

**Human Rights Commission
Panel of Adjudicators**

Annual Activity Report

2008-09

Message from the Chief Adjudicator

As Chief Adjudicator of the Human Rights Commission Panel of Adjudicators I am pleased to present the 2008-09 Annual Activity Report of the Human Rights Commission Panel of Adjudicators. This report details the activities of the Panel of Adjudicators from April 1, 2008 to March 31, 2009.

As Chief Adjudicator, my signature below is indicative of the Panel's accountability for the preparation of this report and the actual results contained therein.



James Merrigan
Chief Adjudicator

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Introduction/Overview

In accordance with the provisions of the *Human Rights Code, RSNL 1990, Chapter H-14*, the Lieutenant Governor in Council may 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 Commissioner of the Human Rights Commission. Appointments are for a term of three years and Adjudicators may be reappointed. From April 1, 2008 until March 31, 2009 the Panel of Adjudicators were:

James Merrigan, Chief Adjudicator (Corner Brook)
Aiden Beresford, Q.C. (Eastport)
Glenda Best, Q.C. (St. Johns)
Cillian Sheahan (Corner Brook)
Jennifer Newbury (St. Johns)
Keri-Lynn Power (St. Johns)

The Panel of Adjudicators does not have an office or any clerical staff. The clerical staff and recording equipment for hearings is provided by staff from the Human Rights Commission. Neither the Panel of Adjudicators nor the Human Rights Commission has hearing facilities so panel hearings are held in various locations including the facilities of the Labour Relations Board and facilities rented at hotels. Hearings are held generally in the region in which the complainant and respondent reside although this is determined on a case by case basis.

Vision

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

Mandate

The mandate of the panel of adjudicators is contained in sections 27 and 28 of the *Human Rights Code, RSNL 1990, Chapter H-14*. It is the responsibility of the Commissioners of the Human Rights Commission to determine which matters are referred to the chief adjudicator for hearing. The chief adjudicator may hear the matter or refer the matter to another adjudicator. Once a matter is referred, the adjudicator shall inquire into the matter and give full opportunity to all parties to present their evidence and make representations, through counsel or otherwise. The complaint referred shall be heard without undue delay. In performing his or her duties an adjudicator has the powers of a commissioner

under the *Public Inquiries Act, 2006, SNL 2006, Chapter P-38.1*. The adjudicator will determine if the complaint is justified and either dismiss the matter or grant a remedy under section 28 of the *Human Rights Code, RSNL, Chapter H-14*.

Activities

Issue 1: Ensuring Complaints are Heard Without Undue Delay

The process of referring matters to adjudicators and fixing hearing dates must be accelerated to clear the back log of cases that currently exists. In addition new matters referred to the adjudicators must be assigned a hearing date to ensure that no new backlog develops. The prompt setting of hearing dates not only ensures that the earliest reasonable and available date is set aside for the matter, it gives the parties incentive to discuss potential resolution of the complaint and a timeframe in which to accomplish it. Simply put, the fixing of a hearing date can assist and prompt the parties to settle without the need of a hearing.

A number of factors play into setting the hearing date. First, the chief adjudicator must either hear the complaint or refer the matter to another adjudicator. According to section 27(3) of the *Human Rights Code* the adjudicator must hear the matter without undue delay. 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 and the availability of counsel, the parties and witnesses contribute to the complexity. Additionally, the panel has only one set of recording equipment and one clerical staff member. This means that only one hearing can proceed at a time. Thus, what constitutes undue delay will vary depending upon the circumstances of the case.

In order to provide objective indicators that progress is being made towards clearing this back log the panel must first focus on setting dates for the hearings to commence. If after the first year any other problems arise with respect to hearings proceeding as scheduled, completing hearings or receiving decisions from hearings, they will have to be addressed separately. It is worth noting, however, that once an adjudicator is seized with a matter that adjudicator is the only person with authority to control the process of the hearing, absent any applications for judicial review.

Objective 1:	Each year, the Human Rights Commission Panel of Adjudicators will hear complaints without undue delay
Measure	
Complaints heard without undue delay	
Indicators	Actual Results
All matters assigned to an adjudicator within two weeks of the receipt of the referral	<p>All 17 matters pre-dating the appointment of the current Panel were assigned to adjudicators within 3 months of appointment.</p> <p>There were 7 new matters referred to the Panel during the fiscal year. Of the 7 new matters referred during the fiscal year, only 3 were assigned within the time limit set. The remaining matters were all assigned within 3 months of referral. All new matters were assigned to an adjudicator in the fiscal year.</p> <p>A number of factors explain the variance in the indicator and result. First, the adjudicator, Executive Director and Commission counsel were all newly appointed at the time of the development of the Activity Plan. This resulted in a number of unexpected issues being identified after preparation of the activity plan which needed to be addressed in order to achieve the desired results. Second, all adjudicators are or were lawyers engaged in private practice. This means that a system for performing conflict checks is required. This system had to be developed promptly to ensure that any matter assigned was absent of potential conflict of interests. Third, a communication process had to be implemented to ensure that information was gathered and recorded before and after assignment of a matter. Fourth, an independent registry of matters set for hearing had to be established. The Executive Director of the Human Rights Commission and the Chief Adjudicator had to develop a process for the creation and maintenance of a "docket" of cases before the panel. This process had to work for both the HRC and the HRC Panel of Adjudicators. Accordingly, a process was created and a "docket" list now exists.</p>

<p>Within one month of assignment to the adjudicator, the adjudicator will have presented proposed hearing dates to all parties.</p>	<p>Insufficient data is available with respect to the response time for adjudicators presenting proposed hearing dates to all parties. As noted above, the adjudicators are all lawyers in private practice. Once a matter is assigned, the responsible adjudicator communicates directly with the lawyers representing the complainant and commission. All adjudicators have been notified that the Chief Adjudicator wishes to be notified of all correspondence regarding proposed hearing dates. This will facilitate a central recording process that will track the duration between when a matter is assigned to an adjudicator and when proposed hearing dates are communicated to parties.</p> <p>The Executive Director of the Human Rights Commission and the Chief Adjudicator will also discuss this on a monthly basis. The Executive Director will be able to confirm when communication was made with counsel for the Commission providing verification of this date.</p> <p>Anecdotally, no complaints have been received to indicate that hearing dates have not been presented to parties in a timely fashion.</p>
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As stated in the 2008-11 Activity Plan of the HRC Panel of Adjudicators, the Panel will report on this objective and indicators again in 2009-10 and 2010-11

Financial Statements

The Panel of Adjudicators' budget is subsumed within that of the Human Rights Commission. Such financial information, as is available, is contained in the Human Rights Commission Annual Activity Report. The Report does not break down the expenditures as between the Commission and the Panel of Adjudicators.