

Towards a World Family (Ferris Report)

Executive Summary and Excerpt Recommendations

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ABOUT THE REPORT

In 1989, the government asked Charles Ferris, then the Legal Counsel for the Ombudsman, to review the New Brunswick Human Rights Act and its application by the Human Rights Commission and report back with recommendations for reform.

He and his team solicited briefs, conducted research and consulted widely. His work completed, Mr. Ferris published the Towards a World Family report, which contains over 150 recommendations.

Here are the executive summary and list of recommendations excerpted from the Ferris Report.

EXECUTIVE SUMMARY AND RECOMMENDATIONS

The object of this report is to recommend the means by which New Brunswick's legislative and administrative structures may best promote fundamental human rights within its borders - and, where permissible, beyond. This objective has been pursued by the world community, of which New Brunswick is a part, through enactments of the United Nations and its affiliated bodies. Canada and New Brunswick are obliged by law to observe these standards of the international world community. New Brunswickers are citizens of the World and must be assured of the same fundamental rights to which all members of the world community aspire.

Being part of a world family - like being part of one's own family - contemplates a level of acceptance and expectation, tolerance and respect. Tension is invariably part of the relationship; however, it is necessary to ensure that the tensions remain healthy, that they do not destroy the relationship. To help ensure the stability and growth of relationships, certain rules of conduct must be mutually understood and accepted. Within the immediate family, such rules are usually informal, the result of a series of spoken and unspoken dialogue and underlying moral beliefs.

At the world level, the United Nations has evolved a set of rules to facilitate healthy, growing relationships between and within its member states. These rules are known collectively as the United Nations *International Bill of Rights*. Under its terms, the member states, including Canada, agree to respect and promote a broad range of legally binding fundamental, democratic, economic, social, cultural and anti-discrimination rights and freedoms for the purpose of promoting equality of opportunity.

As part of the Canadian federal state, New Brunswick is bound by the United Nations instruments. Indeed, New Brunswick has been a leader in the protection and promotion of the fundamental rights and freedoms enunciated thereunder. Moreover, the guiding philosophical principle underlying the provincial administration - equality of opportunity - complements and draws inspiration from the *International Bill of Rights*. The recommendations of this report are designed to underscore and revitalize the Province's commitment to the protection and promotion of fundamental rights and freedoms.

The primary focus of this inquiry has been on legal structures - the type of legal instrument that would best enable New Brunswick to meet its international legal obligations and, in so doing, to promote a vital community based on respect for freedom and the recognition of responsibility to others.

The report's first recommendation for meeting the broad primary objective is legal in nature, namely, the enactment of a comprehensive human rights statute, the *New Brunswick Charter of Rights*

and Freedoms, which would incorporate fundamental, democratic, legal, economic, cultural, social, environmental and anti-discrimination rights and freedoms.

For the most part, such a step would codify in a single enactment the province's existing legal obligations under the U. N. *International Bill of Rights* and the *Canadian Charter of Rights and Freedoms*. However, it would also provide a focus and a discipline that would complement the well recognized need to promote human rights and responsibilities in New Brunswick in a coordinated fashion.

The second recommended initiative, which is legislative in nature, is the revision of the mandate, jurisdiction and powers of the New Brunswick Human Rights Commission to more properly reflect the central position that the protection of human rights has traditionally occupied in this Province. It is concluded that the broader promotional and compliance role foreseen for the Commission necessarily requires its removal from a central authority (presently the Department of Labour) and its reconstitution as a legislative office. Such action would complement the clarification and extension of the anti-discrimination provisions of the New Brunswick *Human Rights Code* consistent with the *Canadian Charter of Rights and Freedoms* and the norms established by other Canadian statutory human rights agencies.

The report's third broad recommendation, which is administrative in nature, is that the Executive Council coordinate the compliance with and promotion of human rights, freedoms and responsibilities contained within the *New Brunswick Charter*. It is envisaged that this coordinating function would serve to confirm and underscore the existing human rights mandate of the Departments of Justice, Labour and Multiculturalism, Education, Advanced Education and Training, Health and Community Services, Income Assistance, Environment, and Solicitor General. Such coordination would also provide a greater opportunity for consultation by and with other public and private human rights bodies.

This proposed structure presents New Brunswickers with a unique opportunity for leadership that ought not to be squandered by a lack of vision. These recommendations aspire to three important objects. First, they will foster in New Brunswickers a greater sense of commitment to the achievement of equality of opportunity through the promotion of fundamental human rights. Second, they will illuminate the fact that New Brunswick, as a bilingual and multicultural community, is a microcosm of a larger world family. Finally, these recommendations may create legal structures that are attuned to international realities which would facilitate and complement the Province's economic, financial and commercial initiatives.

RECOMMENDATIONS

- 2.1 It is recommended that the Government of New Brunswick enact a comprehensive human rights statute, the *New Brunswick Charter of Rights and Freedoms* ("the *New Brunswick Charter*"). This enactment would declare and protect fundamental rights, democratic rights, legal or judicial rights, and economic, social and cultural rights in addition to the right to equal treatment and equal protection from discrimination as obtained by the existing New Brunswick *Human Rights Code*.
- 2.2 It is recommended that the United Nations *International Bill of Rights*, the *Canadian Charter of Rights and Freedoms* and the *Quebec Charter of Human Rights and Freedoms* serve as the models for the *New Brunswick Charter*.
- 2.3 It is recommended that the *New Brunswick Charter* incorporate fundamental human rights and the responsibility to respect and promote fundamental rights and freedoms.
- 2.4 It is recommended that the *New Brunswick Charter* incorporate democratic rights within its provisions, including a right to petition the Legislature directly or through the Office of the Ombudsman.
- 2.5 It is recommended that the *New Brunswick Charter* incorporate legal or judicial rights, including the right to a 'full and equal, public and fair hearing by an independent and impartial tribunal' and the right to be represented or assisted by an advocate - including legal counsel - before tribunals.
- 2.6 The recommendation respecting legal or judicial rights contemplates the appointment of decision-makers on the basis of an objectively determined merit system.
- 2.7 It is recommended that the *New Brunswick Charter* incorporate a right to the provision of legal counsel in cases involving fundamental rights and essential legal services. A significant part of this right is subsumed in the terminology of section 34 of the *Quebec Charter*.
- 2.8 The recommendation respecting legal representation contemplates that legal counsel may be provided by the provincial government in cases of greatest need.
- 2.9 It is recommended that the *New Brunswick Charter* incorporate economic, cultural and social rights within its provisions and, in particular, the right to education and training.
- 2.10 In the incorporation of education rights, it is recommended that recognition be given to the necessity of providing the resources to ensure that the right is a meaningful one for all persons. Legislative recognition should also be given to the importance of the promotion of human rights principles, and the unique bilingual status of New Brunswick's multicultural society.
- 2.11 It is recommended that the provincial government engage in consultation with New Brunswick's aboriginal peoples and the federal government, if appropriate, to determine the desirability and content of an aboriginal right to self-government which, to the fullest extent of provincial legislative competence, should be included in the *New Brunswick Charter*.
- 2.12 It is recommended that the *New Brunswick Charter* recognize a right to a healthy and sustainable environment.
- 2.13 It is recommended that the *New Brunswick Charter* contain a clause establishing that it is a supreme provincial enactment.
- 2.14 It is recommended that the *New Brunswick Charter* bind the Crown.
- 3.1 It is recommended that the *New Brunswick Charter* establish the New Brunswick Human Rights Commission as an independent legislative Office that reports to the Legislative Assembly through a Standing Committee on Human Rights.

- 3.2 It is recommended that the Executive Council of the Province establish a Committee on Human Rights, comprised of those of its members charged with responsibilities under the U.N. International Bill of Rights. The purpose of the Committee would be to a) co-ordinate the Province's compliance with the legal requirements of the U.N. *International Bill of Rights*; b) co-ordinate, with the advice of the Commission and other human rights agencies, the promotion and extension of respect for fundamental rights, freedoms and responsibilities, and c) assume the responsibility for the completion of New Brunswick's reporting duties under the U.N. *International Bill of Rights*.
- 3.3 It is recommended that the *New Brunswick Charter* confer on the Chair of the Commission the authority to consult with any member of the Executive Council of the Province.
- 3.4 It is recommended that the *New Brunswick Charter* provide that the mandate of the Commission shall be:
- a) to further the recognition of the equality and dignity of all individuals;
 - b) to promote the principle that cultural diversity is a fundamental human value;
 - c) to promote and effect compliance with the *Charter*;
 - d) to review any law or policy with respect to conformity with the *Charter*;
 - e) to research and develop programs of public education;
 - f) to encourage and conduct research into human rights;
 - g) to advise the government on recommendations respecting human rights made by others;
 - h) to investigate complaints of discrimination and promote settlement or resolution of complaints;
 - i) to investigate systemic discrimination on its own initiative;
 - j) to promote or approve anti-discrimination programs of agencies or groups;
 - k) to recommend or approve affirmative action programs;
 - l) to perform further functions as required in the fulfillment of the *Charter's* mandate;
 - m) to report as required.
- 3.5 It is recommended that the Chair and Vice-Chair of the New Brunswick Human Rights Commission be appointed by the Lieutenant-Governor in Council on the legislative motion of the Premier and Leader of the Official Opposition.
- 3.6 It is recommended that members of the Commission other than the Chair and Vice-Chair be appointed by the Lieutenant-Governor in Council following consultation with groups and individuals interested and/or expert in the field of human rights.
- 3.7 It is recommended that the Chair, Vice-Chair and any member of the Commission be removable by the Lieutenant-Governor in Council only on address of the Legislative Assembly.
- 3.8 It is recommended that the New Brunswick Human Rights Commission comprise a Chair, Vice-Chair and five Commissioners.
- 3.9 It is recommended that the membership of the Commission be drawn from backgrounds that complement its promotional, educational and compliance functions, including educators, racial and other visible minorities, private business, labour, and the legal and other professions.
- 3.10 It is recommended that the Chair, Vice-Chair and Commissioners of the New Brunswick Human Rights Commission be part-time appointees.

- 3.11 It is recommended that the Chair, Vice-Chair and commissioners of the New Brunswick Human Rights Commission be appointed on a staggered basis for a fixed term (three or five years) and be eligible for a single reappointment.
- 3.12 It is recommended that the remuneration paid to the Chair, Vice-Chair and Commissioners of the New Brunswick Human Rights Commission be set at a reasonable level: Chair minimum \$26,250; Vice-Chair - minimum \$175/day; Commissioners - minimum \$100/day).
- 3.13 It is recommended that the methodology for remuneration of the Commission be reviewed and that a more equitable and rational system be instituted.
- 3.14 It is recommended that the New Brunswick Human Rights Commission be granted the authority to be self-administering with respect to staffing, budget and contractual functions. [This recommendation contemplates the conferral of corporate status on the Commission.]
- 3.15 It is recommended that the New Brunswick Human Rights Commission make the necessary arrangements with public and private authorities to ensure that its staffing, budget and contractual powers are exercised consistent with the attainment of independence and economy.
- 3.16 It is recommended that the *New Brunswick Charter* provide that the independence conferred upon the New Brunswick Human Rights Commission be complemented by the imposition of conflict of interest provisions with respect to the financial and other interests of the members and staff of the Commission.
- 3.17 It is recommended that the New Brunswick Human Rights Commission be empowered to delegate its administrative authority to members of the Commission - including the Chair, Vice-Chair or any sub-committee established by by-law or regulation.
- 3.18 It is recommended that the New Brunswick Human Rights Commission be empowered to delegate authority to its executive director or other senior directors, but that any decision made pursuant to a delegation of substantive authority shall be the subject of a full right of appeal to the Commission.
- 3.19 It is recommended that the *New Brunswick Charter* establish a reporting requirement for the New Brunswick Human Rights Commission similar to that of the Quebec and Yukon statutes and that consideration be given to explicit annual report components as set out in the Saskatchewan statute. Such a requirement contemplates that the annual report, in addition to having a public information and promotional value, will serve as a point of departure in relations between the Commission and the Legislature.
- 3.20 It is recommended that the *New Brunswick Charter* provide that the New Brunswick Human Rights Commission may make and publish special reports.
- 3.21 It is recommended that the New Brunswick Human Rights Commission be accorded regulation and by-law-making powers in order to meet the objectives of its legislation in an effective, efficient and remedial manner.
- 3.22 It is recommended that the *New Brunswick Charter* require that each member of the New Brunswick Human Rights Commission and each staff person of the Commission complete an oath of office or solemn affirmation.
- 3.23 It is recommended that the *New Brunswick Charter* confer a staffing authority on the New Brunswick Human Rights Commission.
- 3.24 It is recommended that the *New Brunswick Charter* provide for the appointment of an executive director of the New Brunswick Human Rights Commission and set out the responsibilities of this position.
- 3.25 It is recommended that the *New Brunswick Charter* provide for the appointment of other directors and staff of the New Brunswick Human Rights Commission.

- 3.26 It is recommended that the *New Brunswick Charter* provide that the staff of the Commission be subject to the same general terms and conditions of employment as other public servants.
- 3.27 It is recommended that the *New Brunswick Charter* provide that staff of the Commission who are presently members of the Civil Service be permitted to retain this status.
- 4.1 It is recommended that the *New Brunswick Charter* provide for a general protection from discrimination analogous to that found in section 15 of the *Canadian Charter of Rights and Freedoms* and as set out in section 9 of the *Manitoba Human Rights Code*.
- 4.2 It is recommended that the *New Brunswick Charter* incorporate a definition of discrimination similar to that found in section 9 of the *Manitoba Human Rights Code*.
- 4.3 It is recommended that the *New Brunswick Charter* incorporate the fields of activity within which discrimination is prohibited in the present *New Brunswick Human Rights Code*, including the order of presentation in sections 3 to 7, the definitions in section 2 and the provisions in section 4(3) respecting restrictive covenants. In any re-casting of sections 3 to 7, it is suggested that the terminology contained in the *Manitoba Human Rights Code* and the *Model Human Rights Act* be consulted.
- 4.4 It is recommended that the *New Brunswick Charter* include 'contract' as a field of activity within which discrimination is prohibited.
- 4.5 It is recommended that the *New Brunswick Charter* provide that all contracts be deemed to include a clause prohibiting discrimination (as in *Manitoba Code*, section 56; *Ontario Code*, section 25).
- 4.6 It is recommended that the *New Brunswick Charter* and other provincial enactments include a provision to facilitate, through Crown contract, the promotion of human rights protection by the prohibition of discrimination, by the provision of reasonable accommodation and by affirmative action.
- 4.7 It is recommended that the *New Brunswick Charter* clarify the specified fields of activity by the addition of comprehensive definitions, including the definition of 'employer', 'employee', 'accommodation, goods, services or facility', 'licence' and 'education facility'.
- 4.8 It is recommended that consideration be given to the inclusion within the *New Brunswick Charter* of a specific right to equal treatment with respect to the fields of activity covered by the *New Brunswick Charter*.
- 4.9 It is recommended that the *New Brunswick Charter* confer on the New Brunswick Human Rights Commission the right to approve all requests for exceptions under the Statute, such power to include the conferral of a discretion in the Commission to issue an advisory opinion or guideline in an appropriate instance.
- 4.10 It is recommended that exceptions with respect to discriminatory practices be permitted with respect to a 'bona fide and reasonable requirement' or for 'bona fide and reasonable cause' (as in the *Manitoba Code*, s. 13(1), 14(4), 14(6), 15(1), 16(1) and 18).
- 4.11 It is recommended that the specific exemptions presently found in the *New Brunswick Human Rights Code* be omitted from the *New Brunswick Charter*.
- 4.12 It is recommended that the regulation-making power under the *New Brunswick Charter* enable the Lieutenant-Governor in Council, on the recommendation of the Commission, to formulate regulations with respect to exceptions. This regulation-making authority should define the terminology and criteria applicable to the determination of whether a qualification, requirement, limitation, specification, exclusion, denial, preference or differentiation is 'bona fide' and reasonable. Such regulations would be made with respect to the fields of activity under the Code, including:

- age, sex, disability and marital status discrimination in employment, occupancy and the provision of goods, accommodation, services and facilities;
 - pension, insurance and other benefit plans;
 - citizenship and other legal status under the *Immigration Act* (Canada);
 - criminal charge/conviction/record relevant to employment;
 - pre-employment inquiries and documentation in private residential employment;
 - nepotism (employment of spouse, child or parent of employer or employee);
 - private residential occupancy;
 - functions, including composition, employment and publications of (nonprofit) ethnic, religious, charitable, educational, social, cultural, philanthropic, political or educational institutions and organizations, including volunteer associations.
- 4.13 It is recommended that one or more Commission committees be struck - with power to add persons other than Commission members - in order to obtain the most effective exemption regulations.
- 4.14 It is recommended that an exemption regulation under the *New Brunswick Charter* provide for the delegation of the approval procedure to the executive director of the Commission.
- 4.15 It is recommended that, notwithstanding the requirement that an application for exemption be made in all cases, the Commission or a board of inquiry be vested with remedial authority to grant an exemption following the making of a complaint.
- 4.16 In order to ensure legislatively the recognition, promotion and protection of our multicultural heritage and to underscore New Brunswick's membership in the world family, it is recommended that the *New Brunswick Charter* prohibit discrimination on the basis of race, colour, national or ethnic origin, place of origin, ancestry and perceived race, colour and ancestry.
- 4.17 It is recommended that there be incorporated in the *New Brunswick Charter* an interpretive provision analogous to that contained in section 27 of the Canadian Charter of Human Rights and Freedoms and section 2 of the Yukon Human Rights Code, namely, that the New Brunswick Charter shall be interpreted in a manner consistent with the preservation and enhancement of the multicultural heritage of the residents of New Brunswick.
- 4.18 It is recommended that protection from discrimination on the basis of religion be extended and clarified under the New Brunswick Charter to include "religion or creed, religious belief, religious association or religious practices, observances or activities".
- 4.19 It is recommended that the *New Brunswick Charter* prohibit age discrimination.
- 4.20 It is recommended that the definition of 'age' in section 2 of the *New Brunswick Human Rights Code* be repealed.
- 4.21 It is recommended that the New Brunswick Charter provide that youth-based age discrimination be prohibited except in accordance with a statute in force in the province.
- 4.22 It is recommended that sections 3(6)(a) and (b) of the *New Brunswick Human Rights Code*, which provide for age discriminatory pension and insurance plans, be repealed.
- 4.23 It is recommended that the Lieutenant-Governor in Council make regulations, on the recommendation of the New Brunswick Human Rights Commission, prescribing distinctions, conditions, requirements on qualifications that shall be deemed to be bona fide and reasonable in respect of employee pension, insurance or other benefit plans, whether provided by individual contract, collective agreement or otherwise (as in section 14(7) of *Manitoba Code*).
- 4.24 It is recommended that the *New Brunswick Charter* prohibit discrimination on the basis of physical and mental disability pursuant to a comprehensive definition of disability as it is found in the Saskatchewan and Ontario statutes.

- 4.25 It is recommended that the definition of 'disability' avoid the use of terminology that may reinforce negative stereotypes about the disabled.
- 4.26 It is recommended that consideration be given to including in the definition of 'disability' a reference to AIDS as a specific example of a physical disability.
- 4.27 It is recommended that consideration be given to the inclusion in the definition of 'disability' a reference to dependence on alcohol and/or drugs as a specific example.
- 4.28 It is recommended that the concept of "reasonable accommodation" be incorporated into the *New Brunswick Charter*, the general application of which would have particular relevance to discrimination on the basis of disability. It is suggested that section 12 of the Manitoba *Human Rights Code* may serve to resolve much of the confusion which has resulted from the Bhinder and O'Malley decisions.
- 4.29 It is recommended that the New Brunswick Government immediately take steps to make its services more accessible to the disabled and that such steps be taken as part of a formal coordinated effort with private and public advocacy representatives.
- 4.30 It is recommended that the protection afforded on the basis of marital status be retained in the *New Brunswick Charter*.
- 4.31 It is recommended that the *New Brunswick Charter* incorporate a definition of 'marital status' similar to that found in section 9 of the Ontario *Code*.
- 4.32 It is recommended that the *New Brunswick Charter* retain and clarify the prohibition against sex discrimination by incorporating the definition used in the Manitoba statute, namely, "sex, including pregnancy, the possibility of pregnancy, or circumstances related to pregnancy".
- 4.33 It is recommended that consideration be given to reposing in a single governmental authority the administration of the implementation of equitable wages with respect to men and women.
- 4.34 It is recommended that the prohibition against sexual harassment be subsumed in the broader notion of "harassment" (see Recommendation 4.56 below).
- 4.35 It is recommended that the *New Brunswick Charter* prohibit discrimination with respect to the laying of a criminal charge against a person, a record of conviction, or for a pardoned offence "unless bona fide and reasonable cause exists for the discrimination".
- 4.36 It is recommended that the Lieutenant-Governor in Council, on the recommendation of the New Brunswick Human Rights Commission, make regulations to establish the criteria for establishing a bona fide exception with respect to this prohibition.
- 4.37 It is recommended that the *New Brunswick Charter* prohibit discrimination on the basis of family status.
- 4.38 It is recommended that the *New Brunswick Charter* include a comprehensive definition of family status.
- 4.39 It is recommended that the *New Brunswick Charter* include a provision recognizing the equality of both official linguistic communities in New Brunswick and recognizing the duties which flow from that equal status as outlined in Bill 88.
- 4.40 It is recommended that the *New Brunswick Charter* recognize the multicultural character of each official linguistic community and recognize also the collective right of any linguistic, ethnic and religious groups to speak their own language, to enjoy their own culture and to practice their own religion.
- 4.41 It is recommended that the *New Brunswick Charter* make explicit reference to the duty which lies on the State to safeguard the enjoyment of human rights by positive measures aimed at the promotion and preservation of our linguistic, ethnic and religious minority communities, within

limitations such as the desire and initiative of the minorities themselves, political stability, level of economic development and proportionality of costs and benefits.

- 4.42 It is recommended that the *New Brunswick Charter* include language as a proscribed ground of discrimination.
- 4.43 It is recommended that the *New Brunswick Charter* expressly include as one of its legal rights, the right to be heard in a court or tribunal in the official language of one's choice by a decision-maker who speaks and understands the official language chosen.
- 4.44 It is recommended that the *New Brunswick Charter* include a provision recognizing the right of access, in the official language of one's choice, to public service in the Province.
- 4.45 It is recommended that consideration be given to the inclusion in the *New Brunswick Charter* of a right to public schooling for one's children in the language of one's choice. Such a right would guarantee schooling in one's own language to all New Brunswick students whether their first language be English or French. It would also guarantee the right to immersion schooling where the parents desire their child's second official language to be the language of instruction.
- 4.46 It is recommended that the *New Brunswick Charter* prohibit discrimination on the basis of nationality or citizenship.
- 4.47 It is recommended that section 7(2) of the New Brunswick *Human Rights Code*, dealing with citizenship prerequisites of association membership, be repealed.
- 4.48 It is recommended that "place of residence" be included as a prohibited ground of discrimination under the *New Brunswick Charter*.
- 4.49 It is recommended that the *New Brunswick Charter* prohibit discrimination on the basis of political belief.
- 4.50 It is recommended that with respect to discrimination on the basis of political belief, the Lieutenant-Governor in Council, on the recommendation of the New Brunswick Human Rights Commission, make regulations to establish the criteria for establishing a bona fide exception with respect to this prohibition.
- 4.51 It is recommended that consideration be given to the inclusion in the *New Brunswick Charter* of the prohibition of discrimination on the basis of seizure of pay.
- 4.52 It is recommended that the *New Brunswick Charter* prohibit discrimination on the basis of sexual orientation.
- 4.53 It is recommended that consideration be given to the inclusion of social condition or social origin as a prohibited ground of discrimination in the *New Brunswick Charter*.
- 4.54 It is recommended that the *New Brunswick Charter* prohibit discrimination on the basis of "source of income".
- 4.55 It is recommended that the *New Brunswick Charter* prohibit discrimination on the basis of actual or presumed association with an individual or a group that is subject to a proscribed form of discrimination.
- 4.56 It is recommended that the *New Brunswick Charter* prohibit harassment with respect to all fields of activity and grounds of discrimination in a similar manner to that provided under section 19 of the Manitoba Code.
- 4.57 It is recommended that further study and consideration be given to the inclusion of a provision in the *New Brunswick Charter* similar to section 13 of the *Canadian Human Rights Act*, which would properly balance the right to be free from group defamation with the right to free speech.

- 4.58 It is recommended that the *New Brunswick Charter* prohibit publicity that encourages any violation of its provisions (as in section 12 of the *Canadian Human Rights Act*).
- 4.59 It is recommended that the *New Brunswick Charter* prohibit reprisal in a manner similar to section 20 of the *Manitoba Code*.
- 5.1 It is recommended that expediency of complaint resolution be retained as a preeminent objective of the New Brunswick Human Rights Commission.
- 5.2 It is recommended that the objectives of expediency of and integrity within the Commission's complaint-handling procedure be met by maintaining, but redefining, the compliance and educational/ promotional functions.
- 5.3 It is recommended that the Commission further develop a complaint response structure that combines the roles of investigator and conciliator upon receipt of a complaint in order to effect speedy settlement.
- 5.4 It is recommended that, upon non-settlement at the receipt level within a relatively fixed period of time, the roles of investigator and conciliator be assigned to two different human rights officers who, in a given investigation, may assume the role of investigator or conciliator, but not both.
- 5.5 It is recommended that the role of receipt officer be assumed by human rights officers on a rotational basis or by persons hired for such a specific receipt function.
- 5.6 It is recommended that the implementation of a toll-free telephone service, facsimile service and fast mail be considered as means to facilitate the complaint procedure.
- 5.7 It is recommended that the present emphasis on staff training be continued and increased, by participation in conciliation /alternative dispute resolution training and more traditional learning formats, with particular emphasis on intensifying the Commission's participation in the training initiatives of the Canadian Association of Statutory Human Rights Agencies (CASHRA) and the Canadian Human Rights Foundation.
- 5.8 It is recommended that any person, group, association or corporation have standing to complain to the Commission on their own behalf or on behalf of another person (including a minor) with respect to a prohibited form of discrimination.
- 5.9 It is recommended that the Commission - including its executive director - have standing to make a complaint on its own motion.
- 5.10 It is recommended that the Commission have the authority to require that the consent of a person be obtained prior to the commencement of an investigation.
- 5.11 It is recommended that a person be able to initiate a complaint before a judge of The Court of Queen's Bench of New Brunswick.
- 5.12 It is recommended that the *New Brunswick Charter* provide that the Commission may require that a complaint be in writing.
- 5.13 It is recommended that a complaint form be written in plain, everyday language; and as much as possible in other formats such as braille which will accommodate the individual needs of persons making the complaint.
- 5.14 It is recommended that the *New Brunswick Charter* provide that the Commission may receive complaints in other forms and/or media than a written form.
- 5.15 It is recommended that the *New Brunswick Charter* establish a one-year time limit for the making of a complaint.

- 5.16 It is recommended that the *New Brunswick Charter* provide that the Commission or its executive director may extend this time limit so long as the extension would not cause undue prejudice to a respondent.
- 5.17 It is recommended that, with respect to investigative powers, the present provision contained in section 19 of the *New Brunswick Human Rights Code* be amended to conform with a provision similar to section 28.1 of the *Saskatchewan Code*.
- 5.18 It is recommended that the *New Brunswick Charter* incorporate explicit settlement provisions, modeled after those found in section 42 of the *Ontario Code*.
- 5.19 It is recommended that the *New Brunswick Charter* provide that the Commission be empowered to publish the results of a settlement.
- 5.20 It is recommended that the *New Brunswick Charter* provide that the Commission may dismiss a complaint if in its opinion it:
- a) will more readily be dealt with in another forum;
 - b) is outside its jurisdiction;
 - c) is trivial, frivolous, vexatious or made in bad faith;
 - d) is made beyond the time limit recommended above;
 - e) is based on conduct respecting which an exemption would have been granted, even if such an exemption was not granted at the time of the conduct;
 - f) is otherwise, for reasons stated by the Commission, without merit.
- 5.21 It is recommended that the *New Brunswick Charter* provide that the Commission shall give written reasons, including a summary of the facts upon which such reasons are based, with respect to the dismissal of any complaint.
- 5.22 It is recommended that the *New Brunswick Charter* incorporate provisions to ensure that procedural fairness is extended to the complainant(s) and the respondent(s) throughout the complaint procedure.
- 5.23 It is recommended that the *New Brunswick Charter* provide for the appointment of a panel of adjudicators, comprised of a chief adjudicator and ten adjudicators.
- 5.24 It is recommended that the panel members be selected by the Lieutenant-Governor in Council on the basis of a history of familiarity with and sensitivity to human rights issues.
- 5.25 It is recommended that the selection of particular adjudicators to a board of inquiry be made by the chief adjudicator on a rota basis at the instance of the New Brunswick Human Rights Commission.
- 5.26 It is recommended that the fees to be paid to a board of inquiry adjudicator be fixed by regulation.
- 5.27 It is recommended that the *New Brunswick Charter* provide that, as in section 22(4) of the *Newfoundland Code*, when the Commission declines to refer a complaint to a board of inquiry, the complainant be empowered to apply to The Court of Queen's Bench of New Brunswick for an order that the Commission refer the complaint to a board of inquiry.
- 5.28 It is recommended that the *New Brunswick Charter* provide that the parties to a board of inquiry be as set out in section 20(4.1) of the present *New Brunswick Human Rights Code*.
- 5.29 It is recommended that the *New Brunswick Charter* establish that the Commission shall have carriage of the complaint before a board of inquiry.
- 5.30 It is recommended that, as a matter of practice, the Commission not pay the costs of a complainant's legal counsel, if any.

- 5.31 It is recommended that a board of inquiry appointed under the *New Brunswick Charter* be accorded the powers of a Commissioner under the *New Brunswick Inquiries Act*.
- 5.32 It is recommended that the *New Brunswick Charter*, or a board of inquiry procedure regulation made pursuant thereto, incorporate the following minimum fair procedural provisions:
- notice of hearing;
 - right to be heard;
 - right to counsel;
 - right to adduce evidence;
 - evidentiary powers of tribunal;
 - evidence taken on oath or affirmation;
 - disclosure of information;
 - written decision with reasons;
 - notice of decision;
 - record of proceedings;
 - rules of evidence;
 - adjournment;
 - interim relief;
 - consolidation of proceedings.
- 5.33 It is recommended that the Commission prepare a 'Hearing Checklist' similar to the one distributed by the British Columbia Council on Human Rights, to assist all parties appearing before a board of inquiry.
- 5.34 It is recommended that a board of inquiry appointed by the Commission be conferred with jurisdiction to interpret and apply the *Canadian Charter of Rights and Freedoms*.
- 5.35 It is recommended that the *New Brunswick Charter* provide that a board of inquiry be empowered to order any party who has contravened the *Charter* to comply with the *Charter* and/or make rectification for the contravention. This order may include any of the following elements:
- to act or to cease to act;
 - to pay restitution;
 - to provide access or other amenities for the disabled;
 - to pay damages of either a general, special or exemplary nature;
 - to cease and rectify an offending harassment;
 - to make available the opportunity denied to the complainant;
 - to adopt an affirmative action program; to pay costs;
 - to take whatever other action the board considers appropriate.
- 5.36 It is recommended that the *New Brunswick Charter* provide that a party may appeal from a decision of a board of inquiry by way of application to The Court of Queen's Bench of New Brunswick:
- with a transcript of all proceedings;
 - in accordance with the Rules of Court;
 - upon a question of law or a question of fact or of mixed law and fact;
 - within 60 days of the service of the board's decision;
 - with or without leave.
- 5.37 It is recommended that the *New Brunswick Charter* confer a costs power on a board of inquiry, including the power to award costs to a complainant and, as in s.40(6) of the Ontario *Human Rights Code*, where, upon dismissing a complaint, the board of inquiry finds that the complaint

was trivial, frivolous, vexatious or made in bad faith or has caused undue hardship to the respondent, the board may order the Commission to pay the respondent's costs.

- 5.38 It is recommended that the *New Brunswick Charter* retain the enforcement procedures presently found in the *New Brunswick Human Rights Code*.
- 5.39 It is recommended that references to the "Minister of Labour" in the *New Brunswick Human Rights Code's* enforcement provisions be replaced by references to "the Commission".
- 5.40 It is recommended that more specifically worded offences be established under the *New Brunswick Charter*.
- 5.41 It is recommended that the penalties attendant upon a conviction under the *New Brunswick Charter* be increased to reflect the pre-eminent status of the rights protected under the Charter; and that the penalties set out in the *New Brunswick Provincial Offences Procedure Act* for a category I offence be appropriate.
- 5.42 It is recommended that there be incorporated in the *New Brunswick Charter* an 'onus of proof' provision similar to that contained in section 52 of the *Manitoba Human Rights Code* with respect to proceedings before a board of inquiry or the Commission.
- 5.43 It is recommended that a 'slip rule' be incorporated in the *New Brunswick Charter* similar to that found in section 61 of the *Manitoba Human Rights Code*.
- 5.44 It is recommended that the *New Brunswick Charter* provide that evidence respecting the Commission's conciliation function be protected from disclosure.
- 5.45 It is recommended that an explicit right of access to information, including personal information, be incorporated in the *New Brunswick Charter* and/or the *New Brunswick Right to Information Act*.
- 5.46 It is recommended that the *New Brunswick Charter* incorporate a statutory immunity provision similar to that found in section 32 of the *Newfoundland Human Rights Code*.
- 5.47 It is recommended that the *New Brunswick Charter* provide that a "court privilege" be extended to the proceedings before the Commission similar to that found in section 28(2) of the *British Columbia Ombudsman Act*.
- 5.48 It is recommended that the *New Brunswick Charter* incorporate a non-com pellability provision similar to section 29 of the *Ontario Human Rights Code*. This provision may extend to non-jurisdictional proceedings as in the subsection 24(2) of the *New Brunswick Ombudsman Act*.
- 5.49 It is recommended that the *New Brunswick Charter* incorporate the protection of section 13 of the *Canadian Charter of Rights and Freedoms* (see also Recommendation 2.6).
- 5.50 It is recommended that the *New Brunswick Charter* incorporate a statutory protection for those persons who comply with the provisions of the Charter.
- 5.51 It is recommended that the *New Brunswick Charter* provide that the Lieutenant-Governor in Council, on the recommendation of the *New Brunswick Human Rights Commission*, be empowered to make regulations.
- 5.52 It is recommended that this regulation-making power set out the types of regulations that may be made under the *Charter*, including those relating to:
- complaint initiation and disposition;
 - boards of inquiry procedure;
 - exemptions;
 - special (affirmative action) programs;
 - physical assistance to the disabled;

- definition and form-making authority; and
- a general regulation-making authority.

(See also Recommendations 3.17, 3.21, 4.12, 4.23, 4.36, 4.50, 5.26 and 5.32.)