

**Ontario  
Human Rights  
Commission**

**ANNUAL REPORT  
2002-2003**

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**TABLE OF CONTENTS**

<b>MESSAGE FROM THE CHIEF COMMISSIONER .....</b>	<b>5</b>
<b>MEDIATION AND INVESTIGATION BRANCH.....</b>	<b>6</b>
The Office of the Director .....	6
Inquiry and Intake Office .....	6
Mediation Office .....	7
Investigation Office .....	8
The Caseload .....	8
<b>POLICY AND EDUCATION BRANCH.....</b>	<b>9</b>
Policy Development .....	9
Public Transit Report.....	9
Age Discrimination .....	10
Education and Disability .....	10
<i>Building Code</i> and Restaurant Accessibility .....	11
Racial Profiling.....	12
Aboriginal Human Rights Program .....	13
An Intersectional Approach to Discrimination.....	14
Advice on Human Rights Matters .....	14
Increasing Awareness through Public Education .....	16
Partnerships .....	17
National and International Initiatives .....	17
<b>LEGAL SERVICES BRANCH .....</b>	<b>ERROR! BOOKMARK NOT DEFINED.</b>
Supreme Court of Canada .....	<b>Error! Bookmark not defined.</b>
Superior Court of Justice .....	<b>Error! Bookmark not defined.</b>
Divisional Court .....	<b>Error! Bookmark not defined.</b>
Human Rights Tribunal of Ontario.....	<b>Error! Bookmark not defined.</b>
<b>CORPORATE INITIATIVES .....</b>	<b>35</b>
<b>ACCOUNTABILITY FRAMEWORK.....</b>	<b>36</b>
<b>APPENDICES.....</b>	<b>40</b>
List of Commissioners.....	41
Organizational Chart .....	45
Branch Descriptions .....	47
List of Publications.....	<b>Error! Bookmark not defined.</b>
List of Public Education Activities.....	51
Tables .....	54
Human Rights Tribunal of Ontario Decisions and Settlements.....	60
Financial Statement .....	71

**(letterhead)**

June, 2003

Honourable Carl DeFaria  
Minister of Citizenship and Minister Responsible for Seniors  
6<sup>th</sup> Floor, 400 University Avenue  
Toronto, Ontario  
M7A 2R9

Dear Minister:

Pursuant to section 31(1) of the *Ontario Human Rights Code*, it is my pleasure to provide to you the Annual Report of the Ontario Human Rights Commission for the fiscal year 2002-2003, for submission to the Legislative Assembly of Ontario.

This report reflects the activities of the Commission from April 1, 2002 to March 31, 2003.

Yours sincerely,

Keith C. Norton, Q.C., B.A., LL.B.  
Chief Commissioner

## Message from the Chief Commissioner

I am pleased to report on the work of the Ontario Human Rights Commission for the April 1, 2002 to March 31, 2003 fiscal year.

This year, the Commission opened 1,776 cases and closed 1,954 cases. The active caseload, as at March 31, 2003 was 2,137 cases. The average age of the Commission's active caseload was 11.5 months, which indicates that the Commission continues to maintain a current caseload, (one that is 12 months or less). The Commission referred 58 human rights complaints to the Human Rights Tribunal of Ontario.

In the area of policy, the Commission also accomplished several key achievements. Most notably, the Commission:

- released a Consultation Report on human rights and public transit service in Ontario;
- released its *Policy on Discrimination against Older Persons because of Age*;
- launched a public education awareness campaign to address the four areas where older persons face the most barriers: employment, transportation, health care and housing;
- conducted a survey on accessibility of restaurant chains;
- held public consultation sessions in North Bay, Hamilton, Ottawa and Toronto on issues related to access to education for students with disabilities; and
- launched a major province-wide public inquiry into the effects of racial profiling.

Finally, I would be remiss if I did not express my gratitude to the staff of the Commission. I am both impressed and appreciative of the fact that despite a lengthy public service strike, the continued hard work of staff members enabled the Commission to meet a number of challenges in a particularly demanding year.

Keith C. Norton Q.C., B.A., LL.B.  
Chief Commissioner

## About The Commission

*The Ontario Human Rights Commission (the “Commission”) is an arm’s length agency of government, accountable to the Legislature of Ontario through the Minister of Citizenship. The Commission’s principal functions are set out in the Ontario Human Rights Code (the “Code”) and include the investigation and settlement of human rights complaints. Under the Code, the Commission’s work also includes promoting human rights and public awareness.*

## **MEDIATION AND INVESTIGATION BRANCH**

The Mediation and Investigation Branch, of the Ontario Human Rights Commission, is the largest branch within the Commission with approximately 85 full-time employees located across the province, the majority are based in the Commission’s Toronto office.

The Mediation and Investigation Branch has primary responsibility for the Commission’s mandate to ensure compliance with the Ontario *Human Rights Code*. It is composed of four offices: the Office of the Director, the Inquiry and Intake Office, the Mediation Office and the Investigation Office.

### **The Office of the Director**

The Office of the Director is responsible for the management of the Mediation and Investigation Branch. The Director’s Office also provides supervision for a number of special projects including Fee-For-Service (FFS) investigations, compliance procedures, monitoring compliance, customer service issues and overall caseload management.

### **Inquiry and Intake Office**

The Commission’s Inquiry and Intake Office is the first point of contact for members of the public calling for information on filing, or preventing, a human rights complaint. This Office also handles correspondence about the Commission’s complaint process and receives visitors to the Commission’s Toronto Office who wish to file complaints.

The Office has two units that provide service to the public by telephone through the Call Centre located in Toronto, personal visits to the office, and by written and electronic correspondence.

Through the Inquiry unit, callers, visitors and correspondents receive general information on the complaint process, how to file a complaint and other information about the human rights process. The Intake unit is responsible for

assessing returned intake questionnaires and drafting and serving human rights complaints.

In an effort to provide more effective service to the public, in the fiscal year 2002-2003, the Inquiry office undertook to be more proactive in educating complainants and respondents about their rights and responsibilities under the *Code* on their first contact with the Commission.

This improved approach to serving the public resulted in the following achievements:

- Complainants were empowered to address their human rights concerns and employers/respondents were provided with tools to become proactive in addressing and preventing complaints of discrimination.
- Inquirers whose issues were not human rights in nature were immediately referred to more appropriate organizations to deal with their issues.
- The Commission's resources focused on dealing with issues of discrimination under the *Code*.

In the fiscal year, 2002-2003, the office received 2,324 written inquiries, attended to 902 visitors to the office and answered 46,127 of the 69,817 calls it received. On average, calls were responded to within 3 minutes. The office issued 4,385 intake questionnaires to the public and received 2,863 completed intake questionnaires (including approximately 800 self-drafted complaints) in return. A total of 1,776 complaints were filed.

## **Mediation Office**

The Commission's Mediation Office offers both formal and informal mediation services to parties and is responsible for assessing and processing section 34 requests.

Formal mediation is a voluntary opportunity for parties involved in a complaint to meet and resolve their issues early in the complaint process, with the assistance of a professionally trained mediator employed by the Commission. Informal mediation occurs where the parties seek to resolve their issues early in the complaints process without a formal mediation meeting. Skilled, professionally trained mediators also facilitate informal mediation.

Section 34 requests are requests made under section 34 of the *Code* where the Commission is asked to "not deal with" a complaint because it could or should be more appropriately dealt with by a statute other than the *Code*, or because the

complaint is trivial, frivolous, vexatious or made in bad faith, where the Commission lacks jurisdiction, or because the complaint was filed more than six months after the events which form the subject of the complaint.

The mediation settlement rate for this fiscal year is 72.9% compared with a 73.6% settlement rate in 2001-2002. In this fiscal year, 1,262 cases were closed in the Mediation Office.

### **Investigation Office**

The Commission's Investigation Office conducts investigation and conciliation of complaints that are not settled or otherwise resolved through the Mediation Office.

In this fiscal year, the Investigation Office closed 676 complaints. The average age of the Commission's active caseload was 11.5 months, as of March 31, 2003, indicating that the Commission continues to maintain a current caseload (one that is 12 months or less).

### **The Caseload**

The Commission opened 1,776 cases and closed 1,954 cases in fiscal year 2002-2003. The active caseload, as at March 31, 2003 was 2,137 cases.

More cases would have been opened and closed in this fiscal year but for the Ontario Public Service Employees Union strike, which started on March 13, 2002, and was not resolved until May 6, 2002.

The Commission referred 58 human rights complaints to the Human Rights Tribunal of Ontario.

The Mediation and Investigation Branch is supported by, and receives policy and legal assistance, from the Commission's Policy and Education and Legal Services Branches. The Mediation and Investigation Branch similarly provides support to the work of the Policy and Education Branch and the Legal Services Branch.

The names of parties and the details of cases assigned to the Mediation and Investigation Branch are confidential and protected under the *Freedom of Information and Protection of Privacy Act*. However, once the Commission has referred a case to the Human Rights Tribunal of Ontario (formerly known as the Board of Inquiry), the matter becomes part of the public record. For this reason, no case summaries are provided of cases assigned to the Mediation and Investigation Branch.

Detailed summaries of cases investigated by the Mediation and Investigation Branch that have been referred by the Commission to the Human Rights Tribunal of Ontario are provided in the Legal Services Branch section of this report.

## POLICY AND EDUCATION BRANCH

### Promotion and Advancement of Human Rights

#### Policy Development

In keeping with its mandate to promote understanding of human rights and to conduct research to eliminate discriminatory practices, the Commission undertook a number of policy development initiatives in 2002-2003. The Commission's policies and guidelines are approved public statements that set out the Commission's interpretation of specific provisions of the *Code*. The Commission's policy work helps the Commission to advance understanding of the *Code* and inform the public and those involved in human rights work how the Commission will interpret and apply the *Code* when dealing with particular matters. Highlights of the past year are outlined below.

#### Public Transit Report

In April 2002, the Commission released its Report on *Human Rights and Public Transit Services in Ontario*. The Commission's Report summarized the input received from transit providers, seniors' organizations, disability consumers' groups, advocacy groups and individuals during the Commission's consultation on access to public transit services.

The Report states that there is a legal obligation under the *Code* for equal access to public transit services without discrimination based on prohibited grounds, yet found that persons with disabilities, older persons and families with young children face difficulties in accessing transit on a daily basis.

The Report contains recommendations for transit service providers to set a goal of full integration and accessibility, design services and facilities inclusively and take all steps short of undue hardship, including developing plans, to achieve this goal. The Commission encouraged the provincial government to set standards and timelines across the province and to consider the urgency and impact of accessibility issues in public transit services.

Under the new *Ontarians with Disabilities Act* (ODA), every public transportation organization in Ontario is required to prepare and make publicly available a yearly accessibility plan addressing the identification, removal and prevention of barriers to persons with disabilities in the organization's bylaws, policies, programs, practices and services. The Accessibility Directorate of Ontario notes that public transit providers should complete their first accessibility plans by September 30, 2003, one year after the date of proclamation of the ODA.

## **Age Discrimination**

Building on the Commission's ongoing work in the area of age discrimination, in June 2002, the Commission released its *Policy on Discrimination against Older Persons because of Age*. The Policy provides an in-depth look at age discrimination as it relates to the present protections in the *Code*. The Policy was developed to help the public and Commission staff gain a better understanding of how the *Code* protects older Ontarians. It also aims to raise awareness among service providers, employers and landlords of their obligations under the *Code*. Six fact sheets were also published to provide a quick resource to explain the key issues in the Policy.

At the same time, the Commission announced its public awareness campaign, in partnership with CARP (Canada's Association for the Fifty-Plus), to counteract myths and stereotypes about older persons. The campaign features posters of older people with stickers on their foreheads that state a Best Before age and a tagline that states:

*"Nobody has a shelf life. Stop age discrimination now. It's illegal, and it's just plain wrong."*

The message is intended to serve as a reminder that negative attitudes about aging should not stand in the way of equal opportunity and participation for older Ontarians. There are different posters for employment, transit services, health care and housing - four key areas that affect older Ontarians.

**(Insert age poster visual)**

## **Education and Disability**

The Commission undertook significant work in the area of disability and education. In July 2002, the Commission released a Consultation Paper entitled *Education and Disability: Human Rights Issues in Ontario's Education System*.

The Paper set out specific issues on which the Commission sought input such as access to education, disability and other forms of discrimination, negative attitudes and stereotypes, labelling, the accommodation process, roles and responsibilities, appropriate accommodation, and undue hardship. The Paper invited written submissions from any interested individual or organization on these and other human rights issues related to disability and education.

The Commission received 124 written submissions. Those who made submissions included community organizations, school boards, special education advisory committees, parents, students with disabilities, educators, colleges, universities, consultants, unions, advocacy groups, and government ministries.

In November 2002, the Commission held public hearings in Ottawa, North Bay, Hamilton and Toronto to hear presentations. Interested parties presented submissions on human rights issues affecting people with disabilities in the education sector. The completion of these hearings fulfills a commitment made in 2002 to conduct consultations on disability and education with a view to developing a consultation report and specific guidelines.

A consultation report and guidelines are currently being prepared and are expected to be released in the Fall of 2003.

**(Insert photo of Chief from Toronto Star article)**

### ***Building Code and Restaurant Accessibility***

In March 2002, the Commission presented an in-depth submission to the Ministry of Municipal Affairs and Housing outlining the need for reform to the barrier-free access requirements in the Ontario *Building Code*. The submission identifies priorities for change as well as the human rights principles that should be reflected in a revised *Building Code*. In July 2002, this document was made public along with a report on a Commission initiative to promote accessibility in the restaurant sector.

The initiative involved surveying 29 major restaurant chains in Ontario to ascertain the degree of accessibility of their premises, what standards are used for accessibility, and what objectives are set for achieving accessibility in future.

A review of the responses revealed that the restaurant chains are setting their standards for accessibility based only on the Ontario *Building Code* that is in effect at the time of construction or renovation. Neither the *Code* nor the Commission's *Policy and Guidelines on Disability and the Duty to Accommodate* are considerations in setting standards for accessibility.

Accordingly, the Commission initiated its own inquiry into the accessibility of restaurant chains pursuant to its mandate under section 29 of the *Code*. The Commission retained an expert to conduct restaurant accessibility and service reviews of seven chains. The expert visited several locations of each of the seven chains in various parts of the province. The chains were assessed and rated based on a checklist setting out key elements of accessibility.

The results of the review were disappointing. They revealed that there are facilities in operation in Ontario that do not meet even the most basic accessibility requirements of the current *Building Code*, nor the requirements of the Ontario *Human Rights Code*. In some cases facilities are completely inaccessible while in others, persons with disabilities would face significant barriers, for example, in accessing washrooms.

In the next fiscal year, the Commission intends to share the results of this review with the seven chains to ascertain their plans for achieving accessibility in the future. The results of the review will also be made public.

## **Racial Profiling**

As part of its commitment to initiate a project on race, ethnicity and origins, on December 9<sup>th</sup>, 2002, the eve of International Human Rights Day, the Commission announced that it would undertake a public inquiry to look into the effects of racial profiling on individuals, families, communities and society as a whole.

The inquiry falls under the Commission's mandate in section 29 of the *Code* to inquire into incidents or conditions leading to tension or conflict, to initiate investigations into problems in society, to encourage programs to address such problems and to conduct public education to promote understanding of and compliance with the *Code*.

The Commission worked closely with community partners in the design of the process. On February 17, 2003, the initiative was launched and from February 18<sup>th</sup> to 28<sup>th</sup>, the Commission's phone lines were open in the evenings to receive submissions from the public. The Commission also received a number of submissions through an online questionnaire and by mail.

By the fiscal year end, the Commission had received over 800 contacts. While not all of the contacts fit the parameters of the inquiry, the feedback exceeded the Commission's expectations in terms of both quality and quantity. Persons from a variety of backgrounds from communities across the province shared accounts of their experiences with profiling in a number of settings.

On March 31<sup>st</sup>, the Commission held a one-day public inquiry session in Toronto during which thirteen (13) presenters, representing a cross-section of the submissions received, described the impact of profiling on themselves, their families, their communities, and society and its institutions. The session was successful in its goal of raising public awareness, particularly among those who may lack an understanding of the harmful effects of profiling.

The Commission intends to publish a report on the racial profiling initiative during the next fiscal year.

**(Insert newspaper advertisement)**

**Aboriginal Human Rights Program**

The fiscal year, 2002-2003, marked the third year of the Commission's Aboriginal Human Rights Program. The goals of this important initiative are to create and build on awareness of the *Code* among Aboriginal communities and to enhance their access to the Commission's services. Historically, Aboriginal people in Ontario have filed relatively few human rights complaints and many communities have little knowledge of the provincial human rights law or process.

The Commission is working in partnership with two Aboriginal organizations, Grand River Employment and Training (GREAT) of Ohsweken (near Brantford) and the Native Canadian Centre of Toronto (NCCT), in the development and delivery of this project.

The first phase of the initiative revealed that Aboriginal people face significant discrimination in housing, particularly off the reserve, as well as discrimination in employment and services. In addition, it indicated that Aboriginal communities and members had little knowledge of the Commission's services or the human rights process. The report on Phase 1 recommended that the Commission increase its presence in Aboriginal communities and included strategies to enhance awareness and improve access for Aboriginal persons to the human rights system.

In January 2002, during the second phase of the initiative, a full-time human rights liaison officer began working at NCCT to increase awareness of human rights and the Commission's services.

The third phase was implemented in this fiscal year and was an evaluation of the project. The Final Report, written by GREAT, was submitted in March 2003 and reflected that while the model is effective, there is still a great deal of work to be done in this area.

In particular, the report indicated that the role of a liaison officer had worked effectively:

- with Commission Inquiries and Intake staff to assist Aboriginal people to file complaints;
- with community agencies serving Aboriginal peoples to provide information, support or resolution to situations, many times without referral to the Commission as a complaint;
- with the Canadian Human Rights Commission as many of those who voiced concerns were either from reservations or their inquiries involved federally regulated organizations;
- and as a vehicle for public education in the community, in agencies and in schools.

The Commission will be following up on the recommendations of GREAT's Final Report to strengthen the program's viability and to develop a strategy to broaden the program geographically in Ontario.

### **An Intersectional Approach to Discrimination**

The Commission released a Discussion Paper entitled, *An Intersectional Approach to Discrimination: Addressing Multiple Grounds in Human Rights Claims* and solicited feedback on how an intersectional analysis can be consistently applied in all areas of the Commission's work. The paper explores how factors such as race, gender, age, place of origin and disability often intersect to produce a unique experience of discrimination.

### **Advice on Human Rights Matters**

One part of the Commission's function is to inquire into statutes, regulations, programs and policies, including matters in the public and private sectors to provide input on human rights issues. The Commission can also undertake measures to assist public and private bodies to comply with the *Code*. During the past fiscal year, the Commission:

- communicated with a number of bodies responsible for administering social housing in Ontario to provide a policy interpretation of how the *Code* applies to "seniors only" and "ethnic" housing accommodation;

- wrote to and met with representatives of the Office of the Chief Coroner regarding the potential for a claim of discrimination on the basis of mental disability due to automatic inquests for deaths in police or prison custody versus discretionary inquests for deaths of persons involuntarily committed to psychiatric facilities;
- wrote to the Ministers of Finance and Education regarding Commission concerns with the private school tax credit as proposed. The Commission also met with staff of these ministries to provide advice on human rights aspects of this program. The Commission clarified its public position on this issue by posting a Fact Sheet on the Private School Tax Credit on its Web site;
- wrote to the Minister of Transportation regarding human rights concerns raised by hearing standards for class B, C, E and F drivers licenses in Ontario;
- wrote to the Minister of Foreign Affairs urging the Canadian government to take action regarding an international human rights matter involving a Nigerian woman sentenced to death by stoning for allegedly having a child out of wedlock;
- spoke out about the increase in hate crimes reported across the province since September 11, 2001 with a reminder that intolerant behaviour is unacceptable and has no place in our society;
- wrote to the Ontario Press Council to express concerns regarding an editorial in the Ottawa Citizen which suggested that special measures in the *Criminal Code* of Canada to deal with hate crimes elevate “special categories of victims” to a higher rank than others and place greater worth on their lives;
- wrote to the Minister of Consumer and Business Services to comment on that Ministry’s proposed privacy legislation and to highlight potential human rights concerns;
- wrote to the Ministry of Public Safety and Security regarding the disclosure by police forces of non-criminal information about individuals with mental illness to potential employers, volunteer groups, sports clubs and other organizations that provide services to children or vulnerable persons; and
- wrote to the Ministry of Transportation about that Ministry’s licensing requirements for older drivers, which appear to consider older drivers to be a higher risk despite the conclusion of a 2002 Coroner’s Jury to the contrary.

## **Increasing Awareness through Public Education**

This fiscal year was the third year of the Commission's three-year Public Education Strategy, *Getting the Message Out*, that supports the Commission's mandate to promote and advance awareness of the *Code* through the use of thematic campaigns as well as developing and enhancing partnerships in the private, public and not-for-profit sectors.

The Chief Commissioner took part in a number of public events including: three presentations on age discrimination, three presentations to youth in schools or conferences, one presentation in Santiago, Chile to the Universidad Diego Portales, at an international conference on human rights, and a presentation to the House of Commons Standing Committee on Justice and Human Rights on the topic of same-sex marriage.

Commission staff made several presentations to local chapters of the Human Resources Professionals Association of Ontario (HRPAO), school boards, teachers' forums, colleges and universities.

Enhanced public awareness of human rights issues was also achieved through other initiatives such as the Aboriginal Human Rights Program, the Disability and Education consultations, the public awareness campaign to counteract negative stereotypes of older Ontarians and significant media coverage as a result of the Racial Profiling Inquiry.

In 2002-2003, usage of the Commission's Web site, [www.ohrc.on.ca](http://www.ohrc.on.ca), grew again for the second straight year. During the period April 1, 2002 through March 31, 2003, 330,131 unique visits were recorded, which represents an increase of almost 100,000 unique visits over the same period of the 2001-2002 fiscal year. On average, 904 people visited the Web site each day, an increase over the average of 638 daily visitors in the previous fiscal year.

In February 2003, the Commission used the Web site for the first time to gather submissions to a consultation. An electronic form was placed on the site to facilitate online responses to the call for submissions regarding racial profiling. Through the end of March 2003 over 500 contacts had been made using the electronic form.

The Commission's Web site remains the best place to quickly access information on the Commission from policies, plain language guides, case summaries and news releases to information about the complaints process, consultations and upcoming and past Commission initiatives.

The Commission also produced, in collaboration with COSTI, a multicultural service agency for new immigrants, plain-language brochures on sexual and racial harassment, hiring, how to file a complaint and Commission services in four additional languages: Urdu, Punjabi, Tagalog and Spanish.

**(Insert photo of the brochures)**

## **Partnerships**

The Commission continued to build on partnerships with the community and organizations that share responsibility for and interest in the promotion of human rights.

This fiscal year, the Commission signed a framework agreement with the Human Resources Professionals Association of Ontario (HRPAO) to:

- rewrite “*Human Rights at Work*” by updating the content and increasing its usefulness to practitioners in the human resources field;
- co-operate in delivering workshops and presentations;
- co-produce publications including the Web site; and
- include information about human rights in HRPAO’s publication *HR Professional*; and work together on other awareness campaigns.

The Commission also launched a public awareness campaign to highlight the discrimination faced by older Ontarians because of their age in partnership with Canada’s Association for the Fifty-Plus (CARP).

## **National and International Initiatives Ontario Submissions**

The Commission provides input into Canada’s reports which are required under the various international human rights conventions to which Canada is a signatory.

In 2002-2003, the Commission participated in this process by providing information to the Ministry of Labour in their preparation of Ontario and Canada’s report in response to questions from the International Labour Organization regarding measures taken to prevent discrimination in employment and promote employment of women, older workers, people with disabilities, and other categories of people subject to discrimination and exclusion.

The Commission also provided information about its work to Canada’s delegation appearing before the United Nations Committee on the Elimination of Racial Discrimination. The Committee was considering Canada’s 13<sup>th</sup> and 14<sup>th</sup> Reports under the *Convention on the Elimination of All Forms of Racial Discrimination*.

## **International Delegations and Visitors**

The Commission hosted delegations from human rights commissions and related agencies and groups from the following countries: Korea (Ombudsman), Albania (Ombudsman) and Bermuda (Human Rights Commission).

### **Canadian Association of Statutory Human Rights Agencies**

The Canadian Association of Statutory Human Rights Agencies (CASHRA) is made up of human rights agencies across Canada. As in past years, at the 2002 annual general meeting, Commission staff were involved in delivering seminars on several human rights topics.

At that meeting, CASHRA members also passed a resolution urging the Government of British Columbia to demonstrate its stated commitment to human rights by undertaking to meet international human rights standards by ensuring its human rights system operates at arm's length and is accessible and effective at protecting and promoting human rights.

In September 2002, the Commission prepared a submission, on behalf of CASHRA, to the Government of British Columbia in response to that province's introduction of legislation to abolish its human rights commission. The submission reiterated CASHRA's support for the continuance of independent human rights commissions, in Canada and abroad, as distinct and desirable institutions representing the public interest.

British Columbia's *Human Rights Code Amendment Act* has been proclaimed in force as of March 31, 2003. As a result, British Columbia is now the only province in Canada without a human rights commission.

The Commission maintains regular contact with CASHRA's Public Education Partners/Partenaires en éducation publique et populaire through ongoing regular communication with education representatives of other Canadian commissions and monthly teleconferences.

### *Legal Services Branch*

During the 2002-2003 fiscal year, the Legal Services Branch was involved in the following resolutions: 13 Human Rights Tribunal of Ontario decisions, 37 settlements, 5 judicial review decisions, 4 appeal decisions, and one Supreme Court of Canada decision.

At the end of the fiscal year, the ongoing litigation in the Legal Services Branch comprised: 80 Human Rights Tribunal of Ontario files, 14 judicial reviews, 5 appeals, and one case at the Supreme Court of Canada.

The following are highlights of some of the significant decisions, settlements, and cases over the past year.

### **Supreme Court of Canada**

#### ***B, C, and D v. A and OHRC, Supreme Court of Canada: October 31, 2002.***

Mr. A filed a complaint, following the termination of his employment with D Ltd., alleging that he had been discriminated against on the basis of family and marital status. Mr. A's termination followed a confrontation between Mr. B (Mr. A's boss) and Mr. A's wife and daughter over allegations that Mr. B had sexually abused Mr. A's daughter.

#### **Result at the Human Rights Tribunal of Ontario (then the Board of Inquiry):**

The Tribunal concluded that Mr. A's employment was terminated solely because he was the father of the person alleging the abuse and the husband of the person confronting Mr. B about the alleged abuse, and that the facts amounted to discrimination based on marital and family status.

**Result at the Divisional Court:** The Divisional Court upheld these factual findings but said that, though the parties were related through marriage, this case does not amount to discrimination on the basis of family or marital status.

**Result at the Court of Appeal:** The Court of Appeal allowed the Commission's appeal, agreeing that the grounds "family status" and "marital status" must include the particular identity of one's parent, child or spouse.

**Result at the Supreme Court of Canada:** The Supreme Court of Canada endorsed the Court of Appeal's approach, finding that adverse treatment based on the identity of one's spouse, child or parent is prohibited under the *Code*. The Supreme Court of Canada also reinforced previous case law that confirmed that courts and tribunals should adopt a broad, remedial and purposive approach to interpreting the provisions of human rights legislation.

### **Appeals**

#### ***Pritchard v. OHRC and Sears Canada, Court of Appeal: January 29, 2003.***

Ms. Pritchard filed a human rights complaint in January 1997 against Sears Canada Inc. and certain supervisory personnel alleging discrimination, harassment and reprisal. The alleged reprisal was the termination of Ms. Pritchard's employment and a subsequent failure to re-hire her due to earlier

complaints she had made to the Commission in 1994 for sexual harassment and sex discrimination.

The Commission exercised its discretion under section 34(1)(b) of the *Code* to not deal with the part of her complaint that addressed her termination. The reprisal allegations addressing the subsequent failure to rehire were to be referred to investigation and mediation under the normal course. Ms. Pritchard requested a reconsideration of this decision under section 37. The Commission upheld its original decision.

Ms. Pritchard sought an order that she be provided with all information, both oral and written, that was placed before the Commission when it made its decision under section 34(1)(b).

**Result at the Divisional Court:** The Commission was ordered to disclose all information placed before the Commissioners when they made their section 34 decision including a legal opinion prepared by counsel. The Court held that fairness dictates that Ms. Pritchard was entitled to all the information placed before the Commissioners who made the decision to not deal with a part of her complaint.

**Result at the Court of Appeal:** The Commission appealed, arguing that the legal opinion prepared by its in-house counsel was protected by solicitor-client privilege. The Court of Appeal reversed the Divisional Court's decision finding that the legal opinion was indeed privileged information. The Court further held that on a judicial review, the legal opinion was irrelevant since the question to be answered would be whether the decision of the Commission could be upheld, not whether the legal opinion it received was correct.

**Current Status:** Ms. Pritchard is seeking leave to appeal to the Supreme Court of Canada.

### **Superior Court of Justice**

***Oren Nimelman By Next Friend Cheryl Katz, Noah Nimelman By Next Friend Cheryl Katz and Cheryl Katz v. OHRC, Nancy Pocock, Christopher McKinnon and Keith Norton, Superior Court of Justice: February 5, 2002.***

Cheryl Katz brought an action against the Commission for breach of rights under the *Charter of Rights and Freedoms*, breach of statutory duty, abuse of public office and malicious conduct.

**Result at the Superior Court of Justice:** The Court dismissed the claim, finding that there was no reasonable cause of action. The Court confirmed an earlier Court of Appeal decision that held that the Commission is not an entity that can

be sued for damages. This also excludes the Commission from an action of vicarious liability for the actions of its employees.

## **Divisional Court**

### ***Gismond v. OHRC and City of Toronto*, Divisional Court: February 14, 2003.**

This was an application for judicial review of two decisions of the Commission to not deal with the complainant's age-based discrimination complaint in relation to the termination of his employment. The Commission concluded that the complaint was untimely because the events giving rise to it occurred more than six months before the complaint was filed, and was not satisfied that the delay was incurred in good faith. The Commission therefore decided not to deal with the complaint under section 34(1)(d), and upheld its decision under section 37.

**Result at the Divisional Court:** The Court found that the standard of review to be applied on judicial review of the Commission's decisions under sections 34, 36, and 37 of the *Code* is that of "patent unreasonableness". In coming to this conclusion, it noted the finality of decisions under section 37, the lack of an appeal route from the Commission's decisions, the Commission's investigative and screening (as opposed to quasi-judicial) role under sections 34, 36, and 37, and the well-recognized expertise of the Commission in fact-finding and processing complaints in the human rights context.

The Court also found that the Commission's decisions were not patently unreasonable, and that the Commission had met the requirements of procedural fairness in making its decisions. The complainant was given a full opportunity to make submissions and respond to the Commission's section 34 analysis and reconsideration report, and all of the arguments upon which he relied appeared to have been before the Commission at the time the decisions were made. The complainant had knowledge of the matters the Commission was considering and upon which its decisions would be based. The Commission's reasons were adequate and sufficient. Further, the Court indicated that the reasons for the Commission's decisions could be ascertained by reference to both the case analyses provided to the parties before the decision, and the written reasons provided after the decisions.

### ***OHRC and Ray Brillinger and the Canadian Lesbian and Gay Archives v. Imaging Excellence Inc. and Scott Brockie*, Divisional Court: December 11, 2002.**

Ray Brillinger sought printing services from Imaging Excellence Inc. on behalf of the Canadian Lesbian and Gay Archives (the "Archives"). The president of

Imaging Excellence, Scott Brockie, denied the service on the basis of his religious beliefs that homosexuality is contrary to the teachings of the Christian Bible. Mr. Brockie argued that his right to freedom of religion under section 2(a) of the *Charter of Rights and Freedoms* (the “*Charter*”) acts as a defence for the denial of services.

The decisions of the Tribunal (then the Board of Inquiry) are outlined in last year’s annual report. The respondents appealed to the Divisional Court.

**Result at the Divisional Court:** The Divisional Court held that the Tribunal erred when it purported to add the Archives as a party complainant, as the Tribunal lacked the jurisdiction to add a complainant to a case that had been referred to it by the Commission. Accordingly, the Court dismissed the Archives’ complaint.

The Court upheld Mr. Brillinger’s complaint. It held that Mr. Brockie and Imaging Excellence had discriminated against Mr. Brillinger directly on the basis of sexual orientation, as well as on the basis of his association with the Archives, contrary to section 12 of the *Code*.

The Court rejected Mr. Brockie’s proposed distinction between “sexual orientation” and the political act of promoting the causes of lesbians and gay men as specious and defying rational justification. The Court held that promoting an understanding and respect for lesbians and gay men should not be regarded as separate from the characteristic of sexual orientation.

The Court rejected the argument that the *Charter* could be used in this case to “read into” the *Code* a defence for discrimination based on one’s religious beliefs.

The Court held that the Tribunal’s order to provide printing services went further than was necessary in this case, and could require Mr. Brockie to provide services which could strike at the core elements of his religious belief and conscience. The Court therefore amended the order to not require Mr. Brockie or Imaging Excellence to print material of a nature that could reasonably be considered to be in direct conflict with the core elements of Mr. Brockie’s religious beliefs.

***OHRC and Roosma and Weller v. Ford Motor Company of Canada Limited and CAW Local 707, Divisional Court: September 19, 2002.***

The complainants worked on the assembly line at Ford’s Oakville Plant. They later became members of the Worldwide Church of God, which requires its members to refrain from work from sunset Friday to sunset Saturday. According to the collective agreement between CAW and Ford, the complainants were required to work two Friday night shifts every four weeks. The complainants discussed the situation with CAW but the issue was not resolved. In August and

September 1985, the complainants filed complaints of discrimination on the basis of creed against Ford and CAW.

**Result at the Human Rights Tribunal of Ontario (then the Board of Inquiry):**

The Tribunal found that while there was a *prima facie* case of discrimination, Ford and CAW had made out a defence of undue hardship. The Commission appealed this decision.

**Result at the Divisional Court:** The majority of the Court dismissed the Commission's appeal. The majority found that the Tribunal's decision with regard to both the employer's liability and the union's liability was reasonable.

With regard to the employer's liability, the Tribunal had determined that the general purpose of the work schedule was aimed at a rational and legitimate business objective. In determining that accommodation would result in undue hardship, the majority held that the Tribunal was reasonable in taking into account financial cost, the interchangeability of the operation, the importance of having the regular operator on each job, the impact of the collective agreement, safety considerations, and the effect of accommodation on the morale of other workers.

With regard to the union's liability, while the majority affirmed the application of the duty to accommodate to unions, it found that the union's unwillingness to advocate for accommodations was not unreasonable in this case, given the importance of seniority in this plant and the impact accommodation would have had on seniority.

There was a strong dissent at the Divisional Court. Lax J. found that the Tribunal's decision was unreasonable in a number of respects, and in some respects patently so. Lax J. found that the right to be accommodated is a core element of the equality guarantee and is informed by two principles: (1) broad and generous interpretation of prohibitions of discrimination, and (2) narrow construction of exceptions or defences.

According to Lax J., the Tribunal reversed these principles. She found that accommodating two incremental absences for twenty nights a year on a labour shift of approximately 1250 workers within a labour force of thousands would not impose any of the forms of undue hardship, namely impossibility, serious risk, or excessive cost. Lax J. also found that the Tribunal erred in rejecting, without sufficient examination, a number of options open to the employer and union to accommodate the complainants.

Lax J. found that the absence of a finding that any step was taken to accommodate the complainants alone was fatal to the Tribunal's decision, as it is rarely acceptable for an employer to do nothing. With regard to the union's liability, Lax J. found that although worker morale can be considered, in this

situation worker morale would have been affected principally because Weller and Roosma would be treated differently. As this sentiment is contrary to the *Code*, Lax J. concluded that the Tribunal's consideration of worker morale was unreasonable in this case.

All three judges rejected the union's argument that it was not *prima facie* liable, noting that in agreeing to the work schedule (which clearly had an adverse impact on those whose creed prevented them from working Friday night), both Ford and the union had a duty to accommodate.

**Current Status:** The Commission's motion for leave to appeal the Divisional Court's decision to the Court of Appeal was dismissed on January 15, 2003.

***Canada Mortgage and Housing Corporation v. Iness, Caroline Co-operative Homes Inc. and OHRC, Divisional Court: July 8, 2002.***

Ms. Iness alleged that she was discriminated against by the terms of the agreement between Caroline Co-operative Housing Inc. and Canada Mortgage and Housing Corporation (CMHC), a federal Crown corporation, because she is a recipient of social assistance. Prior to 1995, Ms. Iness paid 25 percent of her income as rent, as did all other residents of the co-operative whose housing charge was subsidized. Following an audit in 1994, CMHC directed the co-operative to set a resident's housing charge as the full amount of the "shelter allowance" portion of social assistance benefits. The change, as implemented by the co-operative, meant that Ms. Iness was no longer able to pay all of her insurance and hydro costs out of the shelter portion of her benefit, but instead had to pay part of these out of her "basic needs" allowance.

Since the change to Ms. Iness' payment was made apparently to comply with CMHC requirements, the Tribunal (then the Board of Inquiry) added CMHC as a party to the complaint. CMHC sought judicial review of the Tribunal's decision adding it as a party.

**Result at the Divisional Court:** The Divisional Court set aside the Tribunal's decision. The Court found that the exercise of CMHC's authority to advance funds to the co-operative is not an invasion of provincial powers regarding housing or human rights. CMHC can advance funds and impose conditions on how those funds are used. Provincial legislation cannot limit the authority given to CMHC, if it affects a vital part of the operation of the federal undertaking. Federal legislation completely governs the spending of federal funds by CMHC in its core endeavour. There is no room for a provincial law to regulate the terms upon which CMHC advances federal funds.

**Current Status:** This decision is under appeal to the Court of Appeal for Ontario.

***Jones and OHRC v. Amway of Canada, Ltd. and Art Knott, Divisional Court: April 19, 2002.***

Ms. Jones made an internal complaint of sexual harassment to her employer, the respondent Amway, on March 25, 1996. She complained that another employee had sexually harassed her. Amway investigated the complaint and found it to be without merit. Ms. Jones agreed to go back to work on March 29, 1996. On April 17, 1996, Ms. Jones presented Amway with her “position” on the harassment by way of a memo written on the advice of her lawyer. On April 26, 1996, Amway fired Ms. Jones, stating that the employment relationship had been destroyed by her allegations. The Commission referred Ms. Jones’ complaint regarding reprisal to the Tribunal (then the Board of Inquiry).

**Result at the Human Rights Tribunal of Ontario:** The Tribunal made the following findings:

- (1) Amway had not intended to reprimand against Ms. Jones for the sexual harassment complaint.
- (2) There was no connection between the complaint of sexual harassment and the dismissal. Rather, the dismissal was due to the breakdown in the employment relationship caused by Ms. Jones continuing to press the issue after it had been dealt with internally.
- (3) Ms. Jones reneged on her agreement to return to work.

The Tribunal therefore dismissed the complaint.

**Result at the Divisional Court:** The Court dismissed the appeal noting it would not interfere with the Tribunal’s decisions in this case as they were based on credibility and fact-finding.

The Court articulated some important principles regarding reprisal. It found that a complainant is entitled to protection under section 8 of the *Code* when she files an internal human rights complaint with her company. It is not necessary to file a formal complaint with the Commission in connection with the alleged harassment/discrimination. Protection under section 8 flows from the exercise of rights available under either the statute or the employer’s human rights policy.

Moreover, a complainant’s right to the protection of section 8 is not affected because her complaint was rejected by her employer. Finally, the Court found that while it is generally not necessary to prove intent in the human rights context, a breach of section 8 does require an intent to perpetrate the prohibited conduct. The onus is on the Commission and the complainant to prove an intent on the part of the respondents in cases involving reprisal under section 8 of the *Code*.

## **Human Rights Tribunal of Ontario**

### ***OHRC and Antony Kearsley v. City of St. Catharines, Human Rights Tribunal of Ontario (then the Board of Inquiry): April 2, 2002.***

Mr. Kearsley applied for a position as a firefighter with the City of St. Catharines. He was accepted, conditional upon passing a medical examination. During this medical examination, it was discovered that he had atrial fibrillation. The medical examiner, a general practitioner, refused to approve Mr. Kearsley for work as a firefighter, despite the fact that the experts with whom the complainant had consulted advised him that it was a benign condition that would not impair his ability to do the job.

The medical examiner testified at the hearing that atrial fibrillation was not a benign condition, as it led to an increased risk of stroke of 1% - 5% per year. In response, the Commission called a medical expert in the area of atrial fibrillation, who testified the increased risk of stroke for someone of Mr. Kearsley's age was inconsequential – possibly 0.2% per year. This expert testified that there was no increased risk of heart failure in someone like Mr. Kearsley, who was otherwise in good general health. Subsequent to being turned down by the City of St. Catharines, Mr. Kearsley became a firefighter with the City of Hamilton, achieving the rank of first class firefighter in October 2001.

**Result at the Human Rights Tribunal of Ontario:** The Tribunal held that the evidence of the medical expert was to be preferred over that of the medical examiner, who had no particular expertise in this area. The Tribunal noted that it would have been appropriate for the City of St. Catharines to seek out and rely on expert advice when confronted with a medical condition such as this. This protocol was followed in other municipalities.

The Tribunal ordered the City to: hire Mr. Kearsley as a first class firefighter, with his work to commence within 75 days of the decision; pay Mr. Kearsley for monetary losses for the failure to hire him on June 8, 1998, including losses from lower wages, overtime and pension losses, and mileage losses for travel to his job in Hamilton; give Mr. Kearsley seniority ahead of those hired on June 8, 1998; and pay general damages of \$4,000.

### ***OHRC and Bubb-Clarke v. Toronto Transit Commission and ATU Local 113, Human Rights Tribunal of Ontario (then the Board of Inquiry): April 4, 2002.***

Mr. Bubb-Clarke was a bus driver with the TTC. He was diagnosed as having narcolepsy, and could no longer drive a bus. Mr. Bubb-Clarke's narcolepsy also made the job of collector unsuitable for him. However, pursuant to the collective

agreement, the ten years of seniority he had gained as a driver could only be used in the group he worked in (transportation) or the collectors' group. From 1991 to 1996, the TTC accommodated Mr. Bubb-Clarke's needs by having him perform various jobs in the maintenance group.

Mr. Bubb-Clarke asked the TTC and the union to permit him to use his system-wide seniority in order to bid on jobs in the maintenance group. The TTC agreed to his request. The union, citing the collective agreement, would not permit Mr. Bubb-Clarke's seniority from the transportation group to be used in the maintenance group.

Mr. Bubb-Clarke filed a complaint regarding the refusal to allow him to use his system-wide seniority in the maintenance group.

During the hearing, the TTC did not oppose the remedy requested. The proceeding continued against the union.

**Result at the Human Rights Tribunal of Ontario:** The Tribunal found that the provisions of the collective agreement preventing the transfer of seniority when an employee moved from one group to another because of disability were discriminatory. Further, employees such as Mr. Bubb-Clarke should not be subject to the union's vote to free them from the discriminatory effects of the collective agreement.

Having found that the terms of the collective agreement were discriminatory, the Tribunal ordered the following:

1. ATU to pay Mr. Bubb-Clarke general damages and damages for mental anguish at the rate of \$4,000 per year, for a total of \$22,000
2. Mr. Bubb-Clarke to be granted full seniority for all the time he has been employed by the TTC, transferable to his present position or any other position he may occupy as a result of his disability
3. TTC and ATU to grant to any employee who has a disability and who transfers to another position because of disability full seniority for all the time employed by the TTC
4. A declaration that a restriction on the transferability of seniority, where the transfer is because of disability, discriminates against the employee with a disability

***OHRC, Commanda, Goulais, Commanda, Commanda, Chevrier, and Anishnabie v. Rainbow Concrete Industries Limited, Settlement: April 16, 2002.***

The six complainants in this case were aboriginal men who worked for Rainbow Concrete Industries at its plant on leased land on the Nipissing First Nation

reserve. The Band sought to renegotiate the lease and increase the royalties with Rainbow. Negotiations reached an impasse, and the Band Council decided to blockade the road to the quarry. Subsequently, Rainbow shut down the operation and laid off all workers. Rainbow then moved its operations to a site in North Bay. It was alleged in the complaint that all of the non-aboriginal workers and two aboriginal workers were recalled. The complainants were not recalled, and were allegedly informed that one of the reasons was that they had either participated in the blockade or had prior knowledge of it and did not inform the company.

The complainants alleged discrimination based on race, colour and ancestry. It was further alleged that the company later took the position that three complainants were not recalled because of their relationship to a member of the Band Council. Accordingly, the grounds of marital status and family status were added to those complaints.

**Outcome of Settlement:** In addition to paying general damages to the complainants, Rainbow agreed to several public interest remedies. It agreed to properly consider members of the Nipissing First Nation Band for open positions, and where such members are the most qualified applicants for open positions, to hire those persons.

Rainbow also agreed: to submit its human rights policies and complaint procedures to the Commission for review and commentary, and to provide copies of the policies and procedures to all employees; to provide human rights educational and sensitivity training to management and supervisors; to provide, upon request, an annual educational seminar open to all employees regarding the provisions and principles of its human rights policies and complaint procedures, and the rights of employees under the *Code*; and to post notices prominently in all of its places of business in Ontario indicating that it observes and upholds the *Code*. Further, Rainbow has provided a letter assuring the Commission that it will comply with its recognized obligations under the *Code*.

***OHRC, Brampton Children's Residential Services Ltd., David MacDonald, and Brenda Mason v. Sandringham Place Inc., Golden Maple Homes Inc., Gilbert Duchamp, and André Duchamp, Settlement: October 10, 2002.***

The corporate complainant, Brampton Children's Residential Services (BCRS), was established to provide a group home for adolescent youths with psychological disorders in the Brampton area. The personal complainants, directors of BCRS, sought leased accommodation for the group home in a residential neighbourhood in Brampton. They signed a lease agreement with the personal respondents for a home in a subdivision being developed by Sandringham Place Inc.

The personal respondents had not taken possession of the home, which was still under construction. It was alleged in the complaint that when the residents of the subdivision discovered that a group home was going to open in their neighbourhood, they objected. It was further alleged that Sandringham Place reacted to the protests by putting pressure on the personal respondents to not proceed with the lease. It was also alleged that the builder, Golden Maple Homes Inc., advised the personal respondents shortly before the closing that it would not proceed with the closing if the personal respondents insisted on proceeding with the lease. Golden Maple Homes, it was alleged, insisted that the Transfer of Deed of Land for the property contain a restrictive covenant prohibiting the use of the property for a group home.

The complainants alleged they were notified by the personal respondents that they would not enter the lease only days before they were to occupy the property. They claimed that they were never able to secure alternate housing and were therefore unable to establish a group home.

**Outcome of Settlement:** In addition to all of the respondents paying consequential damages and returning the complainants' deposit, the personal respondents and Golden Maple Homes agreed to the removal of the restrictive covenant.

***OHRC and Ligia Arias v. Sanjay Desai and 1329732 Ontario Ltd. o/a Comfort Suites Hotel, Human Rights Tribunal of Ontario: February 7, 2003.***

The complainant, Ligia Arias, was employed at the Comfort Suites Hotel for two and a half months. During this time she experienced sexual harassment from one of the owners of the hotel, the personal respondent Sanjay Desai.

Ms. Arias' testimony was supported by a co-worker, who testified that she was also the subject of sexual harassment herself, and the General Manager, who testified that she was asked by Mr. Desai to find a reason to fire Ms. Arias. Ms. Arias was eventually terminated by Mr. Desai.

**Result at the Human Rights Tribunal of Ontario:** The Tribunal held that the Mr. Desai infringed Ms. Arias' right to equal treatment with respect to employment without discrimination based on sex. In addition, Ms. Arias' right to be free from sexual solicitation from a person in a position to confer, grant or deny a benefit or advancement had been infringed. The Tribunal also found that the workplace was poisoned by the sexual solicitation and sexual harassment of the staff by Mr. Desai.

The Tribunal found that Mr. Desai attempted to commit an act of reprisal when he asked his General Manager to create a pretext to fire Ms. Arias. The respondents

committed an act of reprisal when they fired Ms. Arias for advising her supervisor of the sexual harassment and rejecting Mr. Desai's sexual advances.

The Tribunal ordered the respondents to pay Ms. Arias \$25,000 as compensation for the humiliation and loss of dignity resulting from the infringement of her rights and \$5,000 as compensation for her mental anguish. In addition, the Tribunal ordered the respondents to implement a comprehensive workplace anti-harassment and anti-discrimination policy and required all management employees and owners to take an educational program on anti-discrimination and sexual harassment principles.

**Current Status:** The decision of the Tribunal was not appealed.

***OHRC, Odell, Sarlina, Condie, Cluskey, Lang and Shell v. Toronto Transit Commission, Settlement: September 6, 2002.***

The six complainants in this case were users of Wheel-Trans, and required the use of a wheelchair for mobility. In 1996, the TTC implemented new eligibility criteria for Wheel-Trans service. All existing users of Wheel-Trans were required to re-register for the service under the new criteria by attending an in-person interview. Those persons determined eligible for Wheel-Trans were then to pay a \$25.00 fee or lose the service. The \$25.00 fee was not charged to users of the TTC's conventional transit service. The complaints alleged that both the fee and the requirement of an in-person interview were discriminatory on the basis of disability.

**Outcome of Settlement:** The TTC agreed to cease charging the \$25.00 fee to people who apply for and receive Wheel-Trans service. The TTC further agreed to refrain, in the future, from charging people who apply for and receive Wheel-Trans service any fee associated with eligibility determination for Wheel-Trans service. The TTC also provided to each complainant a letter expressing regret that they were required to attend an in-person interview in the re-registration process, when they had been long-time users of Wheel-Trans who rely upon wheelchairs for their mobility.

***Alicia Payne and OHRC v. Otsuka Pharmaceutical Co. Ltd, Minoru Okada, Canadian Ophthalmological Society, Intertask Group of Companies Inc. and Leeanne Akehurst, Human Rights Tribunal of Ontario (then the Board of Inquiry): October 15, 2002.***

The complainant, Alicia Payne, received work through an employment agency, which was contracted to provide staffing requirements for the 27<sup>th</sup> International Congress of Ophthalmologists. Minoru Okada of Otsuka Pharmaceutical Co.

Ltd., a Japanese company, made a request to the conference organizers to find a receptionist for the company's exhibit booth.

Ms. Payne was selected to fill this position. However, when she was introduced to Mr. Okada, Mr. Okada asked the employment agency for another person without acknowledging or speaking to Ms. Payne, who is Black. In rejecting her for the position, Mr. Okada stated the need for "maintaining high standards of the company" and commented, "what would the Japanese doctors think".

**Result at the Human Rights Tribunal of Ontario:** The Tribunal held that all the respondents had violated Ms. Payne's right to be free from discrimination with respect to race, colour, ancestry and ethnic origin. The Tribunal held that based on the findings of fact, a clear *prima facie* case had been made out that Mr. Okada and Otsuka denied Ms. Payne the job of booth receptionist because she is Black.

The Tribunal also found that there is a human rights duty not to condone or further a discriminatory act that has already occurred. The Tribunal found that all the respondents had a relationship with Ms. Payne that fell within the "employment web", as she interacted with them for the sole purpose of finding employment.

In particular, the Tribunal held that the Ontario respondents (Canadian Ophthalmological Society (COS), Intertask Group of Companies Inc. and Leeanne Akehurst) had a duty to Ms. Payne to, at minimum, investigate the matter promptly and take appropriate, reasonable action if they determined discrimination had occurred.

The Tribunal ordered Otsuka and Mr. Okada to pay \$5,000 in general damages and \$5,000 in damages for mental anguish. The COS, Intertask and Leeanne Akehurst were ordered to pay Ms. Payne \$3,000 in general damages and \$2,000 in damages for mental anguish. The Tribunal ordered the COS and Intertask to establish non-discrimination policies and procedures. Otsuka was also ordered to establish a non-discrimination policy, and procedures that they would follow in the event that allegations of discrimination arose when conducting business in Ontario. The Tribunal further ordered Mr. Okada and Otsuka, for a period of five years, to give the Commission and Ms. Payne one week's written notice of the arrival of any of Otsuka representative in Ontario for the purposed of conducting business.

***OHRC and McKinnon v. Ontario (Ministry of Correctional Services), Human Rights Tribunal of Ontario: November 29, 2002.***

The complainant, a person of native Canadian ancestry, is a correctional officer with the Ministry of Correctional Services. In 1998, the Human Rights Tribunal of Ontario (then the Board of Inquiry) found that the complainant suffered discrimination and harassment because of race, ancestry, and ethnic origin and reprisal. The Tribunal ordered a number of systemic remedies, including removing the individual respondents, having the Tribunal's order read on parade, attaching a copy of the order to pay slips and publishing it in the institutional newsletter, and establishing a human rights training program.

The Tribunal reconvened the hearing because of allegations regarding the persistence of a poisoned work environment, despite its previous orders.

**Result at the Human Rights Tribunal of Ontario:** The Tribunal found that it could not reconsider the effectiveness of remedies previously ordered, and could not continue ordering new remedies until they were effective in preventing discrimination. However, it found that it could consider whether the Ministry carried out the Tribunal's previous orders in good faith with a view to making them effective. If, through its own fault, the Ministry did not comply with the orders, the Tribunal would be able to revise its orders to appropriately address the reasons for the Ministry's failure and thereby better assure the fulfillment of the purpose of its original orders and compliance with the *Code*. The Tribunal therefore held that it retained jurisdiction to resolve allegations of harmful non-compliance with its orders.

The Tribunal found that the Ministry failed to comply fully with its original orders and that, as a result, the atmosphere of the Toronto East Detention Centre remained racially poisoned.

With regard to its remedial jurisdiction, the Tribunal held that its authority under section 41(1)(a) applies anew. Section 41(1)(a) allows the Tribunal to direct a respondent to do anything that, in the Tribunal's opinion, it ought to do to achieve compliance with the *Code* in respect of the complaint and future practices. The Tribunal held that it could order any remedies that it could have ordered following the original hearing, including Ministry-wide directives that were, in its opinion, necessary to achieve compliance with the *Code* in respect of the complaints and in respect of the Ministry's future practices.

The Tribunal therefore ordered a range of systemic remedies, including: training for all managers, including senior management of the Ministry; revision of performance appraisal forms to include responsibility for compliance with the Tribunal's decision for the Deputy Minister, Assistant Deputy Ministers, Regional Directors, Superintendents and Deputy Superintendents of the Ministry, as well as the Superintendent, Deputy Superintendents, and Managers of the Toronto East Detention Centre; external investigation and mediation of all Workplace Discrimination and Harassment Protection policy complaints; and appointment by

the Ministry of a competent third party, nominated by the Commission, to develop and oversee the delivery of training programmes ordered.

**Current Status:** The Tribunal's decision is currently under appeal.

***Mark Smith and OHRC v. Mardana Ltd. (c.o.b. as Mr. Lube), Keelestaff Enterprises Inc. (c.o.b. as Mr. Lube), Iswood Holdings Ltd. (c.o.b. as Mr. Lube), Don Strynadka, and Rob Neal, Human Rights Tribunal of Ontario (then the Board of Inquiry): September 10, 2002.***

Mr. Smith commenced part-time employment with the Brampton (Mardana Ltd.) location of Mr. Lube in September 1992. In August 1993, he became a supervisor. Mr. Smith was terminated on November 6, 1995. He alleged that he was subjected to name-calling and racial taunts in the workplace, beginning approximately two weeks after he commenced employment and continuing until he was dismissed. Mr. Smith also alleged that his race was a factor in the termination of his employment.

**Result at the Human Rights Tribunal of Ontario:** The Tribunal found that Mr. Smith had been subjected to a poisoned work environment and ordered the corporate respondent to pay him \$8,000 for "general damages for the period in which he was subjected to a poisoned workplace". The Tribunal did not find that the respondents acted "wilfully or recklessly" and therefore did not award Mr. Smith damages for his mental anguish.

The Tribunal also ordered the corporate respondent to post notices which made it clear that "[r]acial harassment and/or name-calling are 'against the Ontario Human Rights Code' and will result in termination with cause". Finally, the Tribunal ordered the corporate respondents to write a letter to each of their employees advising that the corporate respondents had been found guilty of racial discrimination and harassment under sections 5(1) and 5(2) of the Code.

On the issue of the termination of Mr. Smith's employment, the Tribunal did not find Mr. Smith's race to be a factor, asking in its decision, "why would the very people who hired him, who were impressed by him, who promoted him, and who accommodated his school schedule in terms of working hours, suddenly make a decision against him on his race?"

**Current Status:** The Tribunal's decision is under appeal to the Divisional Court. The Commission is appealing the Tribunal's findings with respect to the termination of Mr. Smith's employment, and that the respondents did not act "wilfully and recklessly".

***Omoruyi-Odin and OHRC v. Toronto District School Board, Human Rights Tribunal of Ontario, Interim Decision: November 26, 2002.***

The complainant alleges that he has been denied promotional opportunities because of his race, colour, ancestry, and place of origin and that he was subject to reprisals as a consequence of initiating the complaint. He further alleges that the Scarborough Board systemically discriminated against African Canadians with respect to promotional opportunities and that African Canadians were under-represented in positions of responsibility at the School Board.

The Commission and the complainant proposed the qualification of two separate experts to provide opinion evidence. The complainant also brought a motion, supported by the Commission, seeking an order that the proceedings be transcribed by a court reporter at no cost to the complainant. The grounds for the complainant's motion included principles of natural justice based on the right to be heard and the right to appeal, and the requirement that the Tribunal exercise its discretion in a manner consistent with the *Charter*.

**Result at the Human Rights Tribunal of Ontario:** The Tribunal declined to qualify the complainant and the Commission's experts because their proposed expertise was not relevant to the proceeding, and not necessary to assist the trier of fact.

The complainant's motion to engage a court reporter for the remainder of the proceedings was also refused. Since the complainant's request was made at the half-way point in the proceeding, only the evidence of the Respondent's witnesses would be recorded. The Tribunal found that it would not be fair to order the proceedings to be transcribed over the objection of the Respondents, when it was the Respondent's witnesses whose evidence would be recorded.

**Current Status:** This case is ongoing and is not expected to conclude until late 2003 or early 2004.

## **CORPORATE INITIATIVES**

The Office of the Executive Director (EDO) is responsible for directing the business operations of the Commission and acts as the administrative link with the Government through the Ministry of Citizenship's Deputy Minister's Office. One of its key functions is to set the strategic direction of the Commission through the development of long-term goals, annual business plans, approval of budgets and staff objectives.

In 2002, the EDO championed a number of initiatives aimed at increasing both employee satisfaction and operational effectiveness of the Commission. These included employee-led Kaizen reviews of investigation and intake processes, as well as new performance management, organizational health and learning plan processes for Commission staff.

## ACCOUNTABILITY FRAMEWORK

The Commission has presented an Accountability Framework in each of the last five annual reports. The framework establishes targets for the organization's performance in the coming year and reports on achievements against previously established targets.

The following is a summary of achievements against 2002-2003 fiscal year targets.

<b>SERVICE AREA</b>	<b>2002 - 2003 COMMITMENTS</b>	<b>2002-2003 ACHIEVEMENTS (As at March 31, 2003 unless otherwise indicated)</b>
<b>Promotion and Awareness of Human Rights</b>	In partnership, implement ageism and age discrimination public awareness campaign and related public education activities.	Public awareness campaign launched in June 2002 in partnership with Canada's Association for the Fifty-Plus (CARP).
	Implement Phase III of Aboriginal Human Rights Program.	Phase III implemented and the final report submitted in March 2003.
	Achieve a satisfaction rate of 80+% among participants for all evaluated public education.	Met and exceeded 80% satisfaction rate.
	<i>Teaching Human Rights in Ontario:</i> Make additional resources available to teachers on the Commission's Web site.	New case studies developed.
	Other significant achievements.	Plain-language guides on sexual and racial harassment, hiring, how to file a complaint and Commission services, were released in Urdu, Punjabi, Tagalog and Spanish.
<b>Policy</b>	Release the Policy on age discrimination against older persons.	<i>Policy on Discrimination against Older Persons because of Age</i> released in June 2002 along with fact sheets that explain key areas of the policy.

<b>SERVICE AREA</b>	<b>2002 - 2003 COMMITMENTS</b>	<b>2002-2003 ACHIEVEMENTS (As at March 31, 2003 unless otherwise indicated)</b>
	Release Discussion Paper, <i>An Intersectional Approach to Discrimination: Addressing Multiple Grounds in Human Rights Claims</i> , and solicit input from stakeholders.	Discussion paper released in September 2002 and feedback requested.
	Conduct consultations on disability in the education sector with a view to developing a consultation report and specific guidelines.	Consultation paper released in July 2002. Public consultation sessions held in Hamilton, North Bay, Ottawa and Toronto in November 2002.
	Release the Consultation Report on transit accessibility.	Consultation report released in April 2002.
	Publish plain-language workplace guides on disability issues.	Drafts developed and shared with stakeholders. Under review based on feedback received.
	Undertake further work to promote accessibility among service providers in Ontario.	As a follow up to the survey of restaurant accessibility and the submission to the Ministry of Municipal Affairs and Housing concerning the <i>Building Code</i> , retained an expert to conduct restaurant accessibility and service reviews of seven restaurant chains.
	Initiate project on race, ethnicity and origin.	Initiated research on racism. Province-wide inquiry on racial profiling launched. Developed Terms of Reference defining racial profiling. Used Commission phone lines and Web site to receive submissions. Over 800 contacts received and analyzed. Public inquiry session held on March 31, 2003.
	Develop tools to help employers implement human rights policies and procedures in workplaces.	Established partnership with Human Resources Professionals Association of Ontario (HRPAO) to develop and produce appropriate materials.

<b>SERVICE AREA</b>	<b>2002 - 2003 COMMITMENTS</b>	<b>2002-2003 ACHIEVEMENTS (As at March 31, 2003 unless otherwise indicated)</b>
	<p>Ensure international obligations are integrated into all new policy work.</p> <p>Monitor relevant United Nations Conventions and Human Rights Decisions.</p> <p>Other significant policy achievements.</p>	<p>Integrated international obligations in Commission's work on: age discrimination, intersectionality, accessibility issues (transit, restaurants, education services) and racism.</p> <p>Provided input on Canada's reports under international instruments (e.g., provided information to Canada's delegation reporting before the United Nations Committee on the Elimination of Racial Discrimination and to the Ministry of Labour for Ontario's response to questions from the International Labour Organization).</p> <p>Undertook or participated in initiatives to explore how commissions can help Canada meet its international obligations, e.g., prepared a submission on behalf of the Canadian Association of Statutory Human Rights Agencies (CASHRA) to the Government of British Columbia's introduction of legislation to abolish its human rights commission.</p> <p>Provided significant and ongoing advice to the provincial government and private sector on a number of human rights issues.</p>
<b>Inquiry and Intake Services</b>	Average response time on calls handled by an inquiry service representative will be within 2 minutes.	Average response time on calls was 3 minutes.

<b>SERVICE AREA</b>	<b>2002 - 2003 COMMITMENTS</b>	<b>2002-2003 ACHIEVEMENTS (As at March 31, 2003 unless otherwise indicated)</b>
	Draft complaints within 14-18 days.	Complaints drafted within 18 days.
<b>Mediation and Investigation Services</b>	Achieve at least a 65% settlement rate in cases in which mediation has been attempted.	Achieved a mediation settlement rate of 72.9%
	Once parties have agreed to mediation, the mediation will be completed within 3-6 months.	Mediation completed within 4 months.
	The average time required to resolve a complaint, from filing to closing, will be less than 14 months.	The average time required to resolve a complaint was 11.5 months.
<b>Corporate Initiatives</b>	Continue to implement the corporate strategic plan 2001-2003.	Strategic Plan implemented.

<b>SERVICE AREA</b>	<b>2003-2004 COMMITMENTS</b>
Promotion	<p>In partnership, implement age discrimination public awareness campaign and related public education activities.</p> <p>Develop framework for Aboriginal Human Rights Program.</p> <p>Achieve a satisfaction rate of 80+% among participants for all evaluated public education.</p>
Advancement	<p>Release the Consultation Report on Disability and Education.</p> <p>Release guidelines on application of the <i>Code</i> with regards to issues of disability in the education sector.</p> <p>Develop consultation framework on race, ethnicity and origin.</p> <p>Release consultation report on racial profiling.</p> <p>Undertake further work to promote accessibility among service providers in Ontario.</p>
Enforcement	<p>Inquiry Service Representatives will answer 70% of telephone inquiries.</p> <p>Achieve at least a 70% settlement rate in cases in which mediation has been attempted at the Commission.</p> <p>The average age of cases in the investigation inventory will be no more than 14 months.</p> <p>Average age of case inventory will be less than 12 months.</p>

## APPENDICES

## List of Commissioners

### **KEITH C. NORTON, Q.C., B.A., LL.B.**

#### *Chief Commissioner*

Keith Norton was appointed Chief Commissioner of the Commission on July 18, 1996. He is an educator and a lawyer by training, having studied law at Queen's University in Kingston, as well as having received a diploma in education from the Ontario College of Education. He practiced criminal and family law in Kingston, Ontario, and taught at the secondary and post-secondary levels.

Mr. Norton is a former Minister of Community and Social Services and served as Parliamentary Assistant to the Treasurer of Ontario and Minister of Economics and Intergovernmental Affairs. He has also served as Minister of Health, Minister of Education and Minister of Colleges and Universities.

As Minister of the Environment between 1981 and 1983, Mr. Norton became the first Canadian cabinet minister to testify before a Committee of the United States Senate. Throughout his career, Mr. Norton has championed issues related to persons with disabilities, senior citizens and the disadvantaged. He has also been involved in a number of business ventures.

Mr. Norton is a former President of the Canadian Human Rights Tribunal.

### **CHERYL BLONDELL**

Cheryl Blondell was appointed to the Commission in February 1997. She is an Assistant Crown Attorney in the Ministry of the Attorney General. She formerly served as Criminal Duty Counsel with the Ontario Legal Aid Plan, where she advised and represented accused persons. Ms. Blondell worked for the Commission in the summer of 1989 as part of the team that created the Systemic Investigations Unit.

### **The Reverend Canon WILLIAM G. CLIFF**

Reverend Canon Cliff was appointed to the Commission in February 1997. He is the Rector of the Collegiate Chapel St. John the Evangelist at Huron University College and Anglican Chaplain to the University of Western Ontario in the Diocese of Huron. He is a former member of the University of Western Ontario Senate, a former Padre with the Royal Canadian Legion and Police Chaplain holding the rank of Honourary Inspector, and a Fellow of the National College of Music (U.K.) An active singer and performer, Canon Cliff, with three other colleagues have sung in numerous concerts and released 3 recordings to raise money for the relief of hunger. To that end, he has been made an honorary life member of the Primate's World Relief and Development Fund; the international development fund of the Anglican Church of Canada, for services to the fund. Trained at the University of Western Ontario Faculty of Music, King's College and Huron University College, Canon Cliff has served parishes in London, Simcoe, Hanover, Durham, Strathroy, and Adelaide, Ontario.

### **NALIN KANUCK**

Nalin Kanuck was appointed to the Commission in September 1997. He is a Management and Financial Consultant. He is also an advisor on Race Relations to the York Region Board of Education. Mr. Kanuck is a former Justice of the Peace in Sri Lanka, a position that required him, among other judicial functions, to investigate human rights violations. He was also Chairman and Managing Director of the Regional Development Board in the Ministry of Regional Development in Sri Lanka. He also functioned as a Director of the National Youth Service Council in Sri Lanka's Prime Minister's Office. Mr. Kanuck has a Bachelor of Applied Arts in Public Administration from Ryerson University, Toronto, a Bachelor of Arts Degree from the University of Ceylon and an Executive Diploma in Public Administration from the University of Colombo, Sri Lanka. The City University of California also awarded him an Honourary Doctorate Degree in Public Administration. He is a graduate of the Canadian Institute of Certified Administrative Managers and a Fellow of the British Institute of Management, England.

## **MICHEL LALONDE**

Michel Lalonde is Reeve of the East Hawkesbury municipal council, having served over the last 20 years as Councillor and as Deputy Reeve. He was appointed to the Commission in December 1997. In 1993, Mr. Lalonde served as Warden of the Council for the United Counties of Prescott and Russell. He was subsequently elected to the Council's executive, planning and public works committees. He received the Award of Merit for the County of Prescott for the year 1985 and also served as President of the Prescott Mutual Insurance Board and of the Hawkesbury and District General Hospital Board. A farmer by occupation, Mr. Lalonde is an active participant in the local farming community. He served from 1989 to 1996 on the board of directors of the Glengarry, Prescott and Russell Local Agricultural Employment Board and as President of the Prescott Peer Review Committee for Environmental Farm Plan from 1993 to 1997.

## **PETER LI**

Peter Li is the General Manager of Sing Tao Daily News, Eastern Edition. Mr. Li was appointed to the Commission in September 1997. He is a member of the Chinese Canadian Development Committee of the Hospital for Sick Children Foundation and sits on the Asian Business Committee of Metro Toronto and York Region's Junior Achievement. Mr. Li was a member of Canada Trust's Asian Advisory Council. He has also served as a Director of the Chinese Information and Community Services and was a past Vice-President of the Chinese Canadian Advertising, Media and Marketing Association. Mr. Li is a former General Manager of Hotel Victoria and Project Administrator of the Chinatown Centre.

## **JUDITH-ANN MANNING**

Judith-Ann Manning was appointed to the Commission in February 2000. Ms. Manning is President of Manning Consultants, a barrier-free consulting company specializing in accessibility and disability issues. She majored in Criminology and Law while at university. A lifelong volunteer, she is currently Co-ordinator of the University of Toronto's Wheelchair Access Committee and has held the positions of Chair of the North York Advisory Committee For Persons With Disabilities, co-Chair of the Board of Directors of the Centre for Equality Rights in Accommodation, and vice-Chair of the Toronto Transit Commission's Advisory Committee on Accessible Transportation. As well, she is a friend on Transport Canada's Accessible Transportation: A1E09 – Committee on Transportation Accessibility and Mobility.

### **MARNIE PAIKIN, CM**

Marnie Paikin was appointed to the Commission in September 1996. She is a past President of the Canadian Council of Christians and Jews, and a recipient of the Province of Ontario's "Outstanding Woman Award" and of the Human Relations Award of the Canadian Council of Christians and Jews. She has been inducted into the Hamilton Gallery of Distinction and has been appointed a Member of the Order of Canada. Ms. Paikin is currently a Director of Atomic Energy of Canada Ltd.

### **ABDUL HAI PATEL**

Abdul Hai Patel was appointed to the Commission in April 1999. Mr. Patel received his primary education in India, secondary education in Barbados and post-secondary education at York University. He is currently employed with Ontario Hydro as a Systems Technical Specialist.

Mr. Patel is a recipient of the Canada 125 commemorative medal from the Governor General for Community Service. He is a recipient of the Volunteer Service Award from the Ministry of Citizenship, Culture and Recreation, a member of the South & West Asian consultative committee of the Toronto Police, and a coordinator of the Islamic Coordinating Council of Imams-Canada. Mr. Patel is also the Vice-Chair of the Association of Employees for Employment Equity with New Horizon Solutions Inc., a division of Ontario Power Generation Company and serves as a member of the Provincial Committee of Power Workers Union on Employment Equity and Diversity.

### **CHRISTIANE RABIER**

Christiane Rabier was appointed to the Commission in April 1999. Ms. Rabier received her PhD from the University of Nice-Sophia-Antipolis; she received her Masters from the University of Montreal and studied public law at the University of Montpellier in France. She is currently Chair of the Department of Political Science and Vice-Dean of Social Sciences and Humanities at Laurentian University in Sudbury.

Ms. Rabier is active within the francophone community in Sudbury and has worked on a program for francophone women to attend post secondary studies, as well as served as a consultant with TV Ontario on Continuing Education. She also served as a volunteer with Canada's Special Olympics in 1998 and Operation Red Nose in 1999.

### **MAE RADFORD**

Mae Radford was appointed to the Commission in April 1999. Ms. Radford received a diploma in nursing from the Toronto Western Hospital and a Bachelor of Arts in health administration from York University. She is currently the manager of volunteer services, overseeing operations of a team of 1700 volunteers who deliver friendly visiting, palliative care volunteer visiting, transportation, and Meals on Wheels for the VON Hamilton-Wentworth.

Ms. Radford is a member of the Coalition of Community Health and Support Services, which advocates for community-based health care. She is a member of the Ontario Community Support Association and the Chair of District B. Ms. Radford is the vice-chair of the Citizen Committee for Violence Against Women for the City of Burlington.

### **CLAUDETTE ROBINSON**

Claudette Robinson was appointed to the Commission in March 1998. She studied at the University of Ottawa and McMaster University. Ms. Robinson is the French Coordinator at Sheridan College and a language consultant for corporate clients. She has co-authored a series of French readers for elementary and secondary schools. She was the author and co-author of three national French television series for TVO educational programs one of which she hosted. She has been consultant for the Halton Board of Education, has taught at the University of Ottawa summer school and has been Principal of the Teaching French as a Second Language course for the Ministry of Education.

### **RICHARD THÉBERGE**

Richard Théberge was appointed to the Commission in February 2002. He is a lawyer, policy analyst and communications consultant. He has held senior posts in the federal government analyzing and developing policies in connection with business and corporate law. He has volunteered with many organizations that work with the youth and disability communities. He has been recognized as a patron of deaf youth by the Jules Leger Centre in Ottawa, Ontario, as well as awarded a lifetime honorary membership in the Canadian Council of Independent Laboratories for his years of work on behalf of the independent testing industry.

## **Organizational Chart**

**(to be inserted – same as last year)**

## **Branch Descriptions**

### **Office of the Chief Commissioner**

The **Office of the Chief Commissioner** provides leadership and guides the Commission in carrying out its statutory functions in a way that ensures that, at both the government and community levels, human rights are protected in the province. The Chief Commissioner and Commissioners set policy direction and make decisions about complaints relating to the *Code*.

### **Office of the Executive Director**

The **Office of the Executive Director** provides leadership and direction to senior management staff of the Commission in carrying out its statutory mandate; directs the development and implementation of corporate and operational plans; and leads the planning and implementation of ongoing organizational improvement initiatives within the Commission. The Registrar's Office, attached to the Office of the Executive Director, is responsible for processing Reconsideration requests, co-ordinating all functions related to Commission and Panel Meetings, and Freedom of Information and Ombudsman issues.

### **Mediation and Investigation Branch**

The **Mediation and Investigation Branch** handles all the enforcement functions of the Ontario Human Rights Commission through a network of offices across the province.

The public's first contact with the Commission is through the centralized Inquiry and Intake Unit. This office handles all inquiries and drafts complaints from across the province. The Mediation Office provides mediation services as well as processing Section 34 requests which gives the Commission discretion not to deal with a complaint, if it could have been resolved elsewhere, is filed in bad faith, is out of time or is outside the Commission's legal authority. The Investigation Office undertakes investigation and conciliation of complaints.

The Branch also develops multi-year strategies to effectively manage the Commission's caseload and procedures for the mediation and investigation of complaints. In addition, the branch assists in carrying out the Commission's public education mandate.

## **Policy and Education Branch**

The **Policy and Education Branch** provides leadership and direction for the promotion and advancement of human rights and supports the enforcement of the *Code*.

The Branch ensures the promotion of human rights through compliance with the *Code* and with international human rights obligations. This includes the development of public policy statements, formal guidelines and research on a broad range of human rights and social justice issues. The Branch is responsible for national and international liaison, issues management, media and stakeholder relations, the Web site and publications. It also conducts public consultations and focus groups and represents the Commission on intergovernmental task forces and delegations.

The Branch is responsible for the strategic planning function for public education and communications at a corporate level and for implementing a wide range of educational programs and partnership initiatives, such as public awareness campaigns, presentations, workshops and conferences. The Branch also provides communications and policy support to the Offices of the Chief Commissioner and the Executive Director.

## **Legal Services Branch**

The **Legal Services Branch** assists the Commission in fulfilling all aspects of its mandate, including compliance, public education and litigation. Its activities include providing legal advice to senior management, Mediation and Investigation managers and officers concerning investigation and conciliation of cases, providing legal opinions requested by the Commission, and serving as legal counsel to the Commission before the Board of Inquiry and the courts (on matters of judicial review and appeals).

## ONTARIO HUMAN RIGHTS COMMISSION

<b>List of Publications</b>	<b>Publications Ontario</b>	<i>Web Site</i>
<i>Plain Language Documents</i>		
Female Genital Mutilation: Questions and Answers (available in English/French, Arabic/Somali, Swahili/Amharic) (8/99)		√
Guide to the Human Rights Code (5/99)	√	√
Guide to Mediation Services (5/97)		√
Hiring: Your Rights & Responsibilities (available in English/French,, Punjabi/English, Spanish/English, Tagalog/English, Urdu/English) (11/01)	√	√
Hiring? A Human Rights Guide (3/99)		√
Human Rights at Work (9/99)	√	√
Human Rights in Ontario: A Complainant's Guide (available in English/French; Bengali/Urdu; Hindi/Punjabi; Gujarati/Tamil, Spanish/English, Tagalog/English) (7/00)	√	
If You Have a Human Rights Complaint – A Complainant's Guide (5/97)		√
If You Receive a Human Rights Complaint – A Respondent's Guide (5/99)		√
Pregnancy and Breastfeeding (11/01)	√	√
Pregnancy – Before, During and After: Know Your Rights (5/99)	√	√
Protecting Religious Rights (1/00)	√	√
Racial Harassment: Your Rights & Responsibilities (available in English/French, Punjabi/English, Spanish/English, Tagalog/English, Urdu/English) (11/01)	√	√
Racial Slurs and Harassment and Racial Jokes (6/96)		√
The Commission: What you need to know (available in English/French, Punjabi/English, Spanish/English, Tagalog/English, Urdu/English) (11/01)	√	√
Sexual Harassment: Your Rights & Responsibilities (available in English/French Punjabi/English, Spanish/English, Tagalog/English, Urdu/English) (11/01)	√	√
Sexual Harassment and Other Comments or Actions About a Person's Sex (11/96)		√
Sexual Orientation (11/01)	√	√
<i>Policies and Guidelines</i>		
Guidelines on Special Programs (11/97)		√
Policy and Guidelines on Disability and the Duty to Accommodate (11/00)		√
Policy on Creed and The Accommodation of Religious Observances (10/96)		√
Policy on Discrimination Against Older Persons Because of Age (03/02)		√
Policy on Discrimination and Harassment Because of Gender Identity (3/00)		√
Policy on Discrimination and Harassment Because of Sexual Orientation (1/00)		√
Policy on Discrimination and Language (6/96)		√
Policy on Discrimination Because of Pregnancy and Breastfeeding (5/99)		√

Policy on Drug and Alcohol Testing (9/00)	√
Policy on Employment-Related Medical Information (6/96)	√
Policy on Female Genital Mutilation (FGM) (11/00)	√
Policy on Height and Weight Requirements (6/96)	√
Policy on HIV/AIDS Related Discrimination (11/96)	√
Policy on Racial Slurs & Harassment & Racial Jokes (6/96)	√
Policy on Requiring a Driver's Licence as a Condition of Employment (6/96)	√
Policy on Scholarships and Awards (7/97)	√
Policy on Sexual Harassment & Inappropriate Gender-Related Comments and Conduct (9/96)	√

*Other Publications*

Annual Report	√	√
Developing Procedures to Resolve Human Rights Complaints Within your Organization (6/96)		√
Human Rights Code	√	√
Human Rights Code Card (11" x 17")	<b>Contact the Commission</b>	
Human Rights Policy in Ontario (2001)	Contact CCH Canadian Ltd. Toll Free: 1-800-268-4522 E-mail: <a href="mailto:cservice@cch.ca">cservice@cch.ca</a>	

**Publications are only available through Publications Ontario  
1-800-668-9938 or via the OHRC Web site: [www.ohrc.on.ca](http://www.ohrc.on.ca)**

## **List of Public Education Activities**

### **Aboriginal**

Ontario Federation of Indian Friendship Centres

### **Business/Legal**

AGF Management (Oakville and Toronto)  
CroMedica Inc.  
Directors Guild of Canada  
Human Resources Professionals Association of Ontario (HRPAO) 2003  
Conference  
HRPAO – London and District  
HRPAO – Grand Valley  
HRPAO – Oxford  
HRPAO – Quinte  
INFONEX  
Krackers Katering – Causeway Inc. (Ottawa)  
Legal Aid Ontario – Quality Assurance Department  
Liffey Custom Coatings Inc.  
Noble Solutions Inc.  
Protus IP Solutions  
Standard Life Assurance Co.  
Sudbury Human Resource Council  
YCC 288 Condominium Corporation

### **Community**

Bancroft Institute  
Beatrice House  
Building Inclusive Communities Fair  
Canadian Association for Community Living Conference  
CARP (Canadian Association for the Fifty-Plus)  
Canadian Race Relations Foundation  
Department of Citizenship and Immigration Canada  
Greater Toronto Apartment Association  
Kenton Learning Centre  
League for Human Rights of B’Nai Brith  
Multiple Sclerosis Society of Canada  
New Leaf Living and Learning Together Inc. (two presentations)  
Ongwanada Hospital (two presentations)  
Ontario Association for Community Living  
Ontario March of Dimes  
Pride Toronto 2002

Sistering – A Woman's Place  
Toronto Seniors' Council  
Volunteer Centre of Sault Ste. Marie  
Windsor-Essex County Council on Aging  
YMCA – Employment Services Information Warehouse

### **Education**

Elmvale District High School  
Fanshawe College  
Georgian College: Human Resources Program  
Grand Erie District School Board  
Holy Trinity School  
La Cité Collégiale  
Lakehead University (two presentations)  
McMaster University - School of the Arts  
Nipissing University  
Northern College of Applied Arts and Technology  
Ontario Business Educators Association  
Peel District School Board  
Ryerson University  
Seneca College (two presentations)  
St. Augustine's Catholic Secondary School  
York University - Labour Studies Program  
York University - Age Quake Forum  
York University - Equity in the Classroom Conference

### **International**

Bermuda Human Rights Commission  
Office of the Ombudsman of Korea  
Ombudsman of Albania  
Conference at Universidad Diego Portales, Santiago, Chile

### **Public Sector**

City of Toronto Advisory Committee on Disability Issues  
Homewood Health Centre  
House of Commons Standing Committee on Justice and Human Rights  
Human Resource Centre for Students – Toronto Centre  
Ontario Community Transportation Association  
Ontario Labour Relations Board  
Ontario Native Affairs Secretariat  
Scarborough Area Probation & Parole  
Workers' Safety and Insurance Board  
City of Hamilton - Social & Public Health Services Department

City of Windsor  
Ontario Northland Transportation Commission

**Unions**  
OPSEU Retirees

**Tables**

**Table 1: New Complaints Filed by Social Area and Grounds Cited  
Total Number of New Complaints 1,776**

Education	6	5	6			4	29	7	32	30	5	38	10		2	32	1		<b>207</b>	82
						1	1	1			1				1				<b>5</b>	2
Age	105	98	6	6	26	49	745	177	61	26	153		337	2	161	383	132	28	<b>2495</b>	1226
	13	23	6			25	390	32	8	4	29	2	53		6	19	6	6	<b>622</b>	456
Sexual Orientation	1		2			2	7		1							1	1		<b>15</b>	10
<b>Grounds</b>	<b>125</b>	<b>126</b>	<b>20</b>	<b>6</b>	<b>26</b>	<b>81</b>	<b>1172</b>	<b>217</b>	<b>102</b>	<b>60</b>	<b>188</b>	<b>40</b>	<b>400</b>	<b>2</b>	<b>170</b>	<b>435</b>	<b>140</b>	<b>34</b>	<b>3344</b>	<b>1776</b>
Percentage Cited	3.74%	3.77%	0.60%	0.18%	0.78%	2.42%	35.05%	6.49%	3.05%	1.79%	5.62%	1.20%	11.96%	0.06%	5.08%	13.01%	4.19%	1.02%	<b>100%</b>	
Percentage of Total	7.04%	7.09%	1.13%	0.34%	1.46%	4.56%	65.99%	12.22%	5.74%	3.38%	10.59%	2.25%	22.52%	0.11%	9.57%	24.49%	7.88%	1.91%	<b>188.29%</b>	
	Age	Ancestry	Association	Breach of Settlement	Citizenship	Creed	Disability	Ethnic Origin	Family Status	Marital Status	Place of Origin	Public Assistance	Race & Colour	Record of Offences	Reprisal	Sex & Pregnancy	Sexual Harassment	Sexual Orientation	<b>Sum of Categories</b>	<b>Total Complaints Per Social Area</b>

\*Note: Because complaints can involve multiple grounds, the sum by grounds exceeds the total for all complaints filed, and the corresponding percentages of total complaints exceed 100%.

**Table 2: Settlements by Ground in Cases Mediated in 2002/2003**

Age	28	\$119,404.74	<b>\$4,264.46</b>
Ancestry	16	\$77,875.00	<b>\$4,867.19</b>
Association	3	\$8,000.00	<b>\$2,666.67</b>
Citizenship	2	\$24,000.00	<b>\$12,000.00</b>
Creed	17	\$65,667.65	<b>\$3,862.80</b>
Disability	272	\$1,732,205.54	<b>\$6,368.40</b>
Ethnic Origin	39	\$215,270.00	<b>\$5,519.74</b>
Family Status	17	\$115,898.25	<b>\$6,817.54</b>
Marital Status	8	\$116,300.00	<b>\$14,537.50</b>
Place of Origin	25	\$126,720.00	<b>\$5,068.80</b>
Public Assistance	3	\$2,000.00	<b>\$666.67</b>
Race & Colour	107	\$548,725.30	<b>\$5,128.27</b>
Record of Offences	2	\$14,000.00	<b>\$7,000.00</b>
Reprisal	45	\$266,562.81	<b>\$5,923.62</b>
Sex & Pregnancy	135	\$765,620.07	<b>\$5,671.26</b>
Sexual Harassment	41	\$206,586.51	<b>\$5,038.70</b>
Sexual Orientation	16	\$72,000.00	<b>\$4,500.00</b>
<b><i>Total for All Grounds*</i></b>	<b>776</b>	<b>\$4,476,835.87</b>	<b>\$5,769.12</b>
	Number Receiving Damages	Monetary Damages	Average

**\*Note: Because complaints can involve multiple grounds, the total sum of monetary damages by ground exceeds the sum of monetary damages by complaints \$2,472,096.26**

**Table 3: Complaints Closed by Disposition and Grounds**  
**Total Number of Complaints Closed = 1,954**

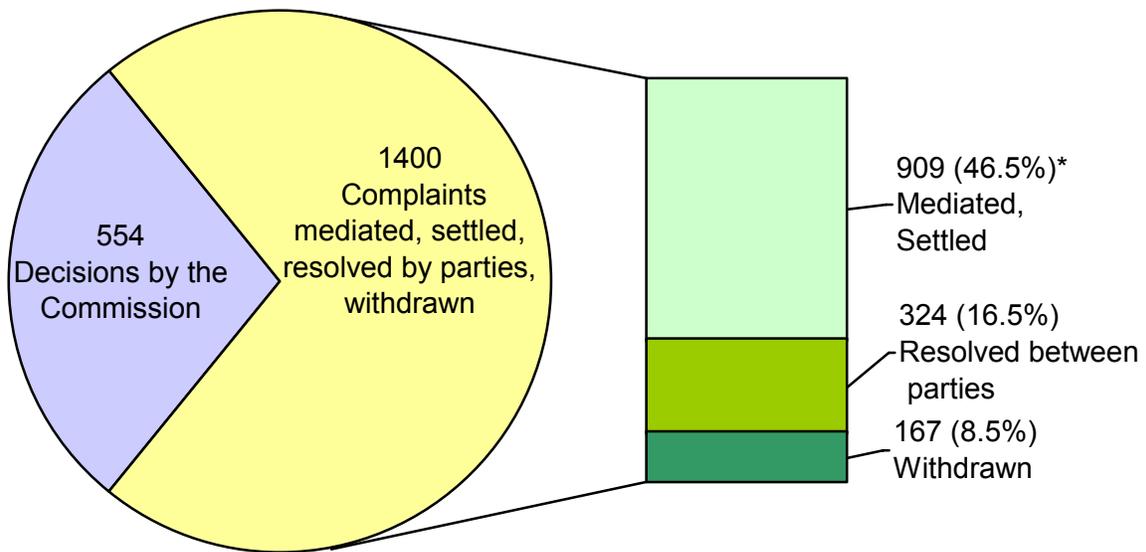
Miss-	16	37	6	1	2	15	125	60	8	3	47	4	119		18	59	14	18	<b>552</b>	271	13
d to de ence		1	1			2	27	6	3	2	3		13		2	8	2	1	<b>71</b>	40	2
Dealt ( 34)	19	20	4	2		8	113	39	10	8	23	2	82	3	18	36	8	6	<b>401</b>	185	9
red man s nal	3	6				2	17	8	4	1	4	3	22		12	38	11	3	<b>134</b>	58	2
-ved	24	12	10	1		12	185	30	10	11	21	3	71	1	40	102	25	9	<b>567</b>	324	16
d	66	51	11		1	40	550	100	33	18	63	6	244	2	102	277	92	22	<b>1678</b>	909	46
n	16	9	2	1	2	12	89	23	15	10	21	2	42		18	43	11	7	<b>323</b>	167	8
	<b>144</b>	<b>136</b>	<b>34</b>	<b>5</b>	<b>5</b>	<b>91</b>	<b>1106</b>	<b>266</b>	<b>83</b>	<b>53</b>	<b>182</b>	<b>20</b>	<b>593</b>	<b>6</b>	<b>210</b>	<b>563</b>	<b>163</b>	<b>66</b>	<b>3726</b>	<b>1954</b>	<b>1</b>
nt-	3.86%	3.65%	0.91%	0.13%	0.13%	2.44%	29.68%	7.14%	2.23%	1.42%	4.88%	0.54%	15.92%	0.16%	5.64%	15.11%	4.37%	1.77%	<b>100%</b>		
	Age	Ancestr y	Associati on	Breach of Settlem ent	Citizens hip	Creed	Disability	Ethnic Origin	Family Status	Marital Status	Place of Origin	Public Assista nce	Race & Colour	Record of Offence s	Reprisal	Sex & Pregnancy	Sexual Harass ment	Sexual Orientati on	Sum of Categori es	Total for All Compl aints	Perce ntage of Com plaints

**Note: Because complaints can involve multiple grounds, the sum by grounds exceeds the total for all complaints filed.**

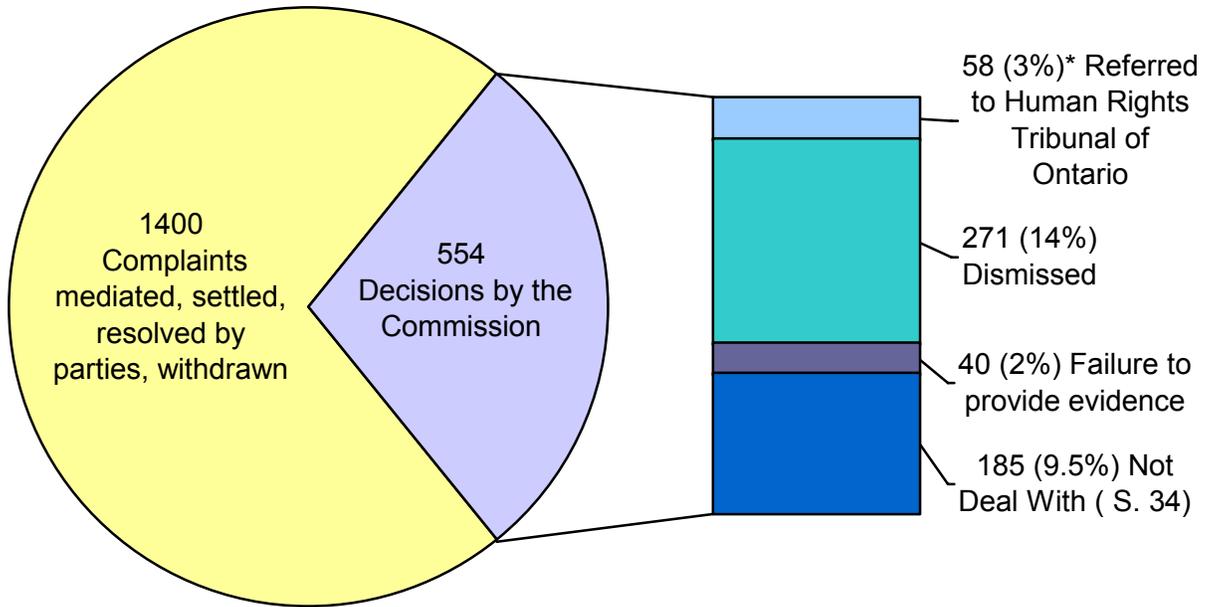
**Table 4: Complaints Closed by Disposition and Grounds**  
**Total Number of Complaints Closed = 1,954**

Dismissed	14	4	191	60	2	271	13.87%
Failed to Provide Evidence	5		31	4		40	2.05%
Not Dealt with (Sec. 34)	9	1	115	49	11	185	9.47%
Referred to Human Rights Tribunal	8		39	11		58	2.97%
Resolved	12	1	267	43	1	324	16.58%
Settled	38	2	799	65	5	909	46.52%
Withdrawn	6	2	140	16	3	167	8.55%
<b>Total</b>	<b>92</b>	<b>10</b>	<b>1582</b>	<b>248</b>	<b>22</b>	<b>1954</b>	<b>100%</b>
Percentage	4.71%	0.51%	80.96%	12.69%	1.13%	100%	
	Accommodation	Contract	Employment	Services	Vocational Associations	Sum of Categories	Percentage of all complaints

### Resolved Cases: Details on Settlements



### Breakdown of Commission Decisions



## **Human Rights Tribunal of Ontario Decisions and Settlements**

### **Decisions**

#### **Ancestry**

*McKinnon v. Ministry of Correctional Services et al.*

*Payne v. Otsuka Pharmaceutical Co. Ltd. et al.*

#### **Citizenship**

*Ahmed v. Shelter Canadian Properties Ltd. et al.*

#### **Colour**

*Forde v. Artisan Screen Print Ltd. et al.*

*Payne v. Otsuka Pharmaceutical Co. Ltd. et al.*

#### **Creed**

*Forde v. Artisan Screen Print Ltd. et al.*

#### **Disability**

*Bubb-Clarke v. TTC et al.*

*Di Marco v. Fabcic*

*Kalbfleisch v. 1321257 Ontario Ltd. et al.*

*Kearsley v. City of St. Catharines*

*Ketola v. Value Propane et al.*

#### **Ethnic Origin**

*McKinnon v. Ministry of Correctional Services et al.*

*Payne v. Otsuka Pharmaceutical Co. Ltd. et al.*

**Harassment (sexual)**

*Arias v. Comfort Suite Hotel et al.*

*DeSousa v. Gauthier*

**Harassment (racial)**

*Forde v. Artisan Screen Print Ltd. et al.*

*McKinnon v. Ministry of Correctional Services et al.*

**Place of Origin**

*Ahmed v. Shelter Canadian Properties Ltd. et al.*

**Race**

*McKinnon v. Ministry of Correctional Services et al.*

*Payne v. Otsuka Pharmaceutical Co. Ltd. et al.*

*Smith v. Mardana Ltd. et al.*

**Reprisal**

*Arias v. Comfort Suite Hotel et al.*

*Chacko and Maharaj v. Transpharm Canada Inc. et al.*

*Forde v. Artisan Screen Print Ltd. et al.*

**Sex**

*Arias v. Comfort Suite Hotel et al.*

*Chacko and Maharaj v. Transpharm Canada Inc. et al.*

*deSousa v. Gauthier*

### **Sexual Solicitation**

*Arias v. Comfort Suite Hotel et al.*

*deSousa v. Gauthier*

### **Settlements**

*Ancestry*

*Commanda, Chevrier, Goulais, Anishnabie v. Rainbow Concrete Industries Ltd. et al.*

*Laurent v. Canopco Inc. et al.*

*Nolan v. Sault Area Hospitals et al.*

*Thompson v. Sears Canada Inc. et al.*

### **Association**

*Brampton Children's Residential Services et al. v. Sandringham Place Inc. et al.*

### **Breach of Settlement**

*Strang v. Red Dog Inn et al.*

### **Colour**

*Cepedes v. Underwriters Adjustment Bureau Ltd. et al.*

*Commanda, Chevrier, Goulais, Anishnabie v. Rainbow Concrete Industries Ltd. et al.*

*Cox v. Sanmina-SCI Enclosure Systems Inc. et al.*

*Neptune v. Lavigne Tire Sales Ltd. et al.*

*Onoriode v. Woodbine Building Supply Ltd. et al.*

*Rajadurai v. Mount Pleasant Group of Cemeteries et al.*

*Thompson v. Sears Canada Inc. et al.*

*Upshaw v. Toronto Catholic District School Board et al.*

### **Disability**

*Brampton Children's Residential Services et al. v. Sandringham Place Inc. et al.*

*Chen v. Cinram et al.*

*Donohue v. City of Windsor et al.*

*Kaminski v. Pilkington Glass of Canada Ltd. et al.*

*King v. Rite Construction Ltd. et al.*

*Lantz v. The Printing House Ltd.*

*Leibovitz v. 854374 Ontario Ltd. et al.*

*McAdam v. Spar Aerospace Ltd. et al.*

*Mortimer v. Brewers Retail Inc. et al.*

*Monster v. Cedarbrae Volkswagen (1990) Ltd. et al.*

*Odell, Sarlina, Condie, Cluskey, Lang and Shell v. TTC*

*Pagliari v. Canon Canada Inc. et al.*

*Perisiol v. T.S.E. Management Services Inc. et al.*

*Smith v. Casino Rama Services Ltd.*

*Solar and Nicho v. Mint Management et al.*

*Wilson v. Groen's Nursery Ltd. et al.*

### **Ethnic Origin**

*Barati v. Gevel and Gown Software Inc. et al.*

*Kaminski v. Pilkington Glass of Canada Ltd. et al.*

*Nolan v. Sault Area Hospitals et al.*

*Thompson v. Sears Canada Inc. et al.*

*Upshaw v. Toronto Catholic District School Board et al.*

### **Family Status**

*Franklin v. 629703 Ontario Ltd. et al.*

*French and Sahsuvaroglu v. Skymark Recreation Centre et al.*

*OHRC v. Brampton Children's Residential Services et al.*

### **Harassment (disability)**

*Perisiol v. T.S. E. Management Services Inc.*

### **Harassment (racial)**

*Laurent v. Canopco Inc. et al.*

*Onoriode v. Woodbine Building Supply Ltd. et al.*

*Reid and Mason v. Silex Inc. et al.*

*Stratton and Mohammed-Ali v. Skylink Technologies Inc.*

### **Harassment (sexual)**

*Antoine, Duhaney, McLean, Morrison and Vapiwalla v. Patrons Online et al.*

*Bui, Deleon, Kusi, Neves, O'Brien, Ogalino and McWhirter v. B&G Foods Inc. et al.*

*Clements-Marcelloni v. Riverside Sportsmen Club et al.*

*Harant v. Mr. C Hairstyling et al.*

*Hope, McGill, Lunn, and Parker v. Bowes Publishers Ltd. et al.*

*MacMillan (Wright) v. International Name Place Supply et al.*

*O'Regan v. Wendell Motor Sales Ltd. et al.*

**Marital Status**

*Solar and Nicho v. Minto Management et al.*

**Place of Origin**

*Barati v. Gavel and Gown Software Inc. et al.*

*Laurent v. Canopco Inc. et al.*

**Race**

*Commanda, Chevrier, Goulais, Anishnabie v. Rainbow Concrete Industries Ltd. et al.*

*Cespedes v. Underwriters Adjustment Burea Ltd. et al.*

*Cox v. Sanmina-SCI Enclosure Systems Inc. et al.*

*Neptune v. Lavigne Tire Sales Ltd. et al..*

*Onoriode v. Woodbine Building Supply Ltd. et al.*

*Rajadurai v. Mount Pleasant Group of Cemeteries et al.*

**Receipt of Public Assistance**

*Franklin v. 629703 Ontario Ltd. et al.*

*Mohamed v. Orange Properties Ltd. et al.*

**Reprisal**

*Bui, Deleon, Kusi, Neves, O'Brien, Ogalino and McWhirter v. B&G Foods Inc. et al.*

*Clements-Marcelloni v. Riverside Sportsmen Club et al.*

*Crocker v. Nutritional Management Services Ltd. et al.*

*Cwalino v. Core Paralegal Services Ltd. et al.*

*Harant v. Mr. C Hairstyling et al.*

*Hope, McGill, Lunn and Parker v. Bowes Publishers Ltd. et al.*

*MacMillan (Wright) v. International Name Plate Supply et al.*

*O'Regan v. Wendell Motor Sales Ltd. et al.*

## **Sex**

*Bui, Deleon, Kusi, Neves, O'Brien, Ogalino and McWhirter v. B&G Foods Inc. et al.*

*Clements-Marcelloni v. Riverside Sportsmen Club et al.*

*Crocker v. Nutritional Mgmt. Services Ltd.*

*Cwalino v. Core Paralegal Services Ltd. et al.*

*Galizio v. Kara (Ontario) Ltd. et al.*

*Harant v. Mr. C Hairstyling et al.*

*Oriente v. Julia Abi Investments Ltd. et al.*

*Mahoney-Sanderson v. Liberty Staffing Services Inc. et al.*

*MacMillan (Wright) v. International Name Plate Supply et al.*

*Novis v. Tropical Rayz Ltd. et al.*

*Trimmer v. Probus Club Alliston et al.*

## **Sexual Orientation**

*McAdam v. Spar Aerospace Ltd. et al.*

## **Sexual Solicitation**

*Bui, Deleon, Kusi, Neves, O'Brien, Ogalino and McWhirter v. B&G Foods Inc. et al.*

*Cwalino v. Core Paralegal Services Ltd. et al.*

*Harant v. Mr. C Hairstyling et al.*

*MacMillan (Wright) v. International Name Place Supply et al.*

### **Divisional Court (Appeal)**

#### **Creed**

*OHRC and Roosma and Weller v. Ford Motor et al.*

#### **Reprisal**

*Jones v. OHRC and Amway of Canada et al.*

### **Divisional Court (Judicial Review)**

#### **Age**

*Gismondi v. OHRC and The Corporation of the City of Toronto*

#### **Disability**

*Shaver v. Toronto East General and Orthopaedic Hospital Inc. and OHRC*

#### **Family Status**

*Sleiman v. OHRC and Attorney General*

#### **Marital Status**

*Sleiman v. OHRC and Attorney General*

#### **Race**

*Howell v. OHRC et al.*

**Receipt of Public Assistance**

*Canada Mortgage and Housing Corp. v. Iness, Caroline Co-operative Housing Inc. and OHRC*

**Court of Appeal**

**Creed**

*OHRC and Roosma and Weller v. Ford Motor et al.*

**Harassment (sexual)**

*Pritchard v. OHRC and Sears Canada Inc.*

**Privilege of Legal Opinion**

*Pritchard v. OHRC and Sears Canada Inc.*

**Receipt of Public Assistance**

*Iness v. Canada Mortgage and Housing Corp., Caroline Co-operative Housing Inc. and OHRC*

***Supreme Court of Canada***

***Family Status and Marital Status***

*Mr. A v. OHRC*

## **Testimonials (to be inserted in different sections)**

### **1. *PI. insert in Mediation and Investigation Branch section***

“Your presentation provided our staff and clients with an informative overview of the Ontario *Human Rights Code*, the role of the Commission, the complaints process and Human Rights in employment...”

*M.M., Student Employment Centre, Toronto  
July 2002*

### **2. *PI. insert in Legal Services Branch section***

“...I know that all concerned will be more sensitive with respect to harassment and discrimination in the workplace. Further, our Harassment and Discrimination policy is currently undergoing joint review and to that end, the seminars were most timely and useful.”

*B.B., Ongwanada  
October 2002*

### **3. *PI. insert in Policy and Education Branch section (Increasing Public Awareness)***

“The machinery of the Ontario Human Rights Commission is “well oiled” and I’m sure there is much that we can borrow from your system.”

*David A. Wilson, Executive Officer  
Human Rights Commission, Bermuda*

**Financial Statement**

***Being sent as separate attachment***

