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# Newfoundland and Labrador Human Rights Code Review

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Labour Rights are Human  
Rights

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Submitted by Newfoundland and  
Labrador Federation of Labour  
May 2009



**“Injustice anywhere is a threat to justice everywhere . . . Whatever affects one directly, affects all indirectly.”**

**Martin Luther King Jr.**

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## **Who we are**

The Newfoundland and Labrador Federation of Labour (NLFL) is an umbrella organization of nearly 30 affiliates unions and 500 locals representing some 65,000 working women and men in every sector of our economy.

The NLFL is dedicated to advancing the cause of working people and society in general outside the collective bargaining process. We advocate for improved workplace rights and stronger laws including occupational, health and safety laws as well as workers' compensation and Employment Insurance programs that are fair and there when people need them. We fight for better labour laws and strong, accessible public services such as universal health care, education, worker training, elder/home care and child care and early learning. We stand up for the principles of equality, equity and social justice and we work with our affiliate unions and social partners to build a better world.

The Federation of Labour welcomes the opportunity to participate in the Newfoundland and Labrador's government's review of human rights legislation in the province.

Our submission will deal only with those provisions of the Code which relate to employment.

## **Introduction**

Sections 9 to 13 of the Code purport to govern the employment relationship from the point of hiring and recruitment to the end of the employment relationship, whether by termination, retirement, lay off or resignation.

And while the scope is laudable, in this age of transforming workplaces and in order to update the Code to “ensure it reflects our society’s changing values” (one of the goals outlined in the government’s own discussion document), the Code should be amended to reflect our changing labour market and employer/employee relationships and ensure all employment relationships are included such as tele-workers and home support workers. The guarantee of a discrimination-free workplace must be and should be provided equally to all workers regardless of the nature of their work or the identity of their employer. While employment is not defined in our Code, courts have found that employment as found in human rights legislation should be given a broad and liberal interpretation. (Annotated Glossary, NL Human Rights Code)

In addition, the Code should include rights that are also enshrined in our international arena – such as equal pay for work of equal value and the right to a union or freedom of association and free collective bargaining – but which have been eroded over time rather than advanced or enhanced.

Human rights legislation is one of the key restraints on employers’ exercise of unfettered powers over their employees. Like labour legislation, human rights legislation frequently deals with situations where the parties do not possess equal bargaining power.

It is also important that the Code prohibit employment practices such as harassment which restrict access to fulfilling and fairly paid work by members of

an oppressed group and that discrimination is defined and understood to also mean systemic discrimination which is often unintentional but is discrimination nonetheless.

The Federation of Labour views the Code as an integral part of the safety net which protects workers from discriminatory employment practices. In conjunction with the Canadian Charter of Rights and Freedoms, the Labour Relations Act, the Public Service Collective Bargaining Act, the Labour Standards Act and the protections found in many collective agreements, the Code has moved us closer to the goal of discrimination-free workplaces.

The province's Human Rights Code is important not just because it helps provide protection from discrimination, but because it should reflect the kind of society we aspire to have – a world free of all forms of discrimination.

In the discussion document, you note that the new Human Rights Code must recognize and promote the values of equality, diversity, respect and inclusiveness and that “these are essential to protecting the dignity and worth of individuals.”

We agree, but would also say that these values are essential to protecting and enhancing our civil society and to building a better world.

You have set out three key objectives:

1. update the code to ensure it reflects our society's changing values
2. protect the critical elements of the existing system
3. ensure the efficiency and effectiveness of the complaints process

With respect to updating the code to reflect society's changing values and protecting the critical elements of the existing code, we propose the following:

## Freedom of Association – Labour rights are Human Rights

“Recognizing that workers have the right to bargain collectively as part of their freedom to associate reaffirms the values of dignity, personal autonomy, equality and democracy.”

- Supreme Court of Canada – 2007 (Case striking down parts of B.C’s Bill 29)

According to research by the National Union of Provincial Government Employees (NUPGE), over 97% of the 180 labour laws passed in Canada in the last 25 years have not advanced, but rather restricted labour rights.

This research was completed before the latest attack on unions by the federal Conservative government contained in their 2009 Budget Implementation Bill and the Equitable Compensation Act.

Freedom of Association and the right to free collective bargaining are well established as fundamental human rights. These rights are enshrined in a number of international documents originating in the United Nations and the International Labour Organization.

In 1944, when the ILO had completed 25 years of work and was on the threshold of its post-war expansion of operations, the International Labour Conference meeting in Philadelphia adopted the Declaration of Philadelphia, which redefined the aims and purposes of the ILO. The Declaration remains a guiding consideration in all ILO work, and embodies the following principles:

- Labour is not a commodity.
- Freedoms of expression and of association are essential to sustained progress.
- Poverty anywhere constitutes a danger to prosperity everywhere.

- All human beings, irrespective of race, creed or sex, have the right to pursue both their material wellbeing and their spiritual development in conditions of freedom and dignity, of economic security and equal opportunity.

At the time the Declaration was developed, Canada as a member State of the ILO, endorsed the principles and rights set out in the Declaration and undertook to work towards attaining its overall objectives.

On December 10, 1948, the General Assembly of the United Nations adopted and proclaimed the Universal Declaration of Human Rights, which set out fundamental principles for human rights. These include the right to freedom of association (Article 21) as well as the right of everyone to form and to join trade unions for the protection of his/her interests (Article 23). Canada was in fact one of its principal drafters and, upon its adoption, Canada agreed to support, promote and adhere to the principles of human rights and fundamental freedoms as set out in the Declaration.

The Newfoundland and Labrador Federation of Labour believes the decision by our own provincial government to review its human rights legislation and to announce that decision on the 50<sup>th</sup> anniversary of the Universal Declaration of Human Rights signalled our government's clear intention to enhance and reaffirm our commitment in this province to human rights.

The Federation of Labour believes strongly that the right to form and join a trade union and to free collective bargaining belong in our province's human rights document. Over the years we have seen a steady erosion of these fundamental rights. It is time to stop the erosion and state clearly that these basic labour rights are also human rights.

**Recommendation #1**

***The Newfoundland and Labrador Federation of Labour recommends that the right to form and join a union and the right to collective bargaining become part of Newfoundland and Labrador's Human Rights code.***

## **Equal Pay for work of Equal Value**

Section 11 outlines the right of equal pay for the same or similar work, but not equal pay for work of equal value. Yet there is no doubt that the concept of “pay equity” as a human right has long been recognized internationally and in our Canadian Human Rights Legislation.

The principle of equal pay for work of equal value was passed by the United Nations International Labour Organization Convention in 1952 and ratified by Canada in 1972, and was proclaimed under the Canadian Human Rights Code in 1977.

The Universal Declaration of Human Rights (Article 23) states that “everyone, without any discrimination, has the right to equal pay for equal work.”

The Canadian Human Rights Legislation (Section 11) states that:

- 1) It is a discriminatory practice for an employer to establish or maintain differences in wages between male and female employees employed in the same establishment who are performing work of equal value;
- 2) In assessing the value of work performed by employees employed in the same establishment, the criterion to be applied is the composite of the skill, effort and responsibility required in the performance of the work and the conditions under which the work is performed;
- 3) Separate establishments established or maintained by an employer solely or principally for the purpose of establishing or maintaining differences in

- wages between male and female employees shall be deemed for the purposes of this section to be the same establishment;
- 4) Notwithstanding subsection (1), it is not a discriminatory practice to pay to male and female employees different wages if the difference is based on a factor prescribed by guidelines, issued by the Canadian Human Rights Commission pursuant to subsection 27(2), to be a reasonable factor that justifies the difference;
  - 5) For greater certainty, sex does not constitute a reasonable factor justifying a difference in wages;
  - 6) An employer shall not reduce wages in order to eliminate a discriminatory practice described in this section; and
  - 7) For the purposes of this section, "wages" means any form of remuneration payable for work performed by an individual and includes:
    - a. salaries, commissions, vacation pay, dismissal wages and bonuses;
    - b. reasonable value for board, rent, housing and lodging;
    - c. payments in kind;
    - d. employer contributions to pension funds or plans, long-term disability plans and all forms of health insurance plans; and
    - e. any other advantage received directly or indirectly from the individual's employer.

In other words a job performed mostly by women cannot be paid less than a job of equal value done mostly by men.

Newfoundland and Labrador's principal Human Rights legislation should be amended to achieve equal pay for work of equal value. There is substantial evidence in Canada and in other countries that a voluntary approach to discrimination just does not work.

Making pay equity mandatory acknowledges the systemic nature of discrimination and associated barriers faced by equity groups. The Federation recommends that all employment equity/pay equity programs be jointly

negotiated with the bargaining agent in unionized workplaces. This will ensure the participation and commitment of both employer and union to the principles and implementation to employment equity.

There must be adequate enforcement mechanisms, and sufficient staffing to effect the legislation. This must be complemented by a wide-spread educational program. The legislation must place the onus on the employer to justify differences in wages. In addition, equal pay for work of equal value legislation must include all forms of compensation, including benefits, vacations and other forms of remuneration; that sex will not be a factor to justify a difference in wages or benefits; that the legislation must insure that wages or benefits will not be reduced to achieve equal pay for work of equal value; that the legislation will not provide for any exclusions which would give the employer the right to ignore the concept of equal pay for work of equal value.

At a time when women's economic equality is under attack from the current federal government (2009, Equitable Compensation Act which turns pay equity into a negotiable item rather than a human right) we believe it is critically important for our provincial government to take a clear stand on the issue of pay equity. This means amending our Code (Section 11) to reflect equal pay for work of equal value rather than its current form "equal pay for same or similar work."

It also means that the provincial government should be working towards the introduction of proactive legislation for the implementation of employment and pay equity. The Human Rights Commission could still be the regulating body under this legislation, although the establishment of an adequately funded, independent Pay and Employment Equity Commission would be the best arrangement.

**Recommendation #2**

***The Newfoundland and Labrador Federation of Labour recommends that the right to equal pay for work of equal value be added to the Newfoundland and Labrador Human Rights Code. This amendment should be further strengthened with the necessary enforcement capability as well as the necessary financial and human resources to ensure compliance with the code and related legislation.***

## Definition of Discrimination

Discrimination is not defined in the Code except to state in section 9: “An employer, or person acting on behalf of an employer, shall not refuse to employ or to continue to employ or otherwise discriminate against a person in regard to employment or a term or condition of employment because of...” a prohibited ground.

This commonly accepted definition of discrimination has been expanded as a result of cases arising under the Charter and human rights legislation. It is recognized that discrimination often assumes indirect and unintentional forms. Much discrimination occurs indirectly and is attributable to systemic biases that are difficult to identify and more difficult to eliminate.

The lack of definition in our Code can lead to uncertainty as to the exact content of the prohibition against discrimination in the province and makes it difficult for members of the public to appreciate the full scope of the Code as it requires analyses of courts of appeal case law to determine if a certain practice which has unexpected and unintended effects is discriminatory because the Code does not prohibit adverse effect discrimination.

The Code ought to be amended to include a definition of discrimination like the one in the Manitoba Human Rights Code (Section 9) which refers to discrimination in terms of differential treatment whether it is intentional or not. In other words it recognizes and names systemic discrimination.

Therefore, the Newfoundland and Labrador Federation of Labour recommends that a definition of discrimination be included in the NL Human Rights Code drawing upon the commonly accepted definition of discrimination which arose outside the human rights context in *Andrews v. Law Society of British Columbia* (1989) and which has been expanded upon in subsequent cases arising under the Charter and human rights legislation including in *Gibbs v. Battlesford and Dist. Co-operative Ltd.* (1996)

In *Andrews v. Law Society (British Columbia)* and *Gibbs v. Battlesford and Dist. Co-operative Ltd.* the following definition of discrimination has been settled upon:

“...discrimination may be described as a distinction, **whether intentional or not** but based on grounds relating to personal characteristics of the individual or group, which has the effect of imposing burdens, obligations or disadvantages on such individual or group not imposed upon others or which withholds or limits access to opportunities, benefits and advantages available to other members of society. Distinctions based on personal characteristics attributed to an individual solely on the basis of association with a group will rarely escape the charge of discrimination while those based on an individual’s merits and capacities will rarely be so classed.”

As pointed out in the Annotated Glossary which accompanies the province’s Human Rights Code, systemic discrimination has been defined by the Supreme Court of Canada in *Action Travail des Femmes v. Canadian National Railway Company* (1987) 8 C.H.R.R. D.4210 as follows:

**In other words, systemic discrimination in an employment context is discrimination that results from the simple**

**operation of established procedures of recruitment, hiring and promotion, none of which is necessarily designed to promote discrimination. The discrimination is then reinforced by the very exclusion of the disadvantaged group because the exclusion fosters the belief, both within and outside the group, that the exclusion is the result of "natural" forces, for example, that women "just can't do the job" (see the Abella Report, pp. 9-10). To combat systemic discrimination, it is essential to create a climate in which both negative practices and negative attitudes can be challenged and discouraged....**

**I have already stressed that systemic discrimination is often unintentional. It results from the application of established practices and policies that, in effect, have a negative impact upon the hiring and advancement prospects of a particular group. It is compounded by the attitudes of managers and co-workers who accept stereotyped visions of the skills and "proper role" of the affected group, visions which lead to the firmly held conviction that members of that group are incapable of doing a particular job, even when that conclusion is objectively false.**

Discrimination should then mean:

- a) differential treatment, whether intentional or not, of an individual on the basis of the individual's actual or presumed membership in or association with some class or group of persons, rather than on the basis of personal merit; or
- b) differential treatment, whether intentional or not, of an individual or group on the basis of any characteristic referred to in Sections 6,7,8,9 or 14.
- c) differential treatment, whether intentional or not, of an individual or group on the basis of the individual or group's actual or presumed association with another individual or group whose identity or membership is determined by any characteristics referred to in Sections 6,7,8,9 or 14.

Which has the effect of imposing burdens, obligations or disadvantages on such individual or group not imposed upon others or which withholds or limits access

to opportunities, benefits and advantages available to other members of society,  
or

- d) Failure to make accommodation to the point of undue hardship for the needs of any individual or group, if those needs are based on any characteristics referred to in section 9 (1).

**Recommendation #3**

***The Newfoundland and Labrador Federation of Labour recommends that the Newfoundland and Labrador Human rights code amend the definition and reference to “discrimination” to reflect discrimination in terms of differential treatment whether it is intentional or not, ensuring that the Code recognizes and names systemic discrimination.***

## Definition of Harassment

Section 2 (g) of the Code defines “harass” as meaning to “engage in a course of vexatious comment or to conduct that is known or ought reasonably to be known to be unwelcome.”

The Code prohibits harassment in Sections 12 and 13. Section 12 prohibits the harassment known as poisoned workplace harassment or sexual annoyance: “By a person in an establishment of another in the establishment of the...” prohibited ground. Section 13 prohibits sexual solicitation or quid pro quo sexual harassment. The definitions of harassment in the Code cover a wide variety of circumstances which prevent persons from having access to a discrimination-free workplace. But the Code ought to include systemic barriers in the workplace which form the basis of discrimination on all the prohibited grounds and in keeping with the goal of updating the Code to reflect society’s changing values, there ought to be a clear understanding by investigators with the Human Rights Commission of the different forms of harassment, including gender harassment and workplace bullying.

Currently, women experiencing gender harassment in the workplace run the risk that their complaint will fail because it does not clearly fit the categories of discrimination or harassment as defined in the Code. Examples would be continuing, repeated exclusion from appropriate work allocation, or overzealous supervision which can amount to harassment which occurs because of the sex of a person, although not overtly sexual in its nature.

It could be argued that the treatment described falls under the “deferential treatment” definition of discrimination, in which case it may be a matter of Commission investigators being aware of this less obvious form of discrimination/harassment. The Federation recommends this kind of harassment be included in the Code and that the Commission consider investigating how structure and processes and formal and informal practices in the workplace form systemic barriers preventing equality in employment.

In addition, bullying is increasingly being recognized as a serious problem in our schools, workplaces and in society. At work, personal harassment and bullying undermine the self-esteem and dignity of individuals and creates a hostile or offensive work environment.

In June 2004, Quebec became the first North American jurisdiction to include protection against psychological harassment of employees in its Act respecting Labour Standards. Bullying, known as psychological harassment, is defined as:

“Any vexatious behavior in the form of repeated and hostile or unwanted conduct, verbal comments, actions or gestures, that affect an employee’s dignity or psychological integrity and that results in a harmful work environment for the employee. A single serious incidence of such behavior that has a lasting harmful effect on an employee may also constitute psychological harassment.”

Certainly, human rights investigators need to be aware that workplace bullying both physical and/or psychological qualifies as harassment for purposes of the Code.

**Recommendation #4**

***The Newfoundland and Labrador Federation of Labour recommends that the Newfoundland and Labrador Human Rights Code strengthen the section of the Code dealing with “harassment” to include specific definitions of and references to gender harassment and workplace bullying.***

## **Disability and Duty to Accommodate**

An essential element of the right to a discrimination-free workplace is the concurrent obligations on employers to accommodate disabled employees and on unions to facilitate reasonable accommodations. This places a legal duty on employers to take positive steps to accommodate the needs of the disabled worker, to the point of undue hardship. Unions can be liable for discrimination if the discrimination arises from a term of a collective agreement to which the union is party or if the union impedes reasonable attempts to accommodate the employee.

The Supreme Court of Canada has recognized the following factors as being relevant to determine whether an accommodation is appropriate: financial cost, disruption of a collective agreement, problems of morale of other employees, and interchangeability of workforce and facilities.

A serious shortcoming of the Code is its failure **to refer to the duty to accommodate to the point of undue hardship which has left the very existence of the duty open to debate.** There is also a complete lack of guidance for unions who must balance the competing interests of the employee requiring accommodation and the rest of the bargaining unit.

The Supreme Court of Canada has held that unions can be liable for discrimination against its members, but the context for the union's duty of reasonable accommodation differs from that of the employer, in view of the representative nature of the union. The primary factor of concern for unions is the impact of the accommodation on the other members of the union or bargaining unit. Where the union becomes liable by obstructing reasonable efforts to accommodate the employee, the union's duty arises only when its involvement is required to make an accommodation possible and no other reasonable alternative resolution of the matter has been found or could reasonably have been found. The duty on the union is "to assist in securing an appropriate accommodation." This duty involves taking reasonable steps to facilitate the solution proposed by either the employer or the union provided the proposal was "reasonable and would, if implemented, fulfill the duty to accommodate."

**Recommendation #5**

***The Newfoundland and Labrador Federation of Labour recommends that the Code be amended to provide limits to the liability to which unions are exposed. Section 9 should be amended to state that: "a bargaining agent that is a party to a collective agreement can only be found to have discriminated against a member of the bargaining unit if the bargaining unit obstructs reasonable efforts to accommodate an employee, by an employer who is party to a collective agreement."***

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## Defenses and Exemptions

### *Good Faith or Bona Fide Occupational Qualification*

The Code provides a defense to discrimination in employment if the discriminatory refusal to employ or to continue to employ, or other discrimination is based on “the expression of a limitation, specification or preference based on a good faith occupational requirement.” This defence is found in other human rights legislation usually under the name “bona fide occupational qualification” (BFOQ) or “bona fide occupational requirement” (BFOR).

The limitation, specification or preference must be objectively related to the performance of the employment concerned, in that it is necessary to assure the efficient and economical performance of the job without endangering the employee, his/her fellow employees and the general public.

The good faith occupational qualification defence in the Code (Section 9 (1)) was considered by the Supreme Court of Canada in *Newfoundland Association of Public Employees v. The Queen in Right of Newfoundland (Green Bay Health Care Centre)* (1996). The Union argued the good faith occupational qualification defence was not available as it was contrary to the absolute prohibition against discrimination and that the parties could not contract out of the protections of the human rights legislation. The Supreme Court upheld the union’s argument on this issue and stated that “human rights legislation sets out a floor beneath which the parties cannot contract out. Parties can contract out of the human rights legislation if the effect is to raise and further protect the human rights of the people affected.”

This case demonstrates that there is a danger that employers can use the Code and its defences to undercut collective agreement provisions which provide superior protections. The defence of bona fide occupational qualification should

be circumscribed to prevent its use to allow improper discrimination. We recommend that the Code be amended to set out the requirements for the bona fide occupational qualification.

In other words, Section 9 (1) should be amended to require the employer to establish that the rule or policy was adopted in good faith, for a valid reason, without an ulterior purpose that would be contrary to the purposes of the Code and in the sincerely held belief that the rule or policy was absolutely necessary. The limitation, specification or preference must be objectively related to the performance of the employment concerned, that it is necessary to assure the efficient and economical performance of the job without endangering the employee, his or her co-workers and the general public.

**Recommendation #6**

***The Newfoundland and Labrador Federation of Labour recommends that Section 9 (1) of the Code be amended in such a manner as to prevent the use of bona fide occupational qualification as a means to allow improper discrimination, and to ensure that any related rule or policy was adopted in good faith, for a valid reason, without an ulterior purpose that would be contrary to the purposes of the Code and in the sincerely held belief that the rule or policy was absolutely necessary.***

## ***Social Origin***

Only Newfoundland and Labrador and Quebec's human rights codes include "social origin" or "social condition" as a prohibited ground. Other codes prohibit discrimination on the basis of "source of income."

The Federation of Labour supports the broader prohibited ground of "social origin" but we believe it needs clarification. It can certainly be useful in combating negative stereotyping of low income women and men, but it could also be used as a tool to address women's material inequality.

According to a brief by the National Association of Women and the Law (NAWL) to the 1999 review of the Canadian Human Rights Code, social and economic rights are encompassed by equality rights. If women's inequality is not addressed, women will never be able to achieve substantive equality.

The Universal Declaration of Human Rights and the human rights treaties that have grown from it reflect a vision where civil, political, social and economic rights form a whole.

The Universal Declaration states that everyone has a right to an adequate standard of living to social security and to the realization of the economic, social, and cultural rights indispensable for her dignity and the free development of her personality.

Canada has voted in favour of a United Nations General Assembly Resolution stating that: "All human rights and fundamental freedoms are indivisible and interdependent" and the "full realization of civil and political rights without the enjoyment of economic, social and cultural rights is impossible."

Therefore recognizing the importance of social and economic rights (NAWL, 1999) as fundamental components of equality rights is consistent with

updating our code. The Code could include social and economic rights and more specifically, recognize the right to adequate food, clothing, housing, health care, social security, education, work which is freely chosen, child care and support services and other fundamental requirements for security and dignity of person.

***Recommendation # 7***

***The Newfoundland and Labrador Federation of Labour recommends that the Code be amended to ensure that social and economic rights are enshrined as a basic component of equality rights. In addition, the fundamental components of social and economic rights should be clearly defined within the code.***

## *Age*

The Code allows differential treatment in employment for people younger than 19 years and yet the province's Labour Standards allows for employment as young as 16 and younger in some cases age. Young workers are often the most vulnerable in workplaces.

### ***Recommendation #8***

***The Newfoundland and Labrador Federation of Labour recommends that the Code prohibit discrimination on the ground of age as outlined in the Newfoundland and Labrador Labour Standards Act.***

## *Political Opinion*

The Code prohibits discrimination on the ground of political opinion but does not define political opinion. Human rights legislation from other provinces use the more inclusive terms “political belief, political association or political activity.”

The Federation of Labour is concerned that political opinion in our Code is seen as participation in established and mainstream political parties. Political opinion can manifest itself in belief in tenets of such movements as trade unionism, feminism, anti-poverty groups, workers' rights groups, environmentalism and many other forms of community and social activism.

As participation in community and social activism (in particular workers' rights) and non-traditional political organizations is more likely to attract the disapproval of employers, it is submitted that the definition should be amended to reflect the diversity of political opinion and activity. The Code should be amended to state: **Political opinion includes political belief, political convictions, political associations, political activities and social activism.**

**Recommendation #9**

*The Newfoundland and Labrador Federation of Labour recommends that the Code be amended to include the following: Political opinion includes political belief, political convictions, political associations, political activities and social activism.*

## **Funding for the Human Rights Commission – Education and Advocacy**

The Commission ought to be provided adequate resources and funding in order to protect and promote human rights. Human rights education is severely lacking in our province. We recommend this be rectified by adequately funding human rights advocacy to be either carried out by a special arm of the Commission or by working in partnership with a community organization (e.g. The Human Rights Commission) whose job it is to carry out education and advocacy.

**Recommendation #10**

*The Newfoundland and Labrador Federation of Labour recommends that the Human Rights Commission be provided with adequate resources (financial, human and otherwise) to carry out a comprehensive program dealing with education and advocacy in relation to human rights and the Newfoundland and Labrador Human Rights Code.*

## **Who does the Commission report to?**

**Recommendation #11**

*The Newfoundland and Labrador Federation of Labour recommends the Human Rights Commission report directly to the House of Assembly.*

## Key Recommendations

1. The Newfoundland and Labrador Federation of Labour recommends that the right to form and join a union and the right to collective bargaining become part of Newfoundland and Labrador's Human Rights code.
2. The Newfoundland and Labrador Federation of Labour recommends that the right to form and join a union and the right to collective bargaining become part of Newfoundland and Labrador's Human Rights code.
3. The Newfoundland and Labrador Federation of Labour recommends that the Newfoundland and Labrador Human rights code amend the definition and reference to "discrimination" to reflect discrimination in terms of differential treatment whether it is intentional or not, ensuring that the Code recognizes and names systemic discrimination.
4. The Newfoundland and Labrador Federation of Labour recommends that the Newfoundland and Labrador Human Rights Code strengthen the section of the Code dealing with "harassment" to include specific definitions of and references to gender harassment and workplace bullying.
5. The Newfoundland and Labrador Federation of Labour recommends that the Code be amended to provide limits to the liability to which unions are exposed. Section 9 should be amended to state that: "a bargaining agent that is a party to a collective agreement can only be found to have discriminated against a member of the bargaining unit if the bargaining unit obstructs reasonable efforts to accommodate an employee, by an employer who is party to a collective agreement."
6. The Newfoundland and Labrador Federation of Labour recommends that Section 9 (1) of the Code be amended in such a manner as to prevent the use of bona fide occupational qualification as a means to allow improper discrimination, and to ensure that any related rule or policy was adopted in good faith, for a valid reason, without an ulterior purpose that would be contrary to the purposes of the Code and in the sincerely held belief that the rule or policy was absolutely necessary.

7. The Newfoundland and Labrador Federation of Labour recommends that the Code be amended to ensure that social and economic rights are enshrined as a basic component of equality rights. In addition, the fundamental components of social and economic rights should be clearly defined within the code.
8. The Newfoundland and Labrador Federation of Labour recommends that the Code prohibit discrimination on the ground of age regardless of age.
9. The Newfoundland and Labrador Federation of Labour recommends that the Code be amended to include the following: Political opinion includes political belief, political convictions, political associations, political activities and social activism.
10. The Newfoundland and Labrador Federation of Labour recommends that the Code be amended to include the following: Political opinion includes political belief, political convictions, political associations, political activities and social activism.
11. The Newfoundland and Labrador Federation of Labour recommends the Human Rights Commission report directly to the House of Assembly.