

# PLIAN'S NOTEBOOK

*Educating Newfoundlanders and Labradorians about the Law*

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Public Legal Information Association of NL

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## Human Rights

Imagine being informed that your child is unable to attend a school, because he/she uses a wheelchair and the building is four floors and is not equipped with chair lifts or elevators. Imagine once again that you are turned down for a promotion at work because you are a recently married female and your boss is afraid you will become pregnant and go on maternity leave.

In Canada, each province and territory has Human Rights laws which prevent you from being discriminated against because of certain grounds; disability and sex are two of these protected grounds.

## Executive Director's Message

Public Legal Information Association of NL (PLIAN) is a non-profit organization dedicated to educating Newfoundlanders and Labradorians about the law. We provide public legal education and information services with the intent of increasing access to justice.

This edition of PLIAN's newsletter focuses on Human Rights. The *Human Rights Code* of Newfoundland and Labrador protects people within our province against discrimination on the basis of the prohibited grounds set out in the legislation. The *Human Rights Code* takes precedence over other statutes where there is a conflict. Its provisions apply to government, private businesses and individuals.

The *Code* creates an administrative procedure that allows for the mediation, adjudication, and resolution of complaints without having to go to court.

The Government of Newfoundland and Labrador is planning to update the existing provincial human rights legislation. The government is undergoing a review as part of that reform process and has engaged in public consultations.

Newfoundland and Labrador's current *Human Rights Code* is available online via the House of Assembly website. Go to: <http://assembly.nl.ca/Legislation/sr/statutes/h14.htm>

We hope you enjoy this edition of PLIAN's Notebook. By focusing on this important topic, we are hoping that readers will become better informed about their rights and responsibilities.

Kristen O'Keefe  
 Executive Director

## Questions and Answers



### What is the purpose of the *Human Rights Code*?

The *Human Rights Code* is legislation by which individuals are protected against discrimination based on certain personal characteristics. These characteristics are called grounds. The Code's provisions apply to government, private business and individuals.

### What are the grounds of discrimination protected under the *Human Rights Code* in Newfoundland and Labrador?

- Race
- Religion
- Religious creed
- Political opinion
- Colour or ethnic origin
- National or social origin
- Sex
- Sexual orientation
- Marital status
- Family status
- Age
- Physical Disability
- Mental Disability

### What is discrimination?

The Supreme Court of Canada defines discrimination as a “distinction which, whether intentional or not but based on grounds relation to personal characteristics of the individual or group, has an effect which imposes disadvantages not imposed upon others or which withholds or limits access to other members of society.”

### In what circumstances does the *Human Rights Code* of Newfoundland and Labrador prohibit discrimination?

The *Human Rights Code* of Newfoundland and Labrador prohibits discrimination in several instances:

- Services and Facilities
- Dwelling Units
- Employment
- Publications

### What are examples of discrimination?

Examples of discrimination could include:

- Refusing to hire someone because of their sexual orientation
- Denying a promotion to an eligible employee because they are female
- Deciding not to rent an apartment to a person because of their race

### What is the Duty to Accommodate?

The duty to accommodate is the obligation to meaningfully incorporate diversity into the workplace. This duty requires employers to identify and eliminate rules that have a discriminatory impact. Accommodation means changing the rule or practice to incorporate alternative arrangements that eliminate the discriminatory barriers. This duty exists until the employer reaches the point of undue hardship.

## Laws Protecting Human Rights

International, Canadian and provincial laws all protect Human Rights for Canadians.

### International Laws

The Universal Declaration on Human Rights was adopted by the United Nations in 1948 and sets out the basic human rights as deemed important for all people. It sets out protection for: an adequate standard of living, legal rights, fundamental freedoms, democratic rights, and right to equal treatment. While the UN Declaration is known worldwide, it is hard to enforce as national law avails over international law, and it is a General Assembly declaration, not a treaty. However, other more powerful conventions or treaties have stemmed from what has been set out in the Declaration, which cover more specific rights, for example the Convention on the Rights of the Child, or Convention on the Rights of Persons with Disabilities.

### Canadian Laws

The *Canadian Charter of Rights and Freedoms* became a part of the Canadian Constitution in 1982. The rights granted by the *Charter* parallel for the most part rights set out in the Universal Declaration on Human Rights of the UN. The protected rights in the *Charter* are legal rights, fundamental freedoms, democratic rights and the right to equal treatment. A parallel to an adequate standard of living is not covered in the *Charter*.

The Federal Government also has the *Canadian Human Rights Act* and the Canadian Human Rights Commission. The *Canadian Human Rights Act* was passed by Parliament in 1977 and it protects persons from being discriminated against by any federally regulated employer or service provider on the basis of: race, colour, national or ethnic origin, religion, age, sexual orientation, sex, marital status, family status, physical or mental disability, or a pardoned criminal conviction.

### Provincial Laws

Each province and territory in Canada has provincial laws which protect people from certain grounds of discrimination. In Newfoundland and Labrador, the *Human Rights Code* came into effect on September 1st, 1971, establishing the Human Rights Commission for the province. The *Human Rights Code* of Newfoundland and Labrador has been amended several times since 1979 to ensure necessary improvements to the rights of the people of the province. The Human Rights Commission is an independent organization which ensures that the *Human Rights Code* is complied with. The Commission also has a duty to educate the public on the topic of human rights and it holds mediation and board of inquiry proceedings when violations occur.

## DID YOU KNOW?

- On January 28<sup>th</sup>, 1916, Manitoba became the first province to give women the right to vote.
- On August 14<sup>th</sup>, 1941 in Argentia Bay, NL, the Atlantic Charter, was issued bringing the world leaders a step closer to realizing the dream of the United Nations.
- In 1944, Ontario enacted the *Racial Discrimination Act*.
- In 1960, Canada's first attempt at a Human Rights Charter – the *Canadian Bill of Rights* was adopted by Prime Minister Diefenbaker's Government.
- The *Canadian Charter of Rights and Freedoms* was passed on April 17, 1982, with human rights becoming an official part of the Canadian identity.

### McEvoy v. Best of Care Ltd., et al.

For an individual to make a complaint about discrimination, the first step is to contact the Human Rights Commission within 12 months of the alleged discrimination having taken place. The Human Rights Commission will then attempt to help the parties involved in the complaint come to an agreement. If the parties are unable to come to an agreement, the next step in the Complaint process is for the Commissioners to decide if they want to refer the case to the Board of Inquiry.

In the case of McEvoy v. Best of Care Ltd., et al, Ms. McEvoy filed a complaint with the Human Rights Commission of Newfoundland and Labrador, alleging her employer, Best of Care Ltd., discriminated against her on the basis of sex, in regards to her pregnancy. Ms. McEvoy was employed in the household of Mr. Dalton, under a home support program, with her duty being to assist Mr. Dalton in his residence. When the Complainant (Ms. McEvoy) commenced her maternity leave on August 5, 2001, she advised the Dalton family that she would return to work on January 2, 2002. In her absence Best of Care Ltd. hired a replacement worker, Ms. Power, as a temporary worker. After on-going discussions, between Ms McEvoy and the Dalton family, Ms. McEvoy, was delayed in returning for work. On March 1, 2002, Mr. Dalton wrote a letter to Best of Care Ltd. stating that he wished to retain Ms. Power as his permanent caregiver, as he felt she provided him with a higher level of service. Ms. McEvoy alleged that by acceding to the wishes of a client and permanently hiring her maternity replacement, her employer, Best of Care Ltd., discriminated against her on the basis of her sex and pregnancy, contrary to section 9 of the *Human Rights Code*.

A Board of Inquiry decided that Ms. McEvoy had established a *prima facie* case of discrimination on the basis of her sex. It was established that both the Department of Health and Community Services and Best of Care Ltd. were both her employers and both therefore liable for damages.

The Board of Inquiry decision was appealed by the Crown to the Trial Division of the Supreme Court of Newfoundland and Labrador. The judge of the Trial Division concluded that the findings of the Board of Inquiry that Ms. McEvoy was discriminated against upon the prohibited ground of sex were unreasonable, and that in any event, the Department was not an employer.

The Trial Division decision was appealed to the Court of Appeal of Newfoundland & Labrador by the Human Rights Commission and Ms. McEvoy. The principal issue on the appeal was whether terminating the employment of a home care worker after maternity leave constituted discrimination because of sex, as prohibited by the *Human Rights Code*. The Court of Appeal concluded that in the circumstances of this case it was not reasonable to infer that the taking of maternity leave was a causative factor in the refusal to continue Ms. McEvoy's employment or that the refusal had any unintended discriminatory effect. Accordingly, the appeal court found that the trial judge was correct in finding the Board was unreasonable to conclude that Ms. McEvoy was discriminated against on the basis of sex.

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