Your Protection under the Maine Human Rights Act: Basic Facts You Should Know

By Ivy L. Frignoca

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In December of 2000, Pine Tree Legal Assistance Native American Unit Attorney Craig Sanborn filed a complaint in Superior Court on behalf of Diane Clement, a Sheed High School student and member of the Passamaquoddy Tribe. The case was later turned over to private attorneys Ivy Frignoca and Sam Rudman of the Portland law firm Lambert, Coffin, Rudman and Hochman. That case was reported on in the Winter, 2001 edition of the Wabanaki Legal News (http://www.pla.org/wabanaki/MWE-8TriTribalBriefs.htm). The complaint stated that a Town of Perry school bus driver discriminated against Ms. Clement. This article updates you on the progress of that case and explains some types of racial discrimination that you may experience as a Native American.

In Ms. Clement’s case, the Maine Human Rights Commission ruled that the bus driver had discriminated against her by calling all “Pleasant Point people” to the front of the bus for a “verbal dressing down with reference to their race,” following a gum throwing incident involving only two students. The case has been filed in court and is in the “discovery” phase. That is the time when the lawyers for both sides send written questions to the opposing party to be answered under oath, take depositions (testimony under oath) of the parties and witnesses, and conduct any other necessary proceedings (Continued on next page).

Pine Tree Case Summaries

The following are summaries of some of the cases

Pine Tree Native American Unit attorneys have handled over the last six months. You can call attorneys Craig Sanborn or Mike Guare or paralegal Danny Mills at 1-800-879-7463.

Case One: Education

The client was a Passamaquoddy woman living in Bangor who was denied admittance at a local university because she had not reimbursed the school for an overpayment in grant monies. The school refused to allow admission until the overpayment was paid in full. After a short investigation, Craig Sanborn discovered that the original overpayment had been the result of a mutual agreement (Continued on page 6)
investigations. When discovery ends, probably in July, the case will be placed on a trial list.

Ms. Clement's case is brought under a part of the Maine Human Rights Act that states that everyone at an educational institution has the right to participate in all educational, counseling and vocational guidance programs and all apprenticeship and on-the-job training programs without discrimination because of race. Maine's highest court, its Supreme Court, has never ruled on what racial discrimination in education actually is. There is also little case law on a national level in this area. Therefore, this case may be an important opportunity for courts to speak on the meaning of racial discrimination in schools.

In addition, to prohibiting racial discrimination in education, Maine's Human Rights Act provides many other protections. For example, it prohibits racial discrimination by creditors. Creditor discrimination occurs when a creditor refuses to extend credit to a person solely on the basis of race. In other words, if a bank refuses to lend you money solely because you are Native American and/or live on a reservation, it violates Maine's Human Rights Act.

The Maine Human Rights Act also prohibits discrimination in public accommodations. An owner, proprietor, manager, or employee of a place of public accommodation cannot discriminate against or refuse lodging or services to a person based solely on race. For example, if an innkeeper refuses lodging to a Native American based solely on race, she violates the Act.

The above are a few of the ways Maine's Human Rights Act works to prevent race-based discrimination. The remedies the Act provides vary with each case. The remedies can include, but are not limited to, money to compensate a victim for some types of harm, monetary penalties, and attorney's fees and costs.

Being aware of discrimination is important. According to experts in discrimination against Native Americans, racial discrimination harms Native Americans in fundamental ways. Discrimination eats away at the pride Native Americans have regarding their culture. It also causes Native Americans to turn to alcohol, drugs, and other means to insulate them from the hurt caused by the racism. Sometimes it even causes Native Americans to turn on one another and harm one another since they feel powerless to change the white world around them.

In addition to the Maine Human Rights Act, Maine's Constitution, the United States Constitution, and federal law all prohibit various types of discrimination. If you have questions about federal and state anti-discrimination laws you may call Craig Sunborn of the Native American Unit at Pine Tree Legal at 1-800-879-7463. You may also call Attorneys Samuel Rudman or Ivy Frignoca at 1-800-841-1238 for further information.
action requesting the EPA to keep jurisdiction was a governmental action. Therefore, the Court found, the Tribes were acting as municipal governments.

The Court did agree with the Tribes that, under the terms of the Settlement Act, the State could not interfere with internal tribal matters. The Court raised the question, however, whether applying the Freedom of Access law to the Tribes would always interfere with internal tribal matters. The Court then defined internal tribal matters.

The Court stated that “a Tribe’s own methods of convening and engaging in government will in most instances be matters ‘internal’ to the Tribe.” In this case, the Court decided that the Tribe’s internal discussions, votes, and decision-making about whether the Tribes would petition the EPA and how they would petition are all internal matters. These internal matters are not reachable by the Freedom of Access law. However, once the decisions were made and actions were taken outside of the Tribes, then these actions are no longer internal matters.

The Court ordered the Tribes to turn over documents that related to:

* Efforts by the Tribes to obtain “treatment as a State” status;

* Efforts by the Tribes to have the EPA adopt water quality standards different from those of the State of Maine for any waters located in the State of Maine; and

* Any agreements with federal agencies that relate to the protection or study of water or other natural resources.

However, the Tribes were not required to turn over documents relating to notices or agendas from any Tribal council meetings, or any notes or minutes taken at any Tribal council meetings.

The Tribes have filed a Motion for Reconsideration with the Maine Supreme Judicial Court. The Tribes believe the Court’s decision is based on a finding that the Tribes have asked the EPA to be treated like a state. The Tribes argue that, in fact, there is nothing in the record of this case to support such a finding. In addition, the Tribes have asked the Court to stay its decision so that the Tribes can appeal to the United States Supreme Court.

On June 20, the First Circuit Court of Appeals issued its decision in an appeal from a Federal District Court decision in this case. The District Court’s decision was reported on in Volume 5, Issue 1 of the Wabanaki Legal News, http://www.ptla.org/wabanaki/WLMFSTribalBri.htm. The First Circuit ruled that the decision by the Maine Supreme Court effectively ended the issues brought up in the District Court case. The Court did imply, however, that, in most respects, the District Court’s decision was correct.

The Tribes had brought the case in federal court, asking the judge to prevent the paper companies from going to state court. The District Court decision had focused on the question whether there was federal jurisdiction to hear that case. The judge had concluded, on technical grounds, that the Tribes had not met the “well-pleaded complaint” rule and that their case arose under Maine, not federal, law.

Supreme Court of Canada Rejects Akwesasne Mohawks’ Claim to Duty-Free Imports

On May 24, 2001, the Supreme Court of Canada reversed a lower court decision that had granted the right of an Akwesasne Mohawk to bring certain goods into Canada duty-free. The lower court had ruled that there were aboriginal and treaty rights that allowed for limited duty-free imports. The Supreme Court disagreed. It stated
"Prior Approval" Rules for Prescription Drugs in Medicaid
(The following article appeared in the MAIN Update, Winter, 2001, http://www.mejp.org/Update/3-1/3-1priorapproval.htm)

The Medicaid Program has made some changes in its prescription drug benefit. In an effort to reduce the cost of drugs charged to the Medicaid program, it is requiring "prior approval" for certain common prescription drugs when the Department believes an effective, less expensive alternative is available. You should still be able to get drugs that your doctor believes you need if the cheaper alternative does not work.

Because these changes were put into place very quickly, there has been some confusion about what they are, and what they mean for people receiving Medicaid. These changes were put into place in January of this year. This article will give you information about the changes that were made, and what protections are available to be sure that no one is harmed as these new policies are carried out.

Here are the Four Biggest Changes:

1. More prescription drugs must be "prior approved" by DHS before your doctor can prescribe them. This means that, in some cases, your doctor must request permission from the Department of Human Services, and provide information supporting that request, before he or she can prescribe certain drugs for you. This is only required where the Department believes there is another less expensive drug available that may work just as well for you. If the Department approves your doctor's request to give you a different drug than the one that DHS recommends, you will be able to get that drug with no further delay.

Only about 3% of all the drugs provided by the Medicaid Program are now subject to this prior authorization requirement. However, many of the drugs affected by this new policy are very common drugs taken by many Medicaid recipients, so many people have already had experience with this new policy.

Here are some of the more common conditions affected by the new prior authorization rules:

- Ulcers and Heartburn medications. DHS is requiring prior authorization of more expensive drugs, like Prilosec, but permits use of the less expensive drugs, like Protonix, without any prior approval.

- Arthritis medications. Prior approval is required of higher cost brand names (like Celebrex), while less expensive drugs and generics are available without prior approval.

- Anti-fungal medications. More expensive anti fungal medication will require prior approval.

- Allergy medications. Some more expensive antihistamines that are less likely to make you sleepy (such as Claritin) have to be prior authorized while less expensive antihistamines do not.

- Blood Pressure medications. If similar drugs are available at different prices, the more expensive drugs will be prior authorized.

- Pain medication - Oxycontin, which is sometimes illegally abused on the street, must be prior authorized, EXCEPT for those who are terminally ill or who are diagnosed with Cancer.

- Migraine medication. Many migraine medications will be limited in the total amount that can be prescribed for an individual per month without prior authorization. Here, DHS believes more of the drugs are being prescribed than is generally appropriate.

- Sedatives for sleep. DHS is limiting the availability of medications to help people sleep at night on the ground that they usually should not be needed every night. More frequent use would have to be prior authorized.

2. In some cases, you may be asked to take a different strength drug. For example, instead of taking two-20 milligram capsules a day, your prescription would be changed to one-40 milligram capsule. This change will be required in cases where the Department believes that a once-a-day dosage of a drug is just as effective and less expensive. If your doctor believes that changing your dosage would be harmful to you, he or she must request "prior approval" from the Department to allow you to take your drug in multiple daily doses.

3. Some additional "over the counter" drugs are now available. Some over-the-counter medications may now be available for help with coughs, allergies and rashes, if these medications provide a "cost-effective" alternative to a prescription drug. For this over-the-counter drug to be covered by Medicaid, your doctor must give you a prescription for it.

4. Pharmacies can now only give a 34-day supply at a time of some brand-name drugs. Pharmacies may still give three-month supplies of some other drugs (generics, for example) when the person will continue to need the drug for that period.

Legislative Update

Native American News

The Maine Legislature passed a bill this session requiring public schools to teach about the Wabanaki

(Continued on page 5)
TANF News

Two bills have been enacted this session relating to
TANF issues. The first deals with sanctions in the
ASPIRE Program. The bill puts into place some
procedural protections against sanctions for people in
the ASPIRE Program. Typically, people in the Program
have been sanctioned for missing meetings or not being
able to comply with other requirements. Under the new
bill, caseworkers must take some extra steps before they
can impose a sanction. Now, caseworkers must:

- review the file to look for possible good cause to
  explain why the ASPIRE participant did not
  comply with a requirement;
- notify the participant in writing and in detail about
  good cause;
- give the participant a chance to respond to the
  caseworker; and
- get supervisory approval before imposing a
  sanction.

The Maine Equal Justice Partners (MEJP) and the Maine
Association of Interdependent Neighborhoods (MAIN)
proposed this bill. MEJP and MAIN were concerned
about the large number of parents who were being
sanctioned or forced into inappropriate job situations
despite serious health problems or other barriers.

The second bill focuses on child care payments. In the
past, parents on TANF have been required to pay up to
$40/week of child care up front before they even get their
first paycheck. This can be a difficult, even impossible,
barrier for some parents to overcome. Under the new
bill, the TANF Program will pay childcare assistance
directly to the childcare provider. Parents wishing to get
the child care payment themselves, however, can opt out
of the system. The new bill, therefore, offers greater
flexibility and should remove the child-care barrier to
getting a job. This new system will need technical
computer work by DHS before it can be used. The bill
will not go into effect until the new computer system is
running, or March, 2002, whichever is earlier.

Minimum Wage

The Legislature enacted an increase in the minimum
wage. The wage will increase to $5.75 on 1/1/02 and to
$6.25 on 1/1/03.

Health Care

The Legislature has expanded the Medicaid Program to
cover more low-income adults. The bill will make
almost 16,000 adults with incomes below the poverty
level eligible for Medicaid by October 2002. The law
helps those who do not fit any Medicaid category and are
not otherwise eligible. This includes adults who do not
have minor children at home and are not elderly or
disabled. The Department of Human Services must now
get a “waiver” from the federal government to allow this
coverage.

The new law also improves the Medicaid rules on assets.
Effective January 1, 2002, savings accounts of up to
$8,000 ($12,000 for larger families) and a second car
needed for work or other essential activities, will be
exempt from the $2,000 Medicaid asset limitation. In
addition, the law expands from 6 months to one year the
length of time that children are covered by Medicaid
before DHS rechecks their family income. The new law
also renames both Medicaid and cub care as
“Mainecare.” Finally, the bill gives some additional
of

("Legislative Update" continued from page 4)
What is The Rakers' Center?

The Rakers' Center is where many agencies have offices during the blueberry harvest season to help blueberry rakers with a number of different issues. The center is in Columbia, ME at the Columbia Town Hall.

The following agencies will be there: Head Start, Food Stamps, Pine Tree Legal Assistance, the Health Clinic, Medicaid, Job Service, Social Security, Training and Development Corporation, the Summer Youth Program, and a food pantry.

Check the Rakers' Center notice for specific times. The Rakers' Center is open Monday to Friday, July 26-August 24. The Center's number is 483-6031.

Case Four: Housing

The client lived off-reservation at an inn in Bangor, paying rent weekly. The client lost his job and fell behind on his rent. The owner of the inn locked the client out of his room, locked up all of his belongings and told him that he could not have his things back until he paid his rent. The client came to Pine Tree for help.

Mike Guare advised him that, under the law, the owner of a hotel or an inn can do this to a guest who doesn’t pay a room charge, but a landlord cannot do this to a tenant who doesn’t pay the rent. In this case, Mike felt that the owner was acting more like a landlord than a hotel owner. Among other things, the client received no maid service, did all the laundry (including sheets and towels), took out his own trash, and cooked in his room. Mike filed a case in court saying that the owner was really a landlord and that it was illegal for the owner to refuse to give our client his possessions. The owner agreed to return our client’s property.

Case Five: Housing and Handicap

The client lived at a local housing authority. He had a number of handicaps that made it very hard to keep his apartment clean. He was being evicted because the housing authority said his apartment was too dirty. The client came to Pine Tree for help. Mike advised him that landlords must offer a reasonable accommodation to handicapped tenants. In this case, Mike asked for a hearing with the housing authority and argued that the handicapped tenant should not be evicted before he had a chance to get some help to keep his apartment clean. Mike won at the hearing and the client was able to stay in his apartment.

The articles in this paper are meant to give information, NOT to give legal advice. No one should interpret any law without the help of an attorney who has been told all the facts.
INDEX of COMMUNITY RESOURCES

CRISIS (available 24 hours a day)
- Adolescent Crisis Stabilization: 1-800-999-9130
- Child Abuse/Neglect: 1-800-452-1999
- Domestic Violence:
  - Penobscot: 1-800-863-9939 or 947-0496
  - Aroostook: 1-800-452-3023
  - Washington: 1-800-452-7009 or 255-4885
- Infoline Emergency Social Services Referral: 1-800-304-2503
- Mental Health: 1-888-568-1112
- Poison Control Center: 1-800-442-6305
- Rape Crisis: 1-800-310-0000
- Youth Crisis Stabilization: 1-800-499-9130

LEGAL SERVICES (Other than Pine Tree):
- Maine Lawyer Referral and Information Service:
  For a $20.00 fee, you can be referred to a lawyer in your area for a one half-hour consultation or review of your paperwork.
  Telephone: 207-622-1460 or 1-800-860-1460
  Website: http://www.mainebar.org/referral.html

Tel-Law:
Tel-Law has a number of different recorded messages to answer your basic questions about the law. It operates 24 hours a day. There is no fee other than the fact that it is a toll call outside the Augusta calling area.
Telephone: 207-622-1470
Website: http://www.mainebar.org/

Volunteer Lawyers Project:
If you meet the Pine Tree eligibility requirements, the Volunteer Lawyer's Project can give you legal advice or informational materials for free, or will refer you to a private lawyer who may handle your case without charge. There is a telephone helpline on Wednesday evenings to help you with family law questions.
Telephone: 207-774-4348 or 1-800-442-4293
Website: http://www.vlp.org/

Legal Services for the Elderly:
If you are age 60 or over, Legal Services for the Elderly can give you free legal advice or limited representation.
Telephone: 1-800-750-5353
Website: http://www.mainelc.org/

Penquis Law Project:
This group gives legal representation to low and moderate income residents of Penobscot and Piscataquis Counties in the following kinds of cases: Protection From Abuse, Divorce and Separation, Child Support Enforcement, Alimony, Parental Rights and Responsibilities, Wills, and Powers of Attorney. The fee depends on several factors, including your annual income and the complexity of your case.
Telephone: 207-973-3671

University of Maine Student Legal Services:
If you are an undergraduate student at the University, you can get free or reduced cost civil legal services.
Telephone: 207-581-1789

Chief Advocate, Department of Corrections:
The Advocate refers civil cases of inmates of the State correctional system, including the Maine State Prison and Maine Correctional Center, to attorneys under contract with the Department of Corrections. This office also gives paralegal and advocacy services for Maine State Prison inmates.
Telephone: 207-287-2145

Patient Advocate, Department of Mental Health, Mental Retardation, and Substance Abuse Services:
The Advocate refers civil cases of patients at state mental institutions or clients of the Bureau of Mental Health and Retardation to attorneys under contract with the Bureau.
Telephone (Bangor Mental Health Institute): 207-941-4180
(Region 3, including Penobscot, Washington, and Aroostook Counties): 207-941-4360

SOCIAL SECURITY:
- Bangor Area: 1-800-772-1213
- Presque Isle Area: 990-4530

DISCRIMINATION:
- Housing Discrimination: 1-800-827-5005
- Human Rights Commission: 624-6050
  Website: http://www.state.me.us/mhrc/index.html
- ME Civil Liberties Union: 774-5444
  Website: http://www.mlca.org/

DISABILITIES:
- Disability Rights Center: 1-800-452-1948
  Website: http://www.drcme.org/

CONSUMER RESOURCES:
- Consumer Mediation Service:
The Attorney General's Office gives this service free of charge. If you want to file a consumer complaint against a business call between 9:00 a.m. and 12:00 p.m.
weekdays. Or write to: Maine Attorney General, Public Protection Division, Consumer Mediation, 6 State House Station, Augusta, ME 04333.
Telephone: 626-8849
Website: http://www.state.me.us/ag/consumer.htm

**Lemon Law Arbitration:**
If you buy a car that has serious defects, the Attorney General’s Lemon Law Arbitration Program can help you.
Telephone: 626-8848
Website: http://www.state.me.us/ag/cglg7.htm

**Utility Complaints:**
The Consumer Assistance Division of the Maine Public Utilities Commission can help you settle problems with any utility in the State.
Telephone: 1-800-452-4699
Website: http://jamas.state.me.us/mpu/CAD/cad.htm

**Low Income Telephone Service Help:**
If you qualify for Food Stamps, Medicaid, TANF, SSI or Fuel Assistance, call your local telephone company to see if you qualify for a reduction on your monthly telephone bill.

**Employment/Labor Information:**
Career Centers: (Website: http://www.mainecareercenter.com/)
- Bangor 561-4600
- Calais 454-7551 or 1-800-543-0303
- Houlton 532-5300 or 1-800-691-0033
- Machias 255-3428 or 1-800-292-8929
- Presque Isle 760-6300 or 1-800-635-0357

State Bureau of Labor (wage or child labor complaints) 624-6410
Website: http://jamas.state.me.us/labor/

US Dept. of Labor (Wages and Hours Division) 945-0330

**Housing:**
Maine State Housing Authority 1-800-452-4668
Farmers Home Administration 947-0335

**Insurance:**
Bureau of Insurance 624-8475
Website: http://www.state.me.us/gfive/info.htm

**Mobile Homes:**
Manufactured Housing Board 624-8612
Manufactured Housing Association 623-2204
(mediation for mobile home residents) or 1-800-698-3335
Maine State Housing Authority 1-800-452-4668
TDD 1-800-452-4603

**COMMUNITY ACTION PROGRAMS (CAPS):**
These agencies give information, outreach, job training, educational programs, day care, housing information and referral, fuel/energy assistance, insulation and furnace repair, surplus food, transportation and emergency crisis intervention program benefits. Not all services are given by all agencies.

Aroostook County Action Program
771 Main St.
Presque Isle, ME 04769
1-800-432-7881 or 764-3721

Penquis Community Action Program
262 Harlow Street,
Bangor, ME 04401
973-3500

Washington-Hancock Community Agency
Maine and Maple Streets
Millbridge, ME 04658
546-7544

**TRIBAL GOVERNMENT and AGENCIES**

- Aroostook Band of Micmac Indians 764-1972
- Houlton Band of Maliseet Indians 532-4273
- Penobscot Indian Nation 827-7776
- Passamaquoddy Tribe 796-2301 and 853-2600

**PENOBSCOT TRIBAL COURT SYSTEM**

- Court Administrator (George Toner) 827-5639
- Clerk of Courts (Clara E. Mitchell) 827-5639
- Tribal Prosecutor 827-5639
- Juvenile Intake 827-5639
- Probation Office (George Toner) 827-5639
Regular Sessions: First Wednesday of the month.
Special Sessions as needed.

**PASAMAQUODD TRIBAL COURT SYSTEM**

- Indian Township Division:
  Clerk of Courts (Wanda Denton) 796-5600 or 7929
  Juvenile Intake/Prob’n Off’r (John Dana) 796-5600

- Pleasant Point Division:
  Clerk of Courts/Administrator (Dorothy Barnes) 853-2600
  Juvenile Intake/Prob’n Off’r (Edward Nicholas) 853-2600
Regular Sessions: One Friday per month at each division. Special Sessions as needed.

**OTHER TRIBAL AGENCIES**

- Tribal Governors Council 941-6568
- Maine Indian Tribal-State Commission 622-4815

**HEALTH SERVICES**

- Penobscot Indian Health Center 827-6101
- Maliseet Health Center 532-2240
- Micmac Health Center 764-6968
- Pleasant Point Health Center 853-0711
- Indian Township Health Center 796-2321

**MENTAL HEALTH AND SUBSTANCE ABUSE**
Wabanaki Mental Health Association, NPC 990-0605
or 990-4346

**HELPFUL NATIVE AMERICAN WEB SITES**
Wabanaki Confederacy:
http://communities.msn.com/WabanakiConfederacy
Nipmuc Indian Association of Connecticut:
http://www.nativeweb.org/NativeTech/Nipmuc/
Pine Tree Legal Assistance: http://www.ptla.org
Index of Native American Resources on the Internet:
http://www.hanksville.org/NAwarden/35
Native Links: http://www.johnco.com/native3
Native Sense: http://www.nativesense.com
Aboriginal Links: http://www.blonestreet.com/300/block/aborican.htm
Dusters Native American:
http://www.speecat.com/~duster/vote2.html