

THE HUMAN RIGHTS COMMISSION
PANEL OF ADJUDICATORS

ACTIVITY PLAN

2008-2011

Message from the Chief Adjudicator:

I am pleased to present the Activity Plan for the Human Rights Code adjudicators which outlines the objective for the 2008-2011 fiscal years. This plan was prepared under my direction and in accordance with the provisions of the *Transparency and Accountability Act*.

The role of the panel of adjudicators 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* S.N.L. 2006 chapter P-38.1.

Adjudicators appointed in accordance with the *Human Rights Code*, R.S.N.L. 1990, Chapter H-14 are classified as a Category 3 Government Entity and, as such, must prepare an activity plan taking into consideration the strategic directions of the Minister of Justice. The preparation of this plan has taken those strategic directions into account. While the panel of adjudicators does not have a direct role in the strategic directions of government at this time, it does feel that it makes a contribution towards access to justice and public trust and confidence.

The *Human Rights Code's* ultimate method of resolving complaints is by hearing before an adjudicator. Access to an adjudicator to resolve such complaints in a timely fashion is an issue that engages access to justice and ultimately, public trust and confidence in the *Human Rights Code* and the system established by the *Human Rights Code*.

As the Chief Adjudicator I, on behalf of the Human Rights Code adjudicators, accept accountability for the preparation of this plan and the achievement of its objective.



Jamie Merrigan
Chief Adjudicator

Introduction/Overview

In accordance with the provisions of the *Human Rights Code, RSNL, 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 Commissioners of the Human Rights Commission. Appointments are for a term of three years and adjudicators may be reappointed.

The panel of adjudicators are:

James Merrigan, chief adjudicator
Glenda Best, Q.C.
Keri-Lynn Power
Aiden Beresford, Q.C.
Cillian Sheahan
Jennifer Newbury

From the period March 31, 2006 to December 31, 2006 one hearing was held. During the calendar year 2007 one additional hearing was held and the matter from 2006 was continued. No hearings have been held yet in 2008, although the panel of adjudicators was only appointed as of March 20, 2008.

Due to an unfortunate convergence of resignations and limited resources a back log of complaints is now before the panel of adjudicators. This back log of complaints is an issue of access to justice for both complainants and respondents. The priority of the panel of adjudicators at this time is to clear up this back log while ensuring that new complaints are heard without undue delay. This must be accomplished without impinging upon the right of all parties to have full opportunity to present evidence and make representations and without compromising the fairness and impartiality of the process.

Currently all matters referred to the panel of adjudicators have been assigned to individual adjudicators.

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. That Report does not break down the expenditures as between the Commission and the Panel Of Adjudicators. The Panel of Adjudicators does not have a budget or budget process.

Mandate

The mandate of the panel of adjudicators is contained in sections 27 and 28 of the Human Rights Code, *RSNL, 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 himself or refer the matter to another adjudicator. Once a

matter is referred, the adjudicator shall inquire into the matters referred to him or 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* which, in accordance with section 30 of the *Public Enquiries Act SNL 2006 Chapter P-38.1*, is limited to those powers granted under section 9 and 10 of the *Public Enquiries Act*. 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*.

Who we serve

The Human Rights Commission panel of adjudicators provides service to the Commission, complainants and respondents all of whom are parties to any matter referred to the panel of adjudicators for adjudication.

Values

Accountability:

Each adjudicator is responsible to ensure the provisions of the Code are upheld.

Fairness & Impartiality:

Each adjudicator performs their duties in a thorough and unbiased manner.

Timeliness:

An adjudicator shall hear complaints without undue delay.

Vision

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

Mission Statement

A mission statement is a result oriented statement which answers the who, what and why questions related to the organization and informs the reader of how the work of the entity supports or contributes to that of a larger supporting entity, such as a board or department or benefits the public or society at large.

The Human Rights Commission panel of adjudicators, as a category 3 government entity, has the options of adopting the Department of Justice mission, indicating how it contributes to that mission or developing its own mission. The panel of adjudicators must remain neutral an

unbiased in their relationship with the Department of Justice and those that they serve, and it is not appropriate to adopt the mission statement of the Department of Justice. The Department of Justice mission is focused on the work of the Department of Justice, in which the panel of adjudicators has no role.

As an administrative tribunal, the powers and duties of the adjudicators are set for them by statute, in this case the *Human Rights Code*. A mission statement would have to be confined to fulfilling these duties to the appropriate standard. Essentially the duties are set out in sections 27 and 28 of the *Human Rights Code* as noted above. Any mission statement would have to either mirror these sections or risk being incompatible with them. In the circumstances no mission statement will be developed by the panel of adjudicators in this Activity Plan.

Issue

In consideration of Government's strategic directions and those of the Department of Justice, the Human Rights Commission panel of adjudicators feels they have a role to play in supporting the strategic directions of access to justice and public trust and confidence. While the panel of adjudicators has not been singled out as having a direct role in these strategic directions, they feel the role that they play in fulfilling their mandate does support the achievement of them. The aforementioned back log of complaints that have yet to be heard is an area of concern. In short access to justice and public trust and confidence are supported when complainants and respondents have access to timely adjudication of human rights complaints. The clearing of this backlog and ensuring matters are heard without undue delay is identified as the key priority of the panel of adjudicators over the next three years. Each year in the three year planning period the panel of adjudicators annual report will report on the achievement of the objective described below.

Issue 1: Ensuring Complaints are Heard Without Undue Delay

At the time of this panel of adjudicators being appointed 19 matters had been referred to the panel of adjudicators. In two of these the hearings had commenced and were in process. In the remaining 17 matters no adjudicator had been appointed and no hearing dates had been set. The process of referring matters to adjudicators and fixing hearing dates must be accelerated to clear this back log. 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 can not 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 and the availability of counsel, the parties and witnesses when applicable, together with the normal exigencies of a hearing process including physical limitations of the panel's resources. Currently the panel has only one set of recording equipment and one clerical staff member so only one hearing can proceed at a time. For this reason 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: Each year, the Human Rights Commission Panel of Adjudicators will hear complaints without undue delay

Measure: Complaints heard without undue delay

Indicators:

All matters assigned to an adjudicator within two weeks of the receipt of the referral.

Within one month of assignment to the adjudicator the adjudicator will have presented proposed hearing dates to all parties.