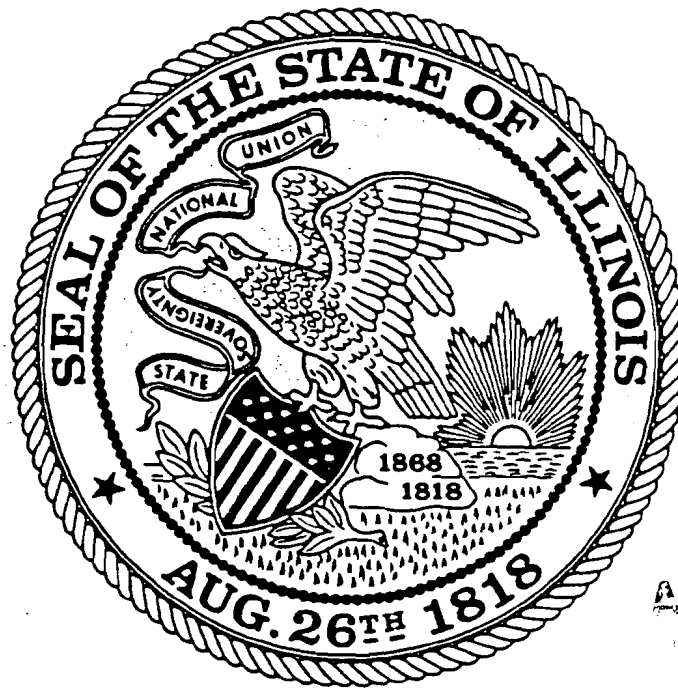


1351.811  
ILLI  
2000  
c.1

# Illinois Human Rights Commission

Fiscal Year 2000

## ANNUAL REPORT



ARCHIVAL COPY  
DO NOT CIRCULATE

George H. Ryan, Governor

Rose M. Jennings, Chairman

*serving the public with fairness; working together with pride*



STATE OF ILLINOIS  
HUMAN RIGHTS COMMISSION



George H. Ryan  
Governor

Rose M. Jennings  
Chairman

September 30, 2000

Dear Governor Ryan:

With pride and accomplishment, the Illinois Human Rights Commission presents our Annual Report to you and the 92<sup>nd</sup> General Assembly.

During the second year of your administration, we have made significant improvements and increased many efficiencies that positively affect the way the Commission now functions.

The Commission received a *temporary*, four-year lump sum appropriation, funding an additional 14 positions to reduce the backlog in Fiscal Year 1997. With the expiration of this *temporary* appropriation at the end of Fiscal Year 2000, we have reduced our headcount by 10 positions, while eliminating all reserved cases. Those cases currently in the purview of the Commission are progressing through our system at a manageable and expected rate. Our caseload is now the lowest in a decade and we anticipate that over half of our cases will settle and not go to hearing.

All Commission staff, in both our Chicago and Springfield offices, now have access to the State of Illinois centralized computer system and have access to the Internet and online research services. We have installed an electronic case management system, and extra services to the public have been added. Expanding on the statewide technology initiative, the Commission's web page was also developed during this fiscal year and is scheduled to go live to the public within 30 days.

We look forward to continuing our accelerated pace of service delivery to the people of the State of Illinois and fulfilling the message of the Commission's motto, "serving the public with fairness; working together with pride".

Sincerely,

Rose M. Jennings  
Chairman

STATE OF ILLINOIS  
HUMAN RIGHTS COMMISSION



Rose M. Jennings  
Chairman

George H. Ryan  
Governor

REMEMBRANCE

Reverend Dr. Rudolph S. Shoultz  
1918 – 2000

It was with a deep sense of loss that the Illinois Human Rights Commission said goodbye to one of its most dedicated members on March 3, 2000. The Reverend Dr. Rudolph S. Shoultz served the people of the State of Illinois as a Commissioner from 1993 until he succumbed to a long illness.

Those who worked with Commissioner Shoultz watched with awe, as he continued to fulfill his civic, pastoral and charitable responsibilities without complaint.

Through his numerous community activities, Reverend Shoultz set a high standard for public service.

We, at the Illinois Human Rights Commission, will miss his explicit and fair contributions to our deliberations and we pay homage to his memory. He will be profoundly missed by us all.

## TABLE OF CONTENTS

Mission Statement.....	1
The Creation of the Human Rights Commission.....	2
Composition of the Commission.....	4
Committees.....	5
Administrative Law Section.....	6
Commission Review.....	9
Significant Decisions of the Commission.....	10
Appropriations .....	12
Glossary.....	13

**MISSION STATEMENT  
OF THE  
ILLINOIS HUMAN RIGHTS COMMISSION**

The Illinois Human Rights Commission is dedicated to promoting freedom from unlawful discrimination as defined by the Illinois Human Rights Act. The Act forbids discrimination based on sex, age, race, color, religion, arrest record, marital status, handicap, citizenship status, national origin, ancestry, unfavorable military discharge, retaliation, and sexual harassment. The Act forbids discrimination in employment, real estate transactions, higher education, public accommodations and access to financial credit.

Our mission is to provide a neutral forum for resolving complaints of discrimination filed under the Illinois Human Rights Act.

Our primary responsibility is to make impartial determinations of whether there has been unlawful discrimination as defined by the Illinois Human Rights Act. We are also responsible for furnishing information to the public about the Act and the Commission.

To fulfill our mission, we strive to provide professional, competent, and considerate service to everyone who seeks information from us or who has a case before the Commission.

## **The Creation Of The Human Rights Commission**

The Human Rights Commission was created December 6, 1979, with the passage of the Illinois Human Rights Act. The Act, the most comprehensive civil rights legislation in state history, created a two-part enforcement procedure: 1) a Department of Human Rights to investigate charges, and 2) a Human Rights Commission to adjudicate complaints of unlawful discrimination in employment, real property transactions, access to financial credit and public accommodations.

## **The Role of the Human Rights Commission**

The Department of Human Rights investigates claims of unlawful discrimination brought under the Act. The Human Rights Commission adjudicates contested charges of unlawful discrimination, following the Department's investigation, when adjudication is proper under the Act. The spirit of the Human Rights Act encourages resolution of claims through the least litigious means. Claims are resolved at many different stages of the investigation and adjudication process.

The Commission acts as a neutral forum for the adjudication of contested claims. It makes findings of fact and law through administrative due process.

## **How a Claim of Discrimination Is Adjudicated Under the Act**

A person may initiate a claim of discrimination by filing a Charge of Discrimination with the Department of Human Rights. The alleged violator is given notice of the charge and the Department conducts an investigation of the allegations. At the conclusion of its investigation, the Department serves the parties with its finding. The Department's finding may be one of the following:

- (1) The claim is dismissed because it does not raise a claim falling under the Human Rights Act, or
- (2) The claim is dismissed because the Department finds that there is not substantial evidence that a violation of the Act has occurred, or
- (3) The Department finds that there is substantial evidence that a violation of the Act has occurred.

When the Department finds that there is substantial evidence that a violation of the Act has occurred, it files a complaint with the Human Rights Commission. This begins the Commission's adjudicative process. If the Department issues no finding of any kind within 365 days of the filing of a charge, the complainant may file a complaint with the Commission, without the Department's finding.

The Commission, through appointed administrative law judges, conducts administrative hearings. There are rules of evidence and witnesses give sworn testimony. Following such a hearing, the presiding administrative law judge issues a recommended order and decision. Hearing before an administrative law judge is similar to a court trial.

The Commission may hear arguments taking exception to the decision of an administrative law judge. The Commission hears arguments of law, based on the record of the hearing, and issues an order similar to an appellate court decision. It is important to note that, notwithstanding the similarities, administrative tribunals are distinct from judicial tribunals and function differently in many ways.

The Commission hears exceptions to recommended orders by meeting in panels of three Commissioners. A party may petition the entire Commission of thirteen members to rehear any order made by a panel. The Commission grants such rehearings at its discretion, usually when it believes it is necessary to create uniformity between its panels or to clarify an important point of law. Additionally, the Commission reviews and approves or rejects the terms of settlements between parties submitted by the Department of Human Rights.

## THE COMPOSITION OF THE COMMISSION

The Commission is made up of thirteen Commissioners, appointed by the Governor with the advice and consent of the Illinois Senate. Staff include an executive director, a general counsel, an assistant general counsel, a chief administrative law judge, administrative law judges, and administrative operations staff.

<u>The Commissioners</u>	<u>Appointment Date</u>	<u>Term Expiration Date</u>
Rose M. Jennings, Chairman Chicago	February 1, 1995 February 8, 1999 <i>(Reappointed and appointed Chairman)</i>	January 20, 2003
Eva Betka Palatine	February 8, 1999	January 20, 2003
Dominic DiFrisco Chicago	February 8, 1999	January 20, 2003
Marylee V. Freeman Chicago	March 31, 1999	January 15, 2001
Mary Jeanne "Dolly" Hallstrom Evanston	September 18, 1991 February 8, 1999 <i>(Reappointed)</i>	January 20, 2003
Sakhawat Hussain, M.D. Frankfort	May 4, 1994 May 1, 1998 <i>(Reappointed)</i>	January 15, 2001
Yvette Kanter Highland Park	May 12, 1998	January 15, 2001
Girvena M. LeBlanc Olympia Fields	February 8, 1999	January 20, 2003
James Maloof Peoria	May 21, 1997	January 15, 2001
Arabel Alva Rosales Chicago	January 10, 1999	January 15, 2001
Daniel C. Sprehe Chicago	February 8, 1999	January 20, 2003
Isiah Thomas Calumet Park	June 20, 1994 February 8, 1999 <i>(Reappointed)</i>	January 20, 2003

Previously appointed and serving as Commissioner during Fiscal Year 2000 was the late Reverend Dr. Rudolph S. Shoultz of Springfield.



## COMMITTEES

In order to fulfill its mission responsibly and responsively, the Commission has formed committees with oversight responsibilities for major Commission areas: Budget, Legislative, Personnel, and Policy and Procedures. The membership of these committees during Fiscal Year 2000 was as follows:

### **Budget**

Eva Betka, chair

### **Legislative**

Daniel C. Sprehe, chair

### **Personnel**

Isiah Thomas, chair

Eva Betka

Yvette Kanter

Daniel C. Sprehe

### **Policy and Procedures**

Sakhawat Hussain, M.D., chair

The Chairman of the Commission, Rose M. Jennings, serves as a member of all committees.

It is the Commission's goal to provide the most equitable and efficient disposition of all civil rights cases brought before it. Fiscal Year 2000 marked the closing of a four-year "lump-sum" funding by the General Assembly designed to eliminate a substantial backlog of cases and resultant delays in trial-level or Commission-review-level resolution of discrimination allegations in the state of Illinois. During the last year of the "lump-sum" period, the Commission completely eliminated a substantial backlog of cases awaiting initial hearing by an administrative law judge, streamlined pre-trial procedures, and, in conjunction with the Department, launched an integrated case tracking system that provides "at a glance" status of individual cases and will also facilitate statistical analysis of cases of alleged or proven discrimination in the state.

## **Administrative Law Section**

The Administrative Law Section of the Illinois Human Rights Commission is the trial-level division of the Commission, charged with the responsibility of conducting the pre-trial and public hearing phase of complaints of discrimination filed by the Department of Human Rights or by individual complainants. This mandate was carried out by the Commission staff of administrative law judges, all licensed attorneys, consisting of a chief judge, motions judges, and hearings judges located in Chicago and Springfield.

### **Preparing a Case for Hearing**

Because of the complex nature of the relevant law, substantial preparation by the parties, including discovery proceedings and motion practice, is generally necessary before a hearing on the merits of the case. As a consequence, all parties are encouraged to obtain legal representation, and at public hearings, both parties are usually represented by legal counsel. In the Chicago office, there is an oral motion practice for cases in which the site of the alleged discrimination is located in Cook County. Having an oral motion call greatly expedites the pre-hearing phase of litigation before the Commission because it often produces immediate responses from the opponent of a motion as well as prompt rulings from the administrative law judge hearing the motion. During Fiscal Year 2000, an additional day for "motion call" was added to the Chicago office schedule to provide greater accessibility and time efficiency to the motion practice of that region.

Motion practice for cases located outside Cook County is generally conducted by telephone conference calls or by mail. There is no set oral motion practice in the Springfield office due to the greater geographic area covered. It would be inefficient to require litigants to travel to the Springfield office for routine motions; instead, such are frequently decided on the basis of the written motions and written responses. Parties may at any time, request an oral argument in person or by conference call, on a motion in the Springfield office.

As with any litigation, it can take parties months to years to complete needed discovery and engage in pretrial motions.

### **Settlements**

Pre-hearing settlement conferences are offered and used extensively at various stages in the resolution of complaints. As a consequence, settlements have been reached after the filing of the respondent's answer, after rulings by the administrative law judge on crucial motions, after completion of discovery, and even during or after preparation of the joint pre-hearing memorandum. The parties in some cases settle after the public hearing has begun or even after the hearing judge has issued a Recommended Liability Determination.

During Fiscal Year 2000, the Administrative Law Section has continued the general practice of having an administrative law judge who will not preside over the public hearing conduct a voluntary settlement conference with the parties and their attorneys immediately before the scheduled public hearing. Administrative Law Section encourages the parties to participate in a settlement conference because it has proven to be a successful tool for final case resolution. "Eve of trial" settlement conferences result in settlements in a significant percentage of cases pending before the Administrative Law Section.

Parties who choose to settle can formalize the terms of their agreement in two ways. First, the most common, parties can settle among themselves without presenting the settlement to the Commission and without making the terms public. Second, parties can submit the settlement agreement to the Commission for approval. These settlements will be discussed in the "Commission Review" section below.

### **Public Hearings**

In accordance with the Act, public hearings are held at a location that is within 100 miles of the place at which the civil rights violation is alleged to have occurred. As a consequence, the Commission's administrative law judges traveled in the course of the year to sites throughout the state as necessary.

The public hearings conducted by administrative law judges at the Commission are very similar to circuit court trials; they are formal and conducted in accordance with the rules of evidence used in the courts of Illinois. These hearings typically last two to three days. They may, however, take less than a half a day at one extreme or several weeks at the other.

Partly as a result of the four-year "lump-sum" funding and partly as a result of recently introduced administrative efficiencies, litigants before the Commission's Administrative Law Section are now able to schedule final public hearing on the merits of their cases at times of the parties' choosing.

### **Decisions**

After the transcripts of a public hearing have been received from the court reporter and post-hearing briefs have been submitted by all parties, the administrative law judge who heard the case prepares a written recommended decision. This includes findings of fact, conclusions of law, a proposed disposition, and a discussion of the applicable statutory provisions, court and Commission decisions, and other relevant authority. If the recommendation is in favor of the complainant, the administrative law judge will recommend appropriate damages. This may include an award of reasonable attorney's fees and costs. In some cases where the decision is in favor of the respondent, the administrative law judge may also recommend fees and costs in that prevailing party's favor.

Parties have the opportunity to file written exceptions to the administrative law judges' recommended orders. If no timely exceptions are filed, the administrative law judge's Recommended Order and Decision becomes the Order and Decision of the Commission. If exceptions are filed, the first level of review of the decision is invoked, and the case becomes a matter for Commission consideration. A panel of three Commissioners has the option of reviewing or declining to review the Recommended Order and Decision. If the panel declines review, the Recommended Order and Decision becomes the Order and Decision of the Commission. If the panel decides to review the Recommended Order and Decision, the panel may adopt, reverse, remand for further hearing, or modify a recommended decision. A party dissatisfied with a panel's decision has the right to seek rehearing before the full Commission.

During Fiscal Year 2000, the Administrative Law Section achieved a balance between cases received and cases disposed of at its level. At the beginning of the year, there were 986 cases pending at the Commission; at the end of Fiscal Year 2000, there were 864 cases. These numbers indicate that cases are moving through the adjudication and administrative review levels of resolution at a reasonable rate.

The number of cases filed with the Commission in Fiscal Year 2000 was slightly up over the previous year. In FY 1999, 370 cases were filed; FY 2000 saw 415 new cases filed at the Commission.

During Fiscal Year 2000, 477 cases were completed at the Administrative Law Section level. Of these, 193 were closed through the issuance of Recommended Orders and Decisions, written opinions authored by administrative law judges. A "ROD" closure occurs either after hearing on the merits of the case or as a result of a dispositive motion. It is important to note that a Recommended Order and Decision only completes a case at the Administrative Law Section level. Cases only become final decisions as a result of Commission action.

The Administrative Law Section closed 283 cases by Final Order and Decision. These cases were voluntarily dismissed by agreement of the parties, usually as a result of the parties reaching a settlement. The Administrative Law Section judges actively facilitate settlement of cases, which is a less costly resolution of the matter than proceeding to hearing on the merits.

## Commission Review

Members of the Human Rights Commission have adjudicative authority over claims and are responsible for the administration of the Commission by and through Commission staff.

In keeping with the spirit of the Act, most cases are resolved without review by the Commissioners. Following the issuance of a Recommended Order and Decision by the Administrative Law Section, parties may file exceptions to that order. If no exceptions are filed, the Recommended Order and Decision of the administrative law judge is adopted by the Commission as its final order. These cases become final due to "No Exceptions".

When exceptions are filed, the Commission determines whether or not to grant review of the case. The Commission takes review of cases based on its statutory discretion and the nature of the claims presented by the parties. For example, the Commission will not disturb an administrative law judge's findings of fact unless those findings are contrary to the manifest weight to the evidence presented to the ALJ at the hearing. A petition of exceptions which seeks review to introduce new evidence not raised at the public hearing will not be granted. These cases are closed because the Commission has "Declined Review".

Parties may reach settlement between themselves after the hearing of the case.

The Commission may take review of any case where one party or another has filed exceptions. In normal practice, only the most contentious or complex cases require the Commission review through a panel, or *en banc*. In these cases, the full Commission issues an Order and Decision. These cases have the most precedential value in interpreting the Human Rights Act. Significant orders of the Commission for this fiscal year are summarized in the next section of this report.

## Significant Decisions Of The Commission During Fiscal Year 2000

In Groh and Rav Chevrolet & Geo Inc., \_\_\_ Ill. HRC Rep. \_\_\_ (1992CN1330, October 4, 1999), an issue arose as to whether the Commission has jurisdiction over a claim that an employer discriminated against the complainant based on her association with a handicapped person. There, the complainant claimed that actionable discrimination occurred when the respondent switched to a new health insurance carrier which in turn refused to insure the complainant's husband who had been diagnosed as having cancer. While acknowledging that such an association claim is theoretically possible under federal law, the Commission found that the duty to accommodate under the Human Rights Act extends only to qualified handicapped applicants or employees.

The duty to accommodate was further clarified by the Commission in Van Campen and International Business Machines Corporation, \_\_\_ Ill. HRC Rep. \_\_\_ (1990CN3803, June 8, 2000), and Leevy and Bodine Electric of Decatur, \_\_\_ Ill. HRC Rep. \_\_\_ (1997SF0607, June 16, 2000). In each case, the complainant argued that the respondent was required to accommodate his or her handicap by either permanently reducing the number of required hours in order to accommodate a medical restriction or granting an unpredictable amount of flex-time in order for the complainant to accommodate his physical or mental affliction as the need arose. In both cases, the Commission held that neither of the requested accommodations were reasonable in light of the requirements of the jobs in question especially where the records suggested that attendance was vital to the needs of the company and where a limited time schedule would preclude the complainant from performing all of the duties of the position.

The Commission in Leevy also addressed an interesting issue concerning whether the Petrillo doctrine applies to Commission proceedings. There, the respondent referred the complainant to a physician used by the respondent to examine and treat its injured employees. After the physician told the complainant that there was nothing more that could be done to treat her pain in her hand, the physician saw the complainant a second time and told a member of respondent's management that complainant could work full-time with limited use of her right hand. At the public hearing, complainant moved to exclude the testimony of the physician based on the Petrillo doctrine which prohibits *ex parte* conferences between plaintiff's treating physician and the defense attorney because they violate the physician/patient privilege. The Commission, though, concluded that the Petrillo doctrine does not apply where the physician was retained by the respondent and where the physician's opinion concerning the complainant's condition was rendered solely for the purpose of assisting the respondent in determining when the complainant could return to work full-time. In both circumstances, the Commission reasoned, no fiduciary relationship exists because the complainant knows or should know that what he or she is telling the physician would be used by the respondent.

Additionally, the Commission in Wilhem and R.R. Hayward Company, \_\_\_ Ill. HRC Rep. \_\_\_ (1991CN2301, February 4, 2000) addressed issues of whether and to what extent an employer must investigate an employee's request to accommodate his or her handicap. There, in the context of a failure to transfer claim, the complainant argued that the respondent violated the handicap provisions of the Human Rights Act when respondent insisted that complainant provide an unrestricted release from his physician indicating that the complainant could do the job. The Commission found that under the recent case of Harton v. City of Chicago Dept. of Public Works, 301 Ill.App.3d 378, 703 N.E.2d 493, 234 Ill.Dec. 632 (1<sup>st</sup> Dist. 4<sup>th</sup> Div. 1998), an employer would not be liable under the Act where Complainant could not show that he or she could perform the essential duties of the subject position with a reasonable accommodation. Accordingly, the complainant in Wilhem did not prevail since the job in question required the individual to perform manual labor 50 to 85 per cent of the time while Complainant's physician, who had released Complainant to perform only light duty, had never released Complainant to perform physical labor.

The Commission, in Thompson and Pinnacle Stanrick Corporation, \_\_\_ Ill. HRC Rep. \_\_\_ (1995SF0318, November 2, 1999), considered whether an employer may properly raise a fetal vulnerability policy as a defense in pregnancy-related sex discrimination cases. There, complainant, who exercised and rode horses as part of her job as a horse caretaker, informed her supervisor that she was pregnant and that, according to her doctor, she had only a ten per cent chance of having a miscarriage by riding horses. Complainant's supervisor, who assessed complainant's ability to ride horses while pregnant based upon the experience of his wife who had been forbidden by her doctor from doing so, told complainant that he did not want her riding horses and discharged her. In finding in favor of the complainant, the Commission initially observed that decisions with respect to the welfare of future children must be left to the employee rather than the employer where the pregnancy does not render the employee physically unable to perform her job functions. Moreover, the Commission noted that Complainant's pregnancy did not render her unable to perform the duties of a horse caretaker, and that even if the respondent had presented medical testimony that there was a ten per cent chance of miscarriage caused by complainant riding a horse, such evidence could not be a defense to a charge of sex discrimination.

## APPROPRIATIONS

### GENERAL REVENUE FUND (In Thousands of Dollars)

Personal Services	861,300
State Paid Retirement Contribution	34,500
Retirement	83,700
Social Security	65,200
Contractual Services	171,700
Travel	34,000
Commodities	13,000
Printing	5,500
Equipment	13,900
Telecommunication	21,500
<b>Total Annual Appropriation</b>	<b>1,304,300</b>
Expenses of Processing Human Rights Cases*	778,800
<b>Total Appropriations General Revenue Fund</b>	<b>2,083,100</b>

\*lump-sum appropriation



## GLOSSARY OF TERMS

Adjudication - Rendering of a decision.

Administrative Agency - An agency created to enforce and adjudicate specific local, state or federal laws and charged with developing expertise in that specific area of law. Distinguished from the judicial system.

ALJ - Administrative Law Judge

Charge - This is the initial allegation of discrimination. It must be filed with the Department of Human Rights within 180 days of the date of the alleged discriminatory act. A charge is often confused with a "complaint," which is the document that starts proceedings at the Human Rights Commission.

Complaint - This is the initial pleading filed at the Human Rights Commission by either a complainant or by the Department of Human Rights.

Complainant - The one who files a charge with the Department of Human Rights.

EEOC - The federal Equal Employment Opportunity Commission.

Final Order and Decision - A decision by an administrative law judge dismissing a case based on the request of the complainant.

Lack of Substantial Evidence - If the Illinois Department of Human Rights finds after an investigation that the substantial evidence standard has not been met, it will dismiss the charge without a hearing based on a "lack of substantial evidence."

Motion - A plea/request by either party asking for a specific finding.

MotionCall - Regularly scheduled times in the Commission's Chicago office when litigants may appear before an administrative law judge to present and argue motions. For cases outside Cook County most motions are either heard telephonically or decided on the basis of the written motions and responses.

Order and Decision - This is the final decision of the Commission on the merits of a case.

Petition for Rehearing - Following an Order of a Commission panel, a party may petition to be heard by the full Commission, all 13 members meeting *en banc*.

Recommended Liability Determination - This is the title of a recommended order by an administrative law judge which upholds the Complaint or portions thereof and/or which determines that a party is entitled to an award of attorney's fees and costs and directs that

party to file a petition for such award. This order is subsequently incorporated into the final Recommended Order and Decision of the administrative law judge.

Recommended Order and Decision - This is the title of the recommendation of the administrative law judge to the Commission as to how the case should be decided.

Respondent - One against whom the complaint of alleged human rights violation is brought.

Substantial Evidence - Enough evidence of discrimination so that a reasonable person might infer a discriminatory motive. This is the standard used by the Department of Human Rights to decide if a case should be dismissed without a hearing at the Human Rights Commission.