

Modernizing the Human Rights System in Yukon

PHASE 2, PART 1: PROCESS AND STRUCTURE

Report to the Minister of Justice

December 31, 2010

Contents

	Executive Summary	3
	Introduction	5
	Background	5
Theme 1	The human rights system: functions and structures	7
	Select Committee recommendations	7
	Current Yukon approach	7
	Approaches in other jurisdictions	8
	What was heard in consultations	9
	Reform objectives	9
	Considerations	9
	Recommendations, Theme 1	13
Theme 2	Appeals of Yukon Human Rights Board of Adjudication	14
	Current Yukon approach	14
	Approaches in other jurisdictions	14
	What was heard in consultations	14
	Recommendations, Theme 2	15
Theme 3	Adjudicator Qualifications	15
	Current Yukon approach	15
	Approaches in other jurisdictions	15
	What was heard in consultations	16
	Considerations	16
	Recommendations, Theme 3	18
Theme 4	Funding and financial accountability of human rights institutions	19
	Current Yukon approach	19
	Approaches in other jurisdictions	19
	What was heard in consultations	19
	Considerations	20
	Recommendations, Theme 4	21
Theme 5	Human rights education in public schools	21
	Current Yukon approach	21
	Approaches in other jurisdictions	21
	What was heard in consultations	21
	Considerations	22
	Recommendations, Theme 5	22
Appendix A.	Summary of recommendations	23
Appendix B.	Additional potential streamlining reforms	26
Appendix C.	Select Committee recommendations	27

Executive Summary

Yukon's human rights system, while serving complainants well, has been subject to criticism that it suffers from delay and inefficiency in the resolution of complaints, from perceived conflicts, bias and questionable judgment on the part of the commission, and from insufficient training and therefore expertise at the tribunal level. Amendments made through Phase One of the *Human Rights Act* Modernization Project achieved significant improvements to the complaints resolution process. However, more can be done to make the system faster, fairer and less adversarial, to focus more on prevention through effective education, and to ensure that public resources are focused on the most serious cases and issues and deployed only where needed.

This report on modernizing the Yukon's human rights regime focuses on five areas for potential reform:

- functions and structures of human rights agencies;
- the appeal process for final decisions of tribunal decisions;
- adjudicator qualifications;
- the method of funding of the Yukon Human Rights Commission; and
- public school education on human rights and responsibilities.

During the past decade, jurisdictions in Canada and elsewhere have undergone reviews of their human rights systems in attempts to deal with many of the same problems as in Yukon. Ontario and British Columbia (B.C.) have made radical structural reforms in terms of eliminating or limiting the mandate of their human rights commissions. Saskatchewan is proposing to eliminate its human rights tribunal, leaving the court to adjudicate human rights disputes. Most jurisdictions, however, have chosen to streamline the existing system through measures such as limiting the commission's role in complaints investigation and prosecution, empowering it to dismiss complaints that lack sufficient merit, establishing procedural rules designed to expedite the complaints process, and applying performance targets to both the commission and tribunal.

Review of the experience in other jurisdictions suggests that radical restructuring creates new problems and does not necessarily speed up the human rights complaint process, while significant streamlining reforms can improve the system without unduly limiting complainant access to justice. A set of reforms is therefore recommended that is designed to focus public resources on human rights education and on the most serious complaints, while directing and empowering the commission and tribunal to deal with complaints in a more timely, fair manner.

These reforms include, among other things:

- eliminating the commission's investigatory role in all but systemic cases;
- having the Director rather than Commissioners make complaint dispositions;
- limiting the commission's role in tribunal and court proceedings; and
- allowing either party to a complaint to have access to the tribunal directly if the commission has failed to dispose of the complaint within a prescribed period of time.

This "hybrid" approach (direct access after a period of time) allows complaints to be screened out or informally resolved at the less costly administrative (commission) level, but also allows those complaints that haven't been so dismissed or resolved to move more quickly to adjudication at the tribunal level.

In response to widespread concern about tribunal processes and decisions, legislated criteria for appointments to the tribunal and to the commission are recommended, with particular emphasis on the competence of adjudicators in administrative law and procedure. A more systematic and ongoing approach to adjudicator training is also recommended.

With respect to the commission's funding, possible alternatives to the status quo — the Human Rights Commission and the Board of Adjudication being funded through the Department of Justice — were examined and it was concluded that each alternative would create more serious problems than it solves.

With respect to human rights education in public schools, it was found that there is a need for more such education but that there is already adequate legislative direction in the *Education Act* for increased attention to human rights in schools. It is therefore recommended that the Department of Education work with the Yukon Human Rights Commission to deliver more human rights education within the existing curriculum and to ensure that Yukon teachers are properly educated in human rights.

Introduction

In June, 2010, the Department of Justice was directed by Cabinet to undertake further research on those recommendations of the 2008 all-party Select Committee on Human Rights that addressed changes to the structure, process, roles and responsibilities of the human rights regime in Yukon. The department was to conduct targeted consultations with key stakeholders, particularly those who had made submissions to the Select Committee on Human Rights, and to provide opportunities for public comment. The department was then to provide a report with recommendations for potential changes to the human rights regime in Yukon to the Minister by December 31, 2010. This is that report.

Background

Select Committee recommendations

In 2008, the Yukon Legislative Assembly set up a special committee to review the decades-old *Human Rights Act* and to recommend changes necessary to ensure that the Act reflected modern-day realities. In November 2008, the all-party Select Committee on Human Rights issued a report on its consultations with the Yukon public and stakeholders, making 25 recommendations for changes to the legislative regime that governs human rights in Yukon. Those recommendations are set out in Appendix C.

Phases of the review of the *Human Rights Act*

Eight of the Select Committee's recommendations — those that could be addressed discretely and relatively easily in terms of legislative drafting — were addressed in Phase 1 of the Human Rights Modernization Project. Phase One was concluded when the amendments to the *Human Rights Act* that gave effect to those eight recommendations came into force in December 2009.

Phase 2 is being carried out in two stages: Part 1 examines issues of process and structure; Part 2 will address outstanding recommendations of the Select Committee, including issues involving the scope and coverage of the Act.

This report covers options and recommendations for action on issues of process and structure. Details of consultations on outstanding Select Committee recommendations have yet to be determined.

Themes for review

This review covers five main themes:

- functions and structures of human rights agencies;
- the appeal process for final decisions of tribunal decisions;
- adjudicator qualifications;
- method of funding of the Yukon Human Rights Commission; and
- public school education on human rights and responsibilities.

Select Committee recommendations relevant to Part 1 of Phase 2

- #13 THAT there be increased education in the school system on human rights and responsibilities, and that this be enshrined in the *Human Rights Act*
- #14 THAT the human rights process change from the current configuration to a hybrid model that would reflect parts of a direct access model, with the intent of building efficiencies into the process
- #15 THAT there should be greater guidance on the role of the Yukon Human Rights Commission in the adjudication process to maintain balance
- #16 THAT the funding of the Yukon Human Rights Commission, and of the Yukon Human Rights Panel of Adjudication, be removed from the Department of Justice
- #17 THAT process issues be addressed and evaluated for both the Yukon Human Rights Commission, and the Yukon Human Rights Panel of Adjudication
- #19 THAT there be further discussion of the roles, responsibilities, and qualifications of the members of the Yukon Human Rights Panel of Adjudication, and that these roles, responsibilities, and qualifications be clarified
- #21 THAT further clarity be sought on Section 28 (“Appeals”) of the Act, with regard to the effectiveness of the provisions concerning appeals of final decisions of the Board of Adjudication

Consultation process

Targeted public consultations on Part 1 of Phase 2 began with the release of a discussion paper early in August 2010. Input on the five themes was solicited via a web site, newspaper advertisements and invitations to individuals and organizations that made submissions to the Select Committee, as well as to Yukon First Nations and communities. The Department of Justice also commissioned five experts to write articles on topics related to the consultation issues, which were posted on the project web site.

Project staff met with all parties that requested a meeting. A total of eight meetings were held with interested organizations and individuals. Six written submissions were received by the consultation deadline of October 8, 2010. The project team produced a report on the consultation entitled *What We Heard: Report on Consultation*. It was released on the web in November 2010 and printed copies were made available in December 2010.

Guiding principles

In addition to the Select Committee recommendations, analysis has been guided by principles underlying human rights systems generally. The starting point is an acknowledgement that government plays an important role as a guardian of human rights in actively promoting a respectful, tolerant society.

International human rights agreements and covenants to which Canada is a party articulate such obligations. For example, Article 6 of the Convention on the Elimination of Racial Discrimination requires that there be “effective protection and remedies, through competent national tribunals and other state institutions, against any acts of racial discrimination...” As well, the United Nations-endorsed and widely respected Paris Principles set out international standards for human rights systems, including the establishment and adequate funding of independent state institutions with broad mandates to promote and protect human rights.

Other principles for an effective human rights system include those identified in the discussion paper:

- **Independence and accountability:** The system should be structured so as to ensure the independence of watchdog and decision-making bodies as well as the accountability of publicly-funded bodies;
- **Accessibility and fairness:** The complaints process should provide access to justice for victims of discrimination and should be fair to all parties;
- **Operational efficiency:** The complaints process should ensure that complaints are resolved in an efficient, effective and timely manner; and
- **Proportionality:** The overall system should be proportional in size, cost and complexity to the size of the jurisdiction.

Theme 1 The human rights system: functions and structures

Select Committee recommendations

- #14 THAT the human rights process change from the current configuration to a hybrid model that would reflect parts of a direct access model, with the intent of building efficiencies into the process
- #15 THAT there should be greater guidance on the role of the Yukon Human Rights Commission in the adjudication process to maintain balance
- #17 THAT process issues be addressed and evaluated for both the Yukon Human Rights Commission, and the Yukon Human Rights Panel of Adjudication
- #19 THAT there be further discussion of the roles, responsibilities, and qualifications of the members of the Yukon Human Rights Panel of Adjudication, and that these roles, responsibilities, and qualifications be clarified

Current Yukon approach

Yukon's current human rights system is similar to that of most other Canadian jurisdictions. It includes a commission that fulfils a range of duties, including research and public education, human rights advocacy and all complaints-handling functions, including screening, assisting complainants and respondents, mediating disputes, investigating complaints, deciding whether to refer complaints to the tribunal, and representing the public interest in hearings before the tribunal. It also includes a quasi-judicial tribunal that hears cases referred to it by the commission. Members of both the commission and tribunal are appointed by the Legislature.

The commission is currently staffed by five employees: the Director, Intake Officer, Legal Counsel, Investigator and part-time Educator. The vast majority of commission staff's time is devoted to answering inquiries and handling complaints; the activities of the part-time educator position represent the majority of the commission's non-complaint-related work. Most complaints are settled with the help of commission staff, if not withdrawn or discontinued. Complaints that cannot be so resolved are put to the Commissioners for a formal disposition based on the staff investigator's report. Commissioners decide either to dismiss the complaint or to refer it to the tribunal for a hearing.

Further to recommendations of the Select Committee, the Yukon *Human Rights Act* was amended in 2009. These amendments gave the commission broader powers to, among other things, screen out complaints without merit, refer cases to the tribunal without investigation, and decide not to proceed with complaints where the complainant has failed to exhaust other available procedures, has withdrawn or abandoned the complaint, has not cooperated with the commission, or has refused a reasonable settlement offer. These streamlining amendments have already had a significant positive impact on the commission's caseload and have gone some distance toward achieving the objectives set out above.

Approaches in other jurisdictions

All Canadian jurisdictions other than B.C. and Nunavut have a human rights commission,¹ with the mandate of public education, research and general human rights promotion. Commissions are also commonly mandated to review legislation, advise government, assist persons concerned with human rights, initiate complaints, investigate matters referred to them by government, and approve affirmative action programs.

All jurisdictions also have a quasi-judicial tribunal to hear cases that cannot be settled, although Saskatchewan recently introduced a bill that would eliminate its human rights tribunal and replace it with the Court of Queen's Bench. This is the approach taken in most Australian jurisdictions, where the court adjudicates human rights disputes.

All commissions other than Ontario's also play a key role in complaint management — screening out complaints that don't meet certain legislated criteria, mediating complaints with the aim of avoiding costly hearings, investigating complaints to determine whether they have merit, and acting as gatekeepers to the tribunal. Only those complaints that the commission finds meritorious proceed to the tribunal.

In some jurisdictions, the staff Director rather than appointed Commissioners makes these determinations. Some jurisdictions allow for appeals of Commissioner/Director decisions to dismiss, either to the tribunal chair or to the Commissioners, while in others, judicial review is the only available route by which commission dismissals can be reviewed.

In contrast, Ontario, B.C. and Nunavut require that complainants go directly to the tribunal. These "direct access" models eliminate the commission's role in complaints handling and gatekeeping, and transfer all complaint screening, mediation and investigation functions to the tribunal. Complainants in these models receive no assistance from the commission, but may receive assistance from another organization funded to do so. Ontario has a publicly-funded Human Rights Legal Support Centre for this purpose, while B.C. funds non-governmental organizations to assist parties. Nunavut's tribunal offers assistance to parties in completing forms and in settling disputes without the need for a hearing. (It has yet to hear a case.)

Most other jurisdictions have also undergone reform in recent years with a view to achieving the same objectives of greater efficiency, speed, fairness and balance, but without removing the commission's gatekeeping and other complaint-handling powers.

1. For purposes of clarity, the term "commission" is used to refer to the entire body (Commissioners plus staff), and "Commissioners" to refer to the panel of individuals appointed to the commission.

New Zealand and most Australian jurisdictions take a hybrid approach, requiring that complaints first undergo screening and attempted mediation by the commission, but allowing all complainants, even those whom the commission screens out, to have access to the tribunal (or court) if the case is not settled. A separate division of the New Zealand commission provides legal representation to some but not all complainants. In other words, the commission in these models acts as an advisor, mediator and advocate for some complainants, but does not act as a gatekeeper to the tribunal or court.

What was heard in consultations

It was heard from all perspectives that the Yukon Human Rights Commission is a critical public institution and that its function in preventing discrimination through education is especially important. It was also heard that the complaint process takes too long, is too adversarial in nature, applies too low a threshold for proceeding with complaints, and is unfairly burdensome on respondents without any commensurate onus on complainants to make their case. Significant concern was expressed that commission staff often play conflicting roles (e.g., mediator/investigator and prosecutor of complaints that proceed to hearing), and are too aligned with complainants. However, almost all stakeholders acknowledged that complainants typically need assistance in bringing forward and advancing their human rights complaints. It was noted that some respondents also need assistance, and that a more cooperative, remedial approach to complaints resolution could be more effective in achieving long-term compliance.

Reform objectives

The proposed reforms have been guided by the following objectives:

- focusing public resources on the most serious cases and issues;
- fair, timely handling of human rights complaints;
 - accessible to the most vulnerable complainants,
 - remedial vs. adversarial focus,
 - speedy, efficient resolution process,
 - fair to both complainants and respondents, and
- greater focus on prevention through effective education.

Considerations

Need for a human rights commission and/or tribunal

In keeping with international law and principles, the Yukon Human Rights Commission plays an important role as a public watchdog and promoter of human rights, and as a body that can assist individual victims of discrimination. B.C. has been widely criticized by human rights advocates for eliminating its human rights commission and vesting human rights education and research functions in the Minister of Justice.

The Yukon Board of Adjudication (tribunal) offers a more accessible and specialized forum than the court for the adjudication of human rights disputes. Indeed, the commission/tribunal system for managing human rights complaints was originally established in part because the court system had failed to do so effectively.

Saskatchewan's recent proposal to eliminate its human rights tribunal is strongly opposed by human rights advocates on the grounds that courts are less accessible to complainants and more costly to the public purse.

Concerns about inefficiency and delay in the resolution of complaints by the commission and/or tribunal can be addressed by reforms such as those discussed below as well as the more detailed reforms listed in Appendix B to this report. For example, performance targets (e.g., average time from intake to resolution of complaints) can be established for both the commission and tribunal, with each body required to report annually on progress toward achieving those targets. Rules of procedure can establish strict timelines with consequences such as the right of parties to take their case directly to the tribunal if the commission fails to dispose of the complaint within a prescribed period of time.

Role of the commission generally

Education, promotion, public interest advocacy

The Paris Principles identify the most important functions of national human rights institutions as human rights monitoring, advice, education and awareness-raising. They recognize that commissions need not take on the full array of complaint-handling functions, as long as some impartial body is available to adjudicate human rights complaints. Moreover, there was broad agreement among Yukon stakeholders that the commission's role in promoting human rights through education and general monitoring and reporting is essential and should be maintained.

A common complaint about commissions, including Yukon's, is that they focus too much on individual complaints and not enough on education, promotion and systemic human rights issues. Yukon's human rights commission has a broad but vague mandate and relatively few clear and specific duties and powers compared to most other commissions in Canada. It would be helpful in this respect to clarify the commission's duties and powers and to specify that the commission's primary duties are education and general advocacy.

The Act could also specify that the commission is empowered to initiate complaints of a serious and systemic nature, since it is unreasonable to expect individuals to take on such a task themselves. However, it is important that "systemic discrimination" be clearly defined and subject to an objective, reasonable grounds test so as to ensure that only truly systemic matters are treated as such.

Complaint handling

Much of the dissatisfaction with the current approach in Yukon has to do with the fact that **the commission plays a number of sometimes conflicting roles** in the handling of complaints, from mediator to investigator to decision-maker to advocate. Some jurisdictions have addressed this problem by establishing separate bodies, or separate offices within the commission, to take on specific roles. However, in a small jurisdiction such as Yukon, such structural separation is less feasible; there are simply fewer people among whom to assign duties. One way to manage conflicting roles in this context is to use independent professionals, operating outside of the commission, for functions such as mediation (as in Nunavut and Manitoba) and/or representation of complainants. Concerns about the additional cost of such independent professionals could be addressed through mechanisms such as regulated fees.

The commission's initial **screening role** is important as it ensures that human rights institutions and courts are not bogged down with meritless complaints. While this function can be performed by the tribunal in a direct access system, it compromises the tribunal's quasi-judicial role and has proven to be the source of great dissatisfaction among human rights complainants in British Columbia. In Ontario, where the tribunal has no screening powers and parties have a right to make oral submissions, the tribunal struggles with a heavy caseload. To balance fairness with timeliness, some body must screen complaints and it appears that the most efficient way to do so is through a commission.

One of the great benefits of commissions is their ability to **provide advice to complainants (and respondents)** regarding human rights law. Like initial screening, such functions are best vested in a non-adjudicative body. Both the B.C. and Ontario direct-access models have been criticized for failing to provide the necessary support for complainants and respondents.

Commissions also typically perform a valuable function by **assisting complainants** who would not otherwise pursue legitimate complaints because of illiteracy, fear, intellectual disability or other barriers. Pure direct access models run the risk of placing an excessive burden on complainants unless they include a mechanism to ensure that complainants have access to assistance at all levels, including complaint formulation, identification and gathering of relevant evidence, and prosecution of their cases before the tribunal. As well, relying on parties to represent themselves before the tribunal requires additional tribunal resources, results in longer hearings and is inconsistent with accessibility goals.

On the other hand, commissions with **carriage of complaints** run the risk of blurring the line between representative of the public interest and complainant advocate. This has been a common complaint in Yukon, where the commission formulates the text of complaints referred to the tribunal, is expected to participate in all adjudications and takes the lead in presenting evidence.

Rules limiting the **commission's role in tribunal and court proceedings** can achieve a better balance in the system of complaints resolution and thereby regain the confidence of respondents. For example, a key streamlining reform undertaken by the Canadian Human Rights Commission has been to clarify its public interest role and to clearly articulate that it will not participate in tribunal hearings other than in exceptional cases. A separate system for providing legal support to needy complainants could be established to ensure that compelling cases are not discontinued merely because the complainant lacks necessary assistance.

Consistent with a remedial as opposed to adversarial approach, the Yukon commission presently plays an important role in **attempting to settle complaints** via mediation. Although the commission has been successful in achieving informal resolutions in most cases, it has also been criticized for being overly partial to complainants and for allowing the mediation process to drag on unnecessarily. Using independent professional mediators and applying strict timelines would respond to these criticisms.

The Yukon commission currently has a full-time **complaints investigator** whose role is to gather relevant evidence in order for the commission to make an informed decision on the complaint. This is one of the most criticized roles of the commission. Some argue that complainants are inappropriately relieved of having to prove their case, and that in some cases, investigations merely record different versions of events without making findings as to

credibility, thus delaying the process unnecessarily. Investigations in Yukon have been further delayed because of the commission's inability to compel parties to produce relevant evidence.

Another approach is to replace commission investigations with written submissions and to rely on complainants to produce evidence supporting their complaints. Complainants would still require assistance to identify and gather relevant evidence, but the commission would no longer conduct investigations regarding non-systemic complaints. Parties could be required to produce evidence as requested by the Director, and failure to do so within the specified timeframe could result in disposition of the complaint on the basis of the evidence provided. Such an approach would help move the commission away from its current perceived prosecutorial role toward a more neutral role (at least with respect to non-systemic complaints) and would allow resources to be refocused on educational activities.

The key feature distinguishing human rights systems like Yukon's from direct access systems is that the commission in the former acts as a **gatekeeper to the tribunal** (or court), limiting the right of complainants to have their cases adjudicated in a formal setting. Some jurisdictions have given their commissions strong screening powers, allowing or even mandating the commission to dismiss complaints that do not, in its view, have sufficient merit. While focusing resources on the most serious cases, this approach has been criticized for denying some complainants a fair hearing. Other jurisdictions apply a comparatively low threshold for referring complaints to the tribunal, resulting in a need for significantly more tribunal resources.

Role of Commissioners versus Director

Currently in Yukon, the panel of appointed Commissioners is responsible for deciding whether to dismiss or refer for adjudication complaints that have not settled. This approach has strained the commission's budget and delayed dispositions because of scheduling challenges. An alternative approach is to empower the Director to make individual complaint dispositions. Commissioners would then be able to focus on the main commission mandate — education, promotion of human rights, systemic complaints — and the broad, strategic direction of the commission. Appointments to both the panel of Commissioners and the position of Director should be made in accordance with specified requirements of the position.

Role of the tribunal

The tribunal's role is to adjudicate disputes that cannot be settled. This implies a formal, adversarial process similar to that of the courts. However, the tribunal can be encouraged or even required to use alternative dispute resolution methods (e.g., mediation) in appropriate cases. This would be consistent with the desire for a more remedial and less adversarial approach to human rights complaints. Mediation at the tribunal level is particularly important if complaints can be made directly to the tribunal.

The tribunal could also be empowered to dismiss cases based on the written record or a preliminary hearing on the grounds that there is insufficient evidence to support the complaint. Such a power is particularly advisable in direct access models, where the commission plays no screening role. Tribunal processes can be further expedited by means of clear rules of procedure (including requiring the filing of agreed statements of fact), establishing strict timelines, and encouraging adjudicators to take a more active role in hearings. In any model, but especially in a direct access model, tribunal appointees need to be skilled in the efficient and fair conduct of hearings and pre-hearing procedures (see Theme 3).

Recommendations, Theme 1

1. Adopt a hybrid, streamlined model of complaints resolution, allowing for direct access to the tribunal if the commission does not dispose of the complaint in a timely manner. In particular:
 - keep both the Yukon Human Rights Commission and the Yukon Human Rights Board of Adjudication (renamed the “Yukon Human Rights Tribunal”);
 - specify that the panel of appointed Commissioners is responsible for the strategic direction of the commission, staff recruitment and hiring, advising the Director regarding the initiation of complaints about systemic discrimination, and management of commission resources in accordance with legislative direction;
 - empower the Director to make complaint dispositions, subject to appeal to the tribunal chair on the basis of the written record;
 - specify that the primary mandate of the Yukon Human Rights Commission is the prevention of discrimination through effective education and promotional activities;
 - clarify that the Yukon Human Rights Commission’s mandate includes, among other things:
 - to conduct education and research,
 - to dispose of complaints on the basis of merit,
 - to initiate and investigate complaints of systemic discrimination, and
 - to appear before the tribunal or court, but only in a public interest capacity where necessary to clarify the law or bring forward relevant evidence, or in respect of systemic discrimination cases initiated by the commission;
 - provide support mechanisms to ensure that compelling cases are not abandoned after referral to the tribunal;
 - allow complainants and respondents to have access to the tribunal directly if the Director fails to dispose of the complaint within a set time period;
 - require that mediators be qualified and experienced and play no other role in complaints handling or disposition except by agreement of the parties;
 - rely on complainants to produce evidence and empower the Director to compel production of relevant evidence; and
 - adopt additional streamlining reforms such as those set out in Appendix B.
2. Allow the Director, on the advice of the panel of Commissioners, to initiate complaints of systemic discrimination, but only in accordance with a clear, statutory definition of “systemic discrimination” and an objective, reasonable grounds test.
3. Legislate criteria for appointment of Commissioners, including:
 - relevant management skills;
 - awareness and understanding of human rights law and issues; and
 - cultural awareness and sensitivity relevant to Yukon.

4. Specify in policy or legislation the qualifications for the position of Director, including:
 - relevant management skills;
 - working knowledge of human rights law and administrative law;
 - cultural awareness and sensitivity relevant to Yukon; and
 - ability to make sound adjudicatory decisions in an impartial manner.
5. Direct the Yukon Human Rights Commission and Yukon Human Rights Tribunal to establish performance targets (e.g., average time from intake to resolution of complaints) and to report annually on progress toward achieving those targets.

Theme 2 Appeals of Yukon Human Rights Board of Adjudication

Select Committee recommendation #21 THAT further clarity be sought on Section 28 (“Appeals”) of the Act, with regard to the effectiveness of the provisions concerning appeals of final decisions of the Board of Adjudication

Current Yukon approach

Section 28 of the Yukon *Human Rights Act* currently allows for appeals on questions of law to the Supreme Court from tribunal decisions. It empowers the court to affirm or set aside, but not to vary, tribunal decisions. Thus, where a court finds a material error of law in a tribunal decision, it must send the matter back to be reconsidered by the tribunal rather than making a ruling itself on the merits of the complaint.

Subsection 28(2) specifies that even though appeals are heard in the Supreme Court of Yukon, the Yukon Court of Appeal’s rules of procedure apply. Now that the Supreme Court has adopted its own rules, this subsection is unnecessary.

Subsection 28(4) purports to deny parties the right to judicial review of tribunal decisions. It is, however, ineffective, as judicial review is always available on matters of jurisdiction and procedural fairness.

Approaches in other jurisdictions

Most jurisdictions in Canada allow for appeals of tribunal decisions to court by right, usually on questions of law only. Some permit appeals on questions of fact, but only with leave of the court. Two require leave of the court before an appeal can proceed. In the remaining five jurisdictions, including B.C. and Ontario, the only remedy from tribunal decisions is by way of judicial review, which is more limited in scope than an appeal.

What was heard in consultations

This was not an issue raised by parties in the consultations, other than the Board of Adjudication, who proposed that appeals require leave of the court and that the court not be permitted to vary tribunal decisions. When asked about the issue, most parties had no concerns with the current approach to appeals on questions of law. Several strongly supported the right of either party to appeal tribunal decisions on questions of law (but not on questions of fact) and to have such decisions judicially reviewed, noting that this is an essential safeguard in the context of a tribunal with relatively little legal expertise.

Recommendations, Theme 2

6. Continue to allow for appeals to the Supreme Court on questions of law only.
7. Remove subsection 28(2), which deals with the rules to be used in appeals, as it is no longer necessary.
8. Allow the court to vary decisions of the tribunal.
9. As judicial review is always available to parties and cannot be negated through legislation, remove subsection 28(4), which purports to eliminate the right to apply for judicial review of a decision of the tribunal.

Theme 3 Adjudicator Qualifications

Select Committee recommendation #19 THAT there be further discussion of the roles, responsibilities, and qualifications of the members of the Yukon Human Rights Panel of Adjudication, and that these roles, responsibilities, and qualifications be clarified

Current Yukon approach

Criteria-based appointments

There are currently no criteria set out in the legislation regarding qualifications for appointments to either the commission or the board. In contrast, the *Child and Youth Advocate Act* sets out criteria that the legislature must consider before appointing a Child and Youth Advocate. In the criminal law sphere, the *Criminal Code* sets out criteria required for the chair and the medical member of the Yukon Review Board.

Terminology

Section 22 of the *Human Rights Act* currently refers to the appointment of a “panel” of adjudicators, from which a “board of adjudication” hears complaints referred to it by the commission. This usage is confusing; almost everyone who made comments on the current approach, including the chair of the panel of adjudicators, refers to the larger body as the “board” and the smaller groups that hear matters as “panels.” (This report refers to the larger body as the “board” or the “tribunal.”)

Approaches in other jurisdictions

Most jurisdictions have legislated criteria for appointments to their human rights adjudicatory body. Members are typically required to have knowledge of administrative procedure and human rights law, and/or an aptitude for impartial adjudication and administrative procedure. Some jurisdictions require legal qualifications for some or all members, while Nunavut requires sensitivity to Inuit culture. Saskatchewan’s approach of eliminating the tribunal and replacing it with courts is another way to address this problem.

What was heard in consultations

One of the most common refrains during the consultations was that board appointees lack the necessary expertise in administrative law and procedure to conduct efficient, fair hearings and to render appeal-proof decisions. A number of contributors complained that the board frequently made poor-quality decisions and did not hold enough hearings for members to develop expertise on the job. There is also a need for ongoing adjudicator training, especially of adjudicators who are not lawyers. Many contributors also emphasized the need for adjudicators to have a current working knowledge of human rights law. Several stated that there should be more legally-trained adjudicators on the board.

It was also heard that appointees should be sensitive to human rights issues in Yukon, and that panels should include members with the expertise and sensitivity relevant to the complaint in question. For example, members with labour law expertise should sit on employment-related cases, and panels should include First Nations members where relevant. A number of contributors proposed that board composition reflect the Yukon population generally (similar to the concept of a “jury of peers” in criminal law). It was also noted that the appointment process is obscure and not tied to clear, legislated criteria.

Considerations

Specifying criteria for appointments to the board and commission

Legislating criteria for appointments in the *Human Rights Act* would effectively respond to widespread criticism that such appointments are not clearly based on merit and that tribunal members should have a greater level of competence in adjudication and dispute resolution than is currently the case.

As in other jurisdictions, the Act could include mandated appointment criteria that reflect some or all of the comments made by participants in the consultation. Such criteria should be aimed at ensuring, first and foremost, that appointees are able to conduct efficient, fair proceedings and to render legally sound decisions in a timely way. Skills in alternative dispute resolution are also desirable, with a view to avoiding costly adversarial hearings. More specific criteria could apply to the tribunal chair in order to ensure a minimum baseline level of experience for that position. It should be kept in mind, however, that the more stringent the criteria, the more difficult it will be to find qualified appointees in Yukon.

In addition to mandating criteria for individual appointees, the Act could identify non-mandatory factors to be considered when making appointments, with a view to ensuring that the tribunal as a whole reasonably reflects the diversity of the Yukon population, and/or that it includes some members with subject-matter expertise relevant to the kinds of matters that typically come before the tribunal.

Similarly, the Act could provide guidance to the tribunal chair by listing non-mandatory factors to be considered when selecting hearing panels. Such factors should include conflicts of interest as well as subject-matter expertise.

Training of mediators/adjudicators

There was consensus among everyone consulted that adjudicators need effective training in administrative law and procedure both before they start hearing cases and on an ongoing basis to keep up their skills. This is particularly so in Yukon, where adjudicators have little opportunity to learn on the job, given the small number of cases overall. To the extent that adjudicators are expected to attempt alternative dispute resolution before proceeding with full-blown hearings, they also need to be properly trained in mediation.

The Northern Institute of Social Justice currently offers training in administrative law to tribunal members, as do some private-sector lawyers in Whitehorse. Such training typically lasts two to four days in total. However, there is no requirement for appointees without the requisite skills to take such training. Moreover, some stakeholders were of the view that these short courses were insufficient for non-lawyers to develop the necessary skills.

Human rights law is another area in which all appointees must be well-versed in order to do their jobs properly and in which they may therefore need training. Some positions (e.g., commission and tribunal chairs) may also require training in organizational management. Appointees should also be educated on conflicts of interest, given the high risk of conflicts in a small jurisdiction such as Yukon. There do not seem to be any policies to ensure that any of this kind of training is offered to appointees.

Use of professional adjudicators from outside Yukon

Yukon courts frequently call upon outside judges to adjudicate disputes. Outside experts are also used on the Yukon Review Board. A similar approach could be taken if an insufficient number of qualified and willing adjudicators who do not have conflicts of interest can be found in Yukon. It should be noted, however, that an increase in the number of professional adjudicators from outside of Yukon would result in a corresponding lessening of the ability to meet other criteria that were identified as desirable: representative of Yukon population, knowledgeable about Yukon and its community, etc.

Reform of administrative tribunals generally (a matter beyond the scope of this review)

During the consultations, concerns were expressed about the quality of Yukon administrative tribunals generally. Some contributors proposed reforms that would have an impact on tribunals beyond the Yukon Human Rights Tribunal. Although outside the scope of this report, these suggestions could help achieve the goals set out above and are deserving of serious consideration.

A number of jurisdictions have taken steps to merge, cross-appoint or otherwise coordinate tribunals with similar mandates. Such approaches can achieve a number of goals, including the enhancement of adjudicator expertise. For example, in New Brunswick, employment-related human rights complaints may be referred to the labour relations tribunal. In Ontario, six tribunals dealing with social justice issues, including the human rights tribunal, are being “clustered” through cross-agency cooperation and coordination of operations and administration in order to enhance overall efficiency, effectiveness and accessibility. Adjudicators can be cross-appointed to tribunals dealing with similar issues or using similar processes. This kind of coordination among similar tribunals allows adjudicators to develop and maintain a higher level of expertise.

In a small jurisdiction such as Yukon, where it can be difficult to find and maintain the necessary expertise and where the caseload of most tribunals is small, such coordination of resources is definitely worth exploring.

Recommendations, Theme 3

10. Change the name of the overall body that hears cases to the “Yukon Human Rights Tribunal” and smaller panels of that entity to “hearing panels.”
11. Legislate criteria for individual appointments to the tribunal, as follows:
 - a. working knowledge of administrative law and procedure;
 - b. aptitude for impartial adjudication and mediation;
 - c. familiarity with human rights law;
 - d. awareness of and sensitivity to challenges faced by members of historically disadvantaged groups; and
 - e. cultural awareness and sensitivity relevant to Yukon.
12. Require that the chair of the tribunal have at least five years’ experience practising law or adjudicating disputes on a quasi-judicial tribunal.
13. Identify factors to be considered when making appointments to the tribunal, such as diversity of overall tribunal membership, with a view to ensuring that the body reasonably reflects the Yukon population and has the necessary subject-matter expertise.
14. Identify factors for the chair to consider when appointing panels, including:
 - a. actual or potential conflicts of interest; and
 - b. knowledge of the subject area of the complaint.
15. Direct the tribunal chair to ensure that:
 - a. all appointees without equivalent training and current working knowledge receive an approved course of professional training in both administrative law and procedure and human rights law before hearing any cases; and
 - b. tribunal members receive regular, ongoing training in administrative law and procedure as well as human rights law to ensure that they maintain the required knowledge and skills.
16. Direct the Department of Justice to work with the Northern Institute of Social Justice to:
 - a. undertake a review of current administrative law training programs in Yukon,
 - b. develop a program that will address the needs of the human rights tribunal in terms of both initial and ongoing training in administrative law/procedure, and
 - c. coordinate such training with that for other Yukon administrative tribunals.

Theme 4 Funding and financial accountability of human rights institutions

Select Committee recommendation #16 THAT the funding of the Yukon Human Rights Commission, and of the Yukon Human Rights Panel of Adjudication, be removed from the Department of Justice

Current Yukon approach

Both the Yukon Human Rights Commission and Board of Adjudication are funded through the Department of Justice; their annual budgets are approved by the Legislature as part of the overall Department of Justice budget. Both bodies report directly to the Speaker of the Legislature on an annual basis.

Pursuant to government policy, the commission is funded by way of a transfer agreement that provides for quarterly payments of an amount approved annually. Additional funds may be provided on separate application, if approved by the Department of Justice and, if beyond the Department of Justice's budget, by the Member Services Board. The commission must provide audited financial reports annually to the Minister of Justice.

In contrast, the expenses and honoraria of the Yukon Human Rights Board of Adjudication are estimated through an annual budgeting process involving the board secretariat and Department of Justice officials, and are paid directly by the Department of Justice. This method of funding is necessary in order to accommodate the much less predictable nature of tribunal proceedings.

Approaches in other jurisdictions

Funding — In nine provinces and territories, human rights commissions are funded through the Department of Justice. Three are funded through other departments (labour, culture, community spirit) and one (Northwest Territories) is funded directly by the legislature.

Accountability — In most cases, commissions are accountable to the Minister whose department is responsible for its activities. The Minister presents the commission's annual report to the legislature (or to the Speaker for tabling in the legislature). In some cases, commissions are accountable directly to the legislature.

What was heard in consultations

The issue of funding was identified as a concern only by the Yukon Human Rights Commission and groups that identified themselves as supporters of the commission. No concerns were expressed about the current funding arrangement for the Human Rights Board of Adjudication.

The basis of the commission's concern was perceived bias on the part of the Department of Justice as the body responsible for funding the commission, since lawyers from the Legal Services Branch of the Department of Justice represent the Government of Yukon when it is a respondent in human rights cases. However, the commission's greater concern seemed to be with the actual level of funding it receives and the fact that it must engage in significant administrative work in order to obtain additional funding that in its view is necessary.

Some concern was expressed by other contributors that both the commission and tribunal need to be more accountable to the public through reporting on specified performance standards (e.g., length of investigations; overall time to dispose of complaint) and regular independent reviews, including feedback from participants in the process.

Considerations

The issue of perceived conflict on the part of the government body responsible for funding an independent agency that may be opposed in interest to the government necessarily exists for all independent administrative agencies, tribunals and other bodies (e.g., courts) funded by government. It can be — and is — managed through appropriate departmental divisions and processes, and by professional obligations to act in a fair, impartial matter with respect to funding decisions. This is true for the Department of Justice and for other departments.

With respect to the perceived conflict arising from the role of Department of Justice lawyers, it should be noted that these lawyers have no personal interest in the cases in respect of which they act. Indeed, the Department of Justice has been able to separate its funding and legal representation roles to the satisfaction of most parties involved in the human rights process, and even commissioners admitted that the concern about conflict is more theoretical than real.

Moreover, the commission's budget is ultimately subject to review and approval of the Legislature as a specified line item in the department's operations and maintenance estimates. Such oversight provides a mechanism for the commission to have its concerns about the sufficiency of its funding considered by the Legislature.

Alternatives to the current funding arrangement for the Human Rights Commission include funding via another department or funding directly by the Legislature.

Funding via another department (as in three provinces) is possible, but this would not eliminate the problem of perceived conflict, since any department is potentially a respondent in a human rights complaints. Among departments, the mandate of the Department of Justice is more closely related to that of human rights institutions than is the mandate of any other department.

Funding directly by the Legislature is the approach requested by the commission. It is the approach currently taken for the annual budgets of the Ombudsman, the Child and Youth Advocate, and the Chief Electoral Officer. In each of these cases, the agency submits its budget to the Member Services Board, which reviews the estimate. The Speaker of the Legislative Assembly then transmits the estimate to the Minister of Finance for recommendation to the Legislative Assembly. The Commissioner in Executive Council may authorize expenditures for these bodies when the Legislative Assembly is not sitting.

This approach has serious drawbacks. Neither the Member Services Board nor the Legislative Assembly is properly equipped to review and approve agency budgets. As well, without departmental oversight, there is no effective mechanism for ongoing fiscal and performance-based accountability. Nor is there a simple method by which the commission can obtain additional funds should the budget prove to be insufficient.

Independence of the commission is preserved in part by making it accountable directly to the legislature (by way of annual reporting), which is the current Yukon approach. This accountability could be enhanced by having the commission and tribunal establish performance targets for themselves and report annually on their achievement of those targets (see Recommendation 5 under Theme 1).

Recommendations, Theme 4

17. Continue to fund both the Yukon Human Rights Commission and the Yukon Human Rights Board of Adjudication through the Department of Justice.
18. Continue to have both the commission and the tribunal deliver their annual reports directly to the Speaker of the Legislature.

Theme 5 Human rights education in public schools

Select Committee recommendation #13 THAT there be increased education in the school system on human rights and responsibilities, and that this be enshrined in the *Human Rights Act*

Current Yukon approach

There is no mention of school-based education programs in the *Human Rights Act*. However, section 4(e) of the *Education Act* states that one of several goals and objectives is “to promote the recognition of equality among Yukon peoples consistent with the Canadian Charter of Rights and Freedoms and the *Human Rights Act*.”

Yukon follows the B.C. school curriculum. Minimal formal education on human rights is provided beyond some optional high school courses. There is no requirement for informal education on human rights other than under the department’s Policy 1011 on Safe and Caring Schools:

Incidents of bullying, harassment, discrimination, intimidation or any unwelcome behaviour that degrade a person on the basis of personal characteristics, gender, sexual orientation, race or disability will be addressed in a timely, effective and consistent manner in order to maintain a safe and caring school environment.

Approaches in other jurisdictions

A thorough comparative review of approaches to human rights education in schools across Canada has not been carried out; however, school curriculum is not mandated by legislation in the jurisdictions reviewed. Indeed, Alberta has done the opposite and legislated a parental right to opt out of certain human rights education (on religion, human sexuality or sexual orientation). This move has been highly controversial. A proposal in B.C. for more human rights education in schools drew a backlash similar to that in Alberta.

What was heard in consultations

There was consensus that there is a need for more school-based human rights education on both a formal and an informal, ongoing basis. Proposed solutions included providing teachers with training in human rights, as well as involving the commission in delivery of human rights education in the schools.

Considerations

Section 4(e) of the *Education Act* already states that one of the goals of the school system is to educate students in human rights. If a specific component of school curricula were to be mandated by way of legislation, the *Education Act* is the appropriate legislative vehicle for such mandating.

However, curriculum is a matter that is typically left for government policy, not legislation. The Department of Education is strongly opposed to mandating curricula for one issue given the number of other issues competing for school time. To do so for human rights would set a precedent that could not be sustained. Mandating human rights education in public schools could also prompt a counter-productive backlash such as occurred in Alberta and B.C.

The goal of ensuring more public school education in human rights can be accomplished without attempting to legislate it and without the political resistance that legislative initiatives have incited elsewhere. The Department of Education can simply work with the Yukon Human Rights Commission to ensure that more human rights education is delivered to students through appropriate elements of the existing curriculum, additional specified learning outcomes or other methods. This approach recognizes that the goal of delivering human rights education is already entrenched in s. 4(e) of the *Education Act*, and builds on that existing legislative foundation.

In order to teach human rights effectively, educators themselves need to understand them. In this respect, programs could be developed to ensure that Yukon teachers receive training in human rights, either by way of prerequisite courses or via ongoing professional development. Once again, the Yukon Human Rights Commission should play a role in the development of such training. However, the concerns identified above about competing demands in the context of curricula also apply to teacher training.

Recommendations, Theme 5

19. The Department of Education should work with the Yukon Human Rights Commission to review curricula and learning outcomes to ensure that:
 - a. all students learn in elementary school about the importance of tolerance and respect for diversity; and
 - b. high school students learn about human rights law in relevant courses such as civics and law.
20. A module on human rights should be included as part of training for Yukon teachers. The Department of Education should work with the Yukon Human Rights Commission to develop such a module.

Appendix A. Summary of recommendations

Theme 1 Functions and structures

1. Adopt a hybrid, streamlined model of complaints resolution, allowing for direct access to the tribunal if the commission does not dispose of the complaint in a timely manner. In particular:
 - keep both the Yukon Human Rights Commission and the Yukon Human Rights Board of Adjudication (renamed to the “Yukon Human Rights Tribunal”);
 - specify that commissioners are responsible for the strategic direction of the commission, staff recruitment and hiring, advising the Director regarding the initiation of complaints about systemic discrimination, and management of commission resources in accordance with legislative direction;
 - empower the Director to make complaint dispositions, subject to appeal to the tribunal chair on the basis of the written record;
 - specify that the primary mandate of the Yukon Human Rights Commission is the prevention of discrimination through effective education and promotional activities;
 - clarify that the Yukon Human Rights Commission’s mandate includes, among other things:
 - to conduct education and research,
 - to dispose of complaints on the basis of merit,
 - to initiate and investigate complaints of systemic discrimination, and
 - to appear before the tribunal or court, but only in a public interest capacity where necessary to clarify the law or bring forward relevant evidence, or in respect of systemic discrimination cases initiated by the commission;
 - provide support mechanisms to ensure that compelling cases are not abandoned after referral to the tribunal;
 - allow complainants and respondents to access the tribunal directly if the Director fails to dispose of the complaint within a set time period;
 - require that mediators be qualified and experienced and play no other role in complaints handling or disposition except by agreement of the parties;
 - rely on complainants to produce evidence and empower the Director to compel production of relevant evidence; and
 - adopt additional streamlining reforms such as those set out in Appendix B.
2. Allow the Director, on the advice of the panel of Commissioners, to initiate complaints of systemic discrimination but only in accordance with a clear, statutory definition of “systemic discrimination” and an objective, reasonable grounds test.
3. Legislate criteria for appointment of commissioners, including:
 - relevant management skills;
 - awareness and understanding of human rights law and issues; and
 - cultural awareness and sensitivity relevant to Yukon.

4. Specify in policy or legislation the qualifications for the position of Director, including:
 - relevant management skills;
 - working knowledge of human rights law and administrative law;
 - cultural awareness and sensitivity relevant to Yukon; and
 - ability to make sound adjudicatory decisions in an impartial manner.
5. Direct the Yukon Human Rights Commission and Yukon Human Rights Tribunal to establish performance targets (e.g., average time from intake to resolution of complaints) and to report annually on progress toward achieving those targets.

Theme 2 Appeals from tribunal decisions

6. Continue to allow for appeals to the Supreme Court on questions of law only.
7. Remove subsection 28(2), which deals with the rules to be used in appeals, as it is no longer necessary.
8. Allow the court to vary decisions of the tribunal.
9. As judicial review is always available to parties and cannot be negated through legislation, remove subsection 28(4), which purports to eliminate the right to apply for judicial review of a decision of the tribunal.

Theme 3 Adjudicator qualifications

10. Change the name of the overall body that hears cases to the “Yukon Human Rights Tribunal” and smaller panels of that entity to “hearing panels.”
11. Legislate criteria for individual appointments to the tribunal, as follows:
 - a. a working knowledge of administrative law and procedure;
 - b. aptitude for impartial adjudication and mediation;
 - c. familiarity with human rights law;
 - d. awareness of and sensitivity to challenges faced by members of historically disadvantaged groups; and
 - e. cultural awareness and sensitivity relevant to Yukon.
12. Require that the chair of the tribunal have at least five years’ experience practising law or adjudicating disputes on a quasi-judicial tribunal.
13. Identify factors to be considered when making appointments to the tribunal, such as diversity of overall tribunal membership, with a view to ensuring that the body reasonably reflects the Yukon population and has the necessary subject-matter expertise.

14. Identify factors for the chair to consider when appointing panels, including:
 - a. actual or potential conflicts of interest; and
 - b. knowledge of the subject area of the complaint.

15. Direct the tribunal chair to ensure that:
 - a. all appointees without equivalent training and current working knowledge receive an approved course of professional training in both administrative law and procedure and human rights law before hearing any cases; and
 - b. tribunal members receive regular, ongoing training in administrative law and procedure as well as human rights law to ensure that they maintain the required knowledge and skills.

16. Direct the Department of Justice to work with the Northern Institute of Social Justice to:
 - a. undertake a review of current administrative law training programs in Yukon;
 - b. develop a program that will address the needs of the human rights tribunal in terms of both initial and ongoing training in administrative law/procedure and human rights law; and
 - c. coordinate such training with that for other Yukon administrative tribunals.

Theme 4 Funding and financial accountability

17. Continue to fund both the Yukon Human Rights Commission and the Yukon Human Rights Board of Adjudication through the Department of Justice.

18. Continue to have both the commission and the tribunal deliver their annual reports directly to the Speaker of the Legislature.

Theme 5 Human rights education in public schools

19. The Department of Education should work with the Yukon Human Rights Commission to review curricula and learning outcomes to ensure that:
 - a. all students learn in elementary school about the importance of tolerance and respect for diversity; and
 - b. high school students learn about human rights law in relevant courses such as civics and law.

20. A module on human rights should be included as part of training for Yukon teachers. The Department of Education should work with the Yukon Human Rights Commission to develop such a module.

Appendix B. Additional potential streamlining reforms

The following potential streamlining reforms are in addition to those specified in the above recommendations or already legislated by way of the 2009 amendments to the *Human Rights Act*. It is recommended that they be considered as ways to further streamline commission and tribunal processes.

Commission duties and powers

- allowing the Director to dismiss trivial complaints (as under the Canadian *Human Rights Act*);
- mandating that the commission dismiss, discontinue or defer complaints that do not meet a certain threshold of merit or that can be resolved through another process (as in Canada, Alberta and Manitoba);
- specifying the test for referral of complaints to the tribunal;
- requiring that complaints be treated as abandoned after a certain period of non-response from the complainant;
- if the commission continues to have a role in complaints after disposition, allowing the Director to discontinue complaints at any time prior to hearing where the complainant refuses a settlement offer that is, in the Director's view, reasonable;
- clarifying that settlement of non-systemic complaints does not require commission approval of the settlement;

Commission and tribunal practice and procedure

- attempting early resolution of complaints before they enter the system as a matter of course (“preventative mediation”);
- conducting a preliminary assessment of all complaints that survive initial mediation, and conducting an expedited review and disposition based on written submissions in appropriate cases;
- applying strict timelines for the production of evidence and filing of written submissions by parties, with meaningful consequences in the event of non-compliance;

Tribunal practice and procedure

- requiring the filing of agreed statements of fact and evidence early in tribunal proceedings;
- applying strict timelines for the production of evidence and filing of written submissions by parties, with meaningful consequences in the event of non-compliance;
- requiring that the tribunal hold pre-hearing conferences with a view to clarifying issues, encouraging settlement, and moving cases quickly through the process;
- allowing disclosure of commission reports to the tribunal if both parties consent;
- allowing parties to disclose their settlement offers to the tribunal;
- directing the tribunal to take a more active role in hearings.

Appendix C. Select Committee recommendations

Recommendations re structure, roles and responsibilities, and process (Phase Two, Part One)	
13	THAT there be increased education in the school system on human rights and responsibilities, and that this be enshrined in the <i>Human Rights Act</i>
14	THAT the human rights process change from the current configuration to a hybrid model that would reflect parts of a direct access model, with the intent of building efficiencies into the process
15	THAT there should be greater guidance on the role of the Yukon Human Rights Commission in the adjudication process to maintain balance
16	THAT the funding of the Yukon Human Rights Commission, and of the Yukon Human Rights Panel of Adjudication, be removed from the Department of Justice
17	THAT process issues be addressed and evaluated for both the Yukon Human Rights Commission, and the Yukon Human Rights Panel of Adjudication
19	THAT there be further discussion of the roles, responsibilities and qualifications of the members of the Yukon Human Rights Panel of Adjudication, and that these roles, responsibilities, and qualifications be clarified
21	THAT further clarity be sought on Section 28 (“Appeals”) of the Act, with regard to the effectiveness of the provisions concerning appeals of final decisions of the Board of Adjudication
Recommendations on scope and coverage issues (Phase 2, Part Two)	
6	THAT Section 7 (“Prohibited grounds [for discrimination]”) of the <i>Human Rights Act</i> be reviewed with a view to using more contemporary language
7	THAT Section 9 (“Prohibited discrimination”) of the Act be amended to add protection for volunteers
11	THAT the Preamble to the Act provide greater guidance to the rest of the legislation
12	THAT the Act more strongly promote human rights and responsibilities, awareness, and education
22	THAT language in the Act be revised to reflect clarity on the issue of systemic discrimination
24	THAT Section 8 (“Duty to provide for special needs”) of the Act be revised and modernized around the duty to accommodate, specifically, “duty to provide for special needs” be changed to “duty to accommodate”
23	THAT further clarity be sought with respect to the application of human rights laws to self governing Yukon First Nations, including clarification of the application of section 13.1 of the Yukon First Nations Self Government Agreements, and clarification of the application of the recently amended <i>Canadian Human Rights Act</i>
General recommendations to apply to all phases	
8	THAT if draft human rights legislation is brought forward by the Yukon Government, there be the opportunity for the public and for stakeholder groups to have the opportunity to comment on the proposed legislation
10	THAT strong consideration be given to a plain-language approach when revising the Act
25	THAT after the <i>Human Rights Act</i> is reviewed and amended, the regulations be reviewed for compliance as well

Phase One recommendations — complete	
1	THAT the <i>Human Rights Act</i> be amended under Section 20 (“Complaints”) so that the threshold for filing a complaint under the Act is raised from its current level — i.e., that a complainant “believes” that they have been harassed or discriminated against — to the requirement that there be “reasonable grounds” for such a belief
2	THAT the <i>Human Rights Act</i> be amended under Section 20 to expand the circumstances under which the Commission shall not investigate a complaint by adding after 20 (1)(c): <ul style="list-style-type: none"> a. the commission decides to refer the complaint to the Board of Adjudication or to mediation; b. the complaint has either been abandoned by the complainant or the complainant fails to cooperate with the investigation; or c. the complainant has declined what the Director considers a fair and reasonable settlement offer; or d. the substance of the complaint has been or could be dealt with in another proceeding or review procedure or under another Act
3	THAT the <i>Human Rights Act</i> be amended under Section 20 to extend the allowable time limit for filing a complaint under the Act from the current period of 6 months, to a period of 18 months of the alleged contravention
4	THAT the <i>Human Rights Act</i> be amended under Section 20 such that if a continuing contravention is alleged, the complaint must be filed within 18 months of the last alleged instance of discrimination
5	THAT the <i>Human Rights Act</i> be amended under Section 20 such that the Yukon Human Rights Commission may accept a complaint filed after the expiration of the time limit, if the Commission determines that a) the delay in filing the complaint was incurred in good faith; and b) no substantial prejudice will result to any person because of the delay
9	THAT the language used throughout the Act, and in the definitions section of the Act in particular, needs to be clarified and updated to reflect more modernized language, e.g., <ul style="list-style-type: none"> a. change the name of the <i>Human Rights Act</i> to the <i>Yukon Human Rights and Freedoms Act</i> (note: this was not done as part of Phase 1) b. remove the term “mental retardation” from the Act c. remove the definition of sexual orientation from Section 37 (“Interpretation”) d. clearly define the Board of Adjudication and the Panel of Adjudication e. change “seeing eye dog” to “guide dog”
18	THAT the reporting accountability of the Yukon Human Rights Panel of Adjudication be clarified, and that the Panel submit a report of its activities and cases to the Legislative Assembly annually
20	THAT Section 22 (“Panel of adjudicators”) of the Act dealing with the size of the panel of adjudication and the number of adjudicators that are seized to a board of adjudication be clarified, and that the total number of adjudicators appointed to any one time be clarified

Modernizing the Human Rights System in Yukon

In 2008, the Yukon Legislative Assembly set up a special committee to review the decades-old *Human Rights Act* and to recommend any changes necessary to ensure that the Act reflected modern-day realities. The committee consulted with the Yukon public and stakeholders and issued recommendations for numerous changes. A number of these recommendations were passed by the legislature in May 2009 and brought into effect in December 2009. This completed Phase 1.

In June, 2010, the Department of Justice was directed by Cabinet to undertake further research on those recommendations of the 2008 all-party Select Committee on Human Rights that addressed changes to the structure, process, roles and responsibilities of the human rights regime in Yukon. The department was to conduct targeted consultations with key stakeholders and provide opportunities for public comment. The department was then to provide a report with recommendations for potential changes to the human rights regime in Yukon to the Minister. This is that report.

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