

**Human Rights Commission
Panel of Adjudicators**

Annual Report

2022-23

Message from the Human Rights Commission Panel of Adjudicators

As the Chief Adjudicator of the Human Rights Commission Panel of Adjudicators (the Panel), I hereby submit the 2022-23 Annual Report of the Panel which details activities from April 1, 2022 to March 31, 2023.

The role of the Panel is to hear complaints that have been referred to them by the Human Rights Commission. The Human Rights Commission refers complaints to the Chief Adjudicator who may hear such complaints or refer them to another Adjudicator. A single Adjudicator hears each complaint, exercising the powers of a Commissioner appointed under the **Public Inquiries Act, 2006**. The Panel is a category three entity under the **Transparency and Accountability Act**.

In accordance with the **Transparency and Accountability Act**, my signature below is on behalf of the Panel, which is accountable for the results reported.



Brodie Gallant
Chief Adjudicator

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Overview

In accordance with the **Human Rights Act, 2010** (Act), the Lieutenant Governor in Council shall appoint at least six persons, one of whom is named Chief Adjudicator, to act as members of a panel of inquiry into matters referred to them by the Commissioners of the Human Rights Commission. Appointments are for a term of three years and adjudicators may be reappointed. As of March 31, 2023, the following individuals served on the Panel:

- Brodie Gallant, Chief Adjudicator;
- Barbara Barker, Adjudicator;
- Justin Caines, Adjudicator;
- Allison Conway, Adjudicator;
- Michael Duffy, Adjudicator;
- Daniel Glover, Adjudicator;
- Rebecca Redmond MacLean, K.C., Adjudicator; and,
- Rodney Zdebiak, Adjudicator.

In 2022-23, new members were appointed to the Panel. This included a new Chief Adjudicator, Brodie Gallant. The Panel worked with the Department of Justice and Public Safety throughout 2022-23 and the Public Service Commission to recruit new members and ensure the Panel has a Chief Adjudicator and Adjudicators available to hear human rights matters.

Mandate

Where the Human Rights Commission determines that a complaint should be sent to a Board of Inquiry for a hearing, the complaint is referred to the Chief Adjudicator of the Panel. The Chief Adjudicator may hear the matter or refer the matter to another Adjudicator.

The Adjudicator shall inquire into the matters referred to them and give full opportunity to all parties to present their evidence and make representations through counsel, or otherwise. Where an Adjudicator finds a complaint to be justified, they may grant a remedy under Section 39 of the Act.

Vision

An environment where the public has access to, and belief in, established mechanisms of review for Human Rights Complaints.

Highlights and Partnerships

The Panel works in tandem with the Human Rights Commission to ensure that the requirements of the Act are fulfilled. Both the Human Rights Commission and the Panel are keenly mindful of the users of the system in regard to promoting human rights, and the Commission and the Panel must work in coordination to ensure access to justice.

The Panel also works with the Department of Justice and Public Safety on certain matters such as the reporting requirements under the **Transparency and Accountability Act** and appointment of adjudicators.

Activities

Issue 1: Ensuring Complaints are Heard Without Undue Delay

Pursuant to Section 35 of the Act, where the Commission refers a matter to a Board of Inquiry, the matter is referred to the Chief Adjudicator who shall hear the matter or refer it to another Adjudicator. The Adjudicator assigned to the matter must then hear the matter “without undue delay” in accordance Section 36 of the Act. With this mandate in mind, the Panel strives to ensure all matters are heard in a timely manner.

What constitutes undue delay cannot be determined by a single standard. The reasonable time for a hearing to commence and be completed will depend on the complexity of the matter; the amount of evidence the parties wish to present; the availability of counsel, parties, and witnesses; together with the normal requirements of a hearing process including physical limitations of the Panel’s resources. Therefore, what constitutes undue delay will vary depending upon the circumstances of the case.

The Human Rights Commission continuously monitors the progress of matters referred to the Panel, and consults with the Chief Adjudicator with respect to the Panel’s procedures. In keeping with the objective of hearing matters without undue delay, written guidelines and rules of procedure have been adopted by the Chief Adjudicator in consultation with the members of the Panel of Adjudicators, and the Human Rights Commission. However, once an adjudicator is seized with a particular matter, that adjudicator is the only person with authority to control the process of their inquiry, and ensure a fair and efficient adjudication of that matter without undue delay, absent of any applications for judicial review.

In light of these considerations, and in order to provide objective indicators, the Panel must focus on setting dates for the hearing process to commence.

The objective for the Panel is consistent for the 2020-2023 planning period and the associated indicators are reported below for fiscal year 2022-23.

Objective 1: By March 31, each year, the Panel will hear complaints without undue delay.	
Indicators	Actual Results
Number of matters referred to the Panel that are assigned to an adjudicator within two weeks of the receipt of the referral	<p>During the fiscal year, 10 matters were referred by the Commission for adjudication by a Board of Inquiry.</p> <p>Of the 10 matters referred for adjudication by a Board of Inquiry, three matters were assigned to an Adjudicator within two weeks of referral.</p> <p>Of the 10 matters referred for adjudication by a Board of Inquiry, one matter was assigned to an Adjudicator outside of the two week timeframe due to conflicts or caseload considerations identified.</p> <p>Of the 10 matters referred for adjudication by a Board of Inquiry, six matters were assigned to an Adjudicator outside of the two week timeframe because the position of Chief Adjudicator was vacant.</p>
Number of referrals for which assigned dates were presented to all parties within one month of appointment of an adjudicator	<p>Of the 10 matters assigned to an Adjudicator during the fiscal year, seven matters were offered hearing or pre-hearing conference dates by the Adjudicator within 30 days of the Adjudicator being assigned.</p> <p>Of the 10 matters assigned to an Adjudicator during the fiscal year, one matter was not offered hearing or pre-hearing conference dates by the Adjudicator within 30 days of the Adjudicator being assigned, for the following reason: The parties elected to return to Commission Directed Mediation within 30 days of an Adjudicator being assigned.</p> <p>Of the 10 matters assigned to an Adjudicator during the fiscal year, one matter was not offered hearing or pre-hearing conference dates by the Adjudicator within 30 days of the Adjudicator being assigned, for the following reason: The parties reached a settlement</p>

	<p>within 30 days of an Adjudicator being assigned.</p> <p>Of the 10 matters assigned to an Adjudicator during the fiscal year, one matter was not offered hearing or pre-hearing conference dates by the Adjudicator within 30 days of the Adjudicator being assigned, for the following reason: Delay, in filling vacancies on the Panel of Adjudicators. However, once vacancies on the Panel of Adjudicators were filled and normal functioning of the Panel of Adjudicators resumed, this matter proceeded from pre-hearing status to completion of a hearing within four months. A decision was rendered within 30 days of the hearing bringing this matter to conclusion.</p>
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During this fiscal year, 2022-23, there were delays due to a number of vacancies on the Panel, including most importantly, the position of Chief Adjudicator. During the majority of the 2022-23 fiscal year, there were only four members serving on the Panel. In February 2023, four additional members were appointed to the Panel, including the Chief Adjudicator.

One function served by the Chief Adjudicator is the assignment of matters requiring adjudication to members of the Panel of Adjudicators. Pursuant to Section 35 of the Act, where the Commission refers a matter to a Board of Inquiry under Subsection 34(1) or where a judge of the Trial Division orders the Commission to refer a matter to a Board of Inquiry on an appeal under Section 33, the Commission shall refer the matter to the Chief Adjudicator of the panel appointed under Section 36 who shall hear the matter or refer it to another Panel Member. During any period when the position of Chief Adjudicator is vacant, it is not possible for matters to proceed before a Board of Inquiry in strict compliance with the Act.

While there was no Chief Adjudicator available to assign cases for most of 2022-23, some individual panel members agreed to accept referral of matters for adjudication directly from the Commission. Seven of the 10 matters referred to a Board of Inquiry proceeded in this fashion. Pursuant to Section 49 of the Act, a proceeding under the Act is not considered invalid because of a defect in form or a technical irregularity.

Although vacancies on the Panel did result in delays and a diminished capacity to move matters forward expeditiously during the fiscal year 2022-23, membership of the Panel is now returned to normal capacity and normal operations of the Panel have resumed.

The Panel is pleased to provide the following breakdown of the current status of matters referred for adjudication by a board of inquiry:

- Eight matters are in pre-hearing process and have not yet had hearings;
- One matter settled within 30 days of the Assignment of an Adjudicator; and
- One matter was referred back to the Human Rights Commission for mediation.

To summarize the totality of activity during fiscal year 2022-23, including activities during the fiscal year 2022-23 that began during previous fiscal years:

Referred for Hearings during 2022-23 and in Pre-Hearing Process

There are currently eight matters that were referred during the fiscal year that are in the pre-hearing stages of the complaint and have not yet had hearings.

Total Completed Hearings during 2022-23

There were nine hearings completed during the fiscal year: all nine of these matters had been assigned in previous fiscal years, and none of these were assigned within the fiscal year and proceeded to a hearing within that same fiscal year.

Total Rendered Decisions during 2022-23

There were nine decisions rendered during the fiscal year.

Awaiting Decision

At the end of fiscal year 2022-23, there were no matters which had proceeded to a hearing for which decisions had not yet been rendered.

Settlements

Two matters were settled during the 2022-23 fiscal year, prior to their scheduled hearing date.

Alternate Dispute Resolution

One matter that had been referred for a hearing during the 2022-23 fiscal year, was re-directed to Human Rights Commission for mediation.

Appeal

One decision was appealed to the Supreme Court of Newfoundland and Labrador. This appeal was subsequently abandoned by the appellant.

Opportunities and Challenges

Both the Human Rights Commission and the Panel are keenly mindful of the users of the system, and how they must work in coordination to ensure access to justice. One of the challenges identified by the Panel is workload and number adjudicators available for hearings. This is important as access to the complaints process and justice depends on delivery in a timely manner. In 2022-23, the Panel operated at a diminished capacity while the Department of Justice and Public Safety worked to add additional adjudicators to the Panel, bringing the number of possibly available adjudicators from three to seven. This now complies with the minimum six member Panel size prescribed by section 36(2) of the Act.

The Panel will continue to work with its partners, the Department of Justice and Public Safety and the Public Service Commission through the merit-based process, to ensure adjudicator positions are appointed in a timely manner. The Panel membership does remain diminished when compared to previous years when a full roster of ten members were appointed to the Panel. The new members do represent an opportunity to bring new perspectives and practises to the work of the Panel. The Chief Adjudicator, with the assistance of the Commission is actively engaged in efforts to provide guidance and support to the new Panel members in order to ensure the consistent application of procedures and hearing processes. The objective of the Panel of Adjudicators is at all times to achieve the fair, efficient, and timely adjudication of all matters referred to the Panel, consistent with the Act and relevant jurisprudence.

Financial Statements

The Panel's budget is contained within that of the Human Rights Commission. Such financial information, as is available, is contained in the Human Rights Commission Annual Report for 2022-23. The Report does not break down the expenditures between the Commission and the Panel.

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