



Equality of Opportunity

Freedom from Discrimination

The Inside Stories

Mediation over investigation	2
Now that's a banner!	2
Hockey and human rights	3
Victory for wheelchair athlete	3
Systemic discrimination	3
Emerging issues and trends	4
Racialized Communities and Police Services Project	4

The 25th Anniversary of Manitoba's Human Rights Code

Two events defined the summer of 1987 in Manitoba

At 2:00 a.m., July 17th on the final night of the 33rd session of the Manitoba legislature, debate over the province's new human rights legislation was still raging. Much to the frustration of the Commission and human rights advocates, the proposed bill was referred to as the gay rights bill, despite the fact that adding sexual orientation as a protection from discrimination was only one small part of the new legislation.

Small, but for many in 1987, very controversial.

The debate was virulent. There were constant references to Sodom and Gomorrah, the spread of AIDS and the morality of the Government of Howard Pawley.

Premier Pawley argued that the new *Human Rights Code* was drafted to entrench the rights of all Manitobans saying that in the province "there are no A class citizens or Class B citizens."

At dawn, the Human Rights Code (Manitoba) was passed 29-25.

At the same time, preparations were underway for Winnipeg's first Gay Pride Day. On Sunday, August 2, 1987 about 275 gay and lesbian supporters took part in the parade and celebrated the inclusion of sexual orientation as a protected ground from discrimination.

These two events, which became inextricably linked together and would define the summer of 1987 in Manitoba, were celebrated in June, 2012 at the Manitoba Legislative Building. In his opening address, Attorney

General and Justice Minister Andrew Swan referred to those difficult times and how the struggle for equality is never easy. "Those who fought for adding sexual orientation to the *Human Rights Code* know this," he said.

The 25th anniversary of the *Human Rights Code* and the First Gay Rights Parade was an opportunity to celebrate and look to those who championed change and acceptance in 1987.

Chairperson of the Manitoba Human Rights Board of Commissioners Jerry Woods took the opportunity to acknowledge those people who were, and still are, the real heroes of change. Among many others, he spoke of the Commission's executive director at the time Durlene Germscheid, former chairs of the Board of Commissioners Claudia Wright, Dale Gibson, Ken Filkow and Janet Baldwin, all of whom fought for the rights of gay, lesbian, bisexual, transsexual and transgendered people. He thanked Roland Penner who has often been quoted as saying the 1987 human rights legislation is what he is most proud of doing during his time as Attorney General of Manitoba.

Mr. Woods acknowledged advocates Chris Vogel and Richard North for their tireless work fighting discrimination based on sexual orientation, as well as Sharon Hunter and Stacey Garrioch who launched a Charter challenge addressing Manitoba's Adoption Laws. The result was amendments to the law allowing same sex adoption.

"There are so many more that either vocally or quietly, have made a difference. I encourage you to continue to do so," Mr. Woods said. "We all know that discrimination still exists - but there is strength in numbers and supporters increase every year, every month and every day."



Today is a very different world from what was seen and heard in 1987. On Friday, June 1 at 9 p.m. 2012, the front of the Manitoba Legislative Building lit up in rainbow colours, with the Pride 25 logo appearing on the dome of the building, just beneath the Golden Boy.

Amendments to *The Code* builds on a legacy

On June 14, 2012, changes to Manitoba's *Human Rights Code* (*The Code*) were proclaimed ensuring Manitobans are protected from discrimination based on gender identity and disadvantaged social status.

"Manitoba's human rights legislation was ahead of its time 25 years ago when protection from discrimination based on sexual orientation was added to *The Code*," said Minister of Justice and Attorney General of Manitoba Andrew Swan.

"These changes will build on that legacy and ensure the Commission

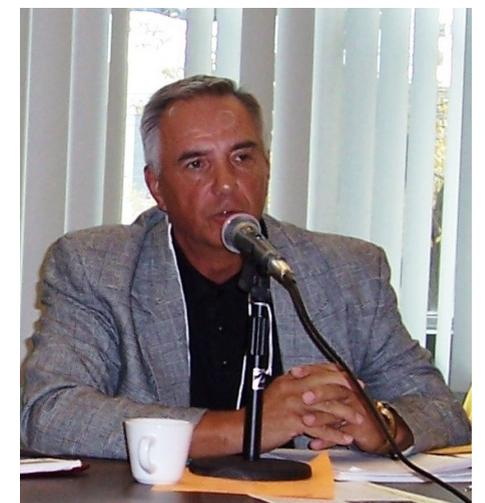
has the tools it needs to effectively address current and emerging challenges."

The Chairperson of the Manitoba Human Rights Board of Commissioners Jerry Woods said that these changes were a progressive approach to human rights.

By adding social disadvantage, complaints can be filed based on discrimination relating to homelessness, inadequate housing, low levels of education, chronic low income, unemployment or underemployment.

"The *Human Rights Code* recognizes the individual worth and dignity of every member of the human family and the ground of social disadvantage will help the Commission address prejudice on that basis, and focus attention on poverty and homelessness in Manitoba," Mr. Woods said.

He also believes that specifically protecting persons from discrimination on the basis of gender identity is important in clarifying that such discrimination is contrary to *The Code*.



Chairperson of the Manitoba Human Rights Commission Jerry Woods

Mediation, investigation and adjudication at the Commission

Once a person or group comes to the Commission with the intent of filing a human rights complaint, the first step is to find out if the parties involved would be interested in mediation.

The Manitoba Human Rights Commission has a high success rate of resolving complaints through mediation. Even better, in many circumstances, a survey of participants revealed that the complaints are resolved to the satisfaction of both parties. Either party can request a return to mediation, even if an investigation has started.

Many complaints are settled through mediation within three months; investigations take an average of 10 months to complete.

The Board will either dismiss the complaint or send it back to mediation. If mediation is not successful, the Board will ask for an independent adjudicator to be assigned by the government-appointed Chief Adjudicator. The complaint will now be in the hands of the adjudicator and a date for a public hearing will be set.

Human Rights Awards

Every year, in recognition of International Human Rights Day, the Manitoba Human Rights Commission, the Canadian Human Rights Commission and the Manitoba Association for Rights and Liberties acknowledge human rights activities that have advanced the rights of Manitobans. These annual awards are given to those who have promoted respect for human rights and fundamental freedoms.

Education Programs

The Manitoba Human Rights Commission has developed a pro-active approach to human rights in the workplace by initiating workshops to assist employers, supervisors and human resource specialists. Topics range from Human Rights in the Workplace and How to Investigate a Human Rights Complaint to Legal Trends – The Past Year's Most Notable Human Rights Cases and Mental Health Issues in the Workplace.

For Landlords, the Commission offers a seminar on Opening Doors to Rental Rights.

By request, the Commission will also send a facilitator to offices where staff is in need of training and information.

That's one big human rights banner Students inspired and inspirational

The human rights banner, created by students across the province almost completely covered the Grand Staircase at the Manitoba Legislative Building. It was an inspiring project, just one of many that students have taken on over the past decade.

In 2001, the Commission embarked on a "new millennium youth initiative." Over the years, this initiative would include youth conferences in Winnipeg, Brandon, Shilo, Thompson and The Pas. The conferences yielded award winning videos, challenge awards, video public service announcements and the "Peace by Piece Banner" that was revealed at the Manitoba Legislative Building in honour of the 60th Anniversary of the Universal Declaration of Human Rights on December 10, 2008. Students from around Manitoba added their piece to the banner, which would travel around the province for the next four years.

Not only were the projects challenging to students, so were the many workshops

designed over the years. The Commission staff did not shy away from uncomfortable topics. From the beginning, students took part in interactive workshops like *Backlash*, developed after the 9/11 attack, *Pride and Prejudice*, about being gay in high school, *Bully Alert* and *Sticks and Stones* dealing with harassment and bullying.

The student written, produced and acted video public service announcements are available on the Commission's website at www.manitobahumanrights.ca, as is the award-winning 2005 video "Respect" by the students of Oscar Blackburn School in South Indian Lake.

Although for the first 10 years, these human rights youth conferences were designed for high school students, last year the Commission looked at junior high students and with a few minor adjustments to its

programs, found that the younger students' enthusiasm was unsurpassed.

The initiative was about more than youth

conferences. In 2005, the first of a series of publications was released.



This series is entitled "The Rights of Youth" and topics include; Human Rights, On the Job, You and School and Disabilities.

And finally, the Commission launched *Manitoba Class Action*, a

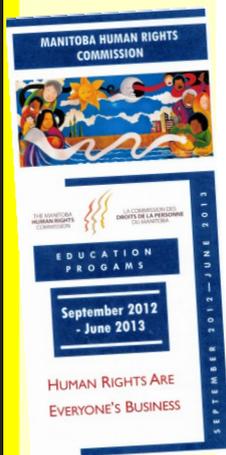
website designed specifically for students and teachers. Students could use it for a human rights assignment. Teachers who were teaching human rights could use the site as a classroom tool. The website details one major human rights event every week for one year.

In the future, the Commission plans human rights rallies at schools. In fact three rallies are planned for Northern Manitoba in 2013.

The Commission would like to thank all the teachers and students who took part in the youth conferences and projects over the years, and hopes that the experience remains with them in their futures.

Class Action

... a student's guide to Human Rights



The hockey story of 2006



After speaking at the 2006 Respect Reloaded Youth Conference, Jesse and Amy Pasternak showed students the Wolverine Jersey that the coaches of the West Kildonan Boys' Hockey team gave them.

From time to time, human rights cases capture the attention of the media and subsequently the public.

No other human rights case in Manitoba has received more coverage than the Pasternak twins and their efforts to try out for their high school boys hockey team.

In 2004, when they were in grade ten, Amy and Jesse Pasternak filed a complaint with the Manitoba Human Rights Commission when they were not allowed to try out for the boys' hockey team. According to the rules of the Manitoba High School Athletics Association (MHSAA), which regulates high school sports in the province, if a girls' team is available, girls can not try out for the boys' team. At the Pasternak's school, a girls' team had started up that year. In other schools, where no girls' team existed, girls continued to try out for the boys' team.

The MHSAA argued that girls' hockey would suffer, that boys would take over girls teams or that boys would end up being disadvantaged as a group when it comes to opportunities to play hockey.

In her decision Adjudicator M. Lynne Harrison found the girls had suffered sex discrimination because of the rule and that the Association had not succeeded in justifying its position.

In October 2006, the MHSAA filed for a judicial review of Adjudicator Harrison's decision.

In her written decision, however, Madame Justice McKelvey found that the MHSAA was unable to establish a single justification, based on objective evidence, for refusing the girls the opportunity to try out.

Human rights victory for wheelchair athlete

Arlene Ursel is a wheelchair curling champion. She had rented an accessible room at The Bay Hill Inns & Suites a number of times while visiting her parents in Neepawa. In April 2007, however, Ms Ursel was told by one of the owners that there was no longer an accessible room at the hotel. She subsequently filed a complaint with the Manitoba Human Rights Commission.

There was no reply or response from the owners either to the complaint or at any time afterwards up to and including the date of hearing, which they did not attend. Ms Ursel testified that there were no other accessible hotels in Neepawa. As her parents did not have an accessible home, she was forced to drive back and forth to Winnipeg on the same day, a journey of about five hours. She said her father was very ill and she visited him many times.

Adjudicator Lyle Sordin found that the hotel had violated the *Human Rights Code* ordering that the accessible room be restored within 60 days, and that the Manitoba Human Rights Commission monitor the situation for a period of 2 years. He also awarded Ms Ursel with general damages for injury to her dignity, feelings and self respect caused by the barriers she faced in accessing the hotel.



In 2009, The Commission released a series of video public service announcements. Comedian Big Daddy Tazz and Arlene Ursel talked about visible and invisible disabilities. This and other PSAs can be found on the Commission's website.

In her decision Adjudicator Harrison found the Pasternak twins had suffered sex discrimination and that the MHSAA had not succeeded in justifying its position.

All the Manitoba legal human rights decisions since 1987 can be found on the Manitoba Human Rights Commission's Website. Also available are samples of the Commission's settlements.

Systemic discrimination solutions

On the 25th Anniversary of Manitoba's *Human Rights Code*, the Manitoba Human Rights Commission would like to commend those who fought against discrimination over the last 25 years and those who continue to speak out today. Not only can individuals find a resolution to their personal situation, some complaints result in change for many others. These cases are referred to as systemic resolutions.

Systemic discrimination occurs when policies or procedures have a discriminatory effect on a specific group of people. Systemic complaints require extensive research and investigations, but resolutions have a great impact in addressing large scale patterns of discrimination.

The following are just a few examples of successful systemic settlements.

After a complaint of systemic discrimination and a successful human rights mediation, Winnipeg City Council's Public Works Committee approved a plan allowing people with Alzheimer's disease and other forms of dementia to use Handi-Transit.

An individual complaint with a systemic resolution involved changes to a Manitoba health care policy, which has resulted in more

family members receiving funds when providing non-professional home care services.

The Association of Foreign Medical Graduates in Manitoba filed complaints alleging discrimination against international medical graduates (IMGs). The Association also asserted that due to existing policies and practices, systemic discrimination resulted in IMGs being significantly less likely to obtain a residency position than either internationally trained doctors from Western European countries or Canadian graduates. The mediation and subsequent negotiations resulted in systemic changes to training and licensing for IMGs. A significantly greater number of IMGs are now accessing residency positions each year and a number of specialized supports and resources are available to them.

Ainley Bridgeman was instrumental in changes to Winnipeg intersections with pedestrian traffic signals. She and David Martin filed complaints with the Manitoba Human Rights Commission against the City of Winnipeg. The 2008 mediated settlement resulted in all intersections with pedestrian traffic signals eventually having audible cues. These changes, which benefit people with disabilities when they are attempting to cross streets at controlled intersections, were applauded by both disability and human rights advocates.

*Ainley Bridgeman
1945-2010*



At the time of the settlement Ms. Bridgeman said, "This is a positive step forward and it will make a huge difference for people with disabilities."

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The Human Rights Code (Manitoba) protects everyone in Manitoba from discrimination in the areas of **employment, housing and services available to the public**, in addition to other areas that are specifically set out, such as contracts. *The Code* prohibits discrimination on the basis of protected characteristics or historically disadvantaged groups.

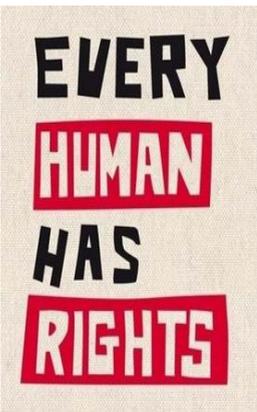
Protected characteristics are the grounds on which a human rights complaint can be filed. These include ancestry, nationality, ethnic background, religion, age, sex (including sex-determined characteristics such as pregnancy), sexual orientation, marital or family status, source of income, political belief, gender identity, social disadvantage and physical or mental disability. In addition to these characteristics, the Manitoba Human Rights Commission accepts complaints alleging discrimination on the basis of stereotyping if it applies to a historically disadvantaged group. For example, the Commission accepts complaints alleging discrimination on the basis of criminal record.

THE MANITOBA
HUMAN RIGHTS
COMMISSION



LA COMMISSION DES
DROITS DE LA PERSONNE
DU MANITOBA

Emerging Issues and trends



The Manitoba Human Rights Commission identifies emerging issues in another effort to meet human rights needs in our province. Such emerging issues are the significant and unique barriers faced by children with disabilities living in the north, and the increasing number of complaints filed on the basis of mental health issues.

A noticeable upward trend is emerging around the number of complaints based on pregnancy in the area of employment. In 2008, 36 per cent of complaints based on sex were pregnancy related. In 2009, this increased to 67 per cent. In 2010 and 2011 the percentage remains at almost 50 per cent.

Human rights in the workplace

Employers, managers, business owner and supervisors have responsibilities to ensure that discrimination and harassment do not occur in the workplace. The *Human Rights Code* protects current, past and potential employees.

The workplace has been, and remains the greatest area of human rights complaints since 1987, when the *Human Rights Code* was proclaimed. In 2011, more than 75 per cent of the registered complaints were in the area of employment.

www.manitobahumanrights.ca

Racialized Communities and Police Services (RCAPS) Project

In June of 2005, representatives of a neighbourhood safety committee brought their concerns about policing in their area to the Manitoba Human Rights Commission's attention. They believed that there was racial profiling on the basis of Aboriginal ancestry in the provision of police services to area residents. They did not want to file a human rights complaint at that time, but asked the Commission to look into their concerns.

In July 2005, the Commission met with faculty members of the University of Winnipeg to discuss possible research projects to examine the concerns raised by the neighbourhood safety committee. The faculty members expressed an interest in carrying out a research project.

At the first consultation, held in October 2006, nearly 20 community groups and neighbourhood associations spoke of the importance of anti-racism education, the need for more Winnipeg Police Service resources for cross-cultural training, a more effective public complaints mechanism, and the fear that many of their members have of the police. The Winnipeg Police Service was also represented at this meeting.

Three community consultations followed during the winter, spring and summer of 2007. They took place in the West Broadway Neighbourhood, the Centennial Neighbourhood and the Lord Selkirk Park Neighbourhood.

At all four of these consultations, participants shared stories and observations with respect to the provision of police services to themselves

and others in racialized communities. At the community based consultations, individual stories were not investigated by the Commission and the confidentiality and anonymity of the participants were respected. The report documents these stories and observations.

The major themes that emerged from the community consultations included the lack of police services to the Aboriginal community, the abusive treatment by police based on Aboriginal ancestry, the need for community-based policing, the systemic nature of racial bias in the Winnipeg police service, the perception by police and media that groups or members of racialized groups are gang members, and sexually abusive treatment of Aboriginal women by police. These findings were documented in the 2007 RCAPS Interim Report.

The Commission continued to meet with the Winnipeg Police Service and its then new Chief of Police Keith McCaskill.

In 2009, the Commission solicited interim responses in the form of recorded individual interviews from community leaders who had been in attendance at the original round table discussion in 2005 and present when the RCAPS Interim Report was released in 2007. The responses revealed that there appeared to be a growing optimism in the communities. Although racism and abusive behavior continued, most community leaders reported that there was improvement, recognizing that change does not happen quickly. There was a general sense that the Winnipeg Police Service and individual officers were willing to work with them, in an active partnership.

The last Community meeting on November 7, 2012 was attended by the community leaders and Chief of Police Devon Clunis, who had just been sworn in days earlier. Although concerns were still voiced, there continues to be progress and optimism continues. It has often been said that change starts with a conversation.

Now that the RCAPS Project has concluded, the Manitoba Human Rights Commission will make every effort to keep the conversation going.

Fast Facts

Manitoba's human rights legislation is intended to be "remedial" rather than "punitive."

An adjudicator is independent from the Commission.

The Human Rights Commission does not "rule". It mediates and investigates complaints. Only the Adjudicator can "rule."

The Human Rights Commission is not an advocacy organization. It is impartial.

A complaint must be filed within one year of the discriminatory action.

There is no fee for filing a complaint

The Manitoba Human Rights Commission publishes a monthly bulletin called MHR Connections.

Equality of Opportunity and Freedom from Discrimination