Saskatchewan Human Rights Commission 1982 Annual Report

CANADIAN CHARTER OF RIGHTS AND FREEDOMS

Whereas Canada is founded upon principles that recognize the supremacy of God and the rule of law:

Guarantee of Rights and Freedoms

1. The *Canadian Charter of Rights and Freedoms* guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.

Fundamental Freedoms

2. Everyone has the following fundamental freedoms: (*a*) freedom of conscience and religion; (*b*) freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication; (*c*) freedom of peaceful assembly; and (*d*) freedom of association.

Democratic Rights

3. Every citizen of Canada has the right to vote in an election of members of the House of Commons or of a legislative assembly and to be qualified for membership therein. 4. (1) No House of Commons and no legislative assembly shall continue for longer than five years from the date fixed for the return of the writs at a general election of its members. (2) In time of real or apprehended war, invasion or insurrection, a House of Commons may be continued by Parliament and a legislative assembly may be continued by the legislature beyond five years if such continuation is not opposed by the votes of more than one-third of the members of the House of Commons or the legislative assembly, as the case may be. 5. There shall be a sitting of Parliament and of each legislature at least once every twelve months.

Mobility Rights

6. (1) Every citizen of Canada has the right to enter, remain in and leave Canada. (2) Every citizen of Canada and every person who has the status of a permanent resident of Canada has the right (*a*) to move to and take up residence in any province; and (*b*) to pursue the gaining of a livelihood in any province. (3) The rights specified in subsection (2) are subject to (*a*) any laws or practices of general application in force in a province other than those that discriminate among persons primarily on the basis of province of present or previous residence; and (*b*) any laws providing for reasonable residency requirements as a qualification for the receipt of publicly provided social services. (4) Subsections (2) and (3) do not preclude any law, program or activity that has as its object the amelioration in a province of conditions of individuals in that province who are socially or economically disadvantaged if the rate of employment in that province is below the rate of employment in Canada.

Legal Rights

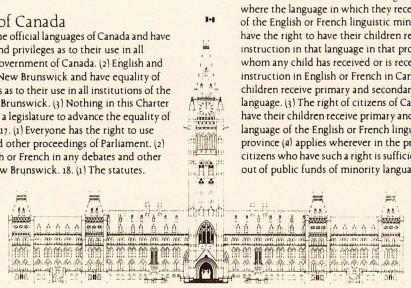
7. Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice. 8. Everyone has the right to be secure against unreasonable search or seizure. 9. Everyone has the right not to be arbitrarily detained or imprisoned. 10. Everyone has the right on arrest or detention (*a*) to be informed promptly of the reasons therefor; (*b*) to retain and instruct counsel without delay and to be informed of that right; and (*c*) to have the validity of the detention determined by way of *habeas corpus* and to be released if the detention is not lawful. 11. Any person charged with an offence has the right (*a*) to be informed without unreasonable delay of the specific offence; (*b*) to be tried within a reasonable time; (*c*) not to be compelled to be a witness in proceedings against that person in respect of the offence; (*d*) to be presumed innocent until proven guilty according to law in a fair and public hearing by an independent and impartial tribunal; (*e*) not to be denied reasonable bail without just cause; (*f*) except in the case of an offence under military law tried before a military tribunal, to the benefit of trial by jury where the maximum punishment for the offence is imprisonment for five years or a more severe punishment; (*g*) not to be found guilty on account of any act or omission unless, at the time of the act or omission, it constituted an offence under Canadian or international law or was criminal according to the general principles of law recognized by the community of nations; (*h*) if finally acquitted of the offence, not to be tried for it again and, if finally found guilty and punished for the offence, not to be tried or punished for it again; and (*i*) if found guilty of the offence and if the punishment for the offence has been varied between the time of commission and the time of sentencing, to the benefit of the lesser punishment. 12. Everyone has the right not to be subjected to any cruel and unusual treatment or punishment. 13. A witness who testifies in any proceedings has the right not to have any incriminating evidence so given used to incriminate that witness in any other proceedings, except in a prosecution for perjury or for the giving of contradictory evidence. 14. A party or witness in any proceedings who does not understand or speak the language in which the proceedings are conducted or who is deaf has the right to the assistance of an interpreter.

Equality Rights

15. (1) Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability. (2) Subsection (1) does not preclude any law, program or activity that has as its object the amelioration of conditions of disadvantaged individuals or groups including those that are disadvantaged because of race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

Official Languages of Canada

16. (1) English and French are the official languages of Canada and have equality of status and equal rights and privileges as to their use in all institutions of the Parliament and government of Canada. (2) English and French are the official languages of New Brunswick and have equality of status and equal rights and privileges as to their use in all institutions of the legislature and government of New Brunswick. (3) Nothing in this Charter limits the authority of Parliament or a legislature to advance the equality of status or use of English and French. 17. (1) Everyone has the right to use English or French in any debates and other proceedings of Parliament. (2) Everyone has the right to use English or French in any debates and other proceedings of the legislature of New Brunswick. 18. (1) The statutes, records and journals of Parliament shall be printed and published in English and French and both language versions are equally authoritative. (2) The statutes, records and journals of the legislature of New Brunswick shall be printed and published in English and French and both language versions are equally authoritative. 19. (1) Either English or French may be used by any person in, or in any pleading in or process issuing from, any court established by Parliament. (2) Either English or French may be used by any person in, or in any pleading in or process issuing from, any court of New Brunswick. 20. (1) Any member of the public in Canada has the right to communicate with, and to receive available services from, any head or central office of an institution of the Parliament or government of Canada in English or French, and has the same right with respect to any other office of any such institution where (*a*) there is a significant demand for communications with and services from that office in such language; or (*b*) due to the nature of the office, it is reasonable that communications with and services from that office be available in both English and French. (2) Any member of the public in New Brunswick has the right to communicate with, and to receive available services from, any office of an institution of the legislature or government of New Brunswick in English or French. 21. Nothing in sections 16 to 20 abrogates or derogates from any right, privilege or obligation with respect to the English and French languages, or either of them, that exists or is continued by virtue of any other provision of the Constitution of Canada. 22. Nothing in sections 16 to 20 abrogates or derogates from any legal or customary right or privilege acquired or enjoyed either before or after the coming into force of this Charter with respect to any language that is not English or French.



Minority Language Educational Rights

23. (1) Citizens of Canada (*a*) whose first language learned and still understood is that of the English or French linguistic minority population of the province in which they reside, or (*b*) who have received their primary school instruction in Canada in English or French and reside in a province where the language in which they received that instruction is the language of the English or French linguistic minority population of the province, have the right to have their children receive primary and secondary school instruction in that language in that province. (2) Citizens of Canada of whom any child has received or is receiving primary or secondary school instruction in English or French in Canada, have the right to have all their children receive primary and secondary school instruction in the same language. (3) The right of citizens of Canada under subsections (1) and (2) to have their children receive primary and secondary school instruction in the language of the English or French linguistic minority population of a province (*a*) applies wherever in the province the number of children of citizens who have such a right is sufficient to warrant the provision to them out of public funds of minority language instruction; and (*b*) includes, where the number of those children so warrants, the right to have them receive that instruction in minority language educational facilities provided out of public funds.

Enforcement

24. (1) Anyone whose rights or freedoms, as guaranteed by this Charter, have been infringed or denied may apply to a court of competent jurisdiction to obtain such remedy as the court considers appropriate and just in the circumstances. (2) Where, in proceedings under subsection (1), a court concludes that evidence was obtained in a manner that infringed or denied any rights or freedoms guaranteed by this Charter, the evidence shall be excluded if it is established that, having regard to all the circumstances, the admission of it in the proceedings would bring the administration of justice into disrepute.

General

25. The guarantee in this Charter of certain rights and freedoms shall not be construed so as to abrogate or derogate from any aboriginal, treaty or other rights or freedoms that pertain to the aboriginal peoples of Canada including (*a*) any rights or freedoms that have been recognized by the Royal Proclamation of October 7, 1763; and (*b*) any rights or freedoms that may be acquired by the aboriginal peoples of Canada by way of land claims settlement. 26. The guarantee in this Charter of certain rights and freedoms shall not be construed as denying the existence of any other rights or freedoms that exist in Canada. 27. This Charter shall be interpreted in a manner consistent with the preservation and enhancement of the multicultural heritage of Canadians. 28. Notwithstanding anything in this Charter, the rights and freedoms referred to in it are guaranteed equally to male and female persons. 29. Nothing in this Charter abrogates or derogates from any rights or privileges guaranteed by or under the Constitution of Canada in respect of denominational, separate or dissentient schools. 30. A reference in this Charter to a province or to the legislative assembly or legislature of a province shall be deemed to include a reference to the Yukon Territory and the Northwest Territories, or to the appropriate legislative authority thereof, as the case may be. 31. Nothing in this Charter extends the legislative powers of any body or authority.

Application of Charter

32. (1) This Charter applies (*a*) to the Parliament and government of Canada in respect of all matters within the authority of Parliament including all matters relating to the Yukon Territory and Northwest Territories; and (*b*) to the legislature and government of each province in respect of all matters within the authority of the legislature of each province. (2) Notwithstanding subsection (1), section 15 shall not have effect until three years after this section comes into force. 33. (1) Parliament or the legislature of a province may expressly declare in an Act of Parliament or of the legislature, as the case may be, that the Act or a provision thereof shall operate notwithstanding a provision included in section 2 or sections 7 to 15 of this Charter. (2) An Act or a provision of an Act in respect of which a declaration made under this section is in effect shall have such operation as it would have but for the provision of this Charter referred to in the declaration. (3) A declaration made under subsection (1) shall cease to have effect five years after it comes into force or on such earlier date as may be specified in the declaration. (4) Parliament or a legislature of a province may re-enact a declaration made under subsection (1). (5) Subsection (3) applies in respect of a re-enactment made under subsection (4).

Citation

34. This Part may be cited as the *Canadian Charter of Rights and Freedoms*.

"We must now establish the basic principles, the basic values and beliefs which hold us together as Canadians so that beyond our regional loyalties there is a way of life and a system of values which make us proud of the country that has given us such freedom and such immeasurable joy."

P.E. Trudeau 1981

The Challenge Ahead

Saskatchewan Human Rights Commission 1982 Annual Report

The Canadian Charter of Rights and Freedoms

Equality Rights

Equality before and under law and equal protection and benefit of law

15. (1) Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

Affirmative action programs

(2) Subsection (1) does not preclude any law, program or activity that has as its object the amelioration of conditions of disadvantaged individuals or groups including those that are disadvantaged because of race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

(To come into force April 17, 1985)

The Challenge Ahead

Saskatchewan Human Rights Commission Members

Ken Norman,
Chief Commissioner

Louise Simard,
Deputy Chief Commissioner

Chief Hilliard McNab

William G. Gilbey

Helen Hnatyshyn

Kayla Hock

Gordon DeMarsh

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Ken Norman

Deputy Chief Commissioner
Louise Simard

Commissioners
Gordon DeMarsh
William G. Gilbey
Kayla Hock
Helen Hnatyshyn
Chief Hilliard McNab

Director
Shelagh Day

Refer to file

March 14, 1983.

Hon. J. Gary Lane, Q.C.,
Attorney General,
Room 338, Legislative Building,
Regina, Saskatchewan.
S4S OB3

Dear Minister:

I have the honour to transmit this our Annual Report for 1982 to you and through your good offices to the Legislative Assembly pursuant to Section 49 of The Saskatchewan Human Rights Code and The Tabling of Documents Act.

This past year has been an eventful one for human rights. Of first importance was the coming into force of the Charter of Rights and Freedoms in April. As a result of this crucial legal event, Saskatchewan inherited an obligation to look to its own human rights legislation to see if it is in compliance with constitutional standards. You will appreciate the Commission's view that our own house needs immediately to be set in order so that not only the letter but also the spirit of the Charter is endorsed by our Legislature.

Specifically, my colleagues and I ask that The Saskatchewan Human Rights Code be amended in order to meet the expectations created by Section 15 of the Charter and so as to achieve a clear measure of independence for the Commission by making it answerable to the Legislative Assembly, as is the case with the Ombudsman's office. Our argument for such autonomy is set down in my speech as President-Elect of the Canadian Association of Statutory Human Rights Agencies, delivered in Montebello, P.Q. on May 31, 1982. (See appendices to this Report.)

Lastly, there is the outstanding issue of built environment accessibility for persons with physical disabilities. We very much hope that this coming year will see legislated accessibility standards along the line proposed and adopted by the Commission.

Yours sincerely,

Ken Norman

Ken Norman,
Chief Commissioner.

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The Mandate of the Commission

The Saskatchewan Human Rights Commission is a law enforcement, regulatory and educational agency responsible for the administration of *The Saskatchewan Human Rights Code.* Section 3 of the Code states that:

3. The objects of this Act are:
   a) to promote recognition of the inherent dignity and the equal inalienable rights of all members of the human family; and
   b) to further public policy in Saskatchewan that every person is free and equal in dignity and rights and to discourage and eliminate discrimination.

These objects are derived from the *Universal Declaration of Human Rights* adopted 34 years ago by the General Assembly of the United Nations.

The Code also gives the Commission the authority to investigate and settle complaints of discrimination, to carry complaints before Boards of Inquiry, to approve or order affirmative action programs, to grant exemptions from certain provisions of the Code, to make regulations subject to the approval of the Lieutenant-Governor-in-Council, and to carry out research and educational programs which will advance the principles of equality and eliminate discriminatory practices.

The Structure of the Commission

The Commission is made up of seven Commissioners appointed by the Lieutenant-Governor-in-Council, one of whom is the Chief Commissioner and another the Deputy Chief Commissioner. The Commission sets policy, reviews all settlements of complaints, orders Boards of Inquiry, considers for approval all applications for affirmative action programs and exemptions, conducts oral hearings (when requested) into applications for affirmative action programs and exemptions, and assists the staff in fulfilling the education mandate.

The staff of the Commission is divided into three divisions: investigation, affirmative action and education.

The Investigation Division is staffed with six Investigating Officers responsible for receiving and investigating complaints. They are also responsible for attempting to settle complaints when the evidence collected supports the allegation of discrimination.

The Affirmative Action Division, with two Affirmative Action Officers, reviews and monitors all affirmative action programs brought to the Commission for approval. They are also responsible for reviewing all applications requesting exemptions from certain provisions of the Code.

The Education Division, composed of a Director of Education and two Education Officers, is responsible for disseminating information regarding *The Saskatchewan Human Rights Code.* The Division conducts workshops, makes public presentations and consults with educational institutions and community organizations. They are also responsible for conducting research into the field of human rights.

Law Enforcement

The Saskatchewan Human Rights Code

The basic protections afforded by *The Saskatchewan Human Rights Code* are set out in two substantive sections. Part I of the Code contains the Bill of Rights, which protects the fundamental rights and freedoms of all residents of Saskatchewan. The Bill of Rights guarantees freedom of conscience, freedom of expression and association, freedom from arbitrary arrest and detention, and the right of all adult citizens to vote in provincial elections at least once every five years.

Part II of the Code prohibits certain discriminatory practices. Discrimination is prohibited in the following areas: employment; employment applications and advertisements; rental of housing accommodatin; provision of accommodation, services and facilities to the public; education; publication and display of signs and notices; membership in trade unions, professional societies and occupational associations; contracts; and the purchase of property.

The prohibited grounds of discrimination are race, creed, religion, colour, sex, marital status, physical disability, age (18 to 64), nationality, ancestry and place of origin.

Enforcement Procedures

Any person, who has reasonable grounds to believe that a provision of the Code has been violated, may file a complaint with the Saskatchewan Human Rights Commission. In addition, the Commission may initiate a complaint on its own authority.

A preliminary informal investigation is undertaken to determine whether the complaint falls within our jurisdiction, and if there are reasonable grounds to believe that the Code has been violated.

When a formal complaint is filed, a Human Rights Officer is appointed to investigate, and through investigation the Officer determines whether there is evidence to substantiate the allegation that a provision of the Code has been violated. An Investigating Officer has the legal authority to examine records and documents and to obtain information pertinent to the complaint.

Where the investigation does not substantiate the allegation, the complaint file is closed, or the complaint is formally dismissed. However, where the evidence gathered through investigation supports the claim, an attempt to settle the complaint is made.

A settlement may take any form which is appropriate to the circumstances of the complainant and the respondent, the nature of the violation, and the opportunities lost or damages caused (see p. 9 for examples of settlements).

If a settlement cannot be effected, the Human Rights Commission may direct that a formal inquiry be held to decide the matter. In such cases, the Attorney General appoints a Board of Inquiry, which is composed of one or more persons.

When a Board is appointed, the Commission has carriage of the complaint, and the Commission's legal counsel appears before the Board to present the Commission's and the complainant's evidence and argument.

A Board of Inquiry, once it finds that a contravention of the Code has occurred, may order the person who contravened the Code to comply with the legislation, to rectify any injury caused, to pay compensation for expenses or lost wages, or to pay damages for humiliation suffered. An order of a Board of Inquiry may be appealed on a question of law to the superior courts.

Nature and Disposition of Informal Complaints

The Saskatchewan Human Rights Commission received 386 informal complaints during this reporting period, an increase of 9%. Complaints are accepted informally when preliminary investigation is required to determine jurisdictional issues or to establish that the complainant has reasonable grounds to believe the Code has been violated. Some informal complaints are filed as formal complaints subsequent to this preliminary examination, and others are resolved at this informal stage.

The informal complaints filed during this period show that complaints received in the area of employment are the highest (45%), followed by application forms (20.5%), public services (15%) and housing (8%). These four areas account for 88.5% of the informal complaints filed with the Commission. (see Table I.)

Complaints of discrimination on the grounds of sex (27.5%), race (17%), and physical disability (16.5%) are the most frequently alleged informal complaints (see Table I).

Sexual harassment complaints comprise 37% of all informal sex discrimination complaints, while 63% of race discrimination complaints are filed by persons of Indian ancestry. As well, 14% of the informal complaints based on the grounds of physical disability alleged that facilities customarily available to the public were not accessible to persons with physical disabilities.

Informal complaints in the area of employment consisted mainly of those alleging discrimination because of sex, physical disability and race. The highest number of informal complaints in the area of public services were made on the basis of race and physical disability. Race discrimination accounts for the majority of informal complaints in the housing category (see Table I).

Of the 386 informal complaints received in this reporting period, 77 have been settled, 46 have been withdrawn, 132 have been transferred to formal inquiries, 53 were concluded to have no reasonable grounds and 78 are presently under investigation (see Table II).

Nature and Disposition of Formal Complaints

An examination of the 212 formal complaints filed during the reporting period (an increase of 20.5% over last year) shows that discrimination in employment is still the most significant area of complaint, accounting for 55.5% of the formal complaints filed with the Saskatchewan Human Rights Commission. Complaints in the area of public services and housing accommodation each comprise 15.5% of the total number of complaints. Therefore, these three areas — employment, public services, and housing accommodation — account for 86.5% of the formal complaints filed during the reporting period (see Table III).

Sex discrimination continues to be the most frequently alleged ground of complaint (37%), followed by allegations of race discrimination (19%). Complaints on the basis of physical disability comprise 18.5% of all complaints.

Sexual harassment complaints account for 33% of all sex discrimination complaints, and 65% of race discrimination complaints are filed by persons of Indian ancestry. 15% of the formal complaints based on the grounds of physical disability alleged that facilities customarily available to the public were not accessible to persons with physical disabilities.

The highest number of complaints in the employment area are under the category of sex discrimination. Complaints on the basis of physical disability are also prevalent.

Race discrimination and those involving discrimination on the basis of physical disability made up the majority of complaints in the area of public services.

Of the 212 formal complaints alleging violations of the Code, 24 have been settled, 28 have been withdrawn or dismissed, 8 have been referred to Boards of Inquiry for adjudication and 152 are presently under investigation (see Table IV).

Settlement

The Legislative mandate of the Saskatchewan Human Rights Commission with respect to complaints is twofold. According to Section 28(1) of the Code, the Commission is to inquire into a complaint and to endeavour to effect a settlement. Therefore, in each complaint where determination of probable cause is made, the Commission must attempt to effect settlement. The settlement of a complaint is designed to remedy the situation and make the complainant "whole"; that is, in the situation he/she would have been in had the discriminatory incident (practice) not occurred. The elimination of discriminatory practices which violate *The Saskatchewan Human Rights Code* is both the policy and the law of this province and settlements of complaints must reflect this. The following are some examples of complaints which were settled during 1982:

Example I. Sex Discrimination

A woman alleged she had been discriminated against in the terms and conditions of her employment and had been terminated from her position of driver/attendant with an ambulance service because of her sex, contrary to Section 16(1) of *The Saskatchewan Human Rights Code.*

In settlement of this complaint, the respondent conveyed its regret to the complainant for any sufferings in respect of feeling or self-respect resulting from any discrimination and paid the complainant $650.00 in this regard.

The respondent undertook to inform itself of the provisions of *The Saskatchewan Human Rights Code* as they relate to discrimination against women in employment, including discriminatory terms and conditions of employment and sexual harassment. The respondent agreed to abide by such provisions.

The respondent also agreed that, for a period of one year following this settlement, it would advertise all vacancies and new positions in the local newspaper, and give applicants one week to respond to the advertisement. The newspaper ad is to state that all positions are open to both men and women applicants. The respondent agreed to inform all unsuccessful female applicants in writing that *The Saskatchewan Human Rights Code* requires employers to hire without regard to sex, and if an applicant feels that her sex was a factor in not securing employment, she should contact the Saskatchewan Human Rights Commission. Copies of all notices to unsuccessful female applicants shall be sent to the Commission. At the end of the one year period, the respondent shall provide the Commission with a list of all persons who were employees of the Company during that year. Any female employees who were terminated within the one year period shall be provided with a notice containing the same information as those notices provided to unsuccessful female applicants for employment, and copies sent to the Commission.

The respondent agreed to place a notice on the employee's notice board or other conspicuous place advising female employees that they cannot be required to assist in extra duties traditionally ascribed to females, and inviting any female employee who feels she has been subject to discriminatory terms and conditions of employment, including sexual harassment, to contact the Saskatchewan Human Rights Commission. The notice shall remain posted for one year, and a copy shall be forwarded to the Commission.

As well, it was agreed in settlement that, if the respondent uses an application for employment form, it shall be submitted to the Saskatchewan Human Rights Commission for approval.

The record of the matters arising out of this complaint are to be removed from the complainant's personnel file, and the employer is to disregard this matter in any future application for employment from the complainant or in reply to a request for an employment reference.

The Commission is to have access to the respondent's employment records to ensure compliance with the settlement agreement.

Example II. Marital Status Discrimination

The complainant in this case applied for a small loan to purchase an item of household furniture. She alleged she was refused the loan by Trans Canada Credit Corporation because her husband had an outstanding account with the company, even though the complainant had a good credit record, and that this was a violation of Section 15 of *The Saskatchewan Human Rights Code.* In settlement of the complaint, Trans Canada Credit agreed to change its Credit Score Guide, and to pay the complainant $350.00, which is approximately the amount of the loan she originally applied for.

Example III. Religious Discrimination

This complainant alleged that he had been discriminated against because of his religion and creed, contrary to Section 16(1) of *The Saskatchewan Human Rights Code.* The complainant had been employed for nearly two years with the same employer when he began attending the Seventh Day Adventist Church. His employment involved regular afternoon and evening work, and in order to conform to his religious observances, he could not work from sundown on Fridays to sundown on Saturdays. The employer refused the employee's request to change his work schedule to allow for his religious observances and eventually fired him.

A settlement was reached between the two parties when the employer acknowledged that it has an obligation under Section 16 of the Code to make accommodations for religious practices, to the extent that such accommodation does not result in any undue hardship. The employee was reinstated in his position without loss of seniority and holiday and sick leave benefits. As well, all references to this complaint and matters arising from it will be removed from the employee's file and will not have any effect on any future employment decisions regarding the employee.

Boards of Inquiry

The Saskatchewan Human Rights Code

During the reporting period, the following cases have been adjudicated by Boards of Inquiry:

S.H.R.C. v. University of Saskatchewan Engineering Students Society:
Board of Inquiry: Professor Paul Havemann, Joan Thorstenstein and Rueben Richert
Under Section 14 of *The Saskatchewan Human Rights Code*:
The complainant alleges that certain issues of the Engineering Students Society's paper, "The Red Eye", ridicule, belittle and affront the dignity of women.

Hearings into the matter were held on January 13th, March 9th and 10th, and May 3rd, 4th and 6th, 1982. The Board adjourned on May 6th when the respondent indicated their intention to apply to the Court of Queen's Bench for a Writ of Prohibition to bar the Board of Inquiry from hearing and adjudicating the complaint. When no application was forthcoming the Board convened once again on October 18th, 1982, when the respondents served notice that they had applied to the Court of Queen's Bench for a Writ of Prohibition. The hearing on the application was heard in the Court of Queen's Bench in Saskatoon on November 30th, 1982. The application was dismissed by the Court as the Board of Inquiry had not been named as a party to the application. The Board of Inquiry is scheduled to reconvene to hear the complaint in this matter on January 27th, 1983 in Saskatoon.

Roy Day v. City of Moose Jaw and Moose Jaw Firefighters Association
Board of Inquiry: Terry Bekolay
Under Section 16 of *The Saskatchewan Human Rights Code*:
This complaint alleges that Roy Day was discriminated against on the basis of age because he was forced to retire at age 60, according to the Collective Bargaining Agreement between the City of Moose Jaw and the Moose Jaw Firefighters Association. The Board of Inquiry heard the matter on July 27th, 28th and 29th, 1982 in Moose Jaw. The decision is pending.

Donna Pinay v. Mary Roome
Board of Inquiry: Ron Kurzeniski
Under Section 12 of *The Saskatchewan Human Rights Code*:
Ms. Pinay alleged she was discriminated against because of her race when she was refused service by Mary Roome at Ron's Hi-Way Restaurant. Prior to the hearing being held, the two parties reached a settlement of this matter and appeared before the Board of Inquiry to request that the Board issue a consent order. The order the Board issued on November 2nd, 1982 requires the Respondent, Mary Roome, to refrain from any further contravention of Section 12 of *The Saskatchewan Human Rights Code*, to supply a letter of apology to Ms. Pinay for the affront to her dignity, and to pay Ms. Pinay $200.00 in compensation.

James Weatherall v. City of Moose Jaw
Board of Inquiry: Theresa Holizki
Under Section 16 of *The Saskatchewan Human Rights Code*:
James Weatherall alleged he was discriminated against because of his physical disability when his employment with the City of Moose Jaw was terminated. Mr. Weatherall suffers from high blood pressure. The Board of Inquiry convened to hear the matter on December 9th, 1982 at the Harwood Inn in Moose Jaw. However, the date the hearing was convened, the City of Moose Jaw indicated that it had made an application to the Court of Queen's Bench to prohibit the Board from hearing the matter on the grounds that Mr. Weatherall had earlier filed a grievance to his union with respect to this same matter, and the arbitration decision regarding the decision was released on December 8th, 1982. The Board of Inquiry adjourned, pending the outcome of the respondent's application for prohibition. The application will be heard in the Court of Queen's Bench in Moose Jaw on January 10th, 1983.

During the reporting period, the following complaints have been adjudicated by Boards of Inquiry, and have been appealed to the Courts:

Yvonne Peters v. University Hospital
Appeal: Court of Appeal for Saskatchewan
Under *The Saskatchewan Human Rights Code*:
In a Board of Inquiry decision dated February 13th, 1981, the University Hospital in Saskatoon was found to have violated the provisions of *The*

Saskatchewan Human Rights Code when it refused a blind woman, accompanied by a dog guide, entrance to the hospital to visit a relative. The University Hospital appealed this decision to the Court of Queen's Bench for Saskatchewan, and by decision dated August 14th, 1981, Mr. Justice Maher upheld the appeal, finding that the human rights legislation did not apply because the University Hospital is not a place "to which the public is customarily admitted". Yvonne Peters and the Saskatchewan Human Rights Commission have appealed this decision, and the appeal was heard in Regina on June 14th and 15th, 1982 by five members of the Saskatchewan Court of Appeal. The Court reserved its decision.

Michael Huck v. Canadian Odeon Theatres Limited
Appeal: Court of Appeal for Saskatchewan
Under Section 12 of *The Saskatchewan Human Rights Code*:
In a Board of Inquiry decision dated July 9th, 1980 the Coronet Theatre in Regina was found to have violated *The Saskatchewan Human Rights Code* by failing to provide adequate seating in the theatre for wheelchair users. The respondent appealed this decision, and the appeal was heard in Regina on June 16th, 1982 by Mr. Justice Halverson of the Court of Queen's Bench for Saskatchewan. Mr. Justice Halverson reversed the Board's decision on June 30th, 1982, saying the Code requires only that providers of service make their facilities available to physically disabled people in the same manner as they make it available to other members of the public. Halverson also stated in his decision that the Code does not cast upon the operators of public premises the added duty of adapting them to meet the special needs of disabled people, and that the interpretation of the Code does not meet the expectations of all the disabled or enhance access to amenities enjoyed by the public. The Queen's Bench decision is under appeal.

Keith Dieter, Joseph Dumont, Wesley Ironstar and Fred Runns, Jr. v. R.C.M.P. Officers Scowby, Hopper, McBride, Woodward, Clark and Gains
Appeal: Court of Appeal for Saskatchewan
A Board of Inquiry was appointed to hear five complaints alleging arbitrary arrest and detention of a group of native men by R.C.M.P. officers in the Hudson Bay area. The respondent R.C.M.P. officers made an application to the Court of Queen's Bench to prohibit the Board from hearing the complaint. Mr. Justice Maher rendered a decision on June 25th, 1982 saying that the Board of Inquiry lacked jurisdiction to inquire into complaints against the R.C.M.P. officers because they are a federal force. The decision of the Queen's Bench is under appeal to the Court of Appeal for Saskatchewan.

During the reporting period, the following complaints have been referred to Boards of Inquiry, but have not yet been adjudicated:

Mr. and Mrs. Henry Dyck v. Odeon-Morton Theatres Limited
Board of Inquiry: Betty Halstead
Under Section 12 of *The Saskatchewan Human Rights Code*:
The complaint alleges discrimination in the provision of a public service because of a physical disability. This Board is in abeyance pending the outcome of the case of *Michael Huck v. Canadian Odeon Theatres Limited*, aforementioned.

Barbara Kvale v. Odeon-Morton Theatres Limited
Board of Inquiry: Betty Halstead
Under Section 12 of *The Saskatchewan Human Rights Code*:
This complaint alleges discrimination in the provision of a public service because of a physical disability. This Board is in abeyance pending the outcome of the case of *Michael Huck v. Canadian Odeon Theatres Limited*, aforementioned.

S.H.R.C. V. Cudlow Holdings Ltd., Citation Investments Ltd. and Quadra Investments Ltd.
Board of Inquiry: Betty Halstead
Under Section 11 of *The Saskatchewan Human Rights Code*:
The landlords are alleged to have charged higher rates to single people sharing accommodation than to married couples renting similar suites. The Board of Inquiry has been tentatively scheduled to hear the matter on February 24th, 1983 in Regina.

Ev Anderson v. Violet Woloschuk and SEDCO
Board of Inquiry: Irving Goldenberg
Under Section 16 of *The Saskatchewan Human Rights Code*:
The complainant alleges that she was discriminated against because of her physical disability when she was refused a job of receptionist/typist at SEDCO. The Board of Inquiry is tentatively set for April 20th and 21st, 1983 in Regina.

Eileen Saunders v. Dave's Painting and Design
Board of Inquiry: Ron Kruzeniski
Under Section 16 of *The Saskatchewan Human Rights Code*:
Ms. Saunders alleges that she was discriminated against because of her sex when she was refused a job as a painter at Dave's Painting and Design. The Board of Inquiry is scheduled to hear the matter on February 28th, 1983 in Regina.

The Labour Standards Act

As provided for in Sections 19 and 20 of *The Labour Standards Act*, the Saskatchewan Human Rights Commission sits as the adjudicating body for equal pay complaints which are referred to them after investigation by the Women's Division of the Department of Labour.

During this period, the Saskatchewan Human Rights Commission heard the following complaints:

Jane Bublish v. Saskatchewan Union of Nurses
Board of Inquiry: Saskatchewan Human Rights Commission
Under Section 17(1) of *The Labour Standards Act*:
Ms. Bublish complained that the Saskatchewan Union of Nurses violated Section 17(1) of *The Labour Standards Act* by paying a male Employment Relations Officer a starting rate of pay higher than the starting rate of pay received by her. The matter was heard on January 13th, March 8th, 9th and 10th, 1982 in Regina. The decision is pending.

Beatrice Harmatiuk et al. v. Pasqua Hospital, The Board of Governors of the South Saskatchewan Hospital Centre
Board of Inquiry: Saskatchewan Human Rights Commission
Under Section 17(1) of *The Labour Standards Act*:
Ms. Harmatiuk alleged that she and her female co-workers employed as housekeeping aides at the Pasqua Hospital in Regina were paid at a lower base rate than two male caretakers who performed similar work at the hospital. Hearings were held in the matter on February 17th, 18th and 19th and April 2nd, 5th and 6th, 1982 in Regina. A decision in this matter was released on December 1st, 1982, wherein the Board of Inquiry found that the housekeeping aides and caretakers performed similar work, and therefore the Pasqua Hospital was in violation of Section 17(1) of *The Labour Standard Act*. Back pay was awarded to the housekeeping aides employed at Pasqua Hospital from the date the complaints were filed with the Department of Labour. Pasqua Hospital, the Board of Governors for the South Saskatchewan Hospital Centre has appealed this decision to the Court of Queen's Bench for Saskatchewan.

Miscellaneous Inquiries

During the 1982 reporting period the Commission handled 4,129 miscellaneous inquiries. These inquiries include requests for information and interpretation of Human Rights Laws, requests for pamphlets and brochures, as well as inquiries which require referrals to other agencies.

Special Programs — Affirmative Action

Affirmative Action addresses the disadvantages experienced by persons of Indian ancestry, persons with physical disabilities and women, by consciously measuring representation by race, sex and physical disability in order to identify the systemic barriers which may adversely affect these groups. An affirmative action plan represents a commitment to alter the policies, practices and procedures of employing institutions so as to open the door for qualified members of the target groups. The facts regarding unemployment and underutilization of all three target groups identified continues to provide disturbing evidence that members of these target groups have historically been disadvantaged and are still affected in today's workplaces. Recent estimates of native employment show very low levels of labour force participation. Despite some improvement in education and shifts toward more active involvement in professional pursuits that will provide economic independence, statistics still show that the average earnings of a person of Indian ancestry are far below national levels.

The Special Parliamentary Committee on the Disabled and the Handicapped in its February, 1981 Report called "Obstacles" states:

> There exists an unacceptable high rate of unemployment among employable disabled Canadians with an estimated figure of over 50%.

As well, women continue to be employed in low paid, low status, traditionally female occupations.

While these disparities in economic status stem from a complex set of factors, they provide strong evidence of the persistence of systemic discriminatory practices in the workplace and in related institutions. Considered in this context, the purposes of affirmative action initiatives are to eliminate the institutional barriers which have excluded these groups and, most importantly, to redress present imbalances in our labour force.

An experiment is presently in motion and the question that may need to be answered is whether affirmative action can be effective on a purely voluntary basis.

Affirmative Action Programs are a recent addition to legal measures to address equality of opportunity in the province. Gains in establishing approved affirmative action programs have been promising, but to date they constitute a very small step indeed towards the goal of genuine equal opportunity.

It is evident from our experience that voluntary affirmative action requires the political commitment of the government to ensure that affirmative action will be effective and wide spread in the public sector. Only once such a tone is clearly sounded can one expect the private sector to take its responsibilities seriously in this regard.

The Saskatchewan Human Rights Code provides four ways in which affirmative action programs can be introduced:

1. The Commission may approve a voluntary program (Section 47);
2. The Commission may order that a program be put into place (Section 47);

3. A Board of Inquiry may order a program as a remedy where there is evidence of discrimination (Section 31(7)(a));
4. An affirmative action program may be introduced as settlement of a complaint.

The approval of a program under Section 47 provides the applicant with legal protection against so-called "reverse discrimination" law suits. With the proclamation of Section 15(2) of the *Charter of Rights and Freedoms* on April 17th, 1985, additional constitutional protection of affirmative action will be in place.

Approved Affirmative Action Programs

During the 1982 reporting year the following programs were granted approval pursuant to the proposed regulations of April 9th, 1980, which the Commission incorporated by reference into each of its published decisions.

1. Potash Corporation of Saskatchewan

Interim approval was granted to the Potash Corporation of Saskatchewan on December 31st, 1981 for the purpose of recruiting and hiring four persons of Indian ancestry. A preliminary workforce analysis of the head office of the Potash Corporation of Saskatchewan has established that out of 227 employees, 3 (.73%) are persons of Indian ancestry, an underrepresentation of approximately 10%. The approval was granted with the condition the Potash Corporation of Saskatchewan submit to the Saskatchewan Human Rights Commission, within a reasonable period of time, an overall affirmative action plan which addresses all three target groups.

Potash Corporation's interim approval has been extended to April 30th, 1983.

2. Saskatchewan Housing Corporation

The Saskatchewan Human Rights Commission granted approval on February 8th, 1982 for an affirmative action program sponsored by the Saskatchewan Housing Corporation. The program is designed to address the lack of adequate housing available to persons of Indian ancestry. (This does not include those persons of Indian ancestry who reside on Reserves or in the Northern Administration District.)

It is estimated that 71% of households headed by persons of Indian ancestry require housing assistance. In 1980, the Saskatchewan Housing Corporation provided 11% of the estimated need. It is recognized that a further 60% of native families are in need of adequate housing provisions. The long term goal of the Saskatchewan Housing Corporation is to provide for this need.

3. The Co-operators

An interim approval was granted on February 8th, 1982 to The Co-operators to conduct a Native Employment Opportunities Project. The goal of the project is to provide meaningful career and job opportunities within The Co-operators for persons of Indian ancestry.

There are 700 employees in the Regina office of The Co-operators, .14% of which are persons of Indian ancestry. The Co-operators has identified a target of hiring 103 native employees by 1991, increasing the representation of native employees in the Regina office of The Co-operators to 14.6% of their total workforce.

The Commission approved the program on the condition that The Co-operators submit a comprehensive program addressing all three target groups — women, persons of Indian ancestry and persons with physical disabilities — by December 31st, 1982.

The Co-operators' interim approval has been extended to June, 1983.

4. Pre-Employment Trades Exploration for Women — Prince Albert Natonum Community College

Approval was granted to Prince Albert Natonum Community College on March 30th, 1982 to conduct a Pre-Employment Trades Exploration for Women program. This program is similar to that sponsored by Regina Plains Community College, having as its primary objective increasing the representation of women in non-traditional trade occupations. The Prince Albert Natonum Community College is attempting to ensure that 15 to 20 students are admitted into the program each year, so that more women may be introduced to new career options in non-traditional fields.

5. Saskoil Affirmative Action Program

On May 27th, 1982 the Saskatchewan Human Rights Commission granted approval to Saskatchewan Oil and Gas Corporation for an affirmative action program that is designed to address employment opportunities for persons of Indian ancestry, physically disabled persons and women.

Saskoil's affirmative action program is the first comprehensive plan to be submitted to the Commission for approval that effectively deals with all three target groups.

A public hearing was held in Regina on May 14th to receive oral and written briefs respecting Saskoil's application, and to allow input from the community to assist the Commission in rendering a decision. Submissions were received from representations of native and physicall disabled person's organizations, women's groups, and different levels of government. All were positive in their interventions.

Analysis of Saskoil's current workforce indicated an underrepresentation of persons of Indian ancestry (approximately 1.04% of the total workforce), and physically disabled persons (less than 1% of the total workforce), as well as an underrepresentation of women in the areas of administration and upper management. Saskoil's affirmative action program outlines very clearly the remedial and special measures that will be initiated to remove barriers that have contributed to this imbalance, and establish a flexible time frame in which to meet these goals.

While the application met the criteria published by the Commission to substantiate an approved affirmative action program, a condition was imposed to ensure that employment practices and policies will be assessed and, if necessary, altered so as to neutralize systemic discrimination. A monitoring report of the program will be submitted to the Commission by April 30th, 1983 pursuant to Section 42 of the Regulations under *The Saskatchewan Human Rights Code.*

6. Key Lake Mining Corporation, Construction Phase

On May 17th, 1982 the Saskatchewan Human Rights Commission granted approval for an affirmative action program sponsored by Key Lake Mining Corporation. The program was approved for the construction phase of the Key Lake Uranium Mining Site only, and is designed to assist and increase employment opportunities for persons of Indian ancestry living in the geographical area of the mine site. Statistics indicate that 70% of the population in the North Administration District is comprised of people of Indian ancestry.

The goals for contractors during the construction phase are that 60% of onsite work which is other than apprenticeable trades will be done by persons of Indian ancestry, 10% of on-site administrative and supervisory work will be carried out by persons of Indian ancestry, and 15% of on-site work in the apprenticeable trades will be performed by first level apprentices of Indian ancestry. The construction phase is expected to be completed in 1983. The Commission will consider Key Lake Mining Corporation's application for an affirmative action program for the operations phase at a later date.

7. Sask Tel Affirmative Action Program

The Saskatchewan Human Rights Commission granted approval for an affirmative action program to Sask Tel on October 29th, 1982. The program is designed to address employment opportunities for all three target groups — women, persons of Indian ancestry and persons with physical disabilities. This is the second comprehensive program submitted to the Saskatchewan Human Rights Commission which effectively deals with all three target groups.

The program was approved subsequent to an oral hearing held in Regina on October 1st, 1982. Submissions at the hearing were received from representatives of women's groups, organizations of native people and physically disabled people, different levels of government, and the Communication Workers of Canada who represent the employees of Sask Tel. The input from these organizations was positive, and assisted the Commission in making its decision.

An analysis of Sask Tel's workforce showed that persons of Indian ancestry comprised .6% of the workforce, indicating an underrepresentation of approximately 11%. Persons with physical disabilities held only .5% of the positions, an underrepresentation of approximately .7%. As well, although 40% of Sask Tel's workforce is female, there is a significant underrepresentation of women in classifications above clerical/administration.

Sask Tel's affirmative action program outlines comprehensive remedial and special measures to be implemented to overcome barriers which have contributed to the imbalances in its workforce, and has established a long term goal of 13 to 18 years to attain a workforce which reflects 11.5% employees of Indian ancestry, 7.1% of the workforce to be persons with physical disabilities, and 39% women in all categories.

Pursuant to Regulations 42 of *The Saskatchewan Human Rights Code*, Sask Tel is obligated to report back to the Commission on the actions taken to implement its affirmative action program, the progress of the program, difficulties encountered in meeting the goals of the program, and any changes to the program it may be considering, by April 30th, 1983.

Exemptions

Section 48 of *The Saskatchewan Human Rights Code* allows the Commission or the Director to grant exemptions from any provision of the Code "where any person or class of persons is entitled to an exemption . . . under any provisions of this Act" or "where the Commission . . . considers (an exemption) necessary and advisable".

The Code, and regulations pursuant to the Code, outline procedures for applying for an exemption and for the convening of a public hearing to determine whether the exemption should be granted.

The following exemption was granted by the Saskatchewan Human Rights Commission during the 1982 reporting year:

Saskatchewan Social Services, Corrections Branch:

The Saskatchewan Human Rights Commission convened a public hearing in Regina on June 15th, 1982 pursuant to an exemption which had been granted to Saskatchewan Social Services, Corrections Branch on February 27th, 1980. By the original order of 1980 the Commission granted the Corrections Branch an exemption from the provisions of Section 16 of *The Saskatchewan Human Rights Code* in order to allow women to be excluded from holding certain custodial positions in two proposed correctional centres for adult males in Prince Albert and Saskatoon. As well, the Corrections Branch was permitted to exclude women from custodial positions in all custody, recreation and admitting areas within the male institutions in Regina, Prince Albert and the Battlefords, and to exclude men from living and admitting positions in the adult female institutions of Pinegrove Correctional Centre in Prince Albert, for a period of two years. In a decision dated July 7th, 1982 the Commission narrowed the scope of its earlier exemption order. Pursuant to this decision the Corrections Branch may only exclude women from 44 of 151 positions at the Regina Correctional Centre and from 4 of 7 positions at the Battlefords Correctional Centre. The new exemption order also allows the Corrections Branch to refuse to employ men in 6 of 9 positions at the Pine Grove Correctional Centre for Women in Prince Albert.

During the course of the hearing, the Saskatchewan Government Employees' Union requested that the Commission reconsider the rationale underpinning its initial exemption order of February 27th, 1980. The Commission rejected this suggestion saying:

> ". . . it seems to us to be only fair to remain true to the rationale expressed by us in our earlier decision, which continues to prevail with regard to the two new facilities for adult males in Saskatoon and Prince Albert. To reiterate the principle involved, we said that:
>
> > Where the compelling interest of (a high) degree of security dictates surveillance or searching of the person, at any given moment, at the option of custodial workers, conventional standards of public decency in this Province, at this point in time, clearly require that custodial staff be of the same sex as the inmate.
>
> If the rationale is to disappear then it ought properly to be brought before us on an application for termination of the entire Exemption Order, pursuant to the provisions of Section 48(2) of the Code."

On August 20th, 1982, the Saskatchewan Government Employees' Union formally applied to the Commission for just such a termination. As a result, a hearing was convened on October 26th, 1982 with regard to all correctional facilities. On January 14th, 1983, the Commission rendered a decision continuing its prior orders, although on a narrower basis.

Education and Research

Education Activities

The Saskatchewan Human Rights Code gives the Commission a broad mandate to further equality and the recognition of rights through research and education programs. The Commission has the duty under Section 25 of the Code to:

a) forward the principle that every person is free and equal in dignity and rights without regard to his race, creed, religion, colour, sex, marital status, physical disability, age, nationality, ancestry or place of origin;

b) promote an understanding and acceptance of, and compliance with, this Act;

c) develop and conduct educational programs designed to eliminate discriminatory practices related to the race, creed, religion, colour, sex, marital status, physical disability, age, nationality, ancestry or place of origin of any person or class of persons;

d) disseminate information and promote understanding of the legal rights of residents of the province and conduct educational programs in that respect;

e) further the principle of the equality of opportunities for persons, and equality in the exercise of the legal rights of persons, regardless of their status;

f) conduct and encourage research by persons and associations actively engaged in the field of promoting human rights;

g) forward the principle that cultural diversity is a basic human right and fundamental human value.

In fulfilling its educational role, the Commission attempts to keep the public and affected groups informed of new developments in all areas.

The Commission's education activities, therefore, provide information on new developments in legal provisions, law enforcement procedures, Board of Inquiry decisions in Saskatchewan and other jurisdictions, special programs, exemptions, and accessibility. This information is disseminated through speaking engagements and meetings, media contact, printed materials and newsletters.

During 1982 the Commission received and responded to 660 requests to send speakers to conferences, workshops, community meetings, school and university classes and training sessions (see Table VI). These requests came from professional associations, business organizations, members of consumer, community and advocacy groups, teachers, students, labour unions, staff associations, and social service agencies.

In addition, many students, teachers, lawyers and professional consultants contacted the Commission with requests for materials, case decisions, and general information to help them develop papers, courses, articles or theses on human rights issues.

The Commission publishes a newsletter five times a year which is distributed to 10,000 people in the Province.

Our staff has also prepared and distributed hundreds of pamphlets on all aspects of the Code (see Table VII).

Canada, along with other members of the United Nations Education Scientific and Cultural Organization (UNESCO) made a committment in 1978 to incorporate the teaching of human rights into school curricula by 1986. In response to this committment we undertook two major projects in 1982. The Education Division has produced a schools newsletter entitled "On Rights", which is to be produced 4 times a year and is being circulated to all Grades 7 to 12 schools in Saskatchewan. Each edition of "On Rights" will feature an article on a human rights issue, along with classroom projects and exercises and a list of resource material including books and audio-visual material.

The second project was in response to Canada's new Constitution which was proclaimed in 1982. Included in our Constitution is the Charter of Rights and Freedoms, and its status as part of the supreme law of Canada illustrates its importance in Canadian society. In order to assist teachers, students and the general public in understanding the history surrounding the Charter, its philosophical basis and its possible effect, the Commission, along with the Saskatchewan Association on Human Rights, produced a document on the Charter entitled "A Manual on the Charter of Rights and Freedoms". The Manual has been distributed to schools in Saskatchewan and is available free of charge.

During 1982 the Commission staff took part in two career exhibitions; one held in Saskatoon and the other in Prince Albert. As part of our educational mandate, we took the opportunity to urge students to select careers which are of interest to them and which offer them the best employment opportunity, rather than basing their decisions on sex role stereotypes.

The Education Division is pleased with the progress they have made in 1982 in working with educational institutions in Saskatchewan.

Accessibility Standard

The Saskatchewan Human Rights Code states that physically disabled persons have the right to equal access and cannot be discriminated against in areas such as employment, housing, public accommodation and education. However, physically disabled individuals are often denied their rights to equal opportunity and access because of architectural barriers.

In order to eliminate these barriers in the future, the Commission adopted the "Accessibility Standard" on August 14th, 1980.

The Standard is unique in that it takes into consideration not only the accessibility problems of persons with mobility limitations, but also those persons with visual and hearing impairments, by including such things as tactile cues for persons with visual limitations, and communication aids and visual alarms for persons with hearing limitations. The Standard will make buildings accessible for persons with physical disabilities, as well as making mobility easier for the aged, expectant mothers, children, and those with temporary physical limitations.

During 1982 the Commission received 117 sets of building plans for review. A large number of the plans submitted to us are plans for new schools or additions and/or alterations to existing schools. The Department of Education has requested that all plans for schools be submitted to the Commission to ensure that they conform to the "Accessibility Standard". The Department of Government Services has also submitted a number of plans for review. Other plans are sent to us for our comments on a voluntary basis by architects throughout the province.

The Commission staff is also called upon to evaluate existing buildings in light of the provisions outlined in the Standard and submit their recommendations on the necessary changes required to make the buildings accessible.

In June of 1981 the provincial government established an Advisory Committee on Uniform Building Standards to study the possibility of adopting a Provincial Building Code which incorporated the requirements outlined in the "Accessibility Standard". A member of our staff was appointed to this Committee. The Advisory Committee agreed that a Provincial Building Code was needed for Saskatchewan and that accessibility requirements must also be incorporated into it. The Committee rewrote the "Accessibility Standard" using the language of the *National Building Code* and produced Accessibility Regulations. The Advisory Committee submitted recommendations to the Minister of Labour, Lorne McLaren in July, 1982. They recommended that a Provincial Building Code and Accessibility Regulations be adopted by the Saskatchewan government.

The Commission urges the Saskatchewan provincial government to incorporate accessibility regulations into statute as soon as possible.

Resource Centre

Our Commission office in Saskatoon has a Resource Centre which is available for public use.

Our collection includes approximately 900 books, 330 serial publications of which 300 are current, an extensive vertical file collection and various audio-visual material. The Resource Centre is used by university and high school students, teachers, professors, lawyers and the general public.

Our Resource Centre also has on hand the following law reporters:

- Affirmative Action Compliance Manual for Federal Contractors
- Canadian Charter of Rights and Freedoms
- Canadian Charter of Rights Annotated
- Canadian Human Rights Reporter
- Canadian Labour Law Reporter
- Canadian Native Law Reporter
- Canadian Human Rights Reporter
- Disability Law Reporter
- Employment Practices Guide
- Employment and Training Reporter
- Equal Opportunity in Housing
- European Convention on Human Rights Decisions
- European Human Rights Reports
- Fair Employment Practice Service
- Human Rights Law Journal
- Reasons for Judgment: Charter of Rights and Freedoms (CLIC)
- Supreme Court of Canada Decisions

United Nations Commission on Human Rights

Shelagh Day, Director of the Saskatchewan Human Rights Commission, was appointed by the Department of External Affairs as a member of the Canadian delegation to the 38th Sesstion of the United Nations Commission on Human Rights. The Session was held in Geneva, Switzerland, February 1 - March 13, 1982.

Since then, Ms. Day has been appointed Chairperson of the Canadian Working Group on the Draft United Nations Convention on the Rights of the Child.

Copies of reports filed with the United Nations Commission and resolutions passed during the 1982 session are available in the Resource Centre of the Saskatchewan Human Rights Commission, Saskatoon office.

List of Saskatchewan Human Rights Commission Staff As of December, 1982

Saskatoon (Head Office):

Director:	Shelagh Day
Assistant Director:	Marty Schreiter
Staff Solicitor:	Milton Woodard
Investigators:	Mona Frederickson
	Cynthia Thomas
Affirmative Action Officers:	Yvonne Peters
	Nadine Bogren-Robinson
Director of Education:	Ailsa Watkinson
Education Officer:	June Vargo
Articling Student:	Guy Herriges
Office Manager:	Judy Kostyshyn
Stenographers:	Pat Cook
	Beverly Edwards-Jackson
	Beverly MacSorley
	Theresa Walker
Librarian:	John Doyle (part-time)

Regina (Regional Office)

Investigators:	Molly Barber
	Robin McMillan
Education Officer:	Bill Fayant
Stenographers:	Caryl MacKenzie
	Sue Smart

P.A. (Regional Office)

Investigators:	Greg Deren
	Norma Green
Stenographer:	May Barr

Table I

Summary of Informal Complaints by Grounds and Category

Category	Grounds															
	Application Forms	Sex		Colour	Race		Religion*	Nationality/ Citizenship	Marital Status	Age	Ancestry**	Physical Disability		Other	Total	Percent
		Sexual Harass.	Other		Native Ancestry	Other						Access	Other			
Accommodation, Services and Facilities			10		18	3		1	5	3	2	7	9		58	15%
Notices/Publications			7		1	1	1				2				12	3%
Employment		40	45	2	10	13	3	1	5	11	3	1	39	2	175	45%
Employment Advertisements			3												3	1%
Trade Unions							2	1							3	1%
Application Forms/Interviews	79														79	20.5%
Bill of Rights														10	10	2.5%
Right to Education						1	1						5		7	2%
Right to Engage in Occupations											1				1	.25%
Property/Housing			2		12	6		1	8			1	1	1	32	8%
Membership in Associations																
Reprisal														1	1	.25%
Contracts					1				1				1		3	1%
Other										1				1	2	.5%
Total	79	40	67	2	42	24	7	4	19	15	8	9	55	15	386	
Percent	20.5%	27.5%		.5%	17%		2%	1%	5%	4%	2%	16.5%		4%		100%

* Includes "creed"
** Includes "place of origin"

Table II

Disposition of Informal Complaints

Disposition	Number	%
Settled	77	20
Withdrawn	46	12
*No Reasonable Grounds	53	14
Transferred to Formal Inquiry	132	34
Total	308	80
Under Investigation	78	20
Grand Total	386	100%

** Cases in which we lack jurisdiction either because the alleged facts did not disclose a violation of one of our sections, or because of legal limits on our jurisdiction.*

Table III

Summary of Formal Complaints by Grounds and Category

Category	Grounds															
		Sex			Race							Physical Disability				
	Application Forms	Sexual Harass.	Other	Colour	Native Ancestry	Other	Religion*	Nationality/ Citizenship	Marital Status	Age	Ancestry**	Access	Other	Other	Total	Percent
Accommodation, Services and Facilities			5		8				5	2	2	5	6		33	15.5%
Notices/Publications			6												6	3%
Employment		26	34	1	4	9	7		4	9	1		22	1	118	55.5%
Employment Advertisements			3												3	1.5%
Trade Unions							1						1		2	1%
Application Forms/Interviews	1														1	.5%
Bill of Rights: Freedom of Speech														1	1	.5%
Bill of Rights: Arbitrary Arrest														3	3	1.5%
Right to Education					3								4		7	3%
Right to Engage in Occupations											1				1	.5%
Property/Housing			5		11	5			11			1			33	15.5%
Membership in Associations																
Reprisal														2	2	1%
Contracts									2						2	1%
Other																
Total	1	26	53	1	26	14	8		22	11	4	6	33	7	212	
Percent	.5%	37%		.5%	19%		3.5%		10.5%	5%	2%	18.5%		3.5%		100%

* Includes "creed"
** Includes "place of origin"

Table IV

Disposition of Formal Complaints

Disposition	Number	%
Settled	24	11.5
Withdrawn	13	6
No Probable Cause	6	3
Dismissed	9	4
Referred to Board of Inquiry	8	3.5
Total	60	28
Under Investigation	152	72
Grand Total	212	100%

Table V

Boards of Inquiry

Number and Nature of Complaints Referred to Boards of Inquiry:

Accommodation	5
Notices and Publications	1
Employment	4
Housing	3
	13

Grounds of Complaints Referred to Boards of Inquiry:

Physical Disability	6
Sex	1
Race	1
Age	1
Marital Status	3
	12

Disposition of Complaints Referred to Board of Inquiry:

Settled	1
Board Pending	7
Board in Progress	1
No Decision to Date	2
On Appeal	2
	13

Table VI

Education Statistics For 1982

Type of Activity	No. of Events
Speeches	91
Media Contacts	126
Workshop/Conference	23
Community Consultation	414
Displays	6
Total	660

Table VII

Requests for Literature

	No. of Requests	No. Given
Written Requests	2,379	5,554
Personal Requests	2,768	6,383
Telephone Requests	1,809	15,305
Conferences, Displays	20,263	22,522
Total	27,219	49,764

List of Saskatchewan Human Rights Commission Publications

1. 'The Saskatchewan Human Rights Code and Regulations

2. Pamphlets and Brochures:

   *Saskatchewan Human Rights Commission — Information Kit
   *Doing What's Right: The Saskatchewan Human Rights Code
   *Rights on the Job: Employer's Guide
   *Getting About: Rights of the Physically Disabled
   *Equal Access: Good Business
   *Finding a Home: Landlord and Realtor Responsibilities
   *Application Forms and Interview Guide: A Guideline for Employers and Job Applicants
   *You've Filed a Complaint — Now What Happens?

3. Newsletters:

   *Compulsory Retirement: Elements of the Debate
   *Sexual Harassment: Taking a Stand
   *The KKK: An Editorial Statement
   *Making Saskatchewan Accessible
   *The Education System and Human Rights
   *Saskatchewan Human Rights Commission Releases Interpretive Document on Pensions, Employee Benefits and Insurance
   *Sexual Harassment: New Developments and Interpretations
   *Independence for Human Rights Commission: An Idea Whose Time Has Come
   *Canada's Constitution and Charter of Rights and Freedoms
   *Aboriginal Peoples of Canada and the Constitutional Process: The Task Ahead
   *Affirmative Action News #1
   *Affirmative Action News #2

4. *"On Rights", Saskatchewan Human Rights Commission Schools Newsletter, Vol. 1 No. 1

5. Other Materials:

   *Accessibility Standard
   *Human Rights and Benefits in the 80's
   *Affirmative Action Legal Provisions
   *A Manual on the Charter of Rights and Freedoms
   A Pictorial History of the Metis and Non-Status Indian in Saskatchewan
   Human Rights for Persons with Physical Disabilities (includes case law)
   TASC Workshop on Sexism
   TASC Workshop on Racism
   TASC Workshop on Handicapism
   Prejudice in Social Studies Textbooks, along with Supplement
   Sex Bias in Primary Readers

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COMMENT

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The Canadian Association of Statutory Human Rights Agencies (CASHRA) held its annual conference May 31st - June 2nd, 1982 in Montebello, Quebec. Ken Norman, Chief Commissioner of the Saskatchewan Human Rights Commission, was elected President of CASHRA for the 1983 term. The following is the text of an address given by Mr. Norman to the conference.

INDEPENDENCE FOR HUMAN RIGHTS COMMISSIONS: AN IDEA WHOSE TIME HAS COME

> Without the security and independence which is provided for in the Quebec and federal Acts, through appointment during good behaviour subject only to a removal process involving the legislative body, there is less than full confidence that human rights commissions will enforce their codes as vigorously against their own governments as against the private sector.
>
> Tarnopolsky, *Discrimination and the Law in Canada*, 1982 Richard De Boo at p. 434.

My thesis is that to ignore Professor Tarnopolsky's commentary is to jeopardize the very point of legislative action in the field of human rights and fundamental freedoms. Although my argument might well have been put some months or indeed years ago, I submit that it is particularly appropriate to consider it now, in the immediate aftermath of the patriation of our new Constitution with its *Charter of Rights and Freedoms*. For, in the sole preambulatory provision of the Charter, it is stated that Canada is founded upon a recognition of the supremacy of the rule of law. Whatever else the principle of the rule of law might be said to stand for, it surely sets its face against the notion that anyone is above the law. It was this great democratic idea which brought down President Nixon a decade ago. And it is this same idea which ought to be foremost in our thoughts as we, in human rights commissions in Canada, consider the matter of our institutional integrity. For if we cannot win and retain public confidence that we will be steadfast in our law enforcement responsibilities whether the respondent is a private employer or landlord or the government itself, then human rights commissions may well come to be perceived by many as being part of the problem in the struggle for human rights in this country. We surely did not take up our appointments because we wish to be seen to be part of the problem. As individuals, we all want to be part of the solution. My suggestion is that we begin immediately to get our respective institutional houses in order. It has been some five years now that Canada has established human rights commissions in all jurisdictions. Yet from the perspective of institutional integrity, our commissions present a bewildering array of structures and reporting linkages, not to mention mandates.

L'INDÉPENDANCE POUR LES COMMISSIONS DES DROITS DE LA PERSONNE: UNE IDÉE OPPORTUNNE

par M. Ken Norman, Commissaire principal de la Commission des droits de la personne de la Saskatchewan

> Sans la sécurité et l'indépendance qu'assurent les lois du Québec et du Canada par le truchement de nominations qui demeurent en vigueur durant bonne conduite sous réserve d'un processus de destitution ne pouvant être amorcé que par le corps législatif, on ne peut être tout à fait sûr que les commissions des droits de la personne feraient respecter leurs codes aussi rigoureusement par leurs propres gouvernements que par le secteur privé.
>
> Tarnopolsky, *Discrimination and the Law in Canada*, 1982, Richard De Boo, p. 434.

Ã mon avis, si l'on ne tient pas compte de l'observation du professeur Tarnopolsky, on compromet l'essentiel même de l'action législative dans le domaine des droits de la personne et des libertés fondamentales. Mon point de vue aurait pu être formulé il y a quelques mois ou même quelques années, mais j'estime qu'il convient particulièrement de l'examiner à ce stade-ci, immédiatement après le rapatriement de notre constitution, dont fait partie la *Charte des droits et libertés*. En effet, dans le préambule même de la Charte, il est déclaré que le Canada est fondé sur la reconnaissance de la primauté du droit. Quelles que soient les autres significations que l'on puisse accorder à ce principe, il est certain qu'il s'oppose à l'idée que quiconque soit au-dessus des lois. C'est ce grand principe démocratique qui a entraîné la démission du président Nixon il y a une dizaine d'années. Et c'est ce même principe qui devrait prévaloir, lorsqu'au sein de nos commissions des droits de la personne au Canada, nous nous penchons sur la question de notre intégrité institutionnelle. Car si nous ne pouvons susciter et maintenir chez le public la conviction que nous accomplirons avec fermeté notre devoir de faire respecter la loi, que ce soit devant un employeur ou un propriétaire privés ou devant l'État lui-même, beaucoup de gens en viendront à considérer des commissions des droits de la personne en particulier comme faisant partie intégrante du problème qui anime la lutte pour les droits de la personne dans notre pays et, je le crains, y associeront toutes les commissions des droits de la personne. Ce n'est certainement parce que nous voulons être considérés comme faisant partie du problème que nous avons accepté nos nominations. Au contraire, chacun d'entre nous veut prendre part à la solution. Je vous propose donc que nous commencions immédiatement à mettre de l'ordre dans nos institutions respectives. Il y a maintenant environ cinq ans que chaque administration au Canada à sa commission des droits de la personne. Pourtant, du point de vue de l'intégrité institutionnelle, nos commissions comportent un nombre déconcertant de structures et de liens hiérarchiques, sans parler de la diversité des mandats.

With regard to the crucial matter of tenure of office, only Quebec and federal commissioners have the security of knowing that nothing short of an act of the legislative body will see them thrown out of their offices. My colleagues and I in Saskatchewan enjoy the next most secure position. We are appointed for a fixed term of five years. The other jurisdictions either provide for no term or for a maximum term. In either case, commissioners continue in office at the pleasure of the cabinet in their province. Saskatchewan and Prince Edward Island are the only two jurisdictions to provide for staggered terms of office.

In the other provinces, the 'new broom' of a newly elected government can and does sweep clean an entire commission. Whether such activity is for better or for worse in terms of advancing the protection of human rights in any given jurisdiction, is open to debate on the subjective merits of just who was ousted and who was put in their place. But, I suggest to you that over the long term, such partisan behaviour does nothing but harm to the image of human rights commissions as fearless and independent defenders of protected classes of persons against all comers, including governments.

The next related issue is that of reporting. Other than the Quebec Commission which, like Ombudsmen's Offices, enjoys a direct relationship with the legislative body, all other commissions report to a minister. As to which minister, there is no harmony. Some codes specify the minister. Others do not. In practice the commissions are split exactly down the middle. Five of us report to our respective Minister of Justice or Attorney General and five report to their Minister of Labour. The explanation for this split is historical. But, I ask you to consider whether it makes any continued sense. As for the actual reporting mechanisms, happily half of us actually do report to the legislative body as our minister must lay our reports before the house within a specified number of days of receiving the same from us.

Commission staff are considered public servants, except in Quebec and Saskatchewan. This also applies to the executive director in four jurisdictions. But in four others, including Saskatchewan I regret to say, the executive director is an 'at pleasure' appointment of the Lieutenant-Governor in Council. In Quebec and Ottawa, the chief executive officer is the head of the commission and may only be removed by the legislative body. In Prince Edward Island the executive director is employed by the commission.

If independence and institutional integrity are worthy objectives to be pursued, then I submit that, at least for smaller commissions where full time commissions are not needed, the Prince Edward Island relationship is the model to be looked to.

The history of the past decade has demonstrated that the real crucible in which commission decisions have been tested has been in the law enforcement area. Other than in Quebec, we have adopted a board of inquiry process for the hearing and determination of probable cause violations of our codes. This process deserves to be examined at both the front and back ends.

Pour ce qui est de l'importante question de la durée du mandat, seuls les commissaires québécois et fédéraux jouissent de la sécurité de savoir qu'ils ne peuvent être démis de leurs fonctions que par un acte du corps législatif. Ce sont nous, mes collègues et moi-même de la Saskatchewan, qui avons ensuite la position la plus sûre. En effet, nous sommes nommés pour une période fixe de cinq ans. Dans les autres administrations, soit qu'aucune période ne soit fixée, soit qu'il y ait une période maximale, et dans les deux cas, les commissaires détiennent leur poste selon le bon plaisir du Cabinet de leur province. La Saskatchewan et l'Île-du-Prince-Édouard sont les deux seules administrations qui prévoient des mandats d'une durée échelonnée.

Dans les autres provinces l'élection d'un nouveau gouvernement peut entraîner un remaniement complet des effectifs d'une commission. Pour ce qui est de savoir si cette formule est avantageuse ou préjudiciable pour la protection des droits de la personne dans une administration donnée, il faut se livrer à un examen subjectif des mérites respectifs des personnes évincées et de leurs remplaçants. Mais à mon avis, un régime partisan comme celui-là ne peut, à long terme, que nuire à l'image des commissions des droits de la personne en tant que défenseurs déterminés et indépendants de certaines classes de personnes contre tous et chacun, y compris les gouvernements.

Il y a aussi la question connexe des liens hiérarchiques. Sauf pour ce qui est de la commission et Québec qui, comme les bureaux des protecteurs du citoyen, relève directement du corps législatif, toutes les autres commissions relèvent d'un ministre, et il n'y a aucune uniformité quant à savoir de quel ministre il s'agit. Certains codes désignent expressément un ministre, d'autres ne le font pas. Dans la pratique, les commissions sont divisées exactement en deux groupes à ce chapitre. Cinq d'entre elles relèvent du ministre de la Justice ou du Procureur général, et cinq, du ministre du Travail. Des raisons historiques expliquent ce partage des responsabilités, mais ce que je vous demande, c'est de voir si, à votre avis, cet état de choses se justifie encore aujourd'hui. Pour ce qui est des mécanismes hiérarchiques eux-mêmes, heureusement, la moitié d'entre nous relevons finalement du corps législatif, car notre ministre doit déposer dans un délai précis devant la Chambre le rapport que nous lui soumettons.

Pour sa part, le personnel des commissions fait partie de la fonction publique, sauf au Québec et en Saskatchewan, et ce principe s'applique au directeur administratif dans quatre administrations. Dans quatre autres, y compris à mon grand regret en Saskatchewan, le directeur administratif est nommé "à titre amovible" par le lieutenant-gouverneur en conseil. Au Québec et à Ottawa, l'administrateur en chef dirige la commission et il ne peut être destitué que par le corps législatif. A l'Île-du-Prince-Édouard, le directeur administratif est un employé de la commission.

Si l'on considère l'indépendance et l'intégrité institutionnelle comme des objectifs valables, j'estime donc, du moins pour les petites commissions qui n'ont pas besoin de commissaires à plein temps, qu'il faudrait adopter comme modèle hiérarchique celui de l'Île-du-Prince-Édouard.

L'histoire de la dernière décennie a démontré que le domaine dans lequel les décisions des commissions ont vraiment été mises à l'épreuve est celui de l'application de la loi. Sauf au Québec on a adopté un processus de commission d'enquête pour entendre et juger les causes probables de violation de nos codes. Le début et la fin de ce processus méritent d'être examinés.

First, let's look at how a board of inquiry is established. With the exception of the federal commission, which is given the responsibility to appoint a board, all other jurisdictions give this function to the responsible minister. Unhappily most codes leave the minister with a discretion in this matter. What a spot this puts a particular minister in when the named respondent is his very own department of government or an agency responsible to him. And what is the public likely to think of the entire process if the minister declines to appoint an inquiry? More than a few such negative exercises of discretion have taken place in recent years by ministers. Thus, this is far from an academic point. Alberta and Saskatchewan remove the discretion from the minister. The decision to appoint a board of inquiry, once taken by the commission, leaves the minister with a clear duty to appoint. This simple, though crucial change, relieves the minister of any potential embarrassment and underscores most emphatically the underlying premise of the rule of law.

The *Ontario Human Rights Code*, which was proclaimed June 15th, 1982, will take this course. It states that:

> 37. — (1) Where the Commission requests the Minister to appoint a board of inquiry, the Minister *shall* appoint from the panel one or more persons to form the board of inquiry and the Minister *shall* communicate the names of the persons forming the board to the parties to the inquiry. (Emphasis added)

Finally, let me turn your attention to the back end of the inquiry process. Given the existence of an aggrieved complainant asserting a claim of right, and, given a determination by a commission that sufficient cause exists to warrant a full public inquiry into the question as to whether a code has been violated, then, surely it follows that the board of inquiry's decision ought to be dispositive, subject only to formal appeals. Yet, three jurisdictions do not follow this course. Their inquiry opinions at the conclusion of hearings are just that — opinions. They are not binding. This is not a happy state of adjudicatory affairs.

There is also the question of the roles of statutory human rights agencies. Here again, we find considerable variety, and not just in the language of particular human rights codes. What commissions actually do is at least as important as the language of their parent statutes. From the perspective of administrative law, it is, of course, essential to understand the words of the empowering statute. But, the words alone are not enough. One has to listen for the music.

My point is that commissions are not just law enforcement and educational agencies. With varying degrees of regulatory authority we are actually law makers and we should not be shy about recognizing this reality.

On March 26, 1982, in a public lecture at the Faculty of Law, University of Saskatchewan, Professor H. W. Arthurs made the point in the following language:

> I come now to perhaps the most important case of all, how law is made by the administration. Acknowledging that all official action, in some general way, relates back to an empowering statute, we encounter everywhere examples of administrative lawmaking through regulations, formal

Etudions d'abord la façon dont une commission d'enquête est instituée. Sauf pour ce qui est de la commission fédérale, à qui revient l'institution d'une commission d'enquête, toutes les autres administrations attribuent cette fonction au ministre responsable. Malheureusement, la plupart des codes laissent cette question à la discrétion du ministre qui se trouve placé dans une mauvaise position lorsque l'intimé est son propre ministère ou un organisme dont il est responsable. Que pensera alors le public de tout le processus si le ministre refuse d'instituer une commission d'enquête? Au cours des dernières années, il est arrivé plusieurs fois que des ministres se soient prévalus de la discrétion qui leur est laissée d'opposer un tel refus. Il ne s'agit donc pas là d'une question purement théorique. L'Alberta et la Saskatchewan n'accordent pas cette discrétion au ministre. Lorsque la commission décide qu'une commission d'enquête doit être instituée, le ministre n'a plus qu'à s'y conformer. Cette différence, élémentaire mais très importante, évite au ministre tout embarras éventuel et souligne très catégoriquement la prémisse sous-jacente de la prémauté du droit.

Le *Code des droits de la personne de l'Ontario*. Il specifie:

(Traduction)

> 37. — (1) Lorsque la Commission demande au Ministre d'instituer une commission d'enquête, le ministre *doit* choisir parmi le groupe une ou plusieurs personnes qui constituent le comité d'enquête, et il *doit* communiquer le nom de ces personnes aux parties intéressées à l'enquête. quête.
>
> (Certains mots ne sont mis en relief qu'aux fins de la présente citation.)

Enfin, voyons maintenant l'autre extrémité du processus d'enquête. Si un plaignant s'estimant lésé revendique un droit et si une commission estime que le motif est suffisant pour justifier une enquête publique sur la question de savoir s'il y a eu violation d'un code, la décision prise par la commission d'enquête devrait alors nécessairement être exécutoire, sous réserve seulement d'un processus officiel d'appel. Pourtant, trois administrations ne suivent pas cette ligne de conduite. Les opinions émises par les commissions d'enquête à la suite des audiences ne sont que cela, c'est-à-dire des opinions; elles ne lient personne. Ce n'est pas là une très bonne forme d'arbitrage.

Il y a aussi le rôle des organismes statutaires des droits de la personne. Là encore, la disparité est considérable et ce, non seulement dans le libellé des divers codes de droits de la personne. Les actes effectivement accomplis par les commissions sont tout au moins aussi importants que le libellé de leurs lois constitutives. Du point de vue du droit administratif, il van sans dire qu'il est essentiel de comprendre le libellé de la loi habilitante. Or, tout n'est pas de comprendre le libellé, encore faut-il en saisir l'esprit.

C'est-à-dire que les commissions ne sont pas simplement des organismes chargés de faire appliquer la loi et de sensibiliser le public et disposant à cette fin de pouvoirs réglementaires à des degrés divers, car elles participent vraiment à l'élaboration du droit, et elles ne devraient pas hésiter à reconnaître ce fait.

Le 26 mars 1982, au cours d'une conférence prononcée à la faculté de droit de l'Université de la Saskatchewan, le professeur H. W. Arthurs le soulignait en ces termes:

> Et maintenant je voudrais parler du cas peut-être le plus important, la façon dont l'administration crée le droit. En admettant que toute action officielle se reporte d'une façon générale à une loi, nous rencontrons partout des exemples de législation administrative issue de règlements, de

> decisions, policy statements, informal rulings, routine responses to standard situations, press releases, and even through total inaction. All of these, and other techniques, are used not simply to secure compliance with statutory policies, but to secure compliance at a cost, in a manner, and to a degree which is also determined by the administration. Indeed, given the vagueness with which most statutory policies are expressed, their very content is in effect supplied by the administration.

We have at least three recent examples of a human rights commission not just playing the role of a defender of legislative rights but extending itself into the role of a proponent of change, in the name of human rights. First, on Wednesday, April 7, 1982, the federal commission's annual report was tabled in Parliament. That same day a letter from Gordon Fairweather was sent to all Members of Parliament and Senators. A Canadian Press story quotes that letter as pleading with the parliamentarians to abolish mandatory retirement laws. The letter argues that the present law ". . . is not fair and it is contrary to the spirit of human rights legislation." Is the circulation of such a letter an improper role for an independent human rights agency to assume? I suggest not.

Second, there is the role of the Saskatchewan Human Rights Commission with regard to built environment accessibility. In August of 1979 'physical disability' was added as a new protected head to our code. But this simple legislative amendment did nothing to address the hard reality of barriers facing people with disabilities. My colleagues and I decided that what was needed was nothing less than a province-wide building code to ensure accessibility in all new structures and with regard to major renovation projects. To this end, we convened public hearings in the months that followed. Arising out of those hearings, a consumers' committee was given a mandate by the Commission to draft a standard. This was done and a year later the Commission passed a resolution 'adopting' the standard. We realized that such an 'adoption' did not make the Accessibility Standard into building code law. But, it was a first step. And, then came the International Year of Disabled Persons. On March 22, 1982, I authored a covering letter to my Minister, when our Annual Report was filed. That letter said, in part:

> . . . the International Year of Disabled Persons helped establish a climate of opinion which enabled a good deal of headway to be made on the question of building accessibility standards. The Government's promise of legislation in the field set a most welcome tone for the concluding days of the International Year. The Commission looks forward to the "Accessibility Standard," which we adopted on August 14, 1980, attaining the force of building code law in the coming months.

I am pleased to advise you that Bill 33, *The Uniform Building and Accessibility Standards Act* was read for the first time in the Saskatchewan Legislature on March 19, 1982. On April 26, 1982, a new government came into office in Saskatchewan. On May 10, I sent a letter to all members of the new government caucus calling upon them to place the *Accessibility Standards Bill*, or something like it, high on their legislative agenda. I am confident that they will do so.

> jugements officiels, de déclarations de principes, de décisions non officielles, de réactions courantes à des situations normales, de communiqués, et même de l'inaction totale. Toutes ces mesures, ainsi que d'autres techniques, sont utilisées non pas simplement pour assurer le respect des politiques établies par des lois, mais pour en assurer le respect à un coût, d'une façon, et dans une mesure que détermine l'administration. En réalisté, compte tenu de l'imprécision de la plupart des politiques établies par les lois, c'est en fait l'administration qui en établit le contenu.

Il y a trois exemples récents où des commissions des droits de la personne ne se sont pas contentées de jouer le rôle de défenseur des droits établis par la loi, mais se sont également faites l'avocat du changement, au nom des droits de la personne. Premièrement, il s'agit de la Commission fédérale, qui a déposé son rapport annuel au Parlement le mercredi 7 avril 1982. Le même jour, M. Gordon Fairweather faisait parvenir une lettre à tous les députés et sénateurs. Selon un article de la Presse canadienne, cette lettre incitait les parlementaires à abolir les lois imposant la retraite obligatoire. Il y est mentionné que la loi actuelle ". . . n'est pas juste et est contraire à la législation sur les droits de la personne". Un organisme indépendant des droits de la personne outrepasse-t-il son rôle en diffusant une telle lettre? J'estime que non.

Deuxièmement, la Commission des droits de la personne de la Saskatchewan est intervenue relativement à l'accessibilité des constructions. En août 1979, le "handicap physique" était ajouté aux classes protégées en vertu de notre code. Toutefois, cette simple modification législative n'a rien fait pour atténuer la dure réalité des obstacles auxquels se heurtent les handicapés. Mes collègues et moi-même avons décidé qu'il fallait rien de moins qu'une disposition dans le code du bâtiment de la province en vertu de laquelle toute nouvelle structure et tout grand projet de rénovation devraient prévoir des moyens d'accès. Ā cette fin, nous avons convoqué des audiences publiques au cours des mois qui ont suivi. Ā la suite de ces audiences, la Commission a chargé un comité de consommateurs de rédiger une norme, ce qui a été fait et, un an plus tard, la Commission "adoptait" cette norme par voie de résolution. Nous savions fort bien qu'une telle "adoption" n'incluait pas à elle seule la norme d'accessibilité dans le code du bâtiment, mais c'était une première étape. Ensuite est venue l'Année internationale des handicapés. Le 11 mars 1982, au moment où notre rapport annuel était déposé, j'ai adressé à mon ministre une lettre de présentation dans laquelle je disais, entre autres, ce qui suit:

> . . . l'Année internationale des handicapés a aidé à susciter un climat qui a permis d'accomplir beaucoup de progrès dans la question des normes d'accessbilité des constructions. La promesse que le gouvernement a faite d'adopter des dispositions législatives dans ce domaine a contribué à donner un ton on ne peut plus heureux aux derniers jours de l'Année internationale. La Commission espère que la "norme d'accessibilité" qu'elle a adoptée le 14 août 1980 sera intégrée au code du bâtiment dans les prochains mois.

Je suis heureux de vous annoncer que le project de loi 33, *The Uniform Building and Accessibility Standards Act*, a passé l'étape de la première lecture. Le 26 avril un nouveau governement a été mis en place en Saskatchewan. Le 10 mai, j'ai envoyé une lettre à tous les membres du conseil de ministres du nouveau governement. En leur demandant de spécialement venir compte de la loi en favuer des droits des handicapés ou de quelque chose de similaire dans leur programme législatif. Je suis confident et sûr qu'ils feront quelque chose pour avancer et trouver des solutions concernant ce projet. Avons-nous outrepassé notre rôle en en-

Third, there is the vexing relationship between the spirit of human rights legislation and the practices of the insurance industry in this country. If human rights commissions were to concern themselves with only the words and not the music, then they might have decided to treat the subject in the same manner as sex was dealt with by Victorian England. That is to say, it ought not to be considered in public discussion. Happily, a number of commissions have chosen a bolder and more forthright course. Most recently Alberta and Saskatchewan have chosen to engage the industry and the public in a debate on the question. Before long, regulations like the federal and proposed Manitoba ones may see the light of day. And, a little more human rights law will have been made.

Finally, there is the role of scrutineer of existing statutory and regulatory provisions. Both Quebec and Ottawa have the responsibility to analyze laws with a view to determining whether they are in conflict with provisions of human rights legislation. This is surely desirable if compliance with human rights codes is to be achieved in the land. It is perhaps implicit in Alberta, Saskatchewan, and Prince Edward Island that commissions have such a responsibility, given the presence of paramountcy clauses. I should add that this will soon be the case in Ontario with proclamationof Bill 7. But this role ought to be made explicit in all jurisdiction. With the advent of the *Charter of Rights and Freedoms*, it is even more crucial that human rights houses be put in order and that conflicting legislation be brought into line with human rights codes. And, who is better suited to perform the initial analysis than the responsible human rights agency?

Allow me to conclude by saying that although I have addressed a number of issues, they have all orbited around a central theme. Objective and fearless administration of human rights codes is best ensured by giving security of tenure to commissioners. It is tenure and nothing less which gives the judges the courage to stand up for the rule of law. In his recent book, *Fragile Freedoms: Human Rights and Dissent in Canada*, Mr. Justice Berger authors this memorable line:

> Judges may not always be wiser than politicians, but they should be able to stand more firmly against angry winds blowing in the streets.
>
> (At page 262.)

Would it not be a worthy goal for us all to look to our own statutory foundations with a view to seeing a day dawn when someone like Mr. Justice Berger might say the same of human rights commissioners?

courageant l'adoption de cette modification législative? Je vous laisse le soin de répondre à cette question.

Troisièmement, les rapports controversés qui existent entre l'esprit de la législation sur les droits de la personne et les usages suivis par l'industrie de l'assurance dans notre pays. Si les commissions des droits de la personne devaient ne se préoccuper que de la lettre et non de l'esprit de la loi, elles auraient peut-être décidé de traiter la question de la même façon que le sexe l'a été à l'époque victorienne en Angleterre, c'est-à-dire comme une question dont il ne fallait pas discuter en public. Heureusement, un certain nombre de commissions ont décidé de suivre une ligne de conduite audacieuse et plus directe. Tout dernièrement, l'Alberta et la Saskatchewan ont choisi de lancer un débat sur la question avec l'industrie et le public. Avant longtemps, des règlements comme ceux du gouvernement fédéral et ceux que propose le Manitoba verront le jour. Ici encore, je vous laisse le soin de déterminer si ce genre d'activité est justifié.

Enfin, les commissions peuvent être appelées à examiner attentivement les lois et les règlements en vigueur. Québec et Ottawa ont la responsabilité d'analyser les lois afin de déterminer si elles entrent en conflit avec les dispositions de la législation sur les droits de la personne. Une telle mesure est certainement souhaitable si l'on veut que les codes relatifs aux droits de la personne soient respectés dans le pays. Une responsabilité de ce genre incombe peut-être implicitement aux commissions de l'Alberta, de la Saskatchewan et de l'Île-du-Prince-Édouard, compte tenu de l'existence de clauses de prépondérance. Je voudrais ajouter qu'en Ontario, l'adoption du projet de loi 7 concrétisera bientôt une formule analogue. Mais j'estime que ce rôle devrait être assigné explicitement dans tous les administrations. Avec l'adoption de la *Charte des droits et libertés*, il est encore plus important que l'on mette de l'ordre dans les organismes voués à la protection des droits de la personne, et que l'on fasse concorder les lois contradictoires avec les codes des droits de la personne. Et qui mieux que ces organismes peut effectuer l'analyse initiale?

Pour conclure, j'ajouterai que j'ai abordé un certain nombre de questions, mais qu'elles gravitaient toutes autour d'un thème central. La meilleure façon d'assurer l'application objective et déterminée des codes relatifs aux droits de la personne est de garantir la sécurité du mandat des commissaires. C'est cette sécurité et rien de moins qui donne aux juges le courage de défendre la primauté du droit. Dans son récent ouvrage intitulé "*Fragile Freedoms: Human Rights and Dissent in Canada*", le juge Berger écrit cette phrase mémorable:

> Les juges n'ont peut-être pas toujours plus de sagesse que les hommes politiques, mais ils devraient pouvoir affronter avec plus de fermeté les tempêtes qui font rage dans la rue.
>
> (Traduction, page 262)

Ne serait-ce pas pour nous tous un objectif valable que de nous pencher sur nos lois fondamentales dans la perspective qu'un jour, quelqu'un comme le juge Berger puisse dire la même chose des commissaires aux droits de la personne?

CANADIAN
HUMAN RIGHTS
REPORTER

Volume 3, Decision 194 Paragraphs 8638 - 8681 August-September 1982

Court of Queen's Bench Decision under the
SASKATCHEWAN HUMAN RIGHTS CODE

Corporal V.B. Scowby, Corporal W.L. Ganes
Constable J.A. Clarke, Constable A.R. Hopper
Constable B.C. Woodward, and Stephen B. McBride
Applicants

vs.

Peter Glendinning

Respondent

Date: June 25, 1982

Place: Saskatoon, Saskatchewan

Before: Maher, J.

Appearances by: C. Dean Campbell, Counsel for Scowby, Ganes, et al.
M.C. Woodard, Counsel for Dieter, Dumont, et al. and the Saskatchewan Human Rights Commission
Betty Anne Pottruff, Counsel for the Attorney General of Saskatchewan

Summary: *The Court grants the application sought and prohibits a Board of Inquiry appointed by the Attorney General under the Saskatchewan Human Rights Code from inquiring into the complaints of Dieter, Dumont, Ironstar and Runns that they were arbitrarily arrested and detained.*

The applicants before the Court are officers of the Royal Canadian Mounted Police and the Respondents in the human rights complaint.

The applicants argued successfully before the Court that the Board of Inquiry was without jurisdiction in this matter because Section 7 of the Saskatchewan Human Rights Code, which guarantees the right of every person to be free from arbitrary arrest or detention, does not apply to members of the Royal Canadian Mounted Police engaged in the investigation of offences under the Criminal Code of Canada. A Board of Inquiry constituted under the Human Rights Code does not have the authority to inquire into the administration and management of the Royal Canadian Mounted Police because the RCMP is a federal agency.

In this case, the Court finds that the Board of Inquiry would be undertaking inquiry into the administration and internal management of the Royal Canadian Mounted Police. Consequently, the Court rules that the Board of Inquiry is without jurisdiction and prohibits it from inquiring into the complaint.

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8638 This is an application for an Order of Prohibition made on behalf of six members of the Royal Canadian Mounted Police and directed to the Chairman of a Board of Inquiry appointed under The Saskatchewan Human Rights Code S.S. 1979 Cap S24.1. The Attorney General of Saskatchewan appointed the Board of Inquiry to inquire into the complaint of four citizens of the Province who allegedly have been denied rights guaranteed to them by section 7 of The Saskatchewan Human Rights Code.

8639 The application is made on the following terms: grounds:

> "(a) That the Saskatchewan Human Rights Commission and the Respondent Chairman of the Board of Inquiry lack jurisdiction to inquire into complaints against the conduct of members of the Royal Canadian Mounted Police while on duty.
>
> (b) THAT Section 7 of the Saskatchewan Human Rights Code cannot be employed to establish rights or procedures in matters of criminal law and has no application to members of the Royal Canadian Mounted Police engaged in the investigation of offences under the Criminal Code of Canada.
>
> (c) THAT Sections 29 and 31 of the Saskatchewan Human Rights Code are beyond the competence of the Saskatchewan Legislature in that they purport to confer upon the Board of Inquiry judicial powers and functions analagous to those performed by judges of a Superior, District or County Court appointed pursuant to Section 96 of the British North America Act."

8640 The complaint bears date March 13, 1981 and is signed by each of the four complainants and directed against the applicants. It alleges that the violation of section 7 of The Human Rights Code took place on or about September 28, 1980, and the particulars of the alleged violation are set out in the complaint as follows:

> "On September 27, 1980, we Joseph Dumont, Keith Deiter, Fred Runns Jr. and Wesley Ironstar were southeast of Hudson Bay, along the Ridge Road, hunting moose. We hunted for several hours, then proceeded back to a cabin at Moose Range Lodge, where we all went to sleep for the night. Several hours later, approximately 2:00 A.M., we were awakened by a man's voice amplified by a loudspeaker stating that it was the R.C.M.P., that Fred Runns was under arrest, and that he should come out of the cabin with his hands behind his head. Runns did this. We were then instructed to come out of the cabin one at a time with our hands behind our heads, and not to bother to dress.
>
> Once outside, we saw headlights directed at the cabin and the silhouettes of a number of men, surrounding the cabin, with guns pointed at us. We were all instructed to lay face down on the ground, with our hands behind our heads and not to move. A man questioned Runns, and in the meanwhile, other men laughed, made jokes about the situation, and ridiculed us. A dog was barking and growling during this time, and we perceived him to be loose as he came very close to our heads on several occasions while doing this. During this time someone stepped down on the back of the heads of both Mr. Deiter and Mr. Dumont. Finally, after approximately one-half hour of laying on the ground, not adequately clothed, in below-zero temperatures, we were told to get up one at a time and asked our names and addresses, then told by an R.C.M.P. officer to get back into the cabin."

8641 The actual complaint follows the recital of the particulars and is as follows:

> "We believe these R.C.M.P. officers violated our rights by arbitrarily detaining us and by not informing us as to the charges on which we were being detained. We believe this is in contravention of the Bill of Rights under The Saskatchewan Human Rights Code, Section 7.
>
> We further believe that our experience is indicative of a general pattern and practice of the Royal Canadian Mounted Police in contravening Section 7 of the Bill of Rights."

8642 Following the filing of the complaint an investigation was carried out by the Human Rights Commission pursuant to sec. 28(1) of the Code and the commission found probable cause to believe that the alleged violation did occur. The section requires the commission to endeavour to effect a settlement between the parties and on behalf of the commission a letter was directed to the six police officers under date of August 11, 1981. The letter advised the police officers that a settlement on the following terms would be acceptable to the complainants:

> "1. That you each acknowledge an understanding of *The Saskatchewan Human Rights Code* and in particular Section 7 thereof and undertake not to violate the provisions of same in the future;
>
> 2. That you jointly and severally agree to pay to each of the respondents the sum of $5,000.00. To ensure there is no misunderstanding we are requesting that each complainant receive a total of $5,000.00."

8643 The applicants were asked to reply to the suggested settlement by August 26, 1981 and when no response was forthcoming a formal inquiry into the complaint was directed by the Attorney General.

8644 Unfortunately particulars of the Order-in-Council directing the inquiry were not made available to the court but notice of the formal inquiry signed by the chairman, Peter Glendinning, was filed. It sets out that the inquiry is to be into the complaint of the four individuals dated March 13, 1981. Accordingly it must be assumed that the direction of the Attorney General required the board of inquiry to inquire into all matters set out in the complaint.

8645 Preliminary objection to the application was taken on behalf of the respondent. It was contended that prohibition should not issue until the question of whether the R.C.M.P. Officers were engaged in the execution of their duties and the extent of their involvement had been determined. From the material before the court, and in particular the complaint itself and the letter from the Saskatchewan Human Rights Commission to the applicants, it is clear that at the time of the alleged violation of section 7 of the code, the applicants were R.C.M.P. officers on duty and were engaged in the investigation of an alleged offence and the arrest of a person suspected of committing that offence. It is also clear that the alleged denial of the rights of the complainants took place during the course of the investigation and subsequent arrest. The three grounds of the application challenge the jurisdiction of the board to inquire into the matter and I cannot see in what manner evidence would provide any assistance in determining the question of jurisdiction. The issues raised are questions of law and on the answers to these questions depend the authority of the board of inquiry to inquire into the complaint. In my view the applicants are entitled to have these questions determined and do not have to wait until the board has considered the matter. *Bell v. Ontario Human Rights Commission* (1971) 18 D.L.R. (3rd) 1. It follows that the preliminary objection must fail.

8646 The first ground of the application is that the board of inquiry lacks jurisdiction to inquire into complaints against the conduct of R.C.M.P. members while on duty and I propose to first deal with this ground.

8647 The Royal Canadian Mounted Police is a police force operating under the authority of a federal statute, *The Royal Canadian Mounted Police Act* R.S.C. 1970 cap. R. 9. The authority of parliament for the establishment of the force and its management as part of the Government of Canada is unquestioned. *Attorney General of Quebec and Keable v. Attorney General of Canada et al* (1978) 90 D.L.R. (3rd) 161, per Pigeon, J. at p. 180. The Province of Saskatchewan has by contract with the Government of Canada entered into an arrangement for the provision of policing services by the engagement of this federal force and the validity of this agreement is not in issue. Nor is there any dispute of the fact that the applicants in this matter are members of that force serving in the Province of Saskatchewan pursuant to the terms of that contractual arrangement.

8648 By virtue of being members of the R.C.M.P. the applicants are subject to the provisions of *The Royal Canadian Mounted Police Act* as well as the Regulations and Standing Orders made thereunder. The Act itself provides that it is the duty of members of the force who are police officers to perform all duties that are prescribed by the Governor in Council or the Commissioner, including duties in relation to preservation of the peace, the prevention of crime and of offences against the law of Canada and the laws in force in any province in which they are employed. (Sec. 18.) The Act provides further that every member who refuses to obey the lawful command of a superior is guilty of a major service offence, (Sec. 25), and every member who violates or fails to comply with any Standing Order of the Commissioner or any regulation made under the authority of the Act is guilty of a minor service offence (Sec. 26). Punishment following conviction ranges from a reprimand to a term of imprisonment of one year (Sec. 36) and a convicted member is liable to be dismissed from the force upon the recommendation of his convicting officer (Sec. 38). There is also provisions for an appeal by a convicted member to a Board of Review appointed by the Minister (Sec. 41-44).

8649 The regulations made pursuant to the Act provide that it is the duty and responsibility of every officer and of every person in charge of a post to ensure that there is at all times strict observance of the law and compliance with the rules of discipline by all members (Reg. 25). The Standing Orders of the force include a requirement that members shall comply with any oral or written instruction or order issued in a manner authorized by the Commissioner (S.O. C 1.a.).

8650 Included with the material filed in support of the application is the affidavit of William James Neill, the Commanding Officer of 'F' Division of the Royal Canadian Mounted Police in Saskatchewan. Therein he disposes to the fact that complaints were received with respect to the conduct of members of the R.C.M.P. relating to the incident that is the subject matter of this application. An internal investigation was initiated into the conduct of the members pursuant to the Standing Orders of the force and disciplinary action was taken.

8651 In *Attorney General of Quebec and Keable v. Attorney General of Canada et al* (supra) the Supreme Court of Canada held that a commission appointed under provincial legislation for the purpose of inquiring into matters concerning the administration of justice in the Province, namely allegedly criminal or reprehensible acts that included the involvement of members of the R.C.M.P., did not have the authority to inquire into the federal institution, The Royal Canadian Mounted Police, its rules, policies and procedures governing the members who are involved, or the operations, policies and management of that institution.

8652 Pigeon, J., after setting out the authority for the establishment of the R.C.M.P. and its management as part of the Government of Canada said at page 180:

> "It is therefore clear that no provincial authority may intrude into its management. While members of the force enjoy no immunity from the criminal law and the jurisdiction of the proper provincial authorities to investigate and prosecute criminal acts committed by any of them as by any other person, these authorities cannot, under the guise of carrying on such investigations, pursue the inquiry into the administration and management of the force."

8653 In that case the mandate of the Commission whose jurisdiction had been questioned included the right to investigate a search carried out by police in the City of Montreal, an illegal entry into premises where computer tapes were kept, the setting of a fire and a theft of documents. Police forces of the Province of Quebec as well as members of the R.C.M.P. were allegedly involved and the terms of reference of the commission included the power to investigate and report on the methods used during the search, the methods used in committing the alleged illegal act and the frequency of their use.

8654 In referring to this portion of the mandate Pigeon, J. had this to say at p.p. 180-81:

> "The words (translation) "and the frequency of their use" at the end of para. (a) as well as the words "and the frequency of their use" at the end of para. (c) of the Commissioner's mandate, do not contemplate an inquiry into criminal acts but into the methods used by the police forces. Those are essential aspects of their administration and therefore, to the extent that those words relate to the R.C.M.P., what they purport to authorize is beyond provincial jurisdiction to inquire into."

8655 The principals enunciated in *Attorney General of Quebec and Keable v. Attorney General of Canada et al* were applied in a later decision of the Supreme Court of Canada, *Attorney General of Alberta et al v. Putnam et al* (1981) 123 D.L.R. (3) 257. The circumstances in that case are not unlike the facts in the present case. There was a complaint against R.C.M.P. officers that arose out of their alleged harassment of the complainant during a narcotic investigation in which the complainant was searched for drugs. No drugs were found and complaint was made to the Attorney General of Alberta that the police officers had no legitimate reason for stopping the complainant but instead were harassing him because he had appealed a decision in another matter. The Assistant Commissioner, the Commanding Officer of 'K' division of the R.C.M.P. for Alberta found the complaint was not justified and notified the complainant that he found reasonable and probable grounds existed for the search.

8656 The complainant launched an appeal to the Law Enforcement Appeal Board established under *The Alberta Police Act*, 1973, C.44. A motion was launched on behalf of the R.C.M.P. members alleging the Board was without jurisdiction to hear the appeal and seeking an order prohibiting the board from further investigation or hearing and determining the appeal. A Writ of Prohibition was granted by Miller, J. of the Court of Queen's Bench for Alberta, upheld by the Alberta Court of Appeal, (1981) 114 D.L.R. 319, and affirmed by the Supreme Court of Canada.

8657 The finding of all three Courts was that a section of *The Police Act* was inoperative and ultra vires of the Province insofar as it authorized the Law Enforcement Appeal Board to

hear an appeal from a decision of the Commanding Officer of the R.C.M.P. respecting the conduct or performance of duty of members of the R.C.M.P. while in the course of their duties. McGillivray, C.J., of the Alberta Court of Appeal found that the effect of allowing an appeal from a Commanding Officer's decision that a complaint was not justified was to interfere with the internal management of the R.C.M.P. He said at page 327:

> "To have a commanding officer find that a complaint was not justified, and then to have the Board find that it was, seems to me to result "in an impossible situation, which would bring the force into disrepute and which would affect the morale of the personnel of the force."

8658 He concluded that provision for such an appeal when applied to the Royal Canadian Mounted Police force involves an inquiry into the internal management of the force and further that federal legislation and regulations passed under it are paramount.

8659 In the Supreme Court the majority decision was written by Laskin, C.J., and concurred in by the remainder of the court with the exception of Dickson, J.A. who wrote a dissenting judgment. The Chief Justice rejected the contention of the Province that while it admittedly had no authority over the disciplining of officers of the R.C.M.P., it was entitled to authorize inquiry into a citizen's complaint against R.C.M.P. officers who were in the Province pursuant to contract. The Chief Justice held that the decision in the Keable case applied and that "it was beyond the competence of the Province to authorize a provincial Board of Inquiry concerned with looking into allegations of illegal or reprehensible acts by various police forces, including the R.C.M.P., to extend its inquiry into the administration and management of that police force."

8660 While both these decisions relate to the limitation on the right of a province to inquire into criminal activity pursuant to its jurisdiction over the administration of justice under sec. 92 (14) of the *British North America Act*, the principles enunciated therein would apply equally to the right of a province to enact a Human Rights Code pursuant to its jurisdiction under sec. 92(13), property or civil rights in the province. It follows that a Board of Inquiry constituted under a Human Rights Code with power to inquire into acts that may constitute a violation or violations of such code does not have the authority to extend such inquiry into the administration and management of the Royal Canadian Mounted Police.

8661 The question is whether the mandate given to the Board of Inquiry in the present case does extend into the administration and management of the Royal Canadian Mounted Police. If so, it is beyond the power of the province to direct a board to make such inquiry and it lacks the jurisdiction to do so.

8662 It is clear from the particulars of the complaint that the R.C.M.P. officers involved were engaged in the exercise of their duties as police officers when the alleged violation of the Human Rights Code occurred. If the allegations are substantiated the Board of Inquiry must decide whether or not the actions of the officers, in insisting that individuals other than the suspect be detained, amounted to arbitrary detention and arrest contrary to sec. 7 of the code. In the first instance the necessity for the detention of these individuals would be a matter for determination by the officer or senior member in charge of the investigation. If such officer or member decided that it was necessary to detain the individuals in order to successfully complete the investigation and subsequent arrest of the suspect, the other members present would be required to obey any order he might give to carry out such detention. Failure on the part of a member to comply with such order would subject that member to prosecution under the *Royal Canadian Mounted Police Act* and the question as to whether the order was lawfully given would be a matter for determination by a service tribunal as provided in that act.

8663 Likewise if no orders were given the extent of and necessity for the detention of one or all of the individuals by a member would be determined by that member. His decision would also be subject to investigation and discipline either on the initiative of the force itself or, as in the present case, on the complaint of an individual detained.

8664 In either case the disciplinary provisions contained in the *Royal Canadian Mounted Police Act* and the regulations would apply. For a Board of Inquiry constituted under the Saskatchewan Human Rights Code to also inquire into the same facts and circumstances and make its own finding would, in my view, constitute an inquiry into the administration and internal management of the Royal Canadian Mounted Police.

8665 The Board of Inquiry would apply its own standards in determining whether or not there had been arbitrary detention of the complainants contrary to The Human Rights Code. It would be highly unlikely that the standards that would be applied by the Board of Inquiry, taking into consideration the fact that it would make such determination in the context of a statute designed to protect the rights of individuals, would coincide with the findings of the service tribunal of a police force whose primary concern is the preservation of peace and the prevention of crime.

8666 There could very well be a finding by the Board of Inquiry of a violation of section 7 of the Human Rights Code while a service tribunal, dealing with the same circumstances, could exonerate the actions of the member or members of the R.C.M.P. In the event that the Board of Inquiry determined that a member or members of the R.C.M.P. had violated the code, it has broad powers to not only order the member or members to do any act or thing that it deems necessary to constitute compliance with the code, but may also order that person to cease contravening that provision of the code (sec. 31(7)). Moreover, when a person has been convicted of an offence under the code, the Human Rights Commission may apply to a Judge of the Court of Queen's Bench for an order enjoining that person from continuing or repeating the offence. (Sec. 38). If such an order were made, it is conceivable that an R.C.M.P. member could be in violation of an order of the Court of Queen's Bench if he obeyed a lawful order of a superior R.C.M.P. officer as long as the enjoining order remained in force.

8667 Adopting the phraseology of McGillivray, C.J. in re *Attorney General of Alberta et al v. Putnam et al*, (supra) this could result in an impossible situation which would bring the force into disrepute and which would affect the morale of the personnel of the force.

8668 In my opinion, the inquiry directed to be made by the Board of Inquiry in this case is an inquiry into the administration and management of the Royal Canadian Mounted Police.

8669 I am reinforced in this opinion upon examination of the last paragraph of the complaint which is quoted above. By virtue of the direction of the Attorney General to investigate the complaint as set out by the four individuals, the Board of Inquiry has been invited to inquire into "a general pattern and

practice of the Royal Canadian Mounted Police in contravening section 7 of The Bill of Rights." On the basis of the authorities I have referred to, *Attorney General of Quebec and Keable v. Attorney General of Canada et al* and *Attorney General of Alberta et al v. Putnam et al*, it is obvious that an inquiry into these matters would constitute an inquiry into the administration and management of the Royal Canadian Mounted Police.

8670 It is the finding of this court that the Board of Inquiry constituted pursuant to the provisions of the Saskatchewan Human Rights Code lacks the jurisdiction to inquire into the complaint against the conduct of the applicants as they were at the time of the alleged violation of section 7 of The Saskatchewan Human Rights Code on duty and performing their duties as members of the Royal Canadian Mounted Police.

8671 The second ground of the application is that section 7 of the Human Rights Code cannot be employed to establish rights or procedures in matters of criminal law and has no application to members of the R.C.M.P. engaged in the investigation of offences under the criminal code.

8672 The submission of the applicants is that the exclusive jurisdiction of the Federal Government in criminal law and procedure in criminal matters as set out in section 91(27) of the *British North America Act* extends to the exercise of police powers with respect to the detention of individuals and to the judicial determination of the legality of detention. In this area the federal government, having enacted legislation in the Criminal Code, has occupied the field and the doctrine of paramouncy prevails insofar as the legislation relates to matters that affect the detention and arrest of persons during the course of an investigation of a criminal offence.

8673 Numerous provisions of the Criminal Code relate to the release of persons detained or arrested by police officers. Superior courts are authorized to make rules regulating habeas corpus proceedings that are available to persons illegally detained. (Sec. 438). Under certain conditions police officers have the power to release persons from custody and are deemed to have been acting lawfully if the requirements of the provisions of the criminal code are complied with (sec. 451-453). The detention of persons arrested pending their appearance before a justice is authorized by sec. 454, and there is provision for judicial interim release and release from detention when trial is delayed in sections 457 and 459.

8674 It is not disputed by the respondent that at the time of the alleged arbitrary detention, the R.C.M.P. were investigating a criminal offence and that decisions had to be made with respect to the detention or arrest of certain individuals. The validity of any detention or arrest allegedly unlawfully made, and the legality thereof, must be subject to the relevant provisions of the Criminal Code. As the Parliament of Canada has legislated in the area, the doctrine of paramouncy applies. Obviously it is open to a province to legislate against arbitrary detention and arrest under sec. 92(13), but such legislation is inoperative and has no application to members of the Royal Canadian Mounted Police engaged in the investigation of offences under the Criminal Code. It is not necessary for me to come to a decision on the last question in order to dispose of the appeal. But I am of the view that insofar as sec. 7 of the Saskatchewan Human Rights Code purports to establish rights and procedures in relation to members of the Royal Canadian Mounted Police engaged in the investigation of offences under the Criminal Code, the doctrine of paramouncy would prevail and sec. 7 would not be applicable in such circumstances.

8675 There is one final matter to which I would like to make reference and which is not specifically put forth in either of the first two grounds of appeal. Reference was previously made to the provision of the Human Rights Code that requires the Human Rights Commission to endeavour to effect settlement of a complaint. In this instance the suggested settlement included an undertaking by the members involved "That you each acknowledge an understanding of *The Saskatchewan Human Rights Code* and in particular section 7 thereof and undertake not to violate the provisions of same in the future;".

8676 The attempt at settlement is separate and distinct from the inquiry sought to be prohibited in this application and this is no doubt the reason no reference was made to it in the grounds for seeking the order. However, it does illustrate the potential for conflict and the possibility of a refusal by a member of the R.C.M.P. to obey a lawful order of his superior if he completed the undertaking requested by the Saskatchewan Human Rights Commission and conscientiously intended to comply with its terms.

8677 In the present case, it would hardly be expected that any of the R.C.M.P. members would have seriously considered acceptance of the offer of settlement when its terms included compensation in the amounts suggested. But there could be instances where a member might voluntarily enter into an undertaking as suggested in the proposed settlement in order to avoid the trouble and expense of a hearing before a Board of Inquiry. By doing so the member could easily put himself into an impossible position with respect to his duties as a member of the Royal Canadian Mounted Police. In my opinion the duty of the Saskatchewan Human Rights Commission to attempt to negotiate a settlement in the case of the alleged violation of sec. 7 of the Human Rights Code also amounts to an intrusion into the administration and internal management of the Royal Canadian Mounted Police when it involves the actions of members of the R.C.M.P. while engaged in the performance of their duties as such members.

8678 For the foregoing reasons I am of the opinion that the application must succeed and the applicants are entitled to an order of prohibition. In view of my findings with respect to the first two grounds of the application, I do not deem it necessary to consider ground three.

8679 An order will go prohibiting the Board of Inquiry constituted under sec. 29 of the Saskatchewan Human Rights Act from inquiring into or hearing the complaint of Joseph Dumont, Keith Deiter, Wesley Ironstar and Fred Runns, Jr., dated March 13th, 1981 against the applicants herein.

8680 The matter of costs may be spoken to.

Maher, J.

ORDER

8681 UPON HEARING this application including representations by counsel for the Applicants and for the Respondent:

IT IS ORDERED and ADJUDGED that the Respondent is hereby prohibited from further inquiring into or hearing the complaint of Joseph Dumont, Keith Deiter, Wesley Ironstar, and Fred Runns, Jr., dated March 13th, 1981 against the Applicants herein.

DATED at the City of Saskatoon, in the Province of Saskatchewan, this 7th day of July, A.D. 1982.

CANADIAN HUMAN RIGHTS REPORTER

SASKATCHEWAN / PUBLIC SERVICES / DISABILITY
Court of Queen's Bench
Canadian Odeon Theatres Ltd. v. Michael Huck

Volume 3, Decision 196 Paragraphs 8740 - 8775 August-September 1982

Court of Queen's Bench Decision under the SASKATCHEWAN HUMAN RIGHTS CODE

Canadian Odeon Theatres Ltd.

Appellant

vs.

Michael Huck

Respondent

Date: June 30, 1982

Place: Saskatoon, Saskatchewan

Before: Halvorson, J.

Appearances by: D.K. MacPherson and J. Busse, Counsel for Canadian Odeon Theatres Ltd.
M.C. Woodard, Counsel for Michael Huck and the Saskatchewan Human Rights Commission

Summary: *The Court grants the appeal by Canadian Odeon Theatres Ltd. and overturns the decision of a Board of Inquiry which found that Michael Huck was discriminated against because of his disability when he attended a theatre in Regina and could only be seated in his wheelchair in a space in front of the front row of seats.*

The Court finds that the provisions of the Saskatchewan Human Rights Code do not require those who provide services to adapt their facilities to accommodate disabled persons. Providers of services are only required to offer the same facilities to disabled persons that they offer to other members of the public.

8740 This is an appeal pursuant to section 32 of *The Saskatchewan Human Rights Code*, 1979 S. of S. c. S-24.1, from the finding by a board of inquiry that the appellant had discriminated against the respondent, Michael Huck ("the complainant"), contrary to section 12(1)(b) of the code.

8741 The facts are straightforward and not in dispute. The complainant has a condition known as muscular atrophy, and, as a result, he relies on a wheelchair for mobility.

8742 When he attended at the appellant's movie theatre to purchase a ticket he was asked if he would be transferring from his wheelchair to a regular seat. He replied in the negative, and was then informed that he could station his wheelchair at the front of the theatre. The complainant bought a ticket and watched the movie from that vantage point.

8743 Shortly after, he laid a complaint under the code alleging that the appellant had discriminated against him by failing to provide a choice of viewing areas as was offered to the general public. A board of inquiry constituted under the code found that the allegation was substantiated.

8744 I will deal firstly with the respondents' preliminary objection that this court has no jurisdiction to entertain this appeal. Section 32 permits an appeal from the decision of the board of inquiry on a question of law. The respondents submit that the issue of discrimination was of a question of fact solely within the domain of the board and that no question of law arose.

8745 It is the appellant's position, as stated in its notice of appeal, that the board erred as a matter of law in its determination of what the appellant was offering to the public and in its conclusion that the services and facilities offered to the complainant differed from those offered to the public.

8746 It was essential under section 12(1)(b) for the board to determine what facilities the appellant was making available to the general public. The unrefuted testimony of an officer of the appellant given at the hearing was: "we provide a motion picture and a seat to view it from." However, the board concluded that: "the service or facility being offered by the respondent is a movie and a place, whether seat or space to place a wheelchair, from which to view the movie."

8747 In my opinion the board was wrong in finding from the

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evidence that the appellant offered to the public a "seat or space to place a wheelchair." This concession was made to the complainant, but it was not open to the public in general. Testimony is clear that the public was offered "a seat" and there was no evidence from which the board could infer that the appellant offered to the public a "space to place a wheelchair."

8748 The board fell into error by inferring that the offer made specifically to wheelchair reliant persons was the offer made to the public. This mistake went to the very root of the board's finding of discrimination, and it was an error in law subject to appeal.

8749 I have some doubt it was necessary to rule on the objection in this way as it seems to me the finding of the board that discrimination occurred, based as it was on the interpretation of a statute, was a question of law.

8750 I turn now to the main ground of appeal, that the board was wrong in determining that the appellant discriminated against the complainant by failing to extend to him, because of his physical disability, the same facilities as it offered to the public.

Section 12(1)(b) of the code states:

> "12. (1) No person, directly or indirectly, alone or with another, by himself or by the interposition of another, shall: . . .
>
> (b) discriminate against any person or class of persons with respect to the accommodation, services or facilities to which the public is customarily admitted or which are offered to the public;
>
> because of the race, creed, religion, colour, sex, marital status, physical disability, age, nationality, ancestry or place of origin of that person or class of persons or of any other person or class of persons."

8751 "Physical disability" is defined in section 2(n) as follows:

> " 'physical disability' means any degree of physical disability, infirmity, malformation or disfigurement that is caused by bodily injury, birth defect or illness and, without limiting the generality of the foregoing, includes epilepsy, any degree of paralysis, amputation, lack of physical coordination, blindness or visual impediment, deafness or hearing impediment, muteness or speech impediment, or *physical reliance on* a guide dog or on *a wheelchair* or other remedial appliance or device;"
>
> (emphasis added)

8752 It must be emphasized at the outset that the issue before me is not whether the appellant could have provided to the complainant a more reasonable location from which to view the movie. It would probably be conceded that the appellant could have easily removed several aisle seats for use as wheelchair spaces, and many would say there was a moral obligation to take this minimal step in order to enhance the opportunity for the disabled to enjoy the amenities of life available to the public. The issue before me, however, is whether the code imposed upon the appellant a legal duty to accommodate the complainant in this fashion.

8753 Section 12(1)(b) is not clear as to the precise legal requirement which it places upon the operator of a facility to which the public is customarily admitted. The duty could be either:

> (a) that the operator must provide to the physically disabled, accommodation which is suited to their special needs; or
>
> (b) that the operator need provide to the physically disabled only the same accommodation as it offers to the general public."

8754 I must endeavour to ascertain which of these meanings was intended by the legislature.

8755 Increased efforts are being made across the country to ensure more facilities are accessible to the disabled, and human rights laws exist to further that end. It has been stated in numerous decisions that such legislation should be given a liberal construction to assure the attainment of the object of these laws. There is also a caution — the interpretation must not lead to ridiculous consequences or offend common sense (see *Ontario Human Rights Commission and Bannerman v. Ontario Rural Softball Asssociation* (1979), 10 R.F.L. 97).

8756 The appellant maintains that the complainant had the same privilege as the public to occupy any vacant seat in the theatre upon buying a ticket. As a special right, he was also given the option to sit at the front in his wheelchair, a concession not offered to the public at large. An American decision, *Marsh v. Edwards Theatres Circuit, Inc.* (1976), 64 Cal. App. (3rd) 881, was referred to as being a somewhat analogous situation.

8757 For the respondents it was argued that when the complainant bought a ticket he was entitled to a choice of seating like any other member of the public, and to restrict him to locating his wheelchair in a position near the screen amounted to discrimination.

8758 "Discriminate" is defined in Webster's Dictionary as:

> "to make a difference in treatment or favor on a class or categorical basis in disregard of individual merit."

8759 The heart of the issue is whether section 12(1)(b) casts upon operators of public premises the added duty of adapting them to meet the special needs of all individuals which the code seeks to protect. Put another way, is it discrimination under section 12(1)(b) to fail to provide for the special needs of all physically disabled persons in public facilities?

8760 It could be argued that section 31(9) and regulation 36 to the code (number 216 of 1979) support an interpretation that in section 12(1)(b) the legislature contemplated compulsory renovations to accommodate the special needs of the disabled.

Section 31(9) states:

> "Where an inquiry is based on a complaint regarding discrimination on the basis of physical disability and the board of inquiry finds that the complaint is substantiated but that the premises or facilities of the person found to be engaging or to have engaged in the discrimination impede physical access thereto by, or lack proper amenities for, persons suffering from the physical disability that was the subject of the inquiry, the board of inquiry shall, by order, so indicate and shall include in its order any *recommendations* that it considers appropriate, but, where the person found to be engaging in or to have engaged in the discrimination establishes that the cost of business inconvenience that would be occasioned in the provision of such amenities or physical access would constitute, in the opinion of the board, an undue hardship, then the board of inquiry may not make an order under subsection (7)."
>
> (emphasis added)

8761 The meaning of section 31(9) I find to be elusive in that the subsection speaks of "recommendations" in regard to

the lack of proper amenities. This seems to envisage something less than an order for rectification of the deficiency, but the concluding proviso to the subsection leaves a different impression.

> Regulation 36 reads:
>
> "Where an application for exemption from the provisions of section 11 or section 12 of the Act with respect to discrimination against physically disabled persons is made to the Commission and where it is established to the satisfaction of the Commission that the cost or business inconvenience that would be occasioned in the provision of amenities or physical access for the physically disabled would constitute, in the opinion of the Commission, undue hardship, the Commission may exempt the applicant from the provisions of said section 11 or section 12."

8762 It is argued by the appellant that section 31(9) does not come into play until after discrimination has been found, so that subsection cannot be a guide to interpretation.

8763 An inference could be drawn from section 31(9) and regulation 36 that the legislature meant in section 12(1)(b) to compel an operator of a public facility to meet the particular needs of the disabled.

8764 As a serious invasion of existing property rights would result if such an interpretation were placed on that section, should the intention of the legislature be inferred? If the legislature meant these ramifications to flow from section 12(1)(b), would not that intention have been expressed in clear language?

8765 Insight into the true meaning of the section may be gained when one considers alleged discrimination which is impossible to rectify. We must assume that the legislature never intended to proclaim a law which could not be enforced.

8766 Ease or difficulty in adapting facilities to accommodate the disabled should not be a factor to be weighed in deciding whether discrimination exists, because of the saving provisions of the regulations and, perhaps, section 31(9). But impossibility of performance is quite another matter and could lead to a finding that the legislature never meant section 12(1)(b) to compel alterations to premises.

8767 An infinite number of examples could be cited of situations where it was impossible to cure an alleged discrimination involving the provision for special needs of the disabled. For example, would it be discrimination if the appellant failed to provide for the fact that a deaf person could not hear the sound furnished for those of normal hearing in the theatre? What of a blind person or a quadriplegic permanently confined to a bed?

8768 The circumstances at hand I see as bordering on the unachievable. If there were discrimination, it could only be eliminated if the complainant had a choice of any seating space in the theatre, for that is what is offered to the public. To comply with this, all the seats would have to be removed or be movable to accommodate the preferences of the physically disabled.

8769 The complainant requests a reasonable choice of wheelchair space, but I do not see the concept of reasonableness as relevant on the issue of discrimination. If the allegation of discrimination is proved, the complainant is entitled to the remedy of the same accommodation as is offered to the general public. The reasonableness of the remedy sought does not assist in determining the existence of discrimination.

8770 If the legislature had intended that entrepreneurs must adapt their premises to accommodate the disabled this could have been accomplished by simple terminology, without reference to the word "discrimination," to the effect that in public facilities reasonable efforts must be made to meet the special requirements of the disabled.

8771 What this all leads to, in my view, is the conclusion that the legislature did not intend that the particular needs of physically disabled persons must be catered to by those who provide services and facilities to the public. All section 12(1)(b) requires is that the physically disabled be offered the same facilities as are offered to the public, no more and no less.

8772 In the case of *Gay Alliance Toward Equality et al v. Vancouver Sun* (1979), 4 W.W.R. 118, a section of the British Columbia Human Rights Code similar to section 12(1)(b) of the Saskatchewan code was under consideration, and Martland, J. stated that this section of the act did not purport to dictate the nature and the scope of service which must be offered to the public but simply provided that a service which is offered to the public is to be available to all persons seeking to use it.

8773 The objects of the code are not infringed by this interpretation, and it does not offend common sense. Unfortunately, the interpretation does not meet the expectations of all the disabled, nor does it enhance access to amenities enjoyed by the public. Redress lies with the legislature not the courts.

8774 It is unnecessary for me to rule on the other grounds of appeal including the question of the retroactive effect of the code.

8775 The appeal is allowed and the order of the board of inquiry is set aside. The parties may speak to me on the matter of costs.

Halvorson, J.

CANADIAN HUMAN RIGHTS REPORTER

SASKATCHEWAN / EMPLOYMENT / SEX
Saskatchewan Human Rights Commission
Saskatchewan Social Services,
Corrections Branch

Volume 3, Decision 215 Paragraphs 9253 - 9271 October 20, 1982

Saskatchewan Human Rights Commission Decision
under the
SASKATCHEWAN HUMAN RIGHTS CODE

Saskatchewan Social Services,
Corrections Branch
Applicant

and
Saskatchewan Government Employee's Union
and
Inmate Committee, Regina Correctional Centre
and
Native Project Society
and
Inmate Committee,
Prince Albert Correctional Centre
and
Canadian Human Rights Commission,
Special Programs Consultant
Saskatchewan Human Rights Commission,
Assistant Director
Intervenors

Date: July 7, 1982

Place: Regina, Saskatchewan

Summary: *The Saskatchewan Human Rights Commission reviews its exemption order of February 27, 1980 with respect to the employment of women in male correctional institutions and the employment of men in female correctional institutions and, with the agreement of the Corrections Branch, narrows the number of exempted positions.*

The result is a new exemption order which allows women and men to be barred from employment in certain positions where skin searching and observation of showering activities of inmates of the opposite sex are required.

The exemption order allows the Corrections Branch to refuse to employ women in 44 of 151 positions at the Regina Correctional Centre and in 4 of 7 positions at the Battlefords Correctional Centre. It also allows the Corrections Branch to refuse to employ men in 6 of 9 positions at the Pine Grove Correctional Centre for Women.

DECISION

9253 This matter arises out of an Exemption Order authored by the Saskatchewan Human Rights Commission on February 27, 1980. By that order, my colleagues and I granted the Corrections Division an exemption from the provisions of Section 16, Part II, of the Code allowing a sex bar to be maintained in certain limited custodial positions in

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two proposed correctional centres for adult-males in Prince Albert and Saskatoon. As the existing institution for adult-males in Prince Albert was due to be shut down, a broad exemption was granted to expire on December 31, 1981. With regard to the remaining institutions in Regina, the Battlefords and Prince Albert, we said this:

> The Applicant is permitted to exclude women from custodial positions in all custody, recreation and admitting areas within the remaining existing adult-male institutions and to exclude men in living and admitting positions in the existing adult-female institution, Pine Grove Correctional Centre, Prince Albert, until March 1, 1982, at which time the Commission will review the Applicant's plans with a view to opening some equal custodial employment opportunities, by way of structural modifications and/or functional job reassignments in the subject centres.

9254 On February 27, 1982, the Applicant tabled its proposals with regard to this condition, with the Commission. By minute number 11314/82 the Commission resolved to continue the Exemption Order of February 27, 1980 until the hearing with regard to the new proposals, scheduled for June 15, 1982. Notices were then sent to all interested parties and published in the following daily newspapers:

Star-Phoenix — Saskatoon,
Leader Post — Regina,
North Battleford Optimist,
Prince Albert Herald.

9255 At the conclusion of the hearing, convened in Regina on June 15, 1982, the Commission resolved to continue the existing exemption until such time as this decision was released to the parties. (Minute number 11618/82).

9256 At the outset of the hearing, Mr. Brandvold, in speaking to the Applicant's written submission, began by advising the Commission that the past two years have seen a good deal of change in attitudes on the subject of employing female custodial workers in male institutions in this province. He explained that following our formal Exemption Order of February 27, 1980, the Corrections Division began to recruit female corrections workers for the two new centres. On April 21, 1980, the first female Corrections Worker I for the new men's centres was hired. In the time since some 39 such women have been hired, of which 34 are presently on staff. During the period prior to bringing the two new centres on stream in Prince Albert and Saskatoon, the Division experimented by placing one newly hired female C.W.I in the Battlefords Community Correctional Centre for eight months. As well, two women C.W.I's spent some three and one-half months on full duties at the Regina Correctional Centre.

9257 The Applicant's conclusions with regard to these specific placements and, more generally, with regard to the increased presence of female C.W.I's in the two new male centres are unreservedly positive. In its written submission, the Corrections Division expresses itself as follows, on this matter:

> These temporary placements and general experiences with hiring female corrections workers have been very successful. There is no necessity to make structural changes in the existing correctional centres to ensure that female corrections workers avoid unplanned sightings of male inmates in various stages of undress. The occasional, passing glance, presents no problem in areas or at times where the corrections worker is not required to stop and search or observe the inmate. As a result, women can be employed in many more situations than it was thought possible before.

9258 On this basis, the Applicant seeks rather specific exemptions with regard to the three subject correctional centres. These exemptions are much more limited in scope than was the order granted by the Commission in February of 1980. We will now set down just what the Corrections Division proposes with regard to each of the 'old' institutions, in turn.

REGINA CORRECTIONAL CENTRE

9259 This institution dates back to 1930, so far as its main building is concerned. Inmate accommodations, for the most part, take the form of traditional 'ranges', i.e. some 15 cells, back-to-back, along a corridor constituting a range. Inmate population for the Regina Centre runs from 330 to 350 people. In the stead of the blanket exemption authored in 1980 by the Commission, the Applicant now seeks only an exemption for those positions which are situated in areas of the centre where skin frisks and close observations of inmates, who may happen to be in various states of undress, are a regular routine. In total, the exemption requested would allow the Division to lawfully exclude women from C.W.I positions assigned to the admitting area, the remand area, Unit 3D (the maximum security area), Unit 3C (relief positon for 3D), escort duty and exercise duty. Specifically, this breaks down in the following fashion. During the day and afternoon shifts, there are 18 cell block positions. Those for which exemption is sought are two positions in the basement holding area. Due to strip searching and observation of showering activities, as well as the close observation required in the special basement holding facilities, the inmate's right to privacy requires that women be excluded. Although there are two positions in the remand unit, only one needs to be exempted. Since the second position is a C.W.II job and thus is a promotional opportunity for female C.W.I's, the Division seeks exemption from the C.W.I position only as all that is necessary is that one correctional worker, who is male, be available at all times for the purpose of skin searching. Unit 3D, as a secure area, follows the same logic as the admitting positions. Unit 3C, as a relief position to 3D also needs to be exempted. On each of the two shifts an escort officer is designated whose responsibility may require skin searching. As well, two exercise officers are assigned to each of the shifts and their jobs entail supervision of showering inmates. Thus, of the 18 positions, exemption is sought for 8 only. For the night shift, there are 7 positions. Of these, 3 are to be exempted. Finally, the exemption granted in 1980 for the admitting area is to be continued.

Camp Positions

9260 There are four Camps associated with the Regina Centre. All positions are brought within the exemption application on footing that it is just not operationally feasible to do otherwise. Normally the camps are run with only one correctional worker on staff at any given time. Each camp houses up to 16 inmates. As the managers take their turns on shift at the camp, they are in no different position than any other correctional worker, so far as the privacy issue is concerned. The Division grants that the camps are classified as low security but stresses the point that occasions do present themselves when skin searching is called for.

9261 Thus, in sum, it is proposed that an exemption be granted to extend to 30 of the 73 custody positions at the Regina Centre and to all 14 camp positions. Such an exemption would mean that, in total, a sex bar would remain intact for 44 positions out of a staff complement of 151 at the Regina Centre.

BATTLEFORDS COMMUNITY CORRECTIONAL CENTRE

9262 This centre is a renovated nurses' residence capable of housing some 25 inmates. There is a total of 11 staff. Of this number, 7 are custodial positions. During the day and afternoon shifts two correctional workers are on duty. At nights, only one is assigned. In order to ensure that one C.W. on the day and afternoon shifts be a male, since admitting and discharge of inmates takes place on these shifts and skin searching is required, 4 of the 7 positions need to be exempted. The night shift position need not be exempted as admissions and discharges do not take place during this shift.

PINE GROVE CORRECTIONAL CENTRE

9263 This centre for adult-females has 52 inmate beds plus a dormitory capable of accommodating 20 inmates. The staff complement is 20. The Corrections Division expresses a more cautious and traditional view with regard to the matter of privacy in a women's prison. Hence it seeks to have the present exemption with regard to living unit officers continued so as to bar males from such positions. Thus, of the 9 custodial positions, 6 are to be exempted. The Division proposes to open the 3 shift supervisory positions to men. This plan is consistent with the non-exemption of the C.W.III positions in the Regina and Battleford institutions.

9264 On behalf of the Saskatchewan Government Employees' Union, Ron Monk had nothing but praise for the steps that have been taken to date with regard to the integration of women into custodial positions at male institutions. On behalf of his membership he indicated that their common experience was that inmate behaviour took a turn for the better with the opening-up of custodial positions to women. He pointed out that women have been assigned to escort duties in the existing centres and to the secure holding areas in the basement in Regina and to Unit 3C. For his purposes, he could see no good reason why the exemption sought needed to be as broad as it was cast by the Division. Given the low security classification at the four camps, he saw no need for the exemption. At bottom, he was of the opinion that there was really no need for the exemption at all, as, with the right professional attitude there was no duty which a woman couldn't effectively perform at a male centre.

9265 Eugene Nichol was generally supportive of equal opportunity for women in the Regina Centre, but, he drew the line at skin frisking. On behalf of his fellow inmates he said that nobody would want to be skin frisked by a woman. With the presence of female custodial officers, inmates tend to look after themselves a little better; they don't tend to swear as much, and they don't 'act up', in the opinion of the inmate committee.

9266 In a written submission on behalf of the Native Project Society, Bill Brass pointed out that the majority of the inmates in Regina Centre were of Indian ancestry. On their behalf he lent his support to the Division's application. His final paragraph reads as follows:

> The conclusion, we support the concept of female corrections custodial workers! Above all else, they represent a build-up of morale and respect! It may be slow — but ultimately — the future holds a bright horizon for these determined females. Hire more of them!

9267 We learned a good deal from Pam Madsen, of the Canadian Human Rights Comission, as to the experiences and outcomes of the federal Special Employment Program for Women as Correctional Officers. This project began in 1979. Ms. Madsen has monitored 8 medium and minimum security federal institutions where the Program was implemented. She advised the hearing that the evidence very much established that the incidence of violence decreased with the introduction of female custodial officers in these institutions. Although the total presence of women remains quite small — some 1.7% of the correctional officer positions and 2.4% of the living unit officer positions in federal male prisons are filled by women at last count — the experience of integrating women into custodial positions has been positive, from the perspectives of all concerned. As for the federal women's prison, Ms. Madsen advised that men are not employed as living unit officers. Finally, Ms. Madsen acknowledged that the matter of privacy was a crucial issue and advised that the Correctional Service of Canada is currently reviewing the entire question of searching within its institutions.

9268 On behalf of the staff of the Human Rights Commission, Marty Schreiter submitted that the Commission ought to depart from the rationale upon which its exemption order was based in February of 1980. He submitted that to the extent that we based our decision upon the matter of privacy, or, if you like, public decency, we erred. His view was that we ought to consider the exemption only on the basis of 'reasonable occupational qualification', as specified in Section 16(7) of the Code.

9269 With all due respect to Mr. Schreiter, we are not persuaded that we erred in 1980. In our view the Corrections Division sought an exemption under Section 48 of the Code and the Commission, after a full hearing, considered it to be "necessary and advisable" to grant the requested exemption, with some limitations. Section 48 imposes upon us no requirement that we so read Section 16(7) of the Code with the result that conventional standards of personal privacy or public decency are precluded from being considered. In any case, this application not only flows from but is mandated by our Order of 1980. Thus, it seems to us to be only fair to remain true to the rationale expressed by us in our earlier decision, which continues to prevail with regard to the two new facilities for adult-males in Saskatoon and Prince Albert. To reiterate the principle involved, we said that:

> Where the compelling interest of (a high) degree of security dictates surveillance or searching of the person, at any given moment, at the option of custodial workers, conventional standards of public decency in this Province, at this point in time, clearly require that custodial staff be of the same sex as the inmate.

If the rationale is to disappear then it ought properly to be brought before us on an application for termination of the entire Exemption Order, pursuant to the provisions of Section 48(2) of the Code. (During the course of his representations, Mr. Monk advised that S.G.E.U. was contemplating making just such an application to the Commission.)

9270 So far as this particular application is concerned, given the continuance of the public decency or privacy standard articulated earlier by us and given the scope of the present inquiry, we can only say that the Corrections Division is to be commended for its efforts. The steps which the Division now proposes to take with regard to the 'old' male institutions will place it in a position second to none in this country with regard to becoming an equal opportunity employer of custodial workers. On the whole we are persuaded that the exemptions sought are necessary. We have some hesitation with regard to the Unit 3C position at the Regina Centre, as it is only a relief

position and would ask that the Division continue its experimental posting of female C.W.'s to that unit in order to test whether an exemption is really necessary. With regard to the Pine Grove Centre, we are not tempted to allow theory to overcome reality. A women's prison is not just the reverse of a men's prison. Different standards of personal privacy or public decency obtain with regard to the incarcerated woman and her keepers. We were presented with no evidence or opinion to the contrary at the hearing. Indeed, we learned from Ms. Madsen that the federal women's prison at Kingston excludes men from living unit officer positions.

9271 For the reasons which we have given, the applicant is hereby granted exemption from the provisions of Section 16 of Part II of the Saskatchewan Human Rights Code relating to sex discrimination, to this extent: (this exemption to replace Exemption Number 3 of February 27, 1980)

A. The applicant is permitted to exclude women from Corrections Worker I positions in the Regina Correctional Centre assigned to the Admitting Area, Remand Area, Unit 3C, Unit 3D, Escort Duty and Exercise Duty, and in all positions assigned to the Basement Area and the Corrections Camps.

B. The applicant is permitted to exclude women from Corrections Worker I positions in the Battlefords Community Correctional Centre to the extent of four of the seven existing positions. This exemption applies only to the day and afernoon shifts.

C. The applicant is permitted to exclude men from positions in the Admitting Area and Corrections Worker I positions in the Living Areas of the Pine Grove Correctional Centre.

Ken Norman,
Chief Commissioner

CANADIAN
HUMAN RIGHTS
REPORTER

SASKATCHEWAN / AFFIRMATIVE ACTION
Saskatchewan Human Rights Commission
Saskatchewan Oil and Gas Corporation

Volume 3, Decision 189 Paragraphs 8293 - 8320 August-September 1982

Saskatchewan Human Rights Commission Decision
under the
SASKATCHEWAN HUMAN RIGHTS CODE

Saskatchewan Oil and Gas Corporation
Applicant

Voice of the Handicapped

Canada Employment and Immigration Commission, Affirmative Action Branch

Native Employment Services Group

Saskatchewan Advisory Council on the Status of Women

Saskatchewan Department of Labour, Women's Division

Crown Investments Corporation, Affirmative Action Manager

Saskatchewan Action Committee, Status of Women

Saskatchewan Business and Professional Women's Clubs

Staff of the Saskatchewan Human Rights Commission
Intervenors

Date: May 27, 1982

Place: Saskatoon, Saskatchewan

Summary: *The Saskatchewan Human Rights Commission gives approval under Section 47 of the Code to an affirmative action program which is designed to increase the representation of women, persons of Indian ancestry, and persons with physical disabilities in the workforce of the Saskatchewan Oil and Gas Corporation.*

Elements of the program approved include special recruitment, training, analysis of job requirements, and accessibility provisions.

Approval by the Commission has the effect of protecting the operation of the program from complaints which might otherwise be filed under the Code.

DECISION

8293 On March 19th, 1982, Saskoil submitted an applica-

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tion to the Saskatchewan Human Rights Commission seeking approval of a comprehensive Affirmative Action Program addressing people of Indian ancestry, women and people with physical disabilities.

8294 Saskoil's staff complement of some 287 persons consists of professional engineers, geologists, geophysicists, economists, research and support staff and field operators. There is no union certified as a bargaining agent at the Applicant Corporation.

8295 Pursuant to Regulation 32(3) under *The Saskatchewan Human Rights Code*, notices of the application were sent to interested parties. On April 16, 1982 a request for an oral hearing was received by the Commission. The Commission then set such a hearing for 10:00 a.m. on May 14th, 1982, in the Sheraton Centre Hotel, in Regina. All parties were so advised and formal notice was given to the public at large through advertisements in the following newspapers:

Regina Leader-Post
Estevan Mercury
Saskatoon Star-Phoenix
Yorkton Enterprise
La Ronge Northland News

8296 On April 9th, 1980, at the conclusion of a rule-making process which entailed public hearings, the Saskatchewan Human Rights Commission adopted a set of proposed regulations concerning Affirmative Action approvals (see Appendix "A"). Saskoil's written application and oral presentation came within this analytical framework. Our reasons for this decision will now be set down, within these guidelines, which we hereby incorporate by reference into this document, as embodying appropriate criteria to be addressed by the Commission in exercising its Section 47 responsibilities.

8297 The following is a chart illustrating the numbers and percentages of employees at Saskoil. (Appendix 3: Job Code Interpretations)

WORKFORCE ANALYSIS

CHART I

Workforce	Total	Male (%)	Target Groups			Salary Range
			Female (%)	Native (%)	Disabled (%)	
Executive	6	6 (100)	0	0	0	$60,000 plus
Senior Management	0	0	0	0	0	0
Management	14	12 (86)	2 (14)			$27,000 to 60,000
Supervisory	36	33 (92)	3 (8)	1 (2)	1 (2)	$21,000 to 56,000
Professional	73	59 (81)	14 (19)	0	0	$22,000 to 60,000
Technical	39	28 (72)	11 (28)			$17,000 to 45,000
Administrative	7	5 (72)	2 (28)			$20,000 to 46,500
Clerical	67	3 (4)	64 (96)		1 (1)	$14,000 to 25,000
Field Foremen	19	19 (100)				
Operators	26	26 (100)		2 (7)		
TOTALS	287	191 (66)	96 (34)	3 (1)	2 (.7)	

APPLICATION OF PROPOSED AFFIRMATIVE ACTION REGULATIONS

REGULATION 50: (c) "Sponsor Organization" includes a "person" as defined by section 2(m) of the Act, and a board of education, a school or institution as defined in the Universities Commission Act, or other institution or place of learning, vocational training, or apprenticeship, or any institution, organization, association, business or enterprise, or any institution, organization, association, business or enterprise which provides funds to other institutions, organizations, associations, businesses or enterprises:

Saskoil is a "sponsor organization" by virtue of meeting the criteria as a "business or enterprise." It is a Crown Corporation deriving its authority from the *Saskatchewan Oil and Gas Corporation Act*, S.S., Chapter s.32.

REGULATION 52: In addition to any of the protected groups which may be designated by the sponsor organization for inclusion in a special program, the three target groups shall be included, but the commission may give conditional or full approval to a special program that does not include one or more of the target groups . . .

The application for approval of an Affirmative Action program includes all three target groups, persons of Indian ancestry, persons with physical disabilities and women as defined by the regulation criteria.

REGULATION 53: A special program shall include the following:

(A) Analysis, as follows:

(i) "Sponsor Organization Analysis": an analysis of the representation of members of the target groups, and other protected groups designated by the sponsor organization, in all sectors, units, groupings, classifications, and levels in the sponsor organization:

Regulation 53:

(ii) "Community Analysis": an analysis of the representation of members of the target groups, and other protected groups designated by the sponsor organization, in the population, or in those subclasses of the population defined by qualification, eligibility, or geography, from which the sponsor may reasonably be expected to draw its employees, students, tenants, clients, customers or members:

The analysis reflective of the community was determined by applying the statistics developed by the Saskatchewan Human Rights Commission. These figures indicate that in the Province of Saskatchewan, approximately 7.1% of the population between the ages of 15 and 64 are persons with physical disabilities, and 11.5% of the working age population are persons of Indian ancestry. Female participation in the labour force in Saskatchewan represents 39% of all workers but does not represent 39% in all occupational categories. Because the workforce at Saskoil is largely professional and technical, availability of target group applicants must be taken into consideration within those categories.

The unemployment rate for the three target groups indicates an approximate 80% unemployment rate for employable disabled persons, 65% unemployment rate for persons of Indian ancestry on reservations, with a 20% to 30% off-reservation unemployment rate. The unemployment rate for women in Saskatchewan is 5%.

REGULATION 53:

(iii) "Participation Analysis": and identification of all sectors, units, groupings, classifications and levels in the sponsor organization in which members of the target or protected groups are underrepresented.

The following chart indicates the representation of the target groups within the workforce and the percentage figures for underrepresentation or concentration through the application of community analysis statistics (39% women*, 11.5% persons of Indian ancestry**, 7.1% persons with physical disabilities***).

CHART II

PARTICIPATION ANALYSIS

Job Category	Total	Female		Native		Disabled	
		Current (%)	39%*	Current (%)	11.5%**	Current (%)	7.1%***
Executive	6		2		.7		.4
Senior Management							
Management	14	2 (14)	5		2		1
Supervisory	36	3 (8)	14		4		3
Professional	73	14 (9)	28	1 (2)	8	1 (2)	5
Technical	39	11 (28)	15		4		3
Administrative	7	2 (28)	3		1		.5
Clerical	67	64 (96)	26		8	1 (1)	5
Field Foreman	19		7		2		1
Field Operators	26		10	2 (7)	3		2
TOTALS	287	96 (34)	112	3	34	2	20

OCCUPATIONAL DISTRIBUTION FOR MEN AND WOMEN

CHART III

Total Male Workforce	Categories	Male (%)	Total Female Workforce	Categories	Female (%)
191	Executive	6 (3.1)	96	Executive	
191	Senior Management		96	Senior Management	
191	Management	12 (6.2)	96	Management	2 (2.08)
191	Supervisory	33 (17.2)	96	Supervisory	3 (3.1)
191	Professional	59 (30.8)	96	Professional	14 (14.5)
191	Technical	28 (14.6)	96	Technical	11 (11.4)
191	Administrative	5 (2.6)	96	Administrative	2 (2.08)
191	Clerical	3 (1.5)	96	Clerical	64 (66.6)
191	Field Foreman	19 (9.9)	96	Field Foreman	
191	Field Operators	26 (13.6)	96	Field Operators	
TOTAL		191 (99.5)			96 (99.7)

Women

8298 Saskoil has a female representation of 34% (96) in its workforce of 287 employees. While the participation of women in the workforce is only 5% (16) below the community analysis figure of 39% there is a clear indication of underrepresentation in the areas from administration to upper management. Currently only 11% (32) of the female employees occupy these positions. 96% of the clerical classification are women.

8299 The following distribution analysis compares the male representation in each job category in relation to the total male workforce, and the female representation in each job category in relation to the total female workforce.

8300 The average overall salary at Sask Oil is $2,170 per month while the average salary for women is $1,500. In all categories, average salaries for women are well below the overall average salary. (Appendix "C")

Persons of Indian Ancestry

8301 The workforce analysis for Saskoil illustrates that there are presently three employees of Indian ancestry within a total workforce of 287. One of the employees of Indian ancestry is in the professional category and two are field operators. This indicates that persons of Indian ancestry are underrepresented within the present workforce by about 10.5% or approximately 30 employees. (See Chart II).

Persons with Physical Disabilities

8302 Saskoil is currently employing two persons with physical disabilities; one in the professional category and one in clerical. This reveals an underrepresentation of approximately 7% or 18 physically disabled persons on the workfoce. (See Chart II).

REGULATION 53:

(b) "Goals" and "Timetables", as follows:

(i) Goals, which shall be expressed in numbers and percentages, for increasing the representation of the target or protected groups that are included in the program, in those sectors, units, groupings, classifications and levels where underrepresentation has been identified, and timetables, both short and long term, for meeting the established goals;

(ii) Goals and Timetables, for the achievement thereof, shall be set separately for each target or protected group that is included in the program, and for each sector, unit, grouping, classification and level where underrepresentation has been identified pertaining to that group;

(iii) Goals shall be based on the extent of underrepresentation identified and on the availability of members of the target or protected groups who are qualified through reasonable efforts on the part of the sponsor organization, or who are eligible or who can become eligible through reasonable efforts on the part of the sponsor organization, for positions or places within the sponsor organization;

(iv) Timetables, for the achievement of each goal, shall be based on the anticipated increase and decrease in the number of people within the sponsor organization, and the anticipated turnover of people within the sponsor organization;

(v) Goals and Timetables shall be reasonable and flexible.

8303 In the development of a comprehensive Affirmative Action Program Saskoil has the ultimate goal of attaining a workforce which reflects 39% women in all occupational categories, 11.5% employees of Indian ancestry and 7.1% of the workforce to be persons with physical disabilities by 1999 (a long-term goal of 15 years).

8304 More specific goals and time frames are illustrated in the chart below.

TARGET GROUP GOALS AND TIMETABLES

CHART IV

	Current Dec./81	Short Term 1982	Midterm 1985	Long Term 1990-96
Total Employees	287	440	660	800-900
Total Female Employees	96 (34%)	172 (39%)	257 (39%)	312 (39%)
Above Clerical	32 (11%)	65 (15%)	130 (20%)	200 (25%)
Total Native Employees	3 (1%)	15 (4%)	60 (9%)	90 (11.5%)
Total Disabled Employees	2 (.7%)	8 (2%)	25 (4%)	57 (7.1%)

REGULATION 53:

(c) "Program Elements", as follows:

(i) Program elements designed to prevent, eliminate, or reduce disadvantages that are likely to be suffered by, or are suffered by, members of the target or protected groups that are included in the program, by improving opportunities for such groups:

(ii) Program elements designed specifically to address and remedy the underrepresentation of target or protected groups that are included in the program as identified pursuant to Section 53 (a)(i) of these regulations.

Inventory and Identification

8305 An inventory of target group applicants, resumés and application documents will be filed and controlled by the Affirmative Action Co-ordinator. This will provide access for persons of Indian ancestry and persons with physical disabilities into all available positions with Saskoil, and to facilitate the movement of women into positions above the clerical classification.

8306 Every position to be filled must pass through the Affirmative Action Co-ordinator prior to external or internal recruitment for possible identification of potential candidates within the inventory. The Affirmative Action Co-ordinator will be an active participant in the interviewing process for all target group applicants.

Recruitment

8307 Recruitment practices (advertising, career days, etc.) will be extended to organizations or institutions representing persons of Indian ancestry, persons with physical disabilities and women. This includes advertising in relevant newspapers. Educational institutions will be contacted as to availability of graduates of target group students.

8308 In addition, a promotional strategy for advertising and recruiting will be specifically developed to assist in the search for available and potential target group candidates. Saskoil will submit its revised Application for Employment Form to the Saskatchewan Human Rights Commission for endorsation.

Manpower Planning and Training

8309 (a) Resources and specialized personnel are available for the design of individual training packages.

(b) Job requirements will be reviewed and tested for validity. Job descriptions will be redesigned to allow job components to be separated for easier training and/or job accommodation. This procedure is essential to allow for job training programs, work experience and supervision to assist members of the target groups with his/her individual needs. A report on this exercise will be filed with the Commission.

(c) Career pathing and/or promotional opportunities will be provided to allow upward mobility as well as job security. Removal of barriers as they are identified will allow equal participation or progress for the members of the target groups.

(d) Each manager will assume responsibility and be accountable for the placement and retention of target group employees.

(e) Supervisors will be given training to provide understanding and awareness of special needs and assistance that may be necessary to support members of target groups in maintaining employment.

Salary Compensation

8310 (a) Saskoil has a policy that relates to fair and reasonable wage compensation for work and complexity of individual position and allows monetary merit for personal work and contribution. The program emphasizes a close correlation between the level of compensation and quality of work performance. If training is required target group employees will receive a rate of pay that relates directly to the job position and salary level assigned through the salary compensation program.

Women

8311 Women employees at Saskoil, as well as new applicants will be reviewed and evaluated in terms of non-traditional experiences which require specific talents (i.e. community leadership in service clubs, schools, etc.). Skills and interests will be identified and included on personnel files and inventory files. Full consideration for on-the-job training

or special training will be provided for women as relevant positions become available. This allows for career pathing and bridging of positions that will provide mobility into positions above the clerical level.

8312 A corporate policy proscribing sexual harassment will be developed by the Applicant and submitted to the Saskatchewan Human Rights Commission on or before October 1, 1982.

8313 Emphasis will be placed on recruiting women, both internally and externally, who indicate interest for employment in the Field Operations branch of Saskoil which includes operators and labourers.

8314 Saskoil will attempt to recruit at least one female engineer per year for the next three years given availability of women graduating from universities. As well women graduates from universities or technical colleges in other professional and paraprofessional areas will be hired in proportionate numbers.

Persons of Indian Ancestry

8315 (a) Applicants will be evaluated to identify specific skills and interests that would indicate prerequisites for positions. This information will be accessible in the affirmative action inventory and will assist in securing job placement.

(b) Public relations programs through films, community and institutional participation will be conducted within Saskoil to provide awareness of culture, traditions and customs of people of Indian ancestry. This will be of special assistance to supervisors and subordinates.

(c) Pre-employment training involvement with outside trainers will be established.

(d) The Office of Native Career Development will be contracted to develop training packages through their competency based training program. This program determines the skills and knowledge required to perform the job and provides training to individuals whose skills and interests match the requisites established. This will allow persons of Indian ancestry to enter Saskoil's workforce at a level other than operator/labourer. Copies of all Service Training Agreements concluded with the Office of Native Career Development will be filed with the Commission within ten days of execution.

Physically Disabled Persons

8316 (a) Institutions and organizations representing persons with physical disabilities will be consulted with respect to potential employees as well as their expertise in employee support systems.

(b) Pre-employment and on-the-job training for disabled persons will be developed in conjunction with training experts.

(c) A public relations program in conjunction with community and training institutions will be initiated to raise the level of awareness regarding persons with physical disabilities. This will be designed specifically for supervisors, but will include all employees.

(d) Saskoil will endeavour to provide a workplace that is free from physical barriers. An assessment for accessibility will be conducted and action will be taken accordingly. A report on this analysis will be filed with the Commission.

(e) Technical aids and special equipment will be available as individual needs are assessed.

REGULATION 53:

(d) Designation by the sponsor organization of a person to be responsible for the administration of its special program.

8317 Mr. J.M. Sinclair, Human Resources Manager, has been designated as the person responsible for implementing and administering the Affirmative Action Plan. Mr. Sinclair is Co-ordinator of an Affirmative Action Committee representative of all classifications in the workforce. This Committee has responsibility for the overall implementation and monitoring of the Program (See Appendix "D").

8318 As is evident from reading the above, Saskoil's proposed comprehensive Affirmative Action Program merits approval under the provisions of Section 47 of *The Saskatchewan Human Rights Code*. The several diverse intervening parties had this much in common. They all wished to lend their support to the Program. From organizations representing the three target groups to the representatives of the Canada Employment and Immigration Commission, we heard overwhelmingly positive statements of both oral and written approbation. Criticism, when it was voiced, was constructive in nature and was invariably dealt with by way either of immediate response or an invitation to engage in future consultation.

8319 On this footing, it remains only for the Commission to now formally express our approval of Saskoil's Affirmative Action Program. It follows from this assertion that, under Section 47(3) of *The Saskatchewan Human Rights Code*, nothing done in accordance with this Program is a violation of the provisions of the Code.

8320 Pursuant to Regulation 42, under *The Saskatchewan Human Rights Code* the Applicant is obliged, by April 30, 1983, to formally report back to this Commission on the actions taken, between now and then, to implement its Affirmative Action Program, on the progress of the Program, on difficulties encountered in meeting the goals of the program, and on any changes to the program which it may be considering. Further, it is encumbant upon the Applicant to hold itself open to investigation by the Commission staff, from time to time, so as to enable the Commission to monitor compliance with this approval.

Ken Norman, Chief Commissioner
for The Saskatchewan Human
Rights Commission

CANADIAN
HUMAN RIGHTS
REPORTER

Volume 4, Decision 239 Paragraphs 10422 - 10458 January, 1983

Saskatchewan Human Rights Commission Decision
under the
SASKATCHEWAN LABOUR STANDARDS ACT

Beatrice Harmatiuk
Complainant

v.

Pasqua Hospital
and
The Board of Governors of the South Saskatchewan Hospital Centre
Respondents

Date:	December 1, 1982
Place:	Regina, Saskatchewan
Before:	Louise Simard, Helen Hnatyshyn, William Gilbey
Appearances by:	William Lawton, Counsel for Beatrice Harmatiuk and the Women's Division, Department of Labour Maurice LaPrairie, Counsel for Pasqua Hospital

ISNN 0226-2177 Cite: C.H.R.R. D/1177
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Summary: *The Saskatchewan Human Rights Commission rules that Pasqua Hospital contravened the equal pay provisions of the Labour Standards Act by paying women who are housekeeping aides less than men who are caretakers.*

The Saskatchewan Human Rights Commission finds that the jobs are substantially similar and declines to defer to the conclusion of a wage study which evaluated the two jobs and assigned fewer job evaluation points to the housekeeper aides' job. The Commission rules that despite the wage study, the employer must conform to the provisions of the Labour Standards Act and the Commission can find no difference between the jobs which justifies the wage differential.

Beatrice Harmatiuk and the other women in her job category are awarded back pay to the date of the complaint to remedy the wage differential.

10422 Beatrice Harmatiuk, the Complainant, on her own behalf and on behalf of the housekeeping aides of the Pasqua Hospital, says that her employer, the Pasqua Hospital and the Board of Governors of the South Saskatchewan Hospital Centre had violated *The Labour Standards Act* by failing to pay housekeeping aides working at the Pasqua Hospital at the same rate of pay as the caretakers working at that hospital. Subsection 17(1) of *The Labour Standards Act* provides as follows:

> "No employer or person acting on behalf of an employer shall discriminate between his male and female employees by paying a female employee a rate of pay less than the rate of pay paid to a male employee, or *vice versa*, where such employees are employed by him for similar work which is performed in the same establishment under similar working conditions and the performance of which requires similar skill, effort and responsibility, except where such payment is made pursuant to a seniority system or merit system."

10423 Mr. Maurice Laprairie as Counsel for the Pasqua Hospital and Mr. William Lawton, Q.C., as Counsel for Beatrice Harmatiuk consented to this Board treating the Complainant as a complaint on behalf of a group, rather than a complaint on behalf of a particular individual.

10424 Sixteen housekeeping aides filed complaints dated November, 1979, with the Women's Division of the Department of Labour with respect to the aforementioned disparity between the pay ranges of housekeeping aides and caretakers. In February of 1980 Irmgard Krasilowez, an investigator with the Department of Labour, inquired into the said complaints. She concluded that the work performed under the 2 job classifications was "*similar work*" within the meaning of section 17(1) of *The Labour Standards Act* and the Pasqua Hospital was in violation of the said section. When Irmgard Krasilowez was unable to effect a settlement of the matter, the Saskatchewan Human Rights Commission was asked to conduct a formal inquiry.

10425 It was agreed by both parties that the work of the housekeeping aides and the caretakers was performed in the same establishment under similar working conditions, and that the work of both groups required similar skill and responsibility. The hours of work are not in dispute nor are the salaries being paid to the 2 groups, as well, the difference in pay is not made pursuant to a seniority or merit system. Thus, the matter falls to be determined on whether the physical effort involved in the performance of the 2 positions is substantially different and thus would warrant the existing wage disparity.

10426 In *Schiltz v. Solar Sales Ltd.*, [1981] 2 C.H.R.R. 477, the Saskatchewan Human Rights Commission stated that in order for the difference in degree of physical effort to be enough to justify a disparity in pay, it must be determined whether the difference is:

> "substantial enough to constitute a realistic basis for the existing wage disparity, or whether such difference is unsubstantial and incidental to the performance of the primary function of the job." (at p. 481 of *Schiltz v. Solar Sales Ltd. supra*).

10427 The definition of "*effort*" was set out by The Saskatchewan Human Rights Commission in a decision dated September 8, 1975, which was sustained on appeal *sub non Re Department of Labour and University of Regina* (1976), 62 D.L.R. (3d) 717:

> "Effort includes the measurement of the quality and quantity of physical or mental exertion needed for the performance of a job."

10428 The Commission heard evidence for a total of 6 days. We heard from the investigator from the Women's Division, Department of Labour, Irmgard Krasilowez; from 3 women currently employed as housekeeping aides at Pasqua Hospital; from 3 men who are or have been employed at the hospital as caretakers; from Robert Allen, Personnel Manager of the South Saskatchewan Hospital Centre (which includes Pasqua Hospital); from Barry Woulds, Assistant Executive Director of Saskatchewan Health Care Association, from Eva Dulmage, Retired Supervisor, Housekeeping Department, Pasqua Hospital; and from the Director of Housekeeping at the hospital, Gunther Petrowski.

10429 The evidence established that all housekeeping aides at the Pasqua Hospital are female, whereas all caretakers are male. The housekeeping aides and caretakers are part of the housekeeping department at the Pasqua Hospital and neither position requires educational qualifications, nor any formal training program. Each caretaker and housekeeping aide is assigned to a specific area or areas of the hospital that are his or her individual responsibility. However, in both categories there are persons who are referred to as floats, who perform relief work when one of the others is sick, on holidays or regular days off. The primary responsibility of both the housekeeping aides and caretakers is the cleaning of the hospital. Generally speaking, the housekeeping aides are responsible for the cleaning of the patients' rooms, utility rooms, washrooms, nursing station and offices while the caretakers are primarily concerned with the cleaning of the hallways, stairwells, sitting areas, television areas and other large areas.

10430 In 1972 the Canadian Union of Public Employees, Saskatchewan Employees International Union, the Saskatchewan Department of Health and the hospitals in the Province of Saskatchewan established the Co-operative Wage Study. The purpose of this study was to rationalize and rectify any inequities that may have existed in pay rates throughout the Province of Saskatchewan in the various hospitals. The Co-operative Wage Study examined the various job classifications existing in each hospital and award-

ed each job a point value out of a maximum point value of 950. The job classification of caretaker at the Pasqua Hospital received a point value of 285, while the job classification of housekeeping aides received a point value of 265. The 20 point value difference between the 2 classifications was due to the position of caretaker being awarded 20 more points for extra physical effort expended on the job. The housekeeping aides appealed the grade point assessment to the Central Evaluations Committee. The Central Evaluations Committee, composed of 2 management and 2 union representatives, unanimously dismissed the appeal.

10431 On December 1, 1981, the rate of pay for the non-red circled caretakers was $.20 per hour higher than the rate of pay for the non-red circles housekeeping aides (as set out in Exhibit C-1 filed in the hearing). On December 1, 1981, the housekeeping aides were paid a starting wage of $6.57 per hour and escalated to $6.77 and to $6.99 per hour, while the caretakers basic wage was $6.77 which escalated to $6.99 and $7.19 per hour.

10432 Both the caretakers and aides spend approximately 50 per cent of their time wet and dry mopping floors. (at pages 212 and 213 of the transcript). The caretakers use a 24 ounce mop and the aides a 12 ounce mop. (at page 209 of the transcript). The reason given for the different size of mops was efficiency because it is easier to mop a large area with a large mop and a small area with a small mop, and the housekeeping aides use the small mop to mop around furniture and the caretakers use the large mop to mop the hallways.

10433 Evidence was lead that the larger mop is heavier when it is wet. The Respondent attempted to equate the heaviness of the mop with the effort required to use it. Harvey Pranke, in his evidence stated that he used both the 12 ounce and 24 ounce mop and at page 361 of the transcript in response to a question as to which mop was the heaviest and most difficult to use he stated that

> "the larger mop is the harder one to use."

and then in answer to the question

> "Is it significantly harder to use?"

he stated

> "No."

10434 In her testimony Beatrice Harmatiuk said that in order to wet mop the patients' rooms and utlity rooms it is necessary to move furniture, namely lockers, chairs, garbage disposal cans and occasionally a patient's bed. The 3 caretakers also gave evidence that it was necessary for them to move furniture in order to wet mop namely, to move chairs and tables.

10435 The housekeeping aides who testified stated that approximately 30 per cent of their time was spent in dusting (pages 97 and 177 of the transcript). In this regard Barbara Hoffert said she had to:

> "Do my dusting, my sinks, I have to vacuum my rugs, pick up the garbage, wipe the counters down and they have cupboards in there, I have to wipe them down and shelves". (at page 239 of the transcript)

and then at page 240 of the transcript

> "I go down to my sitting room. I also have to wipe the chairs there, clean up the ashtrays, pick up the garbage and scrub my floor with the wet mop."

10436 The housekeeping aides spend the remaining 20 per cent of their time performing extra duties such as stripping and placing sealer on the floors, spot washing the walls from the floor to as high as they can reach, washing the lower panes of the windows, cleaning the pipes with a dry mop, changing the bedside curtains (see pages 181, 182, 214 and 247 of the transcript).

10437 From the evidence it would appear some of the housekeeping aides use the same machines as the caretakers. Alma Oneiu, for instance, uses the vacuum cleaner and the 3 brush stripper for stripping wax off the floors. (at page 179 of the transcript). Barbara Hoffert uses the same vacuum cleaner as the caretakers (at page 240 of the transcript) as well she strips and places sealer on the floors in her area approximately once every 6 months (at page 249 of the transcript) and in so doing has used the 1 pad stripper and the 3 pad stripper to strip the wax off the floor and to polish the floor (at page 272 of the transcript).

10438 The women spot wash walls regularly and once a year wash walls from the floor to as far as they can reach. Approximately once a year the men wash the walls from the ceiling down to where the women have cleaned and wash the ceilings with a special extension mop.

10439 Harvey Pranke who was employed as a caretaker for 1½ years testified that during that time he had washed the walls in the halls and stairways and they were done about once a year (page 317 of the transcript), he had cleaned the ceiling approximately once or twice (page 318 of the transcript), and he has washed 3 windows (page 338 of the transcript).

10440 Jake Fischer testified he washes the ceilings and walls of approximately 3 or 4 rooms per year, strips the floors of approximately 2 or 3 rooms per year (page 403 of the transcript), washes the walls of the halls approximately once a year (page 368 of the transcript) and washes approximately 100 windows per year (page 384 of the transcript). A caretaker in order to wash the windows has to climb a ladder, remove the window, clean it and replace it while the housekeeping aides merely wash the inside lower pane.

10441 Jake Fischer (on page 395 of the transcript) also testified that he occasionally changed bedside curtains in the psychiatric unit and (on page 383 of the transcript) when asked

> Q. "Would they weigh about the same or would the curtains weigh more or would the drapes weigh more?"
>
> A.: "Well the drapes would weigh a little more."
>
> Q.: "A little more but basically about the same?"
>
> A.: "Probably they'd be about the same."

10442 Both groups are responsible for garbage removal in the areas. The women take the garbage in the large plastic bags to the utility room on their assigned floor and either leave it on the floor of the room or place it in the garbage cart. The men do the same, as well, when the garbage cart is full the caretakers move the cart to the garbage room, empty it and return the cart to the floor. The caretakers also clean the garbage cans. However, according to the evidence heard by this Board neither the pushing of the garbage cart onto the elevator and down to the garbage room nor the cleaning of the garbage cans is an especially onerous task.

10443 The women are responsible for cleaning beds in their area and Alma Oneiu, for example, estimates that she cleans 5 or 6 beds a night (at page 178 of the transcript) while Barbara Hoffert does 4 to 12 a night (at page 244 of the transcript).

10444 Beatrice Harmatiuk talked about the bending and lifting involved in the job of housekeeping aides at page 122 and 123 and she gave evidence as to the additional responsibilities the housekeeping aides have because they work in patients' rooms when patients are there. This is not a part of the job of the caretakers. She said (at page 125 of the transcript):

> A.: "Well you have to be thinking what you are doing. I mean you go into a room you just can't knock and go, you've got to think there's patients there, ill patients, some that are not ill but don't want noise, you've got to concentrate on doing your work with as little noise as possible and yet doing a thorough job. You've got to — also, when you're coming around the beds, either wet mopping, not to knock the beds. It is very disturbing for some patients. You have to consider the patients in your daily work. Some rooms that do get on a person's — shall I say nerves because the patients — no, we have different patients, the same as different people. There is some that are sicker, others are a little touchier, you've got to remember all these things as you go along. Now you've got to concentrate too. Yes I've done this . . .
>
> Q.: "Your work does require some planning in order to get it done?"
>
> A.: "It does require planning and it does require what shall we say, studying of the patients. When they are up and about if you do knock a chair or something it isn't as bad as when they are really ill and that you know that if you knock that chair they're going to jump up. You know you have to — you've got to get to know your patients and that takes thinking . . . You've got to think of each individual patient as you go around the beds, as you go into the rooms. Then you've got to consider the doctors . . ."

10445 The evidence established that the caretakers spend approximately 50 per cent of their time wet and dry mopping as aforesaid, 30 per cent of their time on garbage detail and 20 per cent of their time on extra duties such as washing the walls and ceilings down to where the housekeeping aides have washed, washing the upper panes of the windows, both inside and outside, removing and replacing drapes, stripping and waxing the floors, changing mattresses and dusting pipes. (see pages 336, 368, 369, 370 and 376 of the transcript).

10446 Under examination Guenther Petrowski said (page 216 of the transcript):

> Q.: "Are you able to tell us which job description requires more effort to perform? That of a caretaker or that or a housekeeping aide?"
>
> A.: "Well definitely that of a caretaker."
>
> Q.: "Is it a significant amount of more effort?"
>
> A.: "In my opinion, yes."
>
> Q.: ". . . why is there a significant amount of more effort in the caretaking position than that in the housekeeping aide position?"
>
> A.: "Well the nature of their equipment and the type of duties they have . . ."
>
> Q.: "What particularly about their equipment first?"
>
> A.: "Well to begin with, like the machines and the size of the mops and the carts . . . And also by the nature of their jobs."
>
> Q.: "How do you mean?"
>
> A.: "Well using the heavier mop and hand mopping, wall washing, window cleaning, taking the windows out of their frames. High dusting of pipes, extending their arms above heads and using an extension pole."

10447 In his statement Guenther Petrowski referred to the type of duties assigned to the caretakers and those are the same as those specified as extra duties by the caretakers in their evidence. As stated earlier in this decision, both the housekeeping aides and the caretakers spend approximately 20 per cent of their time performing extra duties. The extra duties performed by the 2 job classifications and the number of times they are performed have been previously dealt with. The amount of time spent on those extra duties is minimal.

10448 Also, as indicated earlier in this decision it would appear that the following equipment used by housekeeping aides are the vacuum cleaner, 3 pad scrubber and 1 pad scrubber but that they never use the big scrubber which is a heavy piece of equipment. However, according to the testimony of Guenther Petrowski and the 3 caretakers at this hearing, even though 10 of the 12 caretakers employed at the Pasqua Hospital know how to operate this machine it is primarily handled by Mike Radd (at page 222 of the transcript). According to the evidence, 1 caretaker as part of his daily routine goes to every floor and utilizes the big scrubber in the hallways while the caretaker assigned to that particular area moves any chairs or objects out of the way. (pages 372 and 373 of the transcript).

10449 It should also be pointed out that 50 per cent of the time of both the housekeeping aides and caretakers is spent wet and dry mopping and although Guenther Petrowski is of the opinion that the heavier mop is significantly more difficult to use, the caretakers who testified, testified that the larger mop was not significantly harder to use.

10450 It appears therefore from the evidence that some extra physical effort is required of the caretakers when performing duties such as cleaning windows, ceilings and dusting pipes. On the other hand it appears some extra mental effort is required of the aides when they are working in the patients' rooms.

10451 As mentioned earlier in this decision the Commission heard evidence with respect to the Co-operative Wage Study, which study concluded there was a 20 point difference in effort between the 2 job classifications. While the Commission can and should take into account a study such as this, it is incumbent on the Commission to reach its decision based on the evidence presented to it at the hearing in light of section 17 of *The Labour Standards Act*. There is no evidence before the Commission that section 17 was considered in the preparation of the Co-operative Wage Study and the fact that the Co-operative Wage Study was completed does not allow the Commission to abdicate its responsibility to make a decision or to defer to the decision of the committee responsible for the Co-operative Wage Study. The equal pay standard is not dependent on classifications, point values, or job titles, but

rather on actual job requirements and performance. Job content is the controlling factor. The Act contains its own definition of equal work which is independent of any classification system. Thus, although the point values allocated to 2 jobs may add up to unequal totals, it does not necessarily follow that the work being performed in such jobs is inequal when the statutory tests of the equal pay standard are applied.

10452 It is well established in Canada, and in other countries with similar legislation to the equal pay provision the Commission is enforcing, that "*similar work*" does not mean "*identical work*". There must be a substantial similarity between the jobs and the fact finder must make that assessment based on an objective basis. In the *Schiltz* decision (*supra*) the Saskatchewan Human Rights Commission reviewed the case law in Canada and the United States of America on these 2 points.

10453 With respect to the question of effort, a finding, that some employees must expend greater effort for a portion of their time than other employees, does not, of itself, establish that the 2 jobs do not constitute equal work under our laws. That fact that the caretakers spend some of their time exerting greater physical strength does not in our opinion justify a differential where the continuation by the aides of their regular duties involves an equal or perhaps a greater amount of effort, although of a different kind than exercised by the caretakers.

10454 The Commission heard evidence as to whether the Respondent hospital was activated by motives of sex discrimination. All those appearing on behalf of the Respondent expressed their view that women would be as acceptable as men for the caretaking position. Section 17 of *The Labour Standards Act* contains its own definition of the "*discrimination*" which the equal pay laws are designed to prevent and that is

> "discriminate . . . by paying a female employee at a rate of pay less than the rate of pay paid to a male employee or vice versa . . . for similar work performed in the same establishment, the performance of which requires similar skill, effort and responsibility, and which is performed under similar working conditions, except where such payment is made pursuant to a seniority system or merit system."

10455 The Commission has made it clear in other decisions, *Department of Labour v. Board of Yorkton Regional High School* dated March 30, 1976, for example, that it is not necessary to define present or past intent to discriminate on the ground of sex in order for there to be a violation of the equal pay laws.

10456 It is clear that the legislation makes it illegal to provide less remuneration to persons of one sex doing similar work in the same establishment, which require similar skill, effort and responsibility to persons of the opposite sex unless the reason for this difference is based on a merit or seniority system. No other reason for the difference would be acceptable under the pay laws of Saskatchewan. We are unanimous in our opinion that Pasqua Hospital had no intention to discriminate on the basis of sex between the 2 groups of employees, however, this lack of intent simply is not a relevant factor to be taken into consideration in determining whether or not the equal pay laws have been infringed or breached

> "It is the discriminatory result which is prohibited and not the discriminatory intent."[1]

10457 We find that the Pasqua Hospital has been in violation of section 17 of *The Labour Standards Act* by paying female housekeeping aides at a rate of pay less than paid to male caretakers employed at the hospital.

10458 In most equal pay cases the order would be dated back to the point in time when the violation of the equal pay provisions first occurred. In this case because of the Letter of Understanding from Lynn Pearson, Director of the Women's Division, that because of the Co-operative Wage Study the Division would not go back beyond the date of the complaint, this Commission will order back pay to the housekeeping aides employed at Pasqua Hospital from the date the complaints were filed with the Department of Labour.

Helen Hnatyshyn
William Gilbey
Louise Simard, Chairperson

[1] Hon. Justice D.C. McDonald, S.C. of Alberta, A.G. for the Province of Alberta and Doreen Gares et al and Board of Governors of Royal Alexandra Hospital, and the Alberta Hospital Association, C.U.P.E. Local 41 and Board of Industrial Relations for the Province of Alberta and the Alberta Association of Registered Nursing Orderlies — unreported judgment dated January 27, 1976. [Editor's note: see *Re Attorney General for Alberta and Gares et al* (1976), 67 D.L.R. 635 (Alta. S.C.)]