

2018 Annual Report Rapport annuel

The Manitoba Human
Rights Commission
and Human Rights
Adjudication Panel

La Commission des droits
de la personne du Manitoba
et le tribunal d'arbitrage
des droits de la personne



Equality of Opportunity and
Freedom from Discrimination
Opportunit s  gales
et inclusivit 

THE MANITOBA
HUMAN RIGHTS
COMMISSION



LA COMMISSION DES
DROITS DE LA PERSONNE
DU MANITOBA



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**ATTORNEY GENERAL
MINISTER OF JUSTICE**

Room 104
Legislative Building
Winnipeg, Manitoba R3C 0V8
CANADA

The Honourable Janice C. Filmon, C.M., O.M.
Lieutenant Governor of Manitoba
Room 235 Legislative Building
Winnipeg, MB R3C 0V8

May it Please Her Honour:

I have the privilege of presenting the Annual Report of
The Manitoba Human Rights Commission and Human
Rights Adjudication Panel for the 2018 calendar year.

Respectfully submitted,

Original signed by
Cliff Cullen
Minister of Justice and Attorney General

THE MANITOBA
HUMAN RIGHTS
COMMISSION



LA COMMISSION DES
DROITS DE LA PERSONNE
DU MANITOBA

Honourable Cliff Cullen
Minister of Justice
Attorney General
104 Legislative Building
Winnipeg, MB R3C 0V8

Dear Minister:

Pursuant to section 6(2) of *The Human Rights Code*, we are pleased to provide you with the Annual Report of The Manitoba Human Rights Commission and the Human Rights Adjudication Panel for the calendar year 2018.

Yours sincerely,

Original signed by
Brenlee Carrington Trepel
Chairperson
Board of Commissioners

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“Manitobans recognize the individual worth and dignity of every member of the human family” – The Human Rights Code



About the Commission

The Manitoba Human Rights Commission is an independent agency of the Manitoba government, responsible for:

- enforcing the rights and responsibilities in *The Code* through a complaints process; and
- promoting human rights and educating the public about *The Code*.

Our work is driven by the recognition of the individual worth and dignity of every person.

Any person who believes they have been discriminated against when at work or when accessing public services or housing may file a complaint with the Commission. We investigate those complaints to determine if there is enough evidence to warrant referring them to the Human Rights Adjudication Panel for a final decision. The commission takes an active role in trying to prove those complaints before the Adjudication Panel because we believe that no person should be discriminated against.

Discrimination is often rooted in ignorance, prejudice and stereotypes. We assist in the early resolution of complaints through education and mediation. We also conduct education programs and engage in activities that assist employers, service and housing providers to understand their responsibilities under *The Code* and promote equality.

We are made up of eight commissioners appointed by the Lieutenant Governor-in-Council and seventeen staff led by an executive director.

The Commission reports to the public on finance and administration matters via the Consumer Protection Division of Manitoba Justice.



Message from the Board of Commissioners

Access to justice is a fundamental value of our justice system. Like other administrative tribunals in Manitoba, the Commission is committed to ensuring that it serves the public effectively and with respect. As a member of the Canadian Association of Statutory Human Rights Agencies, we collaborated with commissions across the country to develop a “virtual classroom”, for online human rights education courses.

In addition, this year we focused our resources on making the human rights complaint process more efficient and accessible to the public. Not only were we able to significantly reduce the time a person must wait to have their complaint investigated, but we have also established better systems and processes to enforce the rights and responsibilities in *The Human Rights Code*. This kind of innovation depends on technology and resources, but also on a strong desire to continue to better serve the public.

We welcomed four new Commissioners in 2018, Tracy Leipsic, Ian Grant, Jeannette Acheson and Darcy Strutinsky, and look forward to working together to promote and protect human rights in this province. We also said goodbye to Diane Dwarka and Leo Aniceto, both of whom served with integrity and dedication to the principle of equality of opportunity for all. We thank them for their service.

We are looking forward to reviewing the recommendations of the Manitoba Ombudsman and the Government-initiated independent review as part of our three-year strategic planning process that will ensure our model and approach remain relevant and inspire our Commissioners and staff to continue to do the important work that is our mandate.

We thank our fellow Commissioners and staff for their hard work and commitment as well as the Government of Manitoba for their ongoing support.

Brenlee Carrington Trepel
Chairperson

John Burchill
Vice Chairperson

Board of Commissioners

CHAIRPERSON

Brenlee Carrington Trepel has been a human rights lawyer, mediator and educator in Winnipeg for 20 years. She has a Bachelor of Laws from the University of Manitoba, where she was a sessional instructor, a designation from the Institute of Corporate Directors and extensive community board experience. As the Law Society of Manitoba's first equity ombudsperson, she helped to educate on and resolve workplace human rights issues for the legal profession. She received the MBA's Equality and Community Involvement Awards. She was recognized by LEAF National as one of 25 lawyers in Canada who advanced women's equality. Recently she was honoured to receive Volunteer Manitoba's William H. Norrie Award.



Special Advisor for Public Safety programs at Assiniboine Community College in Brandon.

Tracy Leipsic is a speed skating coach with the River Heights Speed Skating Club, coaching all levels of athletes including beginner, Provincial teams, Masters and Special Olympics athletes. She has a Business Administration diploma from Red River Community College and is a Canadian Accredited Insurance Broker with 17 years of experience in the insurance industry. She is the Vice President, Finance of the Manitoba Speed Skating Association, and has been involved with the 2017 Canada Summer Games, Canadian Sport Centre MB, Revolution Diving Club and Winnipeg Jewish Child & Family Services.



VICE CHAIRPERSON

John Burchill is Chief of Staff with the Winnipeg Police Service. He has Bachelor of Arts in Criminal Justice from Athabasca University, a Bachelor of Law from the University of Manitoba and a Master of Laws from Osgoode Hall. He was a police officer for 25 years, six of which were spent as a supervisor of the Hate Crimes Team. Prior to re-joining the Police Service he worked as a Crown Attorney with Manitoba Justice and a Risk Manager with the University of Manitoba.



Mike Reader is the Director of Capital Management for the Northern Regional Health Authority. He has worked with the NRHA since 2008. Prior to the NRHA he worked with Tolko Kraft Papers and previous owners of The Pas paper mill for 28 years as an Industrial Electrician & 3rd Class Power Engineer. During that time he held various positions within the Union. Executive of the Communications Energy & Paperworkers Union and previous Canadian Paperworkers Union He is of Métis ancestry and was born and raised in The Pas. Mike enjoys all aspects of northern living and is an avid outdoorsman.



Jeannette Acheson is a Parole Officer with the Correctional Service of Canada and has worked with them in a variety of positions since 1984. She has a B.A. with distinction in Criminology and Psychology from the U of M and is fluently bilingual. She often acts as an expert witness for the Correctional Service of Canada in the area of Dangerous Offenders testifying in Manitoba and Ontario courts. She has served as the Chair of the Board of Directors for The Laurel Centre, a treatment centre for women who were sexually abused as children, in Winnipeg and continues to serve as a Honourary Board member. She is a Trustee for the Canadian Museum for Human Rights. Currently, Jeannette is the Vice Chair for the Manitoba Police Commission.



Loretta Ross is a lawyer and the Treaty Relations Commissioner of Manitoba. She has an LL.B from Queens' University. She has practiced law for over 20 years dealing with child and family matters, trust and corporate law, land claims and residential school claims and has acted as legal counsel to numerous First Nation governments and organizations. She is a member of the Hollow Water First Nation in Manitoba. Loretta remains active in the community by presiding on various boards.



Ian Grant is former Chief of Police with the City of Brandon- Brandon Police Service. He has a B.A. from Memorial University and a Masters in Rural Development from Brandon University. Ian also holds an Honorary Diploma in Police Studies from Assiniboine Community College. He began his policing career with the RCMP in 1980 and in 1985 joined the Brandon Police Service. He played a key role in the development of The Missing Persons Act during a secondment with the Province of Manitoba. Ian has been involved with several boards including Sisters in Spirit Walk Organizing Committee and Community Mobilization Westman. Ian is currently serving as a



Darcy Strutinsky is a consultant to the public and private sector on respectful workplace, harassment and discrimination issues in unionized work environments. He has a Bachelor of Arts from the University of Manitoba and has worked extensively in the area of human resources and labour relations, primarily in the health care field, holding senior management positions with the Labour Relations Secretariat, Health Sciences Centre and Seven Oaks Hospital. He serves as a member of the Manitoba Labour Board and the Labour Management Review Committee, and with the Children's Hospital Foundation of Manitoba.



Acknowledgments



Diane Dwarka served as a Commissioner from 2015 until December 2018. She brought a remarkable wealth of experience in grassroots community organizing. She has led numerous community organizations, including the Women’s Inter-church Council of Canada, Red River College Alumni, Council of Caribbean Organizations of Manitoba, Community Legal Education Association and the Manitoba Association for Multicultural Education. We will greatly miss the compassion, sensitivity and perspective Diane brought to our work.



Leo Ancieto served as a Commissioner from 2007 until May 2017. Leo has extensive experience in the legal profession, serving as a Lawyer with Agassiz Community Law Centre, as well as strong ties to Manitoba’s Filipino community. Leo’s contribution to the Board’s work will be greatly missed.

“Maybe some of us have changed the world. Even just a bit. Maybe some of us are still working on it. Diligently. Every day. In our own way.”



Greetings from the Executive Director

This year marked the 70th anniversary of the *Universal Declaration of Human Rights*, which forms the basis for human rights protections in Canada. Despite a growing awareness and focus on these rights, it remains clear that we have much work to do. The complaints investigated by the Commission in 2018 and those referred for a decision to the Human Rights Adjudication Panel demonstrate that prejudice and negative stereotypes persist and that there is an opportunity to educate employers, service providers and housing providers in Manitoba about their legal responsibility to ensure every Manitoban is treated with dignity and respect.

As part of our targeted education strategy, we continued to build the capacity of Manitobans to identify and address discrimination by reaching out to Family Resource Centres in Winnipeg, to offer a free workshop on understanding the rights and responsibilities in *The Code*. In addition, based on feedback from the public and a detailed review of harassment complaints made under *The Code*, we developed a full-day course on conducting a harassment investigation in the workplace. Among other things, we also continued to develop our website, adding guidelines on *Human Rights in Hiring*, *Human Rights in Housing* and in anticipation of the legalization of cannabis, *Drugs and Alcohol in the Workplace*.

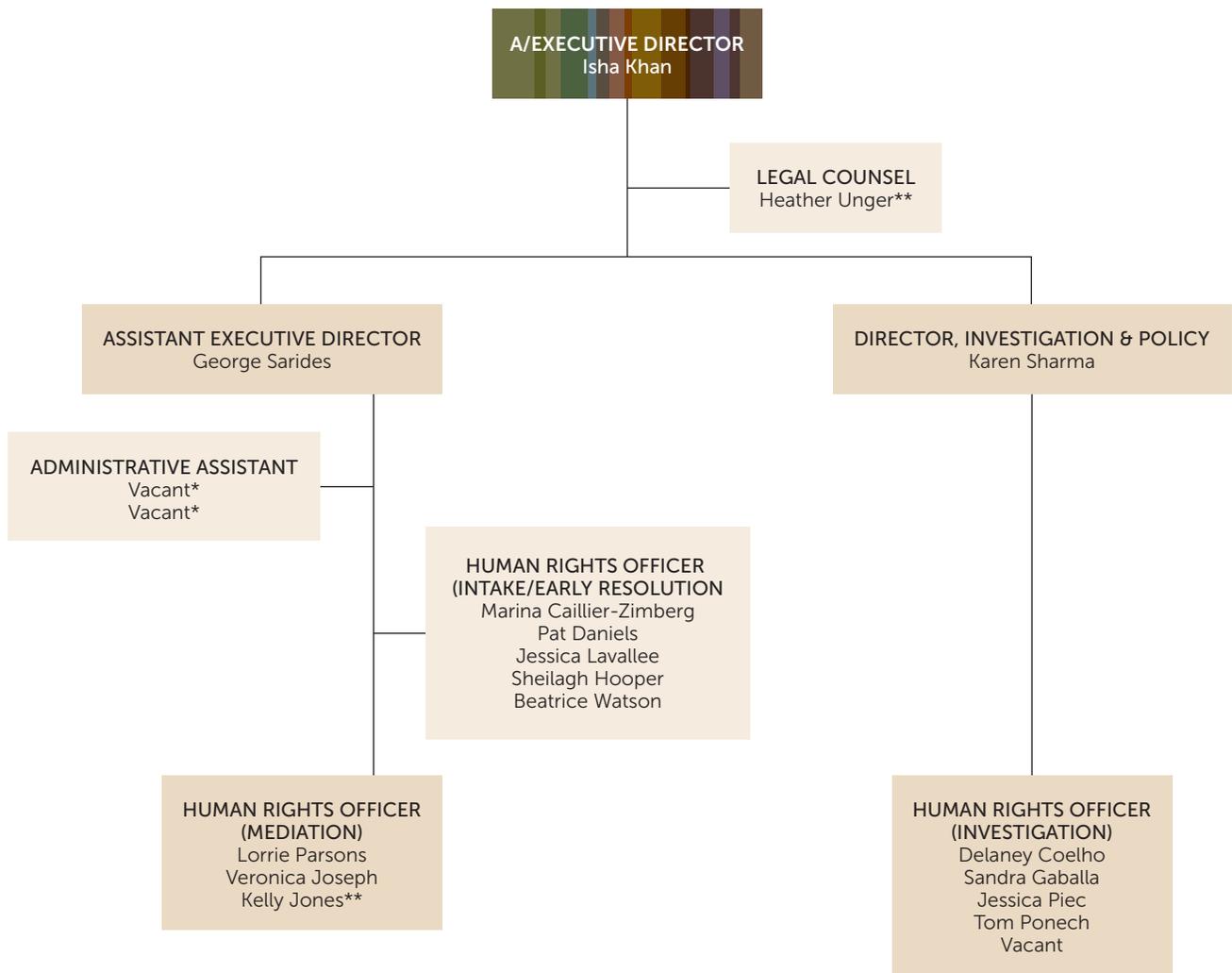
In addition to our education initiatives, we focused this year, more than ever, on making the human rights complaint process more efficient and more accessible to the public.

By redesigning our internal file management database, we were able to create better systems to respond to enquiries from researchers and the media about current and emerging human rights issues. We also looked for innovative ways to streamline our internal processes and communicate with the public. This work has been integral to our success this past year in significantly reducing the time a person must wait to have their complaint investigated.

It is a true privilege to work with colleagues who are driven by the pursuit of equality. I am grateful to each member of our staff for their ability to listen, to educate and to ensure that Manitobans can rely on a fair and robust complaint mechanism.

Every connection we make with the public increases our understanding of our fellow citizens and informs our ability to discharge the responsibilities given to us under *The Code*.

Isha Khan
A/Executive Director



** vacancy may be filled by term placement ** on leave
This chart reflects permanent staff as of December 31, 2018.*

Thank you to Fernando Gonzalez, Emily Rempel and Paul Kruse for your contributions to our work in 2018.





Advancing
Rights for all
Manitobans

Year in Review

“The Commission shall promote the principle that all members of the human family are free and equal in dignity and rights and entitled to be treated on the basis of their personal merits.”
– The Human Rights Code

Your Primary Resource on Human Rights

In 2018, we advanced our strategic objective of being the province’s primary resource on human rights. We were contacted by 4,271 members of the public for information on human rights and provided human rights training to 1,271 individuals across Manitoba. We provided customized training to over 20 organizations in Manitoba and presented to 12 university and college classes.

Improving Client Service

We continued to focus on improving client service by reducing the length of time parties wait for an investigation of their human rights complaint. By introducing a number of initiatives aimed at creating efficiencies within our complaint system, we effectively reduced our wait times from 22 months to 15 months. Through an “all hands on deck” approach, we completed a record number of investigations, up 120% from 2017.

Championing Rights

The Commission represented the public’s interest in five hearings before Manitoba’s Human Rights Adjudication Panel. The hearings dealt with issues ranging from the accommodation of mental health related disabilities in the workplace, the rights of tenants to be free from discrimination on the basis of their source of income when renting housing, and issues of jurisdiction in a case involving an employee who was treated differently following a parental leave. Our lawyers presented evidence in these hearings to prove the complaints and enable the adjudicator to award a remedy that addresses the discrimination experienced by the complainants and prevents discrimination from occurring in future.

Celebrating Success

Along with our partners, the Canadian Human Rights Commission and the Manitoba Association of Rights and Liberties, we held the 18th annual Manitoba Human Rights Awards event, to mark International Human Rights Day and honour Manitobans who work tirelessly to protect and advance human rights in our community. This year we recognized the achievements of Daniel Thau-Eleff, Brielle Beardy-Linklater and the Public Interest Law Centre.

Reflecting on our Shared History

In 2018, we celebrated 70 years since the adoption of the Universal Declaration of Human Rights. To mark the occasion, the Commission organized a series of lectures, open to the public, reflecting on our history of human rights.

L'année en revue

*« La Commission doit défendre le principe selon lequel les membres de la famille humaine sont libres et égaux en dignité et en droit et doivent être traités en fonction de leurs mérites individuels. »
- Code des droits de la personne*

Votre ressource principale en matière de droits de la personne

En 2018, nous avons progressé dans notre objectif stratégique de devenir la ressource principale de la province en matière de droits de la personne. Nous avons fourni de l'information sur les droits de la personne à 4 271 membres du public et donné de la formation sur les droits de la personne à 1 271 personnes partout au Manitoba. Nous avons offert une formation sur mesure à plus de 20 organismes au Manitoba et présenté des séminaires devant 12 classes dans des collèges et universités.

Améliorer le service à la clientèle

Nous avons continué de mettre l'accent sur l'amélioration du service à la clientèle en réduisant le temps d'attente des parties avant la tenue d'une enquête sur leur plainte relative aux droits de la personne. L'adoption d'un certain nombre d'initiatives visant à améliorer l'efficacité de notre processus de traitement des plaintes nous a permis de réduire nos temps d'attente de 22 à 15 mois. Grâce à une approche concertée, nous avons pu mener à bien un nombre record d'enquêtes, ce qui représente une hausse de 120 % par rapport à 2017.

Défendre les droits

La Commission a représenté l'intérêt public dans cinq audiences du Tribunal d'arbitrage des droits de la personne. Ces audiences portaient sur des questions comme les mesures d'accommodement relatives à une incapacité mentale en milieu de travail, les droits des locataires à ne pas faire l'objet de discrimination fondée sur leur source de revenu lorsqu'ils louent un logement, et les questions de compétence dans une affaire concernant un membre du personnel qui a été traité différemment à la suite d'un congé parental. Lors de ces audiences, nos avocats ont présenté des éléments de preuve afin de corroborer les plaintes et de permettre à l'arbitre d'octroyer une réparation qui tient compte de la discrimination subie par les plaignants tout en évitant que ce type de discrimination se répète à l'avenir.

Souligner les réussites

En collaboration avec nos partenaires, la Commission des droits de la personne du Manitoba et l'Association manitobaine des droits et liberté ont tenu la 18^e remise annuelle des prix des droits de la personne, qui souligne la Journée internationale des droits de l'homme en rendant hommage à des Manitobains qui travaillent d'arrache pied pour protéger et promouvoir les droits de la personne dans notre collectivité. Cette année, nous avons reconnu les réalisations de Daniel Thau Eleff, de Brielle Beardy Linklater et du Centre juridique d'intérêt public.

Témoigner de notre histoire commune

En 2018, nous avons souligné les 70 ans de l'adoption de la Déclaration universelle des droits de l'homme. Pour marquer l'occasion, la Commission a organisé une série de conférences ouvertes au public qui portaient sur notre histoire en ce qui concerne les droits de la personne.

Complaints by the Numbers

Any person may file a complaint alleging that another person has contravened *The Code*.

The Commission is responsible for investigating allegations of discrimination in Manitoba and for deciding if the person's complaint should be dismissed or referred to a public hearing before a member of the Human Rights Adjudication Panel.

Intake officers respond to a range of enquiries from the public. We discuss the situation and if it appears that the person is concerned about discriminatory behaviour or treatment, we provide them with general information about their rights and our complaint process. We may assist at this early stage in trying to resolve the concern through pre-complaint mediation. If there is no resolution of the concern, we gather information and evidence to draft a formal complaint under *The Code*.

4,271

people contacted us for information
(by phone, email and in-person)

446

people were referred to
other agencies for assistance

884

believed they were
discriminated against

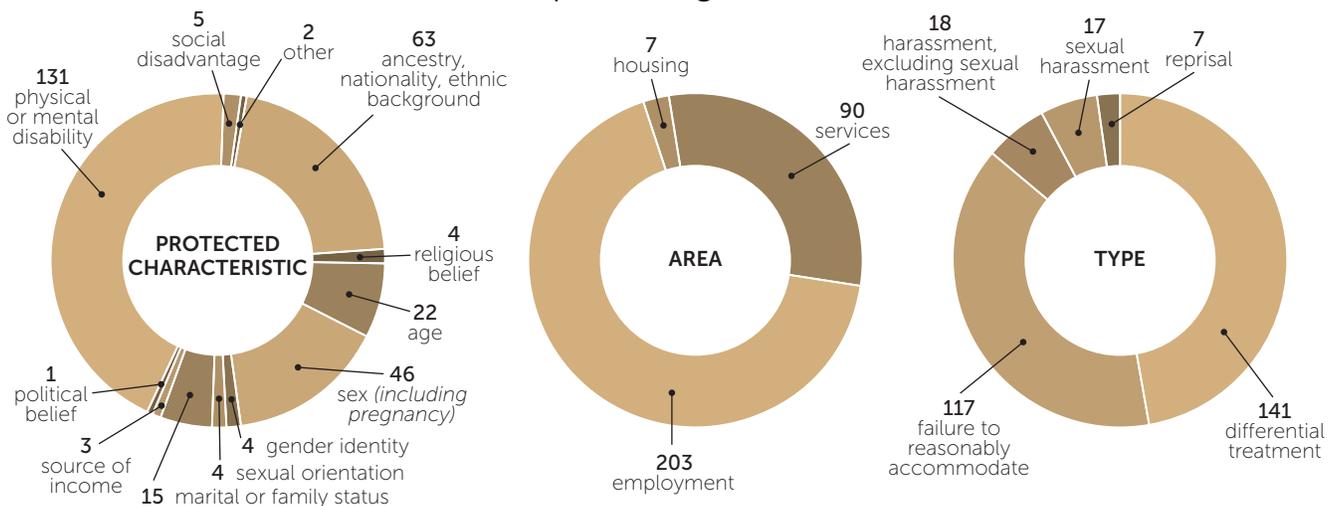
462

complaint files
were opened

300

formal complaints
were registered

New complaints registered in 2018



A complaint alleging that two employees of a business were known to have been using discriminatory and offensive language about a customer based on his ancestry, was resolved without the need to register a formal complaint. The business took responsibility for the actions of its employees, reimbursed the customer for his services, offered to cover the expenses of any further work and offered an apology for the behaviour.

Of the complaints filed on the basis of disability, 60% were on the basis of a physical disability and 40% were on the basis of a mental health related disability.

53 % of complaint files opened resolved through mediation prior to an investigation or were not pursued.

The Commission will serve the registered complaint on the respondent and will assist the parties to resolve the complaint through mediation. If there is no resolution of the complaint we will ask the respondent to provide a written response or reply to the allegation of discrimination

A complaint alleging that a woman had been fired because she had a disability resolved before the complaint was investigated. The employer agreed to compensate the woman for injury to dignity and develop a reasonable accommodation policy, which it would distribute to all staff. The employer also agreed to attend human rights training, with a focus on reasonable accommodation. The woman agreed to sign a release of all claims against the employer.

The investigation team will obtain documents and conduct interviews of the parties to determine if *The Code* has been contravened as alleged in the complaint. The investigator will prepare a report that summarizes all of the evidence relevant to the complaint. The investigator will make a recommendation to dismiss the complaint or to refer it to the adjudication panel for a public hearing, based on whether there is sufficient evidence to substantiate the complaint. The parties have an opportunity to submit a written response to the investigation report before the board makes the decision.

270

investigations were completed

184

complaints were dismissed

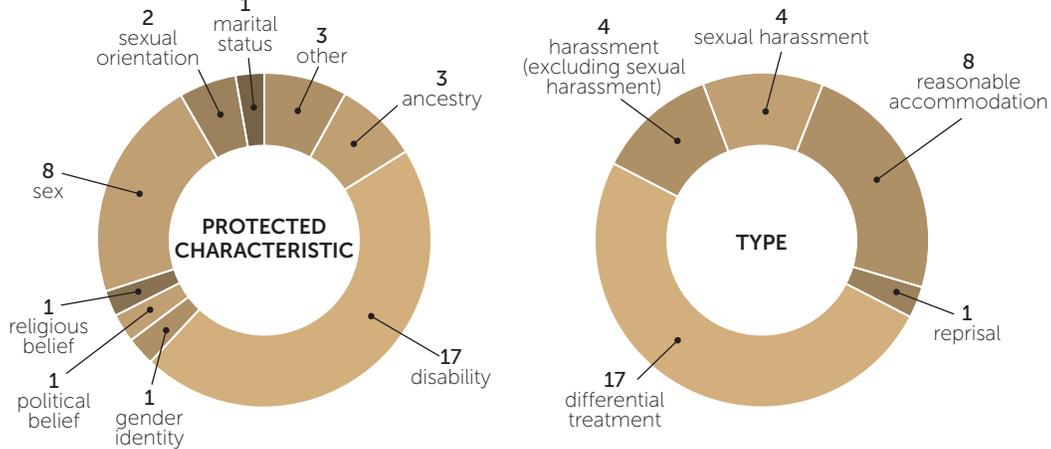
28

complaints were substantiated

40%

of the complaints dismissed required limited investigation

Complaints substantiated in 2018



Note: some complaints were filed on the basis of multiple protected characteristics and alleged multiple types of discrimination.

Average time to investigate a complaint

2014: 11 months
2016: 6 months
2018: 5.5 months



123

investigations completed in 2017

270

investigations completed in 2018

Reducing wait times

In 2018, the Commission continued to prioritize the overall reduction of the time parties are waiting to have their complaint investigated. At the beginning of 2018, wait times were approximately 22 months. Through a number of initiatives aimed at creating efficiency within the Commission's complaint system, the Commission was able to reduce wait times to 15 months by the end of 2018. Our success is reflected in our 2018 investigation outcomes, which includes 120% increase in the number of completed investigations. The Commission will continue to prioritize reducing wait times and implementing efficiencies in our compliance system, while balancing our obligation to conduct thorough investigations.

The Commission will offer the parties a final opportunity to resolve the complaint where the board has found the complaint is substantiated.

7

complaints resolved in directed mediation

Mediators assist the parties to find creative solutions that secure the public's confidence that discrimination will not occur in the future, and that compensate for injury to the complainant's dignity and for any financial loss.

A complaint alleging that an employer discriminated against an employee when he was fired shortly after taking time off work to treat a mental health related disability was referred by the board to a hearing, with one final opportunity to resolve in mediation. A mediator was able to help the parties resolve their complaint. The employer agreed to adopt a reasonable accommodation policy, have its manager take human rights training, apologized to the employee and offered him a letter of reference, as well as compensation for injury to his dignity and lost wages.

If the complaint is not resolved, the Commission will request that a member of the Human Rights Adjudication Panel is appointed to make a final decision following a public hearing. Our lawyers represent the public's interest in eliminating discrimination in that process. We present evidence to the Adjudication Panel to prove the complaint and enable the adjudicator to award a reasonable remedy.

A complaint alleging that a government employee was discriminated against on the basis of her sex (including pregnancy) in the way that her employer calculated her merit increases following her return to work from maternity/parental leave was heard by Manitoba's Human Rights Adjudication Panel. The Commission argued that the government's practice discriminated against the employee and other individuals who have given birth/taken parental leave. The adjudicator heard evidence that the employee had engaged her union on this issue, and determined that given the issue had been decided via another legal process he did not have jurisdiction to consider the matter further.

In accordance with the Manitoba Court of Appeal's decision in *Northern Regional Health Authority v. Manitoba Human Rights Commission*, we continue to work to ensure that we are investigating complaints that are within our jurisdiction to do so. This allows us to ensure that a complaint has not already been determined by another administrative tribunal or is not being considered in another process, including through a union grievance process. Making these decisions early ensures that a person is not having to navigate multiple legal processes at once, and allows them to get a resolution to their concern more quickly.

20

complaints found substantiated by the Board, did not resolve in mediation and were referred to the Adjudication Panel to be determined after a public hearing



THE MANITOBA HUMAN RIGHTS COMMISSION
LA COMMISSION DES DROITS DE LA PERSONNE DU MANITOBA

FREEDOM FROM DISCRIMINATION • EQUALITY OF OPPORTUNITY

1-888-884-8681
manitoba.humanrights.ca

Inspiring
Equality

“Much discrimination is rooted in ignorance and education is essential to its eradication.”
- Preamble,
The Human Rights Code

1,271

people registered for our human rights education programming

170

people were trained on how to investigate and address harassment allegations

31

people were trained on gender diversity and inclusion in the workplace

110

landlords, property managers and other housing providers were trained about how to identify and address human rights issues in the context of housing

271

people were trained about the basic rights and responsibilities in *The Code*

One of our current strategic objectives is to develop our role as a human rights educator in this province. In 2018, we continued providing targeted education to the public on pressing human rights issues, specific to particular industries and professional settings. We

prioritized the development of educational tools and resources focused on the connection between human rights, alcohol and other substances, timely given the recent legalization of cannabis. Our new tools included a Guideline on Drugs and Alcohol in the workplace, aimed at helping employers balance their obligations to uphold the human rights of their employees and clients, with ensuring they maintain safe workplace environments. We also delivered an educational seminar to housing providers, in response to requests to help build capacity on this issue in this sector.

We presented to more than 12 university and college classes on human rights issues.



“It is important that human rights educational programs assist Manitobans to understand all their fundamental rights and freedoms, as well as their corresponding duties and responsibilities to others.”
- Preamble, *The Human Rights Code*



“Thank you so much for coming to speak to our grade nine class. Your talk was such a positive experience for our students. I was impressed with how accessible you made these complex issues.”
- Manitoba Teacher

Following the Manitoba Court of Appeal’s *Northern Regional Health Authority v. Manitoba Human Rights Commission* decision, it was also important to us that we continue fostering dialogue and building capacity within the unionized sector on human rights issues. In 2018, we held a number of educational workshops targeted to union professionals, to help explain the Commission’s interpretation and application of the recent ruling and discuss common human rights challenges in unionized workplaces.

For over ten years, the Manitoba Human Rights Commission has been partnering with immigrant serving agencies to ensure that newcomers to Manitoba are aware of their rights and responsibilities under *The Code*. We know that newcomers may face barriers when it comes to finding housing, gaining employment that recognizes their skills and education and building social networks.

In 2018, we developed new educational resources for Manitobans, including guidelines on *Human Rights in Hiring*, *Human Rights in Housing* and *Drugs and Alcohol in the Workplace*.





We continue to respond to requests from professional associations and industry groups to provide customized human rights training in response to their specific needs at their meetings and conferences. Thank you to the following organizations for asking the Commission to deliver customized training at your events:

- Alternative Dispute Resolution Institute of Manitoba
- Assiniboine Community College
- Brandon University
- Canadian Conference on Developmental Disabilities and Autism
- City of Brandon
- Claims Association of Manitoba
- College of Licensed Practical Nurses
- Cranberry-Portage School Division
- Flin Flon School Division
- Hanover School Division
- Inclusion Winnipeg
- Liquor and Gaming Authority of Manitoba
- Manitoba Alliance of Regulatory Health Professionals
- Manitoba Association of School Superintendents
- Manitoba Council of Administrative Tribunals
- Manitoba Hydro
- Manitoba Infrastructure
- Manitoba Justice – Legal Services Branch
- Mystery Lake School Division
- Professional Property Management Association
- Robson Hall Employment Labour Club
- The Pas Community Renewal Corporation
- University College of the North
- University of Manitoba's Office of Human Rights and Conflict Management
- Volunteer Management Professionals of Canada and Manitoba Association for Volunteer Administrators



THE MANITOBA
HUMAN RIGHTS
COMMISSION

LA COMMISSION DES
DROITS DE LA PERSONNE
DU MANITOBA

Equality of Opportunity and Freedom from Discrimination



Promoting Change



Celebrating 70 Years of the Universal Declaration of Human Rights

In 2018, Manitobans, along with individuals across the world, celebrated the 70th anniversary of the Universal Declaration of Human Rights (UDHR), which was adopted by the United Nations General Assembly in Paris on December 10, 1948. Since its adoption, the UDHR has been the cornerstone of international human rights law and inspires us to continue to work to ensure freedom, equality and dignity for all.

The MHRC celebrated the 70th anniversary of the UDHR by promoting education and awareness, through a three-part speaker series. Open to the public free of charge, the Commission launched the series with a talk by Elder Harry Bone on the connection between the treaties and human rights. Elder Bone explored the spirit and intent of the treaties, and how foundational human rights concepts of equality and dignity form the basis of our treaty obligations. The speaker series also featured disability rights advocate Megan Linton, who reflected on the history of advancing rights for people with disabilities in Manitoba, and the work that remains to address the systemic barriers that people with disabilities face in all areas of life in Manitoba.

The Speaker Series concluded with a lecture by Senator Marilou McPhedran, who reflected on the 70th anniversary of the UDHR and its effectiveness as an instrument of international human rights law. Senator McPhedran's talk was delivered at the Manitoba Human Rights Awards event, calling on participants to reflect upon the ways in which the UDHR is foundational to local advances in human rights.



Manitoba Human Rights Awards

Since 1989, the Commission has held an event to celebrate international Human Rights Day on December 10. Together with our partners, the Canadian Human Rights Commission and the Manitoba Association of Rights and Liberties, we hosted the 18th annual Manitoba Human Rights Awards. There is always a special feeling in the air at the awards events, perhaps because it brings together rights advocates in our community who work tirelessly and often silently to advance equality and challenge the discrimination faced by members of our communities. Every year, the stories of the award recipients inspire us to continue our work and find new and innovative ways to bring about change.

As in previous years, the organizing committee put a call out to Manitoba artists to design a unique piece to be awarded as the Human Rights Commitment Award. This year, Treherne, Manitoba artist Krista Zeghers' designed a fibre-based art piece that depicted the damaging impact of colonialism in Canada, and the collaborative work required by all Manitobans to advance reconciliation and human rights.

The Manitoba Human Rights Commitment award was presented to Daniel Thau-Eleff, a Winnipeg-based playwright, performer, director, workshop leader and artistic producer of the Moving Target Theatre Company. For the past 14 years, he has used theatre to challenge Manitobans to reflect on their lives and live courageously. Through his work, he tackles often complex issues around family, relationships, sex, violence and morality and social issues such as the Israeli- Palestinian conflict and gender identity and inclusion.

In 2018, the Sybil Shack Youth Award was presented to Brielle Beardy-Linklater, who is an advocate for the 2sLGBTQIA+ community. Brielle helped found Pride North of 55 in northern Manitoba and was a 2018 Winnipeg Pride Parade Marshall. Her community activism speaks to the need to challenge transphobia and anti-indigenous racism in all communities across Manitoba.

Finally, the Aaron Berg Award was presented to the Public Interest Law Centre, an independent office of Legal Aid Manitoba that has represented individuals and groups who might otherwise not have the resources or ability to advocate for their rights. The Centre has taken a variety of cases tackling systemic issues including the rights of persons with disabilities to live in the community and the adequacy of services for young persons with disabilities.

THE HUMAN RIGHTS ADJUDICATION PANEL

Sherry Walsh

Lynne Harrison

Peter Sim

Robert Dawson

Lawrence Pinsky

Daniel Manning

ABOUT THE ADJUDICATION PANEL

The Human Rights Adjudication Panel (“the Panel”) is a quasi-judicial administrative tribunal which is independent from the Manitoba Human Rights Commission (“the Commission”). The adjudicators who make up the Panel are lawyers who have experience and expertise in human rights matters. They are appointed by the Lieutenant Governor in Council. One member of the Panel is designated as the Chief Adjudicator.

In addition to hearing complaints, the Chief Adjudicator is responsible for designating a single adjudicator to hear each complaint and for ensuring that decisions are issued on a timely basis.

The *Code* gives adjudicators the authority to conduct hearings in public to determine whether the *Code* has been contravened and to make remedial orders to compensate a complainant for such matters as: injury to their dignity, self-respect and feelings; and any financial losses or expenses they incurred or benefits they lost by reason of having had their rights under the *Code* contravened.

Adjudicators can also make orders to ensure that a respondent complies in the future with the *Code*, including requiring the development of policies, human rights education, training and affirmative action programs

HOW THE PANEL WORKS

CASE MANAGEMENT

Before proceeding to a hearing, adjudicators engage in case management to resolve a variety of preliminary issues.

Shortly after being assigned a matter, adjudicators schedule pre-hearing conference calls with the parties. During these calls the parties are required to confirm the issues that will be resolved during the hearing, explore whether agreed statements of facts and agreed books of documents can be provided and decide other preliminary matters such as hearing dates and venues.

This type of case management aims to ensure a fair and timely resolution of the matters which are sent to adjudication.

HEARINGS

Hearings are held in court-like settings. Each party presents their position by bringing forward evidence for the adjudicator to consider. The evidence may be in the form of witnesses or documents, or a combination of the two.

Hearings are open to the public, including the media. They can last from three days to three weeks and may be held in all areas of the Province, according to the parties' convenience.

They may be conducted in English or in French and participants are entitled to receive the accommodation that is necessary for them to participate in a meaningful way.

The parties to a hearing include:

- ▶ the complainant who filed the claim of discrimination with the Commission;
- ▶ the Commission which represents the public interest and which, by law, has carriage of the complaint; and
- ▶ the respondent who is alleged to be responsible for the alleged discrimination.

Parties may be represented by a lawyer or may choose to represent themselves.

DECISIONS

Adjudicators issue written decisions which resolve the issues between the parties and which are used to educate the public, and to promote every individual's right to equality of opportunity.

The *Code* requires that every decision or order made by an adjudicator under the *Code* be issued in writing and be accompanied by a written statement of the reasons for the decision.

Decisions must be made public. They are published on the Commission's website: www.manitobahumanrights.ca and through other legal databases.



MESSAGE FROM CHIEF ADJUDICATOR

As Chief Adjudicator under *The Human Rights Code*, C.C.S.M. c.H175 (“the *Code*”), I am pleased to present to the Members of the Legislative Assembly this report on the activities of the Adjudication Panel (“the Panel”) for the period January to December, 2018.

On December 10, 2018, the world celebrated the 70th Anniversary of the United Nations *Universal Declaration of Human Rights* (“the *Declaration*”). The preamble for the *Declaration* starts by saying that:

“recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world.”

Manitoba’s *Code* echoes this statement. Its preamble starts by saying:

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

and that implicit in that principle is

“the right of all individuals to be treated in all matters solely on the basis of their personal merits, and to be accorded equality of opportunity with all other individuals.”

The Articles of the *Declaration* stipulate not only that everyone has the “right to recognition everywhere as a person before the law” but also that such rights require a system of enforcement in which everyone “is entitled in full equality to a fair and public hearing by an independent and impartial tribunal in the determination of his rights and obligations ...”

The system of human rights justice which is administered under Manitoba’s *Code* endorses these principles – confirming that every individual has the right to be recognized as a person both before and under the law.

The members of the Panel play a critical role in ensuring that this takes place. The process of justice which they administer ensures that individuals’ rights are recognized both “before the law” – by ensuring fair, accessible processes for adjudicating hearings and “under the law” – by issuing well reasoned, principled decisions.

I have had the honour to serve as an adjudicator under the *Code* since 2007 and as Chief Adjudicator since that role was created in 2012.

As my term has now completed, I have taken the opportunity to look back over the history of the Panel's work.

Looking at the Panel's decisions which have been published on the Commission's website since 1997, what is clear is that over time the work the Panel performs has become increasingly robust.

Between January 1997 and December 2011, the Panel released on average only 1 decision per year. Contrast this with the period January 2012 to December 2018 when the Panel released on average six decisions per year.

Not only has the volume of decisions changed but so has the nature and subject matter of those decisions.

In the last six years the Panel has created a significant body of law which addresses a variety of both procedural and substantive matters regarding the adjudication of human rights complaints.

In the early days of the Panel, it was rare to see decisions published about procedural matters. In the last 6 years, however, adjudicators have been regularly issuing decisions about issues relating to: publication bans, adding appropriate and necessary parties to the proceedings, and jurisdiction.

This time period has also seen upper limits of remedies for loss of indignity increase from \$4,000 to \$20,000, bringing Manitoba's decisions more in line with the rest of human rights decisions in Canada.

The introduction in 2012 of section 37.1 which allows a party who makes a settlement offer to request that an adjudicator be designated to determine the reasonableness of that offer, has also prompted the publication of a number of decisions. Under this process, if an adjudicator determines that the settlement offer is reasonable, but the complainant rejects the offer, the adjudicator is required to terminate the adjudication. The introduction of this section and its consideration by adjudicators is consistent with the goals of an administrative law system of justice which is intended to offer parties a fair resolution of their disputes in ways that are often more accessible and efficient than having to resort to formal court processes.

In the last few years, the Panel has also worked to remind the public that it is independent from the Commission.

For example, although the *Code* states that the Commission will publish an Annual Report describing its activities and the activities of the Panel, since 2015 the Panel has taken responsibility for publishing its own section within that Report.

Going forward there are plans to establish a separate website for the Panel which will again remind the public that the Panel is separate and independent from the Commission.

In previous Annual Reports, I said that the members of the Panel were working to develop a set of Guidelines for adjudication hearings together with documents which would be provided to all parties prior to the commencement of a hearing in order to offer them the information that is necessary for meaningful participation in the process.

I am pleased to report that working together as a group, the members of the Panel have succeeded in developing these documents which include:

- ▶ a five page set of Guidelines for adjudication hearings;
- ▶ a form for a pre-hearing conference agenda; and
- ▶ a form for a pre-hearing conference memorandum.

The purpose of creating these documents was to facilitate the just and timely resolution of the complaints which the Commission refers to the Panel for adjudication.

The Guidelines start out by stating that proceedings before an adjudicator should be conducted as “informally and expeditiously as possible, with courtesy and respect”.

The intention is that when the Chief Adjudicator first communicates with the parties to advise them of the designation of an adjudicator, they will provide the parties with a copy of these documents so that parties are informed from the very outset of the proceedings as to what to expect and how to participate in a meaningful way.

These documents can also be found on the Commission’s website at www.manitobahumanrights.ca.

STATISTICS ABOUT THE WORK OF THE PANEL IN 2018

- ▶ 20 complaints were referred by the Commission to be adjudicated by a member of the Panel
- ▶ 4 hearings were held:
 - A.B. v Andrew Jasniewski and Jeffery Jasniewski o/a Jazco Management
 - Leonhardt v Government of Manitoba
 - Rankin v Government of Manitoba
 - Nash v Natividad and WHRA
- ▶ 5 decisions were issued:
 - Ross v 4888970 Manitoba Ltd. o/a Gillam Motor Inn and Michael Blahy – January 2018
 - ancestry, harassment, employment
 - North v Government of Manitoba – January 2018
 - sexual orientation, discrimination, services
 - Nash v Natividad and WHRA – May 2018
 - physical or mental disability, discrimination, services, interim decision on adding a respondent
 - Leonhardt v Government of Manitoba – September 2018
 - physical or mental disability, discrimination, employment
 - Rankin v Government of Manitoba – November 2018
 - sex, marital or family status, discrimination, employment – interim decision on jurisdiction
- ▶ 3 matters referred to adjudication were settled without proceeding through a hearing

2018 Decision of Note - Ross v 4888970
Manitoba Ltd. o/a Gillam Motor Inn and
Michael Blahy

In this decision Adjudicator Pinsky found that the complainant Ms. Ross had suffered a serious negative impact in her employment as the result of having been the subject of unwelcome, racist and discriminatory comments that had a detrimental effect on her work and her work environment.

In his reasons, the Adjudicator stated:

“[61] Racial attacks and insults about a person’s ancestry cut to the very core of a person’s identity. It is sometimes difficult to put into words the effect of such racial attacks, attacks upon the foundational constructs of the individual that such insults engender. The attack is not merely against the individual, but also against their family, culture, and the root of their being. For the target of such attacks, historical wrongs and atrocities can be dredged up, potentially forcing them to confront a dark past of historical and sometimes recurring wrongs, potentially feeling isolated, hurt, and ashamed.

[62] Left unremedied the corrosive effect of this type of working environment on the individual is heinous. There are also negative effects on society as a whole of permitting such comments to subsist. Permitting such commentary, if not normalizing it, creates or enables an environment in which decency, kindness, civility, productivity, and humanity are sacrificed.”

The complainant was awarded \$15,000 for injury to her dignity, feelings and/or self-respect plus an award on account of exemplary damages as punishment to the respondent for malice or recklessness involved in the contravention, in the amount of \$2,000. The respondent was also ordered to implement appropriate policies to prohibit such conduct in the future.

OTHER ACTIVITIES

On June 1st and 2nd, 2018, I attended the National Human Rights Tribunals’ Forum, a bi-annual event that brings together federal, provincial and territorial representatives of human rights tribunals. The forum covered such topics as judicial writing, remedies and working with self-represented parties and was a good opportunity to exchange best practices and updates on the law with counterparts across the country.

CONCLUSION

I am grateful for having had the opportunity to serve the public as an adjudicator under the *Code*, alongside my colleague members of the Panel. I am completing my term with the confidence of knowing that the Panel will continue working to ensure that individuals are free to make choices that are core to their inherent dignity without public or private interference and to live their lives on a daily basis without discrimination or harassment.

20

complaints were referred by the Commission to be adjudicated by a member of the Panel

3

matters referred to adjudication were settled without proceeding through a hearing

5

decisions were issued

- ▶ *Ross v 4888970 Manitoba Ltd. o/a Gillam Motor Inn and Michael Blahy – January 2018*
 - ancestry, harassment, employment
- ▶ *North v Government of Manitoba – January 2018*
 - sexual orientation, discrimination, services
- ▶ *Nash v Natividad and WHRA – May 2018*
 - physical or mental disability, discrimination, services, interim decision on adding a respondent
- ▶ *Leonhardt v Government of Manitoba – September 2018*
 - physical or mental disability, discrimination, employment
- ▶ *Rankin v Government of Manitoba – November 2018*
 - sex, marital or family status, discrimination, employment – interim decision on jurisdiction

4

hearings were held in 2018

- ▶ *A.B. v Andrew Jasnikowski and Jeffery Jasnikowski o/a Jazco Management*
- ▶ *Leonhardt v Government of Manitoba*
- ▶ *Rankin v Government of Manitoba*
- ▶ *Nash v Natividad and WHRA*



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