

THE MANITOBA
HUMAN RIGHTS
COMMISSION



LA COMMISSION DES
DROITS DE LA PERSONNE
DU MANITOBA

ANNUAL REPORT 2005

EQUALITY OF
OPPORTUNITY

FREEDOM FROM
DISCRIMINATION



**THE MANITOBA
HUMAN RIGHTS
COMMISSION**

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Collect calls accepted

Cover

The photo on this year's annual report cover features students from St. Mary's Academy in Winnipeg performing in a multimedia play called "Your Voice Is All It Takes." The play was performed at a Manitoba Human Rights Youth Conference and revealed that by using art and dance, you can speak out against racism without using words.

The banners, which formed a backdrop for the play, reflect the diversity of Manitoba cultures. The artist is Amelia Smandych, a student at St. Mary's Academy.

Photo: Bruce Bumstead, Brandon Sun

Bilingual Web-site

www.gov.mb.ca/hrc

MANITOBA'S HUMAN RIGHTS CODE

Manitoba's *Human Rights 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



ANNUAL REPORT 2005

Members of other historically disadvantaged groups may also be able to file a complaint. Discriminatory signs and statements are also prohibited.

Most activities in Manitoba fall under provincial jurisdiction. Complaints against certain federally regulated entities, however, such as airlines, banks and telecommunication enterprises, or which involve activities on Crown land set aside for the exclusive use of Aboriginal people and the federal civil service, should be filed with The Canadian Human Rights Commission.

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



**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 2005.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read 'Gord Mackintosh'.

Gord Mackintosh
Minister

THE MANITOBA
HUMAN RIGHTS
COMMISSION



LA COMMISSION DES
DROITS DE LA PERSONNE
DU MANITOBA

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

Sir:

We are pleased to forward to you, the Minister responsible for administration of *The Manitoba Human Rights Code*, the Annual Report of the Manitoba Human Rights Commission for the calendar year ending December 31, 2005.



Janet Baldwin
Chairperson

TABLE OF CONTENTS

- 2** Message from the Chairperson
- 5** Executive Director's Report
- 7** Committees
- 9** Complaint Process – Overview
- 10** Settlements
- 14** Legal Proceedings
- 15** Raising Awareness
- 18** Commissioners
- 21** Organizational Chart
- 22** Statistics

CHAIRPERSON'S MESSAGE

The year 2005 marked 35 years of human rights legislation in Manitoba. Human rights protections in Manitoba have evolved considerably since *The Human Rights Act* was first passed in 1970, and the first Manitoba Human Rights Commission was appointed in 1971. In 1987, the act was replaced by *The Human Rights Code* which, among other things, expanded protected characteristics to include sexual orientation.

The Manitoba Human Rights Commission has been an active leader in cases of sexual harassment and discrimination on the basis of sex, including pregnancy, and sexual orientation. In 2004, the commission intervened in the *Reference re Same-Sex Marriage* to the Supreme Court of Canada, which paved the way for the federal *Civil Marriage Act* in July, 2005, extending the right to civil marriage to same-sex couples. The consequent provincial directive to marriage commissioners to provide service to same-sex couples gave rise to two complaints of religious discrimination by marriage commissioners. The Board of Commissioners had to balance competing rights to freedom from discrimination on the basis of religion and sexual orientation; in this context, where the marriage commissioners were public officials and could not be accommodated without discrimination against same-sex couples, the board dismissed the complaints.

The Board of Commissioners determines the disposition of all complaints, which have not been settled, withdrawn or abandoned, and may dismiss a complaint or refer it to mediation or adjudication. In 2005, the board referred 42 complaints to mediation and/or adjudication, although the commission continues to support voluntary resolution at all stages of the complaint process.

Many of these complaints raised systemic as well as individual issues, such as the remaining cases relating to discriminatory barriers to accessing residency positions faced by international medical graduates.

Complaints regarding the needs of people with visual and certain mobility impairments for accessible pedestrian signals at intersections and crosswalks were referred to adjudication. These complaints underscore the value of citizen committees, which provide a forum for community input on equity, inner city and access issues.

Complaints by the Elizabeth Fry Society, alleging systemic sex discrimination in that provincial corrections 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, have been referred to mediation and, if necessary, adjudication.

Complaints of sex discrimination by two girls about the Manitoba High Schools Athletic Association rule that prohibits girls from trying out for and, if they make the team, playing for their high school boys' hockey team if the school has a girls' team, were referred to mediation and adjudication.

Those who cannot
remember the past
are condemned to
repeat it.

George Santayana

There was only one adjudication hearing in 2005. Adjudicator Arne Peltz upheld a sexual harassment complaint, as described later in this report, and urged the legislature to amend *The Code* to make it possible to name both the harasser and the employer as respondents in a harassment complaint. The commission regrets the resignation of Arne Peltz as an adjudicator and thanks him for his significant contributions to human rights in Manitoba. We welcome M. Lynne Harrison and Peter Sim as new appointees to the adjudication panel. The commission also successfully defended a judicial review of an earlier sexual harassment adjudication in favour of the complainant.

The commission itself decided to apply for leave to intervene in a case before the Manitoba Court of Queen's Bench, which was also a complaint with the commission, to correct the court's misapprehension that nothing had been done to process the human rights complaint and to provide input on the question of jurisdiction over alleged breaches of *The Code* in non-unionized employment.

Once again, the commission decided to seek intervener status in an important case before the Supreme Court of Canada, *Council of Canadians with Disabilities v. Via Rail Canada Inc.*, involving the application of human rights law to the purchase by VIA Rail of a number of rail cars from France which were not accessible to persons with disabilities.

Although *The Human Rights Code* was a model piece of legislation for its time, it requires changes to become a code for the 21st century. Representatives of the commission have met on an ongoing basis with the Minister of Justice and officials from his department to discuss the amendments to *The Code* proposed by the Legislative and Policy Review Committee and detailed later in this report. The commission hosted a lively community consultation regarding the expansion of the provisions of *The Code* to deal with hate messages.

In the summer of 2005, the commission was approached by a group of Aboriginal youth concerned about racial profiling by the police. Commission representatives met with some faculty members from the University of Winnipeg to develop independent research proposals to determine the presence of any bias in the provision of police services.

I was honoured to be invited to serve on the Local Advisory Board to the University of Winnipeg's Global College, which was launched in 2005.

The commission continued to play an active role in the Canadian Association of Statutory Human Rights Agencies (CASHRA), with Dianna Scarth, our executive director, as secretary and myself as past president. Several board and staff members attended the Annual Conference on Human Rights in a Changing World, hosted by the Saskatchewan Human Rights Commission in Saskatoon. Dianna Scarth and I also attended the annual business meeting and the mid-year meeting in December 2005 in Toronto. CASHRA and The Manitoba Human Rights Commission supported in principle the work of the Canadian Commission for UNESCO calling for the establishment of a Canadian Coalition of Municipalities Against Racism and Discrimination.

Jerry Woods, vice-chairperson of the Manitoba Human Rights Commission, was honoured at the Inter-provincial Association on Native Employment Inc. (IANE), Manitoba Chapter Breakfast of Champions. The commission became a member of IANE last year.

The Manitoba Council of Administrative Tribunals continued to evolve, and held two training sessions in 2005: Being Board for board members, and a decision-writing seminar for adjudicators.

Our 35th anniversary culminated in a reception hosted by The Honourable John Harvard, Lieutenant-Governor of Manitoba, and Her Honour Lenore Berscheid, and attended by past and present ministers of justice and attorneys-general, Manitoba Human Rights Commission chairs, commissioners, staff and friends. It was an opportunity to celebrate the distance travelled and to refresh ourselves for the work ahead.

Janet Baldwin
Chairperson

EXECUTIVE DIRECTOR'S REPORT

One's mind, once stretched by a new idea, never regains its original dimensions.

Oliver Wendell Holmes

As 2005 was the 35th anniversary of human rights legislation in Manitoba, it seems appropriate to pause and quickly review the commission's first annual report. One of the achievements noted was an agreement by an employer to remove a term in a collective agreement which permitted the employer to terminate a women's employment if she married. And as a result of consultations with the commission, several newspapers agreed to eliminate the "male" and "female" categories from their help-wanted advertisements. A government agency agreed that it would no longer consider certain key positions as "unsuitable for women" or require photographs to accompany job applications. Human rights complaints filed in the early days appeared to have raised fairly straightforward allegations of direct discrimination, compared with the more subtle and complex issues which are often raised in complaints filed today. Also, there were more limited protections against discrimination, as the only protected characteristics within *The Human Rights Act* were sex, religion, race and nationality. Disability was not protected until 1977, and initially only included physical disabilities. Currently there are 12 protected characteristics and disability includes both mental and physical conditions.

Today the statistics for 2005 reveal that the greatest volume of formal complaints (37 per cent) were filed on the basis of physical and mental disability; the second highest category was sex, including pregnancy (25 per cent), followed by ancestry/ethnic origin (13.5 per cent). This trend whereby disability complaints represent the highest percentage has been consistent over the past decade, peaking in 2004 at 42.5 per cent.

Another important trend in recent years has been the expanded use of mediation and conciliation to resolve human rights complaints. Mediation is offered to the parties at every stage of the complaint process and has become an integral part of the commission's compliance programs. The commission undertook a research project to assess the satisfaction level of parties who had resolved their human rights complaints through the commission's mediation/conciliation processes. A university student, Marise Frankel, designed questionnaires which gave respondents an opportunity to provide feedback on an anonymous basis. When she analyzed the data obtained, Ms Frankel noted that high levels of satisfaction were expressed on the basis of the following six indicators: results of the mediation; procedures followed; length of time to resolve complaints; helpfulness of information received; realism of expectations and extent of emotional resolution. She noted that pre-complaint mediation seemed to be the most consistently satisfying type of mediation, and that in general, there was an equal level of satisfaction among complainants and respondents. Some suggestions were made with regard to program improvement which will be carefully considered. Based on the results achieved by the survey, it was recommended that the commission's mediation programs be continued and strengthened.

As early as 1972, the commission's annual report recognized the importance of "...large-scale public involvement in imaginative educational programs to change

discriminatory patterns among individuals, groups and institutions.” Today one of the greatest challenges faced by human rights commissions is to achieve a balance in the activities of the commission, so that enforcement does not overshadow the promotion of human rights and public education.

Employers are a major focus of the commission’s education activities. In 2005, we were pleased to expand our employment seminars to include a new seminar: How to Investigate a Human Rights Complaint. The half-day seminars on Human Rights in the Workplace, Reasonable Accommodation, and Harassment in the Workplace were fully registered once again, and reached over 200 participants in Brandon, The Pas, and Winnipeg. Our goal next year is to develop new seminars on the topics of employment equity, recent developments in human rights law, and the commission’s complaints processes.

Youth initiatives represented another major focus of the commission’s education activities in 2005. Three youth conferences gave students and teachers an opportunity to learn about human rights issues of particular importance to senior level students. I am proud of the creativity and enthusiasm shown by commission staff who participate in the youth conferences. Each year, the youth conference team develops new workshops, incorporating feedback received from the participants at previous conferences. This year, the interactive workshop Making a Difference challenged students to take information from the conference back to their own schools and to act on it; the commission reviewed the results, and awarded a prize to the winning project. Youth conferences have received overwhelmingly positive feedback and three youth conferences are planned again next year.

The commission continues to work in partnership with other groups and organizations, developing such projects as the *Rights of Youth* publications with the Children’s Advocate and the provincial Ombudsman. We look forward to working together on future publications in this series. Other partners include, the Manitoba Association for Rights and Liberties and The Canadian Human Rights Commission. Together we celebrate and recognize special days and events such as International Women’s Day, International Day for the Elimination of Racial Discrimination and International Human Rights Day.

The commission was very pleased to welcome Rene Ouellette, who joined the staff in May 2005 as an investigator in Winnipeg, and Rena McLeod, who became the commission’s intake officer in The Pas. With Rena’s arrival, the commission’s Northern office re-opened after being closed for almost two years.

Dianna Scarth
Executive Director

COMMITTEE REPORTS

Executive Committee

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

Issues & Communications Committee

Chair: Jerry Woods (Vice-Chairperson)
Janet Baldwin (Chairperson)
Robin Dwarka (Commissioner)
Roberta Frederickson (Commissioner)
Dr. M.V. Naidu (Commissioner)
Fausto Yadao (Commissioner)
Dianna Scarth (Executive Director)
George Sarides (Assistant 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)
Aaron Berg (Legal Counsel)
Sarah Lugtig (Legal Counsel)
Debra Beauchamp (Policy & Program Analyst)

Executive Committee

The Executive Committee, chaired by Janet Baldwin, met five times in 2005. In addition to reviewing financial and personnel matters, it dealt with reconsideration of complaints and provided direction to staff with respect to ongoing concerns, strategic planning, matters relating to the Canadian Association of Statutory Human Rights Associations (CASHRA), media releases, correspondence and emerging issues.

It continued to correspond with Manitoba Health on two issues: the extent of coverage provided for sex reassignment surgery and access to Cholinesterase Inhibitors, such as Aricept, for residents of personal care homes. Representatives of the commission met with officials from Manitoba Health in regard to its decision to discontinue Alzheimer's medication to all residents of personal care homes after three months.

Issues & Communications Committee

The Issues Committee, chaired by Jerry Woods, held four meetings in 2005. It considered matters relating to the commission's communications, such as its monthly bulletin, *Connections*, and its educational initiatives, including youth conferences and employment seminars.

The committee oversaw the establishment of a partnership with the University of Winnipeg to examine racial profiling in policing in Manitoba and to develop strategies to

support bias-free policing. It also oversaw a community consultation with respect to hate messages, attended by over 30 community group representatives.

The committee approved a brochure entitled *You can respect human rights and control the sale of intoxicating substances* to be distributed to merchants.

The committee again wrestled with the difficulty in meeting speaking engagement requests without a dedicated education staff position. It endeavored to fulfill the commission's mandate with respect to human rights education and promotion.

Policy and Legislative Review Committee

The Policy and Legislative Review Committee, chaired by Yvonne Peters, met seven times this year. It continued to review and discuss with the Government of Manitoba legislative proposals for amendments to *The Human Rights Code*. In addition to administrative amendments, the committee continued to develop its recommendation that disadvantaged economic and social condition be added as a protected characteristic under *The Code* and that the protected grounds be clarified to more clearly communicate that discrimination on the basis of gender identity is prohibited. It also recommended an amendment to the harassment section and an amendment to the provisions prohibiting discriminatory signs and statements, in order to more effectively address hate messages.

The committee oversaw the finalization of the Drug and Alcohol Testing Policy, and revised and updated the following policies:

- Rental of Premises: Direct Payment of Rent from Welfare
- Source of Income
- Rental of Premises: Limitation on the number of occupants for a dwelling
- Service/Employment: Dress Codes

COMPLAINT PROCESS – OVERVIEW

Manitobans recognize
the individual worth and
dignity of every member
of the human family...

*Manitoba's Human Rights
Code*

Pre-Complaint Resolution – 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 2005, 64 matters were resolved successfully in the pre-complaint process, taking on average 23.5 days.

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 2005, 212 files were assigned to the three staff mediators at the pre-investigation stage, another 26 were assigned during investigation. Fifty four complaints were resolved successfully in 2005 at these two stages of the process (37 in pre-investigation and 17 at mid-investigation). Of these, 40 complaints were resolved successfully by mediators while the remaining 14 were resolved by investigators or the parties themselves during the investigation. On average, a successful pre-investigation mediation took 73 days.

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 2005, the investigation team was assigned 246 formal complaints to investigate and the team completed investigation assessment reports on 131 complaints. During the investigative process, 14 complaints were resolved by investigators, or the parties themselves, before the matter could be brought before the board. During 2005 the average length of an investigation, including the written report was 10.3 months. In addition to the investigation reports, the team prepared 50 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 warrant further action. In 2005, 42 files were referred to directed mediation and 11 cases were voluntarily resolved at this stage and in 17 other cases, the board determined that the offer made by the respondent in the mediation process was reasonable and declined to proceed to adjudication. On average it took 5.2 months from the time the board determined that mediation should be undertaken, to a successful resolution.

Adjudications – Pursuant to s.29 (3) of *The Code*, the Board of Commissioners can refer complaints to adjudication, either directly or after board directed mediation is not successful. In 2005, 22 files were referred to adjudication and one adjudication hearing was completed. In addition, five files which were referred to adjudication were resolved by legal counsel in advance of the hearing scheduled to take place in 2005.

SETTLEMENTS

Employment

Disability – Accommodation – Reasonable Offer of Settlement

The complainant alleged that a manufacturing company where he had worked for fourteen years, had failed to make reasonable accommodation for his physical disability, asthma. After many absences from work supported by medical notes, his specialist advised him that he could only return to a clean-air work environment. The company said that his job already had the cleanest air environment in the company. After further absences, the company terminated the complainant's employment, citing a lack of medical information and undue hardship on co-workers and the company.

An investigation showed evidence that the company had failed to reasonably accommodate the complainant's special needs once it had been provided with the medical specialist's report and that there was an inadequate process for assessing accommodation requests. After the Board of Commissioners directed that mediation take place, the company proposed a settlement, but the complainant rejected the offer.

The Human Rights Code requires the Board of Commissioners to terminate proceedings if a complainant rejects a settlement offer, which the board considers reasonable. As the parties were close, it urged them to meet once more and an agreement was reached. The company provided the complainant with \$1,500 in general damages for injuries to feelings of self-respect and dignity, implemented an Accommodation Policy and Special Needs Policy and sent supervisory staff to the commission's educational seminars.

Disability – Harassment – Pre-investigation Mediation

The complainant, who is dyslexic, informed her employer of her disability. The employer/owner said that she would work around this condition, but over time, she began to make fun of the complainant when she transposed letters and numbers. Clients overheard these comments and the complainant felt humiliated. Other employees also made similar comments to her, and when she complained about this harassment, the employer told her to "just deal with it." She eventually quit and filed a human rights complaint alleging that she was subjected to abusive and unwelcome comments based on her disability and that her employer had failed to stop the harassment.

Through the commission's pre-investigation mediation, a settlement was reached. The respondent implemented an anti-harassment policy provided by the commission and agreed to attend its Harassment in the Workplace workshop.

Religion – Harassment – Reprisal – Board-Directed Mediation

A woman filed two complaints. The first alleged that a co-worker had made anti-Semitic and inappropriate comments to her, and that after she reported the comments to her supervisor, she was put on sick leave. The second complaint alleged that after she

Throughout history, it has been the inaction of those who could have acted; the indifference of those who should have known better; the silence of the voice of justice when it mattered most; that has made it possible for evil to triumph.

Haile Selassie

contacted the commission, she was terminated from her employment as a reprisal.

Following an investigation, the Board of Commissioners determined that there was sufficient evidence to direct that mediation be undertaken. A settlement was reached, with the complainant receiving almost \$9,500 as severance, and a contribution of \$3,500 towards her legal costs.

Sexual Harassment – Reprisal – Board Directed Mediation

A woman, who contacted the commission about sexually explicit language and comments in her workplace, was given printed information about harassment. She complained in writing to her employer's chief operating officer and also told him that she had contacted the commission and showed him the information she had received. After later being denied a routine \$1,000 bonus, she filed a complaint with the commission alleging she had been subjected to reprisal for having contacted it regarding sexual harassment.

The respondent denied the allegations and said that the complainant did not receive the bonus due to lack of progress in her job duties. The investigation showed that the complainant had never been told of a concern about her work progress and that she had always been given bonuses in the past.

The Board of Commissioners directed that mediation take place and a settlement was reached, with the complainant receiving \$1,000.

Sex – Pregnancy – Different Treatment – Pre-complaint

An employee, who had been on the job four months and on probation, was terminated three days after she told her employer that she was pregnant. Her supervisors cited performance issues and the fact that she was still on probation, but she believed that she had been discriminated against on the basis of her sex (pregnancy). She called the commission and agreed to try pre-complaint resolution.

The parties reached a settlement, with the complainant receiving \$2,884.62, representing the amount she would have earned had she worked up to her maternity leave.

Housing

Family Status – Different Treatment – Pre-complaint Resolution

A woman had been on a waiting list for a subsidized apartment in a building for five years when she was informed that a two-bedroom apartment was available. The property manager however, refused to consider her application because her last name was the same as another tenant's and he did not want to rent to anyone else from that family. The woman contacted the commission and said that she believed that she was being discriminated against on the basis of her family status - being the sister of another tenant. She agreed to try pre-complaint resolution.

The commission contacted the owner, who expressed surprise at the property manager's actions. The woman was offered a two-bedroom apartment.

Disability – Different Treatment – Pre-complaint Resolution

A service provider to adults with mental health disabilities applied to a company it had previously rented from for a three-bedroom apartment for two clients and a worker. It was put on a waiting list and eventually informed that it was at the top of the list. The next three-bedroom apartment that became available however, was given to a retired couple. The executive director of the service believed that they had been passed over because of discrimination based on mental disabilities.

The commission facilitated a pre-complaint resolution by teleconference. The rental company agreed to show the service organization all three-bedroom apartments that became available to see if one was suitable.

Services

Disability – Accommodation – Pre-complaint

A woman who uses a wheelchair could not access the women's changing room at a fitness centre because the two sets of doors at its entrance were too close together to allow for wheelchair passage. She requested that a doorstop be used on the interior set of doors but was told by the centre's supervisor that if other women complained about the door being open, it would have to be shut, and that she could not leave her desk every time someone needed help or she would not get her work done. She suggested to the woman that she bring an aid with her.

The customer called the commission and agreed to participate in a pre-complaint resolution attempt. Commission staff contacted a workplace consultant for the centre, who agreed to look into the matter and later advised that electronic doors were going to be installed.

Age – Different Treatment – Mid-investigation Mediation

A family restaurant did not allow minors into its patio or lounge areas, where there were VLTs, because it thought that doing so would contravene Manitoba laws. A mother believed that this policy was unreasonable discrimination based on age and filed a human rights complaint.

During investigation, commission staff contacted the Gaming Control Commission to inquire about the rules concerning VLTs and minors. A Gaming Control Commission employee subsequently visited the restaurant and said that as the restaurant's VLTs were hidden from view, it would not be an infraction of the Gaming Control Commission if minors who were accompanied by an adult ate in those areas.

The parties agreed to return to mediation and a settlement was reached. The restaurant agreed to allow minors into the lounge and patio when accompanied by an adult and to provide a letter of apology to the complainant.

Sex – Systemic Discrimination – Mid-investigation Mediation

A female high school student wanted to play on a boys' curling team as there was no girls' team. The organization that set the rules and regulations refused the girl's request, stating that to allow it would contravene its boys' only and girls' only team policy. The complainant, who was the mother of the girl, believed that the organization was participating in systemic discrimination on the basis of sex.

During the investigation, the organization admitted that its rule discriminated against girls but argued that it was bona fide and reasonable and that accommodating the request would result in undue hardship. When asked however, to provide evidence, the organization advised the commission that it would change its rule to allow girls to curl on boys' teams when there were not enough girls to form a team of their own. This policy was also extended to other team sports regulated by the organization.

LEGAL PROCEEDINGS

There was one human rights hearing in 2005. There was also a ruling by the Manitoba Court of Queen's Bench upholding a 2002 decision in a sexual harassment case.

Adjudication

In the only human rights hearing the adjudicator, appointed by the attorney general of Manitoba, found that a business owner was in contravention of Manitoba's *Human Rights Code* when, instead of responding properly to complaints that a male manager was mistreating a female employee for rejecting his sexual advances, the owner fired the woman.

The adjudicator however was not convinced that the first direct sexual advance by the manager met *The Code's* definition of harassment. Given a series of text messages exchanged between the two, he found that they had a flirtatious relationship that could have led the manager to think his advances were welcome. Once the woman however clearly turned the manager down, his continuing advances and eventual hostility towards her in the workplace did constitute sexual harassment as reprisal for her rejection.

When the business owner found out about the harassment, he had a duty to investigate and to act on his findings. The adjudicator found that he did make some good faith efforts, but noted that there was no formal or professional investigation.

The ruling emphasized that employers must take the issue of sexual harassment seriously. In this instance, it was found there was a delay in confronting the accused harasser, that the owner lacked the professional expertise to conduct an investigation, and was too close to the subject in his role as owner. The adjudicator also noted that the woman was terminated primarily because she filed a complaint of sexual harassment with The Manitoba Human Rights Commission.

The person who was found to have sexually harassed the complainant was not involved in the hearing. According to *The Human Rights Code*, it is the business owner who is responsible for the harassment of his or her employees when he or she is aware or ought to be aware that harassment has occurred. The complainant was awarded lost wages of \$3,250 and damages of \$1,500.

Application for Judicial Review

In another legal proceeding, the Manitoba Court of Queen's Bench upheld the decision of a human rights adjudicator in a 2002 sexual harassment case. The respondent's argument was that the procedure followed by The Manitoba Human Rights Commission before the Board of Adjudication was unfair alleging that the adjudicator relied on hearsay evidence and that the commission had failed to disclose certain documents. It was found however, that the adjudicator 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 as the respondent had sufficient information to know the case against him. The application for judicial review was dismissed, with costs.

You must be the
change you wish to see
in the world.

Mahatma Gandhi

RAISING AWARENESS

A lie can travel halfway
around the world while
the truth is putting
on its shoes.

Mark Twain

Human rights education and awareness can decrease discrimination and pave the way to equality of opportunity. *The Code* states that “much discrimination is rooted in ignorance and education is essential to its eradication.” The commission places a very high value on providing public education and promoting human rights. Although resources are extremely limited, its accomplishments in these areas include outreach activities, commitment awards, public presentations, youth conferences, workshops, round table discussions, new publications and an innovative website.

Publications

In partnership with the Children’s Advocate and the Office of the Ombudsman, the commission published the first three in a series of *Rights of Youth* booklets. The lack of information available to young people was the driving force behind the project. The first three publications were *On the Job, You and School*, and *Human Rights*. These publications are unique to Manitoba and offer a combination of practical information about employment and education, and also deal with the broad concepts of human rights internationally, nationally and provincially.

In 2005, the commission also published a new pamphlet called *You can respect human rights and control the sale of intoxicating substances*. This guideline specifically aids retailers who sell products containing an intoxicating substance. The commission also reprinted its 2004 reasonable accommodation guideline called *You can remove barriers to equality of opportunity and participation*.

Website

All new publications find their way to The Manitoba Human Rights Commission website, which has more than doubled the number of visits in the last few years. The innovative MHRC TV, which is specifically designed for students, continues to be updated with new videos and youth conference announcements.

Youth Conferences

The cornerstone of the commission’s youth initiative continues to be its youth conferences and in May 2005 the first Westman Human Rights Youth Awareness Conference was held in Brandon. Over 100 students from that area attended.

A new session called Making a Difference was first presented at the Northern Youth Conference held in March. This interactive session encouraged students to discuss human rights in their schools and communities and plan a project. This session was so successful that it was offered to both Westman and Winnipeg conference participants during 2005.

Education Programs

The educational programs offered by the commission continue to be popular among supervisors and human resource specialists. Thirteen seminars on such topics as harassment, reasonable accommodation and human rights in the workplace were offered in Winnipeg, and five were available in Brandon.

A new workshop How to Investigate a Human Rights Complaint was introduced and quickly became the most in-demand program.

A workshop on reasonable accommodation also took place in Thompson while staff was in that city for the youth conference. It was attended by over 50 people.

Outreach and Presentations

Although demands on time make public presentations more difficult each year, the staff continues to try and address requests from various organizations, and reached over 2000 people in 2005. The outreach and liaison officer specifically targeted organizations, which assist new Manitobans, while investigators, mediators and intake officers spoke to various groups associated with government, school divisions, unions and cultural organizations, to name a few.

The commission also provided information booths at such events as Gay Pride Day, 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 Awards luncheon. This year's Commitment Award recognized work that contributed to the improvement of women's rights in the field of employment. The Youth Award acknowledged efforts that had an impact on the advancement of human rights as guaranteed in *The Canadian Charter of Rights and Freedoms* and human rights legislation. In 2005 the award was renamed The Dr. Sybil Shack Memorial Human Rights Youth Award.

The 2005 recipient of 6th Annual Manitoba Human Rights Commitment Award was Marceline Ndayumvire, a settlement officer with Welcome Place.

The 2005 recipient of the Dr. Sybil Shack Memorial Human Rights Youth Award was the Maples Collegiate Unity Group.

Round Table Discussion on Hate Speech

During a lunch time round table discussion at The Manitoba Human Rights Commission, over 30 community representatives met to discuss the restriction of hate messages through human rights legislation. The opinions expressed ranged from concerns over

any type of legislation addressing hate expression to the need to strengthen the existing provisions in *The Human Rights Code*.

The commission is reviewing its current protections. While many other provincial and territorial human rights laws have protections from discriminatory statements similar to those in Manitoba, the provinces of British Columbia, Alberta, and Saskatchewan have hate communications laws, which make it unlawful to promote hatred and contempt towards one or more protected groups. The commission is studying the relative strengths and weaknesses of these and other approaches to discriminatory hate messages, in order to determine whether changes to its current legislation or approach would be of assistance in combating such messages.

BOARD OF COMMISSIONERS

Commissioners represent the geographic, cultural, social and economic profile of Manitoba. They are appointed for a three-year term and serve on a part time basis. There are 10 commissioners, including a chairperson and a vice-chairperson.

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 (U of M) 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 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. 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. Jerry continues his work in the community as an activist and strives for equitable outcomes with a dedication to improving the quality of life for all people.

Commissioners

Roberta Frederickson completed a Family Fetal Alcohol Spectrum Disorder Support Worker program and is now an advocate and educator on behalf of families and children in need. Roberta was a shop steward with the Canadian Auto Workers (CAW) and a long time employee with the Fort Garry Hotel in Winnipeg. She has extensive experience in workplace issues and for many years, facilitated human rights and respectful workplace discussions for CAW members. Her interests include human rights, child advocacy and the issues surrounding domestic violence. Roberta has one grown daughter.

Yvonne Peters has a Bachelor of Arts and a Bachelor of Law from the University of Saskatchewan (in Regina) and a Bachelor of Social Work from the University of Regina. She practises 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 Steering Committee of the

You cannot make yourself feel something you do not feel, but you can make yourself do right in spite of your feelings.

Pearl S. Buck

National Association of Women and the Law, 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 the immediate 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.

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 and is the past chair of the Gay and Lesbian Issues Subsection of the Manitoba Bar Association. He is also a former board member of the Rainbow Resource Centre. As the former editor of *The Jewish Post*, Elliot continues to be active in the Jewish community and is the immediate past president of Camp Massad, a Hebrew immersion residential camp.

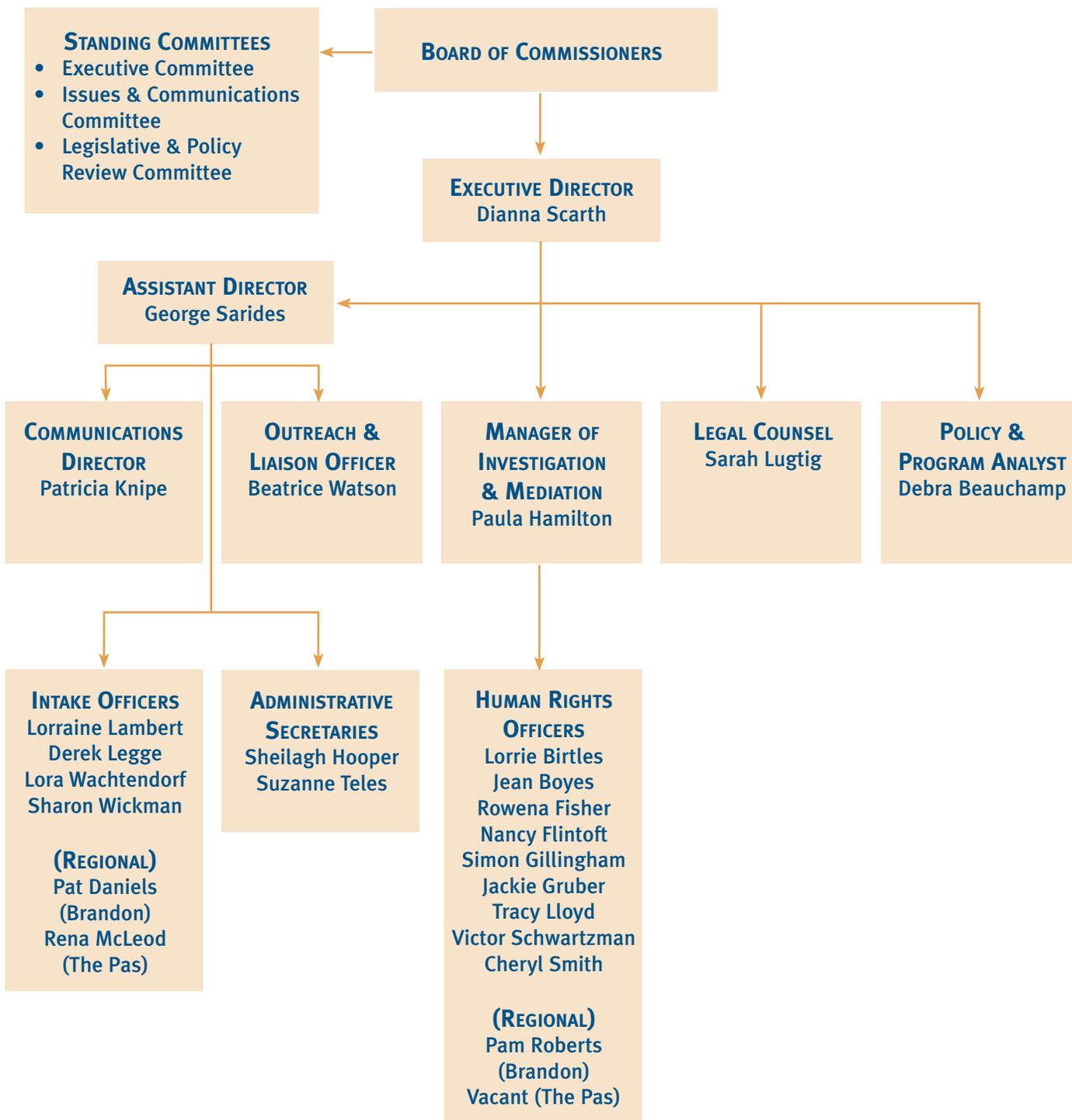
Sheena Rae Reed was born and raised in Flin Flon and her love of the north resulted in her returning to her hometown after receiving her Arts Degree from the University of Manitoba and studying two years of law. Once she returned to Flin Flon, she began working in social services and today she works with Child and Family Services. For the past 17 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 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 for countless organizations and is currently president of the East Indian Support and Advocacy Group, a member of the Manitoba Citizenship Council, and a director on the Board of Directors of the Seven Oaks School Education Scholarship Foundation and Seven Oaks General Hospital Foundation.

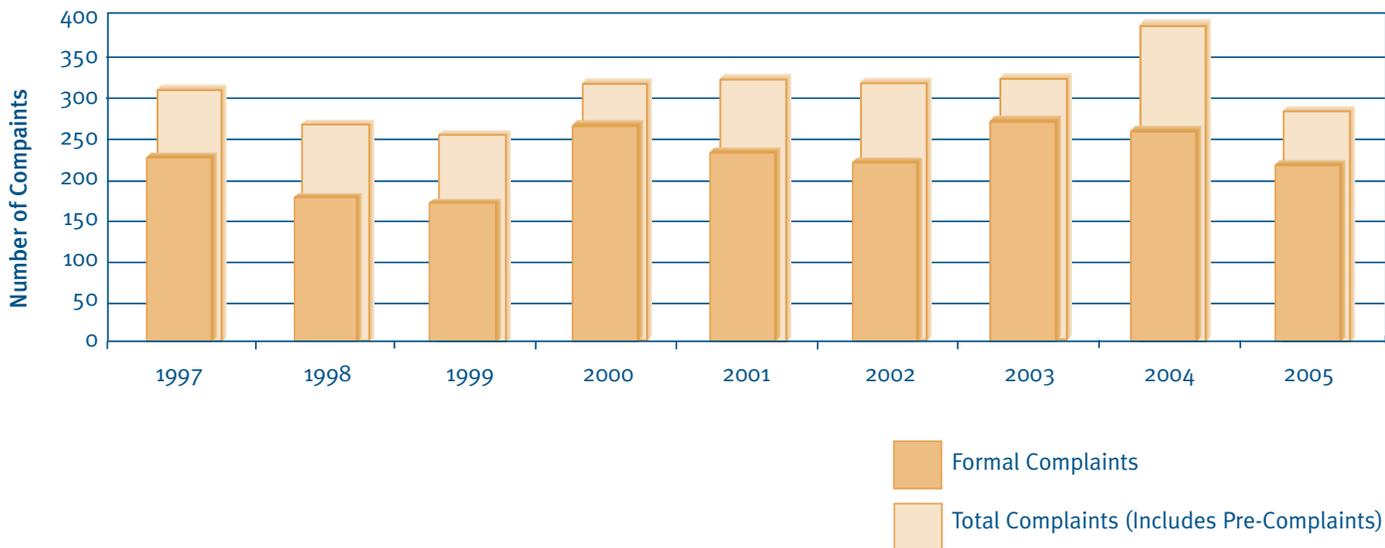
MANITOBA HUMAN RIGHTS COMMISSION

ORGANIZATION CHART 2005



STATISTICS

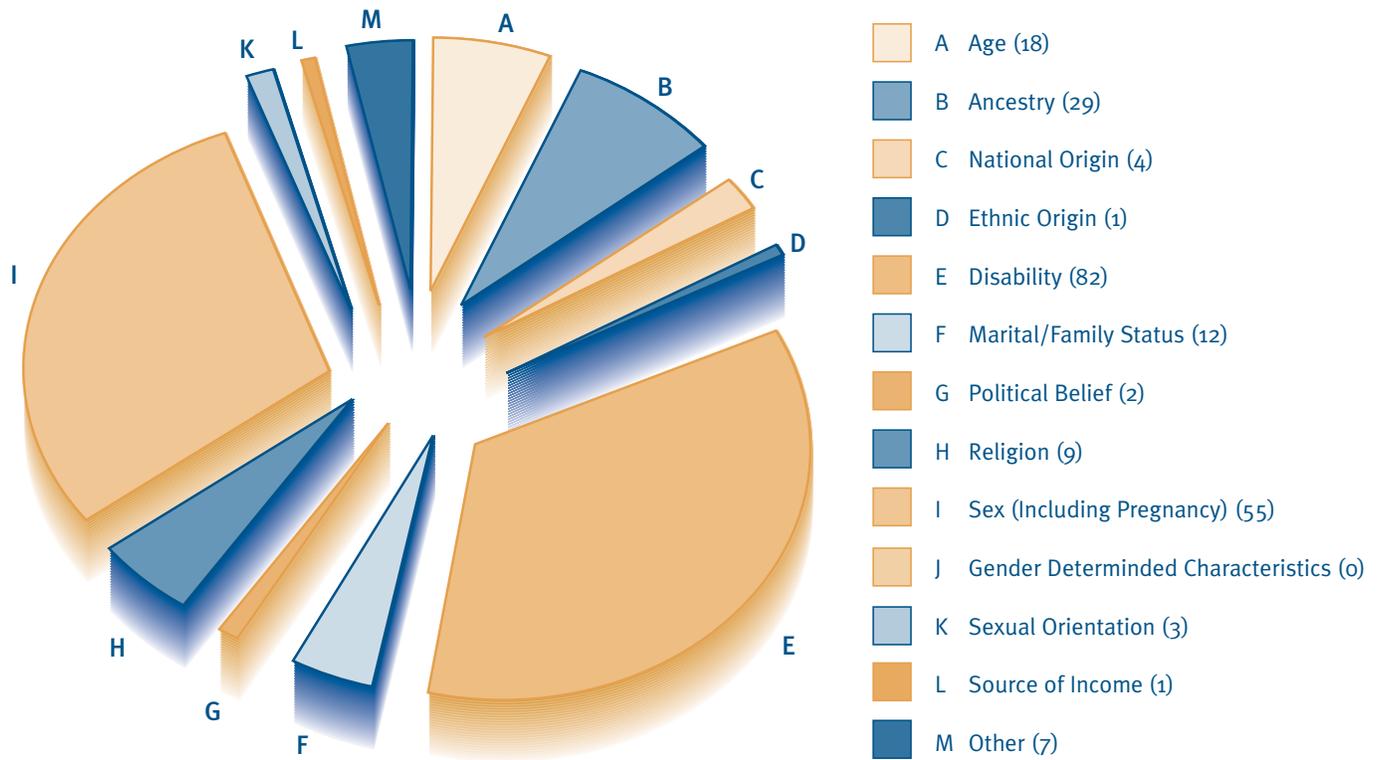
Complaints Filed



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 |

Formal Complaints Registered in 2005 – By Grounds



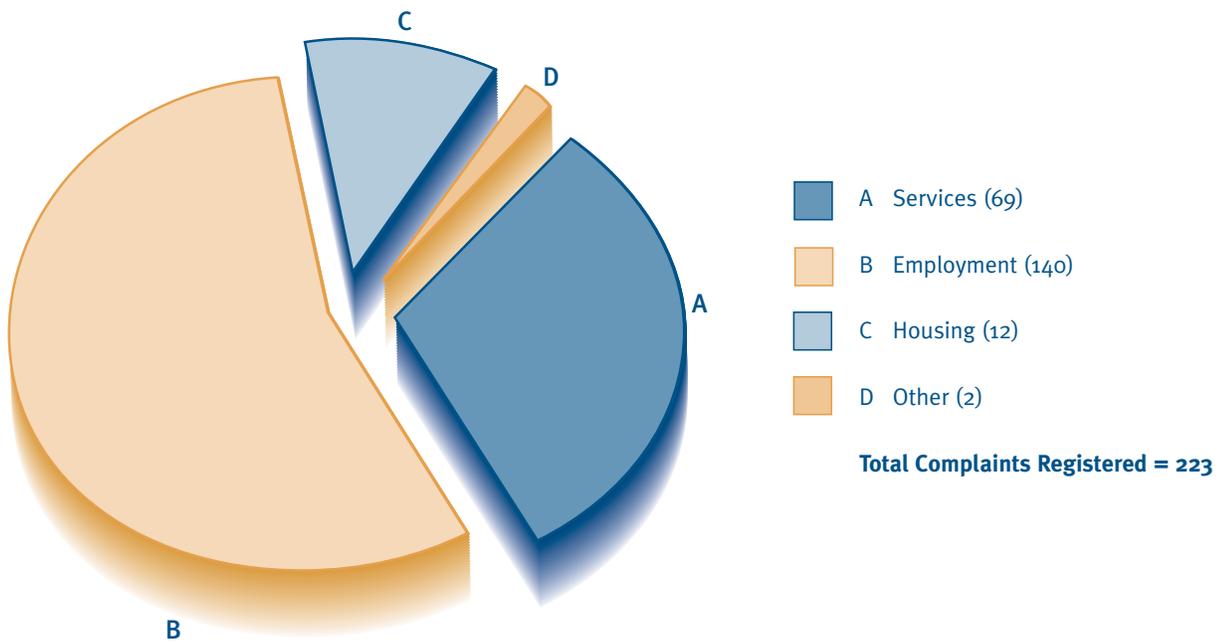
Total Complaints Registered = 223

Files Closed by Grounds in 2005

| 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 | 2 | 4 | 3 | 8 | 0 | 0 | 0 | 1 |
| Ancestry | 4 | 5 | 11 | 22 | 2 | 0 | 4 | 0 |
| National Origin | 1 | 1 | 2 | 5 | 0 | 0 | 4 | 0 |
| Ethnic Origin | 1 | 0 | 0 | 3 | 0 | 0 | 0 | 0 |
| Disability | 23 | 22 | 18 | 33 | 10 | 8 | 6 | 2 |
| Marital/Family | 7 | 5 | 2 | 5 | 2 | 1 | 1 | 1 |
| Political Belief | 0 | 0 | 0 | 2 | 0 | 0 | 0 | 0 |
| Religion | 0 | 0 | 1 | 3 | 1 | 1 | 0 | 0 |
| Sex (including Pregnancy) | 21 | 16 | 9 | 17 | 2 | 1 | 7 | 1 |
| Gender Determined Characteristics | 1 | 0 | 1 | 0 | 0 | 0 | 0 | 0 |
| Sexual Orientation | 2 | 0 | 0 | 3 | 0 | 0 | 0 | 0 |
| Source of Income | 1 | 0 | 2 | 1 | 0 | 0 | 0 | 0 |
| Other | 1 | 1 | 0 | 1 | 0 | 0 | 0 | 0 |
| TOTALS | 64 | 54 | 49 | 103 | 17 | 11 | 22 | 5 |

Total Complaints Closed by Grounds 2005 325

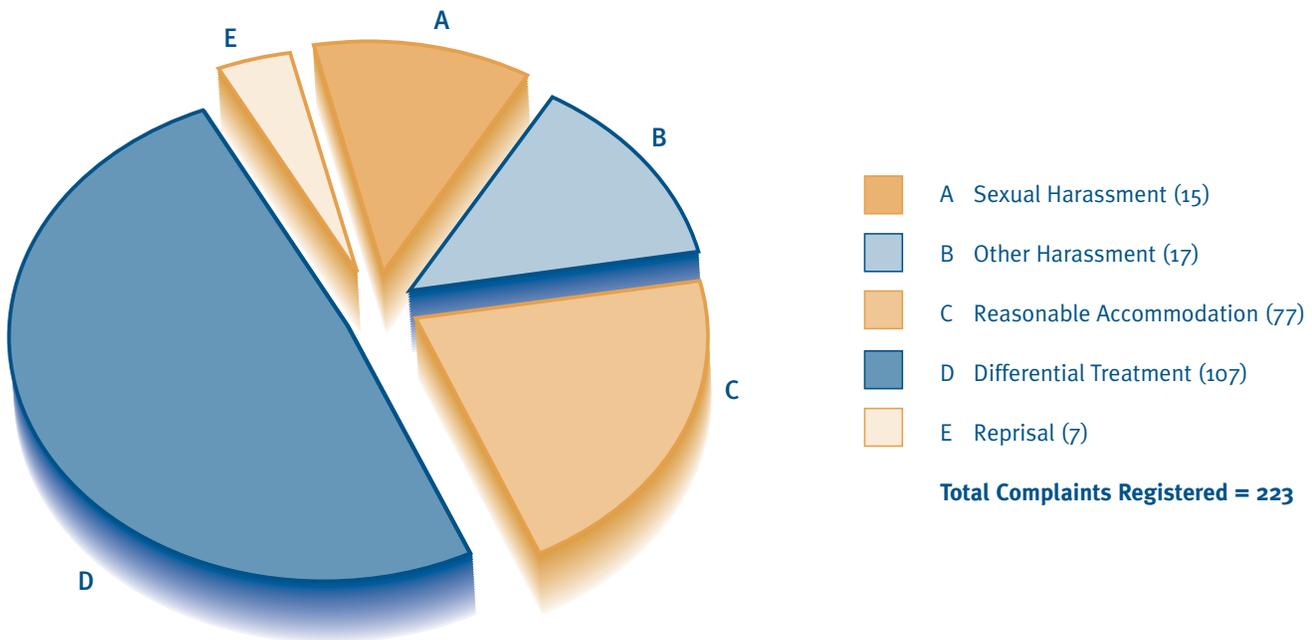
Formal Complaints Registered in 2005 – By Area



Files Closed by Area in 2005

| 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 | 10 | 11 | 15 | 32 | 4 | 3 | 11 | 2 |
| Employment | 48 | 43 | 28 | 65 | 13 | 8 | 10 | 2 |
| Contracts | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Housing | 6 | 0 | 6 | 5 | 0 | 0 | 1 | 1 |
| Other | 0 | 0 | 0 | 1 | 0 | 0 | 0 | 0 |
| TOTALS | 64 | 54 | 49 | 103 | 17 | 11 | 22 | 5 |
| Total Complaints Closed by Area 2005 | | | | | | | | 325 |

Formal Complaints Registered in 2005 – By Nature of Allegation



Files Closed by Nature of Allegation in 2005

| Nature of Allegation | Number of Complaints |
|--------------------------|----------------------|
| Sexual Harassment | 24 |
| Other Harassment | 25 |
| Reasonable Accommodation | 88 |
| Differential Treatment | 177 |
| Reprisal | 11 |
| TOTAL | 325 |

English