

# **Human Rights Commission Panel of Adjudicators**

## **Annual Report**

**2020-21**

## **Message from the Chief Adjudicator**

As Chief Adjudicator of the Human Rights Commission Panel of Adjudicators (“Panel”), I hereby submit the 2020-21 Annual Report of the Panel which details its activities from April 1, 2020 to March 31, 2021.

The role of the Panel is to hear complaints that have been referred to them by the Human Rights Commission. The Human Rights Commission refers complaints to the Chief Adjudicator who may hear such complaints or refer them to another Adjudicator. A single Adjudicator hears each complaint, exercising the powers of a commissioner appointed under the **Public Inquiries Act, 2006**.

In accordance with the **Transparency and Accountability Act**, my signature below is on behalf of the Panel, which is accountable for the results reported.

Sincerely,



---

Kimberley Horwood  
Chief Adjudicator

# **Table of Contents**

<b>Message from the Chief Adjudicator .....</b>	i
<b>Table of Contents .....</b>	ii
<b>Overview .....</b>	1
<b>Mandate.....</b>	1
<b>Highlights and Partnerships .....</b>	1
<b>Activities .....</b>	2
<b>Opportunities and Challenges .....</b>	3
<b>Financial Statements .....</b>	4

## **Overview**

In accordance with the **Human Rights Act, 2010** (the “Act”), the Lieutenant-Governor in Council shall appoint at least six persons, one of whom is named Chief Adjudicator, to act as members of a Board of Inquiry into matters referred to them by the Commissioners of the Human Rights Commission. Appointments are for a term of three years and adjudicators may be reappointed. During the 2020-21 fiscal year, the following individuals served on the Panel:

- Kimberley Horwood, Chief Adjudicator;
- Glenda Best, Q.C.;
- Brodie Gallant;
- Valerie Hynes; and
- Christian Hurley.

## **Mandate**

Where the Human Rights Commission determines that a complaint should be sent to a Board of Inquiry for a hearing, the complaint is referred to the Chief Adjudicator of the Panel. The Chief Adjudicator may hear the matter or refer the matter to another Adjudicator.

The Adjudicator shall inquire into the matters referred to him/her and give full opportunity to all parties to present their evidence and make representations through counsel, or otherwise. Where an Adjudicator finds a complaint to be justified, he/she may grant a remedy under Section 39 of the Act.

## **Highlights and Partnerships**

The Panel works in tandem with the Human Rights Commission to ensure that the requirements of the Act are fulfilled. Both the Human Rights Commission and the Panel are keenly mindful of the users of the system in regard to promoting human rights, and the Commission and the Panel must work in coordination to ensure access to justice.

The Panel also works with the Department of Justice and Public Safety on certain matters such as the reporting requirements under the **Transparency and Accountability Act** and appointments of adjudicators.

## Activities

### **Issue 1: Ensuring Complaints are Heard Without Undue Delay**

A number of factors play into setting the hearing date. First, the Chief Adjudicator must either hear the complaint or refer the matter to another Adjudicator. According to the Act, the Adjudicator must hear the matter without undue delay.

What constitutes undue delay cannot be determined by a single standard. A reasonable time for a hearing to commence and be completed will depend on the complexity of the matter; the amount of evidence the parties wish to call; the availability of counsel, parties, and witnesses. There are also limited physical resources for conducting hearings; most hearings take place at the Human Rights Commission office, or may be conducted virtually making them dependent on the availability of that virtual infrastructure.

Furthermore, what constitutes undue delay will vary depending upon the circumstances of the case. In order to provide objective indicators, the Panel must focus on setting dates for the hearing process to commence. Once an Adjudicator is seized with a matter, that Adjudicator is the only person with authority to control the process of the hearing, absent any applications for judicial review.

The objective for the Panel is consistent for the 2020-2023 planning period and the associated indicators will be reported on for each year of the planning period.

<b>Objective 1:</b> By March 31, each year, the Panel will hear complaints without undue delay.	
<b>Indicators</b>	<b>Actual Results</b>
Number of matters referred to the Panel that are assigned to an adjudicator within two weeks of the receipt of the referral	During the fiscal year, Fourteen matters were referred for hearings. Twelve matters were assigned within two weeks of referral; Two matters were assigned outside the two - week timeframe due to COVID-19 restrictions
Number of referrals for which assigned dates were presented to all parties within one month of appointment of an adjudicator	For all 14 matters referred to a Board of Inquiry in the fiscal year, the dates offered by the Adjudicator were offered within 30 days

During the fiscal year 2020-2021, there were still hearings taking place from earlier fiscal years, which had a direct impact on the ability for the current 14 matters to proceed to a hearing during the 2020-2021 fiscal year. The COVID-19 pandemic also occurred during the 2020-2021 fiscal year, which undoubtedly caused some unexpected delays. In spite of this, of the 14 complaints referred to hearings, the breakdown of their current status is as follows:

- Eight are in pre-hearing process and have not yet had hearings;
- Two had hearings within 2020-2021 and the decisions rendered in 2020-2021;

- One had a hearing within 2020-2021 with no decision rendered during 2020-2021;
- One was scheduled for a hearing in May 2021;
- One was referred back to the Human Rights Commission for mediation;
- One matter was settled prior to its scheduled hearing.

To summarize the totality of activity during fiscal year 2020-2021, including activity during the fiscal year 2020-2021 that began during previous fiscal years:

#### Referred for Hearings during 2020-2021 and in Pre-Hearing Process

There are currently eight matters that were referred during the 2020-2021 fiscal year that are in the pre-hearing stages of the complaint and have not yet had hearings.

#### Total Completed Hearings during 2020-2021

There were three hearings completed during the 2020-2021 fiscal year: all three matters were assigned within the 2020-2021 fiscal year and proceeded to a hearing within that same fiscal year. One of the hearings took place by Written Hearing, a practice recently adopted by the Human Rights Commission as an alternative to the traditional in-person hearing, and which is most effective where the issues are straightforward and can be adjudicated based on documentary evidence. Two hearings were conducted in person.

#### Total Rendered Decisions during 2020-2021

There were ten decisions rendered during the 2020-2021 fiscal year, eight of which were in respect of hearings held during previous fiscal years.

#### Awaiting Decision

At the end of fiscal year 2020-2021, there were three matters for which decisions had not yet been rendered. All three of those arose from hearings during the 2020-2021 fiscal year. The average time for a decision to be rendered since 2016 has been eight to fourteen months. As of the end of the 2020-2021 fiscal year, there are no decisions outstanding from previous fiscal years.

#### Settlements

One matter settled during the 2020-2021 fiscal year, just prior to its scheduled hearing date.

#### Alternate Dispute Resolution

One matter that had been referred for a hearing during the 2020-2021 fiscal year, was redirected to Human Rights Commission for mediation.

### **Opportunities and Challenges**

Both the Human Rights Commission and its Panel are keenly mindful of the users of the system, and how they must work in coordination to ensure access to justice. The Adjudicators, for the first time in 2020-2021, attempted new procedural models for hearings, including informal hearings and hearings by written submission, which facilitated matters moving through the process in the most efficient and most appropriate

way possible. The Panel's efforts, in conjunction with the Human Rights Commission's efforts, to fluidly monitor best practices in human rights dispute resolution have modernized the complaint process and enabled better access to justice.

Clearer information to the public and a streamlined process benefits the Panel in achieving its objective to hear complaints without undue delay. There is also a pre-hearing process, typically by teleconference, during which issues are narrowed, if possible. Discussions regarding agreed statements of facts are undertaken, and efforts to streamline the process are generally explored. It often requires more than one pre-hearing conference to get the parties in the best position for adjudication, before setting a hearing date. This is a factor to be weighed when considering the amount of time between when the adjudicator is assigned and when the hearing actually occurs.

There are currently six Adjudicator positions on the Panel, yet there is only one Legal Counsel representing the Human Rights Commission at hearings. Despite best efforts, this can limit the ability of the Panel to move hearings through to conclusion, which could contribute to delays. Legal Counsel for the Human Rights Commission exercises discretion as to when the Human Rights Commission participates in the hearing proper, or by written submission only, and these efforts are undertaken, in part, to minimize any potential delays. The Panel will continue to work with its stakeholders and partners, including the Department of Justice and Public Safety, to ensure all matters proceed in a timely manner.

## **Financial Statements**

The Panel's budget is contained within that of the Human Rights Commission. Such financial information, as is available, is contained in the Human Rights Commission Annual Report for 2020-21. The Report does not break down the expenditures between the Commission and the Panel.

## **Human Rights Commission Panel of Adjudicators Annual Report**

**2020-21**