



# Moving Forward

Implementing the Recommendations of the 2015  
Comprehensive Review of Human Rights in the NWT



# TABLE OF CONTENTS

Executive Summary .....	5
Findings .....	5
Recommendations .....	5
Required Resources .....	6
<b>BACKGROUND.....</b>	<b>7</b>
History of Human Rights in the NWT.....	7
NWT Human Rights Commission.....	7
Office of the Director .....	8
Adjudication Panel.....	8
Human Rights Working Group .....	8
Call for Comprehensive Review .....	9
<b>COMPREHENSIVE REVIEW.....</b>	<b>9</b>
Purpose and Approach of Review Process .....	9
Major Findings of the Review Report.....	9
Process Issues .....	9
Organizational Structure .....	10
Screening Threshold for Complaints .....	10
Addressing Systemic Issues.....	10
Community Engagement.....	10
Recommendations for Change .....	11
Implementing the Recommendations .....	13
Implementation Team .....	13
Steps in Implementation by Theme .....	14
Required Resources.....	15
<b>CONCLUSION.....</b>	<b>16</b>



# EXECUTIVE SUMMARY

In 2014 the NWT Human Rights Commission contracted an independent review of the NWT *Human Rights Act* (Act) and its supporting programs to mark the tenth anniversary of the Act's inception in 2004.

The Commission received and publicly released the review report in April 2015. The review assessed the system's progress in achieving the original purpose and potential of the *Human Rights Act* in terms of comprehensiveness, fair consideration of complaints, accessibility, and the system's ability to address individual and systemic discrimination to promote social change.

## Findings

The review report made a number of findings, including the following:

- the complaint process is over-legalized which creates a serious barrier to access to justice,
- the organizational structure is unnecessarily complex,
- the threshold for referral of complaints is too low to allow the Director to properly screen complaints,
- there is limited outreach and services to the communities outside Yellowknife, and
- the current focus on individual complaints makes it difficult to effect systemic and institutional changes.

## Recommendations

The major recommendations of the review report include the following:

### 1. Integrate a restorative approach into all human rights work

The review recommends the Commission adopt a restorative approach with particular attention to dispute resolution at the earliest stages of the complaint. A restorative approach takes into account the importance of relationships between the affected parties, considers the context in which issues take place, and encourages the participation of all those affected in crafting the solution. The review notes that using a restorative approach will reduce the need for legal counsel, improve the relationship between parties and help the Commission identify and address systemic issues. The review also suggests considering this approach as an option for Adjudication Panel hearings.

### 2. Unify and simplify the structure and increase responsibility of the Commission

The review recommends that the Commission and Director's office be unified. It recommends the Commission be responsible for directing the work of both the complaint process and the promotion of human rights.

To enable the Commission to more effectively represent the public interest, Commission members would decide whether complaints would be dismissed or referred to the Adjudication Panel for hearing. The Commission would approve settlement agreements to ensure the public interest was dealt with in the agreement.

The report recommends that the *Act* be amended to raise the present screening threshold to allow the Commission to refer for hearing only those cases that have merit and raise significant issues of discrimination.

### **3. Increase access through stronger individual and community relationships**

The review recommends that the Commission increase access to human rights protection and promotion by developing stronger relationships throughout the NWT. The review recommends increasing the presence and connection within communities by building partnerships with organizations in communities, and by considering establishing human rights facilitators in communities.

### **4. Identify and address systemic discrimination**

The review states that much of the focus of the human rights system in the past ten years has been on an individual complaint process which is adversarial and highly legalized.

The review highlights the need for the Commission to shift the focus to broader human rights issues and foster a culture of diversity and inclusion in the NWT. It recommends this be done by working with community groups to identify and prioritize discrimination issues that pervade NWT society and by learning from the best practices of other jurisdictions how to change these systemic patterns of discrimination.

The Adjudication Panel, Commission and Director support the overall findings and recommendations presented in the review report. The Commission has tasked a Working Group, made up of members from the Panel, Commission and Director's office, with developing a plan to implement the changes recommended by the comprehensive review, and with leading the change process. The Working Group has reviewed and discussed the report's findings and recommendations. This document presents the Working Group's suggested steps to implement the recommendations and the resources required to carry them out.

## **Required Resources**

1. The Commission requires in-house legal counsel to fulfill its changed mandate. This mandate includes increased responsibilities in addressing systemic issues, dealing with individual complaints and addressing the public interest in complaints that are referred for adjudication. The report recommends, and the Working Group agrees, that the Commission requires in-house legal counsel in order to do this work.
2. The current half-time Office Manager position with the Adjudication Panel should be increased to a full-time Adjudication Panel Officer, who can carry out the office manager functions currently required, as well as assist with the readying of parties for the restorative hearing process, and assist adjudicators with facilitating restorative hearings.

3. An additional half-time Human Rights Officer position is needed in order to complete the increased work on systemic discrimination and community engagement, the increased focus on resolution of complaints early in the process, and the increased complexity of investigations required by the higher threshold for referral.

## BACKGROUND

### History of Human Rights in the NWT

The NWT *Human Rights Act* (the *Act*) came into force on July 1, 2004. The *Act* applies to all territorial organizations, including government, schools, hospitals, and private companies. The *Act* also applies to non-profit organizations, landlords, and anyone doing business or providing services to the public in the NWT.

The *Act* flows from section 15 of the Charter of Rights and Freedoms, which guarantees the right to equality. The *Act* protects equality rights by making discrimination illegal. When the *Act* was adopted in 2004, it was considered the most comprehensive human rights legislation in Canada.

The *Act* sets up three separate, interrelated, but independent branches: the Human Rights Commission (the “Commission”), the Director of Human Rights and the Adjudication Panel (the “Panel”). Under the *Act*, the Commissioner, on recommendation of the Legislative Assembly, appoints the Director and the members of the Commission and Adjudication Panel. These three entities have different roles and complete independence in their respective roles.

### NWT Human Rights Commission

The Commission was established on June 1st, 2004. The Commission is the most independent Commission in Canada. The Commission does not report to a minister; it answers directly to the Assembly and it requires a vote of the Assembly to rescind appointments, change budget allocations, or make new appointments. The Commission consists of three to five members of the public who are appointed on a part-time basis and are paid honoraria.

Subject to the powers expressly vested by the *Act* to the Director and the Adjudication Panel, the Commission is responsible to the Assembly for the administration of the *Act*. The Commission’s mandate includes developing and conducting programs of education, undertaking research, and promoting understanding and compliance with the *Act*. The *Act* also gives the Commission an advocacy role and the ability to initiate complaints or be added as a party to complaints referred to the Panel by the Director.

The Commission does not have a direct role in the complaints process. The Commission is not told the specifics of individual complaints until they are referred to a hearing; however, the *Act* requires the Commission to table an annual report to the Assembly which includes information about complaints as well as information about its own activities.

## Office of the Director

The Director is responsible to carry out the administration of the *Act*. The Director reviews incoming complaints to ensure they fall under the jurisdiction of the *Act*. The Director may investigate complaints and may assist parties to settle complaints by agreement. The Director may dismiss complaints or refer complaints to the Adjudication Panel for a hearing. Decisions of the Director can be appealed to the Adjudication Panel.

The Director provides information to the public about how human rights complaints are filed and how the office of the Director processes complaints. The Director is responsible to maintain a complaint process that is accessible, fair, and impartial. The Director also acts as a registrar of complaints.

The Director acts as Secretary to the Commission and assists the Commission in carrying out its responsibilities.

The Director is a full-time appointee of the Assembly and hires office staff, who are also full-time excluded members of the GNWT public service.

## Adjudication Panel

The Adjudication Panel consists of at least three part-time adjudicators. Any adjudicator appointed to the Panel must be either an experienced lawyer or a person with experience as a member of an administrative tribunal or court. The Panel is responsible for management of all formal hearings and has no mandate for public education. The Panel hears complaints that are referred to them by the Director. The Panel also hears appeals of the Director's decisions to dismiss. The Panel considers the evidence brought forward by the parties to the complaint and renders a decision on the merits of the complaint.

## Human Rights Working Group

In 2013 the Commission, Director and Panel began a series of working group meetings with representation from all three branches to discuss the current state of the human rights system and to explore process improvement. The working group identified that the NWT process does not always fairly resolve human rights issues and that the complaint process is highly legalized and takes too long. The working group also had serious concerns with the lack of support for complainants, who often need support to navigate the early stages of the complaint process and legal representation to participate meaningfully in the hearing process. The majority of complainants at hearings are unrepresented which can result in a cumbersome and unbalanced process that may compromise the parties' access to justice.

The working group's focus has been to examine the complaint process holistically with the goal of increasing its effectiveness and efficiency. The group reviewed the complaint processes of other jurisdictions and has been particularly interested in the restorative approach adopted by the Nova Scotia Commission as a model that may be a good fit for the population of the NWT.



## Call for Comprehensive Review

In August 2013 the Chair of the NWT Human Rights Commission wrote to the Legislative Assembly, requesting that a comprehensive review of current human rights laws and procedures be added to the list of new initiatives for consideration in the Budget. As 2014 was the tenth anniversary of the implementation of the NWT *Human Rights Act*, it seemed timely to complete a review of how the legislation and structures created by the *Act* were performing after ten years of operation.

The request for funding for a comprehensive review was also supported by the Standing Committee on Government Operations in its report on the review of the 2012-2013 Northwest Territories Human Rights Commission Annual Report, presented to the Legislative Assembly March 13, 2014. The amount of \$100,000 for the comprehensive review was added to the 2014-2015 budget of the Human Rights Commission.

## COMPREHENSIVE REVIEW

### Purpose and Approach of Review Process

Through the RFP process, a three-member review team was selected for this work. Team members were Gerald Hashey, Jennifer Llewellyn and Grant Sinclair. Their collective experience includes research and teaching in such areas as human rights law, building and managing human rights processes, developing and implementing legislation, and adjudicating human rights cases.

The purpose of the review was to find opportunities to strengthen and improve human rights in the Northwest Territories. The review Team facilitated a review process involving internal and community stakeholders, and undertook a detailed review and analysis of the original purposes and intentions of human rights promotion and protection in the Northwest Territories as envisioned by the *Human Rights Act*.

The review methodology was comprised of three broad components: review of Structure and Mandate of the human rights system in the NWT, File and Document review, and Key Informant Consultations.

The review Team assessed progress in achieving the original purpose and potential of the *Human Rights Act* in the 10 years since it was passed under the categories of comprehensiveness, fair consideration of complaints, accessibility, and the system's ability to address individual and systemic discrimination to promote social change.

### Major Findings of the Review Report

The review report identified the following issues with the current human rights system:

#### Process Issues

- The process is over-legalized which makes it unattractive, ineffective and inaccessible
- Unrepresented and under-represented complainants have a serious barrier to access to justice in a legal system that focuses on procedure and precedent using unfamiliar language.

- The nature of human rights work does not align with a traditional client service structure. Relationships are key to understanding what people have experienced and being able to provide appropriate support and assistance.

### **Organizational Structure**

- The organizational structure of the system is unnecessarily complex and difficult to access and navigate for decision-making and client service.
- The Adjudication Panel's administrative services are delivered in a way that was introduced to protect the independence of the Panel but in fact causes unnecessary complexity and inefficiency.

### **Screening Threshold for Complaints**

- The threshold for referral of complaints is too low to allow the Director to screen complaints properly.
- The current low threshold has the following effects:
  - Creates an adversarial adjudicative default
  - Makes it more difficult to provide early supports for parties to address issues
  - Makes it more difficult to integrate the promotion and education mandate of the Commission with the complaint process

### **Addressing Systemic Issues**

- The focus on individual complaints makes it difficult to effect systemic and institutional changes.
  - The system needs to focus on and deploy resources to address systemic issues.
  - The system lacks a structured approach to identifying and addressing systemic discrimination.
- The system is oriented toward individual complaints with few resources directed towards identifying and addressing systemic discrimination. The resolution of individual complaints (whether by settlement or hearing) does not achieve social change.
- Knowledge and expertise about systemic discrimination is limited.

### **Community Engagement**

- There is limited outreach and service to the communities outside Yellowknife. The reach of current in-person education activities is very limited and its impact is difficult to measure.
- Individuals and organizations across the NWT are working toward social change and wish to partner with the human rights system.
- The system would gain enhanced knowledge of community issues and contexts and increased influence in the community by pursuing community partnerships and relationships.

## Recommendations for Change

The report addresses a number of core issues that are critical to the future development of human rights in the Northwest Territories. Most of the specific and major recommendations relate to four major themes:

- integrating a restorative approach into all aspects of human rights work;
- unifying and simplifying the structure to better align the work of the Director of Human Rights and the Commission;
- increasing access to human rights protection and promotion through stronger relationships with individuals and communities throughout the NWT, and;
- emphasis on identifying and addressing systemic discrimination.

### 1. Integrate a restorative approach into human rights work

- Adopt a restorative approach with particular attention to dispute resolution at the earliest stages of a complaint.
- Consider a restorative approach option for Adjudication Panel hearings.

**Rationale:** The current model of the human rights complaints process is adversarial. The review report recommends the adoption of a restorative approach to dispute resolution. A restorative approach focuses on resolving disputes while making, maintaining and repairing relationships. It fosters a sense of social responsibility and shared accountability. A restorative approach considers the whole context of the issue. It encourages those involved to work out solutions together rather than assigning blame.

There are different models that use restorative approaches, and these would need to be researched, and a model appropriate for the NWT developed.

In addition to a restorative approach to the complaint process under the Director's office and Commission, the review report also suggests the Adjudication Panel consider a more restorative approach to hearings, such as by using a more inquisitorial model. The inquisitorial model allows the Adjudicator take the lead in asking questions and eliciting information, rather than relying on the parties to put forward their case. This approach will also assist to balance the concern about access to justice for the unrepresented complainant, since the Adjudicator can ensure the information that is needed to make a good decision is brought out at hearing.

The Adjudication Panel will be researching restorative approaches to hearings, and developing a model appropriate for the NWT.

### 2. Change structure of the Commission

- Bring the Director of Human Rights and the Commission under the single banner "The Human Rights Commission" with a single authority and reporting structure.
- The Director would be a non-voting member and CEO of the Commission.

- The Commission members would make decisions to refer or dismiss complaints, considering the recommendations of the Director's office.
- Mediated settlement agreements would require Commission approval.
- The Director would fulfill certain administrative functions on the Commission's behalf, such as deferral, extension of time, and some dismissals where there is no decision on the merits.
- The threshold for referral of cases would be raised by amending the *Act*, allowing the Commission to dismiss cases where they find the complaint is without merit, raises no significant issues of discrimination, or there is no reasonable likelihood that further investigation will reveal evidence of discrimination.

**Rationale:** The review report points out that the current lack of involvement of the Commission in the individual complaint process makes it difficult for it to fulfill its role in protecting and promoting the public interest. The change in structure and the more direct role of the Commission with respect to the handling of individual complaints will increase its information and knowledge in this area and enable it to better fulfill its public interest mandate regarding the protection, promotion and education on human rights.

The raising of the threshold for dismissal will allow the focus of the Adjudication Panel to be on those cases that have merit, show evidence of discrimination and raise significant issues of discrimination. Other cases will be resolved at an earlier stage, or dismissed by the Commission.

### **3. Increase access through stronger individual and community relationships**

- Establish community-based human rights facilitators to work on behalf of the Director's office. These facilitators would handle intake, investigation, and facilitate conferences on human rights complaints as well as undertaking promotion, education and outreach work within the communities.
- Consider funding the existing community justice coordinators to do this work.
- Establish an ongoing advisory group of key community, business and government stakeholders to help monitor and evaluate Commission promotion and protection activities with a focus on community impacts and systemic discrimination.
- Increase presence and connections with communities by building partnerships with organizations in communities.
- Work with Aboriginal communities to identify and develop a role for the human rights system within the framework of Aboriginal self-governance and collective rights.

**Rationale:** Although the Commission has made community visits every year to inform community members about human rights and ask for input, more community engagement and access to services in communities is needed. Providing services in a restorative model will be more in keeping with life in small communities, as it will seek to resolve issues without the damage to relationships that can occur with an adversarial approach.

#### 4. Identify and address systemic discrimination

- Design and implement an approach to identifying and addressing systemic and institutional discrimination that does not rely solely on the complaint process. Consider the following elements:
  - Work with community groups/individuals to identify/prioritize issues
  - Research best practices from other jurisdictions regarding how to disrupt systemic patterns of discrimination
  - Make a consistent effort to identify systemic issues in all interactions with the community, not just within the complaint process.
- Build stronger relationships with community groups.

**Rationale:** The current NWT human rights system is fundamentally oriented towards individual dispute resolution. This is in contrast to the original intention underlying the *Act* as a means of addressing social inequality in order to improve life in the NWT for everyone. Consultations with the public throughout the review process highlighted the hope that the Commission would take a lead role in promoting and working towards the vision of an inclusive and just NWT society.

Both the integration of the Commission structure suggested in point 2 above, and the increased collaboration with community groups outlined in point 3 above, will assist the Commission to fulfill this role. What is also needed however is a strategy to identify and address systemic and institutional discrimination that does not rely solely on the individual dispute resolution process.

### Implementing the Recommendations

#### Implementation Team

The review recommends that the Working Group, with members from the Adjudication Panel, Commission and Director's office implement the recommendations. The Commission agrees with this approach.

Since receiving the review report in April of this year, the Working Group has met to review and discuss its findings and recommendations. It has developed a common understanding of the recommendations and agreement on their implementation.

The Working Group has agreed on the importance of moving to a restorative approach, not just in the early stages of the complaint process, but throughout the process, including the Adjudication Panel hearings. It has committed to have this restorative approach in place throughout the NWT human rights system by April of 2017.

The Working Group is continuing the collaboration it began between the three agencies in 2013, by working together to develop a plan for the implementation of the review report's recommendations.

Below are the suggested steps in implementation and resource requirements developed by the Working Group for implementation of the recommendations.

## Steps in Implementation by Theme

### 1. Integrating a restorative approach into human rights work

- Research on best practices in a restorative approach to human rights issues will take place and a model of the restorative approach appropriate to the NWT will be developed.
- Development of restorative policies and procedures for the work in the Director's office will take place next, concurrent with development of a communications and consultation plan.
- The Adjudication Panel will research best practices on the inquisitorial and restorative approaches, and develop policies and procedures for the model chosen.
- Training for Director's staff, Commission members, and Adjudication Panel members will be developed and delivered.
- The intent is to have the entire human rights system functioning in an integrated manner with a restorative approach.

### 2. Changing the structure of the Commission

- Changes to the structure of the Commission, which will change significantly the role of Commission members and the Director, as well as raise the threshold for referral of cases to the Adjudication Panel, will require amendments to the NWT *Human Rights Act*.
- Following the steps required for development, consultation and introduction of legislation, it is expected that the amendments can be introduced and passed during the life of the 18th Legislative Assembly.
- It is anticipated the legislation could be set to come into force a year after it is passed, giving time for policies and procedures to be developed for implementing the changes, as well as training for Commission members to be developed and carried out.

### 3. Increasing access through stronger individual and community relationships

### 4. Addressing systemic discrimination

- The Working Group determined that these two themes were intertwined and best addressed together.
- While proceeding with researching best practices from other jurisdictions regarding changing systemic patterns of discrimination, the Commission will also use its community visits to engage communities in consultation to identify and prioritize issues of systemic discrimination in their communities.
- Discussions will also take place during the community visits on the best way to continue working with communities and community groups, whether forming an ongoing advisory group, or some other method of communication and input.



- From the results of research and community consultation, a strategy to address the community engagement, public interest and systemic issues will be developed.
- A regional consultation on the strategy will be held.
- Policies and procedures for the implementation of the strategy will be developed.
- Training for staff and Commission members on dealing with systemic issues will be developed and carried out.
- The suggestion of having community based human rights facilitators, perhaps using community justice workers in this role, will need to be discussed with the Department of Justice for feasibility. Since this would be an extension of the changes to a restorative approach to human rights, these discussions will take place once the initial research and development of procedures for a restorative approach have been completed.
- A budget for either the suggested model or an alternative model for service to the communities will then be developed and submitted to the Legislative Assembly for consideration.

## Required Resources

Some of the changes detailed above can be accomplished with current resources. However, there are some resources that would be needed for the changes to function well.

1. As the Commission will be taking over the decision making currently done by the Director, and will be doing so according to an amended *Act* that allows them more discretion to dismiss a complaint, it is essential that Commission members receive adequate legal advice to carry out their duties. The report recommends, and the Working Group agrees, the Commission requires in-house legal counsel to fulfill their mandate.

Currently, there is an allotment of \$50,000 in the Commission's budget for legal advice. The Commission requires additional funding to be able to hire in house legal counsel.

Counsel will advise the Commission on complaints, as well as representing the Commission at hearing if the Commission becomes a party to a complaint to protect the public interest. Counsel will also assist in the implementation of new restorative procedures in the Director's office to ensure that natural justice is maintained. The lawyer may also be involved in assisting with facilitating restorative and inquisitorial processes at the Adjudication Panel.

Currently the Commission spends an average of an additional \$40,000 annually over the \$50,000 budgeted amount for legal counsel.

2. As suggested in the comprehensive review report, the administrative functions of the Adjudication Panel will be integrated into the work of the Director's office. In addition, as the Adjudication Panel moves to a restorative approach, they will need an officer to assist them with restorative hearings.

The current half time Office Manager position with the Adjudication Panel should be increased to a full-time Adjudication Panel Officer, who can carry out the office manager functions currently required, as well as assist with the readying of parties for the restorative hearing process, and potentially assist adjudicators with facilitating restorative hearings.

3. Finally, to allow for the increased attention being given to systemic discrimination and community engagement, the increased focus on resolution of complaints early in the process, as well as the increased complexity of investigations required by the higher threshold, we estimate that another half-time Human Rights Officer position will be needed to assist in the work of the Commission.
4. At this point, the Commission is not bringing forward a request to increase staff at the community level. As mentioned previously, when an appropriate model is developed, a budget for that model will be presented for consideration.

Although the increase in staffing is an added expenditure, the Commission believes that in a relatively short period of time transition to this new system will result in substantial savings to offset these costs by decreasing the number of Adjudication Panel hearings that are required.

The average cost in adjudicator time to close a complaint or appeal file over the last four years has been approximately \$44,000. From 2011-2012 to 2014-2015 the Adjudication Panel closed nineteen (19) complaint and appeal files. It closed eleven (11) referred complaint files: five by adjudication and six by mediation. Another five (5) files were withdrawn or resolved in a non-Commission process. The Panel also closed three (3) appeal files in this same period. The average cost per file ranged from \$38,361 in 2013-14 to \$47,848 in 2011-2012.

Based on historical data, about one-third of all complaints filed with the Commission are referred to the Panel for adjudication. This is approximately eight complaint files a year. As more complaints are resolved or dismissed at the early stages, fewer referrals to the Panel will take place. Based on the numbers above, if four fewer cases are referred to the Panel per year, a saving of approximately \$175,000 would take place, as well as significantly shortening the time in which cases are resolved.



## CONCLUSION

The Commission is committed to providing a human rights system in the Northwest Territories that is accessible, fair and effective. The Commission believes that the changes suggested in the comprehensive review, implemented in a manner that is appropriate for the people of the NWT, will result in a system that is not only more accessible, fair, and effective, but will have the ability to repair and strengthen relationships between people and encourage communities to work together to find solutions to systemic discrimination.



NORTHWEST TERRITORIES  
**HUMAN RIGHTS  
COMMISSION**

5003 - 49th Street, Main Floor, Laing Building,  
PO Box 1860, Yellowknife, NT X1A 2P4