

Moving Forward with Human Rights in Nova Scotia

**A discussion paper presenting issues and options identified
in Phase I of the Organizational Review
of the Nova Scotia Human Rights Commission**

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Table of Contents

1	INTRODUCTION	1
1.1	BACKGROUND	1
1.2	THE NEED FOR AN ORGANIZATIONAL REVIEW	1
1.3	THE SCOPE AND OBJECTIVES OF THE DISCUSSION PAPER	2
1.4	FUTURE STEPS	2
2	SUMMARY OF CONSULTATIONS	3
2.1	MANDATE ISSUES	3
2.2	RESOURCE ISSUES	4
2.2.1	<i>Workloads and Staffing</i>	4
2.2.2	<i>Prospects for New Resources</i>	4
2.3	COMPLAINTS MANAGEMENT STRATEGIES	5
2.3.1	<i>Complexities of current procedures</i>	5
2.3.2	<i>The Direct Access Model</i>	8
2.3.3	<i>Using other Agencies to Adjudicate Human Rights Complaints</i>	9
2.3.4	<i>Internal responsibility policies</i>	9
2.3.5	<i>Permanent versus part-time tribunals</i>	9
2.4	SPECIFIC COMPLAINTS MANAGEMENT ISSUES	10
2.4.1	<i>Intake and Appeals Procedures</i>	10
2.4.2	<i>Alternative Dispute Resolution</i>	10
2.4.3	<i>Time Limits on Complaints</i>	10
2.4.4	<i>Caseflow Management and Performance Standards</i>	11
2.5	OUTREACH AND ADVOCACY ISSUES	11
2.5.1	<i>Constraints on Anti-racism and Affirmative Action programs</i>	11
2.5.2	<i>Public Education and Awareness</i>	11
2.5.3	<i>Research and Policy Role</i>	11
2.5.4	<i>Regional Services</i>	12
3	POINTS FOR DISCUSSION	13
3.1	MANDATE	13
3.2	LEADERSHIP ON HUMAN RIGHTS POLICY	13
3.3	OPTIMAL USE OF RESOURCES	13
3.4	PARTNERSHIPS	14
3.5	ALTERNATIVE MODELS FOR HUMAN RIGHTS PROTECTION	14
3.6	EQUITY GROUPS	14
3.7	CASE MANAGEMENT	15
3.8	TRIBUNALS	15
	APPENDIX I: GLOSSARY OF TERMS	16
	APPENDIX II: COMPARISONS WITH OTHER JURISDICTIONS	18
	RESOURCES AND CASELOADS	18
	PERMANENT VERSUS AD HOC TRIBUNALS	19
	AUTHORITY TO DISMISS COMPLAINTS	19
	APPEALS PROCEDURES	20
	USE OF MEDIATION AND CONCILIATION	20
	TIME LIMITS ON SUBMISSION OF COMPLAINTS	21

PUBLIC EDUCATION MANDATES AND CAPABILITIES	21
RESEARCH MANDATES AND CAPABILITIES	21
REGIONAL SERVICES	22
APPENDIX III: AGENCIES WITH RELATED MANDATES	23
CANADIAN HUMAN RIGHTS COMMISSION AND TRIBUNAL	23
DISABLED PERSONS COMMISSION	23
NOVA SCOTIA ADVISORY COUNCIL ON THE STATUS OF WOMEN	23
OMBUDSMAN	23
LAW REFORM COMMISSION OF NOVA SCOTIA	24
NOVA SCOTIA LABOUR STANDARDS TRIBUNAL	24
NOVA SCOTIA LABOUR RELATIONS BOARD AND CONSTRUCTION INDUSTRY PANEL	24
APPENDIX IV: NSHRC CASELOAD STATISTICS	25
APPENDIX IV: LIST OF INDIVIDUALS INTERVIEWED FOR THIS REPORT	27
APPENDIX V: LIST OF SOURCES	30

1 INTRODUCTION

1.1 BACKGROUND

The government of Nova Scotia established the Nova Scotia Human Rights Commission (NSHRC) in 1967. Its explicit purpose was to challenge long-standing patterns of discrimination on racial, religious and ethnic grounds. The NSHRC was one of the first human rights commissions in Canada, and its mandate included public education and advocacy as well as the investigation of individual complaints and the conduct of tribunals. Since 1967 the prohibited forms of discrimination have been expanded to include age, gender, sexual orientation, marital status, family status, source of income, physical and mental disability, and political belief, affiliation or activity.

The NSHRC is an independent government agency responsible for administering the Nova Scotia Human Rights Act. The Act calls for the appointment by Cabinet of no fewer than three or more than 12 commissioners who collectively constitute "the Commission". Cabinet designates one of the members as Chair. At present, there are 11 members of the Human Rights Commission. Commissioners serve on a part-time basis. The chief executive officer of the NSHRC is titled the Director of Human Rights and is also a member of the Commission. The Director and the Chair both report to the Minister of Justice.

In addition to the Director, there are currently four other senior management positions in the NSHRC:

- Special Assistant to the Director;
- Co-ordinator of Race Relations and Affirmative Action;
- Legal Counsel;
- Coordinator of Investigation and Compliance.

The NSHRC also employs nine investigating officers and eight support staff, the majority based in Halifax. One investigating officer and one support staff are based in each of Digby and Sydney, and there is a single support person to maintain an office in New Glasgow.

1.2 THE NEED FOR AN ORGANIZATIONAL REVIEW

The NSHRC has benefited from the talent, hard work and commitment of its commissioners and staff over many years, and has established a solid foundation for the continuing development of human rights services in the province. Despite its many achievements, the organization cannot stand still. The NSHRC is subject to the many pressures that impact on government decision-making and the provision of services to the public. These include changes in public attitudes and expectations, the constant development of new technologies, and fiscal constraint

and other policy priorities. The NSHRC must therefore maintain a strategic outlook in its management of people and services and look constantly to new ideas and approaches.

The NSHRC is also aware that a review of agencies, boards and commissions is underway within the Government of Nova Scotia, and that changes are being considered for agencies with mandates related to social equality and human rights. They see the need to be proactive in exploring the implications of this line of thinking within the government.

Faced with such challenges, in the summer of 2000 the NSHRC committed itself to conduct an organizational review to be completed by March 2001. The first Phase of activities aimed at the clarification of mandate issues and directions for change through the development of this discussion paper.

1.3 THE SCOPE AND OBJECTIVES OF THE DISCUSSION PAPER

In preparing this report the consultants reviewed the academic and policy literature, examined developments in human rights services across the country, and met senior managers, human rights officers and support staff in Halifax and in the three NSHRC regional offices. They also interviewed informed observers in the legal profession, in universities, in organizations representing visible minorities, disabled persons and women, and in key government departments, agencies, boards and commissions.

The purpose of the paper is to encourage and support informed discussion among direct stakeholders in Nova Scotia about the mandate and activities of the NSHRC. The paper will summarise findings from the consultations to date on case management and adjudication of complaints, and on possibilities for realigning responsibilities among administrative tribunals and agencies involved in social equality and citizens' rights issues (including the Ombudsman's Office).

The paper will not address wider concerns about the grounds for discrimination set out by the Nova Scotia Human Rights Act, issues that properly belong to a full and open review of the Act.

1.4 FUTURE STEPS

The research and consultations carried out in Phase I, and summarised in this report, will feed into a second phase of activities encompassing a more in-depth review of roles and responsibilities within the NSHRC and the Ombudsman's Office.

This discussion paper, feedback from stakeholder groups on it, and the Phase II outcomes will provide the basis for recommendations to government for specific actions to improve the provision of human rights protection services in Nova Scotia.

2 SUMMARY OF CONSULTATIONS

The following section briefly reviews the findings from interviews with NSHRC staff, government officials in relevant departments and agencies, members of the legal and academic communities and other informed observers. For more background information on particular issues and explanations of terms, see the appendices.

2.1 MANDATE ISSUES

In addition to handling human rights complaints, the Nova Scotia Human Rights Commission is mandated to carry out public education and advocacy, to conduct research and policy analysis and to promote affirmative action and more positive race relations. Almost all the informed observers who were consulted favour strengthening the work of the NSHRC in public education and outreach with employers and the community to prevent discrimination. Many feel that such activities in fact constitute the *raison d'être* of the NSHRC, and that it now devotes too much of its resources to the administration of individual human rights complaints and not enough on the broader aspects of its mandate. In addition, informed observers see a need for clarification and strengthening of the mandate, including the delineation of clearer roles and responsibilities for the Commissioners, the Director and the staff.

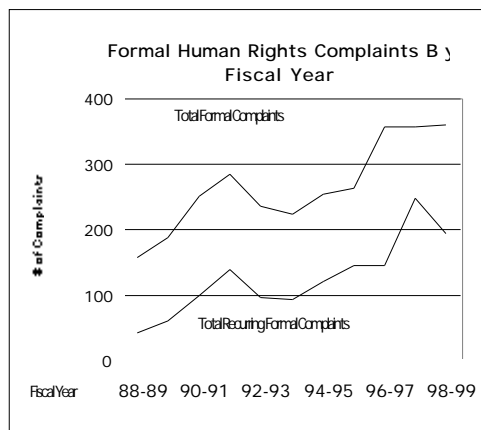
A key area for consideration was the possible overlap in the NSHRC's mandate for research, policy development and public education with other agencies, boards and commissions including in particular the Nova Scotia Disabled Persons Commission and the Nova Scotia Advisory Council on the Status of Women. Informed observers in government and in the agencies themselves expressed concern that a root and branch effort to "rationalize" the various commissions and agencies might reduce the influence of equity groups, weaken key leadership bodies and generally downgrade the government's commitment to the promotion of equality. Observers also questioned the savings that might be achieved by linking organisational resources and infrastructure, and emphasised the need to maintain highly specialized expertise in the discrete fields of citizens' rights disability and women's issues. In particular, strong arguments have been put forward in the media on the public interest in maintaining human rights protection and ombudsman services as independent and distinct functions. On the other hand, interviewees generally supported the idea of expanded collaboration and pooling of resources on research and public education activities to address areas of common concern.

2.2 RESOURCE ISSUES

2.2.1 Workloads and Staffing

Informed observers agree that the NSHRC does not have sufficient staff resources to handle current caseloads effectively and within reasonable time limits. However, there is little expectation that caseload pressures at the NSHRC will be resolved through expansion of staff resources alone.

NSHRC staff report that although real improvements have been made in internal procedures, the work of investigating and drafting complaints has expanded considerably in recent years due to more frequent litigation, higher stakes settlements, and the perceived pressure on NSHRC staff to meet courtroom standards in recording and presenting evidence. At the time of writing, the NSHRC is carrying a substantial backlog of cases – approximately 200 – and formal complaints typically take 2 to 3 years to reach resolution. Informed observers inside and outside the NSHRC feel that caseload pressures are driving the whole organization and diverting attention from other areas of the core mandate.



Some observers suggest that the NSHRC is still relatively well resourced compared to human rights commissions across the country. However, caseloads are heavier in Nova Scotia relative to the size of the population, and caseload expansion has outpaced growth in budgetary resources. (For more detailed comparisons, see Appendix II)

2.2.2 Prospects for New Resources

Observers in government and outside agree that, in the current fiscal climate, the NSHRC cannot expect any significant increase in budgetary resources in the foreseeable future. If new funding is to be sought, government spokespersons indicated that proposals for specific investments to improve efficiency over the long-term might meet with more success than a push for across the board increases. The general advice is to look to administrative, work organization and procedural changes to find ways to resolve the backlog of cases and to reduce workloads.

As mentioned above the government is considering options to link certain agencies, boards and commissions with related mandates, and other internal functions such as the Ombudsman's Office, as a way of addressing overall cost issues. Most observers suggest that such changes could under certain circumstances improve research and public education on human rights issues, but

there is little agreement on the benefits of such restructuring in terms of cost savings or services to equity groups.

Another option identified by experts would be to redirect certain classes of human rights complaints to other administrative tribunals such as the Labour Standards Tribunal or the Nova Scotia Labour Relations Board and the Construction Industry Panel. This approach might reduce pressures within the NSHRC by shifting costs elsewhere, but the potential overall costs and benefits for government would have to be analysed.

2.3 COMPLAINTS MANAGEMENT STRATEGIES

2.3.1 Complexities of current procedures

NSHRC procedures for investigating and adjudicating human rights complaints are complex and have not been substantially restructured since the NSHRC was established.

Although improvements have been made in processing of complaints through the establishment of an Assessment Team and other innovations, as noted, the work of processing complaints has increased due to more frequent litigation, higher stakes settlements, and the perceived pressure on NSHRC staff to meet courtroom standards in recording and presenting evidence.

The following table describes three steps or stages in the handling of human rights complaints by the NSHRC from the initial contact of a person with a possible complaint through to a Board of Inquiry. As indicated, the complaint can be settled outside of this formal process at any stage along the way.

Step	Action	Contingency
Step I: Assessment		
	Citizen with a possible complaint contacts the HRC	
	HRC staff check to see if complaint comes under the jurisdiction of the Human Rights Act	If not, it may be referred to an outside agency
	HRC staff may try to settle the issue through intervention with parties	If successful, the matter is closed
	A formal complaint is drafted based on the complainant's written statement	HR officer prepares file for assessment
	The complaint is provided to the respondent	Respondent is asked to make a response Complainant is given the opportunity to rebut the response
	The NSHRC Assessment Team reviews the complaint	Decision: <ul style="list-style-type: none"> • Discontinue • Investigate • Alternative dispute resolution • Referral to another division or agency If the decision is to discontinue, the complainant can appeal to the Director, who then refers the matter to the Commissioners who can: <ul style="list-style-type: none"> • Refer the complaint back to staff for further investigation • Uphold the decision to discontinue
Step II: Investigation		
	HR officer gathers evidence, interviews witnesses on both sides	
	HR officer prepares summary of evidence	Summary of evidence is shared with complainant and respondent
	HRC legal counsel and the Coordinator of Investigations review the report independently	Decide if further investigation is needed Legal counsel prepares a legal opinion for the Commissioners

Step	Action	Contingency
	<p>If there is enough evidence to support the complaint, NSHRC staff attempt to settle it</p> <p>If there is not enough evidence to support the complaint, NSHRC can discontinue it</p>	<p>Grounds for discontinuing:</p> <ul style="list-style-type: none"> • The facts do not support the allegation • Respondent’s explanation shows there was no discrimination • It is not in the public interest to continue • There is no reasonable basis to continue, or no prospect of remedy
Step III: Board of Inquiry		
	Commissioners review the complaint	Can decide to discontinue or send to a Board of Inquiry
	If Commissioners send case to an Inquiry	<p>Chief Judge of Provincial Court appoints Board Chair</p> <p>Normally a one member panel</p> <p>Witnesses can be called</p> <p>Possible outcomes</p> <ul style="list-style-type: none"> • Complaint discontinued • Complaint upheld
	If complaint upheld	<p>Board has broad powers to order remediation which can include lost wages, compensation for pain or humiliation, reinstatement in a position, etc.</p>
Settlement		
	Parties can resolve the complaint through mutual agreement at any time in process.	<p>Settlement may include:</p> <ul style="list-style-type: none"> • An apology • Positive reference letter • Agreement to change discriminatory policies and practices • Financial compensation
	Proposed settlement is referred to the Commissioners for approval.	
	Decision can be appealed to the Nova Scotia Court of Appeal	Appeal can only address errors in law

Informed observers feel that the current procedures for handling human rights complaints in Nova Scotia are lengthy and complex. With upward of 400 allegations coming to the NSHRC in a year many cases take two or more years to work their way through the system.

NSHRC managers identify five separate points in the process where judgements are made whether to continue with the investigation/adjudication of a particular allegation, and the complainant has certain opportunities to appeal if such decisions go against them.

- At the outset in step I staff must determine if the allegation constitutes discrimination as prohibited by the Act.
- At the completion of Step I, the Assessment Team decides whether to continue.
- After the investigation (Step II) staff determines if there are grounds for proceeding or discontinuing and make their recommendations to the Commissioners.
- NSHRC counsel reviews the file and writes a legal opinion.
- The commissioners review the recommendations of staff and the opinion of legal counsel and decide whether or not to go to a tribunal.

Legal experts point out that the staff of the NSHRC carries out a series of different functions through the process, starting with advice and referrals, investigation and documentation of evidence, and preparation of a detailed report that may be subject to critique and rebuttal by the lawyers of the respondent. The legal counsel for the NSHRC will present the summary of evidence and the legal opinion to the Commissioners and make recommendations as to its disposition, and then may make arguments before a tribunal. These constitute a large array of services that in other court procedures would be carried out by legal counsel for the complainants and the respondents and, in a criminal case, by police and the public prosecutors. Under other circumstances as well complainants might have access to legal counsel through the Legal Aid services.

2.3.2 The Direct Access Model

Lawyers and experts in human rights who were interviewed frequently referred to the report of the Canadian Human Rights Act Review Panel that advocated adoption by the Canadian Human Rights Tribunal of a direct access model. Under such an approach, the NSHRC would no longer carry out investigations and present cases, and most complainants would have their “day in court” much more quickly and directly. All complaints would go directly to a tribunal, receive a preliminary hearing and if warranted move directly to a full hearing within a few months.

According to the Review Panel proposals, complainants would take their cases directly to the tribunal, with both complainants and respondents having access to legal aid where necessary. NSHRC resources would be concentrated on public

education, preventive work with employers and other groups and advice to government on human rights policy and legislation. Commissions could intervene in cases before tribunals and initiate cases to address systemic discrimination.

2.3.3 Using other Agencies to Adjudicate Human Rights Complaints

Some legal experts consulted for this paper suggested that many current workplace-based complaints could be directed to the Labour Standards Tribunal or to the Labour Relations Board. Cases that come before the Labour Relations Board often have human rights aspects, and increasingly collective agreements include prohibitions against discrimination and harassment as defined by the Human Rights Act. The Labour Relations Board has a tripartite structure with equal management and labour representation and an impartial Chair or Vice-Chair. Most panels sit as three members, and the Minister of Labour appoints all board or panel members on a part-time basis.

These experts proposed that the NSHRC also work with the Department of Labour to promote greater inclusion of the anti-discrimination provisions of the Human Rights Act in labour standards regulations and collective agreements. And with so many complaints involving the workplace, there is potential for more human rights issues to be dealt with in-house through the establishment of joint labour-management policies on discrimination and harassment.

2.3.4 Internal responsibility policies

Informed observers point to the Internal Responsibility model as a powerful tool to support human rights enforcement. This approach is widely used to promote and enforce workplace health and safety. The Canadian Human Rights Act Review Panel recommended that all employers with five or more employees establish an internal responsibility system to deal with human rights matters within their control. Key elements of an internal responsibility system would include (a) management-labour co-operation (b) policies and programs promoting equality development (c) training for all managers and employees and (d) mechanisms for internal resolution of complaints of discrimination.

2.3.5 Permanent versus part-time tribunals

Informed observers point out that recent reviews of human rights commissions across Canada have all recommended that the traditional ad hoc tribunals and boards of inquiry be replaced by permanent adjudicative tribunals. The argument is that a permanent tribunal offers “expertise, consistency, economy and efficiency in case flow management, and jurisprudential effectiveness, as well as stature and prestige.” (Howe and Johnson, p133)

The balance of opinion among the interviewees favoured the establishment of a permanent tribunal – it might require only one or two persons on a part-time basis – to speed up the process and consolidate experience and expertise. Interviewees

who opposed a permanent tribunal were concerned about cost, bias in the appointment of panel members, and the lack of diversity and freshness in a permanent panel.

2.4 SPECIFIC COMPLAINTS MANAGEMENT ISSUES

2.4.1 Intake and Appeals Procedures

Informed observers and legal experts point out that some human rights commissions have reduced caseloads measurably by putting more resources and expertise into their intake procedures to ensure that good decisions are made at the outset on whether to investigate particular complaints and how best to move towards resolution. Improved procedures for recording complaints and for using alternative dispute resolution methods including mediation, conciliation and other interventions to resolve cases at the early stages often result in quicker resolution of complaints.

Observers note that in some other provincial commissions the Director or other senior staff have greater authority than in Nova Scotia to dismiss vexatious or frivolous complaints. There was broad support among interviewees for expanding the authority of the NSHRC Director and staff to dismiss cases that were deemed to be frivolous, vexatious or outside the jurisdiction of the Commission, provided that an effective appeals mechanism was in place as a protection against arbitrary decisions.

2.4.2 Alternative Dispute Resolution

There was nearly unanimous support among interviewees for the wider use of alternative dispute resolution at earlier stages in the complaints process provided that the issues are appropriate and the participants are good candidates for such interventions. Many agreed that alternative dispute resolution approaches are cost-effective over the long term, although increased costs for staff recruitment and training can be expected in the short term.

Having the staff with the requisite skills is seen to be critical to the success of alternative dispute resolution approaches. Two-thirds of the interviewees agreed that the NSHRC does not now have the resources to expand in these areas. Few respondents were definite in supporting contracting out of alternative dispute resolution services but saw such an approach as a possible solution to case backlogs.

2.4.3 Time Limits on Complaints

Experts point out that most commissions put a one-year time limit on complaints, either through legislation or procedural guidelines. Among interviewees there was general agreement on the need for reasonable time limits on submission of complaints after the incidence of discrimination.

2.4.4 Case flow Management and Performance Standards

There is agreement among informed outside observers and NSHRC staff on the need to upgrade internal management systems particularly in the areas of records keeping, data management and analysis, and the implementation of service standards, time standards, and “productivity” measures.

2.5 OUTREACH AND ADVOCACY ISSUES

2.5.1 Constraints on Anti-racism and Affirmative Action programs

The Race Relations Division and Co-ordinator were established through amendment to the Nova Scotia Human Rights Act in 1991 in response to recommendations from the Royal Commission on the Donald Marshall Jr. Prosecution. The Race Relations Division carries responsibilities for public education, policy advice, and service monitoring. In recent years the Race Relations Co-ordinator has been given the additional responsibility of directing the NSHRC’s affirmative action activities. The NSHRC became involved in the area of affirmative action (or "employment equity") shortly after it was formed in 1967. The primary approach has been to seek formal voluntary memoranda of understanding between the NSHRC and major employers, committing employers “to take special and direct action to work towards ensuring that the makeup of their workforce was truly representative and reflective of the community they serve.” (Pachai, 94)

In the interviews, virtually all respondents felt the NSHRC should play an expanded role in dealing with systemic discrimination, and several argued that it should be the highest priority for the NSHRC in terms of the allocation of staff time and other resources.

2.5.2 Public Education and Awareness

As mentioned above, many interviewees expressed the view that the NSHRC is not currently fulfilling its mandate for public education and promotion of human rights in the community. Many want to see a realignment of resources and programming to devote more resources to this area. They argue that an effective public education program, and in particular more intensive work with employers to promote human rights in the workplace, will generate better overall outcomes than the handling of larger numbers of individual complaints.

2.5.3 Research and Policy Role

In the interviews, the great majority of respondents felt that the NSHRC should be doing more in the areas of research and policy. Some legal experts were quite critical of the NSHRC for its perceived failure to generate significant analyses from its caseload data. Senior managers in various departments felt that the NSHRC is not currently functioning as the lead agency for the Government in the

area of human rights legislation and policy, and should be doing more in that area. There were also indications that the NSHRC should be more active in partnering with academics and other researchers to achieve its research objectives. Observers also suggest that the NSHRC should work more closely and pool resources with other agencies, boards and commissions involved in social equity issues. However nearly everyone acknowledged that the NSHRC does not have the resources at present to expand this function.

2.5.4 Regional Services

In addition to its head office in Halifax, the Nova Scotia Human Rights Commission maintains regional offices in Sydney, New Glasgow and Digby.

Interviewees were asked if the NSHRC should decentralize services and decision-making to regional offices around the province to a greater degree. Most commentators were not very familiar with regional services and did not have strong views, although the majority favoured centralized processing of complaints to ensure consistency of treatment.

Interviewees from outside of Halifax agreed that people around the province do not have equal access to Human Rights services, but were not optimistic about possibilities for new offices or expanded services. There was some interest in expanded use of Access Nova Scotia sites and Internet communications to expand access to the complaints process for people in smaller communities. Suggestions were also made to train volunteers in smaller communities to serve as guides for people accessing human rights services via the Internet or Access Nova Scotia sites.

3 POINTS FOR DISCUSSION

The following are key questions to be addressed in the ongoing work of the NSHRC organizational review. They provide a focus for continuing consultations with stakeholders on immediate administrative issues and on the longer-term development of the mandate and operations of the NSHRC.

3.1 MANDATE

What should be the core mandate of the NSHRC, and how should it allocate resources and prioritise activities among its various responsibilities for:

- Research and policy development;
- Public education and affirmative action;
- Investigations and management of complaints;
- Adjudication of complaints?

Does the NSHRC's mandate for legislative and legal action on issues of systemic discrimination need to be clarified or expanded?

3.2 LEADERSHIP ON HUMAN RIGHTS POLICY

Should there be a lead agency for human rights research and policy development in Nova Scotia, and if so should it be the NSHRC, the Department of Justice, the Law Reform Commission, or some other agency or coalition of agencies?

3.3 OPTIMAL USE OF RESOURCES

What might be the costs and benefits of pooling resources and more closely aligning the activities of the various administrative tribunals and other agencies that handle complaints and appeals in Nova Scotia (the NSHRC, the Ombudsman, the Labour Standards Tribunal, the Public Utilities Board, and the Labour Relations Board), in terms of:

- Optimal utilisation of resources for intake, investigations and adjudication;
- More effective promotion and protection of human rights in workplaces and the community?

What might be the potential positive and negative impacts of pooling resources and more closely aligning the activities of the various Nova Scotia agencies, boards and commissions with related mandates in the field of equality and human rights, in terms of:

- Optimal utilisation of limited resources for research and public education;

- Maintenance of centres of expertise and policy initiative on social equity issues;
- Maintenance of leadership, public representation and advocacy capabilities within particular equity groups?

3.4 PARTNERSHIPS

What is the scope for building more effective partnerships to advance the mandate of the Nova Scotia Human Rights Commission?

- More developed linkages and/or partnerships with other provincial and federal human rights agencies?
- Building more effective partnerships with universities and advocacy groups in the community?
- Expanded programs in the school system?
- A more coordinated system, perhaps through Access Nova Scotia, to access the services and support of government agencies and community organizations?
- The use of trained volunteers, particularly in smaller communities, to assist individuals in accessing NSHRC services?

3.5 ALTERNATIVE MODELS FOR HUMAN RIGHTS PROTECTION

In terms of caseload pressures and the need to improve services to the public, are there basic alternatives to the current system for investigating and adjudicating human rights complaints that should be actively considered by the NSHRC?

- The Direct Access model in which complaints go directly to a tribunal and the NSHRC would focus primarily on public education, advocacy and policy development?
- Processing employment-related complaints through the Labour Standards Tribunal and/or the Labour Relations Board?
- Legislative and regulatory initiatives to shift the onus for protection of human rights and resolution of complaints to employer and employee groups through internal responsibility mechanisms?

3.6 EQUITY GROUPS

What policy changes and specific action steps might be needed to improve the services provided by the NSHRC to groups who have special needs in the areas of human rights and the promotion of equality?

- First Nations;

- Blacks;
- Women;
- Persons with disabilities;
- Other groups covered by the Nova Scotia Human Rights Act.

3.7 CASE MANAGEMENT

What specific changes could be made to enhance case management?

- Expanded and upgraded intake procedures;
- A call centre, common counter or "one-stop shop" for the public to bring complaints or appeals to government, possibly integrating intake of complaints to the NSHRC, the Ombudsman's Office, Labour Standards, and so on;
- Formalized procedures for dismissing complaints and appealing such dismissals;
- Wider use of alternative dispute resolution approaches;
- Setting a time limit on making human rights complaints after the incident;
- Improved access in smaller communities to public services related to citizens' rights;
- Use of information technology to enhance case flow management and to improve public education and the handling of human rights complaints?

3.8 TRIBUNALS

What would be the advantages and disadvantages of having a permanent tribunal instead of ad hoc tribunals?

APPENDIX I: GLOSSARY OF TERMS

Direct Access Model - A Direct Access Model has been proposed for the Canadian Human Rights Commission by a review panel. Under such an approach, the commission would no longer carry out investigations and present cases. All complaints would go directly to a tribunal, receive a preliminary hearing and if warranted move directly to a full hearing. Complainants or their legal counsel would take their cases to the tribunal, with both complainants and respondents having access to legal aid where necessary. Commissions could intervene in cases before tribunals and initiate cases to address systemic discrimination.

Tribunals or Boards of Inquiry– Appointed to adjudicate complaints. Have powers to summon witnesses and compel testimony. Decisions of tribunals or boards of inquiry are binding and may include an apology, an award of damages or the elimination of unacceptable practices.

Internal Responsibility Model - A proposal to create a duty on the part of employers and service providers to promote equality and eliminate discrimination in the same way that labour legislation creates a general duty for employers to ensure the protection of the safety and health of employees at work. Employers would establish an internal responsibility system to deal with human rights matters within their control. Elements of an internal responsibility system would include (a) management-labour co-operation (b) policies and programs promoting equality development (c) training for all managers and employees and (d) mechanisms for internal resolution of complaints of discrimination.

Intake systems – Process followed by HR commissions when a complaint is received. Some commissions have centralized inquiries and intake so that a dedicated unit will first assess whether inquiries are within the NSHRC's mandate. If there is a human rights case and the party wants to file a complaint, an intake questionnaire and package is sent out within 48 hours. If the questionnaire is returned, it goes to the intake unit, which handles the filing and serving of the complaint.

Alternative Dispute Resolution - There are a variety of approaches, the most important being mediation or conciliation, for NSHRC staff to intervene in the processing of a complaint to attempt to resolve it "out of court" to the mutual satisfaction of the parties. The terms "mediation" and "conciliation" are used interchangeably to describe processes aimed at settling complaints at any time before a tribunal or board of inquiry renders a final decision.

Performance Standards and time limits – managers in human service agencies often defined standard amounts of time and effort that should be allocated to particular tasks, and ways to measure outcomes of those tasks, as ways of introducing greater accountability and efficiency into work processes.

Affirmative Action or Employment Equity - Many jurisdictions use these policies and programs to provide underprivileged groups with opportunities to advance economically. In 1986 Parliament passed the Employment Equity Act which required federally regulated companies with 100 or more employees to report annually on representation in their workforce of occupational categories and salaries of women, aboriginal people, visible minorities and persons with disabilities. The NSHRC became involved in affirmative action shortly after it was formed. The approach in Nova Scotia has been to seek formal voluntary memoranda of understanding between the NSHRC and major employers, committing employers “to take special and direct action to work towards ensuring that the makeup of their workforce was truly representative and reflective of the community they serve.” (Pachai, 94) The first affirmative action agreement (and the first in Canada) was signed with Maritime Telegraph and Telephone in 1972. By 1997-98, there were 32 such agreements in place in Nova Scotia.

Systemic Discrimination – Systemic discrimination is defined as persistent patterns of inequality, the result both of intentional and unintentional discrimination. The Canadian Human Rights Act Review Panel recommended that the CHRC be given the legislative authority to investigate broad patterns of systemic discrimination, which extend beyond any particular business or organization. At present there is a lack of clarity regarding the mandate of the NSHRC to investigate such issues. Acting on its own, it can only investigate a complaint or alleged violation where it has reasonable grounds for believing that a complaint exists.

APPENDIX II: COMPARISONS WITH OTHER JURISDICTIONS

RESOURCES AND CASELOADS

When inflation is taken into account, the NSHRC has seen its funding decline while its workload increased dramatically over the past 20 years. As Table 1 reveals, the NSHRC was one of only three provincial commissions to see a funding drop between 1980 and 1997. In addition, the Nova Scotia caseload increase from 1980 to 1997 was the second highest among the Provinces. Using human rights cases per 100,000 populations, as Table 2 shows, Nova Scotia was second highest.

Despite budget cuts the NSHRC remains one of the best funded in the country, ranking behind just Quebec and British Columbia in expenditures per capita in 1996-97. A 1994 report (Howe and Andrade) also showed that between 1985 and 1990, Nova Scotia had the highest spending per case (\$5,591) of any Province. And as Table 4-3 shows, despite a cut this year, the NSHRC budget still has had a net increase of 11.6% over 1997 levels.

Table 1. Change in per capita funding (1991 dollars) and workload by Province 1980-1997

Province	Cases 1980	Cases 1997	% Change	Funds 1980	Funds 1997	% Change
NS	102	403	+395%	\$1.35	\$1.28	-5.2%
NF	Na	164	Na	0.19	0.48	+253%
PEI	20	150	+750%	0.59	0.80	+136%
NB	147	189	+129%	0.66	0.79	+120%
PQ	2002	1409	-30%	0.62	1.38	+223%
Ont	994	2775	+279%	0.57	1.02	+179%
Man	457	440	-3.7%	0.92	1.15	+125%
Sask	201	386	+192%	1.33	0.88	-33.8%
Alta	281	825	+294%	0.73	0.72	-1.4%
BC	828	1439	+174%	0.64	1.30	+203%

Source: Restraining Equality; Human Rights Commissions in Canada, Johnson and Howe, 2000

As Table 1 reveals, the NSHRC was one of only three provincial commissions to see a funding drop between 1980 and 1997. In addition, the Nova Scotia caseload increase from 1980 to 1997 was the second highest among the Provinces.

Table 2. Cases per 100,000 Population by Province, 1997

Province	Caseload	Population	Cases per 100,000
Nova Scotia	403	934,800	43.1
Newfoundland	164	554,400	29.6
Prince Edward I.	150	136,800	109.6
New Brunswick	189	754,000	25.1
Quebec	1409	7,307,600	19.3
Ontario	2775	11,260,400	24.6
Manitoba	440	1,136,800	38.8
Saskatchewan	386	1,022,200	37.8
Alberta	825	2,837,800	29.1
British Columbia	1439	3,959,300	36.3

Table 3. Total NSHRC Budgets, 1997-98 to 00-01

1997-98	1.442m.
1998-99	1.515m
1999-00	1.700m
2000-01	1.609m

Source: Estimates, Province of Nova Scotia

PERMANENT VERSUS AD HOC TRIBUNALS

Over the last decade reviews of human rights commissions across Canada have all recommended that permanent adjudicative tribunals be created to replace ad hoc tribunals and boards of inquiry that have traditionally been the rule except at the Federal level and in Quebec. The argument is that a permanent tribunal offers “expertise, consistency, economy and efficiency in case flow management, and jurisprudential effectiveness, as well as stature and prestige.” (Howe and Johnson, p133) British Columbia moved to a permanent board following a 1994 review which concluded that “It is almost impossible for a single agency to take all the positive steps needed to protect human rights while serving as the tribunal that decides human rights cases.” Under the British Columbia system, the Commission is responsible for complaint processing and larger social initiatives, while the Tribunal is responsible for complaints. In Ontario, the government has established a “standing board of inquiry” that may evolve in time into something close to the Quebec, BC and Federal model. In Alberta, a “Standing Human Rights Panel” has been established under legislation passed in 1996.

AUTHORITY TO DISMISS COMPLAINTS

Commissions and their officers have considerable leeway on how to deal with complaints and the priority to assign to them. Unlike Nova Scotia and most other

Provinces, Ontario legislation spells out the conditions under which the OHRC may dismiss complaints. Section 34 of the Ontario Human Rights Code confers discretionary power to dismiss complaints that could or should be dealt with in another forum, complaints that are trivial, frivolous and vexatious, complaints made in bad faith, complaints outside the commission's jurisdiction and complaints that are stale-dated. Alberta's commission will also discontinue a complaint if the director is of the opinion that the complainant has refused to accept a proposed settlement that is fair and reasonable.

APPEALS PROCEDURES

Most Provinces have an appeal procedure if a commission refuses to deal with, discontinues or dismisses a complaint. In some cases, the process is written into the Act while in others it is in guidelines or regulations. In Ontario, a Section 34 decision not to proceed with a complaint or a subsequent decision not to forward a complaint to a board of inquiry is subject to appeal to the Commission through an application for reconsideration. The Commission's decision on the reconsideration application is final. Alberta allows an appeal to the Chief Commissioner. If the Chief Commissioner concurs in the dismissal or discontinuance, the decision is final and binding, subject only to a court appeal on process. The Newfoundland Human Rights Code provides that when the Commission declines to refer a complaint to a board of inquiry, a complainant may apply to the courts for an order forcing it to do so.

USE OF MEDIATION AND CONCILIATION

In an effort to facilitate early settlement, several commissions offer informal conciliation at an early stage. In Alberta, for example, a staff conciliator "helps the Complainant and the Respondent to identify the issues, discuss the factors surrounding the issues and generate possible solutions." All information provided by the parties during conciliation is without prejudice and will not be used for any purpose other than conciliation. Only if conciliation fails does the Alberta HRC appoint a human rights investigator.

In British Columbia, The BC Human Rights Commission has initiated an Expedited Disposition pilot project that, with the agreement of the parties, strives to resolve uncomplicated disputes within 28 days. Mediation is offered at different stages: at the outset, during investigation and after investigation. In Ontario, the parties to a human rights dispute are invited to participate in mediation during the Commission's intake process, generally within 90 days from the date a complaint was filed. Mediation officers have been trained "to facilitate the discussion between the parties so that a mutually acceptable solution to the conflict can be reached." Since inception, 75 – 85% of the cases proceeding to mediation have been settled.

TIME LIMITS ON SUBMISSION OF COMPLAINTS

Most commissions put a one-year time limit on complaints, either through legislation or procedural guidelines. Newfoundland has a six-month time limit. So does Ontario, but there is a provision in the Ontario code allowing an extension when the delay was incurred in good faith and no substantial prejudice will result from waiving the time limit. Application of time limits during the process is also an issue. An extensive review held in Saskatchewan in 1993-94 recommended that:

- The Code should require parties and witnesses to provide relevant documents, information concerning such documents, and answers to investigators' questions within 30 days.
- The Code should require parties and witnesses to provide written answers within 30 days to written questions of investigators... Respondents who fail to provide such answers on request should risk having default judgements awarded against them.

PUBLIC EDUCATION MANDATES AND CAPABILITIES

Supreme Court Justice Mme. Claire L'Heureux-Dube has noted that human rights legislation proceeds on the premise that much discrimination can be eliminated by giving people an opportunity to reassess their attitudes and practices, after being made aware of the effects of their conduct. "Indeed, discrimination is often unintentional, the result of unquestioned assumptions. Consequently, education, persuasion and conciliation are the first lines of attack."

Reviews of HR commissions across Canada have led to calls for the expansion of public education programs. However, advocacy of better public education efforts has run into budget restraint and the drive to reduce case backlogs. Some critics argue that the public education role of the commission is also hampered by the fact that settlement awards are too low and the details of too many settlements are kept secret through the inclusion of confidentiality clauses. While such clauses may be contrary to the public interest in educating about human rights, both respondents and claimants may have good reason for wanting to keep matters private, especially the former. Indeed, the prospect of confidentiality may well work as an incentive to settle before a matter comes to a board of inquiry.

RESEARCH MANDATES AND CAPABILITIES

Some Commissions supplement in-house research and policy development by supporting external human rights agencies. In Alberta, the Alberta Human Rights and Citizenship Commission formed a partnership with the University of Calgary to establish the Cultural Diversity Institute for "research, education, training and information on cultural diversity to the corporate, not-for-profit and education sectors throughout the province." Since 1995 the Quebec commission has had wide powers to promote and protect the rights of children and teenagers. This has

encouraged a variety of research projects relating to children and teenagers, some of which have been carried out in conjunction with the school system. The federal government is currently funding a number of new research chairs in Canadian universities, and it may be possible for HR commissions to access resources to have a centre of excellence in human rights at an appropriate institution.

REGIONAL SERVICES

The Nova Scotia HRC is more de-centralized than its counterparts in Prince Edward Island and Newfoundland, which do not have regional offices. Alberta has only two offices, one for the northern part of the Province and another for the south, as does Saskatchewan. The Manitoba Human Rights Commission has three offices. Québec has a head office in Montreal and five regional support offices. The Ontario Human Rights Commission (OHRC) had a head office in Toronto and six branch offices. As a cost-cutting measure, the OHRC shut down its regional offices but retained a regional presence by giving employees the option of working from home or at a desk in another government office. OHRC now has a presence in 10 communities across Ontario, providing mediation and investigative services.

APPENDIX III: AGENCIES WITH RELATED MANDATES

CANADIAN HUMAN RIGHTS COMMISSION

Established in 1978 to cover the federal public sector and businesses under federal jurisdiction, the CHRC has often functioned as a trendsetter for provincial HR commissions. The Canadian Human Rights Commission has an Atlantic Regional office in Halifax. In June 2000, a Federal Review Panel recommended a number of significant changes to the Canadian human Rights Act, including introduction of a Direct Access Model.

CANADIAN HUMAN RIGHTS TRIBUNAL

The Canadian Human Rights Tribunal is an independent body responsible for adjudicating complaints referred to it by the Canadian Human Rights Commission.

DISABLED PERSONS COMMISSION

The Nova Scotia Disabled Person's Commission was established by legislation in 1989 to facilitate the participation of persons with disabilities in the development of provincial government policies and programs, to convey the views of persons with disabilities to government, and to ensure that departments coordinate their efforts to address disability issues. It also has a mandate to conduct public education activities to raise awareness on disability issues, and acts as a resource for community-based organizations and groups. The Commission is made up of 12 members, 7 of whom represent the cross-disability community. The remaining 5 are from the government departments with the most significant responsibilities in the field.

NOVA SCOTIA ADVISORY COUNCIL ON THE STATUS OF WOMEN

The Advisory Council on the Status of Women was established in 1977 to educate the public and advise the provincial government on issues of interest and concern to women. Its mission is "to advance equality, fairness and dignity for all women." The Council's board is composed of women from all parts of the province, different racial and ethnic categories, and women with disabilities.

OMBUDSMAN

The Ombudsman deals with complaints about treatment of individuals by government agencies on issues such as claims for social assistance, employment or consumer services, property affected by public works, or any matter regulated by provincial or municipal law. The Ombudsman will investigate a complaint,

and if it is deemed to be justified, will recommend an appropriate remedy and report the matter to the Legislature. The Ombudsman does not have the power to enforce remedies, but is considered to have significant influence on behaviour and decision-making within government.

Within the Ombudsman's office there is a Children's Ombudsman. This position was established in 1999 in response to concerns about the protection of children receiving care from provincial institutions and social services.

LAW REFORM COMMISSION OF NOVA SCOTIA

The Law Reform Commission was established in 1991 as an independent advisor to government with a mandate to review provincial laws and make recommendations for improvement, modernization and reform. The Provincial Justice Department, which funds the commission jointly with the Law Foundation of Nova Scotia, will end its financial support in March 2001.

NOVA SCOTIA LABOUR STANDARDS TRIBUNAL

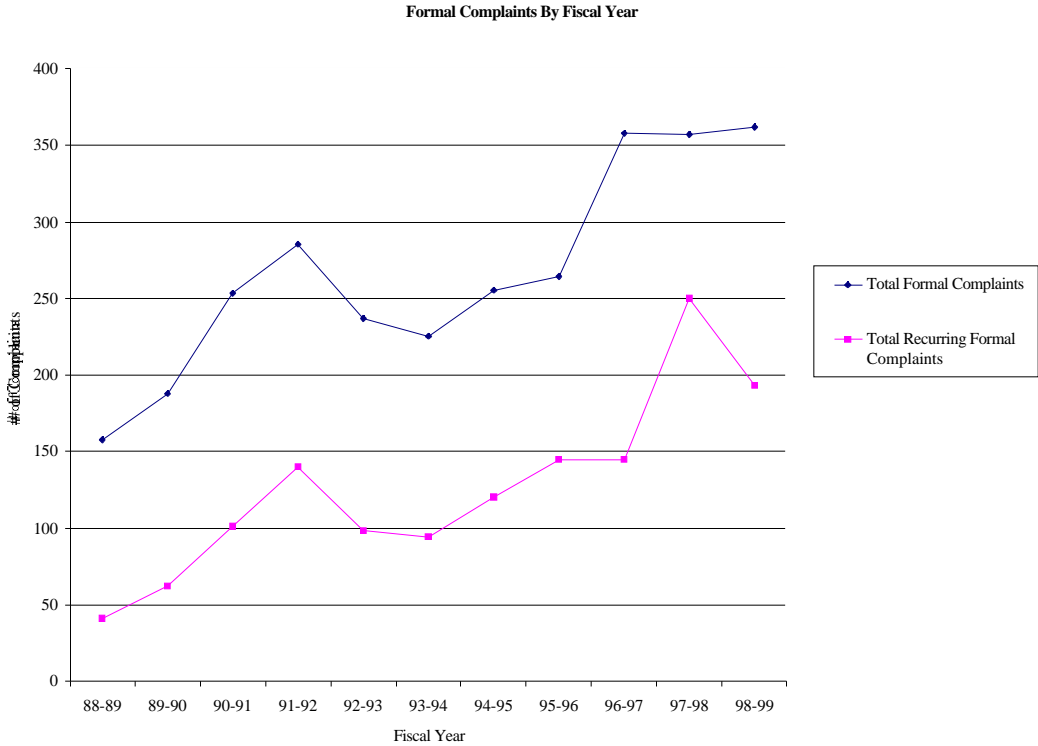
The Labour Standards Tribunal is set up within the Department of Labour and its role

is to deal with appeals on decisions under the Labour Standards Act. Some labour standards issues may have human rights implications – such as the duty to accommodate for disabilities and the duty to provide harassment-free workplaces.

NOVA SCOTIA LABOUR RELATIONS BOARD AND CONSTRUCTION INDUSTRY PANEL

The Labour Relations Board and the Construction Industry Panel are responsible for handling complaints and adjudicating matters arising under the Trade Union Act. Each has a tripartite structure with equal management and labour representation and an impartial Chair or Vice-Chair. Many cases that come before the Labour Relations Board have human rights aspects, and many collective agreements include some prohibitions against discrimination and harassment as defined by the Human Rights Act. In some Provinces the Labour Relations Board rather than the Human Rights Commission handles human rights complaints arising from workplace settings where there are collective agreements in place.

APPENDIX IV: NSHRC CASELOAD STATISTICS



Formal Complaints Totals 1998-1999

	Employment	Services	Accommodations	Volunteer	TOTAL
Race/Color	44	13			57
Religion/Creed	7				7
Aboriginal Origin	2	6			8
Ethnic/National Origin	15	3			18
Sex/Gender	41	6		1	48
Pregnancy	32	1			33
Sexual Harassment	57	6			63
Sexual Orientation	7	4			11
Physical Disability	65	14			79
Mental Disability	11	1			12
Marital Status	9	2	1		12
Family Status	12	1	1		14
Age	12	2	2	1	17
Source of Income	2	1		1	4
Political	12		1		13
Association	4				4
Irrational Fear	2	1			3
Retaliation	8	2			10
TOTAL	342	63	5	3	413
Percentage	82.8%	15.3%	1.2%	0.7%	100%

Disposition of Complaints to NSHRC

	1996-1997	1997-1998	1998-1999	Percentage
Withdrawn	15	24	34	5.2%
Resolved	27	62	70	11.3%
Early Intervention	21	73	62	11.1%
Ongoing	263	251	193	50.1%
Board of Inquiry	18	13	17	3.4%
Discontinued	93	76	99	18.9%
TOTAL	437	499	475	100%

APPENDIX IV: LIST OF INDIVIDUALS INTERVIEWED FOR THIS REPORT

Name	Organization
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Nova Scotia Government

1	Randy Duplak	Justice - Senior Solicitor
2	Pat Clahane	Labour - Senior Solicitor, Labour Standards
3	Diane Manara	Labour - Chief Labour Standards Officer
4	A. Ross Mitchell	Labour - Director, Labour Standards
5	Heather Chandler	Human Resources Consultant
6	Jonathon Davies	Director of Legal Services
7	Peg MacInnis	Aboriginal Affairs - Deputy Minister
8	Rick Anderson	Health
9	Laura Russel	Housing and Municipal Affairs
10	Valerie White	Community Services - Coordinator, Senior's Secretariat
11	Bob Fowler	Community Services - Assistant Deputy Minister
12	Kevin McNamara	Labour - Deputy Minister
13	Doug Keith	Justice - Deputy Minister
14	Gordon Gillis	Office of the Premier - Deputy Minister
15	Martha Muggah	Community Services
16	Michael Baker	Justice - Minister of Justice

Nova Scotia - Agencies, Boards and Commissions

17	Jim Houstin	Worker's Compensation Board
18	Denise Moore	Advisory Council on the Status of Women,
19	Darce Fardy	Review Officer - Freedom of Information

	Name	Organization
20	Janet MacInnon	Office of the Ombudsman
21	Douglas Ruck	Ombudsman
22	Charlie MacDonald	Director, Disabled Persons Commission
23	Brigitte Neumann	Director, Status of Women
24	Anne Jackman	Exec. Dir. – Law Reform Commission
25	Maureen Shebib	Legal Council – NSHRC

Government of Canada

26	Sandra Smith-Muir	Acting Atlantic Regional Director – CHRC
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Universities

27	Jeanne Fay	Community Legal Worker – Dalhousie Legal Aid
28	Wayne MacKay	Dalhousie Law School
29	Philip Gerard	Dalhousie Law School
30	Archie Kaiser	Dalhousie Law School
31	Bruce Wildsmith	Dalhousie Law School
32	David Johnson	Dept. of Politics, Government & Public Administration, University College of Cape Breton
33	Patricia Doyle-Bedwell	Director, Indigenous Black and Mi'kmaq Program
34	Wanda Thomas-Bernard	Maritime School of Social Work

Lawyers

35	Anne Derrick	Beaton, Derrick and Ring
36	Eric Durnford	McInnis, Cooper and Robertson
37	Vince Calderhead	Metro Legal Aid
38	Brian Johnston	Stewart, McKelvey, Stirling, Scales
39	Don Fraser	Barrister and Solicitor

Name		Organization
40	Robert Sampson	Sampson McDougall
41	Raymond Larkin	Pink Breen Larkin

APPENDIX V: LIST OF SOURCES

AHRC (Alberta Human Rights Commission). *Website*. Address: www.albertahumanrights.ab.ca

Aylward, Carol. 1999. *Canadian Critical Race Theory: Racism and the Law*. Halifax, Fernwood.

BCHRC (British Columbia Human Rights Commission). 1998. *Human Rights for the Next Millennium: Recommended BC Human Rights Code Amendments for British Columbians by British Columbians*. Vancouver, BCHRC.

>Description of extensive public consultation process undertaken by the BCHRC and summary of recommendations.

BCHRC. 2000. *Website*. Address: www.bchrc.gov.bc.ca

Canadian Human Rights Act Review Panel. 2000. *Promoting Equality: A New Vision*. Ottawa: The Canadian Human Rights Act Review Panel chaired by Justice Gerard La Forest.

>In depth review of Canadian Human Rights Act and Canadian Human Rights Commission (including structure, complaints process, etc.) and summary of recommendations.

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Corporate Research Associates. 1999. *CRA Atlantic Omnibus Survey November 1999: Preliminary Results for Nova Scotia Human Rights Commission*. Halifax, Corporate Research Associates.

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Crawford, Michael G. 1991. "Human Rights Commissions: Politically Correct Predators?" *Canadian Lawyer*. 15, 7: 16-23.

>Critical Assessment of the procedures of human rights commissions, focusing on several controversial Ontario cases.

Day, Shelagh and Gwen Brodsky. 1999. "Women's Economic Inequality and the *Canadian Human Rights Act*." In *Women and the Canadian Human Rights Act: A collection of policy research reports*. Ottawa, Status of Women Canada.

>Argues that adding the ground social condition to the grounds of prohibited grounds of discrimination will not address the poverty and economic inequality that are a result of long-standing discrimination based on sex, race and disability.

Duval Hesler, Nicole. 1993. "Human Rights Adjudication." In *Discrimination in the Law and Administration of Justice*. Edited by Tarnopolshy et al. Canadian Institute for the Administration of Justice. Pp. 508-519.

Greschner, Donna and Mark Prescott. 1999. "Should the CHRC Mirror the Charter?" In *Women and the Canadian Human Rights Act: A collection of policy research reports*. Ottawa, Status of Women Canada.

>Examines whether the CHRA should contain an open-ended clause that would prohibit discrimination on grounds other than those specifically listed in the Act.

Hawkins, Robert E. 2000. "Reputational Review III: Delays, Disrepute, and Human Rights Commissions." *Queen's Law Journal*. 25, 2: 599-658.

>Examines the reluctance of human rights tribunals to grant stays of proceeding solely on the grounds of delay. Author argues that if stays were granted more often, it would send a signal to HRCs to become more efficient.

Howe, R. Brian. 1994. "The Reputations of Human Rights Commissions in Canada." *Canadian Journal of Law and Society*. 9: 1-20.

>Findings of a study done on reputations of provincial HRCs among stakeholders (Community organizations, minority groups, etc.). Results demonstrated that commissions generally have poor reputations but their low ratings were not related to levels of funding.

Howe, R. Brian and David Johnson. 2000. *Restraining Equality: Human Rights Commissions in Canada*. Toronto: University of Toronto Press.

>Reviews the history and operations of the human rights system in Canada. Focuses on the internal contradictions of human rights commissions (the fact that they are set up to be both proactive promoters of human rights and law enforcement bodies subject to the rules of natural justice) and on how commissions are dealing with increasing demand coupled with declining resources.

Hucker, John. 1997 "Anti-discrimination Laws in Canada: Human Rights Commissions and the Search for Equality." *Human Rights Quarterly*. 19: 547-571.

Human Rights: Reflections, Realities and Reasons (A Roundtable Discussion).
2000. Halifax: Verbatim Inc.

> Transcript of roundtable discussion on NSHRC. Primarily reflections and remarks of six former and present executive directors and chairs, followed by some questions by moderator and audience.

Jackman, Martha and Bruce Porter. 1999. "Women's Substantive Equality and the Protection of Social and Economic Rights under the *Canadian Human Rights Act*."

In *Women and the Canadian Human Rights Act: A collection of policy research reports*. Ottawa, Status of Women Canada.

> Examines the issue of whether, and how, social and economic rights can be effectively protected under the *Canadian Human Rights Act*.

Johnson, David, Ph.D. and R. Brian Howe, Ph.D. 1997. "Human Rights Commissions in Canada: Reform or Reinvention in a Time of Restraint?" *Canadian Journal of Law and Society*. 12: 1-35.

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Keefe McCready Taylor Management Consultants. 1997. *Comparative Survey: Provincial Human Rights Commissions "Nova Scotia."* Edmonton: Keefe McCready Taylor Management Consultants.

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Nova Scotia. 1991. *Human Rights Act*. Halifax: The Queen's Printer.
>Nova Scotia Human Rights Act as amended in 1991.

Nova Scotia Advisory Council on the Status of Women. 2000. *Website*. Address:
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Nova Scotia Disabled Persons Commission. 1999. *Website*. Address:
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>Review of year by division. Also includes relevant statistics (on number of inquiries, number of complaints, disposition of complaints, etc.).

NSHRC. 1999. *Business Plan 2000 / 2001*. Halifax: NSHRC.

>Explains how a 15% budget cut would negatively affect the commission.
Proposes that funding remains the same as in 1999 / 2000. Also includes goals, priorities, outcomes and outcome measure for the year.

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>Flyer published by the NSHRC for the public that goes over the definition of a complaint and goes through the complaint process step-by-step.

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