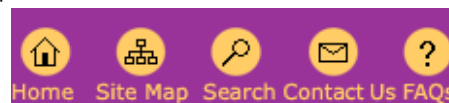


Alberta Human Rights and Citizenship Commission

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Fostering equality and reducing discrimination

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Alberta Human Rights Information Service August 7, 2003

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Commission News

Recent panel decisions:

- [Michael Cross v. International Paper Canada Inc.](#) (June 26, 2003; Delano Tolley, Panel Chair)
- [Laurent Marcil v. Vantage Contracting Ltd.](#), (June 5, 2003; Delano Tolley, Panel Chair)

You can now [access court decisions](#) related to appeals of Commission panel decisions from the Commission's Web site.

PLEASE NOTE: In the following sections of the newsletter, we publish news and information provided by other organizations. We also cite other Web sites related to human rights and diversity. The Commission is not responsible for the content provided by other organizations on their Web sites or by other means. Comments or inquiries regarding these organizations or their Web sites should be directed to the organization in question.

Notable court and tribunal decisions from other jurisdictions

Please note: We are unable to provide a link to the decisions preceded by an asterisk (*). You may be able to access these decisions through a Law Society Library. [Contact the Law Society Library nearest you.](#)

The following three court decisions are of particular interest because they clarify the standard of review in administrative decisions.

Ryan v. Law Society (New Brunswick) (April 3, 2003), 28639 (2003), 2003 CarswellNB 145, 223 D.L.R. (4th) 577 (S.C.C.); reversing (2001), 2001 CarswellNB 124, 2001 NBCA 37, 236 N.B.R. (2d) 243, 611 A.P.R. 243 (N.B. C.A.) [New Brunswick]

The particulars of this case involved the Law Society of New Brunswick disbarring a lawyer for conduct that was considered egregious, specifically deceiving clients for five years that he was doing work on their case when he was not doing anything.

In this decision, the Supreme Court of Canada confirms that there are three standards for judicial review of administrative decisions: correctness, reasonableness simpliciter, and patent unreasonableness. Having determined the standard of review in this case was reasonableness simpliciter, the Court decided that they would not interfere with the decision because the Law Society had more than enough information to make the decision they did.

Q. v. College of Physicians & Surgeons (British Columbia) (April 3, 2003), 28553 (2003), 2003 CarswellBC 713 (S.C.C.); reversing [2001] B.C.W.L.D. 714, (sub nom. Dr. Q. v. College of Physicians & Surgeons of British Columbia) 198 D.L.R. (4th) 250, (sub nom. Dr. Q., Re) 154 B.C.A.C. 12, (sub nom. Dr. Q., Re) 252 W.A.C. 12, [2001] B.C.J. No. 887 (B.C. C.A.); affirming (1999), [2000] B.C.W.L.D. 88 (B.C. S.C.) [British Columbia]

The particulars of this case dealt with a doctor who faced disciplinary action for physically and sexually assaulting a patient. The administrative body preferred the evidence of the complainant to that of the doctor.

On a reasonableness simpliciter standard of review, the Supreme Court of Canada found there was ample evidence to support the administrative body's conclusion that the physician had taken physical and emotional advantage of the

patient and was guilty of the alleged conduct.

B.L.E. v. Canadian Pacific Railway 2003 CarswellAlta 596 (Alberta Court of Queen's Bench) – Justice E. Macklin

The particulars of this case dealt with an individual who was charged with a narcotics offence and then subsequently refused to take a drug test at the request of his employer. The employee was then placed on leave without pay. The employee filed a grievance.

The matter was sent to arbitration. The arbitrator dismissed the grievance because it found that the request for a drug test was reasonable. The complainant made an application for a judicial review.

The Court agreed that the arbitrator had made the correct decision regarding the request, however the additional issue about the leave without pay was unreasonable because the arbitrator ignored the application of another section of the collective agreement. Therefore, under judicial review, that part was allowed and sent back to the arbitrator for proper disposition. Focus of this case was the amount of deference the Court would show for the decision of the administrative tribunal.

The following three court decisions relate to same-sex marriage.

Halpern v. Toronto (City) (June 10, 2003), CA C39172, C39174 (2003), 2003 CarswellOnt 2159 (Ont. C.A.); reversing in part (2002), 2002 CarswellOnt 2309, 28 R.F.L. (5th) 41, 215 D.L.R. (4th) 223, (sub nom. Halpern v. Canada (Attorney General)) 95 C.R.R. (2d) 1, 60 O.R. (3d) 321, (sub nom. Halpern v. Canada (Attorney General)) 163 O.A.C. 276, [2002] O.J. No. 2714 (Ont. Div. Ct.) [Ontario]

In this decision, the Ontario Court of Appeal looked very closely at the definition of marriage and whether there was discrimination occurring against same-sex couples. The Court recognized that there were both societal discrimination as well as systemic discrimination that occurred against this recognized group of people.

An appropriate remedy to the infringement of the couples' constitutional rights was to declare the existing common law definition of marriage to be invalid to the extent that it referred to "one man and one woman," and to reformulate it as "the voluntary union for life of two persons to the exclusion of all others."

EGALE Canada Inc. v. Canada (Attorney General)

[Court of Appeal decision 1](#)

[Court of Appeal decision 2](#)

In this decision, the British Columbia Court of Appeal approves the definition of "marriage" as indicated in the *Halpern* decision.

****Hendricks c. Québec (Procureur général)*** [2003] C.C.S.

No. 537, [2002] J.Q. no 3816

In this decision, the Quebec Court of Appeal finds that certain sections of the *Quebec Civil Code* and other legislation were inoperative because they infringed upon the *Canadian Charter of Rights and Freedoms*.

This decision relied on the *Halpern* decision in looking at the issues of same-sex marriage and applying the *Charter* to the *Civil Code* and the other relevant provincial legislation.

Other court decisions

Lawrence v. Texas [2003] SCT-QL 144 John Geddes Lawrence And Tyron Garner, Petitioners v. Texas (United States Supreme Court)

In this case, the United States Supreme Court was asked to decide on the issue of whether a law prohibiting same-sex sodomy was constitutional pursuant to the 14th Amendment.

The Supreme Court decided in a 6-3 decision that the law was unconstitutional because application of the law resulted in different standards being applied for homosexuals and non-homosexuals.

Bell Canada v. C.T.E.A. (June 26, 2003), 28743 (2003), 2003 CarswellMan 276 (S.C.C.); affirming (2001), 9 C.C.E.L. (3d) 228 (Fed. C.A.); reversing (2000), 5 C.C.E.L. (3d) 123 (Fed. T.D.) [Manitoba]

The Supreme Court of Canada was asked to review issues of apprehension of bias as well as issues of procedural fairness. A respondent was challenging the ability of the Canadian Human Rights Tribunal to be fair and impartial because of their close legislative and procedural link with the Canadian Human Rights Commission.

The Supreme Court found that the Canadian Human Rights Tribunal does not lack independence and impartiality because of the power of the Canadian Human Rights Commission to issue guidelines binding on the tribunal concerning class of cases. The Canadian Human Rights Tribunal does not lack independence and impartiality because of the power of the tribunal chairperson to extend tribunal members' terms of office in ongoing inquiries.

Canadian Human Rights Tribunal Decisions

Des Rosiers v. Jean Barbe

This complaint was based on allegations of sexual harassment and ethnic discrimination at the workplace. The tribunal found that there was harassment and they awarded \$5,000 for non-pecuniary damages (maximum allowed at the time of the conduct under the *Canadian Human Rights Act*). In addition, the tribunal ordered the respondent to pay certain expenses.

[Warman v. Kyburz](#)

In this case, the complainant was a lawyer of Jewish heritage who filed a complaint against an individual who had a Web site that he claimed discriminated against persons of Jewish heritage.

After finding that the Web site would expose an identifiable group to hatred or contempt, the tribunal balanced that against the freedom of speech. The tribunal followed the precedent set by the Supreme Court of Canada in finding that the restriction of free speech was necessary to curtail hate propaganda.

Other human rights and diversity news

Grants and awards

The next deadline for applications to the [Human Rights and Multiculturalism Education Grant Program](#) is October 1. Financial assistance is available to organizations as well as public institutions in Alberta that are undertaking human rights and diversity initiatives that lead to change.

The [Starbucks Foundation](#) makes grants to local non-profit organizations that serve low-income at-risk youth. The grants support local community programs that promote youth leadership through the power of literacy and respect for diversity. The foundation has confirmed that Canadian non-profit organizations are eligible to apply. Applications are accepted for review twice yearly, on April 1st and October 1st.

Conferences and events

The [Cultural Diversity Institute](#) presents Diversity Conference 2003 from September 18 to 19, 2003 in Calgary, Alberta. The theme of the conference is Lessons from Professional Hockey: Building your organization's diversity strategies. For more information, visit the upcoming events section of the [CDI Web site](#).

New developments

The Ontario Human Rights Commission, CARP (the Canadian Association for the Fifty-Plus) and Shoppers Drug Mart have entered into a partnership for a [public awareness campaign on the subject of age discrimination](#).

[Alberta Learning](#) is revising the [social studies curriculum](#). A consultation on a proposed new Kindergarten to grade 12 Social Studies program has been completed, and a draft

consultation report has been published. The Validation Draft notes that "the dynamic relationship between citizenship and identity forms the basis for skills and learning outcomes in the program of studies." Concepts such as diversity, pluralism, multiculturalism, fairness and equity are included in the focus of the program of studies.

You will find information related to revision of the program in the following documents:

[Social Studies Kindergarten to Grade 9 Program of Studies, Validation Draft, May 2003](#)
[Report on Consultations: Alberta Social Studies K-9 Program of Studies Consultation Draft, January 2003](#)
[French Version](#)
[High School Social Studies Needs Assessment Report, September 2002](#)
[Executive Summary](#)
[Social Studies Kindergarten to Grade 12 Update, December 2002](#)

The Canadian Metropolis has launched a new Canadian Metropolis website. It is easier to navigate and has a new, cleaner, more attractive look. Visit the site at www.canada.metropolis.net. The Metropolis Project is an international forum for research and policy on migration, diversity and changing cities. [The Prairie Centre of Excellence for Research on Immigration and Integration](#) is one of four research centres that form part of the Canadian Metropolis. The Centre is located at the University of Alberta.

Also new at Metropolis is the [Cities Initiatives](#). The objective is "to increase the participation of municipalities in Metropolis and to foster the project's expertise within a municipal setting. While the context of Metropolis research has always been largely urban, the Cities Initiatives aims for a more effective municipal engagement in Metropolis and to enhance the relevance of the research for municipal governments. Specific measures include developing the Cities Corner Metropolis Web site, identifying urban policy-research questions, and organizing events that engage municipalities."

Publications, reports and speeches

In [How are Women Faring in the Entrepreneurial Economy?](#), University of Alberta associate professor Karen Hughes states that women's share of self-employment in Canada today is the highest of the OECD (Organisation for Economic Cooperation and Development) countries.

According to Statistics Canada, the gap in the low-income rate between recent immigrants and Canadian-born individuals widened significantly during the past two decades. [Read the release.](#)

The City of Calgary has published a [new fact sheet on immigration to Calgary](#).

The Government of Ontario Web site [Paths to Equal](#)

[Opportunity](#) says of the study [Barriers and Facilitators to Inclusive Education](#): "The study addresses whether special education efforts meet the needs of children with disabilities and comply with our convictions of inclusion, full participation, and citizenship. While students identified many physical barriers, it was attitudinal barriers that were the most limiting."

The BC government has published the handbook [Responding to Incidents of Racism and Hate: A Handbook for Service Providers](#). The handbook states: "This handbook has been developed to give professional service providers access to the information, skills and resources required to support victims of racism and to respond effectively to issues of racism that arise in the community."

In its report [In The Shadow of the Law](#), a pan-Canadian coalition monitoring the application of Canada's anti-terrorism agenda documents the negative impacts already felt in the areas of civil liberties, human rights, refugee protection, citizenship and racism, political dissent, as well as international cooperation and humanitarian assistance. "The main victims of the new security paradigm are refugees and immigrants," says Janet Dench, director of the Canadian Council for Refugees. [Read the news release.](#)

Related Web sites

Mental Health Works, an initiative of the [Canadian Mental Health Association, Ontario](#), has launched its [new web site](#) to provide employers and employees with new tools to help them deal with mental illness in the workplace.

From the [Cultivating Peace](#) Web site: "The goal of the Cultivating Peace initiative is to create classroom-ready resources for schools across Canada that will assist teachers and community leaders to educate for change. The programs created through this initiative will encourage youth to respect diversity, think globally, value human rights, recognize injustice and respond to conflict with methods other than violence. These resources will engage children and youth in the search for a culture of peace in their homes, their schools, their neighbourhoods and their global community."

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