

**Human Rights Commission
Panel of Adjudicators**

Annual Activity Report

2011-12

Message from the Chief Adjudicator

As Chief Adjudicator of the Human Rights Commission Panel of Adjudicators I am pleased to present the 2011-12 Annual Activity Report of the Human Rights Commission Panel of Adjudicators. This report details the activities of the Panel of Adjudicators from April 1, 2011 to March 31, 2012.

As Chief Adjudicator, I accept accountability on behalf of the entire Panel of Adjudicators, which is accountable for the actual results reported.



James Merrigan
Chief Adjudicator

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Introduction/Overview

In accordance with the *Human Rights Act, 2010*, 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. From April 1, 2011 until March 31, 2012 the panel of adjudicators were:

James Merrigan, chief adjudicator
Glenda Best, Q.C.
Jennifer Newbury
Keri-Lynn Power
Gladys Dunne
Rob Ash

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 the *Human Rights Act, 2010*. 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 referred to him/her 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 Enquiries Act, 2006*.

The adjudicator will determine if the complaint is justified and either dismiss the matter or grant a remedy under section 39 of the *Human Rights Act, 2010*.

Activities

Issue 1: Ensuring Complaints are Heard Without Undue Delay

What constitutes undue delay depends upon the nature and complexity of a matter. Hearings vary in length from as little as a single day to as much as six weeks. The schedules of parties, their counsel, witnesses and adjudicators must be taken into account. In addition some matters such as compelling disclosure of information in advance of the hearing are dealt with in advance of the substantive hearing date. The reasonable time for a hearing to commence and be completed will depend on the complexity of the matter. Additionally, the panel has only one set of recording equipment. 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.

The process of referring matters to adjudicators and fixing hearing dates are measurable indicators which are largely independent of the complexity of a case. 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 38(3) of the *Human Rights Act, 2010* the adjudicator must hear the matter without undue delay.

In order to provide objective indicators that progress is being made the panel must focus on setting dates for the hearings to commence. 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: By March 31 each year, the Human Rights Commission Panel of Adjudicators will hear complaints without undue delay													
Measure													
Complaints heard 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 there were eight matters referred to the panel. Of the eight, none were assigned to an adjudicator within two weeks. The first six referrals were delayed while the Panel's work plan was adjusted to reflect available resources.</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: center;"># of matters</th> <th style="text-align: center;">Date Referred</th> <th style="text-align: center;">Date Adjudicator Assigned</th> <th style="text-align: center;">Length of time</th> </tr> </thead> <tbody> <tr> <td style="text-align: center;">4</td> <td style="text-align: center;">June 23, 2011</td> <td style="text-align: center;">September 2, 2011</td> <td style="text-align: center;">2 months, 10 days</td> </tr> <tr> <td style="text-align: center;">2</td> <td style="text-align: center;">October 6, 2011</td> <td style="text-align: center;">November 15, 2011</td> <td style="text-align: center;">1 month, 9 days</td> </tr> </tbody> </table> <p>The remaining two matters were delayed due to the Chief Adjudicator being unexpectedly away from the office. These matters were referred on February 15-16, 2012 and adjudicators were appointed March 22 and 23, 2012, one month and six days later.</p>	# of matters	Date Referred	Date Adjudicator Assigned	Length of time	4	June 23, 2011	September 2, 2011	2 months, 10 days	2	October 6, 2011	November 15, 2011	1 month, 9 days
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Number of referrals for which assigned dates were presented to all parties within one month of appointment of an adjudicator	<p>Four of the eight matters had dates for hearings presented within one month.</p> <p>Dates were not provided within one month for the remaining four matters as the Panel's work plan had to be adjusted to reflect available resources.</p>												

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.