

**Human Rights Commission  
Panel of Adjudicators**

**Annual Report**

**2019-20**

## Message from the Chief Adjudicator

As Chief Adjudicator of the Human Rights Commission Panel of Adjudicators ("Panel"), I hereby submit the 2019-20 Annual Report of the Panel which details its activities from April 1, 2019 to March 31, 2020.

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,



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Kimberley Horwood  
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 Board 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. The Panel has no separate staff or location outside of the Human Rights Commission. During the 2019-20 fiscal year, the following individuals served on the Panel:

- Kimberley Horwood, Chief Adjudicator;
- Glenda Best, Q.C.;
- Brodie Gallant;
- Valerie Hynes;
- Christian Hurley; and
- Kellie Cullihall (resigned October 23, 2019).

## 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, they may grant a remedy under section 39 of the Act.

## 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. 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 call; the availability of counsel, parties and witnesses, when applicable; together with the normal requirements of a hearing process including physical limitations of the panel's resources. Further, 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 hearings 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.

<b>Objective 1:</b>	By March 31, each year, the Human Rights Commission Panel of Adjudicators will hear complaints without undue delay.	
	<b>Indicators</b>	<b>Actual Results</b>
	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, 13 matters were referred to hearings. All 13 matters were assigned to an adjudicator within two weeks of the referral.
	Number of referrals for which assigned dates were presented to all parties within one month of appointment of an adjudicator.	For all 13 matters referred to a Board of Inquiry in the fiscal year, the dates offered by the adjudicator were offered to all parties within 30 days.

During the fiscal year 2019-2020, there were still hearings taking place from earlier fiscal years, which had a direct impact on the ability for the current 13 matters to proceed to a hearing during the 2019-2020 fiscal year. Of these 13 complaints referred to hearings, the breakdown of their current status is as follows:

- Six are in pre-hearing process and have not yet had hearings;
- Three had hearings within 2019-2020 but decisions not rendered in 2019-2020;
- Two matters were resolved through mediation;
- One matter was withdrawn by the complainant;
- One matter was re-directed to mediation.

To summarize the totality of activity during fiscal year 2019-2020, including activity during the fiscal year 2019-2020 that arose during previous fiscal years:

#### Referred for Hearings during 2019-2020 and in Pre-Hearing Process

There are currently six matters that were referred during the 2019-2020 fiscal year that are in the pre-hearing stages of the complaint and have not yet had hearings.

#### Total Completed Hearings during 2019-2020

There were six hearings completed during the 2019-2020 fiscal year: three matters had been assigned during previous fiscal years but had their hearings during the 2019-2020 fiscal year; and three matters were assigned within the 2019-2020 fiscal year and proceeded to a hearing within that same fiscal year.

#### Total Rendered Decisions during 2019-2020

There were four decisions rendered during the 2019-2020 fiscal year, all of which were from hearings from previous fiscal years.

#### Awaiting Decision

At the end of fiscal year 2019-2020, there were six matters where hearings were completed, for which decisions had not yet been rendered, and three of those arose from hearings during the 2019-2020 fiscal year. The average time for a decision to be rendered since 2016 has been 8-14 months.

#### Dismissed during 2019-2020

There were three matters that were dismissed during the 2019-2020 fiscal year: one was dismissed for non-participation by the Applicant; one was dismissed when the Applicant deceased; and one was withdrawn by the Applicant. Two matters had been referred during previous fiscal years and one matter was referred during 2019-2020.

#### Alternate Dispute Resolution

There was one matter that had been referred for a hearing during the 2019-2020 fiscal year, which was re-directed to medication.

### **Opportunities and Challenges**

Both the Human Rights Commission and its Panel are keenly mindful of the users of the system, and how both can best operate to ensure access to justice. Further to this, the Human Rights Commission has undertaken an extensive review of its procedures and has dramatically streamlined the complaint process over the course of the fiscal year 2019-2020. It developed and implemented a complete overhaul of its website and of its online application process. Other endeavours included alternate dispute resolution mechanisms, and more recently, implementation of new procedural models for hearings, including informal hearings and hearings by written submission, which should facilitate matters moving through the process in the most efficient and most appropriate way possible. Clearer information to the public and a streamlined process benefits the Panel in achieving its objective to hear complaints without undue delay. There is also a pre-hearing process, typically by teleconference, during which the focus of issues are narrowed, if possible, discussions regarding agreed statements of facts are undertaken, and efforts to streamline the process are generally explored. This takes time to arrange

and once complete, there might be further work to be completed prior to a hearing date being set. This is a factor to be weighed when considering the amount of time between when the adjudicator is assigned and when the hearing actually occurs.

A unique challenge for the Panel is that unlike some other tribunals, the Act does not permit adjudicators to continue beyond the expiry of their term. This presents a challenge for the Panel in that there will be periods, as recently occurred, where any lapse in the re-appointment of adjudicators could result in delays. In addition, there is just one individual conducting hearings on behalf of the Human Rights Commission. This limits the ability of the Panel to move several matters through to conclusion, also contributing to delays. The Panel will continue to work with its stakeholders and partners, including the Department of Justice and Public Safety through Government's merit based process for appointments to agencies, board and commissions, to address challenges and ensure all matters proceed in a timely manner.

### **Financial Statements**

The Panel's budget is subsumed within that of the Human Rights Commission. Such financial information, as is available, is contained in the Human Rights Commission Annual Report for 2019-20. The Report does not break down the expenditures between the Commission and the Panel.

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