

THE MANITOBA  
HUMAN RIGHTS  
COMMISSION



LA COMMISSION DES  
DROITS DE LA PERSONNE  
DU MANITOBA

**2002**

**Bilingual Web site**

**[www.gov.mb.ca/hrc](http://www.gov.mb.ca/hrc)**

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## Manitoba Human Rights Code

In 1987 the provincial government passed the current Manitoba Human Rights Code. Protection under *The Code* extends to all ages. It prohibits unreasonable discrimination on the following grounds:

- Ancestry
- Age
- Ethnic background or origin
- Religion or creed, or religious belief, religious association or religious activity
- Nationality or national origin
- 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

Members of other groups, which have been historically disadvantaged but are not listed above, may be able to file a complaint on analogous grounds.

The mandate of the Manitoba Human Rights Commission is to achieve equality of opportunity and freedom from discrimination in the areas of housing, employment, contract and services available to the public. Although many of these activities fall within provincial jurisdiction, complaints against certain federally regulated entities, such as airlines, banks, telecommunications, 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 is authorized to mediate and investigate complaints of discrimination, to refer matters to adjudication, to issue binding opinions and to educate the public and promote human rights issues.

***Mission Statement***  
***The Manitoba Human Rights Commission is mandated to achieving equality of opportunity and freedom from discrimination***

### **Board of Commissioners**

Janet Baldwin  
Chairperson

Jerry Woods  
Vice-Chairperson

### **Commissioners**

Roberta Frederickson

Yvonne Peters

Fausto Yadao

Robin Dwarka

M.V. Naidu

Sheena Rae Reed

Elliot Leven

Ajit Kaur Deol

**Minister**  
**The Honourable**  
**Gord Mackintosh**

## Message from the Chairperson

*“There are, in every age, new errors to be rectified and new prejudices to be opposed.”*

*Samuel Jackson*

The faces of the Manitoba Human Rights Commission again changed in 2002, as terms of appointment of Commissioners are staggered. We welcomed to the Board Ajit Deol, Elliot Leven, Professor Mumulla V. Naidu and Sheena Rae Reed, whose impressive profiles appear later in this report. An expanded orientation session was held for new Commissioners. We said farewell to Dr. Armarjit S. Arneja, Dianne Frith and Randall Smith Q.C., and thank them for their many years of service to the Commission. While we are delighted to be up to full strength and broadly representative of the population of Manitoba, the fact that three of our ten Commissioners are from outside Winnipeg has placed additional stress on our limited financial resources. We have had to reduce the number of full Board meetings to six per year and cannot afford to hold Board meetings outside Winnipeg.

The Board of Commissioners establishes Commission policies, determines the disposition of all complaints, and directs the activities and programs that the Commission undertakes to fulfill its triple mandate of enforcement of *The Human Rights Code*, public education, and the promotion of human rights and furtherance of equality.

The Board considered 273 formal complaint matters in 2002, as well as receiving reports in regard to pre-complaint conciliation, cases with staff and cases with counsel. In August, 2002 the Board decided to delegate file closure following settlements to the Executive Director, as the Board has no discretion to disallow settlements, though it still receives reports on all settlements. The Commission continues to stress voluntary mediation in appropriate cases, at all stages of the complaint process, and is experimenting with other forms of alternative dispute resolution, such as healing circles. The quality of the investigation assessment reports improved further with initial legal input by our Manager of Investigation and Mediation, Donna Seale, and timelines for investigations were further reduced. Nineteen (19) complaints were referred to adjudication in 2002, and two (2) adjudication decisions were received, in favour of the complainant, in regard to sexual harassment, and discrimination on the basis of sex against a female construction worker. The Board addresses systemic, as well as individual, issues wherever possible: for example, in the continuing cases in regard to foreign medical graduates, or the conditions for women in the provincial jail; in case management, by utilizing test cases, for example in claims by part-time workers, the vast majority of whom are women, for top-up maternity leave benefits granted to full time workers; and in complaint resolution at all levels, by developing systemic as well as individual remedies, wherever possible, such as in cases involving reasonable accommodation for deaf students or patrons.

The Issues and Communications Committee, chaired by Vice Chairperson, Jerry Woods, with the support of Assistant Director, George Sarides, directs the education and outreach programs and activities of the Commission. In 2002 the educational focus continued to be on youth. A video on “Bullying and Harassment” was produced, which was featured on the Commission’s interactive website; the Second Annual Youth Conference was held on 6 December; and a seminar for school administrators was developed. The Commission’s Bulletin was produced monthly, with the Chairperson’s column,

The Rights Connection, with co-author, Debra Beauchamp, Policy and Program Analyst, on current human rights issues.

The Commission increased its activities to promote human rights, issuing ten press releases, on such topics as the controversial smoking by-law, and writing to the editor in regard to age discrimination.

Commissioner Leven and I made two submissions to the Standing Committee on Law Amendments of the Legislative Assembly of Manitoba, in favour of Bill 34, allowing same-sex couples to adopt, and Bill 53, extending family property laws to common-law couples, whether of the same or opposite sex. The Commission continued and will continue to urge the Government of Manitoba to take all possible action in support of the right of same-sex couples to choose to marry.

*“Never believe  
that a few  
caring people  
can’t change  
the world.  
For, indeed,  
that’s all who  
ever have.”*

*Margaret  
Mead*

The Legislative Review Committee, chaired by Commissioner Yvonne Peters, pressed for the adoption of amendments to *The Human Rights Code* proposed in 2001, particularly the addition of “social condition” as a protected ground. “Social condition” would be defined to include circumstances relating to social or economic disadvantage, and its inclusion would allow the Commission to respond more comprehensively to discrimination based on multiple grounds. The Committee agreed that binding advisory opinions have outlived their usefulness, and proposed that Section 21 be replaced with a provision expressing the willingness of the Commission to provide informal advice concerning best practices. The Commission also proposed an amendment to *The Code* to clarify the protection of gender identity, and expressly include protection for the transgendered. These amendments have not yet been passed, but it is hoped, will proceed in 2003. The Committee continued its review of *The Code*, particularly the extent of liability under the harassment provision.

The ongoing strategic planning process identified as a goal for 2002, the review of all our current policies interpreting *The Code*. A new Policy Review Committee was established to undertake this work. While significant progress was achieved, this task was not quite completed. The Board approved new or revised policies on: Reconsideration of Complaints; Religious Belief; Political Belief; Services - Bona Fide and Reasonable Cause for refusal; Reasonable Accommodation - Disability; Bona Fide and Reasonable Occupational Qualification; Definition of Discrimination; Unspecified Grounds of Discrimination; Canadian Experience or Citizenship Requirements; and Criminal Record. The Committee also commenced its revision of the Disability Policy and began to explore a policy on Commission-initiated complaints.

On the national scene, I was honoured, but surprised, to be elected President, with Dianna Scarth, our Executive Director, as Treasurer, of the Canadian Association of Statutory Human Rights Agencies (CASHRA) at its annual meeting in May, 2002 in Prince Edward Island. As well as assuming the Presidency of CASHRA, the Manitoba Commission is also the host of the 2003 Annual Conference. A Conference Planning Committee, chaired by Vice-Chairperson, Jerry Woods, was established and a conference planner retained, to develop the program and organize the event, focusing on human rights issues facing Aboriginal peoples.

Looking forward to 2003, the Board will hold a special meeting to review its own processes, in particular those related to the acceptance and disposition of complaints, in light of the experience of other Commissions. The Commission hopes to take a more proactive approach to systemic issues, for example by meeting with employers and assisting them in developing employment equity plans. The Policy Review Committee will complete its revision of existing policies; will develop new policies, for example, in regard to drug and alcohol testing, breastfeeding, and racial profiling; and will establish an ongoing review process. The Manitoba Human Rights Commission is dedicated to addressing human rights issues facing Aboriginal peoples, and would like to offer its assistance to reserves in Manitoba to develop indigenous human rights codes.

I should like to thank all members of the Commission's Board and staff for their work and support throughout the year. The communication between Board and staff is excellent. In particular, I should like to express my appreciation to Jerry Woods, Vice-Chairperson, for "sharing the burden", to Dianna Scarth, Executive Director, for her commitment and vision, and Aaron Berg, legal counsel to the Commission, for his wise advice.

Janet Baldwin

## Executive Director's Report

Annual Reports provide an opportunity to reflect on the year's achievements, and to identify areas in which improvements may be made in future. In my last report, I outlined the broad goals identified by Commissioners and staff during a strategic planning process in late 2001. In summary, those goals were to become more proactive by expanding our community outreach and education programs, to continue to improve our complaint resolution processes, and to revise and update Commission policies, which interpret the provisions of *The Code*. I am pleased to report that significant progress was made towards achieving those goals during the year 2002.

*"You see things  
and say, 'why?'  
I dream things  
that never were  
and say 'why  
not?'"*

*George  
Bernard  
Shaw*

A number of new outreach activities were undertaken by the Commission in partnership with other community groups to raise awareness of human rights, including International Women's Day, Gay Pride Day, Aboriginal Day, International Elimination of Racial Discrimination Day, and International Human Rights Day. The format for presenting information about the Commission to the public was redesigned, so as to incorporate videos, and human rights quizzes, as well as the usual brochures and posters. Our goal was to present information in an interesting and engaging way, and the feedback has been very positive.

The Commission continued to expand the scope of its education programs through the use of technology. An interactive website, featuring a video on the topic of bullying and harassment, and an interactive chat-room were developed for the first time. Students throughout Manitoba were invited to log on to a monitored chat-room, where they could discuss the topics of bullying and harassment with each other, and with special chat-room hosts, such as the Minister of Justice, and sports and entertainment celebrities. This new initiative was based, in part, on our awareness of a recent Statistics Canada report, which found that over 70 percent of young people between the ages of 15 and 17 years use chat-rooms on a regular basis.

*“People must  
know the  
past to  
understand  
the present  
and face the  
future.”*

*Nellie  
McClung*

Our second Youth Conference was held in Winnipeg on December 6<sup>th</sup>, commemorating the anniversary of the UN Universal Declaration of Human Rights. The Commission has continued to make youth a major focus of its educational programs, because young people frequently deal with human rights issues in their daily lives, and need to be aware of their protections under *The Code*. Over 150 senior level students from across Manitoba attended the Youth Conference, which once again featured a prize for the best human rights video produced by one of the schools in attendance. Our Youth Conference has become an integral part of our education programs, which we hope to be able to expand next year, so that similar conferences will take place in other regions, in addition to Winnipeg. The Commission is often limited in its ability to conduct all of the education programs it would like to carry out, because of a lack of staff and financial resources. There is currently no staff position devoted entirely to education, and the challenge of finding sufficient resources to expand our educational programs is an ongoing one.

The accessibility of the Commission's services was improved when human rights officers began holding regular office days at the St. Boniface Multi-Service Center, the Aboriginal Center, the Manitoba Metis Center, and the Community Offices in St. Laurent, Manitoba. This was in addition to the regular office days held throughout Northern Manitoba by a human rights officer who is based in The Pas.

Much progress was made in the area of improving complaint resolution processes in 2002 as well.

The total number of complaints filed during the year was consistent with the volume of complaints filed in the previous few years. Of the 279 complaints which were closed during the year, a record number (57%) were resolved through settlements. This figure speaks to the success of the Commission's mediation and conciliation programs, in that settlements reflect resolutions which the parties themselves have created, and which they have determined are appropriate in their circumstances. It is important to note that Commission mediators are trained to identify systemic issues during settlement negotiations, and all settlements are reported to the Board of Commissioners, who are also attune to the broader implications which a single complaint may reflect. Negotiated settlements often include terms, which respond to broader public interest concerns, in addition to those of an individual complainant.

The increase in settlements of complaints has been quite dramatic in the past 5 years. The 1996 Annual Report indicated that 31% of complaints had been settled, a figure, which is just slightly over half the percentage of complaints, settled in 2002.

Significant progress was also made in improving timeliness of our complaint procedures. The number of files in investigation, which were one year or older, was reduced from 34% at the end of 2001 to 19% at the end of 2002. When all of the options utilized to resolve complaints are combined and a time calculated, the average time taken by the Commission to process



complaints in 2002, from the pre-complaint conciliation contact to directed mediation, was 3.8 months.

It is always interesting to note the grounds of complaints, as well as the activities in which they have arisen. As was the case in 2001, complaints arising in employment constituted the vast majority (just under 70%) of complaints filed. Our employment seminars were redesigned to incorporate more interactive components, and the seminars and workshops continued to be very well received by employers, lawyers, and human resource professionals. The high percentage of complaints filed in the area of employment confirms the importance of such programs, and we will try to identify new areas of interest so as to expand them in the coming year.

*“All evil needs  
to flourish is for  
good people to  
do nothing.”*

*Edmund  
Burke*

Complaints filed on the basis of disability were once again the most common ground among complaints filed in 2002, a trend evident in recent reports of our Commission and others across the country. It is interesting to note that 50% of the pre-complaint resolutions, which were achieved, were disability complaints, whereas 32.75% of the formal complaints registered during the year were based on disability. The discrepancy between those figures suggests that the pre-complaint conciliation process is particularly effective when disability is the ground cited in the complaint. Once again, sex (including pregnancy) was the second highest ground at 32.75% of the formal complaints filed.

In terms of considering future directions for the Commission’s programs and services, our strategic planning process is an ongoing one, and we will continue to evaluate and plan in accordance with the broader objectives which were identified by staff and Commissioners in their meetings.

I would like to take this opportunity to acknowledge the commitment and dedication of Commission staff, who are always enthusiastic, and eager to take on new challenges. There were a number of personnel changes during the year. Linda Wilcox completed her secondment with the Commission and returned to the Women’s Directorate. Victor Schwartzman ended his secondment with the Chief Medical Examiners Office and returned to the Commission. We were all very saddened in December to learn of the death of Donna May, who had been an employee of the Commission for almost 30 years. Donna will be greatly missed and we extend condolences to her family.

I am most grateful, as well, for the continued support of the Board of Commissioners and wish to express my appreciation especially to Chairperson Janet Baldwin and Vice-Chairperson Jerry Woods.

Dianna Scarth

## ***Complaint Process***

### **Manitoba Human Rights Commission**

#### ***When the Commission Is First Contacted***

- The intake unit is the first point of contact when someone calls or drops by the Commission.
- The person may be provided with information on the Commission and the *Human Rights Code* or directed to another agency, if the matter does not fall within *The Code*.
- After establishing that the complaint falls within the Commission's jurisdiction, the intake staff will attempt, in some cases, to resolve matters informally usually over the telephone. This is called pre-complaint resolution.
- If pre-complaint conciliation is not appropriate or does not result in a resolution, a written complaint will be prepared and registered by the intake staff and sent to the respondent.

#### ***After a Complaint Has Been Formally Registered***

- The parties are offered an opportunity to resolve their complaint through a voluntary resolution process called pre-investigation negotiation facilitated by one of the Commission's specially trained mediators.
- All pre-investigation negotiations are confidential and are conducted on a neutral, without prejudice basis.
- Complaints not resolved by pre-investigation negotiation will proceed to a full investigation by the Commission's investigators. The investigation may include interviews and documentation review.
- Once an investigation is concluded, investigators prepare a report of their findings and make a recommendation to the Board of Commissioners as to whether or not the complaint should proceed further.
- At any time during the investigation process, the parties may explore voluntary resolution with one of the Commission's mediators.

#### ***Once a Complaint Has Gone to the Board of Commissioners***

- The Board is free to accept, reject or modify investigators' recommendations.
- The Board may dismiss a complaint.
- The Board may direct mediation to be undertaken to settle the complaint.
- The Board may ask the Minister of Justice to appoint an independent adjudicator from an established roster.
- The adjudicator convenes a public hearing, hears the evidence and issues a written decision as to whether there has been a contravention of *The Code*.

## Overview

A total of 528 files were opened in 2002. Files are opened when a complainant requests that an allegation, which appears to have the basis for a complaint and falls within the jurisdiction of the Manitoba Human Rights Commission, be pursued.

### Activities

Pre-complaint resolution was attempted with 256 files, 90 of which were resolved successfully. The average length of time that a file spent at the pre-complaint stage in 2002 was 26 days.

Of the total files opened in 2002, 229 resulted in formal complaints being filed with the Commission.

During the year, the mediation team was assigned 215 formal complaints for the purposes of pre and mid-investigation negotiation. Fifty-one of those complaints were resolved successfully (34 in pre-investigation and 17 in mid-investigation). Pre-investigation negotiations were, on average, completed within 72 days in 2002, while mid-investigation negotiations took, on average, 82 days.

*“Progress lies  
not in what is,  
but in advancing  
toward what  
will be.”*

*Kahlil Gibran*

The investigation team was assigned 175 formal complaints in 2002 and was handling a further 37 formal complaints that were carried over from previous years. During 2002, the team completed investigations and prepared investigation reports with recommendations to the Board of Commissioners on 123 complaints. These reports were then reviewed and considered by the Board of Commissioners and determinations were made pursuant to *The Code* (either that the complaint be dismissed or that it be referred to directed mediation or adjudication). The average length of an investigation in 2002 was 8.73 months.

In terms of overall age of the Commission's investigation files, by the end of 2002, only 19% of the files in investigation at that time were one year or older. This is down substantially from 34% at the end of 2001.

Directed mediation is the last opportunity for a settlement between the parties. It is a process which occurs after a full investigation of a formal complaint has been completed and the Board of Commissioners has determined that the complaint will not be dismissed and that directed mediation ought to occur. Twenty-five formal complaints were referred to directed mediation in 2002 with 23 of those cases being resolved successfully. Directed mediations were, on average, completed within 133 days.

When all of the options noted above are combined, and a time calculated, the average time to process complaints in 2002, from the pre-complaint attempt to directed mediation, was 115 days or 3.8 months.

In 2002 three complaints proceeded to a hearing before an adjudicator. Decisions were rendered in relation to 2 of the matters. The parties resolved the third matter after the hearing but before the adjudicator completed the written decision. During 2002, a further 19 complaints were referred to adjudication.

In all, during 2002 the Commission closed 279 complaints. As a result, the Commission closed more matters than became formal complaints in 2002 (279 closed; 229 formal complaints registered). Of the 279 matters that were closed during this year, 124 were resolved prior to the matter proceeding to investigation (ie. in pre-complaint or pre-investigation negotiation). This means that of the matters closed by the Commission in 2002, 44% were resolved prior to an investigation even being commenced.

As of December 31, 2002, the Commission's active caseload was 266 files, which included complaints and pre-complaint matters.

## Settlements

Physical or  
Mental  
Disability

### **Disability - Physical - Mid Investigation Mediation**

The complainant had worked for the company for twelve years before she went on long term disability leave for a knee operation. She returned to work in 2000 as a term employee. She said she knew there was a good chance of lay-offs in the future. She claimed however, that there was also a promise to recall employees as soon as possible.

Six months later, she was on sick leave again for an operation on her other knee. She claimed that this time her doctor told her that she could return to work within eight weeks. While she was on sick leave, however, the lay-offs took place. A month later most employees had been recalled.

As predicted, she returned to work within eight weeks only to be advised that her employment had ended months earlier. She claimed she had never been notified. On her Record of Employment, Code 'D' was cited as the explanation for her lay off. Code 'D' relates to "illness or injury."

The complainant alleged that she had received differential treatment in employment on the basis of a disability and brought her concerns to the Commission.

Mediation was encouraged but the parties could not reach an agreement and an investigation began. Mediation can take place at any time during the process, however, and the parties agreed to return to mediation. This time a settlement was reached.

The complainant received four months lost wages in the amount of \$8,221.16 gross and a revised Record of Employment.

### **Disability - Mental - Pre-complaint Resolution**

Although the complainant had a history of panic or anxiety attacks, she hadn't had one for almost two years. One day, as she worked as a sales clerk, she had another one. She left the main area of the store and went to the back to calm down. Her store manager suggested that she see a doctor, which she did. The complainant received a prescription for medication and returned to work.

She said, however, the store manager's attitude towards her changed, alleging that she was watched more closely and not given as much time on the sales

*"All truth passes through three stages. First, it is ridiculed. Second, it is violently opposed. Third, it is accepted as being self-evident."*  
Arthur  
Schopenhauer

floor but rather was assigned “stock work”. Within two months of the incident, she was terminated on the grounds of poor performance.

The complainant believed she had been discriminated against and had been treated differentially because of her mental disability.

A pre-complaint resolution was reached in which the owner of the store, while denying there was an issue of differential treatment, agreed to a voluntary resolution of a payment of \$250.00 (equal to one week’s pay). He also agreed to have the store manager attend the next Human Rights Commission Employment Workshop.

**Sex, including pregnancy, or circumstances related to pregnancy**

### **Sex - Breast Feeding - Pre-complaint Resolution**

During a family dinner at a local restaurant, one family member, a young mother, began breastfeeding her baby. Apparently a waitress approached and informed her that the restaurant did not allow breastfeeding. The young woman said she was asked to breastfeed in the washroom.

The woman contacted the Commission and requested that contact with the restaurant management be made on an informal basis to discuss her concerns.

The intake worker spoke with the restaurant’s manager about *The Code’s* requirement that service providers provide reasonable accommodation for nursing mothers. The manager stated that the restaurant would now allow breast-feeding on the premises. He also wrote a letter of apology and provided a gift certificate to the customer.

*“It is never too late to give up on our prejudices.”*

*Henry  
David  
Thoreau*

### **Sex - Harassment - Mediation**

The complainant was a woman who worked for a company over a period of five years. She said that a new manager subjected her to a series of unwanted sexual comments and advances in the workplace for nearly 18 months, before her employment was terminated.

The complainant alleged that the harassment had begun with off-colour jokes, which she had confronted the manager about. She claimed he then began calling her “sweetie” and blowing her kisses. She also alleged that he wanted to take her picture with a digital camera he was using for work related matters. She claimed he told her he could make changes to the picture on his computer, such as attaching a naked body to her head.

The woman contacted the Commission and filed a formal complaint. The company owner was interested in a voluntary resolution.

A mediator was able to help the parties reach an agreement. The settlement involved the complainant receiving \$3,000 in general damages for loss of dignity and self-respect, and a positive letter of reference.

### **Sex - Pregnancy - Board Directed Mediation**

In May, a receptionist advised her employer that she was pregnant and due in November. In July, however, her pregnancy was terminated due to complications.

The complainant requested five weeks medical leave. Rather than granting the woman leave, however, her employer terminated her employment and hired another receptionist.

It was alleged by the complainant that rather than reasonably accommodating her need for medical leave due to circumstances related to pregnancy, her employer had terminated her employment.

The employer responded that she could not reasonably be expected to fill a temporary position, which required training and experience, on such short notice.

The complaint was investigated and a report given to the Board of Commissioners. The Board directed that mediation be undertaken; if a resolution could not be reached, the matter would proceed to adjudication.

One of the Commission mediators assisted the parties in reaching a settlement. The complainant received \$1,000 in general damages, which was intended to compensate for loss of dignity and self-respect.

## Age

*“I have a dream that my four children will one day live in a nation where they will not be judged by the colour of their skin but by the content of their character.”*

*Martin  
Luther  
King Jr.*

### **Age - Pre-complaint Resolution**

A sixteen-year-old student wanted to submit an application for part-time work at a national retail company. She was asked to complete a computerized profile survey. One of the first questions was “Are you over eighteen?” As soon as she answered “no”, a window appeared on the screen, informing her that she would not be considered for employment.

The intake worker contacted the district manager of the store who indicated that the company’s head office in Ontario provided the survey. He was unaware of the difference with Manitoba laws. In Manitoba there is no age restriction on discrimination in employment (unless an employment opportunity relates to certain jobs, such as serving liquor or working in an adult video store). However, there is no legal requirement to be eighteen or over for other types of work such a gas station attendant or store clerk.

The manager agreed to immediately discontinue the discriminatory practice and to ensure the survey conformed with Manitoba laws. He was sent a copy of the Commission’s Pre-Employment Inquiries Guidelines. The employer provided a letter of apology to the complainant as well as a \$40 gift certificate.

### **Age - Pre-complaint Resolution**

An eighty-year-old woman was surprised when she called to make an appointment at a clinic. She claimed that the receptionist asked her age, and when she replied that she was eighty, the receptionist told her that the clinic did not accept patients over 65 years. She relayed this information to her daughter-in-law who was a client at the same clinic. The daughter-in-law contacted the Commission and agreed to have an intake officer call on an informal basis.

The respondent was informed of the complainant’s concern with the apparent age discrimination in the provision of services. The respondent agreed to alter its practice so as to provide services to patients in any age bracket. The

complainant called the Commission later and advised that the clinic was accepting clients of all ages and she was satisfied with the resolution of her concern.

### **Age - Smoking By-law**

The City of Winnipeg's smoking by-law came into effect in January 2002 banning smoking in establishments, which allowed minors on the premises. A total of 18 complaints were filed with the Manitoba Human Rights Commission. The issues raised in the complaints ranged from excluding children from the premises, to employers who had terminated the employment of those under eighteen because of the new by-law.

Of these complaints, one was abandoned, 11 were withdrawn, 3 were settled and 3 were still under consideration at the end of December 2002.

### **Ancestry**

#### **Ancestry - Pre-complaint Resolution**

The complainant, an Aboriginal woman, was shopping at a retail store with her young grandson. The children's toy area had toys scattered about. According to the complainant, a clerk approached her and said something to the effect of, "Why do you people make such a mess?" The woman felt unfairly blamed for the state of the toy area and interpreted "you people" as a reference to her ancestry.

She brought her concerns to the Commission and with her permission, the district manager of the store was contacted. After investigating the matter he apologized and provided the woman with a \$50 gift certificate. As well, he spoke directly to the employee, and later to all his managers, about the issue raised in this complaint. He also instructed his managers to have similar discussions with their employees. The woman was satisfied with this outcome.

### **Family Status**

#### **Family Status - Mediation**

The complainant's girlfriend was moving out of a rented house. The complainant, who had four children, expressed an interest in renting it. She claimed she spoke to the owner of the house and he agreed to let her have it.

*"To know the road ahead, ask those coming back."*

*Chinese Proverb*

A few days later however, she said her husband told the homeowner that they had four children. According to her husband, the owner told him that four children were too many and he didn't want the house damaged.

The woman believed that she was denied the opportunity to rent the house because of her family status.

The respondent was interested in resolving the matter through mediation. According to him, the house was too small for all the children and the current tenants had decided not to move.

Through mediation, the following agreement was reached. The landlord provided a letter of apology and agreed to advise the complainant if he became aware of any suitable rental accommodations in the next six months.

**Source of Income**

**Source of Income - Pre-complaint Resolution**

A single parent who was working and receiving social assistance wanted to find an apartment closer to her children’s school. She found one, but said the caretaker told her that she had to arrange for the rent to be paid directly from social services. She said her social worker told her that this could not be done because she also was working. She felt she was going to lose the apartment and believed she was being discriminated against because of her source of income.

When an intake worker contacted the agency, the information provided suggested that the only reason the condition had been imposed was because of its past experience with tenants on social assistance. No information relating to the complainant had been obtained. The agency withdrew its requirement that the woman’s rent be paid directly from social services, and her application to rent the premises was approved.

**Religion or creed, or religious belief, religious association or religious activity**

**Religion - Mediation**

The complainant is a Jehovah Witness who was working part-time in a group home for adults with developmental disabilities. When he was interviewed for the job, he said he had made his employer aware of his religion, and had given some examples of things that he would not feel comfortable doing.

There were no incidents during his first few months, but around Christmas he was asked to take some of the clients to a Christmas concert at a church. Jehovah Witnesses do not celebrate Christmas, and the complainant tried to explain his discomfort to his supervisor, without success. He said he was told to put his religion aside. In the end, he went to the concert but felt very uncomfortable.

Shortly afterward, the complainant was asked to bake a birthday cake for one of the residents. He said that he had explained to his supervisor that he did not celebrate birthdays and had tried to suggest alternative ways of getting the task done. Once again he said he was told to set his religion aside. This time the conversation escalated into an argument and another supervisor was called. The complainant resigned and filed a complaint with the Commission.

The director of the organization did not dispute what had happened and the supervisors admitted that they were not aware of their duty to consider all reasonable options to accommodate the complainant’s religion.

The settlement included \$4,000 in general damages and a reasonable accommodation training session was provided to the supervisors and management of the organization by the Manitoba Human Rights Commission.

*“All progress occurs because people dare to be different.”  
Harry Miller*

**Sexual Orientation**

**Sexual Orientation - Pre-complaint Resolution**

The complainant and his partner are gay. They claimed that during the last few weeks of their tenancy, their caretaker referred to them in derogatory, homophobic terms. They said that employees of the moving company they hired heard the caretaker make similar remarks.

The complainant was concerned because the caretaker was scheduled to be present for an apartment inspection. He agreed to a pre-complaint contact with the owner of the property management company.



A call was made to the owner who was aware of the situation. He apologized and assured the complainant that the caretaker had been warned not to repeat such behaviour, or he would face termination. Further, he assured the complainant that the caretaker would not be present at the inspection. After speaking with the intake worker, he also agreed to have a policy sent to tenants and employees on the subject of harassment. He received a sample policy and stated that he would incorporate it into the leasing materials given to new tenants as well as to current tenants at lease renewal time. The complainant was very pleased with this outcome.

**Analogous  
Grounds**

**Criminal Record - Pre-complaint Resolution**

Although individuals with criminal records are not specifically designated as a protected group, there is a provision in *The Code* for members of groups, which have been historically disadvantaged, but not listed under Section 9(2) of The Code, to file a human rights complaint.

The complainant was an apprentice technician with a criminal record. Seven years earlier he was convicted of possession of narcotics and fined \$300.00.

*“I may not have gone where I intended to go, but I think I have ended up where I intended to be.”*

*Douglas  
Adams*

His union referred him to an employment opportunity. When he arrived at the potential employer’s office, however, he was given a request form for a criminal record check as part of the employment process. He took the form to the police station, where he was informed that it would take up to ten days, as there was a conviction to report.

He returned to the potential employer’s office and explained about the delay. He said he told the person there that he had a conviction and it was for possession of marijuana seven years ago. According to the complainant, the employee then told him that his application would not be considered because of the conviction.

Although he quickly found other employment, he brought his concerns to the Commission. He said that he did not want others to be denied employment for a minor criminal offense. He agreed to try a pre-complaint resolution. The director of human resources explained that there was a zero tolerance policy on all criminal convictions, which involved narcotics or assault. There was however, an appeal process that could result in an exception made. The complainant claimed that he had not been informed of this opportunity.

As a result of this incident, the complainant received a letter of apology and a commitment was made by the employer to include information about the policy and the appeal avenue whenever a request for a criminal record check is made.

The Commission’s criminal record policy is available through the Commission offices.

# University Monitoring Reports

University of  
Winnipeg

The University of Winnipeg has submitted a second report pursuant to an agreement reached in May 2001. The report provided hiring data within academic and administrative ranks during the year ending June 30, 2003, as well as information regarding special measures undertaken by the University which had the objective of "... improving the status of all women on Campus in matters concerning their equitable treatment."

*"An invasion of armies can be resisted, but not an idea whose time has come."*

Victor  
Hugo

In an effort to broaden the range of individuals and organizations receiving notice of employment opportunities, the link to faculty employment opportunities was established on the University's website. A search consultant firm, hired to conduct searches for two senior positions, is operated by a woman who ensured that a wide range of women's groups and organizations were contacted about the positions. The Employment Equity Officer (Executive Director of Human Resources) is involved in the recruitment of all middle or senior management positions, including the President. Eight employment equity consultants are available to assist search committees, and the Employment Equity Officer for the University may be consulted should any substantive equity issues arise.

Multi-year contracts were negotiated with each of the four on-campus unions during 2002-2003. The University of Winnipeg Faculty Association Collective Agreement now provides for paid parental leave for its members.

An internal workplace diversity survey, mentioned in last year's Annual Report, was completed. It will assist the University to set employment equity goals on a department by department basis.

The University also participated in a feasibility study on the potential for expanding its current daycare services. The findings will be reviewed during a planning process, which is now underway within the University.

The University has also provided information regarding the number of "new hires" in the academic ranks during the year. By way of background information, in 1997, the Commission conducted a statistical analysis, which showed that, within the National Occupational Classification Group "university teachers", the representation rate of women at the University of Winnipeg was slightly under the national representation rate of 29%. However, in the last 2 years, 46% of the "new hires" in the academic ranks were women. Moreover, progress has been made in hiring women for tenure-track positions. In the Commission's 2001 Annual Report, concern was expressed because only 2 women had been hired for the 7 available tenure-track positions in the previous year. Last year, however, a more encouraging trend was noted, in that women were hired to fill 5 of 11 tenure track positions.

In 1997, the Departments of History and Psychology had a particularly low representation of women, when assessed against the availability of qualified graduates in the external workforce. The representation of women in the Psychology Department has increased from 21% in 1997, to 36% in 2002. Progress was made in the History Department, as well, which reported that 50% of its tenure track positions are now filled by women.

In summary, the most recent report from the University of Winnipeg showed that it continued to implement employment equity initiatives, and that modest progress has been made in the recruitment and retention of women within its academic and administrative ranks. It is hoped that this progress will continue in the coming year.

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**Brandon  
University**

*“It is wise to direct your anger towards problems - not people; to focus your energies on answers - not excuses.”*

*William  
Arthur  
Ward*

For the fourth time, Brandon University has submitted hiring data for the previous year to The Manitoba Human Rights Commission. The data has been reviewed and a summary is included in this annual report, pursuant to a settlement agreement reached in 1999. The objective in reviewing the hiring data is to determine whether progress has been made toward rectifying the historic under-representation of women in faculty and administrative positions, which was acknowledged by the University at the time the settlement was reached.

Hiring data provided for the year ending August 31, 2002 indicated a total of 32 “new hires”, of which 15 were females (46.8%). This represents progress over the previous year when only 7 out of 19 new hires were females (31%).

In 1997 the Commission undertook a statistical analysis, which compared the availability of qualified women in the external workforce to the number of women in the academic ranks at Brandon University on a department by department basis. According to the data gathered at that time, the Faculty of Science was of particular concern, in terms of under-representation of women, and that pattern continued throughout the past 3 years. Some progress was made last year, however, when there were 4 women out of a total of 9 “new hires”.

It was also encouraging to note that 2 female academic deans were reappointed for additional 5-year terms.

Although modest progress can be noted in a review of the hiring data provided, Brandon University has not yet reported any employment equity initiatives, nor have equity targets for each department been identified. Next year’s Annual Report will pay particular attention to steps taken by the University toward fulfilling their previous commitment in this area. As noted in the last Annual Report, the Commission has suggested that consideration should be given to the implementation of special measures, if real progress is to be achieved in the recruitment, hiring and retention of women in faculty and administrative positions.

## Legal Proceedings

The two following complaints proceeded to a hearing before an adjudicator in 2002. One other was settled before the adjudicator completed a written decision.

### **Sexual Harassment in the Workplace**

A former employee of a residential care facility filed a complaint against her employer for failure to terminate sexual harassment by a co-worker. An investigation followed and an independent adjudicator was designated by the Minister of Justice to hear the complaint.

The adjudicator found that a caretaker subjected the care worker to sexual harassment and that management was aware there was a problem and made no attempt to rectify it. He found also that the complainant's dismissal from her job was related to her disclosure of the harassment.

The respondent was ordered to pay the complainant 12 weeks wages plus \$4,000 in general damages for injury to dignity, feelings and self-respect. The adjudicator also ordered that a harassment policy acceptable to the Manitoba Human Rights Commission be prepared, adopted and implemented expeditiously. As well, the Commission was granted a monitoring order since the offending maintenance man was still employed at the Home at the time of the decision. The respondent has filed an application for a judicial review, which remains outstanding.

*The Manitoba Human Rights Code* requires employers to take reasonable steps to prevent or terminate harassment in the workplace, about which they knew or ought to have known.

### **Woman Faces Discrimination in Non-Tradition Job**

In December 2002 an adjudicator found that that *The Manitoba Human Rights Code* had been contravened and that a construction worker had been discriminated against while she was employed. The owner of the construction company did not attend the hearing.

The complaint was filed with the Commission alleging discrimination. Specifically, the woman claimed that the terms and conditions of her employment, her work assignment, dress requirements and the decision to lay her off, were unreasonably based on her sex.

According to the adjudicator, the evidence established that the complainant was denied the opportunity to work on an out of town project because she was a woman and was also laid off although there was apparently work available, and other male employees were not terminated.

In addition to lost wages and damages for injury to dignity, feelings and self-respect, the adjudicator also ordered exemplary damages. In her decision she wrote, "It is challenging enough for a young woman to try and work in a non-traditional occupation and this attitude and deliberate behaviour on the part of the respondent does suggest an intent to denigrate and thereby merits an exemplary damage award."

The company owner was ordered to pay a total of \$3,470 for lost wages, general damages, exemplary damages and expenses incurred by the complainant to attend the hearing.

"Never look  
down on  
somebody  
unless you are  
helping him up."  
Jesse Jackson

## Raising Awareness

*The Manitoba Human Rights Code* states that “it is important that educational programs assist Manitobans to understand all their fundamental rights and freedoms as well as their corresponding duties and responsibilities to others.” The Commission therefore, has continued to expand its educational activities by using pamphlets, the Internet, videos, presentations, workshops and personal contacts.

### Publications

The MHR Connections Bulletin arrives monthly at the doors, computers and fax machines of subscribers. Its focus remains human rights news, issues, coming events and profiles. The Connections Bulletin also serves as a popular handout at the Commission’s outreach activities.

### News Releases

In an effort to keep the public informed, the Commission doubled the number of news releases sent out during the year, compared to past years. Topics included adoption rights of same sex couples, extension of property laws to common-law couples, Manitoba Human Rights rulings, the Youth Conference and celebrity guests talking to Manitoba students about bullying and harassment in the Commission’s chat-room. These news releases resulted in extensive media coverage of the Commission and its work.

### Website [www.gov.mb.ca/hrc](http://www.gov.mb.ca/hrc)

*“The beginning  
of knowledge  
is the discovery  
of something  
we do not  
understand.”*

*Frank  
Herbert*

Students were the focus of the Commission’s website in 2002. In an effort to reach young people, the Commission decided to use the medium students were most comfortable with and set up a video on bullying and a corresponding monitored chat-room for students to discuss harassment in schools. Guests in the chat-room included The Honourable Minister of Justice Gord Mackintosh, the Honourable Minister of Labour and Immigration Becky Barrett, singer Andrea Henry of Sugar Jones, writer/performer Ian Ross and Olympic medallist Clara Hughes.

The number of ‘hits’ to the website increased dramatically, going from less than 5000 per month to over 10,000.

The website continues to offer human rights information such as how to file a complaint, on line publications, and decisions.

### Workshops/ Seminars

The Commission’s highly successful seminars and workshops continued throughout 2002. The full day employment workshop was revamped and now provides participants with the most up-to-date information on human rights in employment.

Another very popular seminar is Reasonable Accommodation in the Workplace. This workshop offers employers practical advice to employers on how to deal with accommodation, which is a complex area of human rights legislation. Other workshops and seminars offered in 2002 included Human Rights Issues for Non-Profit Organizations, Recent Developments in Human Rights Laws and Harassment in the Workplace. In 2002, 160 people participated in the various workshops offered by the Commission.

### Presentations

Every year the Commission staff responds to requests from businesses, organizations, governments and educational institutions and delivers human rights presentations. These presentations take place in Winnipeg as well as

rural and northern Manitoba. The Commission reached over 5,500 people around the province and delivered more than 150 human rights presentations with audiences ranging in size from 10 to 400 people.

## Outreach

*“Make sure you have finished speaking before your audience has finished listening.”*

*Dorothy Sarnoff*

The Commission expanded its outreach activities during 2002. Although such activities are always impacted by financial restraints, the Commission was able to develop arrangements on a cooperative basis with community organizations for human rights officers to be present in the community more frequently. A human rights officer began attending the St. Boniface Service Centre one-day each week, to offer bilingual outreach and intake services. As well, a human rights officer began attending the Aboriginal Centre, the Manitoba Metis Federation offices, and the St. Laurent Municipal Centre once a month. The human rights officer in the north continues to travel extensively and holds regular office days in Friendship Centres and other community offices across Northern Manitoba.

The Commission also expanded its outreach activities to include display tables at the legislature on International Women’s Day, at The Forks on Aboriginal Day and in the Commission’s Winnipeg office on Elimination of Racism Day.

## Youth Conference

The second annual Youth Conference was held on December 6<sup>th</sup>, in Winnipeg and was attended by over 150 students. This one-day conference was held in celebration of International Human Rights Day. This year however, the actual conference fell on the sad anniversary of the Montreal Massacre. Vice Chairperson Jerry Woods asked the students to take a moment and reflect on the National Day of Remembrance and Action on Violence Against Women and invited a student to light a candle in memory of the fourteen women who died that day in 1989.

The goal of the Youth Conference is to raise awareness among senior level students of their rights under the *Human Rights Code*. Commission staff presented workshops on four topics: Working Blues (employment), Pride and Prejudice (homosexuality), Sticks and Stones (harassment) and Not So Trivial Pursuit (human rights quiz). The Conference also had a video contest and the students were entertained by music and dance performed by “Burnt”. This group performed their unique combination of blues, jazz, folk, contemporary, tribal and Indigenous music while two First Nations dancers joined in with an energetic form of traditional dance. Once again the students evaluated the Youth Conference as a great success.

A production company handed out three cameras to students who in turn agreed to videotape parts of the conference. The resulting video was produced by Allmedia Inc. and placed on the Commission’s website.

## Awards

The Manitoba Human Rights Commission, the Canadian Human Rights Commission and the Community Legal Education Association jointly sponsored the Commitment Award luncheon on December 10th in celebration of International Human Rights Day.

A Winnipeg activist for disabled persons received the 2002 Commitment Award for advancing human rights. Jim Derksen, whose dedication and energy in working to ensure equality for persons with disabilities spans more than three

decades, was presented the award by Justice Minister Gord Mackintosh.

Mr. Derksen was born in Morris, Manitoba and became disabled during the polio epidemic of 1953. He has used a wheelchair for personal mobility ever since. He has participated in the founding, and served as National Chairperson, of the Council for Canadians with Disabilities and the Canadian Disability Rights Council. Mr. Derksen lives in Winnipeg where he works for the Manitoba Government.

## 2002 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 ten Commissioners, including a Chairperson and a Vice-Chairperson.

### Chairperson

**Janet Baldwin** taught law at the University of Manitoba for 31 years and was involved in equity and diversity issues with the Canadian Association of University Teachers and at the University. She 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 and human rights policies. Currently Janet is a member of an Agency Liaison Team with the Red Cross for the United Way Community Investment allocation. In 2002 she was elected President of the Canadian Association of Statutory Human Rights Agencies. Janet is married and has two children.

### Vice-Chairperson

**Jerry Woods** is a proud member of the Couchiching First Nation. He has been a labour and social activist all of his working life, which began when he was only fifteen years old. Over the following twenty-five years he worked as a papermaker at the Boise Cascade paper mill in Fort Frances, Ontario. For twenty of those years he served as an Officer with the Local Union. In 1989 he became a full time National Representative for the Communications, Energy and Paperworkers Union. Jerry retired in 2002.

*"Injustice  
anywhere is a  
threat to  
justice  
everywhere."  
Martin  
Luther  
King Jr.*

**Roberta Frederickson** is a Shop Steward with the Canadian AutoWorkers. She is a long time employee with the Fort Garry Hotel in Winnipeg and has extensive experience in workplace issues. She facilitates human rights and respectful workplace discussions for CAW members. Her interests include human rights, child advocacy and the issues surrounding domestic violence and sits on the Steering Committee for the Manitoba Childcare Coalition. Roberta has one daughter.

**Yvonne Peters** has a Bachelor of Arts and a Bachelor of Law from the University of Saskatchewan and a Bachelor of Social Work from the University of Regina. She practices 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 as a member of the Equality Rights Panel of the Court Challenges Program and sitting on the Board of the Women's Health Clinic.

**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 Task Force on Services to Aboriginal and Multicultural Communities. Fausto is a Board Member of the United Way and Board Member and Fundraising Co-ordinator for the Philippine-Canadian Centre of Manitoba. He is a recipient of the Golden Jubilee Medal for community service and has two daughters.

**Robin Dwarka** is the Director of Administration for Legal Aid Manitoba. Robin is a Certified Management Accountant (CMA) and has a Bachelor of Commerce (Honours) from the University of Manitoba. She is a member of Toast Masters International and is treasurer and a performing member of the Winnipeg Steel Orchestra. She is also a representative of the Trinidad and Tobago Society to the Council of Caribbean Organizations of Manitoba.

New

*“No pessimist  
ever  
discovered the  
secret of the  
stars, or  
sailed to an  
unchartered  
land, or  
opened a new  
doorway for  
the human  
spirit.”*

*Helen  
Keller*

**M.V. Naidu** is the past Chair of the political science department and a professor at Brandon University. The recipient of many honours such as the Canadian government’s citation for Citizenship and the Fulbright Scholarship Grant, Professor Naidu is also the past president of the Canadian Peace Research and Education Association and the Canadian Asian Studies Association. Well known for his community involvement, he founded the West Manitoba Multicultural Council, the Citizen’s Committee for Medicare and the Civic Affairs Association of Brandon. He is the editor of an international journal *Peace Research* and writes a regular column for the Brandon Sun.

**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 last fourteen years Sheena has coached girls’ gymnastics and has been involved in Big Brothers/Big Sisters. She is the President of the Flin Flon Friendship Centre’s Board of Directors and the 1<sup>st</sup> Vice President of the Manitoba Association of Friendship Centres.

**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 veteran board member of the Rainbow Resource Centre. As the former editor of the Jewish Post, Mr. Leven continues to be active in the Jewish Community and is the president of Camp Massad, a Hebrew immersion residential camp.

**Ajit Kaur Deol** who immigrated to Canada in 1967, is credited with developing the Caroline McMorland School for the Mentally Handicapped in Marathon, Ontario, from a church basement operation. This program is now integrated into the local high school system. Today she is a retired teacher and continues to be involved in her community. Among her many activities Ajit is the President of the East Indian Support and Advocacy Group, a position she has held since 1993. This year, Ajit was invested into the Order of Manitoba, the province’s highest honour.