



**Annual Report
1998/1999**

**“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.” 1948-1998 Universal Declaration of Human Rights**

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Annual Report 1998–1999

Ontario Human Rights Commission

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Ontario
Human Rights
Commission

Commission
ontarienne des
droits de la personne



Chief Commissioner

Commissaire en chef

180 Dundas Street West
Toronto ON M7A 2R9
Tel: 416.314.4541

180 rue Dundas ouest
Toronto ON M7A 2R9
Tél: 416.314.4541

June, 1999

Honourable Isabel Bassett
Minister of Citizenship, Culture and Recreation
6th Floor, 77 Bloor Street West
Toronto, Ontario
M7A 2R9

Dear Minister:

Pursuant to Section 31(1) of the Ontario *Human Rights Code*, it is my pleasure to provide to you the Annual Report of the Ontario Human Rights Commission for the fiscal year 1998-1999, for submission to the Legislative Assembly of Ontario.

This report reflects the activities of the Commission to March 31, 1999.

Yours sincerely,

A handwritten signature in black ink, appearing to read "K. Norton".

Keith C. Norton, Q.C., B.A., LL.B.
Chief Commissioner

Message from the Chief Commissioner



I am pleased to report to the Honourable Minister of Citizenship, Culture and Recreation, the Legislative Assembly and the people of Ontario on the work of the Commission during the 1998–99 fiscal year. The Commission continues to face many challenges as we carry out our mandate under the Ontario *Human Rights Code*.

For an unprecedented third year in a row, I can report solid progress in the reduction of the caseload. Despite a 35% increase in new complaints this year over last, we have again resolved more cases than we took in. For this achievement I want to thank the staff of the Commission for their hard work and commitment to improving our service to the people of Ontario.

I also want to thank the management team which has demonstrated that money alone is not the answer to the problems the Commission has faced historically. Rather, creative, progressive and sound management is an essential component.

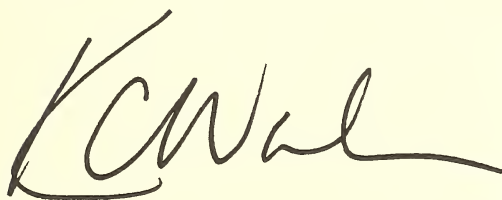
Our mandate is to advance the public policy as set out in the preamble to the *Code*:

“to recognize the dignity and worth of every person and to provide for equal rights and opportunities without discrimination that is contrary to law, and having as its aim the creation of a climate of understanding and mutual respect for the dignity and worth of each person so that each person feels a part of the community and able to contribute fully to the development and well-being of the community and the Province.”

It has also been said that a society will be judged by how well it provides for its most vulnerable citizens. I feel compelled to urge each and every one of us to focus our attention and energy upon the needs of the homeless among us. Every level of government, the housing industry, community groups and each of us who is more fortunate must assume some responsibility to press for a more aggressive effort to make available appropriate and adequate accommodation for these our neighbours.

If anyone doubts the seriousness of this problem, you need only walk with me from my home to my office any day of the week, to get a sense of its magnitude and its impact upon the physical well-being, the dignity and the sense of self-worth of the individuals affected.

I conclude by expressing my growing confidence that the Commission, following several years of major change, is well positioned to carry out its mandate more effectively and that the goal of having a current caseload is within our grasp.

A handwritten signature in dark ink, appearing to read 'K. Norton', with a long horizontal flourish extending to the right.

Keith C. Norton, Q.C., B.A., LL.B.
Chief Commissioner

Highlights of the Year

ABOUT THE ONTARIO HUMAN RIGHTS COMMISSION

The Ontario Human Rights Commission (OHRC or the Commission) is an arm's length agency of government accountable to the Legislature of Ontario through the Minister of Citizenship, Culture and Recreation. The Commission's principal functions are set out in the *Human Rights Code* (the *Code*) and include the investigation and settlement of human rights complaints. Under the *Code*, the Commission's work also includes promoting human rights.

The *Code* requires the Commission to submit an annual report on the activities of the fiscal year ending March 31.

HIGHLIGHTS 1998-99

In 1998, we celebrated the 50th anniversary of the Universal Declaration of Human Rights here and around the world. Ontario had celebrations marked by conferences and special events, and the Commission was especially proud to have been a major partner with the Greater Toronto Initiative and the City of Toronto in the first annual Human Rights Film and Video Festival held in December 1998. Also in 1998, the Government of Ontario introduced an Award for Outstanding Achievement in Human Rights, recognizing exceptional contributions of individuals and groups in this province.

1998-99 was also an important year for human rights decisions from the courts and boards of inquiry. The Court upheld the Board of Inquiry's decision in the matter of *Entrop v. Imperial Oil*, a case dealing with discriminatory drug and alcohol testing in the workplace and its impact on persons with disabilities.

The government also held consultations with disability groups on a discussion paper, *Preventing and Removing Barriers for Ontarians with Disabilities*, a document drafted as a prelude to new legislation. Although the *Ontarians with Disabilities Act* received first reading in November 1998, it was not passed when



the House prorogued in December 1998. The proposed Act garnered significant public and media attention.

In the social area of housing, the Commission obtained a favourable position in *Kearney*, another important case. The case involved a challenge to the practice of screening tenants based on minimum income criteria. The practice involves a “30 per cent rule,” which is used to assess rental applications. Under this rule, tenant applicants have to disclose their income, and if the rent amounts to more than 30 per cent of the person’s income, the landlord often refuses to rent the property.

The Board of Inquiry decided that this practice is contrary to the *Human Rights Code*. These types of screening tests were shown to have an adverse impact on single parents, recent immigrants and refugees, youth and those who receive social assistance.

In June 1998, the Ontario legislature decided to proceed with legislation that would, among other things, allow landlords to ask tenants about income information in conjunction with other information, as a way to screen applicants. The *Tenant Protection Act* and amendments to the *Human Rights Code* became law.

The Commission’s work also includes reviewing and providing input on reports that Canada submits to the United Nations’ Committee on Economic, Social and Cultural Rights.

KEY OHRC ACCOMPLISHMENTS

The Commission made significant strides in a number of areas during the 1998–99 fiscal year. These included:

- improving the timeliness of handling the complaints caseload;
- making its services to the public more efficient and accessible; and
- increasing its education and information activities.

Award-winning information technology has also complemented the Commission’s efforts to streamline and improve case processing. Known as the Case Management Information System (CMIS), this program enables the Commission to track and document each inquiry through every step of the complaints process including initial filing, mediation, investigation and resolution.

In 1998–99, the Commission:

- had a caseload of 2,386 as of March 31, 1999 compared to 2,745 at the same time last year;
- opened 1,850 cases and resolved 2,218 cases, making 1998–99 one of the most productive years in the Commission’s history, and for the third consecutive year, resolved more cases than it opened;
- achieved a median age of cases that is under 12 months and dropping; and
- sent 92 complaints to the Board of Inquiry (Human Rights), the largest number in the history of the Commission with the exception of the 1992–93 fiscal year.

HIGHLIGHTS IN INQUIRIES AND CASE PROCESSING

During the past year, the Commission’s call centre handled over 199,000 calls. A certain number of callers opted for the automated message, which provides basic information on how to contact the Commission, how to file a complaint and other information about the human rights process. A total of 40,112 callers spoke with inquiry service representatives. On average, the waiting time for these callers was 65 seconds. As part of this service, the Intake Unit assisted 1,850 persons in filing their complaints.

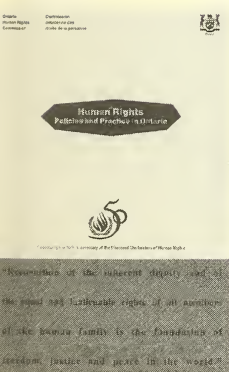
The Mediation Office is now the first step in the Commission’s process after a complaint is filed. Mediation gives the parties a structured and speedy opportunity to resolve their complaint with Commission staff very early in the process. In 1998–99, Mediation Services resolved almost half of all complaints (1,065 out of 2,218 cases resolved by the Commission in 1998–1999). The median completion time for these cases was six months. These high rates of success in resolving cases “up front” are having a positive impact on the Commission’s caseload.

With a steady decrease in caseload, the Commission can focus on addressing cases that are over two years old. This will enable the Commission to meet its commitment to the Ontario public to achieve a current caseload where all complaints are resolved within an average of twelve months. Based on current trends indicating a median age of open cases of less than 12 months, this goal is within reach.

EDUCATION AND COMMUNICATIONS ACTIVITIES

Increasing public awareness and understanding of human rights is also an important part of the Commission's work. As the Commission reduces its caseload, there has been a renewed focus on the Commission's responsibilities in this area. 1998-99 has been one of the most active years in Commission history. Commissioners and Commission staff delivered education and training to over 4,500 people this year. The Commission also:

- developed strategic partnerships for education and outreach with not-for-profit and employers' associations, including the Human Resources Professionals Association of Ontario;
- initiated outreach to aboriginal communities focusing on human rights in the workplace through workplace training initiatives with Miziwe Biik, the Native Women's Resource Centre and the Native Friendship Centre in Fort Frances;
- launched *Human Rights: Policies and Practice in Ontario*, a publication featuring an up-to-date compilation of all the Commission's new policy work. The book was sent to thousands of community and advocacy groups in Ontario and across Canada;
- conducted a province-wide public awareness campaign on sexual harassment in May 1998 on public transit;
- provided information and assistance to over 1,000 employers and organizations, including policy advice on how to develop in-house anti-discrimination policies and practices; and
- was a major partner in the first Toronto Human Rights Film and Video Festival in December 1998.



Issues in Human Rights

DISABILITY

In 1998–99, discrimination against people with disabilities remained one of the largest areas of complaints filed with the Commission. Disability was cited as a ground 760 times in complaints filed this year and this represented 25% of all grounds cited.

Government initiatives were introduced for persons with disabilities this year, including the Ontario Disability Support Program from the Ministry of Community and Social Services in February 1999 and the tabling of the *Ontarians with Disabilities Act* (ODA) by the Minister of Citizenship, Culture and Recreation.

The ODA began with a discussion paper, *Preventing and Removing Barriers for Ontarians with Disabilities*. This document was drafted as a prelude to new legislation and released in August 1998.

The Commission responded to the paper, noting that the *Human Rights Code* alone has not been enough to achieve equal participation in society by people with disabilities. The Commission stressed the need for meaningful legislation with “teeth”. The Commission recommended that the government implement both regulatory and non-regulatory approaches to removing barriers. Also, barriers should be defined more broadly than those related to physical impediments. The Commission made a number of specific suggestions related to identifying barriers, removing them, and monitoring progress on their removal.

Following consultation on its discussion paper, the government introduced the *Ontarians with Disabilities Act*. Although the Act received first reading in November 1998, it was not passed when the House prorogued in December 1998. The Minister has stated her intention to reintroduce the legislation in 1999.

The Ontario Human Rights Commission continues to follow these disability issues closely on a number of levels, ranging from processing complaints and presenting cases before boards and courts, to new policy work.

Policy

Accommodation of Persons with Disabilities

In 1998–99, Commission staff undertook consultations on proposed changes to the *Guidelines on Assessing Accommodation Requirements for Persons with Disabilities*. The *Guidelines* are the Commission's interpretation of provisions relating to accommodation and undue hardship as set out in the *Code*. Throughout the consultation process, the Commission sought input on recent developments and, more specifically, on updates and revisions related to the standard of undue hardship and voluntary assumption of risk.

Further consultations with disability-related groups and organizations throughout the province, as well as with non-disability groups and organizations, such as employers' groups, business associations, service providers, and colleges and universities, are planned for Spring 1999.

In partnership with disability groups, the Commission also held a two-day staff training conference in March 1999. The session sought to heighten sensitivity and awareness of disability issues. It also provided staff and disability groups with a unique opportunity to network as well as to communicate the Commission's commitment to engage groups in a discussion of disability issues and the needs of this community.

The Commission is committed to ensuring that all its services and facilities are accessible to clients with disabilities. The Canadian Hearing Society made inquiries this year about access to the Commission and the Ontario Public Service for clients who are deaf, deafened or hard-of-hearing. The Commission clarified its internal policy that sign language and text-based interpretation services are considered disability accommodations and are provided free of charge to clients upon

request. The Commission wrote to Management Board Secretariat on behalf of the Canadian Hearing Society regarding disability access to all government services.

In addition, the Commission prepared a review plan containing a policy framework for evaluating the Commission's own accessibility which is expected to take place in 1999–2000.

HIV/AIDS Discrimination

The Commission met with representatives from the Canadian HIV/AIDS Legal Network and the Canadian AIDS Society in September 1998 to discuss their joint paper, *Legal, Ethical and Human Rights Issues Raised by HIV/AIDS: Where Do We Go From Here? Planning for 1998–2003*. The Commission also provided written comment on their most recent document, *HIV Testing and Confidentiality: Final Report*.

COMMISSION CASES

Pat Muise v. Elmwell Investments Limited, E. I. Grossman and Morris Altman (Board settlement – November 12, 1998)

The complainant rented an apartment in a building owned by the respondent. She suffered from chronic emphysema and needed a motorized scooter as well as modifications to the building for unassisted access to and from the building, her individual unit, and the underground garage.

Under a mediated settlement, the respondents agreed to:

- pay \$3,000 in general damages; and
- modify the building and underground garage to improve accessibility.

Bob Brown, Cyril Henry Dargewitz, Nancy Dewell, by her Litigation Guardian Irvan Dewell and Mark Todd, by his Litigation Guardian Reina Todd v. Her Majesty the Queen in Right of Ontario and Ministry of Health (Board settlement – May 25, 1998)

The four disabled complainants had applied to the Assistive Devices Program (ADP) for financial assistance to buy an

assistive device. They were turned down because they did not meet the age restriction that applied to the device they needed. The complainants alleged that the age-based eligibility criteria were discriminatory.

At one time, *all* of the device categories in the ADP were subject to age-based eligibility criteria. In the years since the introduction of the program in 1982, most of the age restrictions have gradually been removed. The device categories at issue in these complaints were the only categories that still carried restrictions.

According to the settlement reached by the parties, the respondent will:

- pay the complainants compensation for the expenses they incurred toward the purchase of the necessary assistive devices (between the time of application to the ADP and the present) that would not have been incurred had they been eligible for financial assistance under the program;
- compensate the complainants for anticipated *future* expenses (from the present time until January 4, 1999) that would, but for the age restriction, be covered by the ADP;
- write the complainants a letter of regret; and
- amend the ADP so that by January 4, 1999, it “shall not contain criteria which either directly or indirectly violate the Ontario *Human Rights Code*.”

The Commission is currently reviewing the new program introduced in January 1999.

Brad Thomson v. 501781 Ontario Limited operating as Fleetwood Ambulance Service, and Ontario Public Service Employees Union (Divisional Court decision – January 25, 1999)

Mr. Thomson’s complaint was based on a collective agreement which reduced an employee’s vacation entitlement by 1/12 for each full month that an employee was absent from work. The complainant had been absent for several full months because of an injury for which he received Workers’ Compensation benefits.

Result at Board: The Board of Inquiry held that:

- a policy which pro-rates vacation entitlement for each month worked has an adverse impact on persons with disabilities, and that, therefore, the collective agreement provisions breached the *Code*; and
- OPSEU was not liable, as it was able to establish that it had tried for years to remove the clause from the agreement.

The Board ordered the employer to:

- stop applying the clause in question; and
- pay the complainant the value of the lost days of vacation plus interest, and \$1,000 in general damages.

The respondent appealed to the Divisional Court.

Result at Divisional Court: In finding for the respondent, the Divisional Court considered itself bound by the very recent Court of Appeal decision in *Orillia Soldiers' Memorial Hospital*, which held that an analogous provision — another employment benefit tied to working — was “reasonable and *bona fide* in the circumstances.” The Court of Appeal commented that, by the very nature of the issue, “accommodation” was not possible. The Court set aside the Board of Inquiry decision and ordered the Commission to pay \$3,000 in costs.

Status: The Commission is seeking leave to appeal, pending results in the ongoing appeal of the *Orillia Soldiers' Memorial Hospital* case.

Martin Entrop v. Imperial Oil Limited (On appeal to the Court of Appeal)

The complainant had been employed by the respondent company for 18 years when the respondent introduced a new Alcohol and Drug Policy. Under this policy, the complainant was required to disclose to the respondent that some years prior, he had had an alcohol problem.

As a consequence of this forced disclosure, and again pursuant to the provisions of the company's Alcohol and Drug Policy, the complainant was removed from his safety-sensitive job to a less desirable job. As well, the complainant was subject to a restrictive reinstatement process that involved ongoing undertakings and controls. He filed a complaint with the Commission alleging that he had been discriminated against on the basis of handicap and that he had been subject to reprisal.

Result at Board: In a series of separate decisions, the Board decided in favour of the complainant on each issue. The respondent appealed to the Divisional Court.

Result on Appeal: On February 6, 1998, the Divisional Court dismissed the respondent's appeal in its entirety and held that the Board's findings were "reasonable" and supported by the evidence, and that the Board had correctly interpreted sections 5 and 17 of the *Code*. The respondents successfully sought leave to appeal to the Court of Appeal.

Status: The Ontario Court of Appeal heard the appeal on January 18 and 19, 1999. The Court's decision is pending.

TENANT PROTECTION AND RECEIPT OF PUBLIC ASSISTANCE

A key factor in the fight against homelessness is the ability to access affordable housing. In Ontario, the Commission has actively supported the need to protect individuals from landlords who screen potential tenants solely based on their income information. Several studies show that refusal to rent because of an absence of rental or credit history can result in adverse discrimination for vulnerable persons on grounds prohibited under the *Code*, such as age, place of origin, receipt of public assistance or family status.

The following cases describe this year's developments before the courts and boards of inquiry in this area.

COMMISSION CASES

Dawn Kearney, JL and Catarina Luis v. Bramalea Limited (now Bramalea Inc.), The Shelter Corporation and Creccal Investments Ltd.

(Board of Inquiry decision – December 22, 1998)

This case dealt with the legitimacy of the “30 per cent rule,” a standard widely used by landlords when assessing rental applications. Under the “30 per cent rule”, landlords require tenant applicants to disclose their income, and based on this information, they decide whether or not to rent to them. If the rent amounts to more than 30 per cent of the person’s income, the landlord often refuses to rent the property.

The effect of the “30 per cent rule” is to require that prospective tenants have a minimum level of income to be eligible for accommodation. The complainants challenged this practice, alleging that this criterion excludes persons who are young, female, single, new to Canada, single parents and/or those in receipt of public assistance from acquiring decent rental space.

Result at Board: The Board of Inquiry held a lengthy and complex hearing. It ruled that:

- the respondent Bramalea used a minimum income criterion of 25% rent-to-income ratio in assessing applications; respondent Shelter used a range from 30% to 34%; respondent Creccal used a criterion of \$22,000 annual income;
- statistical evidence demonstrated that landlords’ use of such criteria has a disparate impact on people on grounds prohibited under the *Code*, such as race, sex, marital status, family status, citizenship, place of origin, age and receipt of public assistance;
- the landlords did not establish a defence under section 11 of the *Code*, since they could not prove that using such criteria was reasonable or *bona fide*. Moreover, since using a rent-to-income ratio (or a minimum income criterion) has no predictive value as to whether a tenant will default, the landlords could not establish that stopping the use of such criteria would cause undue hardship; and

- rent-to-income ratios and minimum income criteria breach the *Code*, whether used alone or in conjunction with other criteria or requirements.

The Board ordered the respondents to pay general damages to the three complainants – \$5,000 for one and \$4,000 for the other two, as well as certain specific damages.

(Note: Currently, eight more complaints dealing with similar issues stand before the Board of Inquiry. The events that gave rise to the complaints in Kearney and the cases currently before the Board of Inquiry pre-dated amendments to the Code and to the Tenant Protection Act (discussed later). The Board of Inquiry decision in Kearney does not consider the new legislative changes.)

Status: The respondents have filed a Notice of Appeal to Divisional Court.

OHRC and Lise Rhéaume v. René Leroux and Rencar Construction Ltd.

(Divisional Court decision – January 25, 1999)

The complainant alleged that she spoke to the appellant when she called about renting an apartment that had been advertised in a local newspaper. She claimed that when she informed the appellant she was on “Mother’s Allowance” in response to his question as to where she worked, he told her that he did not rent to people receiving Mother’s Allowance. The appellant denied having this conversation, but said that he spoke briefly to a woman who would not disclose the amount of income she receives from the Province.

Result at Board: In its August 23, 1996 decision, the Board found that the appellant discriminated against the complainant in accommodation by refusing to consider her as a prospective tenant because she was receiving public assistance. The Board preferred the complainant’s evidence to that of the appellant, and found that although the appellant did rent to tenants on public assistance, he decided not to consider the complainant’s

application because she was receiving Mother's Allowance. The respondent appealed the decision.

Result at Divisional Court: In a two to one split, the Divisional Court upheld the Board's finding of discrimination in housing on the basis of receipt of social assistance. The issues before the court were procedural in nature: delay, addition of parties to the proceeding and the necessity of having a transcript of the proceedings before the Board.

The majority held that:

- a four-year delay was unfortunate, but did not impact on the fairness of this hearing;
- adding the corporation as a respondent raised no new issues before the Board of Inquiry; and
- the absence of a transcript did not amount to a denial of natural justice.

Legislative developments

On June 17, 1998, Ontario's new *Tenant Protection Act* came into effect. During debate on the *Act*, the Commission had argued that landlords should not screen potential tenants based on income information. Although the *Act* does allow the use of income information, it is restricted to prescribed circumstances.

Section 212(1) of the new *Act* amends the *Code* by creating section 21(3), an exception to the *Code*'s section 2 protection against discrimination in housing accommodation. The exception allows the use of income information, but only in specific instances as outlined in new regulations.

- These new regulations permit a landlord to ask for and consider income information, but only in conjunction with one or more other forms of information, such as rental history, credit references and credit checks, if available.
- Landlords may not use minimum income as a criterion nor may they apply a maximum rent-to-income ratio as a cut-off rule in the absence of evidence that they considered other information where such information is available.

- Under the regulations, landlords may not refuse to rent to someone simply because rental history, credit check or credit reference information does not exist.
- Landlords who conduct credit checks without seeking authorization from the rental applicants may not be able to benefit from the regulations' protection.

The Commission will continue to accept complaints from people who believe they have suffered discrimination in housing accommodation under the *Code* in order to support an understanding that is consistent with basic principles of human rights and the law.

INSURANCE

In 1998–99, the Commission finalized a research paper on human rights in insurance. A background paper outlines how the risk criteria used by insurance companies are often based on stereotypes and personal characteristics, which constitute a prohibited ground under the *Code*. The paper outlines steps the Commission might take in response to such problems.

These include:

- citing legal principles that promote protection from discrimination in insurance on prohibited grounds of the *Code* when litigating cases;
- reviewing complaints with an eye to further developing positive case law in this area;
- continuing to argue in favour of insurance classification schemes that do not determine risk based on characteristics which constitute a prohibited ground under the *Code*;
- seeking an amendment to Regulation 321 of the *Employment Standards Act*, which discriminates against pregnant women in employment insurance benefits;
- supporting increased public control over underwriting criteria that can be used in disability insurance; and
- engaging in an ongoing dialogue with the Financial Services Commission of Ontario (FSCO) regarding issues related to discrimination in insurance.

The Commission sought the input of the FSCO, which offered preliminary comments. A first meeting was recently held between the two agencies. The Commission is planning further consultation and the release of a final paper with recommendations in the coming fiscal year.

The Commission also met with a large private insurance company, upon its request, to discuss the application of the *Human Rights Code* from both an employer and service provider perspective.

RACE AND RACE-RELATED GROUNDS

The grounds of race and colour were cited most frequently among complaints filed in 1998–99. These grounds were cited 828 times, and represented 27% of all grounds cited.

In the past year, the Commission developed a proposal to conduct research in the area of multiple and intersecting grounds of discrimination. This is an emerging issue in dialogues on human rights, equality, discrimination and equal treatment. Preliminary indications show that persons who experience discrimination on more than one ground of discrimination experience the impact in a way that is significantly greater than the sum of the individual parts. Race is a key area of this research project.

The issue of multiple grounds was raised at the 1998 meeting of the Canadian Association of Statutory Human Rights Agencies (CASHRA) in Halifax, Nova Scotia. The Commission will be examining the impact of multiple and intersecting grounds of discrimination with a view to developing an analytical model that is significantly different from the current single-ground approach.

COMMISSION CASES

Maxwell B. Nelson v. Durham Board of Education and Don Peel

(Board of Inquiry decision – August 28, 1998)

Mr. Nelson worked for the Durham Board of Education, first as a teacher, then as the first black vice-principal. He aspired

to become a principal, but was unsuccessful. At the time of Mr. Nelson's attempts to become a principal, there were no black principals. Mr. Nelson alleged discriminatory treatment in his experiences between 1977 and 1989, when he resigned from the school board.

Result at Board: The Board of Inquiry found *direct* discrimination in the following areas of the complainant's employment:

- delay in the complainant's reclassification from vice-principal "B" to vice-principal "A";
- delay in granting the complainant's "release time" (time away from teaching duties to help administrators carry out administrative duties);
- treatment of the complainant in his unsuccessful applications for promotion to principal;
- treatment of the complainant in his unsuccessful applications for transfer (to position of vice-principal at other schools of the Durham Board); and
- unfair allocation of release time following Nelson's transfer to a different school (after years of unsuccessful attempts to transfer).

The Board also found evidence of *systemic* discrimination, noting that the following elements created a climate in which characteristics such as race and colour became factors in decisions made by the school board:

- informal guidelines governing employment processes (up to 1987);
- inconsistent application of criteria for advancement;
- subjective decision-making regarding approval for courses required for promotion; and
- lack of clear or written policies with respect to promotion, rotation (transfer), and release time.

Status: The Board will address the issue of remedy in late March 1999.

Coldmatic Refrigeration of Canada, George Zafir and Brian Palmer v. Luis Espinoza and OHRC (Divisional Court decision – October 13, 1998)

The complainant, Luis Espinoza, was fired after he was involved in a fight at work provoked in part by a racial slur.

Mr. Espinoza alleged that Spanish-speaking workers with the respondent company were subjected to insulting and humiliating comments as well as differential treatment, such as arbitrary discipline and excessive monitoring.

Result at Board: In its 1995 decision, the Board of Inquiry held that:

- the complainant had been subjected to discrimination in the workplace on the basis of his ethnic origin and place of origin;
- language, one of the many identifying features of ethnic origin, can be addressed through that protected ground; and
- an imbalance of power was the operative dynamic in the workplace and it had a discriminatory effect.

The Board order included monetary damages and broad-reaching policy remedies designed to prevent future discrimination and harassment. The respondents appealed the Board decision to the Divisional Court.

Result at Divisional Court: The Court dismissed the appeal and supported the Board's findings, holding that the Board:

- did not err in considering hearsay evidence as to the timing of Mr. Espinoza's dismissal as this evidence was not critical to its finding on that issue;
- did not err in admitting similar fact evidence pertaining to the applicant company's subsequent conduct in the circumstances of this case; and
- had ample evidence to support its conclusion that a poisoned environment existed and that the treatment accorded to Mr. Espinoza by the appellants was based on his ethnic origin and place of origin.

The Court awarded costs of \$3,000 to Mr. Espinoza.

Naraine v. Ford Motor Co. Ltd.
(on appeal to the Divisional Court)

The complainant, a person of East Indian origin from Guyana, worked for the Ford Motor Company in Windsor for over nine years. He alleged that his working environment was poisoned by racist graffiti and racist comments that were directed at him and, in some instances, at other visible minority employees. The complainant also alleged that he was given inferior work assignments and training, and that he was subject to a higher level of scrutiny and discipline than were other employees. In the last three years of his employment, Mr. Naraine was subject to progressive discipline, ultimately resulting in his termination for an alleged altercation with a co-worker.

Result at Board: The Board found that:

- apart from one racially charged incident with a security guard, there was no direct causal connection between the disciplinary incidents and race;
- name-calling and graffiti should be recognized for their inherently destructive effect on racial equality in the workplace;
- evidence of direct supervisory involvement in and knowledge of the poisoned work environment was sufficient to establish corporate liability;
- as the complainant was increasingly taunted in the poisoned work environment, his outbursts became more frequent;
- the respondent failed to take seriously or investigate the allegations of unfair treatment;
- a causal connection between the poisoned environment and the complainant's termination was established; and
- this was not an appropriate case for any findings of personal liability given the systemic nature of the racial discrimination.

The Board ruled on the issue of damages in a separate, December 1996 decision in which it ordered the respondent to:

- reinstate Mr. Naraine;
- make the necessary training available to Mr. Naraine so that

he could become conversant with technological developments since his termination;

- pay for any reasonable counselling expenses associated with the reintegration process;
- pay special damages, including compensation for loss of seniority increments, pension benefits, employment benefits and vacation entitlement to Mr. Naraine for the amount that he would have earned from the date of discharge to the date he began to work with another company; and
- pay \$30,000 in general damages: \$20,000 as compensation for the “intrinsic value of the infringement of his rights and as compensation for the experience of victimization,” and \$10,000 for “mental anguish caused by the respondent’s recklessness in contravening the *Code*.”

The Board also awarded prejudgement interest. The respondent filed a Notice of Appeal for both Board decisions.

Status: The appeal was heard in Divisional Court on February 4, 1999. The Court’s decision is pending.

Michael McKinnon v. Her Majesty the Queen in Right of Ontario (Ministry of Correctional Services), Frank Geswaldo, George Simpson, P. James and Jim Hume (Board of Inquiry decision – April 28, 1998)

The complainant, a person of native Canadian ancestry, worked as a correctional officer with the Ministry of Correctional Services. The complainant alleged discrimination and harassment in employment on the basis of race, ancestry, and place of origin, and alleged acts of reprisal against him for claiming his rights under the *Code*.

Result at Board: The Board held that:

- the complainant suffered discrimination, harassment, and reprisals at the hands of the respondents;
- the personal respondents were liable for racial discrimination and harassment for their use of racial slurs, and their

- involvement in several of the “targeting incidents”;
- additional personal respondents, both members of senior management, were liable for their role in discriminatory decisions concerning the complainant’s working conditions;
 - the complainant and his wife had been discriminated against when they were denied the entry-level management positions for which they had each applied;
 - senior management’s failure to take appropriate and timely measures to deal with Mr. McKinnon’s complaints infringed his right to be free of discrimination in employment in that a “poisoned work environment” was permitted to exist;
 - the Ministry was jointly and severally liable with the personal respondents for discrimination; and
 - the Ministry was vicariously liable for its employees’ wrongful conduct and thus jointly and severally liable with the other respondents for harassment.

The Board ordered substantial general and special damages. It also ordered the Ministry to:

- promote the complainant and his wife to the entry-level management positions to which they had applied and were previously denied;
- relocate the personal respondents, and ensure that they do not work with him again;
- amend its files and destroy all materials relating to the human rights complaint;
- publish the Board’s decision and order; and
- establish a training program.

Status: The Ministry has substantially complied with the Board’s order. The complainant has made further/new allegations of ongoing harassment and reprisal against him by the Ministry, which he has asked the Board to consider. The Board has reserved its decision on whether it can assume immediate jurisdiction to hear these new allegations or whether it will be necessary for the Commission to undertake a full investigation first.

AGE

In 1998–99, age accounted for 6% of grounds cited in complaints filed this year. The ground protects the rights of both older and younger persons. 1999 has been designated as the International Year of Older Persons.

COMMISSION CASES

Donald Andrews and Robert McEllistrum v. London Police Services Board and London Police Association (Board settlement – September 3, 1998)

The complainants alleged discrimination on the basis of age because of the respondents' rule that police officers must retire at age 60. The collective agreement also included this compulsory retirement rule. In a board-mediated settlement, the London Police Services Board and the London Police Association agreed to the following settlement terms:

- the respondents will change the compulsory retirement age for police officers in the collective agreement from 60 to 65 years;
- all police officers who would have been required by the collective agreement to retire during 1998, may continue working, subject to the amended collective agreement; and
- the London Police Services Board will pay the complainants comprehensive general and specific damages.

FAMILY STATUS

Under the *Code*, family status is defined as the state of being in a parent-child relationship.

In December 1998, the Board of Inquiry made a key decision that identified, among other things, that the use of rent-to-income ratios by landlords has a disparate impact on individuals protected under the *Code* on the ground of family status. The *Kearney* decision is described in detail above in the section dealing with Tenant Protection. Differential treatment based on family status, such as adult-only buildings, also violates the *Code*.

COMMISSION CASES

John Leonis v. Metropolitan Toronto Condominium Corporations Nos. 741 (Trillium); 742 (Vista); and 634 (Skypark) (Board of Inquiry decision – June 10, 1998)

The complainant, who had a daughter under the age of 16, resided in a building that restricted the use of its recreation facilities for those under 16. The condominium did significantly alter its “Children’s Rules” in 1996 and 1997 to allow greater use of the facilities by children.

Result at Board: The Board of Inquiry held that:

- “occupancy of accommodation” includes the occupancy of a condominium unit;
- use of the recreation centre comprises an integral part of the complainant’s occupancy of his unit;
- the centre is not a “recreational club” within the meaning of section 20(3) of the *Code*;
- the rules in question have a disparate negative impact on parents of young children;
- allowing children unrestricted access to the centre at all times would cause undue hardship to the respondents, given the impact on other unit owners who use the centre;
- the children’s rules in existence at the time of the complaint were not reasonable and *bona fide* because they did not accommodate the complainant’s needs short of undue hardship; and
- the revised rules adequately accommodate the needs of parents.

The Board ordered the respondents to:

- pay the complainant \$500.00 in general damages; and
- ensure that at least one place on the recreation committee be made available to a unit holder who has a child under 16 years of age.

CREED

COMMISSION CASES

Brendan Henry v. Toronto Honda and Mort Ison (Board settlement – December 2, 1998)

The complainant, a Seventh Day Adventist, alleged that his employer discriminated against him on the basis of creed when he was fired from his job as a mechanic. The complainant alleged that he was let go because he would not work Saturdays. The personal respondent asserted that the lay-off resulted from a shortage of work for mechanics.

The parties agreed to settle the matter. Under the terms of the settlement, the respondent will:

- pay \$4,000 general damages;
- pay \$320 damages for lost wages; and
- make an addendum to its Employee Manual, stating that Toronto Honda will accommodate religious observance requirements.

SEXUAL ORIENTATION

1998 was an important year for members of the gay and lesbian community. The Supreme Court of Canada came down in favour of equality rights in the landmark case *Vriend*. Although the case originated in Alberta, the Commission intervened as a member of the Canadian Association of Statutory Human Rights Agencies (CASHRA), along with many other human rights agencies, to establish that the *Canadian Charter of Rights and Freedoms* (*Charter*) should protect people even when laws are silent on human rights, and not just when laws expressly violate human rights.

Also in 1998, two key cases were decided in the Ontario courts, *Rosenberg* and *OPSEU*, both affirming the equality rights of gays and lesbians by including their relationships in the definition of “spouse.” In *OPSEU Pension Plan Trust Fund v. Ontario et al.* the court examined the Public Service Pension Plan of the Province of Ontario, and held that ongoing distinctions between the Plan for same sex and opposite sex couples were a violation of section 15 of the *Charter*.

Although the Commission was not a party to the OPSEU case, it has important implications for the Commission. At present the Commission is unable to challenge discriminatory legislation that uses an opposite-sex definition of spouse because the *Human Rights Code* itself contains discriminatory definitions of spouse and marital status. As these decisions work their way up the courts, however, the words of the Supreme Court of Canada in *Vriend* are especially appropriate:

“... groups that have historically been the target of discrimination cannot be expected to wait patiently for the protection of their human dignity and equal rights while governments move toward reform one step at a time. If the infringement of the rights and freedoms of these groups is permitted to persist while governments fail to pursue equality rights diligently then the guarantees of the Charter will be reduced to little more than empty words.”¹

Despite these decisions, the Ontario government has not amended the large number of statutes (at least 65) that continue to violate the *Charter* on the ground of sexual orientation. The Attorney General indicated his intention to wait until the release of the Supreme Court of Canada’s decision in *M. v. H.*

COMMISSION CASES

James Lawrence Moffatt v. Kinark Child & Family Services and Harry Oswin (Board of Inquiry decision – December 2, 1998)

The complainant, a gay man, was fired shortly after he became the foster parent of a male youth. He alleged that he was discriminated against because of the respondent’s stereotypical views associating homosexuality with pedophilia and because of a perceived handicap (AIDS). The complaint also included the grounds of family status and reprisal.

Result at Board: The Board of Inquiry decided in favour of the complainant and made the following findings:

1: (1998) 1 SCR 493

- Mr. Moffatt was subjected to a poisoned work environment because of rumours and gossip stemming from his sexual orientation;
- the respondents failed to take adequate steps to investigate and address the complainant's concerns about harassing rumours;
- this failure constituted an infringement of the complainant's right to be free of discrimination in employment;
- the evidence did not indicate, however, that the decision to dismiss Mr. Moffatt was motivated by an intention to retaliate against him for having claimed his human rights, nor did the evidence establish that the dismissal was linked to his human rights claim; and
- reprisal *did* constitute a factor in the 1991 sexual abuse report made by the respondents (The report contained misleading information sent to the Children's Aid Society, in part, because of Mr. Moffatt's human rights claim.).

Status: Hearing dates on the issue of remedy have not yet been set.

Vriend et al. v. Alberta (Supreme Court of Canada decision – April 2, 1998)

The Commission participated in this case at the Supreme Court of Canada in its capacity as a member of the Canadian Association of Statutory Human Rights Agencies (CASHRA), which intervened in support of the appellant, Delwin Vriend.

The case began when Vriend, who worked at King's College in Edmonton, Alberta, was fired shortly after disclosing to his employer that he was a homosexual. The Alberta Human Rights Commission advised Vriend that he could not file a human rights complaint because sexual orientation is not included as a protected ground under Alberta's human rights legislation, the *Individual Rights Protection Act (IRPA)*. Vriend then sought a court declaration that the *IRPA* violates section 15 of the *Charter* by failing to prohibit discrimination on the basis of sexual orientation.

Result at Court of Queen's Bench: The lower court agreed with Mr. Vriend and found that Alberta's human rights legislation violated the *Canadian Charter of Rights and Freedoms*. The court effectively held that the Government of Alberta has a *positive obligation* under the *Charter* to legislate protection from discrimination based on sexual orientation, and that therefore such protection should be "read into" the legislation. The Government of Alberta appealed this decision.

Result at Court of Appeal: In a two-to-one decision, the Alberta Court of Appeal reversed the lower court and ruled in favour of the government, holding that the omission of sexual orientation as a protected ground did *not* constitute a *Charter* violation. Mr. Vriend appealed to the Supreme Court of Canada, where CASHRA intervened to support his position.

Result at Supreme Court: In its April 2, 1998 decision, the Supreme Court of Canada found that the *Charter* applied to omissions in legislation and to the legislature's regulation of private activity. The Court further found that the failure to include sexual orientation as a prohibited ground in the *IRPA* violated the equality rights of gays and lesbians without justification.

MARITAL STATUS

In 1998–99, two key issues of interest were in the area of discrimination based on marital status. One was the issue of whether or not same-sex couples could apply for benefits based on their marital status.

The other was whether the protection under the *Code* for marital status extended to couples who faced discrimination based on their association in the relationship as a married partner.

COMMISSION CASES

Attorney General of Ontario v. M. and H. (on appeal to the Supreme Court of Canada)

This case began in the courts and was never the subject of a human rights complaint. The Commission sought involvement as an intervenor because of the important and precedent-setting human rights issues at stake.

Following the breakdown of their 12-year relationship, the respondent “M” asked the court for a support order against “H,” her former partner. She argued that the opposite-sex definition of “spouse” in section 29 of the *Family Law Act*, which precluded an application for support in the context of a lesbian common law relationship, denied her the equality rights guaranteed to each individual under section 15 of the *Charter*.

Both the original court and the Court of Appeal ruled in “M’s” favour, holding that the *Family Law Act*’s definition of “spouse” violated the *Charter*.

“H” appealed to the Supreme Court of Canada, where the Commission successfully applied for leave to intervene, and in its submissions, supported “M’s” position. The Commission argued that the opposite-sex definition of “spouse” in the *Family Law Act* is discriminatory and violates principles of equality under section 15 of the *Charter*.

Status: This case was argued before the Supreme Court of Canada on March 18, 1998. The decision was still pending as of March 31, 1999.

OHRC and Mr. A. v. Mr. B., Mr. C. and D. Ltd. (Divisional Court decision – January 19, 1999)

This case calls into question whether the terms “marital status” and “family status” are broad enough to encompass situations where a person is differentially treated because of the *specific identity* of their spouse or child.

Result at Board: The Board of Inquiry made a factual finding that the complainant had been fired because of the actions

of his wife and daughter. The Board then held that this was discrimination on the basis of family and marital status.

Result on appeal: The Divisional Court did not overturn the Board's finding of fact, but said that differential treatment because of the particular identity of one's spouse or child does not amount to discrimination on the basis of family or marital status.

Status: The Commission is considering the legal implications of the Divisional Court decision and may seek leave to appeal further in this case.

SEX AND GENDER IDENTITY

Last year the Commission made a public commitment to develop a policy position on the rights of transgendered individuals. This year, the Commission began research and consultation with community groups and individuals in the transgendered community. At present, the *Code* does not explicitly include gender identity as a protected ground of discrimination.

The following points summarize results of the Commission's research and consultation to date:

- the transgendered community is profoundly marginalized and experiences significant social stigma;
- these factors, as well as high levels of discrimination in employment and services and social stereotyping make a progressive understanding of gender identity both timely and compelling;
- Ontario's existing legal structure can support a progressive understanding of the *Code* to protect transgendered persons effectively. There is a close relationship between sex discrimination and gender discrimination — specifically, discrimination based on gender characteristics or stereotypes that are different from a person's birth-assigned gender; and
- the Commission will continue to accept complaints related to gender identity under the ground of sex.

Consultation will continue to further develop policies and practices relevant to issues of discrimination based on gender identity.

SEXUAL HARASSMENT

Following the tragic death of Theresa Vince at the hands of her manager in 1997, a coroner's jury made a number of recommendations on the issue of sexual harassment. These recommendations included several to the Ontario Human Rights Commission, all of which were accepted by the Commission and acted upon.

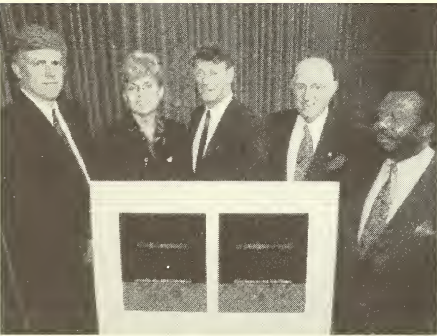
As part of these initiatives, the Commission also launched a public awareness campaign in 1998 to promote awareness of the issue.

As a result of the Vince Inquiry, Commission staff introduced a new procedure to help victims of sexual harassment identify potential situations of violence and refer them to appropriate community services including the police. In May 1998, staff began to ask callers whether they felt that their personal safety was at risk. Of the 460 sexual harassment-related calls that were received from this period onwards, 107 (23%) indicated a perceived threat, 45 (10%) indicated that police were called, and 62 (13%) indicated that a referral was desirable. In such cases, the Commission can refer callers to a number of regional and local resources and contacts for assistance.

COMMISSION CASES

**Ena Drummond v. Tempo Paint and Varnish Co.
(Division of Tower Chemicals Limited),
Bernard Jakobson and Hugh Kerr
(Board of Inquiry decision – June 18, 1998)**

The corporate respondent employed the complainant as a labeller and box-maker. The complainant alleged that from December 1988 to the end of her employment, she was subjected to harassment, sexual solicitation and discrimination on the basis of



sex by two of the respondent's employees. The complainant's employment was terminated on September 19, 1989.

Result at Board: The Board found that the complainant's allegations were well founded. The Board held that:

- the corporate respondent, through the inaction of its management, infringed the complainant's rights under the *Code* to freedom from harassment and from discrimination in employment;
- the harassing employees knew that their ongoing conduct was not welcomed by the complainant and was the cause of significant distress on her part;
- management's complete failure to address the harassment allegations perpetuated a hostile work environment for the complainant and led, predictably, to her dismissal; and
- the company is jointly and severally liable with the personal respondents for losses arising out of the infringement.

In a separate decision on damages, dated January 6, 1999, the Board ordered the respondent to:

- pay the complainant \$5,000 in special damages and \$10,000 in general damages;
- pay both prejudgement and post-judgement interest to the complainant;
- post notices in all of its workplaces setting out its rights and responsibilities under the *Code*; and
- develop and implement an internal human rights complaint procedure for its employees, to be approved by the Commission within six months of the order.

PREGNANCY

In the area of human rights, women are often adversely affected in areas such as employment because of pregnancy. As part of its mandate to promote awareness, the Commission developed a plain language version of the Commission's *Policy on Pregnancy*. The document focuses on women's rights at the work-

place while they are pregnant and after delivery, and also addresses a woman's right to breast-feed her child. Both publications are scheduled for release in the summer of 1999.

COMMISSION CASES

Solange Lavendar v. 944369 Ontario Limited and John Polizogopoulos

(Board of Inquiry decision – September 1, 1998)

The complainant was employed as a waiter of the respondent's restaurant. After a complicated pregnancy and miscarriage, the complainant requested and received time off from her employer. When she contacted her supervisor and the personal respondent to arrange for her return, neither returned her phone calls. She was later informed that her position had not been held for her.

Result at Board: The Board found that the respondents:

- would not have terminated the complainant but for the circumstance of her asking for time off due to pregnancy; and
- violated the *Human Rights Code* when they terminated the complainant.

The Board ordered the respondents to:

- pay \$3,500 in general damages;
- pay \$4,896.68 in lost wages plus prejudgement interest to the complainant; and
- post notices declaring the organization's commitment to human rights prominently in their business establishment.

Connie Wight v. Office of the Legislative Assembly (Board of Inquiry decision – July 13, 1998)

The complainant experienced a high risk pregnancy and, as a result, delivered her baby before she had completed the one-year minimum service requirement that would have made her eligible for paid maternity leave. She was dismissed for refusing to return to work when ordered until she had secured adequate day care for her children. She was also denied short-term sickness benefits, maternity leave and extended leave.

The complainant alleged that her right to equal treatment in employment without discrimination had been infringed in contravention of the *Code*. She alleged she could have and should have been accommodated by the respondent. She also alleged that the respondent's decision to extend her probationary period by six months because she had been off for an extended period due to her pregnancy was discriminatory.

Result at Board: The Board found that:

- the respondent's sick leave provisions were applied unequally to women in that they were available to all employees after twenty days of service except pregnant women, and they were not available for pregnancy-related illness; and
- the respondent's usual practice in such circumstances was to extend the probationary period by the length of the absence. The only reason for extending the probationary period was the complainant's pregnancy. Therefore, the Board found that the extension of the probationary period was discriminatory.

The Board dismissed the remaining allegations. In compensation for the discriminatory extension of her probationary period and denial of sick leave benefits, the Board awarded the complainant \$1,000 in general damages. The Commission has appealed the Board's decision to the Divisional Court.

Status: A hearing date for the appeal has yet to be set.

DAMAGES

The purpose of human rights legislation is not to find fault but to eliminate discrimination and to provide redress. It is meant to be preventative and remedial, not punitive.

A remedy to a complaint might include restoring the complainant to a position the individual would have held had the *Code* not been violated. It may also consist of compensation for loss of earnings or job opportunities, or damages for mental anguish suffered as a result of the violation.

An important component of this principle is the Board of Inquiry's power to award damages and interest. This power was challenged in two appeal cases this year, and the Commission was successful in both.

COMMISSION CASES

OHRC and Geiger v. London Monenco

(Geiger/Barboutsis)

(Divisional Court decision – October 6, 1998)

The complainants worked for the company at a remote site approximately 200 km north of Thunder Bay. Under company policy, married staff were flown home at the company's expense every three weeks. Unmarried staff did not qualify for this benefit, and had to fly home at their own expense. At the hearing, the complainants testified that their inability to return home more frequently caused them to suffer loneliness, boredom and isolation which, in the case of one complainant, led to a need for medical help.

Result at Board: The Board of Inquiry ruled in favour of the complainants and awarded prejudgement interest at a rate of 10%. This rate approximated the average interest rate contemplated by the *Courts of Justice Act* for the period commencing August 1, 1984. The Board noted that prejudgement interest was payable only on the damages for out-of-pocket expenses and for the value of the benefit not received.

The respondents appealed the power of the Board of Inquiry to award interest under section 41(1)(b) of the *Code*

and, in the alternative, argued that they should not be required to pay prejudgement interest to cover expenses, which were never incurred.

Result at Divisional Court: The Divisional Court dismissed the appeal. Stating that it was bound by the Court of Appeal decision in *OHRC v. Impact Interiors*, the Divisional Court found that:

- the Board had jurisdiction to award prejudgement interests and that the \$10,000 cap in section 41(1)(b) applied only to damages for mental anguish;
- the value of the trips not taken represented an improper diminution of salary; and
- the loss arising out of the infringement should attract prejudgement interest, as it was the equivalent of money owed and not received.

Shirley Hom and Cindy Petersen v. Impact Interiors Inc. and Ken Walia
(Court of Appeal decision – July 13, 1998)

The complainants alleged discrimination on the basis of sexual harassment and were successful before the Board. The respondents appealed to the Divisional Court.

Result at Divisional Court: The Court upheld the findings with respect to discrimination, but held that the Board assessed special damages for one of the complainants at a disproportionately high rate, and erred in ordering prejudgement interest on the damages awarded. The Commission was granted leave to appeal to the Court of Appeal on the damages issues.

Result at the Court of Appeal: The Court of Appeal found that the Divisional Court erred in interfering with the Board's award of interest and the quantum of damages. In particular the Court disagreed with the Divisional Court's statement "... there must ... be some consequence between the com-

pensation for lost wages and the duration and quality of the complainant's employment."

INTERPRETING COMMISSION DISCRETION

Section 34 of the *Code* gives the Commission discretion not to deal with certain complaints if:

- there is another law in Ontario which would better deal with the matter;
- the complaint is trivial, frivolous, vexatious or made in bad faith;
- the matter is outside the Commission's authority or jurisdiction; or
- the complainant has waited more than 6 months after the last incident on which the complaint is based to file the complaint.

The number of cases not dealt with under section 34 fluctuates from year to year. In 1997–98, 21% of cases fell into this category. In 1998–99, 8.1% of the total cases resolved by the Commission were as a result of decisions not to deal with the matter under section 34.

Parties to a complaint may apply to the Divisional Court for judicial review of certain Commission decisions, such as whether to:

- deal with a complaint (section 34);
- refer the subject matter of a complaint to a Board of Inquiry (section 36); or
- change an original Commission decision under either section 34 or 36 upon reconsideration (section 37).

Court rulings on these applications help to clarify the scope of the Commission's discretionary powers, and generally, either endorse or reverse the Commission on its handling of complaints. The cases outlined below explain rulings made in response to applications for judicial review during the last year.

COMMISSION CASES

Mrs. Joan Burman on behalf of her daughter

Riley Burman v. OHRC

(Divisional Court decision – November 26, 1998)

The applicant asked the Court to quash the Commission's decision not to deal with her complaint against the Carleton Board of Education. The Commission had decided not to deal with the complaint pursuant to section 34(1)(a), on the basis that the matters raised in the complaint could more appropriately be dealt with under the *Education Act*.

Result on judicial review: The Divisional Court unanimously held that the application should be dismissed. However, there was a difference of opinion on the interpretation of section 34(1)(a).

Two judges held that section 34(1)(a) suggests a one-step determination in the exercise of the Commission's discretion as to whether the complaint could or should be more appropriately dealt with under another Act. The Court held that the Commission's exercise of that discretion was not patently unreasonable.

The third judge held that the section requires the Commission to undertake a two-step process which, in fact, it did undertake in this case:

- the Commission must first decide whether it appears that the complaint is one that could or should be dealt with under another Act — a decision within the Commission's expertise; and
- having made that determination, the *Code* gives the Commission discretion to hear or not to hear the complaint.

Status: The applicants have applied for leave to appeal.

Leslie Devlen v. OHRC

(on appeal to the Court of Appeal)

The complainant worked for the Liquor Control Board of Ontario (LCBO) as an investigator. Some years prior to

her employment, she sustained a head injury, which she alleged had an ongoing effect on her cognitive abilities and her memory. She was fired from her job at the LCBO while on a sick leave. The Commission decided that it would not deal with the case on the basis that (a) the complainant did not have a handicap, and (b) the complaint was trivial. This decision was upheld on reconsideration.

Result on judicial review: The Divisional Court focussed on the standard of review, which it said was “patent unreasonableness.” Applying that standard, the Court held that neither the section 34 nor the section 37 decisions were patently unreasonable.

The LCBO submitted that the standard of review for an administrative body exercising a discretionary power is whether the decision was made (i) in good faith, (ii) upon relevant considerations, and (iii) in accordance with procedural fairness. The Court noted that this test had also been met. The Divisional Court dismissed the judicial review, with costs of \$4,000 to the LCBO.

Status: The Divisional Court decision is currently under appeal to the Court of Appeal.

**Mercy Anselm v. OHRC, Minister of Citizenship
(Divisional Court decision – June 18, 1998)**

The Commission exercised its jurisdiction under section 36 of the *Code* and decided not to refer the subject matter of this complaint to a Board of Inquiry. The complainant challenged this decision.

Result on judicial review: The Divisional Court held that the Commission’s discretion under section 36 is very broad and the Commission has a duty to act fairly in exercising this discretion. The Court was not persuaded that the Commission had acted unfairly. Furthermore, the Court ruled that it is for the Commission to decide whether the evidence justifies an inquiry into issues of credibility, and the Court had no jurisdiction to substitute its decision for that of the Commission.

Service to the Public

The Commission continues to move toward its goal of a current caseload – one in which the agency completely resolves all complaints within an average of 12 months from the date of filing. This success is due to current trends of early resolution coupled with effective strategies to reduce the number of cases under investigation.

Despite this success, there are still several challenges. The average age of cases that are resolved continues to be high because the Commission is focusing on resolving older cases. For this reason, the average age of complaints that were resolved, was 22 months on March 31, 1999. The average age of cases is determined by totalling the ages of all cases and then dividing this sum by the total number of cases.

The Commission also uses *median age* as a measure. The *median* is the midpoint in the distribution of cases, and is the point above and below which fall exactly 50% of the complaints. The median age of resolution for cases filed as of March 31, 1999, was 18.5 months.

Last year, the Commission's goal was to decrease the average age of cases in the caseload to 14 months. As of March 31, 1999, the average age of cases in the caseload was 16.2 months, and the median age of cases was under the 12-month mark.

INQUIRIES AND FILING COMPLAINTS

The Inquiry and Intake Service Unit is the hub for the Commission's first contact with the public. Since 90% of the public's first contact with the Commission is by telephone, a centralized call centre for one-window access now provides prompt service in English and in French for callers across the province. TTY service is also available.

During the past year, the Commission's call centre handled over 199,000 calls. A certain number of callers opted for the automated message, which provides basic information on how to contact the Commission, how to file a complaint and other information about the human rights process. Another

40,112 callers stayed on the line and were connected with inquiry service representatives. On average, the waiting time for these callers was 65 seconds.

The appropriate staff person answered the questions of the callers who reached a representative or referred the call to another level of government or to another agency. Inquiry service representatives sent out intake forms (preliminary complaint forms) for 4,155 of the 40,112 calls that they handled (10%).

In 1998–99, the intake office received 2,246 intake packages. Of these, 1,850 or 82% became human rights complaints.

MEDIATION AND SECTION 34 REQUESTS

Mediation

The Commission's professionally trained mediators provide services throughout the province. Mediation provides parties with an opportunity to resolve complaints early on in the process on a strictly voluntary basis.

Parties to a human rights complaint may choose to try mediation at the time a complaint is filed, unless the Commission believes that the complaint should not be mediated for public interest reasons.

As noted above, there were 1,850 complaints opened at the Commission in the 1998–99 fiscal year. Of this number, 1,537 complaints were inputted to the Commission's mediation and section 34 processing stage. By the end of the fiscal year, 1,065 or 69% of cases had been completed. A total of 472 cases (31%) were moved into the investigation stage.

For the 1,065 cases that were closed in the mediation and section 34 stage, the median age at resolution was six months. In total, settlements accounted for 54% of all resolutions achieved in the mediation and section 34 stage.

Section 34

Section 34 of the *Code* gives the Commission discretion not to deal with certain complaints.

In 1998–99, 8.1% of cases were not dealt with as a result of section 34 decisions. Most of these decisions occurred at the beginning of the complaint process. In cases where the Commissioners decided to “deal with” the matter, complaints were referred back for mediation or investigation.

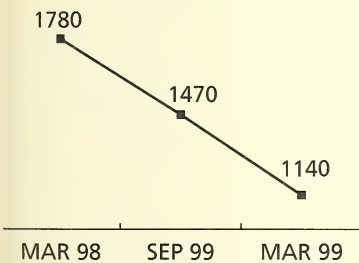
INVESTIGATION

An investigation begins when:

- the Commission decides under section 34 to deal with the case;
- the parties do not agree to mediation; or
- mediation fails.

In the 1998–99 fiscal year, the Commission reduced its investigation caseload volume by approximately 36%. During the year, 472 additional cases became assigned to the investigation stream (either as the result of failed mediations or as the result of not pursuing the mediation option), while 1,153 cases were closed at the investigation stage.

Total Number of Cases at Investigation



Improvement in Investigation Timeliness

The success of the mediation process has had an important effect on the investigation caseload: it has meant that a substantial number of cases are now resolved up front and early in the process.

On March 31, 1998, 1,780 cases were at the investigation stage. This was about 60% of the Commission’s caseload. By September 30, 1998, this had been reduced to 1,470 cases (55% of the caseload). By March 31, 1999, this segment contained 1,140 cases or 48% of the caseload. Importantly, as the investigation caseload has decreased, so too, has the median age of the overall caseload inventory.

With a resulting reduced investigation caseload, the Commission has been able to devote its resources to investigating older cases. Particular efforts were made this year to resolve the 387 cases that were three years of age or older.

Although 109 of these cases were still open on March 31, 1999, all are being actively investigated and are scheduled to be resolved early during the 1999–2000 fiscal year. The Commission aims not only to fulfill its commitment on these three year-old cases but to ensure that similar measures are taken to address the number of cases that are now two years old, before they reach three years of age.

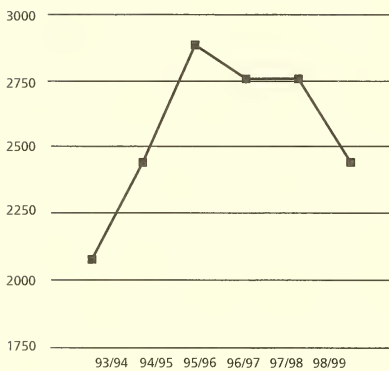
The Caseload Picture

For the third year in a row, the Commission has resolved more complaints than it opened. This is despite a 35% increase in new complaints compared to last year. At the end of March 1999, our caseload stood at 2,386 complaints.

Looking at the average age of cases when they are resolved has been the usual way to assess timeliness. The age of the average case at resolution provides a rough forecast of the expected timelines for processing cases.

In the short term, however, the Commission's strategy of focusing on older cases is pushing up the average age of cases at resolution. The age at resolution will continue to be high throughout the course of 1999–2000 as the Commission continues its strategy of resolving older cases. In the longer term, this indicator will show much lower values when this initiative has been successfully completed. The average age of cases (determined by totalling the ages of all cases and then dividing this sum by the total number of cases) at resolution on March 31, 1999, was 22 months.

Caseload Evolution



The Countdown to a Current Caseload

At present, another measure of the progress made is given by the median age of the caseload. The 'median' is the midpoint in the distribution of cases, and is the point above and below which fall exactly 50% of the complaints. In situations where the case distribution ranges between older and very new cases, the median presents a better picture of the Commission's caseload.

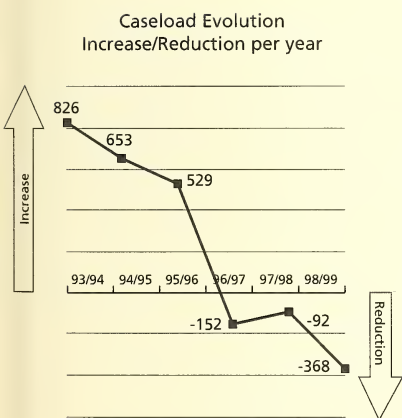
The median age has been decreasing steadily since we started tracking cases this way and demonstrates the progress made. The median age of the caseload at present is under 12 months.

A key commitment made to the Ontario public when the organizational changes were made has been the goal of a “current caseload.” The objective is to achieve an average age of 12 months for complaints resolved. Based on current trends, this goal is within reach.

Conclusion

The Commission has made the following significant strides toward improving the timeliness of its case processing:

- the Commission’s caseload is steadily decreasing and the speed of the decline is increasing;
- there is an important shift occurring within the caseload due to the success of the new service delivery model, mediation services, where larger volumes of cases are being resolved earlier and up front; and
- the caseload is declining, making it more manageable and enabling the Commission to address the older cases.



While the Commission still has to achieve its objectives for those cases that are over three years old, mediation targets are being met and the Commission is moving forward in the direction that it has charted.

Education Initiatives in our Community

Education is an integral part of the Commission's mandate. An informed public is the best guarantee of equality.

In 1997, the Commission introduced a strategy to revitalize its education and information activities and 1998-99 has been one of the most active years in Commission history. Commissioners and Commission staff personally delivered education and training to over 4,500 people this year, up from 3,000 in 1997-98, and 1,800 in 1996-97.

Staff members, the Chief Commissioner and Commissioners visit schools and a variety of workplaces, ranging from private companies to major public institutions, to explain how the *Code* works. The Commission also maintains contact with other human rights agencies, governmental and non-governmental to discuss, advise and consult on human rights issues.

Due to the high proportion of race-related complaints (27% this year), the Commission has enhanced its outreach and work with a number of community-based and anti-racist groups and organizations. These include the Council of Agencies Serving South Asians, the Town of Ajax Race Relations Advisory Committee, the Peel Multicultural Council, and the Tamil Anti-Racism Committee.

1998 was the 50th anniversary of the Universal Declaration of Human Rights. To celebrate the year, the Commission launched *Human Rights: Policies and Practice in Ontario*, a publication with an up-to-date collection of new and revised policy statements and guidelines. Hundreds of community advocacy and business groups in Ontario and across Canada requested the book. A revised version is planned for this fiscal year.

HUMAN RIGHTS AND EMPLOYMENT

Employment generates the most complaints at the Commission, accounting for three-quarters of all complaints filed. With the many changes occurring in the workplace in recent years, this is an ongoing focus for the Commission. Personal characteristics such as gender and age are important factors in labour market adjustments and these have human rights implications. Both



employers and unions are key players in the Commission's educational strategy.

This year, the Commission:

- ▶ developed strategic partnerships for education and outreach with unions, employers and employers' associations, including the Human Resources Professionals Association of Ontario;
- ▶ conducted 30 public education events with the private and public sector employers and unions, with a special focus on sexual harassment in the workplace; and
- ▶ provided information and assistance to over 1,000 employers and organizations, including policy advice on how to develop in-house anti-discrimination policies and practices.

The Commission has also developed a new comprehensive publication, *Human Rights in the Workplace*, which will be released in the 1999–2000 fiscal year. The document specifically targets the employment sector, from which arise over 70% of complaints to the Commission, and gives a complete, plain language presentation of policies and guidelines on human rights.

Aboriginal Communities

Last year, the Commission indicated its commitment to enhance its work with Aboriginal people. This year, the Commission began its outreach work with a focus on human rights in the workplace. For example, the Commission initiated workplace training initiatives with Miziwe Biik, the Native Women's Resource Centre and the Native Friendship Centre in Fort Frances.

Sexual Harassment

In response to the Recommendations of the Coroner's Inquest into the Deaths of Russell Davis and Theresa Vince, the Commission launched a public awareness advertising campaign, using Ontario's 18 municipal transit systems to post the message "Sexual Harassment: It's never okay. It's against the law."



The campaign was conducted in partnership with the Ontario Women's Directorate, the Human Resources Professionals Association of Ontario and the Canadian Human Rights Commission. The first campaign was conducted in May 1998. A second one is planned for the spring of 1999.

The Commission also:

- distributed 15,000 posters and support material on sexual harassment to human resources professionals, community groups and agencies throughout the province for circulation in workplace environments; and
- conducted 14 conferences, seminars and workshops on sexual harassment.

The Chief Commissioner spoke at a provincial conference held in London in November 1998. In his remarks, the Chief outlined the Commission's role in trying to eliminate sexual harassment and dispelled some common myths associated with this issue. He noted that sexual harassment — based on dynamics of power and control — can *never* be considered acceptable and *always* causes harm.

NATIONAL AND INTERNATIONAL LIAISON

In 1998–99, the Commission met with a number of visiting delegates from Japan, New Zealand, and the Northern Ireland Human Rights Commission. The Commission also received non-governmental organization (NGO) representatives from Greece, Burma, and South Africa, as well as a representative from Japan researching the UN's recommendation to the Japanese Government that it establish an independent mechanism for investigating complaints of human rights violations.

The Commission also prepared comments in response to questions around Canada's Fourth Report from the UN Committee on Economic, Social and Cultural Rights, as well as those from the Committee for the Elimination of Discrimination against Women.

Nationally, the Commission had the opportunity to meet with representatives of the Alberta and Nova Scotia Human Rights Commissions, and hosted a meeting of legal directors from other human rights commissions. Commission staff also attended the Canadian Association of Statutory Human Rights Agencies' annual conference in Halifax, Nova Scotia.

TECHNOLOGY

In 1998–99, the Commission’s focus was to achieve greater efficiency in the administration of its case management. Over the year, it continued to invest in the development of its Case Management Information System (CMIS). The Commission received an Amethyst Award for the development of this computer software application. The system supports both of the Commission’s primary goals – to respect the *Code* and promote and advance its work in the area of human rights.

TRAINING

The Commission delivered corporate training programs for staff throughout the fiscal year. The key programs delivered were:

- advanced mediation training;
- performance management training for management staff;
- investigation training (new employees);
- Code of Ethics; and
- barriers faced by persons with disabilities (two-day comprehensive seminar for all staff).

PERFORMANCE MANAGEMENT

The Commission introduced a new performance management system in 1998–99, which requires early identification of individual performance objectives for all staff in the organization. In addition, two in-year progress reviews are now required, and a final evaluation at year-end. This performance framework is directly tied to the Commission’s corporate objectives and will assist us in meeting annual performance commitments.

QUALITY SERVICE FRAMEWORK

With help from independent consultants, the Commission has begun work on the development of a framework for a comprehensive quality service program. This framework outlines preliminary quality objectives for all aspects of the Commission’s operations. The Commission will further consult with staff to develop more detailed standards and measures and provide orientation on the standards in 1999–2000.

ACCOUNTABILITY FRAMEWORK

The Commission has presented an accountability framework in the last two annual reports (1997-98, 1998-99). The framework is designed to establish targets for the organization's performance in the coming year as well as report on achievements against previously established targets.

The following is a summary of achievements against targets in 1998-99 and the Commission's public commitments for the 1999-2000 fiscal year.

SERVICE AREA	1998-99 COMMITMENT	1998-99 ACHIEVEMENT	1999-2000 COMMITMENT
Public education and communication	➤ Public awareness campaign on sexual harassment	➤ First campaign was successful	➤ Second campaign to be conducted in the spring of 1999
	➤ Plain language documents	➤ New documents include <i>Pregnancy, A Guide to the Code</i>	
	➤ Additional partnerships with aboriginal organizations and the private, public and not-for-profit sectors	➤ The Commission has initiated workplace-training initiatives with Miziwe Biik, the Native Women's Resource Centre and the Native Friendship Centre in Fort Frances	➤ Increase liaison activities with aboriginal communities
	➤ Improve international liaison	➤ Met with a number of international delegates. ➤ The Commission also prepared comments in response to the Report from the UN Committee on Economic, Social and Cultural Rights as well as those from the Committee for the Elimination of Discrimination against Women	➤ Maintain international liaison activities
	➤ Improve distribution of Commission publications	➤ Distribution of OHRC's policies to 10,000 human resources professionals, individuals and community groups	➤ Maintain distribution of policies on discrimination
	➤ Maintain level of direct delivery of public education	➤ Number of people reached through public education increased by 30%	➤ Maintain 1998-1999 levels
	➤ Modify the Web site to provide access to information/publications	➤ Daily user sessions on the Web site increased from 123 to 217	➤ Increase in the number of hits on the Web site by 10%

OPERATIONS

SERVICE AREA (cont'd)	1998-99 COMMITMENT (cont'd)	1998-99 ACHIEVEMENT (cont'd)	1999-2000 COMMITMENT (cont'd)
Policy	➤ Re-direct policy resources to support case management ➤ Update research tools on disability ➤ Develop a policy position on transgendered persons and the <i>Code</i> ➤ Review legislation and bills tabled before the legislature for compliance with the <i>Code</i>	➤ 25% of resources used in support of case management ➤ Consultation paper on disability developed ➤ Discussion paper on gender identity developed	➤ Develop a policy position on age, on sexual orientation
Inquiry Services	➤ Maintain service levels	➤ Inquiry services handled 199,083 calls ➤ A total of 40,112 callers spoke with an Inquiry Service Representative ➤ The average response time was 65 seconds as compared to 66 seconds for the 1997-98 fiscal year	➤ The average response time on calls handled by an Inquiry Service Representative will be under 60 seconds
Intake Services	➤ Maintain service levels	➤ Intake services received 2,246 intake packages for processing in 1998-99 ➤ Drafting of complaints is completed within 15 days of receiving an intake package	➤ Maintain processing times for drafting of complaints
Mediation Services	➤ Maintain at least a 50% settlement rate for cases that go through the mediation process ➤ Complete an evaluation of the mediation program	➤ The settlement rate for cases proceeding through mediation was 74% for the fiscal year ➤ The first evaluation report has been completed	➤ Achieve at least a 65% settlement rate for cases proceeding through mediation ➤ Resolve 1,100 cases with 16 staff through the early processing stages of mediation and Section 34

OPERATIONS

SERVICE AREA (cont'd)	1998-99 COMMITMENT (cont'd)	1998-99 ACHIEVEMENT (cont'd)	1999-2000 COMMITMENT (cont'd)
Investigation Services	➤ Resolve 95% of cases over 3 years of age as of March 31, 1998 ➤ Decrease the average age of the caseload to 14 months	➤ 73% of cases over 3 years of age were resolved in 1998-99. An additional 10% were completed in this period. ➤ The average age of the caseload as of March 31, 1999 was 16.2 months (The median age of the caseload was 10.5 months).	➤ Resolve 80% of cases over 2 years of age as of March 31, 1999 ➤ Resolve 1,100 cases through the investigative process with 31 staff. ➤ Reduce the median age of the caseload to under 10 months.
Corporate Initiatives	➤ Quality Assurance Program developed ➤ Enhanced Case Management Information System ➤ Training in mediation, systemic investigation, public education, Code of Ethics, Quality Assurance and Sensitivity to persons with special needs	➤ Quality Service Framework developed. Detailed service standards are being developed. ➤ Case Management System was further developed as per defined business requirements. ➤ Training was completed on Mediation, public education delivery, Code of Ethics and barriers faced by persons with disabilities.	➤ Quality service standards introduced in September 1999. ➤ Training programs to be provided on public education, mediation, sexual harassment cases and quality service. ➤ Complete review of accessibility of Commission services and employment practices for persons with disabilities.

Appendices

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Commissioners

KEITH C. NORTON, Q.C., B.A., LL.B.

Chief Commissioner



Keith Norton was appointed Chief Commissioner of the Ontario Human Rights Commission on July 18, 1996. He is an educator and a lawyer by training, having studied law at Queen's University in Kingston, as well as having received a diploma in education from the Ontario College of Education. He practiced criminal and family law in Kingston, Ontario, and taught at the secondary and post-secondary levels.

Mr. Norton is a former Minister of Community and Social Services and served as Parliamentary Assistant to the Treasurer of Ontario and Minister of Economics and Intergovernmental Affairs. He has also served as Minister of Health, Minister of Education and Minister of Colleges and Universities.

As Minister of the Environment between 1981 and 1983, Mr. Norton became the first Canadian cabinet minister to be invited to testify before a Committee of the United States Senate. Throughout his career, Mr. Norton has championed issues related to persons with disabilities, senior citizens and the disadvantaged. He has also been involved in a number of business ventures.

Mr. Norton is a former President of the Canadian Human Rights Tribunal.

CHERYL BLONDELL



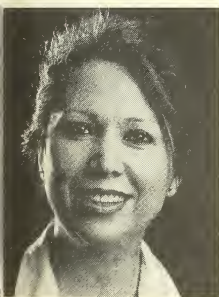
Cheryl Blondell was appointed to the Commission in February 1997. She is an Assistant Crown Attorney in the Ministry of the Attorney General. She formerly served as Criminal Duty Counsel with the Ontario Legal Aid Plan, where she advised and represented accused persons. Ms. Blondell worked for the Commission in the summer of 1989 as part of the team that created the Systemic Investigations Unit.

THE REV. FR. WILLIAM G. CLIFF



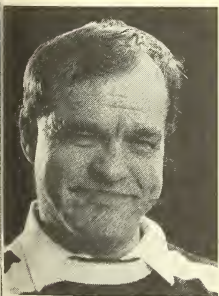
Fr. Cliff was appointed to the Commission in February 1997. He is the Rector of St. John the Evangelist Church in Strathroy in the Diocese of Huron. He is a former member of the University of Western Ontario Senate, a Padre with the Royal Canadian Legion and a member of the Anglican Roman Relations Committee of the Diocese of Huron. A former Chaplain Intern at St. Joseph's Health Centre, London, he was trained at King's College and Huron College at the University of Western Ontario and has served congregations in London, Simcoe, Hanover and Durham, Ontario.

MITRA S. MANESH



Mitra S. Manesh was appointed to the Commission in February 1997. She is the Executive Director of the Peel Multicultural Council, co-chair of the Ministry of Citizenship, Culture and Recreation's Policy Advisory Council, member of the Trillium Foundation Review Committee and past member of the Board of Directors of the Ontario Council of Agencies Serving Immigrants. Ms. Manesh is also past chair of the Peel Committee Against Woman Abuse.

RICHARD MILES



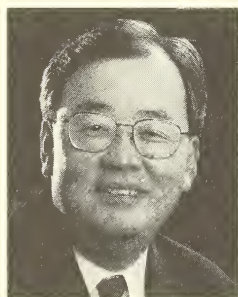
Before his appointment to the Commission in July 1992, Richard Miles held senior administrative positions with the Ministry of Community and Social Services, the Federal Secretariat for Disabled Persons Office, and the Handicapped Action Group Incorporated in Thunder Bay. Mr. Miles was appointed by the Minister of Citizenship, Culture & Recreation to the task force, which conducted a procedural review of the Ontario Human Rights Commission.

MARNIE PAIKIN, CM



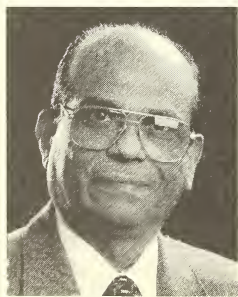
Marnie Paikin was appointed to the Commission in September 1996. She is a past President of the Canadian Council of Christians and Jews, and a recipient of the Province of Ontario's "Outstanding Woman Award" and of the Human Relations Award of the Canadian Council of Christians and Jews. She has been inducted into the Hamilton Gallery of Distinction and has been appointed a Member of the Order of Canada. Ms. Paikin is currently a Director of Atomic Energy of Canada Ltd. and of Westcoast Energy Inc.

PETER LI



Peter Li is the General Manager of Ming Pao Daily News, Eastern Edition. He is a member of the Chinese Canadian Development Committee of the Hospital for Sick Children Foundation and sits on the Asian Business Committee of Metro Toronto and York Region's Junior Achievement. Mr. Li was a member of Canada Trust's Asian Advisory Council. He has also served as a Director of the Chinese Information and Community Services and was a past Vice-President of the Chinese Canadian Advertising, Media and Marketing Association. Mr. Li is a former General Manager of Hotel Victoria and Project Administrator of the Chinatown Centre. Mr. Li was appointed to the Commission in September 1997.

NALIN KANUCK



Nalin Kanuck was appointed to the Commission in September 1997. He is a Management and Financial Consultant. He is also an advisor on Race Relations to the York Region Board of Education. Mr. Kanuck is a former Justice of the Peace in Sri Lanka, a position that required him, among other judicial functions, to investigate human rights violations. He was also Chairman and Managing Director of the Regional Development Board in the Ministry of Regional Development in Sri Lanka. He also functioned as a Director of the National Youth Service Council in Sri Lanka's Prime Minister's Office. Mr. Kanuck has a Bachelor of Arts Degree from the University of Ceylon and an

Executive Diploma in Public Administration from the University of Colombo, Sri Lanka. The City University of California also awarded him an Honorary Doctorate Degree in Public Administration. He is a graduate of the Canadian Institute of Certified Administrative Managers and a Fellow of the British Institute of Management, England.

MICHEL LALONDE



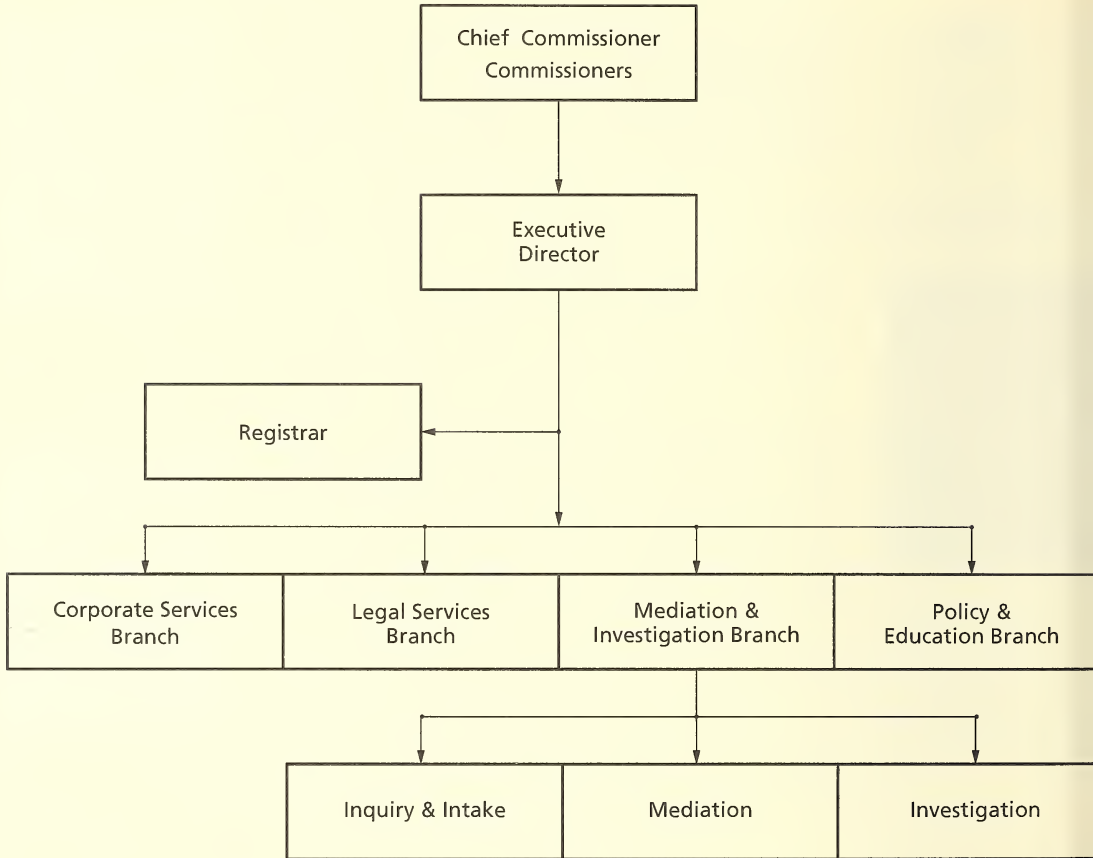
Michel Lalonde is Reeve of the East Hawkesbury municipal council, having served over the last 20 years as Councillor and as Deputy Reeve. In 1993, Mr. Lalonde served as Warden of the Council for the United Counties of Prescott and Russell. He was subsequently elected to the Council's executive, planning and public works committees. He received the Award of Merit for the County of Prescott for the year 1985 and also served as President of the Prescott Mutual Insurance Board and of the Hawkesbury and District General Hospital Board. A farmer by occupation, Mr. Lalonde is an active participant in the local farming community. He served from 1989 to 1996 on the board of directors of the Glengarry, Prescott and Russell Local Agricultural Employment Board and as President of the Prescott Peer Review Committee for Environmental Farm Plan from 1993 to 1997. He was appointed to the Commission in December 1997.

CLAUDETTE ROBINSON



Claudette Robinson was appointed to the Commission in March 1998. She studied at the University of Ottawa and McMaster University. Ms. Robinson is the French Coordinator at Sheridan College and a language consultant for corporate clients. She has co-authored a series of French readers for elementary and secondary schools. She was the author and co-author of three national French television series for TVO educational programs one of which she hosted. She has been a consultant for the Halton Board of Education, has taught at the University of Ottawa summer school and has been Principal of the Teaching French as a Second Language course for the Ministry of Education.

Organizational Chart



Branch Descriptions

Office of the Chief Commissioner

The Chief Commissioner provides leadership and guides the Commission in carrying out its statutory functions in a way that ensures that, at both the government and community levels, human rights are protected in the province.

The Chief Commissioner and Commissioners set policy direction and make decisions about complaints relating to the *Code*.

Office of the Executive Director

The Executive Director provides leadership and direction to senior management staff of the Commission in carrying out its statutory mandate; directs the development and implementation of corporate and operational plans; and leads the planning and implementation of ongoing organizational improvement initiatives within the Commission. The Registrar's Office, attached to the Office of the Executive Director, is responsible for processing Reconsideration requests, co-ordinating all functions related to Commission and Panel Meetings, and Freedom of Information and Ombudsman issues.

Mediation and Investigation Branch

The Mediation and Investigation Branch handles all the enforcement functions of the Ontario Human Rights Commission through a network of offices across the province.

The public's first contact with the Commission is through the centralized Inquiry and Intake Office. This office handles all inquiries and drafts complaints from across the province. The Mediation Office provides mediation services as well as processing Section 34 requests which gives the Commission discretion not to deal with a complaint, if it could have been resolved elsewhere, is filed in bad faith, is beyond the time limits or is outside the Commission's legal authority. The Investigation Office undertakes investigation and conciliation of complaints.

The branch also develops multi-year strategies to effectively manage the Commission's caseload and procedures for the mediation and investigation of complaints. In addition, the branch assists in carrying out the Commission's public education mandate.

Policy and Education Branch

The Policy and Education Branch leads the planning, development and evaluation of the Commission's public policy and education functions. The branch is also responsible for communications, consultations, international liaison and media relations. The branch prepares and publishes guidelines, policy statements and reports on the Commission and application of the *Code*; researches a broad range of human rights and social equity issues; examines draft legislation and government policy; and advises Commission staff, senior management, the Chief Commissioner, Commissioners and the general public on policy matters. The branch also represents the Commission on inter-governmental task forces and delegations. The branch fosters understanding of and voluntary compliance with the principles of the *Code* through a range of public education and communications initiatives and programs.

Legal Services Branch

The Legal Services Branch assists the Commission in fulfilling all aspects of its mandate, including compliance, public education and litigation. Its activities include providing legal advice to officers and Mediation and Investigation managers concerning investigation and conciliation of cases, providing legal opinions requested by the Commission, and serving as legal counsel to the Commission before the Board of Inquiry and the courts (on matters of judicial review and appeals).

Corporate Services Branch

The Corporate Services Branch supports the Commission through the planning and delivery of human resources, information technology, financial and administrative services. The branch also co-ordinates corporate planning as well as monitoring and reporting on organizational performance. In partnership with other branches, Corporate Services co-ordinates the implementation of organizational improvement initiatives by the development of new technology applications in case management, the training of staff and by facilitating access to Commission services.

Public Education

Organizations or groups participating in Public Education during this past year:

BUSINESS

Alliance of Manufacturers & Exporters Canada
Client Conference: Osler, Holkin, Harcourt Barristers & Solicitors
Client Conference: Smith Lyons
Client Conference: Templemann, Menninga, Kort, Sullivan & Fairbrother
Client Conference: Zinn Hofley Human Resource Services Inc. (Ottawa)
Council on Education in Management (through Heenan Blakie)
Dolce International (Ontario) Inc.
Human Resources Professionals Association of Ontario (HRPAO)
HRPAO Northwestern Ontario (Thunder Bay)
Personnel Administrators of Library Systems
Samsung Electronics
Union Gas (Windsor)

COMMUNITY

ALDERCentre
Council of Agencies Serving South Asians
Downtown Legal Services (Toronto)
Fred Victor Centre
The Greater Essex Area Women's Coalition
GTA Access Community & Employment Support Services
Jewish Vocational Services of Toronto
London & Area Association for Volunteer Administration
Miziwe Biiki
Parents, Families & Friends of Lesbians and Gays (Toronto)
Participation Apartments Metro Toronto
Peel Multicultural Council
Pride Toronto '98
Tamil Anti-Racism Committee (Tamil Eelam Society)
Tobias House
Town of Ajax: Race Relations Public Policy Conference
Victim Assistance Program (519 Church St. Community Centre – Public Presentation)
Volunteer Centre of Ottawa

EDUCATION

Collège des Grands Lacs
College Educator Development Program, Western Region
Holy Cross Academy Secondary School
Humber College Early Childhood Education Program
Humber College Hotel & Restaurant Management Program
Inter-University Disability Issues Association
LINC – Ellesmere, Toronto District School Board

Niagara College Law Clerk Program
Ontario Association for Counselling and Attendance Services
Osgoode Hall Law School
Queen's University Law School
Queen's University, Master of Industrial Relations Program
Toronto District School Board
Toronto District School Board Equity Studies Centre
University of Toronto Faculty of Law
University of Western Ontario Faculty of Law
York Region District School Board
York Region Roman Catholic Separate School Board

GOVERNMENT

Association of Law Officers of the Crown
The Board of Inquiry (Human Rights)
Ministry of Labour: Call Centre Representatives
Ontario Multi-faith Council
Senior Management Group of the Ontario Public Service (Centre for Leadership)

INTERNATIONAL

Delegation from Tottori Prefecture Research on Gender Equal Society
Human Rights Forum 21 (Japan)
Ministry of Justice, Tokyo, Japan
National Institute of Public International Law and Research, Pretoria, South Africa
New Zealand Human Rights Commission
Standing Advisory Commission on Human Rights, Northern Ireland

UNIONS

Hotel Employees, Restaurant Employees Union
United Food & Commercial Workers Union

CONFERENCES AND TRADE SHOWS

HRPAO Annual Conference
The jobsMarket Employer Awareness Forum and Job Fair for Persons with Disabilities sponsored by HRDC
“Meeting Your Duty to Accommodate” sponsored by Infonex (Toronto)
“Sexual Harassment & Sexual Assault: The Way Forward” sponsored by the London Sexual Assault Centre
“The Use of Mediation in Human Rights Enforcement” sponsored by the Canadian Association Against Sexual Harassment in Higher Education
“Workplace Harassment: Prevention, Solutions & Closure” sponsored by the Canadian Society for the Advancement of Workplace Solutions

Boards of Inquiry

FINAL DECISIONS

Age

Dawn Kearney, JL and Catarina Luis v. Bramalea Ltd. (now Bramalea Inc.), The Shelter Corporation and Creccal Investments Ltd.

Ancestry

Michael McKinnon v. Her Majesty the Queen in Right of Ontario, (Ministry of Correctional Services), Frank Geswaldo, George Simpson, P. James and Jim Hume

Association

Elma Watson and Micheline Watson v. Adriano Antunes and Armanda Antunes

Colour

Maxwell B. Nelson v. Durham Board of Education and Don Peel

Ethnic Origin

Michael McKinnon v. Her Majesty the Queen in Right of Ontario (Ministry of Correctional Services), Frank Geswaldo, George Simpson, P. James and Jim Hume

Family Status

John Leonis v. Metropolitan Toronto Condominium Corporations Nos. 741 (Trillium); 742 (Vista); and 634 (Skypark)

Connie Wight v. Office of the Legislative Assembly

Handicap

Adam Tilberg v. McKenzie Forest Products Inc.

James Lawrence Moffatt v. Kinark Child & Family Services and Harry Oswin

Connie Wight v. Office of the Legislative Assembly

Harassment

Michael McKinnon v. Her Majesty the Queen in Right of Ontario (Ministry of Correctional Services), Frank Geswaldo, George Simpson, P. James and Jim Hume

Susan Riemer v. York Regional Police, Chief of Police Bryan Cousineau and Inspector Donald Kirk

Ena Drummond v. Tempo Paint and Varnish Co. (Division of Tower Chemicals Ltd.), Bernard Jakobson and Hugh Kerr

Connie Wight v. Office of the Legislative Assembly

Race

Michael McKinnon v. Her Majesty the Queen in Right of Ontario (Ministry of Correctional Services), Frank Geswaldo, George Simpson, P. James and Jim Hume

Elma Watson and Micheline Watson v. Adriano Antunes and Armanda Antunes

Maxwell B. Nelson v. Durham Board of Education and Don Peel

Reprisal

Christiane Bryan v. Premark Canada Inc., Gary Colegate and Paul Stethem

Sex

Dawn Kearney, JL and Catarina Luis v. Bramalea Ltd. (now Bramalea Inc.), The Shelter Corporation and Creccal Investments Ltd.

Solange Lavendar v. 944369 Ontario Limited and John Polizogopoulos

Susan Riemer v. York Regional Police, Chief of Police Bryan Cousineau and Inspector Donald Kirk

Ena Drummond v. Tempo Paint and Varnish Co. (Division of Tower Chemicals Ltd.), Bernard Jakobson and Hugh Kerr

Connie Wight v. Office of the Legislative Assembly

Sexual Solicitation

Ena Drummond v. Tempo Paint and Varnish Co. (Division of Tower Chemicals Ltd.), Bernard Jakobson and Hugh Kerr

Christiane Bryan v. Premark Canada Inc., Gary Colegate and Paul Stethem

SETTLEMENTS

Age

Bob Brown, Cyril Henry Dargewitz, Nancy Dewell, by her Litigation Guardian Irvan Dewell and Mark

Todd, by his Litigation Guardian Reina Todd v. Her Majesty the Queen in Right of Ontario and Ministry of Health

Donald Andrews and Robert McEllistrum v. London Police Services Board and London Police Association

Ancestry

Irene Marques v. Portuguese Social Services Centre of Toronto, Carlos Oliveira, Luis Braganca, Antonio Letra and Sophie Amaral

Colour

David Grant v. Danzig Enterprises Limited and Wigand Kruger

Creed

Brendan Henry v. Toronto Honda and Mort Ison

Spiros Agapiou v. Woodland Cemetery Mausoleum and Crematorium

Ethnic Origin

Irene Marques v. Portuguese Social Services Centre of Toronto, Carlos Oliveira, Luis Braganca, Antonio Letra and Sophie Amaral

Family Status

Cindy Rock v. Hound and Heather Restaurant, Graham Nierop, and Elda Thibideau

Handicap

Joe Leffelhoc v. JNM Tool & Manufacture Inc.
Pat Muise v. Elmwell Investments Limited, E.I. Grossman and Morris Altman

Harassment

Danielle Greer v. Said Ibrahim and The Lobby Smoke Shop/Dining Lounge
Elizabeth Morrison v. Robby Electric Ltd. and Anil Uppal
Irene Marques v. Portuguese Social Services Centre of Toronto, Carlos Oliveira, Luis Braganca, Antonio Letra and Sophie Amaral

Race

David Grant v. Danzig Enterprises Limited and Wigand Kruger

Reprisal

Lidia Biber v. Oakdale Cleaners & Maintenance Ltd., Nick Veneziano, Stairs Buildings Limited, and Richard Kieda

Sex

Elizabeth Stojanovski, Tara Carrier, Catherine Anne Buchan, Bonnie Borland, Cindy Booth and Anna Boglis v. Honeywell Limited
Randy Dowswell, Linda Dowswell, Carol Metcalf, Marlene Morgan v. Village Garden Restaurant, Carol Cipollone, Gerlado Cipollone
Cindy Rock v. Hound and Heather

Restaurant, Graham Nierop, and Elda Thibideau

Danielle Greer v. Said Ibrahim and The Lobby Smoke Shop/Dining Lounge

Elizabeth Morrison v. Robby Electric Ltd. and Anil Uppal

Irene Marques v. Portuguese Social Services Centre of Toronto, Carlos Oliveira, Luis Braganca, Antonio Letra and Sophie Amaral

Lidia Biber v. Oakdale Cleaners & Maintenance Ltd., Nick Veneziano, Stairs Buildings Limited, and Richard Kieda

Sexual Orientation

Dennis Parks v. Pink Chestnut Bed and Breakfast, Mary Kiely and Carolyn Crowe

Robert Metcalfe v. Bell Actimedia Inc.

Sexual Solicitation

Irene Marques v. Portuguese Social Services Centre of Toronto, Carlos Oliveira, Luis Braganca, Antonio Letra and Sophie Amaral

Lidia Biber v. Oakdale Cleaners & Maintenance Ltd., Nick Veneziano, Stairs Buildings Limited, and Richard Kieda

DIVISIONAL COURT

JUDICIAL REVIEWS & APPEALS

Ancestry

Mercy Anselm v. OHRC, Minister of Citizenship

*Joyce Brome v. OHRC, North York
Branson Hospital and Attorney
General for Ontario*

Colour

*Joyce Brome v. OHRC, North York
Branson Hospital and Attorney
General for Ontario*

*Marcia Robertson v. OHRC and Maple
Leaf Foods Inc.*

Ethnic Origin

*Mercy Anselm v. OHRC, Minister
of Citizenship*

Family Status

*OHRC and Mr. A v. Mr. B Mr. C
and D Ltd.*

Handicap

*Brad Thomson v. 501781 Ontario
Limited operating as Fleetwood
Ambulance Service, Ontario Public
Service Employees Union*

*Mrs. Joan Burman on behalf of her
daughter Riley Burman v. OHRC*

Harassment

*Shirley Hom and Cindy Petersen v.
Impact Interiors Inc. and Ken Walia*

Marital Status

*OHRC and Mr. A v. Mr. B Mr. C and
D Ltd.*

*OHRC & Geiger v. London Monenco
(Geiger/Barboutsis)*

Place of Origin

*Mercy Anselm v. OHRC, Minister of
Citizenship*

*Joyce Brome v. OHRC, North York
Branson Hospital and Attorney
General for Ontario*

*Marcia Robertson v. OHRC and
Maple Leaf Foods Inc.*

Race

*Coldmatic Refrigeration of Canada,
George Zafir and Brian Palmer v.
Luis Espinoza and OHRC*

*Joyce Brome v. OHRC, North York
Branson Hospital and Attorney
General for Ontario*

*Marcia Robertson v. OHRC and Maple
Leaf Foods Inc.*

Receipt of Public Assistance

*OHRC and Lise Rhéaume v. René
Leroux and Rencar Construction
Ltd.*

Sex

*Shirley Hom and Cindy Petersen v.
Impact Interiors Inc. and Ken Walia*

Sexual Solicitation

*Shirley Hom and Cindy Petersen v.
Impact Interiors Inc. and Ken Walia*

Tables

Table 1: Grounds Cited in Complaints Filed by Region of Registration
Total Number of Complaints Filed = 1,850

Eastern	55	23	10	53	17	11	15	7	5	85	0	2	8	0	0	291	194	10%
Northern	17	8	3	16	5	2	8	2	3	42	0	0	4	0	0	110	80	4%
Southwestern	117	32	7	91	26	7	40	9	7	162	0	0	18	1	0	517	347	19%
Greater Toronto	639	217	57	326	116	36	111	32	32	471	12	2	119	4	2	2176	1229	66%
Total	828	280	77	486	164	56	174	50	47	760	12	4	149	5	2	3094	1850	100%
Percentage	27%	9%	2%	16%	5%	2%	6%	2%	2%	25%	0%	0%	5%	0%	0%	100%	–	–
	Race & Colour	Ethnic Origin	Creed	Sex & Pregnancy	Sexual Harassment	Sexual Orientation	Age	Marital Status	Family Status	Handicap	Public Assistance	Record of Offence	Reprisal	No Grounds	Breach of Settlement	Sum of categories (total grounds)*	Total for all complaints*	Percent of all complaints

*Note:

Because complaints can involve multiple grounds, the sum by ground exceeds the total for all complaints filed.

Table 2: Social Areas and Grounds Cited in Complaints Filed
Total Number of Complaints Filed = 1,850

Services	190	69	16	0	40	22	33	15	7	123	0	0	8	0	1	524	312	17%
Housing	59	17	5	13	7	4	5	9	11	31	12	0	5	0	0	178	94	5%
Contracts	3	1	0	4	1	1	0	0	0	5	0	0	0	0	1	16	12	1%
Employment	567	191	54	465	122	31	134	26	29	594	0	4	136	5	0	2358	1420	76%
Vocational Association	14	3	2	6	0	2	3	0	0	19	0	0	2	0	0	51	30	2%
Total	833	281	77	488	170	60	175	50	47	772	12	4	151	5	2	3127	1868	100%
Percentage	27%	9%	2%	16%	5%	2%	6%	2%	2%	25%	0%	0%	5%	0%	0%	100%	–	–
	Race & Colour	Ethnic Origin	Creed	Sex & Pregnancy	Sexual Harassment	Sexual Orientation	Age	Marital Status	Family Status	Handicap	Public Assistance	Record of Offence	Reprisal	No Grounds	Breach of Settlement	Sum of categories (total grounds and social areas)*	Total for all social areas*	Percent of all social areas*

*Note:

Because complaints can involve multiple grounds and multiple social areas, the sums by ground and social area exceed the total for all complaints filed, and they exceed the totals given in Table 1. In Table 1, the row percentages are calculated on the basis of total complaints filed. In this Table they are calculated on the basis of total social areas cited.

TABLES

Table 3: Settlements Effected by Ground in Cases Mediated in 1998/99 *

Race & Colour	\$ 788,436.86	149	\$ 5,291.52
Ethnic Origin	\$ 211,674.64	37	\$ 5,720.94
Creed	\$ 83,880.00	15	\$ 5,592.00
Sex & Pregnancy	\$ 507,976.96	119	\$ 4,268.71
Sexual Harassment	\$ 197,497.32	48	\$ 4,114.53
Sexual Orientation	\$ 31,100.00	6	\$ 5,183.33
Age	\$ 373,064.88	26	\$ 14,348.65
Marital Status	\$ 76,800.00	15	\$ 5,120.00
Family Status	\$ 38,550.00	13	\$ 2,965.38
Handicap	\$ 988,808.07	144	\$ 6,866.72
Reprisal	\$ 123,707.87	25	\$ 4,948.31
Not Classified	\$ 1,700.00	2	\$ 850.00
Sum of above categories (total for grounds)	\$3,423,196.60	599	\$ 5,714.85
Total for all complaints*	\$2,125,826.66	376	\$ 5,653.79
	Monetary Damages	Number Receiving Damages	Average

*Note:

Because complaints can involve multiple grounds, the sum of monetary damages by ground exceeds the sum of monetary damages by complaints.

TABLES

Table 4: Complaints Closed by Disposition and Ground
Total Number of Complaints Closed = 2,218

Board Appointed	36	10	16	25	5	6	6	3	9	29	4	0	0	0	0	149	92	4%
Settled	345	86	37	293	84	26	71	31	29	305	5	1	41	6	1	1361	867	39%
Dismissed	253	70	14	97	10	16	38	16	25	108	15	1	17	5	0	685	403	18%
Not Dealt With (s.34)	155	43	17	32	17	14	15	7	8	70	1	12	19	3	0	413	180	8%
Withdrawn	310	93	17	196	44	25	66	19	27	252	11	1	35	10	1	1107	676	30%
Total	1099	302	101	643	160	87	196	76	98	764	36	15	112	24	2	3715	2218	100%
	Race & Colour	Ethnic Origin	Creed	Sex & Pregnancy	Sexual Harassment	Sexual Orientation	Age	Marital Status	Family Status	Handicap	Public Assistance	Record of Offence	Reprisal	No Grounds	Breach of Settlement	Sum of categories (total grounds)*	Total for all complaints*	Percent of all complaints

*Note:

Because complaints can involve multiple grounds, the sum by ground exceeds the total for all complaints filed.

TABLES

Table 5: Complaints Closed by Disposition and Social Area
Total Number of Complaints Closed = 2,218

Board Appointed	16	13	0	61	0	0	90	92	4%
Settled	94	46	3	729	4	0	876	867	39%
Dismissed	75	33	2	249	6	0	365	403	18%
Not Dealt With (s.34)	54	1	2	164	0	1	222	180	8%
Withdrawn	78	45	4	544	8	0	679	676	30%
Total	317	138	11	1747	18	1	2232	2218	100%
Percentage	14%	6%	0%	78%	1%	0%	100%	—	—
	Services	Housing	Contracts	Employment	Vocational Association	None	Sum of categories (total social areas)*	Total for all complaints*	Percent of all complaints

*Note:

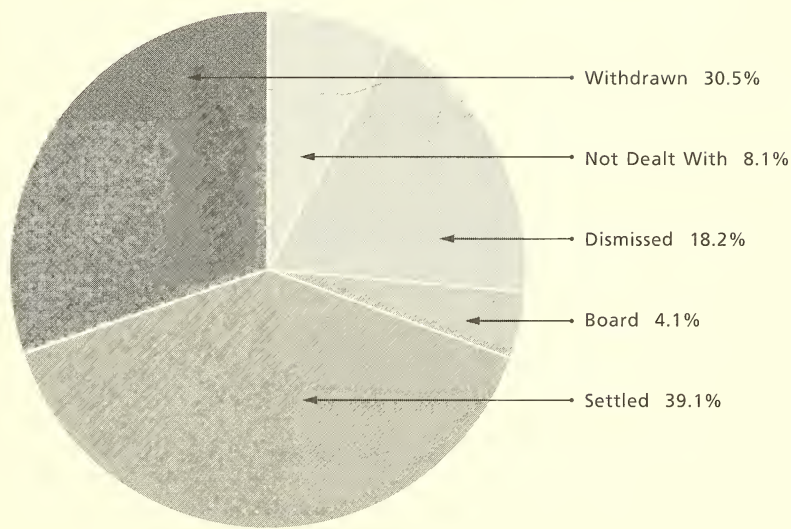
Because complaints can involve multiple social areas, the sum by social area exceeds the total for all complaints closed.

Table 6: Complaints Closed by Year and Disposition

1994/95	336	260	46	293	305
1995/96	331	335	37	359	312
1996/97	343	299	28	314	376
1997/98	304	297	30	379	450
1998/99	180	403	92	867	676

The figure consists of five bar charts, one for each disposition category: Not Dealt With, Dismissed, Board, Settled, and Withdrawn. Each chart shows the number of complaints closed for each year from 1994/95 to 1998/99. The bars are color-coded: light grey for 1994/95, medium grey for 1995/96, dark grey for 1996/97, black for 1997/98, and dark grey for 1998/99. The 'Settled' category shows a significant increase in 1998/99, while 'Not Dealt With' and 'Dismissed' show a general downward trend over the period.

Table 7: OHRC Disposition of Closings
Closing Dispositions – 98/99 (2,218)



Publications of the Commission

- Employment Application Forms & Interviews
- Guidelines for Assessing Accommodation Requirements for Persons with Disabilities
- Accommodation for Persons With Disabilities
- Policy On Sexual Harassment and Inappropriate Gender-Related Comments and Conduct
- Sexual Harassment and Other Comments or Actions About a Person's Sex
- Policy Statement on HIV/AIDS-Related Discrimination
- Exceptions to the Equality Rights Provision of the *Ontario Human Rights Code* as they relate to the Workplace
- Policy on Racial Slurs & Harassment & Racial Jokes
- Racial Harassment & Comments About a Person's Race
- Policy Statement on Height and Weight Requirements
- Annual Report
- Policy on Drug & Alcohol Testing
- Policy on Requiring a Driver's Licence as a Condition of Employment
- Policy on Employment-Related Medical Information
- Declaration of Management Policy
- Guidelines on Special Programs
- If You Have a Human Rights Complaint: A Complainant's Guide
- Know Your Rights Series:
 - Sexual Orientation and the *Human Rights Code*
 - AIDS & AIDS-Related Illness and the *Human Rights Code*
 - Female Genital Mutilation and the *Human Rights Code*
- Human Rights in Ontario
- Developing Procedures to Resolve Human Rights Complaints Within Your Organization
- Policy on Scholarships and Awards
- Policy on Discrimination and Language
- If You Receive a Human Rights Complaint: A Respondent's Guide
- Policy on Creed and the Accommodation of Religious Observances
- Policy on Discrimination Because of Pregnancy
- Guidelines on the Application of Section 34 of the *Ontario Human Rights Code*
- A Guide to Mediation Services
- Policy on Female Genital Mutilation (FGM)

Financial Statement

1998-99 YEAR-END FINANCIAL POSITION (\$'000)

	1998-99 Printed Estimates	Year-End Budget Adjustments	Revised Budget Mar 31, 1999	Actual Expenditure Mar 31, 1999	1998-99 Year End \$	Variance % of Revised Budget
Salaries & Wages	7,656.1	264.2	7,920.3	6,961.8	958.5	8.0
Employee Benefits	1,418.6	491.9	1,910.5	1,787.2	123.3	1.0
Other Direct Operating Expenses (ODOE)	2,087.9		2,087.9	3,154.0	(1,066.1)	(8.9)
	11,162.6	756.1	11,918.7	11,903.0	15.7	0.1

NOTE:

The OHRC 1998-99 budget was increased \$756.1 at year-end (for Labour Adjustment Costs (LAC)).



Ontario Human Rights Commission
180 Dundas Street West, 8th floor
Toronto, Ontario, M7A 2R9

For more information call in confidence:

Tel: 1-800-387-9080

TTY#: 416-314-6526 or 1-800-308-5561

Web Site: www.ohrc.on.ca