



Reviewing Newfoundland and Labrador's *Human Rights Code*

December 10, 2008

Government of Newfoundland and Labrador
Department of Justice

Message from the Minister



Respect for the dignity and worth of every individual is a supreme human right. It is essential that each and every individual have a right to equal treatment, whether before the courts, in their employment, or in the receipt of public services.

The *Human Rights Code* is one of the most important Acts of the Legislature of Newfoundland and Labrador because it provides protection from discrimination. The review of the current *Human Rights Code* is aimed at protecting all individuals in this province from all forms of discrimination.

The input provided by Newfoundlanders and Labradorians, through this process, will shape the new *Human Rights Code*. Only by hearing your thoughts, concerns, and comments can we have a new, comprehensive, all-encompassing set of laws that apply to the dynamics of our changing society.

I encourage you to take the time to review this Discussion Paper and share your thoughts and views with this Government. Your feedback is essential and will shape the future human rights system in Newfoundland and Labrador, a legacy for the generations to come.

Thomas W. Marshall, Q.C.
Minister of Justice and Attorney General

Table of Contents

Introduction.....	4
International Human Rights Obligations.....	6
Human Rights in Newfoundland and Labrador.....	7
What is the <i>Human Rights Code</i> ?.....	7
What is the <i>Human Rights Commission</i> ?.....	7
What is the <i>Board of Inquiry</i> ?.....	9
Human Rights Reform in Newfoundland and Labrador.....	9
Why consult on a new <i>Human Rights Code</i>?.....	11
How Can I Participate?.....	13
Consultation Questions.....	14

Introduction

**“All human beings are born free and equal in
dignity and rights.”**

Article 1, Universal Declaration of Human Rights

The *Human Rights Code* is the key legislative means by which individuals are protected against racism, sexism, and other forms of discrimination. A significant feature of human rights legislation is that anti-discrimination protection is achieved through an administrative process rather than through judges and courts.

Newfoundland and Labrador passed its first *Human Rights Code* in 1969 and it came into force on September 1, 1971. It has been amended several times since to improve administrative procedures and enhance human rights protections offered to individuals in this province.

Over the years, members of the general public and human rights advocacy groups have expressed concerns about the functioning and effectiveness of the current human rights system in Newfoundland and Labrador. Not surprisingly given the diversity of these stakeholders, a wide range of views, on a variety of issues, has been expressed at different times.

It is essential for the effective functioning of a human rights system that it has the confidence of the general public and special interest stakeholder groups. The Government of Newfoundland and Labrador is committed to building a better human rights system and effectively combatting discrimination. The question is how do we do this?

In reforming the existing law, the Government of Newfoundland and Labrador must protect the critical elements of the *Human Rights Code* while at the same time creating progressive change. The new *Human Rights Code* must recognize and promote the values of equality, diversity, respect, inclusiveness. These are essential to protecting the dignity and worth of individuals.

The Government of Newfoundland and Labrador has three key objectives in undertaking this reform:

1. **Updating** the *Human Rights Code* to ensure it reflects our society's changing values;
2. **Protecting** the critical elements of the existing system; and
3. **Ensuring** the efficiency and effectiveness of the complaints process.

In order to guide our reflection in these areas, the Government of Newfoundland and Labrador, led by the Department of Justice, is inviting public input on the issues set out in this paper.

International Human Rights Obligations

After World War II, it became apparent to the international community that steps were needed to ensure that the horrific abuses of human rights, such as the horrors of war and the Holocaust, did not happen again. As a result, the adoption of formal charters proclaiming fundamental rights and freedoms occurred at both the national and international levels.

In 1948, the *Universal Declaration of Human Rights* (the "Declaration") was adopted and proclaimed by the General Assembly of the United Nations. The Declaration sets out a common human rights standard that "all peoples and all nations" will strive to achieve. In the Declaration, to which Canada is a signatory, Member States affirm their faith "in the inherent dignity and the equal and inalienable rights of all members of the human family." According to the Declaration, when fundamental rights are violated, the affected party "has the right to an effective remedy by the competent national tribunals."

Newfoundland and Labrador's initial *Human Rights Code*, passed in 1969, included a reference to the *Universal Declaration of Human Rights* in its preamble. While this reference no longer exists in the current *Human Rights Code*, Canada's international human rights obligations pursuant to the Declaration, along with the Newfoundland and Labrador *Human Rights Code*, and the *Canadian Charter of Rights and Freedoms*, shape the human rights system in this province.

Human Rights in Newfoundland and Labrador

What is the *Human Rights Code*?

The *Human Rights Code* prohibits discrimination in the areas of employment, accommodation, services and publications. The enumerated grounds of discrimination in the *Human Rights Code* include: race, religion, creed, political opinion, national or social origin, sex, sexual orientation, marital status, family status, age and disability. The *Human Rights Code* takes precedence over other statutes where there is conflict.

Its provisions apply to government, private business and individuals. Parties alleging a violation of the *Human Rights Code* have twelve months in which to file a complaint with the Human Rights Commission.

One of the key features of the *Human Rights Code* is the creation of a simplified system that allows for the mediation, adjudication, and resolution of complaints through an administrative procedure without the need to go to court. The administrative process is run by the Newfoundland and Labrador Human Rights Commission.

What is the *Human Rights Commission*?

The Human Rights Commission was established by legislation in 1971 and reports to the Minister of Justice. Its mandate is the promotion, understanding and acceptance of, and compliance with, the *Human Rights Code*. The

legislation requires that the Commission have a complement of three or more members; however, the government usually appoints six commissioners, one of whom serves as chairperson and another who serves as vice-chairperson. Currently, the Commission is composed as follows: six commissioners, an Executive Director, legal counsel, and investigative and administrative staff.

Under the current legislation, the Commission is required to accept all complaints. The Commission receives complaints from the public and is charged with investigating them and, where appropriate, attempts to effect a settlement between the complainant and the subject of the allegations. Settlements are approved by the Commissioners prior to implementation. Where no settlement is reached, a report is made to the Commission which then decides whether to refer the complaint to a Board of Inquiry.

The *Human Rights Code* permits a complainant to apply to the Supreme Court of Newfoundland and Labrador, Trial Division, for an order requiring the Commission to forward his/her complaint to a Board of Inquiry. The *Human Rights Code* also permits a party to a Board of Inquiry to appeal the decision of the adjudicator to the Supreme Court Trial Division, however, the appellant must seek permission to start the appeal from the Court within 30 days of receiving the Board's order.

What is the *Board of Inquiry*?

Cases that cannot be resolved informally are referred to a judicial-style Board of Inquiry, which decides disputed questions of fact and law and which exercises broad remedial powers.

A Board of Inquiry is a formal public hearing where the complainant and the respondent present their arguments before an Adjudicator. The Human Rights Commission presents the complaint to the board, but either party may be represented by legal counsel. The Adjudicator, after hearing all the evidence from the parties and witnesses, will determine if there has been a breach of the *Human Rights Code*. If there is a finding of breach, the Adjudicator has broad remedial powers which may include ordering that the respondent cease the breach, making available denied opportunities or privileges, or ordering compensation. The Adjudicator's decision is legally binding on the parties but is subject to appeal to the Trial Division of the Supreme Court.

Human Rights Reform in Newfoundland and Labrador

Since 1971, the *Human Rights Code* has been amended on a number of occasions over the years. In 1988, a Human Rights Code Review Committee recommended procedural and substantive amendments to the *Human Rights Code*. These procedural amendments were necessary to comply with the *Charter of Rights and Freedoms* and Federal Court decisions relating to procedural provisions in the Canadian *Human Rights Code*, which were similar to

this province's legislation at that time. As a result, the *Human Rights Code* was consolidated and a new procedure for the adjudication of complaints, particularly the Board of Inquiry system, was introduced.

In December 1996, the Human Rights Commission conducted public consultations to determine whether amendments to the *Human Rights Code* were necessary. The Commission presented a report to Government dated December 10, 1997, in which a number of amendments to the *Human Rights Code* were recommended. Below are a number of significant amendments which have been adopted by Government since 1997:

- elimination of the age restriction of 65 in employment;
- addition of sexual orientation, family status, and age as prohibited grounds of discrimination; and
- extension of the limitation period for filing a complaint from 6 months to 12 months.

Almost 40 years have passed since the *Human Rights Code* was passed in Newfoundland and Labrador and it has been 20 years since the last major reform took place. The Government of Newfoundland and Labrador believes that it is now time for a new *Human Rights Code*; one that reflects our changing society.

Why consult on a new *Human Rights Code*?

The Department of Justice, which has responsibility for the *Human Rights Code*, is committed to reviewing and strengthening Newfoundland and Labrador's human rights system. This Government is committed to ensuring discrimination and harassment free communities in the province.

The importance of human rights, both for individuals and for society at large, is at the forefront of the possible impacts of changes to the present *Human Rights Code* on everyone.

Everyone has a stake in the effective protection and advancement of human rights, whether as individuals potentially subjected to discriminatory behaviour; as employers and employees, service providers and housing providers; or as citizens impacted by the broad societal effects of prejudice.

A commitment to revitalizing this province's human rights legislation is a major undertaking. If reform is to be successful, it must be informed by a comprehensive understanding of how the system works, the breadth and interaction of the system's multiple functions, and the complexity of the challenges it currently faces. Given these considerations, the consultation process aims to:

- Clarify the principles and elements of an effective human rights system;
- Create an opportunity for a broad and balanced discussion on the issues;
- Ensure a transparent and open process leading to change; and
- Assist in the development of a progressive *Human Rights Code* for Newfoundland and Labrador.

The release of this Discussion Paper is the first step in a two step consultation process being conducted by the Department of Justice. The Discussion Paper is intended to provide a context and framework for public discussion on Newfoundland and Labrador's *Human Rights Code*.

The Discussion Paper will be posted on the Department of Justice website between December 10, 2008, and March 31, 2009, to provide all members of the general public and special interest stakeholder groups with the opportunity to share their thoughts on this issue.

Department of Justice officials will rely upon the contents of the Discussion Paper and Consultation Questions for the second step of the consultation process which will involve structured and targeted focus group sessions to be conducted, in Winter of 2009.

How Can I Participate?

Individuals are invited to respond to the Consultation Questions, either on line or in writing, by sending responses to the Department of Justice by mail, email, secure fax, or via Department of Justice's website at www.justice.gov.nl.ca/HumanRightsSubmissions prior to March 31, 2009. In addition, individuals and special interest stakeholder groups may forward any other additional comments or written submissions directly to the Department of Justice. These additional comments and submissions may be sent to:

**Department of Justice
Human Rights Consultations
Civil Division
4th Floor, East Block, Confederation Building
P.O. Box 8700
St. John's, NL A1B 4J6
Fax: (709) 729-2129
E-mail: HumanRightsConsultations@gov.nl.ca**

Should you have any questions about the consultation process, you may contact the Department of Justice at (709) 729-2034.

Consultation Questions

Privacy Notice

The only identifiable personal information collected by this website is information you give voluntarily and will be treated as confidential.

This information is collected in compliance with the *Access to Information and Protection of Privacy Act* and will only be used for the purpose of reviewing the *Human Rights Code*.

Any personal information you submit is secure once it reaches the government server. In transit between your computer and the server, however, it may not be secure.

If you choose not to use the Internet to provide personal information through this website, you may submit your responses to the Consultation Questions by fax, mail, or in person.

Responses to the consultation questions can be submitted at:

www.justice.gov.nl.ca/HumanRightsSubmissions