Court File No. 26789

IN THE SUPREME COURT OF CANADA

(ON APPEAL FROM THE COURT OF APPEAL
FOR 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
(INTERESTED PARTY)

FACTUM OF THE INTERVENER
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PART I – STATEMENT OF FACTS

1. The Saskatchewan Human Rights Commission (the "SHRC") accepts the facts as set out in the factums of the Appellants and the Intervener, Irene Schell.

2. The SHRC intervenes in this appeal as the statutory body responsible for the administration of *The Saskatchewan Human Rights Code*[1] (the "*Saskatchewan Code*").

3. In 1989 the Court of Appeal for Saskatchewan rendered its decision in *Saskatchewan Human Rights Commission v. Kodellas*[2]. In that case, the Court decided that exposure for an unreasonable period of time to complaints of sexual harassment under the *Saskatchewan Code,* infringed the right of the respondent to liberty and security of the person, as protected by s. 7 of the *Canadian Charter of Rights and Freedoms* (the "*Charter*"). The Court further decided that the rights of the respondent, under s. 7, prevailed over any right of the complainants to an adjudication of their allegations with the result that the proceedings against the respondent were stayed.

4. The conclusions of the Court of Appeal for British Columbia, which are the subject of this appeal, are the same as in *Kodellas.* The B.C. Court referred favourably to the *Kodellas* decision and rejected the decisions of the Court of Appeal for Manitoba in *Nisbett v. Manitoba (Human Rights Commission)*[3]. *Nisbett* had rejected *Kodellas* and decided that s. 7 of the *Charter* is not applicable to human rights complaints.

5. As described above, the issues faced by the Court on this appeal have been dealt with by the courts of appeal in three provinces, specifically in relation to delays arising during the course of human rights proceedings. (In *Belloni v. Canadian Airlines International Ltd* [4] the Federal Court of Appeal also deals with *Kodellas* and the issue of delay in the human rights context, but in relation to a corporation.) As all jurisdictions in Canada have similar human rights

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[1] S.S. 1979, c. S-24.1
[2] (1989), 60 D.L.R. (4th) 143; [1989] 5 W.W.R. 1; 77 Sask. R. 94 (C.A.)
[3] (1993), 101 D.L.R. (4th) 744; [1993] 4 W.W.R.420 (Man. C.A.)
[4] [1996] 1 F.C. 638; 192 N.R. 74 (F.C.A.)

procedures, all will be affected by the determination of whether delays in the human rights process can infringe rights under s. 7 of the *Charter*.

6. The SHRC has ten years of experience dealing with the consequences of the *Kodellas* decision and intervenes to offer its experience in the processing of complaints during this period.

7. The SHRC proposes to deal with the issues raised by *Kodellas*, *Nisbett,* and now *Blencoe,* from the perspective of the procedures under the *Saskatchewan Code.* While these were not the procedures dealt with specifically by the respondent herein, they are similar, as will be described below. In fact, the procedures in British Columbia changed during the course of events in relation to the complaints against Blencoe[5]. The issues transcend any one specific set of procedures.

PART II – POINTS IN ISSUE

8. The SHRC respectfully submits that the investigative and adjudicative procedures established under human rights legislation do not interfere with the liberty and security of the person as protected by s. 7 of the *Charter.* In this regard, the SHRC supports the arguments of the Appellants and the Intervener, Nova Scotia Human Rights Commission. The SHRC wishes only to add to the submission that the passage of time, in itself, cannot convert a procedure that does not interfere with liberty and security of the person into a violation of s. 7.

9. Alternatively, if the liberty and security of the person can be affected by exposure for an unreasonable length of time to allegations of sexual harassment, the SHRC submits that:

a. Delays such as occurred in *Blencoe* do not violate principles of fundamental justice and

b. A stay of proceedings is not a "just and appropriate" remedy to deal with such delays, as such a remedy infringes the equality rights of the alleged victims of sexual harassment as guaranteed by s. 15 of the *Charter*.

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[5] The complaints against Blencoe were filed in 1995, whereas the new *Human Rights Code* was proclaimed in 1996

PART III – ARGUMENT

A. The Contextual Setting

i. Background

10. This court has established two fundamental principles in relation to human rights legislation: a. that this legislation is quasi-constitutional in nature and b. that it establishes civil rights to compensation and remedial action, as opposed to criminal sanctions. The extensive and well-established authority for these fundamental propositions is set out in the factum of the Appellant, British Columbia Human Rights Commission and Commissioner of Investigation and Mediation. (See their Factum, pages 8 and 9).

11. In all jurisdictions in Canada the quasi-constitutional rights we enjoy do not give rise to a civil cause of action in our courts. This is because of what Laskin, C.J.C. in *Seneca College v. Bhadauria*[6] referred to in relation to the *Ontario Human Rights Code*[7] as "the comprehensiveness of the *Code* in its administrative and adjudicative features".

12. Each jurisdiction in Canada has such a comprehensive scheme for the enforcement of rights and this precludes a civil cause of action. Saskatchewan is no exception. Although human rights are fundamental and extremely important rights, the only way they can be enforced is through the procedures administered by the various human rights commissions.

13. The *Saskatchewan Code*, as are all human rights codes and acts, is primarily concerned with the rights of individuals to non-discriminatory treatment. For example, s. 16 prohibits discrimination with respect to conditions of employment "against any person", because of the person's sex. Although the critical factor is that a person is discriminated against because of his or her membership in a group identified by a protected characteristic, nonetheless the violation is

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[6] [1981] 2 S.C.R. 181 at 183,195
[7] R.S.O. 1970, c. 318, as am.

of the rights of the individual person. The complainants in *Blencoe*, *Kodellas* and *Nisbett* were all complaining of an interference with their right to be free from sexual harassment.

14. Furthermore, it is persons, be they corporations or individuals, who are prohibited from violating the rights of other persons to non-discriminatory treatment. Thus, the *Code* creates private rights as between one citizen and another, similar to other civil rights.

15. If the *Saskatchewan Code* did nothing more than create these rights, while leaving it to aggrieved individuals to enforce their rights and seek remedies through an adjudicative process, it would be beyond challenge that *Charter* rights and, in particular, rights under s. 7 of the *Charter,* are not engaged. In this regard, the SHRC agrees with and adopts "Part B", of the factum of the intervener, Attorney-General of British Columbia.

16. The SHRC takes issue with the proposition that the state can interfere with liberty and security of the person when it has carriage of what is established as being a civil action simply by taking too long. The SHRC submits that an examination of the procedures under the *Saskatchewan and B.C. Codes* establishes that delays in executing these procedures do not engage s. 7 of the *Charter.*

17. Central to the SHRC's argument is the fact that the procedures under the *Saskatchewan Code* are not for the purpose of facilitating an investigation of a complaint. Rather the purpose is to establish safeguards that protect respondents. If the SHRC takes too long to process some complaints, it is because of the complex statutory determinations it must make to fulfill its responsibilities to respondents. It is not because of investigations, as such.

ii. The investigative and adjudicative scheme in Saskatchewan

18. S. 27(1) of the *Saskatchewan Code* allows anyone who has reasonable grounds to believe that the *Code* has been violated to file a complaint with the SHRC. Pursuant to s. 28(1) the Commission designates an investigator who is required to conduct an inquiry into the complaint and to "endeavour to effect a settlement". At any point during the investigation, pursuant to s.

27(4), the SHRC or the investigator may dismiss the complaint if one of them determines that the complaint is without merit.

19. Under s. 28.1 of the *Saskatchewan Code*, the SHRC investigator has the power to enter property, and inspect and copy documents, subject to judicial supervision in the usual manner. The complainant has no independent right to conduct an investigation. Nothing prevents complainants from gathering evidence, but there are no enabling provisions such as those available under rules of court. Complainants are not entitled to production of documents, nor can they examine for discovery.

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20. Settlement can be attempted at any stage. However, there is one point in the process where it must be attempted. Pursuant to s. 10 of the Regulations[8] under the *Saskatchewan Code* (the "Regulations"), after the investigation, the investigator reports to the director and recommends whether or not there is probable cause to believe that the complaint can be substantiated. If there is an affirmative recommendation, and if the director concurs, then the investigator must attempt settlement before other steps can be taken. If there is no determination of probable cause the complaint is dismissed.

21. If a complainant refuses to participate in a *bona fide* manner in settlement negotiations
20 the SHRC may be without jurisdiction to direct a formal inquiry (see following paragraph). Furthermore, pursuant to s. 28(2) of the *Saskatchewan Code*, no settlement is binding unless the SHRC is a party and has agreed to the terms.

22. If the complaint has not been dismissed and if no settlement can be reached, the Commission is authorized to direct a formal inquiry under s. 29(1) of the *Saskatchewan Code*. However, this is a discretionary power, the only prerequisite being that the Commission must have "endeavoured" to effect a settlement. If the Commission declines to direct a formal inquiry, the Minister of Government responsible for the *Code* (presently, the Minister of Justice) may do so.

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[8] S.R. 216/79, as am. S.R. 258/79, S.R. 9/91

23. Should the complaint be dismissed at any stage or should the SHRC decline to direct a formal inquiry, the complainant will be without any recourse. There is no other procedure whereby complainants can allege violations of their human rights or seek remedies for any resulting injury. A complainant does have a limited right to appeal a decision of the investigator to the Commissioners of the SHRC, and to appeal a decision of the Commissioners to the Minister[9]. All arguments to the Commissioners and Minister must be in writing. The complainant does not have the right at this stage to examine or cross-examine witnesses in the presence of the Commissioners or Minister. Nonetheless, based only on the report of the investigator, the Commissioners and the Minister must determine whether to terminate any further pursuit of an alleged breach of the complainant's quasi-constitutional right not to be discriminated against.

24. Prior to a formal inquiry, no official of the SHRC has any power to make an order in favour of the complainant: not the Investigator, Director, Commissioners or Minister. The only order-making power these officials have is to dismiss the complaint, or forward the complaint on to the next stage. It is a process in which complainants can lose, but they cannot win. It is a "weeding out" process.

25. A formal inquiry is presided over by a board, appointed by the Minister under s. 29 of the *Code*. The board is an independent statutory body that does have the power to make an order. Under s. 31(1) the board determines its own procedure and may accept any evidence whether admissible in a court of law or not. Under s. 30(1) of the *Saskatchewan Code,* the parties before the board include the person whose rights have been violated, the person who is alleged to have violated the *Code* and the Commission itself. Essentially, all of the steps up to this stage have simply been for the purpose of establishing the complainant's right to get before the board (unless a settlement has been reached). The adjudicative process starts afresh before the board.

26. Under s. 31(4) the Commission is entitled to participate in the proceedings before the board. S. 19(1) of the Regulations requires the Commission to present the case in substantiation of the complaint. It is only at this stage that the complainant will finally have the right to hear the

[9] The Regulations, s.s. 7 and 14(3)

testimony of witnesses in a forum where they are subject to cross-examination, and to make independent representations in the adjudication process (s.31(5) of the *Code*).

27. The board conducting the formal inquiry may make a number of orders if, pursuant to s. 31(7), it concludes that the complaint is substantiated, "on a balance of probabilities". S. 31(7) states the purpose as being "to rectify any injury caused ... and to make compensation therefore". The respondent can be ordered to make available whatever has been withheld, such as employment or housing accommodation (s. 31(7)(b)), and to compensate for lost wages or any additional cost incurred by the discriminatory treatment (s. s. 31(7)(c) and 31(7)(d)). Under s. 31(8) of the *Code* an individual can be awarded an amount up to $5,000 for a flagrant violation or to compensate for injury to feelings.

28. S. 48 of the *Saskatchewan Code* authorizes the SHRC or the director to exempt any person from the operation of the *Code* if the SHRC considers that it is "necessary or advisable" to do so. So, even where a complainant has a valid complaint, the Commission may determine that the respondent should be exempted from the *Code*.

29. The above procedures establish that individuals who presumably have quasi-constitutional rights not to be discriminated against, do not have ready access to an adjudicative system through which allegations of discrimination can be substantiated and appropriate remedies ordered. Unlike civil actions in court, complainants cannot simply initiate their actions by filing the appropriate documents and proceeding through the adjudicative stages.

30. In accordance with the sections outlined above, complainants must first convince the Commission that there are reasonable grounds. Then they must forego any personal pursuit of their rights until the SHRC has conducted its investigation and completed the steps of determining probable cause, attempting settlement and deciding in its discretion whether to direct a formal inquiry. At any point the complainant may be ejected from the process. In essence, complainants must prove their complaints twice. They must allow the SHRC to satisfy itself that the complaint will likely be proved and then they must go through the adjudicative process to actually prove it.

31. From a practical perspective, the steps the SHRC must take may seem necessary. Any enforcement agency would want to ensure that there is a reasonable likelihood that an allegation will be proved before proceeding to an adjudication stage. But that is not what is happening under these procedures. This is not simply a practical determination of whether a complaint should be carried forward. The *Code* prescribes statutory tests and which officials must apply them. And the consequences of the SHRC applying these statutory tests may well be that the right of the complainant, to an adjudication of her allegations, is extinguished.

32. The procedures under the *Saskatchewan Code* do provide some benefits to complainants. If the matter does proceed to a formal inquiry, the evidence gathered during the SHRC investigation can be used to substantiate the complaint. Most complainants do not have the resources to advocate on their own behalf. Thus the *Saskatchewan Code* establishes a balance between complainants and respondents. On one hand, it provides investigation and adjudication services without financial cost to the complainant. But complainants must put up with cumbersome procedures, out of their control. On the other hand, respondents will have to bear their own costs in the adjudicative process. But the matter will not reach the adjudication stage until the Commission has established firstly, that no settlement is possible and secondly, that the complaint will likely be substantiated if it is referred to a board of inquiry.

iii. The *British Columbia Human Rights Code*[10] (the *"B.C. Code")*

33. There are some significant differences between the *Saskatchewan and B.C. Codes.* In B.C. the adjudicative board is a permanent tribunal, rather than an *ad hoc* board appointed by the Minister. Furthermore, the B.C. Commission does not present the case in substantiation of the complaint before the tribunal.

34. In spite of these differences, the B.C. Commission does have the same hurdles delaying and deterring access to the adjudicative stage as exist in Saskatchewan. When a complaint is filed alleging a B.C. *Code* violation, it is processed by the Commissioner of Investigation and Mediation (the "Commissioner") under s. 23 of the *B.C. Code*. The Commissioner may either

[10] S.B.C. 1996, c. 210

dismiss all or part of the complaint, without any investigation, or refer the matter to an investigator. Once the investigation is complete a report is filed with the Commissioner who, once again, has the option of dismissing all or part of the complaint. Alternatively, the matter may be referred to a tribunal for hearing. Under s. 27 of the *B.C. Code* the reasons why the Commissioner may dismiss the complaint include:

a. There is no reasonable basis to justify referring the complaint to a hearing,

b. Proceeding with the complaint would not further the purposes of the *Code,*

c. The substance of the complaint has already been dealt with appropriately in another proceeding.

These are broad grounds for terminating the pursuit of quasi-constitutional rights prior to any formal hearing.

35. The role of the Commissioner is, as is the SHRC's role in Saskatchewan, to weed out complaints that she believes should not be adjudicated, either at the beginning of the process or after an investigator has filed a report. The Commissioner makes precisely the same determinations that would ultimately be considered by the tribunal.

36. If the *Blencoe* facts are used as an example, it is clear that the Commissioner's "gate-keeper" role and the application of administrative law principles creates a cumbersome procedure which inevitably causes some delays. Several quotes from McEachern, C.J.B.C., in the court below, are very telling[11]:

> First, the Schell complaint was filed more than six months from the date of the conduct complained, contrary to s. 13(1)(d) of the *Act* (now s. 22 which allows for a one-year delay). A part of the Willis complaint was also concerned with conduct which occurred more than six months prior to filing. This required consideration of whether such delay was incurred in good faith and whether there was no substantial prejudice to the respondent. **This took the Commission some time to straighten out but that delay cannot be attributed to the appellant.** By the time the complaints were filed, the appellant was already encountering very serious adverse publicity because of his previous dismissal from the Provincial Cabinet by the Premier. As must have been recognized, any delay in the

[11] C.A. Judgment at paras. 43 and 44

> processing of the complaint must necessarily have prejudiced the appellant.
>
> Second, the *Human Rights Code* includes a mediation function which does not seem to have been significantly engaged in this case. Nevertheless, there were many exchanges between the Commission and the appellant's counsel because of the complicated structure that has been established for the processing of these kinds of complaints. **I am not, however, able to identify any steps taken by the appellant that he was not entitled to take in defending himself against these complaints.** In his factum, counsel for the Commission did not suggest the appellant had contributed substantially to the delay. He merely said that there was "some delay" in receiving responses from the appellant because his counsel was seeking disclosure of information "... that was not easily obtained from the Commission", and logistical difficulties which arose because the appellant moved to Ontario in an unsuccessful attempt to escape relentless publicity in this province. (emphasis added)

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20 37. With respect to the learned judge, his comments concerning the fact that Blencoe did not contribute to the delay because he did not do anything he was not entitled to do misses the point of the *B.C. Code* procedures. The reason that human rights procedures are slow and cumbersome is precisely because they do provide very substantial safeguards, protecting respondents from the adjudicative process, and respondents are entitled to rely on them.

38. McEachern, C.J.B.C. also questions why it should take so long to conduct an investigation when the evidence is relatively straightforward[12]. This misses the point that it is not the actual investigation that takes so long, but "jumping through the hoops" that provide the safeguards for the respondent.

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[12] C.A. Judgment at paras. 37,38, and 51

iv. The effect of *Saskatchewan Code* procedures

39. In Saskatchewan, the effect of the "weeding out" process is evident in SHRC statistics. These are not mere formalities that the SHRC goes through before referring matters to the adjudicative process.

40. In 1997-98, the latest period for which there is an annual report[13], the SHRC received 207 complaints of alleged *Code* violations[14]. More than one-half of these were disposed of at the intake stage[15]. Complaints that make it through the intake stage are called formalized complaints. In the 1997-98 fiscal year, the Commission disposed of 122 formalized complaints[16]. Of this number, "probable cause" was found on only 28 complaints[17]. Some complaints were withdrawn or settled during the investigation process. But, out of the 122, 55 complaints[18] were dismissed because of "no probable cause". During this reporting period (1997-98), legal counsel was responsible for 63 "probable cause" complaints[19]. With respect to these 63 complaints, 24 were disposed of, mostly through settlements[20]. Only 4 complaints were disposed of as a result of a decision of a board of inquiry[21].

41. These statistics show that a large majority of cases never make it to the adjudication stage of the human rights process. Complaints are reviewed and possibly dismissed at three stages: when the complaint is first filed; by the Commission or the investigating officer during or after an investigation; and when the Commission reports to the Minister in cases where no settlement can be reached, either directing or declining to direct a formal inquiry. Some complaints are also settled.

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[13] *Free and Equal in Dignity and Rights, Annual Report 1997-98*, Saskatchewan Human Rights Commission, Table 2 – "Number and Disposition of Complaints in Investigations Unit in 1997-98 at p. 22 and Table 3 – "Number and Disposition of Complaints in Legal Unit in 1997-98"at p. 23

[14] Table 2 – "Files opened during period"

[15] Table 2 – "Total dispositions at intake"

[16] Table 2 – "Total dispositions at investigation stage" - the number of formalized complaints includes some that would have been carried over from the previous year.

[17] Table 2 – "Probable cause"

[18] Table 2 – "No probable cause"

[19] Table 3 – Complaints carried into reporting period" plus "Complaints forwarded to legal unit following probable cause determination".

[20] Table 3 – "Total dispositions during period"

[21] Table 3 – "Substantiated by board of inquiry" and "Dismissed by board of inquiry"

42. Of the 227 cases disposed of by the Commission in the reporting year 1997-98[22], 115 were dismissed at one of these stages and another 51 were not pursued for a total number of 166 or 73%. Another 23% or 53 were disposed of by settlement or withdrawn because of a favourable outcome (settled outside SHRC process).

43. Of the 227 cases referred to above, a total of 219 complaints or 96.5% were resolved without an adjudication. From the complainant's perspective, only about one in four of the 219 complaints were concluded with a satisfactory result (either settled or withdrawn-favourable). The remaining three-quarters of the complaints were all terminated at a stage when the complainant did not have access to an open forum. The 4 complaints that were resolved as a result of a board of inquiry decision constitute only 1.6% of all complaints disposed of. This is clearly not a scheme that favours the adjudicative process. It does not provide a complainant with ready access to an adjudication of her quasi-constitutional rights.

44. The statistics reported in previous years is consistent with the statistics for 1997-98. In the year 1996-97[23], 70.4% of complaints were either dismissed by the Commission or withdrawn by the complainant. Only 5% of complaints were decided by a board of inquiry and 20.2% were settled.

45. In summary, Commissions do play a critical role in providing complainants with the investigative and legal resources necessary to prove an allegation of discrimination. But, before Commissions are allowed to provide these resources they must themselves determine the validity of the allegations before them and they must do so within the context of a statutory process. Commissions are placed in the unenviable position of being the gatekeepers to the adjudication process, through the administration of cumbersome procedures.

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[22] The 227 is comprised of "Total dispositions at intake" plus "Total dispositions at the investigative stage" minus "Probable cause" found at the investigative stage (all from Table 2), plus "Total dispositions during this period" in Table 3. Probable cause complaints are subtracted because they are not finally disposed of. They are passed on to the legal unit and are included in that unit's statistics in Table 3.

[23] *Protecting Human Rights for 25 Years: 1972 – 1997, Annual Report 1996-97*, Saskatchewan Human Rights Commission at p. 28, Table 5 – "Disposition of Complaints at All Stages of Processing in 1996-97

46. The tests that the SHRC and other commissions must apply necessarily causes delays as the Commissions must treat their own procedures as adjudicative in nature. In the process of determining "reasonable grounds", and "probable cause", of attempting to effect a settlement and of determining whether a "formal inquiry should be directed", Commission staff must act fairly. Parties must know how the Commission intends to act, and on what information, and they must be given a reasonable opportunity to respond. To apply principles of fairness at the investigative stage is cumbersome and can be particularly problematic for commissions with limited resources.

47. The cumbersome procedures that delay the final resolution of human rights complaints do not benefit complainants but are, in fact, the price complainants pay for the investigative and adjudicative services offered by Commissions. The beneficiaries of these procedures are respondents. The procedures protect them from the adjudicative process in a large majority of the cases.

B. Delays in proceeding with complaints under human rights legislation do not convert civil allegations of sexual harassment into an infringement of liberty and security of the person

48. The respondent, Blencoe, does not argue that the allegations of sexual harassment, in themselves, or the procedures through which they are processed, infringe liberty and security of the person, but rather that the problem is 'state caused delay". The respondent states at paragraph 25[24]:

> The Commission characterizes human rights processes and human rights legislation as remedial and not punitive. That may be so assuming complaints under such legislation are pursued in a timely way. But, when the Commission is responsible for unreasonable delay, the remedial purpose of such legislation is quickly thwarted and the proceeding as a matter of substance becomes punitive.

and at paragraph 43:

> That is not our submission; it is this: that state caused delay can be and in this case was sufficient cause that Blencoe's liberty and security of the person was

[24] Respondent's Factum

deprived and since that delay was **unreasonable** (ie. inordinate and without good reason) it is a deprivation that cannot be in accordance with fundamental justice.

Fundamental to Blencoe's argument is the unsubstantiated assertion that the Commission is responsible for the delays and that these delays were unreasonable.

49. As stated above, the work of compiling evidence and preparing for a formal inquiry has little to do with the complex procedures that cause delays in the human rights process. Delays arise because of the administrative steps that the SHRC and other commissions must go through in order to comply with the mandatory safeguards that restrict access to the adjudicative process.

50. If:

a. an allegation of discrimination, as such, and an investigation into the allegation does not infringe liberty and security of the person (as the respondent seems to concede) and

b. the purpose of these procedures is to provide the respondent with what amounts to a complex preliminary hearing which in the large majority of the cases will prevent complaints from ever proceeding to an adjudicative stage before a tribunal or board,

then the delays brought about by these procedures do not infringe the liberty and security of the very persons the procedures are designed to protect. This is particularly true when the respondent has chosen to avail himself of the safeguards in the procedures as did Blencoe.

51. Any harm to a person's stature within their family and community that results from public scrutiny is not exacerbated by the delays occasioned by human rights proceedings. In fact, the procedures are designed to protect against such harm. Public hearings are avoided and the privacy of the respondent is protected in any situation where the facts, in the opinion of the Commissioner (in B.C.), do not warrant a tribunal hearing.

52. If this Court determines that delays of this nature violate the right to liberty and security of the person, Commissions across the country will be unable to devote the time needed to ensure that the safeguards available to respondents are properly adhered to. There would, in fact, be fewer protections and greater interference with the rights of respondents.

C. If liberty and security of the person are affected by over-long exposure to allegations of sexual harassment, delays such as occurred in this case are in accordance with principles of fundamental justice.

53. If the delays result from the cumbersomeness of the procedures themselves, then they are not "state caused", in the sense that the delay as such does not result from state action or inaction. Certainly, the state enacts the procedures, but Blencoe does not attack the procedures, as such. He concedes them to be remedial and not punitive. But, the fact that the procedures themselves require certain steps toward settlement, fairness in the investigative procedure, and adjudication almost on the same level as an adjudication before a tribunal, ensure that there will be considerable delays.

54. McEachern, C.J.B.C. accepted the proposition that delay brought about by Blencoe's reliance on the procedures available to him should be included when determining the length of the delay[25]. With respect, this is erroneous. In the context of the purpose of the procedures outlined above, it cannot be said that the time taken for this purpose should be included.

55. In *R. v. Mills*[26], Lamer, C.J.C. established the factors to be taken into account when considering whether a delay is reasonable. The third factor listed is "the time requirements inherent in the nature of the case". In *Kodellas*, Vancise, J.A. interpreted this factor, in the human rights context as being " Whether the delay is *prima facie* unreasonable. Here one must consider the inherent or normal time constraints of a process of the nature being considered."[27]

56. Given that much of the time taken in this case was for the purpose of providing Blencoe with the legal protections to which he was entitled under the *B.C. Code*, that he chose to rely on those protections and that they are built in to the legislation, which Blencoe does not attack, the time taken was not unreasonable and did not constitute a delay. The B.C. Commission is not guilty of "state caused delay". It is guilty only of administering the procedures assigned to it.

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[25] C.A. Judgment at para. 46
[26] [1986] 1 S.C.R.863 at 926
[27] *supra*, f.n. 2 at 179

57. In conclusion, having regard to the reasons why the processing of Blencoe's complaint took as long as it did, it cannot be said that the delay was unreasonable. As Blencoe's argument, that the delay was not in accordance with principles of fundamental justice, is based on the assumption that the delay was unreasonable, Blencoe's argument fails.

D. Assuming that s. 7 is applicable to complaints under human rights legislation, the decisions in *Blencoe* and *Kodellas* fail to balance the rights of complainants, the alleged victims of sexual harassment, with the rights of respondents alleged to have engaged in sexual harassment, and thus fail to achieve a remedy which is "appropriate and just" under s. 24 of the *Charter*

58. In this case, the cumbersome procedures designed to safeguard respondents from unlimited exposure to the adjudicative process have resulted in delays that are said to violate the rights of respondents, such that complainants must be left without a determination of their allegations. The terrible irony for the complainants in this argument is that their quasi-constitutional rights would go unresolved because of delays built into the system for which they are in no way responsible and from which they gain no benefit. They are defeated by the processes that safeguard the rights of respondents.

59. The Courts of Appeal in both *Kodellas* and *Blencoe* were sympathetic to the unsatisfactory result for complainants. But in *Blencoe*, McEachern, C.J.B.C. did not perceive a stay of the complaint process as resulting in a denial of fundamental rights. He viewed the complainants' rights as "concerns" that had to give way to Blencoe's "legal rights". He states[28]:

> Having said that, I wish to add that I have not overlooked the interests of the complainants. They, of course, are anxious to have their complaints determined. In such matters the law cannot accommodate everyone, and regrettable as it may be, **the legal rights of a party must be given precedence over the concerns of others.** This is not to say that the complainants are not entitled to every consideration. Unfortunate as it may be, however, their right to have their cases heard were not absolute rights, and were subject to the legal rights of the appellant to have the case against him heard within a reasonable time. The conclusion I have reached regarding that question in no way reflects adversely upon the complainants nor does it represent any lack of concern for their views which, as I have said, must be subject to legal rights created by the law. (emphasis added)

[28] C.A. Judgment at para.39

With respect to the learned judge, the SHRC submits that he was wrong in relegating the rights of the complainants to a secondary level.

60. Of primary importance is the fact that the complaints are allegations of sexual harassment. It is only with respect to such allegations that it might be said that the respondent is accused of serious criminal activity. It is only with respect to such allegations that the respondent will clearly be subject to stigmatization and a loss of reputation in the community, to the extent where it might be argued that the liberty and security of the person are affected. All of *Blencoe*, *Kodellas* and *Nisbett* relate to allegations of sexual harassment.

61. Sexual harassment, particularly where a sexual assault is involved, is regarded by society as a grievous attack on the dignity of women and a most serious barrier to equality in the work place. This is precisely why it attracts such stigmatization. But, if this is true, then the very reason that Blencoe's dignity is said to be offended is the recognition by society of the extreme harm his alleged conduct is said to have caused. It is unjust and totally inappropriate to remedy the arguable infringement of Blencoe's rights at the expense of the victims of this unacceptable harm.

62. If the decision of the Court of Appeal is upheld, complaints of sexual harassment will be placed in jeopardy of being stayed in any situation where cumbersome investigation procedures combine with practical circumstances to delay referral to an adjudication. As sexual harassment is a form of gender discrimination suffered almost exclusively by women, a result which impedes access to the human rights adjudicative process by victims of sexual harassment denies women the equal benefit of the law and is contrary to s. 15 of the *Charter*.

63. In *Andrews v. Law Society of British Columbia*[29], McIntyre, J. recognized the importance of s. 15 as a tool to interpret other sections of the Charter. He states at page 185:

> The s. 15(1) guarantee is the broadest of all guarantees. It applies to and supports all other rights guaranteed by the *Charter*.

[29] [1989] 1 S.C. R. 143

64. In *New Brunswick (Minister of Health and Community Services v. G. (J.) [J.G.]*[30], L'Heureux-Dubé, J. noted the above comment and recognised the importance of s. 15 specifically in relation to s. 7. At para. 112 she states:

> All *Charter* rights strengthen and support each other ... and s. 15 plays a particularly important role in this process. The interpretive lens of the equality guarantee should therefore influence the interpretation of other constitutional rights where applicable, and in my opinion, principles of equality guaranteed by both s. 15 and s. 28, are a significant influence on interpreting the scope of protection offered by s. 7.

65. A result which would prevent adjudications only in relation to sexual harassment does violate s. 15 of the *Charter*. This Court has established that a denial of equality with respect to the statutory protections of human rights is a denial of substantive equality under s. 15*: Vriend v. Alberta (Human Rights Commission)*[31]. In *Vriend*, the Court found that the (Alberta) *Individual Rights Protections Act*[32] was underinclusive in that it did not prohibit discrimination on the basis of sexual orientation. Cory, J. describes the violation of s. 15 as follows[33]:

> It is clear that the IRPA, by reason of its underinclusiveness, does create a distinction. The distinction is simultaneously drawn along two different lines. The first is the distinction between homosexuals, on one hand, and other disadvantaged groups which are protected under the Act, on the other. Gays and lesbians do not even have formal equity with reference to other protected groups, since those other groups are explicitly included and they are not.
>
> The second distinction, and, I think, the more fundamental one, is between homosexuals and heterosexuals. This distinction may be more difficult to see because there is, on the surface, a measure of formal equality: gay or lesbian individuals have the same access as heterosexual individuals to the protection of the IRPA in the sense that they could complain to the Commission about an incident of discrimination on the basis of any of the grounds currently included. **However, the exclusion of the ground of sexual orientation, considered in the context of the social reality of discrimination against gays and lesbians, clearly has a disproportionate impact on them as opposed to heterosexuals. Therefore, the IRPA in its underinclusive state denies substantive equality to the former group.** (Emphasis added)

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[30] [1999] S.C.J. No. 47
[31] [1998] 1 S.C.R. 493
[32] S.A. 1972 [am. 1980, c.27], c.2
[33] supra, f. n. 31, at 541-42

66. The reasoning in *Vriend*, in relation to substantive equality, is directly transferable to this case. A stay of proceedings would deny substantive equality to women. The magnitude of the problem of sexual harassment and its particular effect on women was recognized by this Court in *Janzen v. Platy Enterprised Ltd.*[34]. Dickson, C.J.C. commented:

> Sexual harassment is a demeaning practice, one that constitutes a profound affront to the dignity of the employees forced to endure it. By requiring an employee to contend with unwelcome sexual actions or explicit sexual demands, sexual harassment in the workplace attacks the dignity and self-respect of the victim both as an employee and as a human being.
>
> Perpetrators of sexual harassment and victims of the conduct may be either male or female. However, in the present sex-stratified labour market, those with the power to harass sexually will predominately be male and those facing the greatest risk of harassment will tend to be female.

67. If women are prevented from pursuing their allegations of sexual harassment and impeded in their access to the adjudicative process designed to protect their quasi-constitutional right to be free from sexual harassment, they are denied substantive equality with men who are protected from gender discrimination but who do not suffer from sexual harassment to the same extent as women.

68. Preferring Blencoe's "legal rights" to protect his reputation in the community, over the right to pursue equality and protection against discrimination is not simply to prefer "legal" rights over the "concerns" of women. It is to prefer the right to reputation and status over the right to seek remedies for a grievous form of gender discrimination against women. If s. 15 is to have any influence in this case, protection of Blencoe's reputation should not be considered a fundamental *Charter* right that overrides the right of the complainants to seek equality and justice.

E. Conclusion

69. It is true that human rights commissions do investigate complaints and that they are empowered to do so by the legislation they administer. But delays in the process whereby a

complainant gets from the point where she files a complaint of sexual harassment to the point where she attempts to prove her complaint in a public forum, result not from the investigation, but from the "weeding out" process Commissions must go through. This process benefits respondents and not complainants.

70. If the complaint and the investigation, alone, do not engage section 7 of the *Charter*, then delays brought about by giving the respondent the benefit of the "weeding out" process cannot be said to create a violation of section 7. If anyone's *Charter* rights are violated by delays in process it is the right of the female complainant to equal access to the human rights process.

10

71. The delays in human rights process are in accordance with principles of fundamental justice (at least, from the respondent's perspective) and it would be unjust and inappropriate to take away the complainant's right to an adjudication as a result of these delays.

PART IV – ORDER REQUESTED

72. The Saskatchewan Human Rights Commission respectfully requests that the appeal be allowed and the order for a stay be quashed.

20 **ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 7th DAY OF DECEMBER, 1999**

Milton Woodard, Q.C.
Counsel for the Intervener,
Saskatchewan Human Rights Commission

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[34] [1989] 1 S.C.R.1252 1284h

PART V – TABLE OF AUTHORITIES

Pages in Factum where cited

STATUTES, REGULATIONS AND POLICIES

CASES

FREE *and* EQUAL *in* DIGNITY *and* RIGHTS

Saskatchewan Human Rights Commission

Annual Report

1997/98

June 30, 1998

The Honourable John T. Nilson, Q.C.
Minister of Justice
Legislative Building
Regina, Saskatchewan
S4S 0B3

Dear Minister Nilson:

In accordance with section 49 of *The Saskatchewan Human Rights Code*, it is my privilege to submit to you the 1997-98 Annual Report of the Saskatchewan Human Rights Commission for presentation to the Legislative Assembly of Saskatchewan.

This report reflects the activities of the Commission from April 1, 1997 to March 31, 1998.

Sincerely,

Donna Scott

Donna C. Scott
Chief Commissioner and Director

Table 2 - Number and Disposition of Complaints in Investigation Unit in 1997-98

Complaints carried into reporting period[1]	**166**
Files opened during period	207
Disposition at intake	
No reasonable grounds/no jurisdiction	59
Withdrawn (favourable)	6
Withdrawn (not pursued)	37
Settled (informal)	3
Application forms review	4
Total dispositions at intake	109
Formalized for investigation during period	90
Disposition at investigative stage	
Withdrawn (favourable)	10
Withdrawn (not pursued)	12
Early resolution	17
No probable cause	55
Probable cause	28
Total dispositions at investigative stage	122
Total dispositions during period	231
Complaints carried forward to next period[2]	**142**

[1] This figure represents the number of files being worked on by the investigation unit at the end of March 1997.

[2] This figure represents complaints carried into reporting period plus files opened during period less total dispositions during period.

Table 3 - Number and Disposition of Complaints in Legal Unit in 1997-98

This table reports on complaints forwarded to the staff solicitor following a probable cause determination.

Complaints carried into reporting period[1]	35
Complaints forwarded to legal unit following probable cause determination	28
Boards of inquiry held	9
Disposition	
Withdrawn	2
Dismissed by Commission	1
Settled	6
Settled after board of inquiry directed[2]	11
Substantiated by board of inquiry[3]	3
Dismissed by board of inquiry[4]	1
Total dispositions during period	24
Complaints carried forward to next period[5]	**39**

[1] This figure represents the number of files being worked on by the legal unit at the end of March 1997.

[2] This figure includes complaints settled by consent order issued by a board of inquiry.

[3] *Desjarlais v. Frammingham and Central Asphalt & Paving Inc.* (employment/race and ancestry), *Naqvi v. DOCL Enterprises Ltd.* (public services/race and ancestry), *Songhurst v. Lopez and Pruden* (employment/sex).

[4] *Roach v. Mazza and Sardi's Restaurant Inc.* (employment/sex[harassment]). This complaint was dismissed without hearing evidence because the complainant did not wish to proceed.

[5] This figure represents complaints carried into the reporting period plus complaints referred to unit during reporting period less total dispositions during period.

Annual Report 1996-97

Protecting human rights for 25 years: 1972-1997

SASKATCHEWAN
HUMAN RIGHTS
COMMISSION

June 30, 1997

The Honourable John T. Nilson, Q.C.
Minister of Justice
Legislative Building
Regina, Saskatchewan
S4S 0B3

Dear Minister:

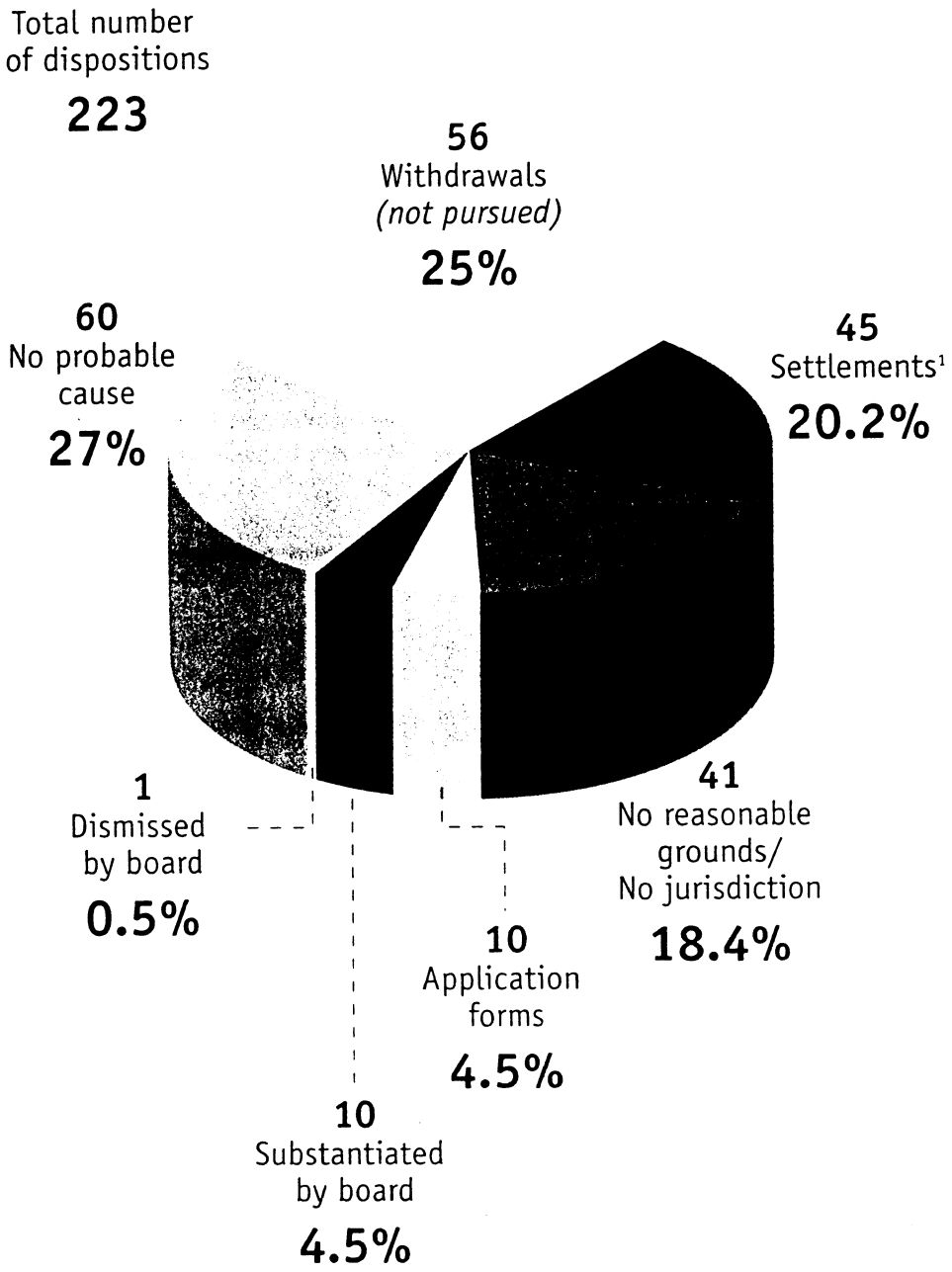
In accordance with section 49 of *The Saskatchewan Human Rights Code*, it is my privilege to submit to you for presentation to the Legislative Assembly of Saskatchewan, the 1996–97 Annual Report of the Saskatchewan Human Rights Commission.

Sincerely,

Donna Scott

Donna C. Scott

Table 5 - Disposition of Complaints at All Stages of Processing in 1996-97



[1] Includes settlements in the following categories: informal, early resolution, post-determination and favourable withdrawals.

The Saskatchewan Human Rights Code

being

Chapter S-24.1 (effective August 7, 1979) as amended by the *Statutes of Saskatchewan, 1980-81,* c.41 and 81; 1989-90, c.23 and 1993, c.55 and 61.

Discrimination prohibited in employment

16(1) No employer shall refuse to employ or continue to employ or otherwise discriminate against any person or class of persons with respect to employment, or any term or condition of employment, because of his or their race, creed, religion, colour, sex, sexual orientation, family status, marital status, disability, age, nationality, ancestry, place of origin or receipt of public assistance.

(2) No employment agency shall discriminate against any person or class of persons because of his or their race, creed, religion, colour, sex, sexual orientation, family status, marital status, disability, age, nationality, ancestry, place of origin or receipt of public assistance in receiving, classifying, disposing of or otherwise acting upon applications for its service or in referring an applicant or applicants to an employer or anyone acting on an employer's behalf.

PART IV
COMPLAINTS

Complaints

27(1) Any person who has reasonable grounds for believing that any person has contravened a provision of this Act, or any other Act administered by the commission, in respect of a person or class of persons, may file with the commission a complaint in the form prescribed by the commission.

(2) Where a complaint is made by a person, other than the person who it is alleged was dealt with contrary to the provisions of this Act, or any other Act administered by the commission, the commission may refuse to act on the complaint unless the person alleged to be offended against consents.

(3) Where the commission has reasonable grounds for believing that any person has contravened a provision of this Act, or any other Act administered by the commission, in respect of a person or class of persons, the commission may initiate a complaint.

(4) Where, at any time, including during the course of any inquiry pursuant to this Act, the commission, or any person designated by the commission, is satisfied that a complaint is without merit, the commission or its designate may dismiss the complaint.

1979, c.S-24.1, s.27; 1980-81, c.81, s.2.

Inquiry into a complaint

28(1) Where a complaint is filed with, or initiated by, the commission, the commission, or any person designated by the commission, shall, subject to subsection 27(4), inquire into the complaint and endeavour to effect a settlement of the matter.

(2) Where a complaint is filed with the commission, the matter shall be considered settled for the purposes of this Act only if the commission is a party to the settlement and has agreed to its terms.

(3) Where a settlement is effected in accordance with subsection (2) or a decision or order is made under section 31 by a board of inquiry, the commission may, in its discretion, publicize in any manner the results of the settlement, decision or order.

(4) to (8) **Repealed.** 1989-90, c.23, s.17.

1979, c.S-24.1, s.28; 1989-90, c.23, s.17.

Search and seizure

28.1(1) For the purposes of inquiry pursuant to subsection 28(1):

(a) the commission; or

(b) any person authorized by the commission;

may, with the consent of the owner or occupier, enter into any premises that in the opinion of the commission or the person authorized by the commission may provide information relating to the inquiry.

(2) Where permission to enter a premises is denied by an owner or occupier pursuant to subsection (1), the commission or any person authorized by the commission shall not enter into the premises unless authorized to do so by a warrant issued pursuant to subsection (3).

(3) A justice of the peace or judge of the Provincial Court of Saskatchewan, if satisfied by information on oath that access to premises is required for the purposes of an inquiry pursuant to section 28(1) may issue a warrant authorizing the commission or a person authorized by the commission to enter and view those premises.

(4) Every warrant issued pursuant to subsection (3) shall be executed between sunrise and sunset unless the judge otherwise directs.

(5) For the purposes of an inquiry pursuant to subsection 28(1), the commission or any person authorized by the commission may at any reasonable time:

(a) require the production of books, documents, correspondence, records or other papers that related or may relate to the complaint;

(b) make any inquiries relating to the complaint, of any person, in writing or orally; and

(c) subject to subsection (6), on giving a receipt for books, documents, correspondence, records or other papers, remove any books, documents, correspondence, records or other papers examined pursuant to this section for the purpose of making copies or extracts of those books, documents, correspondence, records or other papers.

(6) The commission or any person authorized by the commission shall:

(a) carry out the copying of books, documents, correspondence, records or papers removed pursuant to clause (5)(c) with reasonable dispatch; and

(b) promptly return the books, documents, correspondence, records or papers after the copying to the person who produced or furnished them.

(7) Where any person has refused or failed to comply with a demand, requirement or request pursuant to subsection (5), the commission or any person designated by the commission on application *ex parte*, may request a justice of the peace or a judge of the Provincial Court of Saskatchewan to grant an order requiring that person to immediately produce those items to the Commission or its designate, and the judge may make any other order that he considers necessary to enforce the provisions of subsection (5).

(8) No person shall hinder, obstruct, resist, molest or interfere with the commission or any person designated by the commission, or attempt to hinder, obstruct, resist, molest or interfere with the commission or its designate, in the investigation of a complaint under this Act or any other Act administered by the commission.

1989-90, c.23, s.18.

Board of inquiry

29(1) Where the commission, or a person conducting an inquiry on behalf of the commission, is unable to effect a settlement of the matter complained of, the commission shall report to the minister and, in its discretion, may direct a formal inquiry into the complaint to hear and decide the matter or, in the absence of a direction by the commission, the minister may direct such a formal inquiry.

(2) A board of inquiry shall consist of one or more persons appointed by the minister to hear and decide the complaint.

(3) Immediately after the appointment of a board of inquiry, the minister shall communicate the names of the members of the board to:

(a) the commission; and

(b) the parties mentioned in clauses 30(1)(b), (c) and (d);

and thereupon it shall be conclusively presumed that the board was appointed in accordance with this Act.

(4) The members of a board of inquiry appointed under this section shall receive any remuneration for their services and allowances for travelling and other expenses that the Lieutenant Governor in Council may determine.

1979, c.S-24.1, s.29.

Parties to proceeding

30(1) The parties to a proceeding before a board of inquiry with respect to any complaint are:

(a) the commission, which shall have the carriage of the complaint;

(b) the person named in the complaint as the complainant;

(c) any person named in the complaint who is alleged to have been dealt with contrary to the provisions of this Act;

(d) any person named in the complaint who is alleged to have contravened this Act; and

(e) any other person specified by the board, upon any notice that the board may determine and after such person has been given an opportunity to be heard against his joinder as a party.

(2) A true copy of the complaint shall be annexed to the notice of the hearing that is given to any party other than the commission.

1979, c.S-24.1, s.30.

Procedure on inquiry

31(1) Subject to any guidelines for formal inquiries that may be established by the commission and to subsections (2) and (3), a board of inquiry may determine its own procedure and may receive and accept any evidence and information on oath, affidavit or otherwise that in its discretion it considers fit and proper, whether admissible as evidence in a court of law or not, and the board of inquiry and each member thereof has all the powers conferred upon commissioners by sections 3 and 4 of *The Public Inquiries Act*.

(2) The oral evidence taken before a board of inquiry shall be recorded.

(3) Without restricting the generality of subsection (1), a board of inquiry shall, on a formal inquiry, be entitled to receive and accept evidence led for the purpose of establishing a pattern or practice of resistance to or disregard or denial of any of the rights secured by this Act, and the board of inquiry shall be entitled to place any reliance that it considers fit and proper on such evidence and on any pattern or practice disclosed thereby in arriving at its decision.

(4) Counsel for the commission is entitled to participate in any formal inquiry in the same manner as counsel representing any party thereto, including the right to call, examine and crossexamine witnesses and to address the board of inquiry.

(5) The board of inquiry shall inquire into the matters complained of and give full opportunity to all parties to present evidence and make representations, through counsel or otherwise.

(6) Where, at the conclusion of an inquiry, the board of inquiry finds that the complaint to which the inquiry relates is not substantiated, it shall dismiss the complaint.

(7) Where, at the conclusion of an inquiry, the board of inquiry finds that the complaint to which the inquiry relates is substantiated on a balance of probabilities, the board may, subject to subsections (9), (9.1) and (10), order any person who has contravened any provision of this Act, or any other Act administered by the commission, to do any act or thing that in the opinion of the board constitutes full compliance with that provision and to rectify any injury caused to any person and to make compensation therefor, including, without restricting the generality of the foregoing, an order:

(a) requiring that person to cease contravening that provision and, in consultation with the commission on the general purposes thereof, to take measures, including adoption of a program mentioned in section 47, to prevent the same or similar contravention occurring in the future;

(b) requiring that person to make available to any person injured by that contravention, on the first reasonable occasion, any rights, opportunities or privileges that, in the opinion of the board of inquiry, are being or were being denied the person so injured and including, but without restricting the generality of this clause, reinstatement in employment;

(c) requiring that person to compensate any person injured by that contravention for any or all of the wages and other benefits of which the person so injured was deprived and any expenses incurred by the person so injured as a result of the contravention;

(d) requiring that person to make any compensation that the board of inquiry may consider proper, to any person injured by that contravention, for any or all additional costs of obtaining alternative goods, services, facilities or accommodation and any expenses incurred by the person so injured as a result of the contravention.

(8) Where a board of inquiry finds that:

(a) a person has wilfully and recklessly contravened or is wilfully and recklessly contravening any provision of this Act or any other Act administered by the commission; or

(b) the person injured by a contravention of any provision of this Act or any other Act administered by the commission has suffered in respect of feeling or self-respect as a result of the contravention;

the board of inquiry may, in addition to any other order it may make under subsection (7), order the person who has contravened or is contravening that provision to pay any compensation to the person injured by that contravention that the board of inquiry may determine, to a maximum of $5,000.

(9) Where:

(a) an inquiry is based on a complaint regarding discrimination on the basis of disability; and

(b) the board of inquiry finds that the complaint is substantiated but that the premises, facilities or services of the person found to be engaging or to have engaged in discrimination:

(i) impede physical access to the premises, facilities or services by; or

(ii) lack proper amenities for;

persons suffering from the disability that was the subject of the inquiry;

the board of inquiry shall make an order so indicating and include in the order any recommendations that it considers appropriate.

(9.1) Where the person found to be engaging in or to have engaged in the discrimination establishes that the cost or business inconvenience that would be occasioned in the provision of those amenities or physical access would constitute, in the opinion of the board, an undue hardship, the board of inquiry shall not make an order pursuant to subsection (7).

(10) No order made under subsection (7) shall contain a term:

(a) requiring the removal of an individual from a position if that individual accepted employment in that position in good faith; or

(b) requiring the expulsion of an occupant from any housing accommodation if the occupant attained that housing accommodation in good faith.

(11) Where there are more than two members of a board of inquiry, a decision of the majority of the members of the board is the decision of the board, but, in the absence of a decision of the majority, the decision of the chairperson is valid and binding.

(12) No member of a board of inquiry hearing a complaint shall have taken part in any investigation or consideration of the complaint prior to the hearing or shall communicate directly or indirectly in relation to the complaint with any person or his representative except upon notice to all parties and opportunity for all parties to participate, but the board may seek legal advice independent of the parties and in that case the nature of the advice shall be made known to the parties in order that they may make submissions as to the law.

1979, c.S-24.1, s.31; 1989-90, c.23, s.19.

Appeals

32(1) Any party to a proceeding before a board of inquiry may appeal on a question of law from the decision or order of the board to a judge of the Court of Queen's Bench by serving a notice of motion, in accordance with The Queen's Bench Rules, within thirty days after the decision or order of the board of inquiry, on:

(a) the board of inquiry;

Saskatchewan Regulations under *The Saskatchewan Human Rights Code*

being

Saskatchewan Regulation 216/79 as amended by Saskatchewan Regulations 258/79 and 9/91.

Settlement of complaints

10 If the Inquiry Officer determines after preliminary investigation that probable cause does exist for crediting the allegations of the complaint, he shall report his recommendations to the Director or Assistant Director.If the Director or Assistant Director concurs with the recommendations of the Inquiry Officer, the Inquiry Officer, or the Inquiry Officer and the Director or Assistant Director shall attempt to settle the complaint. If a complaint subsequently proceeds to a formal inquiry, no testimony shall be given or received concerning any offers or counter-offers made in an effort to settle any complaint.

10 Aug 79 SR 216/79 s10.

Board of Inquiry

19(1) The case in support of the complaint shall be presented before the Board of Inquiry by the Commission. The complainant or his counsel may also present any case in support of the complaint.