

**No one should
be left out**



**HUMAN
RIGHTS**

Poster by:

Susanne Shawyer
Grade 6 Student
Bishop Feild School
St. John's, Newfoundland

1986 Human Rights Poster Contest

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Crosble Road
P. O. Box 4750
St. John's, Newfoundland
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Telephone: 576-2709 or 576-5812
Toll Free 1-800-563-5808

1986 Annual Report

Fifteen Years of Human Rights in Newfoundland



**Gillian Butler
Chairperson**

Chairperson's Remarks

The 1986 Annual Report, to which these remarks serve only as an introduction, is the first annual report distributed by the Newfoundland Human Rights Commission since its establishment in 1970 and is but one of the accomplishments of the Commission which I am proud to share with you.

The first Commissioner of the Human Rights Commission, Gertrude Keough, was appointed by Premier Joseph R. Smallwood, on March 25, 1971, to enforce the provisions of The Newfoundland Human Rights Code S.N., 1970 Ch. 262. Unlike other appointed members of the Human Rights Commission, Gertrude Keough was permanent public servant. Fred Coates, who was appointed as the first Executive Director of the Commission on September 1, 1971, also served as a Commissioner. In 1977, Herbert Buckingham, a solicitor with the Department of Justice, was appointed as the third Commissioner. The Newfoundland Human Rights Code has a requirement that the Commission consist of three or more members. Therefore, in the 1970's, Gertrude Keough, Fred Coates and Herbert Buckingham were responsible for enforcing our anti-discriminatory legislation and acted both as Commissioners and, in most cases, as members of Boards of Inquiry when complaints referred to the Commission could not be settled. Indeed, this practice continued under the Chairmanship of Abe Schwartz whom I replaced in September of 1985 when the present seven member Commission was appointed for a three year term by the Honourable Lynn Verge, Minister of Justice.

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Immediately from the date of our appointments, we began the practice of seeking appointments of "ad hoc" Boards of Inquiry for complaints that were not settled. The basis for this change in administration was a recognition that to do otherwise might offend the rules of natural justice and may result in court challenges to our procedure. In so doing, our administrative practice was brought into line with the majority of all other statutory human rights agencies in Canada.

The present members of the Human Rights Commission therefore meet their statutorily-imposed mandates of promoting an understanding of the Code and developing educational programs without sitting as adjudicators of the complaints which are not settled.

As is indicated in the Complaint Procedure section of this Report, responsibility for investigation of every complaint lies with the able staff of the Commission, the contingent of which has doubled since my appointment in 1985. Consistent with this recognized need for additional manpower, our budget has been reviewed and increased substantially with the support of the Honourable Lynn Verge, Minister of Justice, whose encouragement for our work is consistent with her own personal commitment to human rights.

The future work of the Newfoundland Human Rights Commission will depend, to a large degree, on further administrative and substantive changes which we, and other interested groups, have sought to the Code. The Commission believes that the amendments which have been recommended to our Minister are both fundamental and necessary in order that individuals in our Province should have the same protection from discrimination as do individuals in other Canadian Provinces and Territories. In this respect, and in order to keep step with the rest of Canada, it has been recommended that (*in addition to the heads of discrimination already set out in the Code*) it be unlawful to discriminate on the basis of pardoned criminal conviction, sexual orientation, family status, source of income and pregnancy (*subject however to bona fide occupational requirements or any bona fide qualification defence*). While this list of amendments is by no means exhaustive, it highlights some of the more significant changes which we are anxious to see implemented in the next sitting of the House of Assembly and without which we fear that we will be restricted by legislation that has not kept abreast of the changing social values and mores.

The human rights arena has become very complex and education of both ourselves and the public at large has been an endeavour which we have energetically pursued. The popular use of terms such as "mandatory retirement", "systemic discrimination", and "affirmative action" are all directly related to the progressive work of Human Rights Commissions (*including our own*) and indicative of advances which have been made in the recognition of protection for values accepted by the community at large.

It is my sincere desire that the Commission become more active in education of the public at large and with particular emphasis on children attending the primary grades at our public school system since an understanding of our work in the community can only serve to increase our effectiveness.

I am extremely proud to be associated with the enforcement of protection for fundamental rights and freedoms and feel privileged to be able to convey such a positive message to our readers after only a short term of office. Clearly, it would not have been possible for me to do so without the support of our Minister and the dedication of my staff and fellow Commissioners.

I trust that this Annual Report will serve as a valuable resource guide to the work of the Commission in 1986.



GILLIAN D. BUTLER
Chairperson

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Commission Members

The Newfoundland Human Rights Commission consists of a Chairperson plus six other members who are representative of various groups and regions throughout the province. All seven Commissioners were appointed in September of 1985 for a three year period.

Chairperson

Gillian Butler

Gillian Butler is a graduate of Memorial University of Newfoundland's School of Business (1977) and the University of Alberta Law School at Edmonton (1980). She was called to the Bar in Newfoundland in December, 1980 and is presently a partner in the 13 member law office of White, Ottenheimer & Green where she is involved mainly in civil litigation.

In addition to her private practice and position with the Human Rights Commission, Ms. Butler is director of several community organizations at the Provincial level. She is married to David D. McKay and is the mother of one daughter, Heather.



Commissioners

Anne Hart

Anne Hart received her Bachelor of Arts (*History*) from Dalhousie University, Halifax, Nova Scotia in 1956, and a Bachelor of Library Science from McGill University, Montreal.

Ms. Hart is Head of the Centre for Newfoundland Studies, Queen Elizabeth II Library, Memorial University of Newfoundland. In addition to her appointment with the Newfoundland Human Rights Commission, Ms. Hart has been involved with several other Boards and Committees including Chairing the Newfoundland Public Libraries Board. She is a writer and the mother of three children.



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Ms. Hart is the author of numerous short stories, plays poems and articles. In 1985, she published her first book, *The Life and Times of Miss Jane Marple*. Her work has won her several awards including the Canadian Library Trustee Association: Annual Merit Award in 1986. Ms. Hart is currently involved in several professional associations.

Irene McGinn

Irene McGinn was first appointed to the Human Rights Commission in 1982. She was reappointed in 1985. Mrs. McGinn is a resident of Glovertown where she served on the Town Council for eight years, three of those years as Mayor of that community.

Mrs. McGinn has been involved with a number of organizations including the Consumer Organization of Disabled People in Newfoundland and Labrador; the Gander District Hospital Board; the Newfoundland Arthritis Society; the Canadian Organizational Committee for International Year of Disabled People; and the Advisory Board for C.N. Marine.

John Moore

John Moore, a graduate of the American Institute of Baking, Chicago, received his high school education in New Brunswick and Newfoundland. He is presently President of family owned Cabot Bakery Limited in Grand Falls.

Mr. Moore has been involved in several voluntary organizations in Grand Falls. He is presently serving as President of the Grand Falls Chamber of Commerce and past activities include member and Vice-Chairman of Central Newfoundland Regional Health Centre; Treasurer of Memorial United Church; Vice-President of the Atlantic Provinces Bakers Association; the Cancer Society; the Red Cross and a member of the Board of Directors of Environment Resources Management Association.

Mr. Moore spends his spare time sailing and skiing.



Yvonne T. Power

Yvonne Power was born and raised in Trepassey, Newfoundland, where she now resides with her husband, Don, and two children, Tina, age 15, and Christopher, age 13. Mrs. Power has completed a Certificate Program in Municipal Administration from Memorial University of Newfoundland and has been actively involved in professional and community organizations. She has served as President of Trepassey Women's Institute; as Founding Commissioner, Trepassey District Girl Guides; as Eastern Director and Vice-President of the Newfoundland and Labrador Association of Municipal Administrators; as a member of Trepassey Recreation Commission and Trepassey Lioness Club. Since 1978, Mrs. Power has been employed as Town Manager in the Town of Trepassey.



Hubert O'Reilly

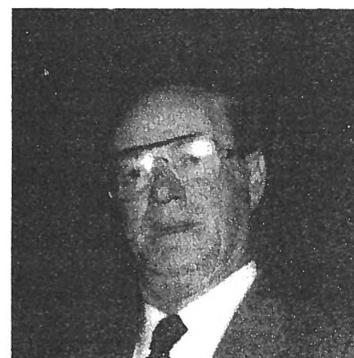
Hubert O'Reilly was born and educated in Corner Brook, on the west coast of Newfoundland. He has been employed with the Canadian National Railways since 1952. Mr. O'Reilly is actively involved with the union and has served as President of local #1350 of the United Transportation Union since 1976. Mr. O'Reilly also served as legislative representative for the United Transportation Union from 1979 to 1984.



Mr. O'Reilly's interests include politics and sports. He is married to the former Shirley Clarke of Springdale and they have five children.

Robert G. Joergensen

Robert G. Joergensen, an Engineer and Journalist, was educated in the United States. He immigrated and settled in Newfoundland in 1975. In addition to his position as Commissioner of Human Rights, he has been involved in the rights of veterans and children's programs on a local and national level for many years. He is retired from a thirty year military career in the navy.



Mr. Joergensen has been in the insurance industry for the past 9 years and operates a retail store in Mount Pearl. He and his wife, Hazel, live in Mount Pearl and have six grown children and six grandchildren.

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**Gladys Vivian
Executive Director**

Executive Director's Remarks

It is with pleasure I present to you this annual report. It is the first annual report of the Newfoundland Human Rights Commission to be released to the general public. The intention of the report is to create a greater awareness of the role of the Commission and to promote respect and compliance with *The Newfoundland Human Rights Code*.

It is the duty of the Commission to enforce *The Newfoundland Human Rights Code*. We do this in a fair and impartial manner and do not advocate for either the complainant or the respondent. We receive written complaints alleging a violation of the Code, conduct an impartial investigation and decide upon the merits of the complaint, based upon the facts collected. The goal is to effect a settlement between the parties. Where a settlement cannot be reached and the Commission believes there is merit to the complaint, the Chairperson will recommend that the Minister of Justice appoint a Board of Inquiry to hear the matter. It is at this stage that a complaint becomes public. The order of settlement from the Minister, as a result of the Board of Inquiry, is binding on both parties but can be appealed in the Supreme Court of Newfoundland.

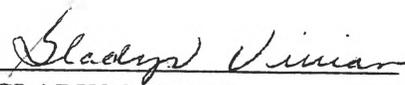
Not all complaints brought to the Human Rights Commission go through the process of investigation. Often people contact the Commission when they need help and are unsure of where to go. The Commission can offer no formal assistance in such complaints but will often deal with matters on an informal basis or direct the parties to an agency where they may find assistance.

Consequently, processed and recorded formal complaints represent only a small portion of the actual complaints handled by the Commission. In 1986, the Commission dealt with 2464 telephone enquires and received 173 office visitors. From these contacts, only 46 formal complaints were accepted for investigation.

In addition to investigating complaints, our staff endeavours to enforce the legislation through education and prevention. We support the teaching of human rights in the schools and encourage the Ministry of Education to include human rights in the curriculum. We encourage employers to contact the Commission to discuss employment matters, as they relate to human rights, in hopes that this type of educational contact will head off complaints to the Commission.

Our staff meets with community groups, students and the news media to promote greater awareness of the legislation. Also in 1986, 5000 copies of *The Newfoundland Human Rights Code* were distributed throughout the province, as well as thousands of copies of our three pamphlets.

1986 has been a very successful year for the Newfoundland Human Rights Commission and I congratulate our secretary and two human rights officers for their commitment and hard work. While small in number, their contributions to the growth of the Commission have been extensive. I look forward to continued growth for 1987.


GLADYS VIVIAN
Executive Director

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The Newfoundland Human Rights Code

The Proclamation of The Newfoundland Human Rights Code marked its fifteenth anniversary in 1986. The Code was assented to by the Newfoundland Legislature on May 13, 1969, and was proclaimed into law on March 3, 1971, except Section 10; this was proclaimed on September 1, 1971.

The Legislature, because of its commitment to human rights, has amended the Code several times since its proclamation in order to improve and expand upon the protections offered to the residents of Newfoundland.

Initially, the Code offered protection from discrimination in employment, accommodation, services and publications on the grounds of race, religion, religious creed, political opinion, color or ethnic, national or social origin and, additionally, the grounds of sex and age (*45 to 65 years*) were included in employment. At that time, the Code was administered under the authority of the Minister of Labour. When the Ministry was renamed on April 2, 1973, the Commission became a part of that Department, and remained there until April 1, 1977 when the Minister of Justice assumed administrative authority.

An amendment to the Code on December 20, 1974 saw the protection from discrimination in accommodations, services and publications extended to cover a person's sex and marital status and, in regards to employment, marital status and age - now 19 to 65 years. Protection was also extended to cover employees who had an attachment of wages served against them.

At the same time, the equal pay provision was expanded from just equal pay for the same work to equal pay for the same or similar work. As well, equal treatment and consideration was required for training, advancement, pension rights and insurance benefits.

On June 30, 1981 an amendment to the Code extended protection to those who are physically disabled.

A further amendment, on December 21, 1983, prohibited harassment and sexual solicitation. It further allowed for the introduction of affirmative action programs.

An amendment dated December 19, 1984 prohibited discrimination on the basis of mental disability.

The Newfoundland Human Rights Code is presently being reviewed by our Minister, the Honourable Lynn Verge, and it is expected that we will have a new human rights Code in the near future.

FROM OUR FILES

Case Summaries

Examples of settled cases

Human Rights Officers investigate and attempt to settle complaints filed under the jurisdiction of *The Newfoundland Human Rights Code*. In most cases, complaints which are found to have merit, are satisfactorily settled between the complainant and respondent.

Employment

1. A lady who filed a complaint against her employer alleging discrimination and harassment because of physical disability received \$3,500 as settlement. The lady was dismissed from her job when she refused to accept a temporary assignment while in receipt of worker's compensation for an injury received on the job. The lady alleged she was unduly harassed by her employer. She says her employer expressed the opinion that she was using the injury as an excuse to stay off work.
2. A lady who was replaced while on maternity leave brought a complaint alleging discrimination on the basis of age against her employer. The complainant, who had been employed as a secretary with the company for seven years, had a good performance record. When she pressed for a reason for the termination, she alleges she was told that the replacement was closer to the age of the employer. The complainant interpreted this to mean that her maternity leave caused problems and that the replacement was past child bearing age. The complainant settled for \$2,500.
3. A gentleman filed a complaint alleging discrimination on the basis of mental disability when he was not offered a job after a reference check showed him to have had a nervous breakdown several years ago which was thought to be job related. The parties agreed that a job offer be made to the complainant contingent upon passing a job related medical. The complainant passed the medical and commenced employment.
4. A gentleman filed a complaint with the Commission after a lady who accepted his application for a position in a lady's clothing store told him he would not be interviewed because he was a male. The investigation showed that being female was not a *bona fide* occupational requirement for the job. The store already had males in the ladies' department and the person hired for the position was better qualified than the complainant. The complainant settled with a letter of apology for the comment made by the receptionist and an invitation to apply for other positions.

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5. A lady who resigned from her job and filed a complaint against her employer alleging discrimination on the basis of marital status had her complaint dismissed after investigation. The employer, a Merchant, gave his employees a 10 per cent discount on articles purchased in his store. The complainant alleged that this benefit was only available to married employees. The investigation showed that the complainant did indeed receive the discount on her purchases but felt, since she was living at home, that this discount should have been extended to her parents. The facts collected showed that the complainant had not requested the discount for her parents. The employer reports that, had she done so, he would have been willing to comply.

6. A lady who was offered a job, by telephone, as a nursing assistant at a senior citizen's home asked if she could be written out of the work schedule for a particular religious holiday. She informed the employer that she was of the Jehovah Witness faith. An hour later she was contacted and the job offer was withdrawn. She contacted the Human Rights Commission immediately. A meeting between Commission staff and the employer resulted in the complainant starting work on schedule.

7. A lady who was unsuccessful in obtaining employment with a security company filed a complaint with the Human Rights Commission alleging sex discrimination. The Manager of the company noted to the investigating officer that some of his contracts preferred not to have female security guards. However, the complainant was contacted by the company immediately after the interview with the Human Rights Officer and offered a job. The complainant was satisfied with this and asked that the file be closed.

Sexual Harassment

1. A lady who resigned her job after running into some problems with a new manager, whom she believed wanted her replaced with his previous secretary, filed a complaint alleging sexual harassment against her previous manager. The company, who gave the complainant two weeks salary as severance pay upon termination, offered to re-employ her with job security, two additional weeks salary (\$595.83), and a written letter of reference. The complainant, who had found other employment, declined the job offer but accepted the money and reference as a satisfactory settlement.

2. A gentleman who filed a complaint against his male supervisor alleging sexual harassment agreed to settle for a small cash settlement. The gentleman had been employed on a short-term project and settled for the difference between lost wages and social assistance received after the termination of employment. He had alleged that his employment was terminated when he refused sexual advances.

3. A young woman, who was fired from her job after refusing to share a room with her employer during a business trip, filed a complaint with the Commission alleging sexual harassment. The complainant contacted other employees and ex-employees to determine if they had encountered similar experiences. As a result, the Commission received a second complaint against the same employer. The second complainant reported that she resigned from her job when she felt unable to cope with the advances of her employer. Derogatory comments were then reported to have been made in the community by the employer about the complainant. The investigator showed that the two complainants had reasonable grounds for their allegations. As a result of conciliation efforts, the respondent paid one complainant the sum of \$1,500 and published a notice in local papers apologizing to the second complainant.
4. A young woman was brought to the Commission office by her mother when she repeatedly became ill after her employer called her to return to work. She had been laid off on a temporary basis. A complaint of sexual harassment was filed with the Commission. The girl commenced employment with the respondent after completing high school. The alleged fatherly affection for the girl turned into sexual advances. The last encounter was reported to have entailed some force with the complainant receiving bruises. The complainant did not want any publicity because of concern and affection she felt for the respondent's family. She requested that the respondent refrain from contacting her. He agreed with her request and the complaint was closed. The respondent's offer of employment in an environment free from sexual harassment was refused by the complainant.

Harassment

1. A lady filed a complaint alleging harassment on the basis of sex against her employer after resigning from her job. She alleged her employer made sexist comments and thought it amusing to play jokes on her, such as grabbing her hand as she was writing or tickling her as he walked by her desk. The complaint settled for \$1,500.

Services

1. A lady filed a complaint with the Commission after a business would no longer honour her credit card. She was advised that her husband, from whom she is separated, had asked that the card be cancelled. The card had been issued to "Mrs." and the complainant was still receiving bills for the outstanding balance. The investigation showed that a joint application had been made by the complainant and her husband for the card. The manager agreed that the complainant would receive no more bills for the outstanding balance and invited her to complete an application to determine her eligibility for credit. This offer was acceptable to the complainant.

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Discrimination In Pay

1. A lady, employed as a cook in a local establishment, filed a complaint with the Commission alleging discrimination in pay when she learned that male co-workers were paid higher wages. The lady believed that she had more seniority than the two male cooks who were receiving higher pay. The investigation showed that, while the lady was the first of the three cooks to commence employment with the establishment, she did indeed have less seniority and experience. There were a number of years when the lady had worked for only a few months. Her employment had been on a full-time basis only the last four of the 20 years in question. She had received regular raises and promotions with the establishment. The two males had been employed as experienced cooks and had worked on a full-time basis since being hired about 10 years ago. The complaint was dismissed.

Ongoing Complaints

Thirteen complaints which were filed with the Human Rights Commission in 1986 but not resolved are being carried over to 1987. Eight of these complaints are employment related and four are being investigated under services.

1. Three ladies, who claim to have "full-time fishing licences", filed complaints with the Human Rights Commission when they were denied the opportunity to sell their catch of caplin. The plants and the local Committees have an agreement whereby, when fish are plentiful, the plant will only purchase from those designated as bona fide fishermen. The women allege that the Committees in question discriminated against women in making their selection. The Minister of Justice will be asked to appoint Boards of Inquiry to hear these complaints.
2. Two gentlemen filed complaints against Her Majesty The Queen In Right of Newfoundland when they were retired from their employment under provisions of The Uniform Services Pensions Act, alleging discrimination in employment on the basis of age. The Minister of Justice will be asked to appoint Boards of Inquiry to hear these complaints.
3. A gentleman filed a complaint against his employer, alleging discrimination on the basis of religion, when he was suspended from his job as a cashier at a local hospital for refusing to sell tickets for a social at which alcohol would be served. The Minister of Justice will be asked to appoint a Board of Inquiry to hear this matter.
4. A gentleman filed a complaint with the Commission, alleging discrimination in the provision of a service, when he was told he would have to pay a higher rate for voluntary life insurance that was being offered through his place of employment, because of a physical disability. This case is currently under investigation.

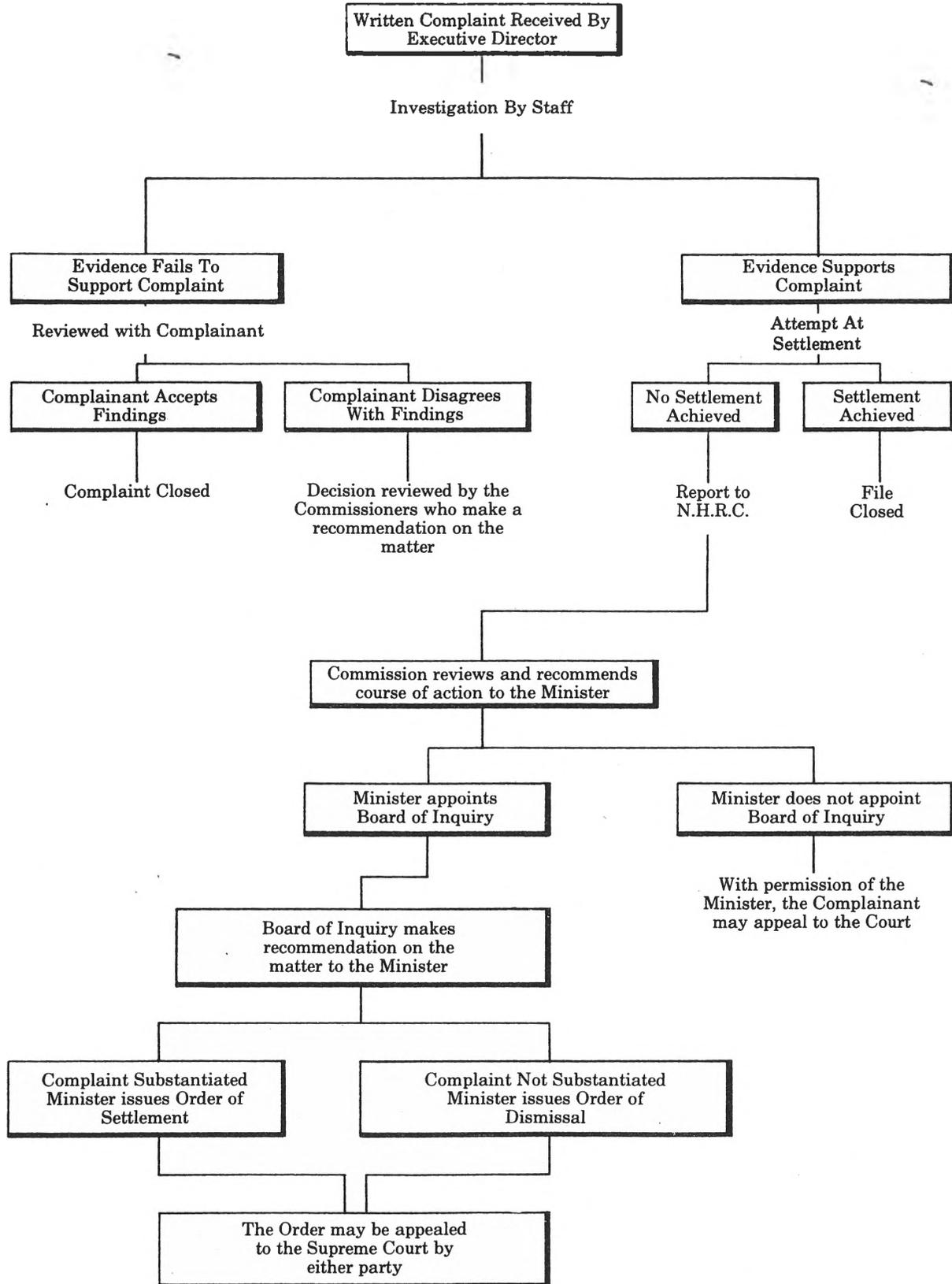
5. A complaint, from a teacher, alleging that a post-secondary institution is discriminatory in its admissions criteria on the basis of ethnic origin is still under investigation. The policy required applicants whose mother tongue was not English, including those educated in Canada, to undergo an English proficiency examination.

6. The investigation into the complaint from a gentleman who was quoted a higher rate of automobile insurance when the insurance agent learned that he was in a wheelchair, has been concluded. A cash settlement has been offered which is acceptable to the complainant but the details of the settlement have not yet been finalized.

7. A blind gentleman complained to the Human Rights Commission when he was denied an opportunity to apply as a partner for a party licence to hunt moose. He is of the opinion that it is unnecessary for both partners to be able to shoot and felt that the present policy discriminates against the disabled.

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THE COMPLAINT PROCEDURE



NEWFOUNDLAND HUMAN RIGHTS COMMISSION

Complaint Form

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File No.

To: Gladys Vivian
 Executive Director, Human Rights Commission
 Box 4750, St. John's A1C 5T7

I, _____ of _____
 Complainant Street

City Province Postal Code Telephone No.

HAVE REASONABLE GROUNDS FOR BELIEVING THAT

Respondent Company Telephone No.

of _____
 Street City Province Postal Code

IS ENGAGING OR HAS ENGAGED IN A DISCRIMINATORY PRACTICE ON OR ABOUT

_____ ON THE GROUND(S) OF _____

Date

IN CONTRAVENTION OF THE NEWFOUNDLAND HUMAN RIGHTS CODE.

The particulars are as follows: _____

Dated at _____ this _____ day of _____, 19 _____

City

COMPLAINANT'S SIGNATURE

WITNESSED BY:

If applicable, read to Complainant by _____

this _____ day of _____, 19 _____

Poster Contest

In 1986, the Newfoundland Human Rights Commission sponsored its first ever poster contest in the schools. The contest was one of several activities of the Commission to celebrate December 10, the thirty-eighth anniversary of the signing of The Universal Declaration of Human Rights.

The contest, which was open to grades five, six and seven, proved to be a great success. More than 1000 entries were received from 51 schools across the province. We were very impressed with the quality of posters submitted. They reflected a broad understanding of human rights issues on the part of the students.

The contest received considerable support from the business community who provided prizes for our three winners. In addition to the three winners, the judges felt that nine other posters were such high quality that they awarded them honourable mention. All participants were sent a certificate of appreciation signed by the Chairperson and the Executive Director.

The Human Rights Commission printed, for promotional purposes, 2000 copies of the first place poster as shown on the cover of this report. The winning entry was submitted by Susanne Shawyer, Bishop Feild School, St. John's.



Executive Director, Gladys Vivian and the Honourable Lynn Verge, Minister of Justice, shown with first place winner, Susanne Shawyer, and second place winner, Sandi Medeiros.



The first place winner, Susanne Shawyer, being interviewed by the news media. On the far left is the Minister responsible for human rights, the Honourable Lynn Verge, Minister of Justice.



Susanne Shawyer, first place winner, and Sandi Medeiros, second place winner, shown with Human Rights Officers Keith Garland and Joanne Payne-Philpott. Both girls were weekend guests of Hotel Newfoundland. Transportation was provided by Canadian Pacific. The girls also received cash donations from The Newfoundland and Labrador Credit Union and Beothuck Construction. Hotel Newfoundland also provided a reception for the presentation of awards. The two officers commenced employment with the Human Rights Commission in October 1986, and the very successful Poster Contest was their first educational project with the Commission.

**Cases Investigated Under
The Newfoundland Human Rights Code — 1986**

	Brought Forward	New Cases	Settled	Withdrawn or Dismissed	Referred to Canadian Commission or other	Undisposed
SECTION 7						
— Sex		2		2		
— Marital Status		2		1	1	
— Ethnic Origin		2	1			1
— Physical Disability		3				3
SECTION 8						
— Social Origin		1		1		
SECTION 9						
— Race		1		1		
— Religion	1	2		2		1
— Sex	1	11	3	5	1	3
— Marital Status		2	1	1		
— Physical Disability	1	4	1	3		1
— Mental Disability	1		1			
— Political Opinion		3		1		2
— Age	1	4	3			2
SECTION 9(4)						
— Applications		1	1			
SECTION 10						
— Pay Discrimination		1		1		
SECTION 10.1						
Harassment						
— Sex	1	2	2	1		
— Physical Disability	1		1			
— Political Opinion		1	1			
SECTION 10.2						
— Sexual Harassment		4	2	2		
TOTALS	7	46	17	21	2	13