

**IN THE SUPREME COURT OF CANADA**  
(Appeal from the Court of Appeal for the Province of British Columbia)

BETWEEN:

**BRITISH COLUMBIA HUMAN RIGHTS COMMISSION,  
COMMISSIONER OF INVESTIGATION AND MEDIATION,  
THE BRITISH COLUMBIA HUMAN RIGHTS TRIBUNAL  
and ANDREA WILLIS**

**Appellants  
(Respondents)**

AND:

**ROBIN BLENCOE**

**Respondent  
(Petitioner)**

AND:

**IRENE SCHELL**

**Intervener  
(Respondent)**

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**FACTUM OF THE INTERVENER, NOVA SCOTIA HUMAN RIGHTS COMMISSION**

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## PART I - STATEMENT OF FACTS

1. The Nova Scotia Human Rights Commission (the "NSHRC") makes no comment on the facts as outlined by the Appellants and Respondent herein.

2. The NSHRC is the provincial government agency responsible for the administration and enforcement of the Nova Scotia **Human Rights Act** (the "Act"). The NSHRC intervenes in this appeal to offer its experience and expertise in the handling of human rights complaints.

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## PART II - POINTS IN ISSUE

3. The NSHRC submits there are three points in issue in this appeal:

- (i) Do the rights of "liberty and security of the person" protected by s.7 of the Canadian **Charter of Rights and Freedoms** (the "**Charter**") include a generalized right to dignity, or more specifically a right to be free from stigmatization, if any, associated with a human rights complaint?
- (ii) Does the amount of time required to process a human rights complaint violate the principles of fundamental justice within the meaning of s.7 of the **Charter**?
- (iii) Do the circumstances at bar support a stay in these human rights proceedings?

4. The NSHRC makes no submissions on the third issue.

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### **PART III - ARGUMENT**

5. The NSHRC focuses its submissions on the applicability of s.7 of the **Charter** in the context of human rights proceedings, the meaning of “security of the person” in s.7 of the **Charter** and judicial approaches to cases of delay and alleged delay.

#### **CONTEXTUAL SETTING - Nova Scotia Human Rights Proceedings**

6. Human rights legislation and proceedings throughout Canada emphasize educational, preventative and non-punitive remedial work. This Court’s decision will affect the work of commissions across the country. In these submissions the author provides the NSHRC legislative and policy framework and practices as the contextual setting for human rights complaints. This context informs the interaction of the NSHRC staff with complainants and respondents, with an emphasis on informal dispute resolution.

7. The NSHRC’s work is mandated by the Act; the purpose of which is as follows:

#### **Purpose of Act**

2. The purpose of this Act is to:

(a) recognize the inherent dignity and the equal and inalienable rights of all members of the human family;

(b) proclaim a common standard for achievement of basic human rights by all Nova Scotians;

(c) recognize that human rights must be protected by the rule of law;

(d) affirm the principle that every person is free and equal in dignity and rights;

(e) recognize that the government, all public agencies and all persons in the Province have the responsibility to ensure that every individual in the Province is afforded an equal opportunity to enjoy a full and productive life and that failure to provide equality of opportunity threatens the status of all persons; and



0 (f) extend the statute law relating to human rights and to provide for its effective administration.

**Human Rights Act, R.S.N.S. 1989, c.214 as amended 1991, c.12, (hereinafter "Human Rights Act"), s.2**

10 8. The NSHRC consists of three to twelve members appointed by the provincial Governor in Council. The Commissioners meet regularly (usually monthly) to oversee the work of NSHRC staff and to decide if complaints which have been investigated should be referred for adjudication by a Board of Inquiry.

9. The duties of the NSHRC include: administer and enforce the Act; develop public information material and education programming; conduct research and encourage others to carry out research in the field of human rights; advise and assist government departments regarding human rights issues; cooperate with and assist individuals and organizations concerned with human rights; report to the Minister (of Justice) on the business and activities of the NSHRC; address any matter referred to the NSHRC by the Governor in Council; and approve programs designed to promote the welfare of any disadvantaged class of individuals.

20 **Human Rights Act, ss.22-30**

10. The activities of the NSHRC are carried out by the Executive Director, a management team of five division heads ("Coordinators") and seventeen additional staff members. There are five Divisions (or departments): (1) Administration Division; (2) Investigation and Compliance Division; (3) Communications and Public Education Division; (4) Race Relations and Affirmative Action Division; and (5) Legal Division. Each of these divisions is described in the Annual Report.

30 **Annual Report for the Fiscal Years 1996-97 and 1997-98, Nova Scotia Human Rights Commission (hereinafter "Annual Report")**

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### **Investigation and Compliance Division**

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11. Human rights complaints are initially addressed by the Investigation and Compliance Division (the “ICD”) during the informal resolution and investigation stages. If a complaint is not resolved during these stages it is referred to the Legal Division for a legal opinion. The Commissioners are assisted by the legal opinion as they decide whether to discontinue the complaint or refer it to a Board of Inquiry. Once a matter is referred to a Board of Inquiry the NSHRC has carriage of the complaint; legal counsel attempts to either settle the matter or present the case to the Board of Inquiry. A majority of complaints are settled before a hearing commences.

12. The ICD is responsible for handling inquiries/referrals from the public (over 3800 calls per year); informal interventions; reviewing allegations; and investigating formal complaints. The ICD’s work is carried out by a Coordinator and nine Human Rights Officers (hereinafter “HROs”).

**Annual Report, pp.26-27**

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### **Informal Resolution Stage**

#### **Settlement Initiatives**

13. Efforts to effect settlement are mandatory. The Act states that once a written complaint has been made, or if the NSHRC has reasonable grounds for believing a complaint exists, it “shall instruct the Director or some other officer to inquire into and endeavor to effect a settlement of any complaint of an alleged violation” of the Act (emphasis added).

**Human Rights Act, s.29**

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14. Settlements may be agreed upon at any stage of the process from the first informal intervention to just prior to a decision from a Board of Inquiry. Settlements are subject to approval by the Commissioners except where reached during the informal resolution stage.

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**Nova Scotia Human Rights Commission Policy Compendium** (hereinafter "**Policy Compendium**") as amended November 1998, s.3.1, p.3  
**Human Rights Act**, s.32

15. The NSHRC may carry out a number of settlement initiatives: interventions; early settlement initiatives; mediation and conflict resolution. Complainants and respondents are encouraged by staff to make and accept reasonable settlement proposals. A matter can be discontinued if a complainant does not accept a reasonable settlement proposal.

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**Human Rights Act**, s.29  
**Policy Compendium**, s.3.5, pp. 1- 5  
**Garnhum v. Canada (Attorney General) et al.** (1996), 120 F.T.R. 1 at 11-15, per Noel, J.

16. Interventions by the ICD staff involve confidential and without prejudice negotiations which are conducted prior to complainants completing a formal complaint. Often such informal interventions are successful in resolving the matter without any finding of fault or assessment of the merits. If the parties fail to reach an agreement through intervention the complaint is formalized and may be referred for a full investigation by an Assessment Team composed of three Division heads.

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**Annual Report** pp. 27

17. Early settlement initiatives (hereinafter "ESIs") offer an alternative to a full formal investigation. ESIs are made prior to the conclusion of the investigation (but after a formal complaint has been lodged). Commission staff assist parties in such settlement negotiations.

**Policy Compendium**, s.3.5, pp.8-9

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18. In most cases, a settlement reached prior to a complaint being referred to the Commissioners or a Board of Inquiry will be entered into without an admission of liability by the respondent.

**Policy Compendium, s.3.5, p.3**

**Initial Assessment**

10 19. When a complaint is brought to the NSHRC there is an initial assessment process which involves the following steps:

- (i) Staff determine whether the complaint comes within the jurisdiction of the Act;
- (ii) Staff may attempt to settle the allegation through intervention (described above) before a formal complaint is made. After successful intervention the matter is closed;
- (iii) If there is no agreement during intervention a formal complaint is completed;
- (iv) An HRO then prepares the file for assessment;
- 20 (v) A copy of the formal complaint form is provided to the respondent who is asked to respond to the complaint. The complainant is given an opportunity to rebut this response. The respondent receives a copy of the complainant's rebuttal;
- (vi) The complaint is then reviewed by the NSHRC Assessment Team which determines whether further investigation is required, whether the matter should be referred to another division of the Commission, whether the matter should be referred to conciliation or whether it should be discontinued. When a matter is discontinued the complainant may ask the NSHRC to review this decision. The review is conducted by the Commissioners.

30 **Policy Compendium, s.3.1 pp. 1-2**

**Human Rights Complaint Process Chart (hereinafter "Complaints Process Chart")**

**Investigation Stage**

20. On average the NSHRC deals with over 400 active complaints annually. Formal complaints, those complaints which are not resolved informally, must be investigated by the

0 NSHRC. HROs collect and analyze oral and documentary evidence from complainants and respondents.

**Annual Report p.27**  
**Complaints Process Chart**

10 21. Respondents are not required to participate in any stage of the proceedings. They do not have to respond to informal or formal complaints, nor do they have to participate in any settlement initiatives. Although respondents are not required to participate in the investigation, they are subject to the powers of an investigator. These include: (1) the ability to require a person to provide information or records that may be necessary for the investigation or process; and (2) the ability to enter premises to which a complaint or other process refers.

**Human Rights Act, s.30**

22. The investigation steps include:

20 (i) Collecting evidence from both the complainant and the respondent through interviews and/or relevant documents;

(ii) Preparing a summary of the evidence and providing copies to the parties for their review;

(iii) Incorporating additional relevant information provided by the parties;

(iv) Attempting to settle the complaint prior to referral to the Commissioners.

30 **Policy Compendium s.3.1, pp. 2-3**

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23. In addition to facilitating informal resolutions of complaints and carrying out investigations, HROs work twenty to forty per cent of their time in the Communications and Public Education Division and/or the Race Relations and Affirmative Action Division.

**Board of Inquiry Stage**

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24. The Board of Inquiry is appointed by the Chief Judge of the Provincial Court. Usually the Board consists of one person selected from a roster of qualified panelists. The Board of Inquiry has functions and powers which are different and separate from the NSHRC. The Board is required to “conduct a public hearing and has all the powers and privileges of a commissioner under the **Public Inquiries Act**” (emphasis added).

25. The Board has the jurisdiction and authority to determine any question of fact or law or both to decide whether there has been a contravention of the **Act** or to make an order pursuant to that decision.

26. The Board has the power to order “any party who has contravened the **Act** to do any act or thing that constitutes full compliance with the **Act** and to rectify any injury caused to any person or class of persons or to make compensation therefor”.

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**Human Rights Act, ss. 34 (1), (7), (8)**  
**Boards of Inquiry Regulations O.I.C. 91-1222, N.S. Reg. 221/91**  
**Policy Compendium, s.3.5, pp. 6-7**

27. The record of the proceedings, including the decision of the Board, is filed with the NSHRC. The NSHRC issues press releases to advise the public of upcoming Board hearings and of Board decisions.

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**Human Rights Act, s.34(9)**  
**Policy Compendium, s.6.2, pp. 1-2**

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28. The decisions of Boards of Inquiry can be appealed on questions of law to the Nova Scotia Court of Appeal.

**Human Rights Act, s.36(1)**

29. While the Act does contain offence and penalty provisions for violations of the Act, this author was unable to locate any evidence of these sections being used by the NSHRC.

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**Human Rights Act, ss.38-41**

30. The bulk of the NSHRC's work is done prior to the matter being referred to a Board. The limited role that adjudication plays in the resolution of human rights complaints has been recognized by this Court.

**Scowby v. Glendinning, [1986] 2 S.C.R. 226 at 255-256, per LaForest J.**

31. Once the matter is referred to a Board of Inquiry, the NSHRC has carriage of the case and is responsible for presenting the evidence to the Board.

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**I.M.P. Group Ltd. v. Dillman (1995), 24 C.H.R.R. D/329 (N.S.C.A.) at D/333-D/334, per Chipman, J.A.**

32. The nature of the proceedings changes once the matter is referred to a Board. The Nova Scotia Court of Appeal has found that NSHRC counsel have a duty of disclosure similar to that of Crown counsel in criminal proceedings, with obligations analogous to the Crown in presenting evidence. The duty only arises when the NSHRC is presenting evidence to the Board, and is based on the powers of a public Board of Inquiry to publish its findings, to find a party liable in damages, and/or to order changes in the way a party conducts business.

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**I.M.P. Group Ltd. v. Dillman** (1995), 25 C.H.R.R. D/329 (N.S.C.A.) at D/333-D/334, per Chipman J.A.

33. Although a Board can compel the attendance of witnesses, Board hearings can take place without respondents present and a Board can make findings against a respondent in his or her absence.

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**I.M.P. Group Ltd. v. Dillman** (1995), 25 C.H.R.R. D/329 (N.S.C.A.) at D/332, per Chipman J.A.

**Human Rights Act**, s.34

**Public Inquiries Act**, R.S.N.S. 1989, c.372, ss.4,5

34. Decisions of the Board which result in monetary orders are enforceable against respondents as judgments of the Nova Scotia Supreme Court.

**Human Rights Board of Inquiry Monetary Orders for Compensation Regulations** O.I.C. 98-639, N.S. Reg. 98/98

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**FIRST ISSUE:**      Do the rights of “liberty and security of the person” protected by s.7 include a generalized right to dignity, or more specifically a right to be free from stigmatization, if any, associated with a human rights complaint?

35. The NSHRC agrees with the submissions of the Appellants British Columbia Human Rights Commission and Commissioner of Investigation and Mediation that the right to “liberty” in s.7 of the **Charter** does not extend to respondents in human rights proceedings for the reasons set out in those Appellants’ Factum.

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36. The NSHRC acknowledges that parties to human rights complaints may experience some level of stress and anxiety as a result of disruption to their lives from involvement in the human rights complaint process. However, the NSHRC submits that the scope of “security of the person” in s.7 of the **Charter** does not include these emotional responses which may



0 arise for respondents or complainants. The NSHRC rejects the Respondent Blencoe equating these emotional responses to “stigmatization or stigma”.

37. The NSHRC further submits that a human rights proceeding does not, in and of itself, give rise to the kind of stigma contemplated by this Court in **R. v. Mills** (infra). The human rights process is a non-punitive process designed to prevent and remedy discrimination.

**Meaning of “Security of the Person”**

10 38. There is a broad range of meaning given to “security of the person”. The interpretation of s.7 must be made on a case-by-case basis. This Court has found that “security of the person” relates to one’s physical and mental integrity.

**Reference Re ss. 193 and 195.1(1)(c) of the Criminal Code (Man.)**, [1990] 1 S.C.R. 1123 at 1176, per Lamer J.

**R. v. Morgentaler**, [1988] 1 S.C.R. 30 at 54-55, per Dickson, C.J.C.

20 39. “Security of the person” has been found to include protection against the “overlong subjection to the vexations and vicissitudes” associated with a criminal prosecution by protecting an accused from unreasonable delay in s.11(b) of the **Charter**. These vicissitudes and vexations are described to include: “stigmatization of the accused, loss of privacy, stress and anxiety resulting from a multitude of factors including possible disruption of family, social life and work, legal costs, uncertainty as to outcome and sanction.”

**R. v. Mills**, [1986] 1 S.C.R. 863 at 919-920, per Lamer J.

**R. v. Morin**, [1992] 1 S.C.R. 771 at 786, per Sopinka, J.

30 40. This view of “security of the person” is grounded in the nature of the criminal justice system and society which includes (1) an open and public criminal justice system from the time the charge is laid and (2) a free and unrestricted press. An accused is seen to be

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prejudiced by the public nature of the criminal system, leading to a violation of s. 11(b) of the **Charter** if there is unreasonable delay in proceeding to a hearing from the time of the charge.

**R. v. Mills**, [1986] 1 S.C.R. 863 at 920, per Lamer J.

41. Further, the process is described as adversarial and conflictual with the nature of the process increasing the stress and anxiety associated with a criminal charge.

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**R. v. Mills**, [1986] 1 S.C.R. 863 at 920, per Lamer J.

42. Section 11(d) does not apply to human rights proceedings because no person is charged with an offence and the proceedings are of a non-penal and non-criminal nature.

**R. v. Wigglesworth**, [1987] 2 S.C.R. 541 at 554, per Wilson J.

43. The fundamental difference between the criminal code legislation and human rights legislation has been recognized by this Court:

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(i) "Human rights proceedings operate in a less confrontational manner, allowing for a conciliatory settlement ... (and) gearing remedial responses more towards compensating the victim".

**Canada (Human Rights Commission) v. Taylor**, [1990] 3 S.C.R. 892 at 917, per Dickson, C.J.C.

(ii) "...we are considering what are essentially civil remedies. The proof of intent, a necessary requirement in our approach to criminal and punitive legislation, should not be a governing factor in construing human rights legislation..."

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**Ont. Human Rights Comm. v. Simpsons - Sears**, [1985] 2 S.C.R. 536 at 549-550, per McIntyre, J.

(iii) "... the central purpose of a human rights Act is remedial ..."

**Robichaud v. Canada (Treasury Board)**, (1987) 2 S.C.R. 84 at 91,  
per LaForest, J.

44. This Court has concluded to date that serious state-imposed psychological and emotional stress constitutes a breach of s. 7 "security of the person" in the criminal context. The Court's decisions relate to situations where the state has taken steps to interfere, through criminal legislation, with personal autonomy and a person's ability to control their own physical or psychological integrity such as prohibiting assisted suicide and regulating abortion.

**Rodriguez v. B.C. (A.G.)**, [1993] 3 S.C.R. 519 at 587, per Sopinka J.  
**R. v. Morgentaler**, [1988] 1 S.C.R. 30 at 54-56, per Dickson, C.J.C.

45. This Court has noted that the guarantees to life, liberty and security of the person are found under the heading of "Legal Rights" which include protections primarily for accused persons in criminal and penal proceedings. Whether s.7 can apply to administrative law proceedings including human rights proceedings remains an open question.

**Reference Re. ss.193 and 195.1 (1) (c) of the Criminal Code (Man.)**, [1990]  
1 S.C.R. 1123 at 1171-1177, per Lamer J.

46. This author is aware of only one case in Nova Scotia where a Board of Inquiry refers to s.7 of the **Charter**. In **Wood v. Hants West District School Board** the Board applies s.7 of the **Charter** to guarantee procedural fairness by requiring witness statements be disclosed to all parties prior to a Board hearing. The Board applies s.7 of the **Charter** without hearing submissions regarding the applicability of s.7 to human rights proceedings and without applying the two part test. There is no analysis of whether the respondent's security of the person interests are at stake.

**Wood v. Hants West District School Board** (1994), 25 C.H.R.R. D/447 (N.S. Bd. of Inq.) at D/449, per Sutherland

0 47. The NSHRC submits that the nature of human rights proceedings is significantly different from criminal proceedings such that human rights proceedings do not give rise to protection of s.7 for the following reasons:

(i) Contrary to the Respondent Blencoe's submissions, adversarial and conflictual criminal proceedings are distinguishable from human rights proceedings for the following reasons: respondents can participate in a number of informal processes; legal counsel is not required to resolve the complaint; respondents have no threat of remedial action prior to the appointment of a Board of Inquiry; at no time is a respondent's liberty at stake;

10 **Respondent Factum**, para. 21, p. 12

(ii) The procedural and remedial provisions of human rights legislation play a "minimal role in the imposition of moral, financial or incarceratory sanctions, the primary goal being to act directly for the benefit of [complainants] ...";

**Canada (Human Rights Commission) v. Taylor**, [1990] 3 S.C.R. 829 at 939-940, per Dickson, C.J.C.

20 (iii) "Security of the person" in s.7 is meant to protect one's personal autonomy and control over one's core being. A respondent in a human rights complaint is not at risk of the state interfering with this right;

(iv) Settlements usually lead to a negotiated resolution with no admission of liability;

(v) The settlement of a complaint is kept confidential in many cases;

(vi) A written complaint is not analogous to a criminal information and can be amended during a Board of Inquiry hearing so long as adequate notice is given to a respondent;

**Wight v. Ontario** (1994), 25 C.H.R.R. D/169 (Ont. Bd. Inq.) at D/171-D/172, per Mikus

(vii) The purpose of human rights proceedings is remedial, not punitive as with criminal proceedings.

48. The nature of human rights proceedings during the informal resolution and investigation stages is particularly distinguishable from criminal proceedings:

(i) A respondent is not at risk of being subjected to any sanctions prior to the formal complaint being referred to a Board of Inquiry;

(ii) The duty on the NSHRC to act fairly in addressing a complaint is a lesser requirement than the duty on the Board to apply the rules of natural justice. The lesser duty on the NSHRC reflects the nature of the proceedings at those stages.

**Roy v. Human Rights Commission (N.S.) et al.** (1992), 115 N.S.R. (2<sup>nd</sup>) 80 (N.S.S.C.T.D.) at 85-87 per Roscoe, J.

**Holmes v. Canada (Attorney General)** (1997), 130 F.T.R. 251 at 260, per Tremblay-Lamer, J.

**Syndicat des employés de production du Québec et de l'Acadie v. Commission canadienne des droits de la personne**, [1989] 2 S.C.R. 879 at 899, per Sopinka, J.

49. Human rights proceedings are only made public by the NSHRC when the complaint is referred to a Board of Inquiry. Until then the matter remains confidential unless publicized by a party. The NSHRC is not responsible for such publicity and does not comment on complaints except to correct inaccuracies about the procedure.

**Policy Compendium**, s.6.2, pp. 1-3

50. Throughout the Respondent Blencoe's Factum the characterization of human rights proceedings is misleading and inaccurate. For example, the Respondent suggests the process

0 becomes punitive when there is “unreasonable delay”. There is no way in law for the remedial nature of the proceedings recognized by this Court to become punitive; the remedies available to a Board of Inquiry do not change with time.

**Respondent Factum** para. 25, p. 13

10 51. The inaccuracies relied on by the Respondent are also reflected in the British Columbia Court of Appeal’s majority judgment which is the subject of this appeal. For example, the majority of that Court has wrongly characterized a human rights complaint as a “charge”.

**Blencoe v. British Columbia (Human Rights Commission)** (1998), 31 C.H.R.R. D/175 (B.C.C.A.) at D/182-D/183, per McEachern, J.

**SECOND ISSUE: Does the amount of time required to process a human rights complaint violate the principles of fundamental justice within the meaning of s.7 of the Charter?**

20 52. In the event this Court finds respondents in human rights complaints have a “security of the person” interest at stake, the NSHRC submits that in order to successfully demonstrate an infringement of s.7 a respondent must show actual prejudice to her or his ability to have a fair hearing before a violation of the principles of fundamental justice can be found.

30 53. A contextual approach to the application of the principles of fundamental justice requires this Court to find there is no inherent prejudice arising from the normal processing of a human rights complaint. The three stages: (1) informal resolution; (2) investigation; and (3) inquiry used in Nova Scotia afford the parties with the opportunity to resolve the complaint in a non-confrontational way. The appropriate time involved in this process changes from case-to-case depending on a number of factors, some of which are not within the control of a human rights commission.

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54. The NSHRC rejects any unfair characterization of the normal administrative processing of human rights complaints as “delay”. The NSHRC urges this Court to recognize that the time required to process a human rights complaint may be lengthy without negatively labeling such passage of time as “delay”.

**Administrative Law Proceedings**

55. The principles of fundamental justice in the administrative law context include, but are not limited to, the rules of natural justice and the duty to act fairly.

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**Pearlman v. Manitoba Law Society**, [1991] 2 S.C.R. 869 at 884-885, per Iacobucci, J.

56. When delay is alleged in administrative law proceedings the central issue is whether the amount of time has been unfair to a party. One must demonstrate some form of prejudice arising from the passage of time in resolving a matter; the time involved in and of itself will not lead to a breach of the duty of fairness or an abuse of process.

20

**Duncan v. Law Society of Alberta Investigating Committee** (1991), 49 Admin. L.R. 142 (C.A.) at 153-154, per Foisy J.A.; leave to appeal to S.C.C. refused (1991), 7 Admin. L.R. (2d) 219 (S.C.C.)

**Medical Board (Nfld.) v. Pandhi** (1994), 125 Nfld. & P.E.I.R. and 389 A.P.R. 111 (Nfld. C.A.) at 113-114, per Cameron, J.A.

**Re Robinson and College of Physicians & Surgeons of British Columbia** (1986), 32 D.L.R. (4<sup>th</sup>) 589 (B.S.S.C.), per McKenzie, J.

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57. If an administrative decision-maker finds that prejudice has arisen from the passage of time in a proceeding, he or she can address this issue in weighing the evidence.

**Hammond v. Assn. of British Columbia Foresters** (1991) 47 Admin. L.R. 20 (B.C.S.C.) at 33, per Esson, C.J.B.C.

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58. The reasons for the alleged delay are also relevant.

**Bennett v. British Columbia (Superintendent of Brokers)** (1993), 87 B.C.L.R. (2d) 10 (C.A.) at 20 per Southin, J.A.; leave to appeal to S.C.C. refused (1994), 91 B.C. L.R. (2d) xxxvi (S.C.C.)

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59. The NSHRC submits that these general administrative law principles should be applied to determine if the principles of fundamental justice are breached. In particular, the amount of time must be considered in the context of human rights proceedings where an emphasis is placed on informal dispute resolution for the benefit of the parties.

#### **Criminal Proceedings**

60. In a criminal context this Court has noted a distinction between an accused claiming prejudice based on unreasonable delay under s.11(b) of the **Charter** and an accused's right to a fair trial under s.7 and 11(d) of the **Charter**.

**R. v. O'Connor**, [1995] 4 S.C.R. 411 at 463 per L'Heureux - Dubé, J.

**R. v. Mills**, [1986] 1 S.C.R. 863 at 921-922, per Lamer, J.

20

61. The right to a trial within a reasonable period of time pursuant to s.11(b) of the **Charter** does not apply in the administrative law context where there are no true penal consequences.

**Pearlman v. Manitoba Law Society**, [1991] 2 S.C.R. 869 at 880, per Iacobucci, J.

62. Section 11(b) does not protect an accused from alleged pre-charge delay. The reason for the distinction is the wording of s.11 (b) of the **Charter** which refers to when a person is "charged with an offence".

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63. In the criminal context, in order to demonstrate a violation of s.7 (arising from non-disclosure) an accused must establish, on a balance of probabilities, that her or his ability to make full answer and defence has been prejudiced or adversely effected.

**R. v. O'Connor**, [1995] 4 S.C.R. 411 at 464 per L'Heureux-Dubé, J.

10 64. Alleged pre-charge delay in criminal proceedings is relevant under ss.7 and 11 (d) of the **Charter** because of the effect of the alleged delay upon the fairness of the trial. The passage of time is not in and of itself an issue.

**R. v. Mills**, [1986] 1 S.C.R. 863 at 945, per Lamer J.

65. The fairness of a criminal trial protected by s.7 of the **Charter** is not automatically undermined by a lengthy time period between reporting an incident and charges being laid. One must look at the particular circumstances of the case to determine if the accused's rights have been infringed.

**R. v. L. (W.K.)**, [1991] 1 S.C.R. 1091 at 1099-1100, per Stevenson, J.


20 66. Contrary to the Respondent Blencoe's submissions, the mere passage of time in resolving a human rights complaint does not give rise to the kind of prejudice that is presumed to follow from the laying of a charge in s.11(b) of the **Charter**. The distinction between s.7 and s.11(b) is clearly set out by this Court. The prejudice required under s.7 is an effect on the person's right to a fair hearing; no such prejudice has been demonstrated in the case at bar.

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**PART IV- NATURE OF ORDER SOUGHT**

69. The NSHRC submits that the appeal be allowed in accordance with the submissions of the Appellants British Columbia Human Rights Commission and Commissioner of Investigation and Mediation.

10 ALL OF WHICH IS RESPECTFULLY SUBMITTED



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Lara J. Morris, L.L.B.  
Maureen E. Shebib, LL.M.  
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Julie Vandervoort, Legal Researcher/Editor  
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# Human Rights Act

CHAPTER 214 OF THE REVISED STATUTES, 1989

as amended by  
1991, c. 12



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CHAPTER 214 OF THE REVISED STATUTES, 1989  
amended 1991, c. 12

An Act to Amend the  
Statute Law Relating to Human Rights

*Preamble repealed 1991, c. 12.*

Short title

1 This Act may be cited as the *Human Rights Act*.  
R.S., c. 214, s. 1.

Purpose of Act

2 The purpose of this Act is to

(a) recognize the inherent dignity and the equal and inalienable rights of all members of the human family;

(b) proclaim a common standard for achievement of basic human rights by all Nova Scotians;

(c) recognize that human rights must be protected by the rule of law;

(d) affirm the principle that every person is free and equal in dignity and rights;

(e) recognize that the government, all public agencies and all persons in the Province have the responsibility to ensure that every individual in the Province is afforded an equal opportunity to enjoy a full and productive life and that failure to provide equality of opportunity threatens the status of all persons; and

(f) extend the statute law relating to human rights and to provide for its effective administration.  
1991, c. 12, s. 1.

## Interpretation

3 In this Act,

(a) "business or trade association" includes an organization of persons that by an enactment, agreement or custom has power to admit, suspend, expel or direct persons in relation to any business or trade;

(b) "Commission" means the Nova Scotia Human Rights Commission;

(c) "Director" means the Director of Human Rights appointed pursuant to this Act;

(d) "employees' organization" includes an organization of employees formed for purposes that include the regulation of relations between employees and employers;

(e) "employer" includes a person who contracts with a person for services to be performed by that person or wholly or partly by another person;

(f) "employers' organization" includes an organization of employers formed for purposes that include the regulation of relations between employers and employees;

(g) "employment agency" includes a person who undertakes, with or without payment, to procure employees for employers and a person who undertakes, with or without payment, to procure employment for persons;

(h) "family status" means the status of being in a parent-child relationship;

(i) "marital status" means the status of being single, engaged to be married, married, separated, divorced, widowed or a man and woman living in the same household as if they were married;

(j) "Minister" means the member of the Executive Council who is charged with the administration of this Act by the Governor in Council;



(k) "person" includes employer, employers' organization, employees' organization, professional association, business or trade association, whether acting directly or indirectly, alone or with another, or by the interposition of another;

(l) "physical disability or mental disability" means an actual or perceived

(i) loss or abnormality of psychological, physiological or anatomical structure or function,

(ii) restriction or lack of ability to perform an activity,

(iii) physical disability, infirmity, malformation or disfigurement, including, but not limited to, epilepsy and any degree of paralysis, amputation, lack of physical co-ordination, deafness, hardness of hearing or hearing impediment, blindness or visual impediment, speech impairment or impediment or reliance on a hearing-ear dog, a guide dog, a wheelchair or a remedial appliance or device,

(iv) learning disability or a dysfunction in one or more of the processes involved in understanding or using symbols or spoken language,

(v) condition of being mentally handicapped or impaired,

(vi) mental disorder, or

(vii) previous dependency on drugs or alcohol;

(m) "professional association" includes an organization of persons that by an enactment, agreement or custom has power to admit, suspend, expel or direct persons in the practice of an occupation or calling;

(n) "sex" includes pregnancy, possibility of pregnancy and pregnancy-related illness;

(o) "sexual harassment" means

(i) vexatious sexual conduct or a course of comment that is known or ought reasonably to be known as unwelcome,

(ii) a sexual solicitation or advance made to an individual by another individual where the other individual is in a position to confer a benefit on, or deny a benefit to, the individual to whom the solicitation or advance is made, where the individual who makes the solicitation or advance knows or ought reasonably to know that it is unwelcome, or

(iii) a reprisal or threat of reprisal against an individual for rejecting a sexual solicitation or advance. 1991, c. 12, s. 1.

## PART I

### DISCRIMINATION PROHIBITED

#### Meaning of discrimination

4 For the purpose of this Act, a person discriminates where the person makes a distinction, whether intentional or not, based on a characteristic, or perceived characteristic, referred to in clauses (h) to (v) of subsection (1) of Section 5 that has the effect of imposing burdens, obligations or disadvantages on an individual or a class of individuals not imposed upon others or which withholds or limits access to opportunities, benefits and advantages available to other individuals or classes of individuals in society. 1991, c. 12, s. 1.

#### Prohibition of discrimination

5 (1) No person shall in respect of

(a) the provision of or access to services or facilities;

(b) accommodation;

(c) the purchase or sale of property;

- (d) employment;
- (e) volunteer public service;
- (f) a publication, broadcast or advertisement;
- (g) membership in a professional association, business or trade association, employers' organization or employees' organization,

discriminate against an individual or class of individuals on account of

- (h) age;
- (i) race;
- (j) colour;
- (k) religion;
- (l) creed;
- (m) sex;
- (n) sexual orientation;
- (o) physical disability or mental disability;
- (p) an irrational fear of contracting an illness or disease;
- (q) ethnic, national or aboriginal origin;
- (r) family status;
- (s) marital status;
- (t) source of income;
- (u) political belief, affiliation or activity;

(v) that individual's association with another individual or class of individuals having characteristics referred to in clauses (h) to (u).

### Sexual harassment

(2) No person shall sexually harass an individual. 1991, c. 12, s. 1.

### Exceptions

6 Subsection (1) of Section 5 does not apply

(a) in respect of the provision of or access to services or facilities, to the conferring of a benefit on or the providing of a protection to youth or senior citizens;

(b) in respect of accommodation, where the only premises rented consist of one room in a dwelling house the rest of which is occupied by the landlord or the landlord's family and the landlord does not advertise the room for rental by sign, through any news media or listing with any housing, rental or tenants' agency;

(c) in respect of employment, to

(i) a domestic employed and living in a single family home,

(ii) an exclusively religious or ethnic organization or an agency of such an organization that is not operated for private profit and that is operated primarily to foster the welfare of a religious or ethnic group with respect to persons of the same religion or ethnic origin, as the case may be, with respect to a characteristic referred to in clauses (h) to (v) of subsection (1) of Section 5 if that characteristic is a reasonable occupational qualification, or

(iii) employees engaged by an exclusively religious organization to perform religious duties;

(d) in respect of volunteer public service, to an exclusively religious or ethnic organization that is not operated for private profit and that is operated

primarily to foster the welfare of a religious or ethnic group with respect to persons of the same religion or ethnic origin, as the case may be;

(e) where the nature and extent of the physical disability or mental disability reasonably precludes performance of a particular employment or activity;

(f) where a denial, refusal or other form of alleged discrimination is

(i) based upon a *bona fide* qualification,  
or

(ii) a reasonable limit prescribed by law as can be demonstrably justified in a free and democratic society;

(g) to prevent, on account of age, the operation of a *bona fide* retirement or pension plan or the terms or conditions of a *bona fide* group or employee insurance plan;

(h) to preclude a *bona fide* plan, scheme or practice of mandatory retirement; or

(i) to preclude a law, program or activity that has as its object the amelioration of conditions of disadvantaged individuals or classes of individuals including those who are disadvantaged because of a characteristic referred to in clauses (h) to (v) of subsection (1) of Section 5. 1991, c. 12, s. 1.

### Publication

7 (1) Subject to Section 6, no person shall publish, display or broadcast, or permit to be published, displayed or broadcast, on lands or premises, in a newspaper, by radio or television or by means of any medium, a notice, sign, symbol, implement or other representation indicating discrimination or an intention to discriminate against an individual or class of individuals because of a characteristic referred to in clauses (h) to (v) of subsection (1) of Section 5.

**Free expression of opinion**

(2) Nothing in this Section is deemed to interfere with the free expression of opinion upon any subject in speech or in writing. 1991, c. 12, s. 1.

**Employment agency**

8 (1) No employment agency shall accept an inquiry in connection with employment from an employer or a prospective employee that, directly or indirectly, expresses a limitation, specification or preference or invites information as to a characteristic referred to in clauses (h) to (v) of subsection (1) of Section 5, and no employment agency shall discriminate against an individual on account of such a characteristic.

**Employment application or advertisement**

(2) No person shall use or circulate a form of application for employment or publish an advertisement in connection with employment or prospective employment or make an inquiry in connection with employment that, directly or indirectly, expresses a limitation, specification or preference or invites information as to a characteristic referred to in clauses (h) to (v) of subsection (1) of Section 5.

**Exceptions**

(3) The exceptions referred to in Section 6 apply *mutatis mutandis* to subsections (1) and (2). 1991, c. 12, s. 1.

**Exemption by Commission**

9 Notwithstanding anything in this Act, the Commission may exempt a program or activity from subsection (1) of Section 5, or a part thereof, where, in the opinion of the Commission, there is a *bona fide* reason to do so. 1991, c. 12, s. 1.

**Void regulation**

10 (1) Where, in a regulation made pursuant to an enactment, there is a reference to a characteristic referred to in clauses (h) to (v) of subsection (1) of Section 5 that appears to restrict the rights or privileges of an individual or a class of individuals to whom the reference applies, the reference

and all parts of the regulation dependent on the reference are void and of no legal effect.

### Exception

(2) This Section does not apply in respect of an exclusively religious or ethnic organization that is not operated for private profit and that is operated primarily to foster the welfare of a religious or ethnic group with respect to persons of the same religion or ethnic origin, as the case may be. 1991, c. 12, s. 1.

### Prohibition of retaliation

11 No person shall evict, discharge, suspend, expel or otherwise retaliate against any person on account of a complaint or an expressed intention to complain or on account of evidence or assistance given in any way in respect of the initiation, inquiry or prosecution of a complaint or other proceeding under this Act. 1991, c. 12, s. 1.

12 *repealed 1991, c. 12, s. 1.*

13 *repealed 1991, c. 12, s. 1.*

14 *repealed 1991, c. 12, s. 1.*

15 *repealed 1991, c. 12, s. 1.*

16 *repealed 1991, c. 12, s. 1.*

17 *repealed 1991, c. 12, s. 1.*

18 *repealed 1991, c. 12, s. 1.*

19 *repealed 1991, c. 12, s. 1.*

20 *repealed 1991, c. 12, s. 1.*

### Act binds Crown

21 This Act binds Her Majesty in right of the Province and every servant and agent of Her Majesty. R.S., c. 214, s. 21.

## PART II

### HUMAN RIGHTS COMMISSION

#### Nova Scotia Human Rights Commission

22 (1) The Nova Scotia Human Rights Commission heretofore constituted is continued.

#### Members and Chairman

(2) The Commission shall consist of not fewer than three nor more than twelve members appointed by the Governor in Council who shall designate one of the members as Chairman of the Commission.

#### Term of office

(3) Each commissioner holds office for the term prescribed in the commissioner's appointment and is eligible for re-appointment.

#### Remuneration and expenses

(4) Each commissioner, not a member of the public service, shall be paid remuneration as the Governor in Council determines in addition to the commissioner's actual and reasonable travelling and living expenses when absent from the commissioner's place of residence in connection with the work of the Commission.

#### Vacancy

(5) Whenever a commissioner ceases to hold office, the Governor in Council may appoint a person to fill the vacancy. R.S., c. 214, s. 22; 1991, c. 12, s. 2.

23 *repealed 1991, c. 12, s. 3.*



**Duties of Commission**

24 (1) The Commission shall

(a) administer and enforce the provisions of this Act;

(b) develop a program of public information and education in the field of human rights to forward the principle that every person is free and equal in dignity and rights without regard to race, religion, creed, colour or ethnic or national origin;

(c) conduct research and encourage research by universities and other bodies in the general field of human rights;

(d) advise and assist government departments and co-ordinate their activities as far as these activities concern human rights;

(e) advise the Government on suggestions, recommendations and requests made by private organizations and individuals;

(f) co-operate with and assist any person, organization or body concerned with human rights, within or outside the Province;

(g) report as required by the Minister on the business and activities of the Commission; and

(h) consider, investigate or administer any matter or activity referred to the Commission by the Governor in Council or the Minister.

**Annual report**

(2) The Commission shall report in each year to the Minister on the activities of the Commission during the preceding fiscal year ending in that year.

**Tabling of report in Assembly**

(3) The Minister shall lay the annual report before the Assembly if it is sitting or, if it is not sitting, with

fifteen sitting days after it next sits. R.S., c. 214, s. 24; 1991, c. 12, s. 4.

#### Approval of program

25 The Commission may approve programs of Government, private organizations or persons designed to promote the welfare of any class of individuals, and any approved program is deemed not to be a violation of the prohibitions of this Act. R.S., c. 214, s. 25.

#### Director of Human Rights

26 (1) The Governor in Council shall appoint a Director of Human Rights who is the chief executive officer and a member of the Commission and who has the status of a deputy head, subject to the provisions of the *Civil Service Act* relating to a deputy or a deputy head.

#### Duties of Director

(2) The Director shall perform duties and functions prescribed by this Act, by the Commission or by the regulations. R.S., c. 214, s. 26.

#### Race Relations Division and Co-ordinator

26A (1) There is hereby established a division within the Commission to be known as the Race Relations Division under the direction of the Co-ordinator of Race Relations.

#### Duties and powers

(2) The Race Relations Division

(a) shall develop and recommend programs and policies to promote racial harmony and to eliminate barriers to the full participation of members of racial minorities in society;

(b) shall assist Government and departments of Government to develop policies on race relations;

(c) shall monitor implementation of policies on race relations adopted by Government or a department of Government; and

(d) may, on application by any person, give such advice and assistance with respect to the adoption or carrying out of a program, plan or arrangement as will foster good relations between races and cultures.

#### Duties of Co-ordinator

(3) The Co-ordinator of Race Relations shall

(a) perform such functions and duties as are assigned to the Co-ordinator of Race Relations by the Commission; and

(b) report to the Commission on the activities of the Race Relations Division. 1991, c. 12, s. 5.

#### Personnel

27 Subject to Section 26, the officers and employees required for the proper conduct of business of the Commission may be appointed under the *Civil Service Act*. R.S., c. 214, s. 27.

#### Estimate of expenditures

28 (1) The Commission shall present a yearly budget to the Minister estimating the expenditures of the Commission on the various programs and activities.

#### Source of funds

(2) All costs, charges and expenses incurred by the Commission in administering this Act shall be paid out of money appropriated by the Legislature therefor. R.S., c. 214, s. 28.

### PART III

#### ADMINISTRATION

##### Procedure on complaint

29 The Commission shall instruct the Director or some other officer to inquire into and endeavour to effect a settlement of any complaint of an alleged violation of this Act where

(a) the person aggrieved makes a complaint in writing on a form prescribed by the Director; or

(b) the Commission has reasonable grounds for believing that a complaint exists. R.S., c. 214, s. 29.

##### Power of investigator of complaint

30 The Director or officer acting under the authority of the Commission in the investigation of a complaint or other process under this Act may

(a) require any person to furnish any information or records that may be necessary to further the investigation or process; and

(b) enter at all reasonable times the premises to which a complaint or other process refers. R.S., c. 214, s. 30.

##### Application for order upon refusal

31 (1) Where any person refuses to furnish information or records or to permit entry to premises at reasonable times as authorized by Section 30, the Commission may apply on notice to a judge of the Trial Division of the Supreme Court for an order directing that information or records be furnished or entry permitted.

##### Order of judge

(2) The judge may make such order as he thinks just and the order may be enforced as any other order or judgment of the Supreme Court. R.S., c. 214, s. 31.

**Referral of settlement to Commission for approval**

32 (1) When, at any stage after the filing of a complaint and before the commencement of a hearing before a board of inquiry, a settlement is agreed on by the parties, the terms of the settlement shall be referred to the Commission for approval or rejection.

**Notice of decision**

(2) Where the Commission approves or rejects the terms of a settlement referred to in subsection (1), it shall so certify and notify the parties. 1991, c. 12, s. 6.

**Board of inquiry**

32A (1) The Commission may, at any stage after the filing of a complaint, appoint a board of inquiry to inquire into the complaint.

**Composition**

(2) A board of inquiry shall not be composed of more than three members.

**Eligibility for membership**

(3) No member, officer or employee of the Commission, and no individual who has acted as an investigator in respect of the complaint in relation to which the board of inquiry is appointed, is eligible to be appointed to the board of inquiry.

**Remuneration and expenses**

(4) A member of a board of inquiry is entitled to be paid such remuneration and expenses for the performance of duties as a member of the board of inquiry as may be determined by the Governor in Council.

**Chair**

(5) Where a board of inquiry is composed of more than one member, the Commission shall designate one of the members to chair the board of inquiry. 1991, c. 12, s. 6.

**Parties to proceeding**

33 The parties to a proceeding before a board of inquiry with respect to any complaint are

- (a) the Commission;
- (b) the person named in the complaint as the complainant;
- (c) any person named in the complaint and alleged to have been dealt with contrary to the provisions of this Act;
- (d) any person named in the complaint and alleged to have contravened this Act; and
- (e) any other person specified by the board upon such notice as the board may determine and after the person has been given an opportunity to be heard against joinder as a party. R.S., c. 214, s. 33.

#### Hearing and powers

34 (1) A board of inquiry shall conduct a public hearing and has all the powers and privileges of a commissioner under the *Public Inquiries Act*.

#### Restriction on communication

(2) A member of a board of inquiry shall not communicate directly or indirectly in relation to the complaint, except regarding arrangements for a hearing, with any person or with any party or the party's representative unless all parties are given notice and an opportunity to participate, but the board may seek legal advice from an adviser independent from the parties and in such case the nature of the advice should be made known to the parties in order that they may make submissions as to the law.

#### Right to be heard

(3) A board of inquiry shall give full opportunity to all parties to present evidence and make representations.

#### Evidence

(4) Oral evidence taken before a board of inquiry at a hearing shall be recorded and copies or a transcript thereof shall be furnished upon the same terms as in the Supreme Court.

**Settlement by agreement**

(5) Where the complaint referred to a board of inquiry is settled by agreement among all parties, the board shall report the terms of settlement in its decision with any comment the board deems appropriate.

**Where no settlement**

(6) Where the complaint referred to a board of inquiry is not settled by agreement among all parties the board shall continue its inquiry.

**Jurisdiction of board**

(7) A board of inquiry has jurisdiction and authority to determine any question of fact or law or both required to be decided in reaching a decision as to whether or not any person has contravened this Act or for the making of any order pursuant to such decision.

**Power of board**

(8) A board of inquiry may order any party who has contravened this Act to do any act or thing that constitutes full compliance with the Act and to rectify any injury caused to any person or class of persons or to make compensation therefor.

**Publication of decision**

(9) A board of inquiry shall file with the Commission the record of the proceedings, including the decision and any order of the board and the Commission may publish the decision and any order in any manner it considers appropriate. R.S., c. 214, s. 34.

**Privileged information**

35 No member of the Commission, nor the Director or any officer or employee provided for in Section 27, shall be required by any board of inquiry or any court to give evidence, or to provide access to Commission records, relating to the information obtained in investigation of a complaint under this Act. R.S., c. 214, s. 35.

**Appeal**

36 (1) Any party to a hearing before a board of inquiry may appeal from the decision or order of the board to

the Appeal Division of the Supreme Court on a question of law in accordance with the rules of court.

#### **Record on appeal**

(2) Where notice of an appeal is served pursuant to this Section, the Commission shall forthwith file with the Supreme Court the record of the proceedings in which the decision or order appealed from was made and that record shall constitute the record on the appeal.

#### **Entitlement of Minister to be heard**

(3) The Minister is entitled to be heard, by counsel or otherwise, upon the argument of an appeal pursuant to this Section.

#### **Duty to hear and determine**

(4) The Appeal Division of the Supreme Court shall hear and determine an appeal based upon the record on the appeal. R.S., c. 214, s. 36.

#### **Compliance with order required**

37 Every person in respect of whom an order is made under this Act shall comply with the order. R.S., c. 214, s. 37.

#### **Offence and penalty**

38 Every person who does anything prohibited by this Act or who refuses or neglects to comply with any order made under this Act is guilty of an offence and is liable on summary conviction to

(a) if an individual, a fine not exceeding five hundred dollars; and

(b) if a person other than an individual, a fine not exceeding one thousand dollars. R.S., c. 214, s. 38.

#### **Consent to prosecution**

39 (1) No prosecution for an offence under this Act shall be instituted without the consent in writing of the Minister.



**Defect in form**

(2) No proceeding under this Act shall be deemed invalid by reason of any defect in form or any technical irregularity.

**Sufficiency of evidence for prosecution**

(3) In any prosecution under this Act, it is sufficient for conviction if a reasonable preponderance of evidence supports a charge that the accused has done anything prohibited by this Act or has refused or neglected to comply with an order made under this Act. R.S., c. 214, s. 39.

**Prosecution of organization or association**

40 A prosecution for an offence under this Act may be brought against an employers' organization, employees' organization, professional association or business or trade association in the name of the organization or association, and for the purpose of any prosecution these are deemed to be corporations and any act or thing done or omitted by an officer or agent within the scope of the officer or agent's authority to act on behalf of the organization or association is deemed to be an act or thing done or omitted by the organization or association. R.S., c. 214, s. 40.

**Injunction**

41 (1) Where a person has been convicted of an offence under this Act, the Minister may apply by way of petition to a judge of the Trial Division of the Supreme Court for an order enjoining the person from continuing the offence.

**Order of judge**

(2) The judge, in his discretion, may make such order and the order may be enforced in the same manner as any other order or judgment of the Supreme Court. R.S., c. 214, s. 41.

**Power of Governor in Council**

42 (1) The Governor in Council may undertake or cause to be undertaken such inquiries and other measures as appear advisable or desirable to promote the purposes of this Act.

**Regulations**

(2) The Governor in Council may make regulations respecting any matter the Governor in Council deems necessary or advisable for the attainment of the objects and purposes of this Act and, in particular, may make regulations

(a) providing for affirmative action programs or other special programs;

(b) defining any word or expression used in this Act and not defined herein.

**Regulations Act**

(3) The exercise by the Governor in Council of the authority contained in subsection (2) shall be regulations within the meaning of the *Regulations Act*. R.S., c. 214, s. 42; 1991, c. 12, s. 7.

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# Boards of Inquiry Regulations

made under subsection 42(2) of the

## *Human Rights Act*

R.S.N.S. 1989, c. 214

O.I.C. 91-1222, N.S. Reg. 221/91

October 15, 1991

Printed by  
the Registry of Regulations  
Halifax, Nova Scotia

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*Regulations are subject to frequent amendments; please ensure that you have the current version of this consolidation.*

**Boards of Inquiry Regulations**  
**made under subsection 42(2) of the**  
***Human Rights Act***  
**R.S.N.S. 1989 c. 214**  
**O.I.C. 91-1222 (October 15, 1991), N.S. Reg. 221/91**

- 1 The Nova Scotia Human Rights Commission may, at any stage after the filing of a complaint, request the Chief Judge of the Provincial Court to nominate a person or persons for appointment by the Commission to a Human Rights Board of Inquiry to inquire into the complaint if the Commission is satisfied that, having regard to all circumstances of the complaint, an inquiry therein is warranted.
- 2 In the event of the absence or incapacity of the Chief Judge of the Provincial Court, the Governor in Council may authorize a judge of the Provincial Court to exercise and perform all the powers and duties of the Chief Judge of the Provincial Court as set out in these regulations.
- 3 Upon receipt of a request from the Nova Scotia Human Rights Commission, the Chief Judge of the Provincial Court shall nominate a person or more than one person for appointment by the Commission to a Board of Inquiry to inquire into the complaint to which the request relates.
- 4 Where the Chief Judge nominates more than one member, the Chief Judge of the Provincial Court shall nominate one of the members to be the Chair of the Board of Inquiry.
- 5 Upon receipt of a nomination from the Chief Judge of the Provincial Court, the Nova Scotia Human Rights Commission may, for any valid reason, reject the nomination and so notify the Chief Judge in writing.
- 6 Upon receipt of a rejection of a nomination, the Chief Judge shall nominate another person in that person's place.
- 7 In relation to a hearing before a Board of Inquiry, a Board of Inquiry may receive and accept such evidence and other information, whether on oath or affidavit or otherwise, as the Board of Inquiry sees fit, whether or not such evidence or information is or would be admissible in a court of law; notwithstanding, however, a Board of Inquiry may not receive or accept as evidence anything that would be inadmissible in a court by reason of any privilege under the law of evidence.
- 8 A hearing of the Board of Inquiry shall be public, but a Board of Inquiry may exclude members of the public during the whole or any part of the hearing if it considers such exclusion to be in the public interest.
- 9 The nomination by the Chief Judge of the Provincial Court of a Board of Inquiry shall be set out in Form 1 for a one member Board of Inquiry or in Form 2 for a three member Board of Inquiry.

**Form 1 - One member board of inquiry**  
**Nomination for appointment to a Human Rights Board of Inquiry**  
**The Nova Scotia Human Rights Act**  
**R.S.N.S. 1989, c. 214**

Pursuant to the Regulations Respecting Boards of Inquiry made under the Human Rights Act, and a request received from the Nova Scotia Human Rights Commission dated the \_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, I hereby nominate \_\_\_\_\_, of \_\_\_\_\_, in the Province of Nova Scotia for appointment by the Nova Scotia Human Rights Commission to a Human Rights Board of Inquiry to inquire into the complaint of \_\_\_\_\_, dated \_\_\_\_\_, 19\_\_\_\_, against \_\_\_\_\_, being the complaint to which the request relates.

Dated at \_\_\_\_\_, Province of Nova Scotia, the \_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

\_\_\_\_\_  
Chief Judge of the Provincial Court

**Form 2 - Three member board of inquiry**  
**Nomination for appointment to a Human Rights Board of Inquiry**  
**The Nova Scotia Human Rights Act**  
**R.S.N.S. 1989, c. 214**

Pursuant to the Regulations Respecting Boards of Inquiry made under the Human Rights Act, and a request received from the Nova Scotia Human Rights Commission dated the \_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, I hereby nominate \_\_\_\_\_, of \_\_\_\_\_, in the Province of Nova Scotia; \_\_\_\_\_, of \_\_\_\_\_, in the Province of Nova Scotia; and \_\_\_\_\_, of \_\_\_\_\_, in the Province of Nova Scotia, for appointment by the Nova Scotia Human Rights Commission to a Human Rights Board of Inquiry to inquire into the complaint of \_\_\_\_\_, dated \_\_\_\_\_, 19\_\_\_\_, against \_\_\_\_\_, being the complaint to which the request relates.

Dated at \_\_\_\_\_, Province of Nova Scotia, this \_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

\_\_\_\_\_  
Chief Judge of the Provincial Court

# Human Rights Board of Inquiry Monetary Orders for Compensation Regulations

made under Sections 5 and 6 of the

## *Court and Administrative Reform Act*

S.N.S. 1996, c. 23

O.I.C. 1998-639, N.S. Reg. 98/98

December 10, 1998

Printed by  
the Registry of Regulations  
Halifax, Nova Scotia

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**Human Rights Board of Inquiry Monetary Orders for Compensation Regulations**  
**made under Sections 5 and 6 of the**  
***Court and Administrative Reform Act***  
**S.N.S. 1996, c. 23**  
**O.L.C. 1998-639 (December 10, 1998), N.S. Reg. 98/98**

**Citation**

- 1 These regulations may be cited as the *Human Rights Board of Inquiry Monetary Orders for Compensation Regulations*.

**Interpretation**

- 2 In these regulations,
- (a) "Board" means a board of inquiry established pursuant to the *Human Rights Act*;
  - (b) "Supreme Court" means the Supreme Court of Nova Scotia.

**Filing and enforcement of monetary orders for compensation in the Supreme Court**

- 3 (1) A monetary order for compensation of a Board, whether made before or after the coming into force of Section 5 of the *Court and [Administration] Administrative Reform Act* may for the purpose of enforcement, be filed with Supreme Court and shall be enforced in the same manner as a judgement of that Court.
- (2) To file a monetary order for compensation referred in subsection (1), the Chair of the Board shall endorse, date and sign a copy of the monetary order for compensation certified by the Chair to be a true copy as follows:

File the within monetary order for compensation in the amount of  
\$                      within the Supreme Court of Nova Scotia.

Dated.....

.....  
Chair of the Human Rights Board of Inquiry

and forward the copy to a prothonotary of the Supreme Court who shall enter it as a record.

- (3) Any subsequent monetary order for compensation of a Board rescinding or varying a monetary order for compensation of that Board already filed with the Supreme Court may be filed in the manner set out in subsection (2).

## CHAPTER 372

### An Act Respecting Public Inquiries

#### Short title

1 This Act may be cited as the *Public Inquiries Act*.

#### Inquiry

2 The Governor in Council may whenever he deems it expedient cause inquiry to be made into and concerning any public matter in relation to which the Legislature may make laws. R.S., c. 250, s. 1.

#### Commissioner

3 In case such inquiry is not regulated by any special law, the Governor in Council may appoint a person or persons as a commissioner or commissioners to inquire into and concerning such matter. R.S., c. 250, s. 2.

#### Witnesses and evidence

4 The commissioner or commissioners shall have the power of summoning before him or them any persons as witnesses and of requiring them to give evidence on oath orally or in writing, or on solemn affirmation if they are entitled to affirm in civil matters, and to produce such documents and things as the commissioner or commissioners deem requisite to the full investigation of the matters into which he or they are appointed to inquire. R.S., c. 250, s. 3.

#### Powers, privileges, immunities

5 The commissioner or commissioners shall have the same power to enforce the attendance of persons as witnesses and to compel them to give evidence and produce documents and things as is vested in the Supreme Court or a judge thereof in civil cases, and the same privileges and immunities as a judge of the Supreme Court. R.S., c. 250, s. 4.



### **Council of Maritime Premiers**

6 (1) The Governor in Council may vest in any board, commission, tribunal or other body or person established or appointed by, under or in relation to the Council of Maritime Premiers, for the purpose of studying, investigating or hearing and determining any matter of common concern among the Provinces of Nova Scotia, New Brunswick and Prince Edward Island, all of the powers and privileges that a commissioner under this Act has.

### **Jurisdiction**

(2) The powers and privileges vested pursuant to subsection (1) may be exercised by the board, commission, tribunal or other body or person in relation to persons, organizations and documents resident or situated within the Province of Nova Scotia wherever the study, investigation or hearing is conducted or held within the region comprised of the Provinces of Nova Scotia, New Brunswick and Prince Edward Island. 1973, c. 53, s. 1.

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