



# Celebrating Our Journey of Human Rights

1976-2016 Prince Edward Island Human Rights Commission


HUMAN  
RIGHTS



# 22 Years Ago

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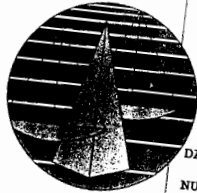
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TO: All Commissions FROM: Connie Cameron

MESSAGE:  
Our Commission is currently exploring the possibility of using the international networking system known as Internet. Please advise whether or not your Commission is presently on this system and if not, do you see any possibility of being on it in the near future? Thanks for your assistance.

IF YOU HAVE ANY PROBLEMS RECEIVING THIS MESSAGE, PLEASE CALL (902) 368-4180.

The Yukon  
Human Rights  
Commission



*Tthak Nihk'it  
Tr'igwindaii*

## FAX TRANSMISSION SHEET

TO: Connie Cameron  
PEI Human Rights Commission

FROM: Jean Nikon  
Yukon Human Rights Commission

DATE: February 2, 1994

NUMBER OF PAGES INCLUDING COVER: one

RE: Subject: Internet

FAX NUMBER: 902 - 368-4236

IF TRANSMISSION IS INCOMPLETE, PLEASE CALL (403)  
667-6226

REPLY REQUESTED YES NO

We are not currently on this system and do not see any possibility in the foreseeable future, mostly due to fiscal restraint and continued reduction in our budget.

*Did You Know?*

*It is discriminatory not to hire someone because they have a criminal record unless the conviction is related to the job. For example, you cannot refuse to hire someone to work at a call centre just because the person has a conviction for impaired driving.*

*Did You Know?*

*In 1998, amending the Act to add sexual orientation led to significant debate in the legislature. It was only agreed upon when the definition of marital status was amended to restrict protections to those in heterosexual relationships. The definition of marital status was later amended in 2008 to remove the words “of the opposite sex.” In 2013 when the Act was amended to protect gender identity and gender expression there was unanimous agreement to the amendments.*

*Did You Know?*

*Discriminatory attitudes and treatment cannot be justified by maintaining the status quo and saying, “Things have always been this way.”*

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# Greetings from Commission Chair John Rogers

It is with great pleasure that the Commissioners, staff and supporters of the Prince Edward Island Human Rights Commission celebrate its 40th anniversary.

The Commission plays many roles. Our two primary tasks are dealing with complaints and providing human rights education. We investigate and adjudicate complaints under the *Human Rights Act*; however, our staff encourages parties to settle their complaints whenever possible. The Commission provides education to the general public, potential complainants, and businesses or service providers who want to understand their rights and responsibilities. As a former educator, I am particularly pleased with the efforts of the Commission over the past number of years to develop resources and relationships with many schools across PEI. Educating our youth is the key to having a diverse and accepting community.

We created this publication to celebrate the developments of the Commission and human rights in PEI. I wish to acknowledge our current staff and Commissioners who have contributed to this publication and the work of the Commission.

Ben Roper is a law student who was hired with the support of a Canada Summer Jobs grant in 2016. He was responsible for researching and drafting this publication with input, support, direction, and editing from Brenda Picard, Executive Director; Lorraine Buell, Mediator/Intake Officer; Wendy Marie Baker, Human Rights Legal Officer; Tom Hilton, Education Project Officer and Josh Adams, Summer Law Intern.

Our current Commissioners are Alcide Bernard, Carmen de Pontbriand, George Lyle, Hon. Ellen Macdonald, Maurice Rio, and me. I thank the Commissioners for their contribution to this publication and to the work of the Commission. On their behalf, I invite all people on Prince Edward Island to commit to the continued advancement of human rights in the Province and the pursuit of dignity and respect for all, which is the true spirit of the *Human Rights Act*. Please join us in this pursuit and in celebrating this important milestone.

John Rogers, *Chair*

Prince Edward Island Human Rights Commission

*Did You Know?*

*Everyone has the right to use washrooms and change rooms based on their lived gender identity. Providing gender-inclusive facilities can help avoid allegations of discrimination in your organization.*

*Did You Know?*

*New corporate research indicates that companies with more diverse workforces perform better financially. Diverse companies are able to win top talent and improve their customer base, employee satisfaction, and decision making. That leads to increased profitability.*

*Did You Know?*

*The Human Rights Act was amended in 1998 to prohibit discrimination on the ground of sexual orientation but based on case law from around the country the Commission started accepting complaints about sexual orientation discrimination five years earlier under the ground of sex.*

*Did You Know?*

*“No person not being a blind person shall carry or use a white cane in any public thoroughfare, public conveyance or public place.” White Cane Act*

## Congratulations from Supreme Court of Canada Justice Thomas Cromwell

Human rights laws express some of our highest aspirations and, in some respects, set a benchmark of mutual understanding and respect that should be at the core of our life together. Many people in Canada cannot afford to vindicate their rights – even their fundamental human rights – in the courts. That is one of the factors that makes the work of Human Rights Commissions so important: the Commissions strive to give people an accessible forum to protect the basic rights that belong to everyone. The PEI Human Rights Commission, like its counterparts in other jurisdictions, works to carry out this important mandate to bring justice to Canadians whose human rights have been violated.

We have become a society that embraces ethnic, gender and religious diversity and in no small measure our human rights protections have helped us to do so. The work of building a society that is free from discrimination and embraces difference will never be completed and so the work of human rights commissions must and will go on, helping to form the society that we aspire to be.

I extend my warmest congratulations and appreciation to the PEI Human Rights Commission on its 40th anniversary and wish the Commission well as it continues its fundamentally important work.

Justice Thomas Cromwell



# PEI Human Rights: Past, Present and Future



Above: PEI Human Rights Commission office, 53 Water Street, Charlottetown. Photo: Wendy Marie Baker.

PEI first recognized human rights when it passed the *Human Rights Code (Code)* in 1968. The *Code* prohibited discrimination on the grounds of race, religion, religious creed, colour and ethnic and national origin. The *Code* also included an equal pay provision regardless of an employee's gender. The *Code* did not set up a Commission and responsibility for the enforcement of the *Code* was with the Minister of Labour. The *Code* was not designed to override other legislation.

Between 1968 and 1975 there was little public education about the *Code* and very few complaints. A 1975 report demonstrated that the public was not seeking the protections of the *Code*. The report recommended updates to the *Code*, including the creation of an independent administrative body to promote and enforce human rights.

In September 1976, the *Human Rights Act (Act)* came into force and with it came the creation of the Human Rights Commission. The mandate of the Commission is to administer and enforce the *Act*, to provide public education and promote human rights awareness.

A significant change to the *Act* was that the anti-discrimination provisions were deemed to prevail over all other laws of the Province. The Province was given three years to make its other legislation consistent with the *Act*.

In the 1976 amendments, the grounds of sex, marital status, association (with a person protected by the *Act*) and political belief were added to the *Act*. Over the years many changes have been made to the grounds of discrimination set out in the *Act*. A chart showing the Evolution of the PEI *Human Rights Act* can be seen at page 14.

The first Commission meeting took place in late September 1976 on Kent Street in Charlottetown, in an office above Sam the Record Man. The Commission Chairperson was Reverend James Kelly. Paul Mullin and Bea Mair were the first Commissioners. Their main task was to educate themselves on the *Human Rights Act*, and establish what the role of the Commission would be.

As human rights administration was new to PEI, the Department of Labour arranged for the Commissioners to attend training seminars in New Brunswick and Nova Scotia, and for the Chairperson to take a course at the University of Toronto. Armed with knowledge and limited resources, the Commission began the work of promoting human rights for the people in Prince Edward Island.

Today, the Commission is located at 53 Water Street. It has grown in size and purpose, and it has grown into its role as the centre for human rights progress on PEI. The services of the Commission are free, and people from all backgrounds enjoy its protection.



Above: Current Chair John Rogers meets past Chair Paul Mullin. Mr. Mullin was a Commissioner from 1976-1979 and Chair from 1979-1980. Mr. Rogers has been a Commissioner since 2008 and was appointed Chair in 2015.

September 11, 2016, marked the 40th anniversary of the Commission. We have created this publication to commemorate this anniversary and to highlight some of the developments in human rights on PEI. We also want to celebrate the Commission's current work as an educator, and promoter of human rights. The Commission has always had challenges and will continue to see those in the future. As progress is made in some areas, new issues emerge. We invite you to join us in celebrating 40 years of progress, challenges and changes.

*“We knew we were pioneers. And it was so exciting to have people start showing up on the doorstep wanting interpretation of their rights”*

Bea Mair, Commissioner

*“I was uncertain of where to begin, fearful of getting it wrong, and honoured to be considered worthy of the appointment and to be able to work with such bright and talented people as Fr. James Kelly and Ms. Bea Mair.”*

Paul Mullin, Chairperson

## ***FROM THE PEI HUMAN RIGHTS ACT...***

*“... the inherent dignity and the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world and is in accord with the Universal Declaration of Human Rights as proclaimed by the United Nations”*

# What is Discrimination?



In 1945, governments from around the world came together to form the United Nations. The UN, tasked with preventing conflict and promoting peace, moved quickly to draft and adopt the Universal Declaration of Human Rights in 1948. This caused a ripple effect, and today we see countries, provinces, territories and states all over the world enforcing human rights legislation.

The PEI *Human Rights Act* is based on the same principle as the UN Declaration, that every person is born free and with equal rights. The purpose of the PEI *Human Rights Act* is to prevent discrimination and to remedy discrimination when it occurs.

Discrimination in the dictionary sense means to make a distinction based on certain characteristics.

In some cases those distinctions are considered acceptable, for example refusing to sell liquor or cigarettes to children.

Each province or country designates which situations (“areas”) and which characteristics (“grounds”) will be protected against discrimination.

The PEI *Human Rights Act* protects people in the following areas:

- accommodations,
- employment,
- lease or sale of property,
- membership in a professional, business, trade or employee organization,
- publications, broadcasts, public displays and advertisements,
- services and facilities available to the public and
- volunteer work.

Personal relationships between family members and friends or neighbours are not covered by the *Act*.

The Human Rights Commission is an independent body which administers and enforces human rights laws on PEI. If a person, individually or as part of a group or organization, believes they have been discriminated against, they may file a complaint with the Commission. The Commission will work with the parties to attempt to resolve the issue. The Commission has power to investigate complaints and, if necessary, hold a Panel hearing to make a decision on the issues contained in the complaint.

The *Act* prohibits discrimination on the following grounds:

- age,
- colour,
- creed,
- disability,
- ethnic or national origin,
- family status,
- gender expression,
- gender identity,

- marital status,
- political belief,
- race,
- religion,
- sex,
- sexual orientation, and
- source of income.

Having a criminal record is also a protected ground, but only in the area of employment when the conviction is unrelated to that employment.

Discrimination can take many forms and may be intentional or unintentional. Some examples of discrimination include:

- refusing to hire or promote an employee due to their gender, race or religion,
- refusing to allow someone with a service animal to enter a restaurant or rent an apartment,
- harassing an employee at work due to their sex or sexual orientation,
- failing to make special arrangements at work to accommodate an employee with a disability when it would not cause undue hardship to the business to do so.

## ***ADVERSE IMPACT DISCRIMINATION***

Sometimes a rule or practice that applies to everyone and “treats everyone the same” may have the unintentional effect of unequal treatment of certain people or groups. For example, an employer has a policy that male employees must be clean-shaven. The employer refuses to hire a man who practices a religion that requires him to have a beard. The policy is not intended to deny jobs to men with this religious belief; however, it has that effect.

## ***RACISM***

Racism is the belief that one group or ethnicity is either superior or inferior to others. Racism can be seen in things like jokes and slurs. Sometimes racism is displayed in crimes against certain groups. Racism can be buried deeply in attitudes, values and stereotypes. People may not even realize they are thinking or behaving in racially discriminatory ways.

## ***SYSTEMIC DISCRIMINATION***

This refers to policies, practices or patterns of behaviour that are part of the structure of an organization, which create disadvantages for certain people or groups. For example, attitudes or long-standing practices may make it difficult for women to get jobs in fields traditionally dominated by men, or for people with disabilities and members of visible minorities to be promoted to high-level jobs.

# Disability, Mental Health and Human Rights

## SOME HISTORY...

The Human Rights Commission released a policy report to the media on October 20, 1982, stating:

***“... the Commission is offering the protection of the Human Rights Act to both inactive and recovering alcoholics. If an inactive alcoholic is denied a job based on his past alcohol record rather than on his job skills, training, aptitudes and experience, the Commission would accept a complaint form from the individual under ‘physical disability’”***

The press statement noted that in adopting this policy it was the first Commission in Canada to recognize that alcoholism is a disability in human rights law.

In the *Human Rights Act*, the ground of disability is broad and encompasses a wide range of physical, intellectual, neurological and psychological illnesses, injuries and impairments. Disability is the most common ground on which complaints are made. The majority of these complaints are in the area of employment. This is consistent with other provinces. Human Rights Commissions across the country put significant effort into dealing with complaints about disability in employment.

One issue the Commission has dealt with under the ground of disability is mental illness, which is included in the definition of disability. Although not all people who have a mental illness are disabled, those that are disabled are entitled to the protections of the Act. Mental illness can be a difficult subject to discuss, particularly in the workplace. People with mental illness may be labelled with generalizations and stereotypes, and this can lead to stigma and feelings of isolation, stress or fear. People living with mental illness may also face barriers in accessing services, gaining employment, or getting workplace accommodation once they are employed.

In 2011, the Commission helped organize and subsequently participated in a nation-wide forum on Mental Health in the Workplace. Representatives from human rights commissions across Canada discussed some of the barriers and challenges faced by people with mental illnesses in the workplace. They worked together to identify resources to help both employees and employers prevent human rights issues related to mental illness from arising at work.

Responding to a complaint that a woman was denied access to a disability support program because she was disabled by reason of mental illness, a 2016 Human Rights Panel determined that programs which provide supports for persons with disabilities must not exclude applicants because they are disabled by reason of mental illness. The Respondent in this matter has made an application for Judicial Review.

## ***ABLEISM***

Ableism may be defined as a belief system that sees persons with disabilities as being less worthy of respect and consideration, less able to contribute and participate, or of less inherent value than others. Ableism promotes stereotypes and enforces the belief that disability is an impairment or shortcoming rather than a simple consequence of human diversity. Ableism can limit the opportunities of persons with disabilities and reduce their inclusion in the life of their communities.

## ***JUDICIAL REVIEW***

Judicial Review is not an appeal, and it is not a rehearing of a case. When someone asks the Supreme Court of Prince Edward Island for a Judicial Review, the Court's role is to review the process used by the Commission to be sure the process was correct and the decision was made in a reasonable and fair manner.

# Duty to Accommodate: A Shared Responsibility

In many settings, accommodation is necessary to allow people with disabilities to access buildings, obtain services or perform job duties. Accommodation must be assessed on a case-by-case basis. What is an adequate and reasonable accommodation for some may not be so for others.

The duty to accommodate persons with disabilities means accommodation must be provided in a way that is respectful and does not take away from the dignity of the person. Respecting the dignity of others requires consideration of how accommodation is provided and how the individual will participate in the process.

Employers and service providers are required by law to accommodate an individual's disability-related needs up to the point of undue hardship. This means the accommodation needs of individuals must be met by the employer or service provider up to the point at which they become cost-prohibitive or pose a risk to the health and safety of the person requesting the accommodation or others. In most cases, accommodating the needs of an individual with a disability is not as expensive or difficult as employers or service providers may assume; however, like the need for accommodation, claims of undue hardship are determined case-by-case. What creates an undue hardship for one organization may not create undue hardship for another.

Accommodation is a shared responsibility between the person requiring accommodation and the organization providing it. To accommodate a person with a disability, an organization must first know about the disability and the needs of the individual requesting accommodation. It is the responsibility of the person requesting accommodation to identify their needs, and it is the responsibility of the organization to put accommodations in place that are adequate and reasonable based on those needs.

A large part of the Commission's work involves informing individuals and organizations about the accommodation process. Employees often contact the Commission seeking information about the accommodations to which they are entitled and employers often contact us to ask what steps they are required to take to accommodate their employees. We encourage all parties concerned about their rights and responsibilities to contact the Commission before disputes arise.

In many ways, the duty to accommodate shows what human rights is all about; collaborating to overcome issues that may result in unfair treatment.

## ***EXAMPLES OF ACCOMMODATION***

Accommodations for people with disabilities may include:

- changing or adjusting hours of work
- modifying job duties
- creating a plan for individualized absenteeism
- Making physical changes to the workplace
- Purchasing assistive technology or devices

### ***IF YOU ARE AN EMPLOYER***

- Be proactive in establishing a diverse and inclusive workplace.
- Foster a harassment-free workplace.
- Encourage open communication with employees about their needs.
- Contact the Human Rights Commission if you have questions about your rights or responsibilities as an employer.

### ***IF YOU ARE AN EMPLOYEE***

- Communicate openly with your employer about the accommodations you require. Your employer must be aware of your needs before they can accommodate them.
- If appropriate, provide your employer with documentation from your doctor or health professional describing your accommodation needs.
- Contact the Human Rights Commission if you have questions about your rights or responsibilities as an employee.





# Accessibility and Universal Design

People with disabilities can face significant barriers in almost every aspect of daily life. Common tasks such as banking, grocery shopping, or going out to dinner and a movie with friends can present a challenge for some people with disabilities. Many people with disabilities are unable to drive and must rely on other forms of transportation such as buses and cabs. For others, transportation presents less of a challenge than physically entering an establishment, obtaining services from a business or accessing a public washroom.

Human rights law requires that employers and service providers make their facilities accessible for persons with disabilities. Being accessible means ensuring both unassisted direct access and compatibility with assistive devices. For example, unassisted direct access might include putting Braille on elevator buttons to allow a blind person to use it without assistance. Installing a ramp for individuals who use walkers or wheelchairs is an example of compatibility with assistive devices.

Accessibility can be achieved by using the principles of universal design. Universal design is a concept meant to create products, devices, buildings and environments that are usable or accessible to people with a wide range of abilities, in a wide range of situations.

Curb cuts are a good everyday example of universal design. Curb cuts are intended to assist wheelchair users in accessing sidewalks and street crossings, but they are more often used by people with strollers, shopping carts, hand trucks, or wheeled luggage than by wheelchair users. Originally, curb cuts were designed with only wheelchair users in mind. Later, they had to be redesigned to accommodate the needs of blind and low vision individuals, and to ensure that they were as safe as possible in severe weather conditions. From this example, we can see that universal design benefits everyone. To achieve this goal, everyone's needs must be taken into consideration and universal design principles should be considered from the beginning.

## **CONSIDER THIS:**

The next time you are in public, consider these things from the perspective of a person with a disability:

- How would you enter your favourite restaurant or business? Are there access ramps and automatic doors? Are there curb cuts and barrier-free parking spaces? Are the entrances and exits marked clearly?
- Do apartment buildings in your community have elevators?
- Do businesses and public buildings have high-contrast signs? Adequate lighting? Barrier-free washrooms?
- Do public service providers in your area offer forms and publications in alternative formats such as Braille, large print or electronic text? Do they offer sign language interpretation?

## *FOR EMPLOYERS AND SERVICE PROVIDERS*

- Instead of accessibility being an afterthought, design products and places to be as accessible as possible.
- Provide training and other work materials in alternative formats such as audio, Braille, or large print.
- Provide sign language or captioning for people who are Deaf or hard of hearing.
- Make physical accessibility a priority. Consider automatic entry doors for common areas.
- If you operate on street-level be mindful of sidewalk space. Arrange signs and tables to keep sidewalks safe and open for pedestrians. Remember pedestrians include children, seniors and people with disabilities.
- Consult with your community to find out what their needs are and be responsive to those needs.
- If you have questions, contact the Human Rights Commission.



# Evolution of the Prince Edward Island *Human Rights Act*

**1968**

The Human Rights Code is passed, protecting the grounds of race, religion, religious creed, colour, ethnic and national origin.

**1980**

Age and physical disability become protected grounds. The ground of age applies only to persons between the ages of 18 and 65.

**1989**

The definition of political belief is amended.

**1968**

**1976**

**1980**

**1985**

**1989**

**1976**

The *PEI Human Rights Act* is passed, and the PEI Human Rights Commission is created.

**1976**

Sex, marital status, association, and political belief are added as protected grounds.

**1985**

Mental handicap becomes a protected ground. The ground of age is amended to include people of any age.

**1997**

Powers of the Human Rights Commission are increased. A new Panel of Commissioners is created.

**1998**

Family status, sexual orientation, source of income, and criminal conviction become protected grounds. The protected ground of criminal conviction applies only to the area of employment.

**1998**

Marital status is defined as being married ... or living with a person of the opposite sex.

**2012**

Physical or intellectual disability is replaced with disability.

**1997**

the Executive Director are and the Board of Inquiry changed to a Human Rights Commissioners.

**1998**

**2008**

Physical or mental handicap is replaced with physical or intellectual disability in the definition of disability.

**2008**

"Of the opposite sex" is removed from the definition of marital status.

**2008**

**2012**

**2013**

Gender expression and gender identity become protected grounds.

**2013**

# Sex Discrimination

Almost half of the Canadian workforce is women.

Most employers know they must treat all employees with fairness and respect, and they know they cannot discriminate on the basis of sex; however, sex discrimination in employment, remains the second most common ground for complaints received by the Commission.

One of the highest profile cases in the history of the Commission was a complaint of discrimination on the basis of sex. The Complainant alleged that she was harassed and discriminated against before her assignment, during her tenure as a minister, and when she was dismissed from the Ministry. The hearing of this matter took 28 days.

The Human Rights Panel found the Complainant had been discriminated against and recognized that she was subjected to hate mail, stalking, and a campaign of harassment. In addition to a significant damage award, the Panel ordered the Respondent to either reinstate her or employ her in another position acceptable to her.

This case is a noteworthy example of how justice is done through Human Rights adjudication. By filing a complaint with the PEI Human Rights Commission, the Complainant had access to a forum which, in the end, affirmed her rights.

Most complaints are not like this one in terms of their scale and complexity. The Commission, however, continues to receive complaints from women alleging that they have been harassed or dismissed because they were pregnant or simply because they are women.



## PAY EQUITY

The *Human Rights Act* prohibits paying employees different wages based on any protected ground of discrimination. People should receive equal pay for equal work, regardless of their personal characteristics.

# Education and Public Outreach: *The 4Rs* and Beyond

The Commission promotes inclusion and human rights awareness through public outreach and education programs. We celebrate these programs as an important part of our mandate and a way for us to engage with the community.

Many people contact the Human Rights Commission seeking information. We use these inquiries as an opportunity to educate people on an individual basis, and we encourage people to contact us to discuss their questions or concerns. Commission staff can provide general information and suggestions for how to prevent or resolve human rights conflicts. We recognize that each situation is unique and must be considered on a case-by-case basis. The Commission does not provide legal advice.

The Commission conducts group presentations and information sessions to schools, businesses, service providers, and community members. In the last four years we have given human rights presentations to over 4,000 students and teachers.

As part of the Commission's education mandate, we developed *The 4Rs* project which stands for Rights, Responsibilities, Relationships & Resources. This is a curriculum resource program designed for teachers to infuse human rights education throughout their teaching practice. It focuses on exposing students to human rights and inclusion at early ages in order to prepare them to thrive in our diverse world.

Over the past three years the Commission has collaborated on *The 4Rs* project with the Law Foundation of PEI, the Mi'kmaq Confederacy of PEI, the Department of Education, Early Learning and Culture, the PEI Teachers Federation, ArtsSmarts, the English Language School Board,

and the UPEI Faculty of Education. Currently, there are Teachers' Toolkits available for grades K-6. There is also a 12-lesson package for grade 9 social studies classes focused on the history and legacy of Canada's Indian Residential School system. Currently, these resources are available in English, and we hope to have them available in French in the near future.



Mi'kmaq Honor Drum created by Summerside Intermediate School grade 9 students under the direction of artist and drummer Gilbert Sark, Lennox Island First Nation.

Indian Residential Schools Resource Pilot May 2016

# Pregnancy and Parenting

Human Rights Commissions across Canada have helped to ensure that women do not need to choose between their families and their jobs. Thanks to advancements in employment, labour and human rights standards, employers cannot screen-out potential employees by asking questions like these in a job interview:

- “Are you pregnant?”
- “Do you plan to become pregnant or start a family?”

Human rights protections state that women cannot be refused employment, fired or demoted because of their reproductive choices. This also applies to opportunities, promotions, training, and important or challenging assignments.

Although there has been progress over the last 40 years, a case from 2012 demonstrates there is still work to be done. The Complainant alleged that less than a month after starting her job, she told her employer that she was pregnant, and forty minutes later her employment was terminated. The Respondent stated that she would have been dismissed regardless of her pregnancy. The Human Rights Panel determined there was a connection between her pregnancy and the termination of her employment, and found that discrimination had occurred. The Panel ordered the Respondent to pay damages.

Employers should also be aware of the need to accommodate parents who have obligations to care for their children. Although parents have a high responsibility to meet the demands of the job while also providing care for their children there may be times when employers will have to make accommodations. An example of this may be a shift worker who has no family support and cannot make child care arrangements for late night shifts. This is an area that requires ongoing communication. Accommodation at work should only be requested as a last resort.



### ***Breastfeeding***

- ***Harassment on the basis of breastfeeding or pregnancy is considered sex discrimination under the PEI Human Rights Act.***
- ***No one has the right to stop you from breastfeeding in public. No one may disturb you or ask you to cover up.***
- ***Your employer must accommodate you and your baby's needs, up to the point of undue hardship. What this looks like will depend on your job. Some jobs may require small changes such as more frequent breaks to accommodate your needs, while others may require significant changes such as adjustment of job duties.***
- ***If you require accommodation, you have the responsibility of explaining your needs to your employer.***





# Women on the Police Force

Making workplaces accessible for women is not just about having more women employed – it's also about opening careers up to women in fields which have traditionally excluded them. Historically, the fields of policing, firefighting and paramedicine have left little room for participation by women, but this is changing.

In 1985, Gladys filed a complaint in which she alleged that she was refused a position as a police officer because of her sex. When the Board of Inquiry overseeing her complaint released its decisions in March and June 1986, it determined discrimination had occurred and ordered the Respondent to offer Gladys a job as a police officer. She was awarded damages as well.

What really mattered to Gladys was not the damage award. Recently, she made the following comment about the Panel's decision:

Is there any amount of money that would have made you feel as compensated as you did from getting the job?

***“No, I had the training and I should have been offered the job. It was really about the job – that I could do it. The money wouldn't have proven that. It was more about my status as a person.”***

***Gladys (Complainant)***

In 2003, the Commission investigated another complaint of sex discrimination in policing. The Complainant alleged that, because of her sex, she was unable to move from casual to full time work as a police officer. She alleged there were barriers for her that men did not face. The Human Rights Panel gave close scrutiny to the fact that one of the Complainant's superiors was overheard saying the town was “not ready for a female [police officer].” The Panel found there was discrimination in this police department. The Respondent was ordered to pay damages to the Complainant and the Panel urged the Respondent to develop better procedures for selecting, supervising and evaluating its personnel.

Since these decisions the Commission has seen policing become more open to women. In the last eight years, PEI has had two female commanding officers of the RCMP and local departments are also recognizing the benefits of diversity on the police force.

**Kensington Chief of Police:** Lewis Sutherland was working in Nova Scotia in 2003. He was hired as Chief of the Kensington police in 2005. His leadership and attitudes embody an evolving standard of diversity and inclusion in policing. His first decision as Chief of Police in Kensington was to hire a female officer.

*“When I read [the 2003] case, it’s not the way it should be. Now, I have four female dispatchers, one female police officer, and at one point I had two. We’re all equal, and we’re ready for more women in policing. You have to have female officers – I couldn’t operate without one.”*

*Lewis Sutherland*



# Girl Power: Sex Discrimination in Hockey



The Human Rights Commission has dealt with many issues over the last 40 years. One of these is equality for girls in minor hockey.

Prior to 1984, the PEI Hockey Association (PEIHA) refused to allow girls to compete with boys in playoff games. This meant that a co-ed hockey team in Central Queens was disqualified from the playoffs because without their three female players they did not have enough players to form a team. The girls, with their parents, filed a human rights complaint against the PEIHA.

Robyn, who is now an educator, was one of those girls. She remembers the impact of being unable to play. It affected her family, coach and teammates as well as her community. Her community was involved in and supportive of the complaint process.

At the time, there were only five 12-and-under female-only teams in all of PEI. This was an essential aspect of the complaint – for most girls there was simply no option other than playing on a boys team.

Despite this, the PEIHA President was quoted as saying, “Boys should play with boys and girls should play with girls.”

The Commission ruled that the PEIHA was discriminating on the basis of sex. On March 1, 1984, the Commission released the following statement:

***“Minor hockey playoffs fall within the definition and meaning of ‘an access to a service and facility’ of the Prince Edward Human Rights Act.... What the Human Rights Act requires in this situation is that children not be denied an equal opportunity to participate in competitive sports at an appropriate skill level or age level. Specifically, the Act prohibits denial of an opportunity to participate in competitive hockey on the basis of sex.”***

Over the last 30 years, hockey has become more open to female players. Women’s hockey was added as a sport in the Canada Winter Games in 1991 and in the Winter Olympics in 1998.

Hockey on PEI has grown because of girls playing the game. While male registration has remained about the same since 1994, female registration has increased by about 675 percent! There are boys' and girls' hockey teams available in many communities in PEI. There is also flexibility in allowing girls to play on boys' teams and boys to play on girls' teams.

Is there a message that you want to send to female hockey players today?

*I feel strongly that playing hockey has made me who I am. Don't take that for granted, and don't waste the opportunity.*

*The complaint process created an awareness that still shapes my life as an educator and a coach. Standing up for my human rights taught me that when you have patience and talk to the right people, change can happen. I remain involved in hockey, and today I see a more open, inclusive sport for girls.*

*- Robyn, Complainant*



# LGBTQ2 and Human Rights



Above: Montague and Charlottetown students, carrying the Commission Logo, lead the Human Rights Commission Float in the 2016 PEI Pride Parade. Photo: Dale Sorensen.

LGBTQ2 is an umbrella term that encompasses a broad spectrum of genders and sexualities. An acronym for Lesbian/Gay/Bisexual/Transgender/Queer/2-Spirited, LGBTQ2 is sometimes shortened to LGBT or lengthened to include other sexual or gender identities.

As gender identity provides no information about sexual orientation (and vice versa), it is important to know that LGBTQ2 individuals are not all the same. Labels or categories cannot capture the diversity and uniqueness found in every person. The one thing we all have in common is that not one of us is the same as anyone else.

LGBTQ2 children and youth may face hardships at school and at home ranging from verbal or emotional abuse to assault. Access to washrooms is simple for many, but for gender-diverse individuals it may present a struggle. These are just a few examples of the challenges LGBTQ2 people deal with every day.

Work and public spaces are adjusting to the fact that today laws protect LGBTQ2 rights, but more still needs to be done to embrace gender and sex diversity fully. It is important to know that establishing a diversity-friendly space is not only the law – it carries tangible rewards for everyone.

Research has shown that discriminatory attitudes, such as homophobia and transphobia, can hurt productivity, employee retention, and undermine the full potential of an organization. These attitudes prevent the kind of atmosphere in which people thrive – where they feel integrated with their coworkers and free to form closer professional and personal relationships with them.

Employers and service providers should be proactive in creating spaces that are compatible with diverse gender identities and expressions. This starts with promoting a culture that embraces diversity. It may be difficult to know where to begin, so we offer some suggestions.

## **FOR EMPLOYERS AND SERVICE PROVIDERS**

- Everyone has the right to be called by their chosen name.
- Don't generalize people – individualize them. Recognize that each person carries their own unique identity.
- The only way to learn how someone identifies their gender or sex is to have a conversation. People should be referred to using preferred pronouns, regardless of what their I.D. or driver's license says. If someone identifies with feminine pronouns, use “she” and “her”. If you are unsure of the right pronoun, ask the person which they prefer.
- People with diverse gender identities should not experience negative treatment or attitudes at work. Organizations can be held liable for any discrimination or harassment that occurs in their spaces.
- Dress codes should not interfere with gender expression or be sexist.
- A person who identifies as transgender does not have to undergo medical or surgical procedures to express their identity.
- It is always up to the person to decide whether and to whom they disclose their gender or sexual identity.

### ***Clarifying Gender as a ground of discrimination...***

***In 2013, the PEI legislature passed an amendment to the Human Rights Act to specifically name gender identity and gender expression protections. Prior to this, these were protected under the ground of sex. This change has helped to better identify human rights protection for gender-diverse persons. It also makes it clear that businesses and service providers cannot discriminate on the basis of gender.***

### **CONSIDER THIS:**

Maturing through adolescence is complicated for individuals who do conform to gender norms. Imagine the challenges faced by those who don't. Which sports team do I play on? Which bathroom do I use? How can I get my friends and teachers to call me by my preferred name?

### ***Did You Know?***

***In 2016 the Vital Statistics Act was amended so that a person can have their birth certificate changed to reflect their gender identity without the need for the person to undergo medical or surgical procedures.***

# Mandatory Retirement and Age Discrimination

The *Human Rights Act* prohibits discrimination based on age. This means someone cannot be denied a job, or a promotion because of their age; however, employers do have the right to make decisions based on age if age is essential to a qualification of the job, such as being of legal age to hold a driver's license or to serve alcohol. In recent years, the Commission has dealt with the question of whether a mandatory retirement age is discriminatory.

An employer on PEI had a policy which required employees to retire at 65. Six employees each filed separate complaints with the Commission alleging age discrimination. In a February 2010 decision, the Human Rights Panel ruled that the mandatory retirement policy was discriminatory. The employer sought judicial review of the Panel's decision. On judicial review, the Supreme Court of Prince Edward Island dismissed the application and did not disturb the Panel's decision. The Complainants were reinstated at work and given retroactive pay.

Another case involved several bus drivers who were forced to retire at 65 because of a mandatory retirement policy. In this case, the question was whether the employer was correct in its assertion there were safety issues with bus drivers being over age 65.

The matter was scheduled to be heard before a Human Rights Panel but the Complainants and the employer resolved the issue prior to the hearing.

Recent decisions finding mandatory retirement policies discriminatory have been part of a larger, Canada-wide trend. In most cases, employees are becoming increasingly allowed to decide for themselves when is the best time to retire.

## ***TIMES HAVE CHANGED...***

The Human Rights Commission has seen attitudes and policies surrounding mandatory retirement evolve over the years.

In 1992, a case involving a bus driver required to retire at 65 was adjudicated by a Panel of Inquiry. The Panel heard medical evidence supporting the position that age was a genuine consideration relating to safety concerns for school bus drivers. The Panel found the provision to be a genuine occupational requirement.

School bus drivers are no longer subject to a mandatory retirement policy based on age.

# Mediation and Settlement Services



The Commission encourages Complainants and Respondents to settle complaints on a mutually agreeable basis. The Commission's Mediator can facilitate formal mediation or informal settlement opportunities.

Our Mediator/Intake Officer reviews files during the intake process to assess whether the parties are open to mediation or settlement. Allowing parties to develop their own solutions through settlement discussion is more effective and satisfactory and less expensive than the tribunal process. It gives the parties the opportunity to settle their issues without waiting for an investigation or panel hearing. Settlements can be reached without a finding or acknowledgement that the matter complained of was discriminatory.

The parties enter into mediation voluntarily and mediations and settlements are confidential. Mediation sessions remain confidential, even if no settlement is reached. Settlements can include things such as policy changes of a

business or service, changes to physical elements of a place of business, re-employment of the Complainant, accommodation at the workplace (hours of work, physical space), an apology letter, letter of reference or financial compensation. Settlements often include an educational component for one or both parties to the complaint which is consistent with the Commission's mandate of providing human rights education.

The Commission has enjoyed a high degree of success in resolving complaints when parties choose to mediate. Approximately one-quarter of all complaints are resolved through mediation or settlement.

The Commission invites Complainants and Respondents to contact us if they wish to take advantage of our settlement services.

## ***LIMITATION PERIOD***

The *Act* states that a complaint must be filed within one year from the date the alleged discrimination took place. If the discrimination is alleged to have taken place over a long period of time, at least one act of discrimination must have occurred within the one year limitation period. It is not enough that the impact of the alleged past discrimination continues into the one-year limitation period.



# A Look Forward

Based on our observations of current trends, our own experiences on Prince Edward Island and the experiences and shared information of other Commissions across Canada, we can make some predictions about upcoming developments in human rights.

## Immigration and Refugees

With the increase in immigration to PEI and Canada, there is a risk of stereotyping, prejudice and other discriminatory attitudes and actions. Sometimes these things can go unchecked and unrecognized – even to the person who holds the beliefs. Particular examples include employers requiring Canadian experience on resumés, or having non-flexible language requirements, when these are not genuine requirements for doing the work. For qualified newcomers to Canada, this makes finding work here very difficult. People from different cultures and backgrounds should be able to live and work in a compatible way. Often used in the workplace, cultural competence practices help to promote inclusive attitudes, and help people understand cultural differences.

## Service Animals

Service animals include more than guide dogs for the blind. As service animals are trained to provide disability related services for a wide variety of disabilities, more understanding and accommodation is required. People who are blind, deaf or use wheelchairs may use service

animals to assist them with many needs. Other service animals are trained to respond to and assist individuals with invisible disabilities or mental illnesses, such as epilepsy or Post Traumatic Stress Disorder. An animal may be trained to alert its owner when the owner is going to have a seizure or when the owner's stress level is reaching a dangerous level. Service providers, landlords and employers should be aware of their responsibility to accommodate service animals where doing so will not cause undue hardship.

## Gender Identification

People are constantly filling out forms. On most forms we are asked to identify as male or female. This presents an exclusion for those who don't identify as either male or female, and for those who identify as a different gender than the one assigned to them at birth. The reality is, this information is often not necessary. This is an area in which we anticipate significant changes over the coming years. Identification documents used to include a reference to race but no longer do. There is a movement across the country to eliminate the need to put gender on identifying documents or business forms. The next time you fill out a form that asks your gender, think about how that information is relevant to the reason you are completing the form.

# HRC Chairs, Commissioners and Staff



2016 Commissioners and Staff. From left: Hon. Ellen Macdonald, John Rogers, Brenda Picard, Carmen de Pontbriand, Thomas Hilton, Alcide Bernard, Wendy Marie Baker, Maurice Rio, Lorraine Buell, George Lyle.

## Human Rights Commissioners and Chairs

	<b>Commissioner</b>	<b>Chair</b>
Rev. James Kelly		1976 - 1979
Bea Mair	1976 - 1978	
Paul Mullin	1976 - 1979	1979 - 1980
Ruth MacLeod VanInderstine	1978 - 1981	
Kenneth Birtwistle	1979 - 1985	
Rev. Allan F. MacDonald		1980 - 1986
Ruth MacLeod	1981 - 1987	
Richard Noonan	1985 - 1989; 1996 - 2006	
Rev. J. Leo Trainor		1986 - 1996
Shawna Sullivan Curley	1987 - 1989	

	<b>Commissioner</b>	<b>Chair</b>
Lila Arsenault	1989 - 1994	
Robert Campbell	1989 - 1996	
Louise Comeau	1994 - 2001	
Rev. Wayne Burke	1995 - 1995	
George S. Kells		1996 - 2006
Angie Cormier	2001 - 2004	
Richard Montigny	2004 - 2006	2006 - 2009
Ann Sherman	2004 - 2009	2009 (acting)
Anne Nicholson	2004 - 2009	2009 - 2015
Gerry O'Connell	2006 - 2008	
Maurice Rio	2006 - 2009; 2012 - current	
Lou Ann Thompson	2006 - 2013	
John Rogers	2008 - 2015	2015 - current
Alcide Bernard	2011 - current	
Arthur Currie	2009 - 2011	
George Lyle	2009 - current	
Robert Acorn	2012 - 2015	
Carmen de Pontbriand	2014 - current	
Hon. Ellen Macdonald	2014 - current	

## **Staff at the Commission**

### **Executive Director**

Mark Arnold	Executive Secretary/Director	1978 - 1979
Thomas Klewin	Executive Director	1979 - 1989
James M. Wyatt	Executive Director	1989 - 1999
Gregory Howard	Executive Director	1999 - 2007, 2010 - 2013
James Hornby	Executive Director	2007 - 2008
David Larter	Executive Director	2008 - 2009
Brenda Picard Q.C.	Executive Director	2013 - current

### **Human Rights Investigator / Compliance Officer / Legal Officer**

Bea Mair	Special Investigator	1979
Virginia Bulger	Temporary Investigator	1986
David MacFadyn	Temporary Investigator	1986
Lorraine Begley	Political Belief Complaint Investigator	1989
Irene Larkin	Political Belief Complaint Investigator	1989
John Dalton	Compliance Officer (part time)	1994 - 1997
Trudie A. MacKinnon	Compliance Officer	1997 - 1999
Patricia M. Butler	Assistant Compliance Officer	1998 - 1999
Janet Christian-Campbell	Compliance/ Human Rights Officer	1999 - 2003
Jacqueline R. O'Keefe	Human Rights Officer	2003 - 2007
Yolande Richard	Human Rights Officer	2007 - 2008
Maria McQuaid	Human Rights Officer	2009 - 2010
Wendy Marie Baker	Human Rights Legal Officer	2010 - current

### **Administrative / Research / Intake / Mediator**

Linda Birt	Secretary (part time)	1977 - 1978
Leah Clearwater	Secretary	1978 - 1979
Sherry Finley	Administrative Assistant	1979 - 1984
Jewel MacDonald	Secretary, Research & Intake Officer	1984 - 1986
Frances Piercey	Admin Assistant, Research-Intake Officer	1986 - 1989
Connie Weatherbie	Administrative Support	1989 - 1994
Nancy Mollison	Administrative Assistant (part time)	1994 - 1997
Patricia M. Butler	Administrative Assistant	1997 - 1998
B. Lorraine Buell	Administrative Assistant / Intake Officer Mediator	1998 - current

### **Education Officer**

Patricia M. Butler	Education Officer	1999 - 2003
Mary Joan Campbell	Education Officer	2003 - 2005
Tom Hilton	Education Project Officer (contract)	2011 - current

## Resources and Guides

### **PEI Human Rights Commission**

902-368-4180

1-800-237-5031 (on PEI only)

53 Water Street

Charlottetown PE C1A 7N8

[www.peihumanrights.ca](http://www.peihumanrights.ca)

[contact@peihumanrights.ca](mailto:contact@peihumanrights.ca)

### **PEI Human Rights Information Guides (English and French)**

[www.peihumanrights.ca](http://www.peihumanrights.ca)

### **The 4Rs Teacher's Toolkit**

[www.peihumanrights.ca](http://www.peihumanrights.ca)

### **The PEI Helping Tree: From The Canadian Mental Health Association**

[pei.cmha.ca/files/2012/03/144630\\_Helping-Tree-Flyer\\_ENG\\_TOPLATE\\_aug15.pdf](http://pei.cmha.ca/files/2012/03/144630_Helping-Tree-Flyer_ENG_TOPLATE_aug15.pdf)

### **Kids Help Phone**

**1-800-668-6868**

[www.kidshelpphone.ca/](http://www.kidshelpphone.ca/)

### **Need Help Now: For Youth Being Cyber-Bullied or in Crisis**

[needhelpnow.ca/](http://needhelpnow.ca/)

Resources, organizations, youth groups and support groups can be found on the links page of our website at [www.peihumanrights.ca](http://www.peihumanrights.ca)