

**Human Rights Commission
Panel of Adjudicators**

Annual Report

2021-22

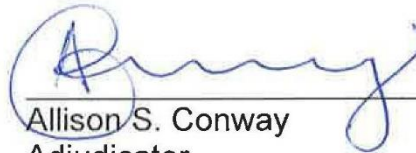
Message from the Human Rights Commission Panel of Adjudicators

As an Adjudicator of the Human Rights Commission Panel of Adjudicators (the “Panel”), I hereby submit the 2021-22 Annual Report of the Panel which details activities from April 1, 2021 to March 31, 2022.

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.

Sincerely,



Allison S. Conway
Adjudicator

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Overview

In accordance with the **Human Rights Act, 2010** (the 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 Board of Inquiry into matters as referred to them by the Commissioners of the Human Rights Commission. The Panel would only hear a matter once it is referred by the Human Rights Commission. The Panel is supported in its work by the Human Rights Commission and does not have a separate staff or physical location. Appointments are for a term of three years and adjudicators may be reappointed. During 2021-22, the following individuals served on the Panel:

- Kimberley Horwood, Chief Adjudicator;
- Glenda Best, Q.C.;
- Brodie Gallant;
- Valerie Hynes;
- Christian Hurley;
- Barbara Agnes Barker;
- Allison Conway;
- Michael Herbert Duffy;
- Meghan Gardner; and,
- Rebecca Redmond MacLean, Q.C.

In October 2021, Ms. Gardner resigned and the Panel worked with the Department of Justice and Public Safety to identify a replacement. In addition, the appointment terms of five members expired in March 2022. These are Kimberley Horwood, Glenda Best, Brodie Gallant, Valery Hynes, and Christian Hurley. The Panel worked with the Department of Justice and Public Safety to recruit new members and ensure the Panel is fully constituted. This is anticipated to progress into 2022-23.

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 him/her 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, he/she 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 appointments of adjudicators.

Activities

Issue 1: Ensuring Complaints are Heard Without Undue Delay

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 the Act, the Adjudicator must hear the matter without undue delay.

What constitutes undue delay cannot be determined by a single standard. A 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 call; the availability of counsel, parties, and witnesses. There are also limited physical resources for conducting hearings; most hearings take place at the Human Rights Commission office, or may be conducted virtually making them dependent on the availability of that virtual infrastructure.

Furthermore, what constitutes undue delay will vary depending upon the circumstances of the case. In order to provide objective indicators, the Panel must focus on setting dates for the hearing process to commence. 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.

The objective for the Panel is consistent for the 2020-2023 planning period and the associated indicators will be reported on for each year of the planning period.

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	During the fiscal year, 12 matters were referred for hearings and all 12 matters were assigned within two weeks of referral.

Number of referrals for which assigned dates were presented to all parties within one month of appointment of an adjudicator	For all 12 matters referred to a Board of Inquiry in the fiscal year, the dates offered by the Adjudicator were offered within 30 days.
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During the fiscal year 2021-22, there were still hearings taking place from earlier fiscal years, which had a direct impact on the ability for the current 12 matters to proceed to a hearing during the 2021-22 fiscal year. The COVID-19 pandemic also continued during the 2021-22 fiscal year, which undoubtedly caused some unexpected delays. In spite of this, of the 12 complaints referred to hearings, the breakdown of their current status is as follows:

- Seven are in pre-hearing process and have not yet had hearings;
- One had a hearing within 2021-22 and the decisions rendered in 2021-22;
- Three had hearings within 2021-22 with no decision rendered during 2021-22;
- One was referred back to the Human Rights Commission for mediation.

To summarize the totality of activity during fiscal year 2021-22, including activities during the fiscal year 2021-22 that began during previous fiscal years:

Referred for Hearings during 2021-22 and in Pre-Hearing Process

There are currently seven 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 2021-22

There were eight hearings completed during the fiscal year: five were assigned in previous fiscal years, and three of these were assigned within the fiscal year and proceeded to a hearing within that same fiscal year.

Total Rendered Decisions during 2021-22

There were five decisions rendered during the fiscal year.

Awaiting Decision

At the end of fiscal year 2021-22, there were six matters for which decisions had not yet been rendered.

Settlements

Three matters were settled during the 2021-22 fiscal year, prior to their scheduled hearing date.

Alternate Dispute Resolution

One matter that had been referred for a hearing during the 2021-22 fiscal year, was re-directed to Human Rights Commission for mediation.

Appeal

One decision was appealed to the Supreme Court of Newfoundland and Labrador.

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 2021-22, the Panel worked with the Department of Justice and Public Safety to add additional adjudicators to the Panel, bringing the number of possibly available adjudicators from six to ten. The new members represented an opportunity to bring new perspectives and practises to the work of the Panel. The returning members continue to offer a continuity of skills and experiences to ensure continuity is maintained. However, in 2021-22, one of the new member resigned and the terms of five members including the Chief Adjudicator, expired. This presents a challenge for the Panel as the Chief Adjudicator is responsible for assigning adjudicators to specific matters. The Panel will continue to work with its partners, the Department of Justice and Public Safety and the Public Service Commission, to ensure a new Chief Adjudicator and five other adjudicator positions are appointed in a timely manner.

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 2021-22. The Report does not break down the expenditures between the Commission and the Panel.

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