

18th Legislative Assembly of the Northwest Territories

Standing Committee on Government Operations

Report on the Review of *Bill 30: An
Act to Amend the Human Rights Act*

Chair: Mr. Kieron Testart

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**STANDING COMMITTEE ON
GOVERNMENT OPERATIONS**

**REPORT ON THE REVIEW OF BILL 30:
*AN ACT TO AMEND THE HUMAN RIGHTS ACT***

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STANDING COMMITTEE ON GOVERNMENT OPERATIONS

REPORT ON THE REVIEW OF *BILL 30:* *AN ACT TO AMEND THE HUMAN RIGHTS ACT*

INTRODUCTION

The Standing Committee on Government Operations (“the Committee”) is pleased to report on its review of *Bill 30: An Act to Amend the Human Rights Act*.

Bill 30: An Act to Amend the Human Rights Act, sponsored by the Department of Justice, has been referred to the Standing Committee on Government Operations for review. The bill proposes to:

- Consolidate the office of the Human Rights Commission and the office of the Director of Human Rights into a single agency called the Human Rights Commission;
- Clarify the public interest mandate of the Commission and provide for the carriage of complaints at hearing by the Commission, in recognition of this public interest mandate;
- Provide that restorative principles are to be applied to human rights protections and processes in the Northwest Territories;
- Make changes to the operation of the Human Rights Adjudication Panel, including giving adjudicators the ability to use practices procedures for resolving complaints that are different from those in traditional adversarial processes;
- Add gender expression as a prohibited ground of discrimination to expand upon and clarify the grounds of sexual orientation and gender identity for which discrimination is already prohibited under the Act;
- Remove the offence and punishment provisions of the Act, in recognition of the shift to a restorative process; and
- Bring the amendments into force annually over a three year period, from 2019 to 2021.

BACKGROUND

Comprehensive Review

The Northwest Territories' *Human Rights Act* received assent in 2002 and came into force in 2004.

In 2014, to mark the 10-year anniversary of the Act's proclamation, the Human Rights Commission ("the Commission") undertook a review of the human rights system in the Northwest Territories, which included a review of the system's governing legislation, the *Human Rights Act*. The Commission contracted a team of experts, with an extensive background in the areas of Canadian constitutional and human rights legislation, to carry out the review.

The recommendations of the Comprehensive Review Team were set out in a report titled the "*Northwest Territories Human Rights Act Comprehensive Review: A review and analysis of human rights promotion and protection in the Northwest Territories*" which was tabled in the Legislative Assembly on October 7, 2015.¹

The review report made a number of findings, including that:

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

The report recommended that:

¹ Llewellyn, Jennifer J.; Sinclair, J. Grant.; and Hashey, Gerald J. "*Northwest Territories Human Rights Act Comprehensive Review: A review and analysis of human rights promotion and protection in the Northwest Territories*," April 2015, p. 1. [Tabled Document 355-17(5)].

- The Commission adopt a restorative approach to all human rights work, encouraging all those affected to be involved in resolving the issues giving rise to a complaint;
- The Commission and the Director's office be amalgamated into a single agency and that, in addition to the work it already does with respect to the promotion of human rights, the Commission be given responsibility for determining whether complaints should be dismissed or referred to the Adjudication Panel;
- The screening threshold be raised by amending the Act to allow the Commission to refer, for hearing by the Adjudication Panel, only those cases having merit and raising significant issues of discrimination; and that,
- The Commission be empowered to identify and address systemic discrimination by moving from an adversarial and highly legalized process focusing on individual complaints, to one that fosters a culture of diversity and inclusion by identifying and prioritizing pervasive issues of discrimination in the Northwest Territories.

The three agencies that currently make up the Human Rights Commission – the Commission, the Office of the Director and the Adjudication Panel – supported the overall findings of the review and developed a plan to implement the recommended changes. This work was captured in a report called *“Moving Forward: Implementing the Recommendations of the 2015 Comprehensive Review of Human Rights in the NWT”* which was also tabled in the Legislative Assembly on October 7, 2015.²

Upon completion of the comprehensive review and the implementation plan, the Human Rights Commission began to make changes to move towards a more restorative human rights system in the Northwest Territories.

Through its reviews of the Commission's annual reports, the Standing Committee has been kept apprised of this work, which has included training for staff on the principles of restorative justice. The Commission has also hosted workshops and events, in concert with its partnership organizations, to promote restorative approaches.

² Tabled Document 356-17(5).

As this work has proceeded, so too has the work to develop amendments to the Northwest Territories' human rights legislation.

Legislative Change

The *Human Rights Act* differs from most territorial legislation in a key respect. While most statutes provide that a Cabinet Minister is responsible for the Act's administration, the *Human Rights Act*³ provides that the Human Rights Commission is responsible to the Legislative Assembly for the administration of the Act.

Consequently, amendments to the *Human Rights Act* necessitate a high degree of collaboration between: the Commission, having administrative responsibility under the legislation; the Department of Justice, as the sponsor of the Bill; and the Office of the Clerk of the Legislative Assembly, which has responsibility for the oversight of the territory's statutory officers, including the Human Rights Commission.

Committee wishes to acknowledge the cooperative effort that went into the development of Bill 30. In its review, Committee has remained mindful of this work and respectful of the Commission's objective of moving towards a more restorative human rights system. Committee also gave careful consideration, in particular, to two issues raised in the development of the bill, for which the Department of Justice and the Human Rights Commission had differing views.

These are:

- That the Act should be amended to prohibit discrimination on the basis of genetic characteristics; and,
- That the Act should be amended to prohibit discrimination on the basis of an unrelated criminal charge or conviction.

Committee's input on these matters is addressed further on in this report.

³ Section 19, Human Rights Act, SNWT, 2002, c. 18.

Bill 30 received Second Reading in the Legislative Assembly on October 1, 2018, and was referred to the Standing Committee on Government Operations for review.

THE PUBLIC REVIEW OF BILL 30

To commence its review of Bill 30, the Committee sent letters inviting input from stakeholders, including all municipal and Indigenous governments in the Northwest Territories, and a number of non-governmental organizations.

During the week of January 21, 2019, the Committee traveled to, and held public meetings on Bill 30 in, Fort Smith, Inuvik and Fort McPherson. A final public hearing was held in Yellowknife on February 5, 2019. Committee thanks everyone who attended these meetings or provided written submissions to the Committee sharing their views on Bill 30.

WHAT WE HEARD

In a presentation to the Committee at its Yellowknife public hearing, Mr. Charles Dent, Chair of the Human Rights Commission and Ms. Deborah McLeod, Director of Human Rights indicated the Commission's support for the amendments proposed in Bill 30. They further noted that the Commission previously brought forward genetic discrimination and unrelated criminal conviction as potential prohibited grounds of discrimination under the Act. They indicated that "the Commission would like to see these grounds added as an amendment to Bill 30 if there is agreement to do so," but noted that they would not want to see passage of the legislation delayed as a result.

In a written submission, Alternatives North, a NWT-based social justice coalition expressed its support for the amendments being proposed to the Human Rights Act. Their letter noted that,

"Previously, complainants were responsible for presenting their evidence in a formal and legal type process, a difficult task for many to accomplish, especially in instances where respondents with access to more financial resources were represented by legal counsel. The change to a restorative process for addressing human rights complaints will address unequal

power dynamics, result in a less confrontational approach and offer more support to complainants.”

Alternatives North recommended an evaluation framework, including both “an Indigenous lens and a gender-based analysis,” in order to measure the effectiveness of the change to a more restorative approach. As well, they noted the importance of developing plain language communication tools to explain the principles and practices of a restorative process, and of orientation and continued training related to cultural competency for Commission staff and any contracted agencies.

In each of the smaller communities to which the Committee traveled, Committee heard support for the inclusion of genetic characteristics as a prohibited ground of discrimination under the Act. Mr. Mike Keizer, a Parks Canada employee from Fort Smith expressed his support for prohibiting discrimination on the basis of genetic characteristics. So did Ms. Lauraine Armstrong, also of Fort Smith, who noted that the fear of being discriminated against might serve as a deterrent to some people getting genetic testing that could help improve their lives. Mr. Richard Nerysoo, of Fort McPherson, told the Committee that prohibiting discrimination on the basis of genetic characteristics “is a good thing to pursue” but offered the view that prohibiting discrimination on the basis of an unrelated criminal charge or conviction could be more challenging to implement.

During the review period, Committee also received a written submission from the Human Rights Adjudication Panel suggesting technical amendments to improve Bill 30.

WHAT WE DID

Proposal to Prohibit Discrimination on the Basis of Genetic Characteristics

Discrimination on the basis of genetic characteristics occurs when a person is treated differently in employment, in the provision of goods or services, or in tenancy, on the basis of their specific genetic information, without *bona fide* and reasonable justification.

Committee researched the proposal to amend the Northwest Territories *Human Rights Act* to prohibit discrimination on the basis of a person's genetic characteristics. Committee learned that, in the intervening period since work started on Bill 30, federal *Bill S-201: Genetic Non-discrimination Act* received

royal assent on May 4, 2017. This bill amended the *Canadian Human Rights Act* to prohibit discrimination on the ground of genetic characteristics. It also amended the Canada Labour Code to protect employees from being required to undergo or to disclose the results of a genetic test, and to provide employees with other protections related to genetic testing and test results.

Committee also learned that, with the passage of the federal legislation, Canada became the last of the G7 countries to pass such legislation. In the United States, the Genetic Information Non-Discrimination Act, which protects people from genetic discrimination in health insurance and employment, was passed in 2008.

With the advent of consumer genetic testing companies, access to genetic information is becoming more commonplace. Fear of discrimination is a common concern among people considering genetic testing. In its public hearings, Committee heard that residents of the Northwest Territories want to be protected from discrimination on the basis of genetic characteristics so that they can get genetic testing to help identify health risks and take preventive measures without fear of reprisal. Accordingly, Committee moved Motion 1 to amend Bill 30 to include genetic characteristics as a prohibited ground of discrimination.

Proposal to Prohibit Discrimination on the Basis of an Unrelated Criminal Charge or Conviction

The Act currently prohibits discrimination on the grounds of a “conviction that is subject to a pardon or record of suspension.” The proposal to prohibit discrimination on the basis of an unrelated criminal charge or conviction would extend this protection.

Committee heard from the Human Rights Commission that its support for this change to the Act is based on concerns it has heard from residents of the Northwest Territories who have been prevented from pursuing certain employment opportunities because of an unrelated criminal charge or conviction. The Commission argued that this proposal merited consideration, given social conditions in the north, including high conviction rates and systemic barriers to

housing, services and employment. The Commission further noted that the rehabilitative objectives of the Act would be met by this proposal.

As admirable as the objectives of the proposal are, Committee supports the decision of the Department of Justice to exclude it from Bill 30. The proposed

amendment would require employers or service providers, such as landlords, to look at a person's record of offences and consider whether the offence that is the subject of a criminal charge or conviction would have a negative effect on the person's ability to do the job or would pose a risk to others in the delivery of housing or other services.

The Committee agrees that this would impose unreasonable risks and constraints on employers and service providers. It could also raise concerns about liability and safety should an individual with a criminal record re-offend in their work capacity or with respect to the services they are receiving. Committee's decision is also based on the fact that, during the public consultation, Committee heard little support for the proposal and, in fact, heard cautions against it.

Proposal to Remove Offence and Punishment Provisions

Clause 25 of Bill 30 proposes to repeal the offence and punishment provisions of the Act,⁴ replacing them with a provision providing that anyone who contravenes section 15 or subsection 40(1) is guilty of an offence. However, clause 25 does not specify any penalties for the offences set out in these two sections of the Act.

During the public hearing, the Human Rights Commission indicated its support for the removal of penalties specified in this section of the Act, arguing that: they are not consistent with a restorative approach to the adjudication of human rights complaints; the Commission does not use those provisions; and that other human rights acts in Canada do not contain penalty provisions.

⁴ Subsections 72(1) and (2), *Human Rights Act*, SNWT, 2002, Chapter 18.

Committee reviewed the human rights acts of eleven⁵ provinces and territories. Of these, Committee found that ten contain penalty provisions. Only British Columbia's *Human Rights Code* does not.⁶

It is the Committee's view that, generally, the various acts distinguish between the remedies that may be ordered or imposed by the body adjudicating human rights complaints, as distinguished from process-related offences under the act for which fines can be imposed by the Courts.

Remedies are largely directed at compensating and restoring the dignity of the individual whose human rights have been infringed, or requiring remedial activities on the part of the violator to prevent similar infractions in the future. In such instances, offences often occur because the person or organization was unaware of their obligations under the Act.

Committee believes that the restorative approach is most appropriately exercised through the remedial actions that may be ordered by the Commission or Adjudication Panel, in the process of resolving a human rights complaint. In these cases, the offences and penalties set out under subsection 72(1) of the Act are not required, as the appropriate remedies will be determined through the Commission's restorative justice processes, including mediation, or by the Adjudication Panel in accordance with its authority under the Act. Therefore, Committee agrees with the removal of subsection 72(1). "

In contrast, section 15 and subsection 40(1) prohibit actions by those who attempt to thwart the authority or operations of the Act by wilfully refusing to comply with direction under the Act or by engaging in deceitful, fraudulent or intimidating behaviours related to activities governed by the Act.⁷ Committee cannot support the removal of the penalties specified for these offences, as this would deprive the Courts, and by extension individuals who have been wronged, of the opportunity to punish unlawful behaviour that is wilful, deliberate and, thus, not as likely to be made better by restorative measures.

⁵ Committee opted not to include the Quebec *Charter of Human Rights and Freedoms* in this review as it differs in fundamental ways from other jurisdictions' human rights legislation, making it less useful for comparative purposes.

⁶ Section 48, Human Rights Code, RSBC, 1996, Chapter 210.

⁷ Section 15 of the Act prohibits "discharging, expelling, evicting, suspending, intimidating, coercing, financially penalizing, denying a right or benefit or retaliating against an individual for making a complaint under the Act" while or subsection 40(1) prohibits "hindering, obstructing or interfering with an investigator".

Accordingly, Committee moved Motion 7 to amend Clause 25 to repeal subsection 72(1) and to retain subsection 72(2).

Power of the Adjudication Panel

Subsection 62(3) of the Act sets out what remedies an adjudicator may include in a remedial order, where there is a finding that a human rights complaint has merit. Clause 24 of Bill 30 proposes to amend this section to broaden the adjudicator's power to "do anything the adjudicator considers that the party ought to do to promote compliance with this Act, including with respect to future practices."

Committee is concerned that this proposal too broad. It allows the adjudicator to order a person or organization that has been found to have violated a complainant's human rights, to do anything the adjudicator thinks necessary to ensure future compliance with the Act, potentially going beyond the particular grounds of discrimination dealt with by the adjudicator in the complaint being adjudicated. Committee expressed the concern that this language was too permissive and could result in over-reach by the Adjudication Panel.

Accordingly, Committee moved Motion 6 to amend Clause 24 to restrict the proposed power of the Adjudication Panel such that may only order remedies that may prevent future contraventions that are the same as or similar to the contravention that is the subject of the adjudication.

Technical Amendments

Committee received a submission from Mr. Sheldon Toner, Chair of the Human Rights Adjudication Panel recommending technical amendments to Bill 30.

Subclause 12(2) of Bill 30 proposes a new subsection 29(2.4) in the Act. This new subsection provides that, in hearing an appeal of refusal to accept a complaint, the Human Rights Commission will adopt the Adjudication Panel's process, with such modifications as the circumstances require. In the Adjudication Panel's submission, Mr. Toner argues that the proposed wording of this subclause is potentially confusing, because it implies that the Adjudication Panel, rather than the Commission, hears these appeals. He further suggests that the Commission should be able to determine its own process, rather than

adopt that of the Adjudication Panel, which was established for a different purpose.

Committee agreed with this assessment and moved Motion 4 to amend the Bill to specify that the Commission will establish its own appeal process.

Subclauses 21(2) to (6) of Bill 30 deals with the matter of “carriage of complaints,” which refers to who has procedural leadership for presenting evidence and arguments before the Adjudication Panel or the Courts. The submission argues that the provisions giving the Executive Director carriage of complaints should appear in Part 5 of the Act, which is dedicated to Adjudication Panel hearings, where carriage is exercised.

The Committee again reviewed the human rights acts of other Canadian jurisdictions and learned that six of eleven human rights statutes contain provisions providing for carriage of complaints. In all of these instances, the provisions specifying carriage of complaints are set out in the part of each act dealing with parties to adjudication. This is consistent with the proposal contained in the submission from the Human Rights Adjudication Panel. For this reason, Committee was persuaded that this change was appropriate and moved Motion 5 to amend subclauses 21(2) to (6) of the Bill 30. The amendments move the carriage of complaint provisions to section 53 of the Act.

Further technical amendments were completed through Motion 3, which amends related references in the Act, and Motion 8, which ensures the coming into force provisions of the Act reflect this reorganization.

An additional unrelated technical amendment was made through Motion 2 to correct a drafting error in clause 9 the Bill.

Evaluation Framework

Based on its reviews of the Human Rights Commission’s annual reports, the Committee believes the Commission has undertaken a significant training directed at implementing a restorative approach in all of the work that it does. Committee is confident that this work will continue. Committee also has confidence that, to complement the extensive public relations materials it already produces, the Commission will develop pamphlets and plan language materials

to explain the changes to the Act and the implementation of the restorative approach.

Committee supports the recommendation made by Alternatives North with respect an evaluation framework and, therefore, makes the following recommendation:

Recommendation 1

The Standing Committee on Government Operations recommends that the Human Rights Commission develop an evaluation framework for assessing the efficacy of moving to a restorative process, which includes in its methodology a gender-based analysis and an assessment of the impacts on Indigenous people.

The Standing Committee on Government Operations further recommends that the findings of this review be tabled in the Legislative Assembly in the first sitting following April 1, 2021, at which time the amendments to the *Human Rights Act* made by Bill 30 will be fully implemented.

CLAUSE-BY-CLAUSE REVIEW OF THE BILL

The clause-by-clause review of the Bill was held on March 7, 2019. At this review, the Committee moved the following motions:

Motion 1: **That clause 2 of Bill 30 be amended by deleting paragraph (a) and substituting the following:**

(a) in the second recital, by adding “or expression, genetic characteristics” after “gender identity”; and

This motion was carried. However, the Minister did not concur,

so the motion did not amend the Bill.

Motion 2: **That clause 9 of Bill 30 be amended in proposed paragraph 23(1)(c) by striking out “or by the Commission” and substituting “and by the Commission”.**

The motion was carried and the Minister concurred. The Bill will be amended accordingly.

Motion 3: **That subclause 11(1) of Bill 30 be amended by deleting proposed paragraph 27(1)(e) and substituting the following:**

(e) have carriage of complaints on behalf of the Commission in accordance with subsections 53(4) to (6);

The motion was carried and the Minister concurred. The Bill will be amended accordingly.

Motion 4: **That subclause 12(2) of Bill 30 be amended by deleting proposed subclause 29(2.4) and substituting the following:**

(2.4) The Commission shall establish a process for conducting an appeal under subsection (2.3).

The motion was carried and the Minister concurred. The Bill will be amended accordingly.

Motion 5: **That Bill 30 be amended by**
 (a) deleting subclause 21(2) and renumbering subclause 21(1) and clause 21; and
 (b) adding the following after subclause 23(2):

(3) The following is added after subsection 53(3):

(4) The Commission has carriage of a complaint before the adjudication panel.

(5) The Commission may elect to have carriage of complaint in a proceeding before a court.

(6) For greater certainty, the Commission has carriage of a complaint for the purposes of representing the public interest and upholding the principles of the Act.

The motion was carried and the Minister concurred. The Bill will be amended accordingly.

Motion 6: That paragraph 24(b) of Bill 30 be amended by deleting proposed subparagraph 62(3)(a)(ix) and substituting the following:

(ix) to do anything that the adjudicator considers appropriate for the purpose of preventing the same or any similar contravention in the future; and

The motion was carried and the Minister concurred. The Bill will be amended accordingly.

Motion 7: That clause 25 of Bill 30 be deleted and the following substituted:

25. Subsection 72(1) is repealed and subsection 72(2) is renumbered as section 72.

The motion was carried and the Minister concurred. The Bill will be amended accordingly.

Motion 8: That clause 29 of Bill 30 be amended by
(a) deleting paragraph (2)(d) and substituting the following:

(d) section 21;

(b) deleting subclause (3) and substituting the following:

(3) Subsections 11(1) and 23(3) come into force April 1, 2021.

CONCLUSION

During the clause by clause review of the Bill, Committee moved Motion 1 to add “genetic characteristics” as a prohibited ground for discrimination. The Minister declined to concur with this motion, setting out his views in remarks made during the discussion on Motion 1 and providing Committee with a letter solicited by the Department of Justice from the Canadian Life and Health Insurance Association.

Committee is well aware through its research, and through Canada’s experience with Bill S-201, that the insurance industry does not support the prohibition on discrimination based on genetic characteristics. Committee notes the Minister did not solicit input from organizations supporting the interests of those with genetic diseases.

On the day following the clause by clause review, the Chair of the Standing Committee tabled documents⁸ supporting the Committee’s position. The Minister’s tabled the letter⁹ he provided to the Committee from the Canadian Life and Health Insurance Association. The Committee looks forward to further debate on this matter in House.

For those motions moved during the clause-by-clause review, with which he did concur, the Committee thanks the Minister of Justice for his concurrence.

Committee also thanks the public for their participation in the review process and everyone involved in the review of this Bill for their assistance and input.

Following the clause-by-clause review, a motion was carried to report Bill 30: *An Act to Amend the Human Rights Act*, as amended and reprinted, as ready for consideration in Committee of the Whole.

This concludes the Standing Committee on Government Operations’ Review of Bill 30.

⁸ Tabled documents 376-18(3), 377-18(3) and 378-18(3).

⁹ Tabled document 379-18(3).

APPENDIX 1

SUBMISSIONS

The Standing Committee received the attached written submissions:



Alternatives North

4 February 2019

The Honourable Kieron Testart
Chair
Standing Committee on Government Operations

Bill 30: Amendments to NWT Human Rights Act

Alternatives North is writing to express its support for the amendments to the NWT Human Rights Act proposed in Bill 30. Previously, complainants were responsible for presenting their evidence in a formal and legal type process, a difficult task for many to accomplish especially in instances where respondents with access to more financial resources were represented by legal counsel.

The change to a restorative process for addressing human rights complaints will address unequal power dynamics, result in a less confrontational approach and offer more support to complainants. While the International Institute of Restorative Practice Commission offered their expertise to the NWT Human Rights Commission in the development of the restorative process, the Amendments do not spell out the policies and procedures in detail. Therefore, an evaluation framework that includes both an Indigenous lens and a gender-based analysis will be essential in terms measuring the efficacy of this change in the approach to addressing human rights complaints. It would also be important to develop plain language communication tools that explain the principles and practices of a restorative process to ensure the change is system-wide and sustainable.

The decision by the Human Rights Commission to enter into MOUs with community organizations who can provide direct support to complainants is very positive. Having said that, orientation and continued training related to cultural competency is critical for staff of the Commission and contracting agencies.

Thank you for considering our input on Bill 30.

Suzette Montreuil
For Alternatives North

cc. Charles Dent, Chair, Human Rights Committee

**Presentation by the NWT Human Rights Commission to
Standing Committee on Government Operations February 5, 2019 on
Bill 30 to Amend the NWT *Human Rights Act***

I would like to thank the Committee for the opportunity to address the amendments to the NWT *Human Rights Act* brought forward in Bill 30. I also would like to acknowledge that the Commission works in the traditional territories of the Dene, Inuvialuit, and Métis peoples and recognizes its obligations under Treaty 8 and Treaty 11.

The proposed amendments stem from an independent comprehensive review of the NWT human rights system contracted by the NWT Human Rights Commission in 2014. As that was the 10 year anniversary of the implementation of the NWT *Human Rights Act*, the Commission thought it was timely to review how the legislation and structures created by the *Act* were performing. We wanted to look at what progress they had made in achieving the original purpose and potential of the *Human Rights Act*.

The three independent agencies of the NWT human rights system, the Commission, the Adjudication Panel and the Director, reviewed the report and together accepted its findings. Representatives of the three agencies had already formed a working group, which developed an implementation plan for the recommendations. The implementation plan, called "Moving Forward," was tabled in the Legislative Assembly in September of 2015.

All three human rights agencies, again through the working group, also began working with the staff of the Legislative Assembly and the Department of Justice on the amendments to the NWT *Human Rights Act* recommended in the comprehensive review.

I would like to take this opportunity to thank the staff of the Legislative Assembly and the Department of Justice for their hard work and collaborative manner, which ensured that the spirit and intent of the changes recommended by the comprehensive review came to fruition in the suggested amendments to the *Act*.

A major recommendation of the review report was that the Commission adopt a more restorative approach in its human rights complaint process. The original intent of the NWT *Human Rights Act* was to have an accessible service, where people could come to talk about their human rights concerns and have them addressed.

The review report found that the process was over-legalized, making it ineffective and inaccessible for most people. It found that unrepresented complainants had a serious barrier to access to justice in a legal system focused on procedure and precedent and using unfamiliar language.

The current model of the human rights complaints process in the NWT 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.

The amendments in Bill 30 provide that restorative principles are to be applied throughout the NWT human rights system, both in ensuring compliance with the *Act* and in promoting respect for and observance of human rights.

The review report also recommended significant changes in the structure and responsibilities of the Commission. The amendments in Bill 30 consolidate the Human Rights Commission and the office of the Director of Human Rights into a single agency called the Human Rights Commission. Both are currently independent agencies. 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 amendments will also clarify the public interest mandate of the Commission in terms of the explicit nature of the Human Rights Commission's responsibility to protect the public interest.

The review report found that the threshold for referral of complaints to the Adjudication Panel for hearing is too low to allow the proper screening of complaints. The amendments in Bill 30 will raise the threshold for referral of cases to hearing, 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.

The Bill amendments provide for the carriage of complaints at hearing by the Commission, in recognition of its public interest mandate. Carriage will be of particular assistance in situations where there are unrepresented parties at hearing.

The amendments in Bill 30 add gender expression as a prohibited ground of discrimination. This expands and clarifies the grounds of sexual orientation and gender identity that are already present in the *Act*.

Although it is not addressed in the review report, the Commission previously brought forward the grounds of genetic discrimination and unrelated criminal conviction as additional grounds to be included in the *Act*. The Commission would like to see these grounds added as an amendment to Bill 30 if there is agreement to do so. However, we

would not like to see Bill 30 held up for this reason. The addition of these grounds could be considered at a later time.

Thank you again for this opportunity to speak to you today. If you have any questions at this time I am happy to answer them.



**Human Rights Adjudication Panel
Tribunal d'arbitrage des droits de la personne**

VIA EMAIL

February 7, 2019

Jennifer Franki-Smith, Committee Clerk
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Dear Ms. Franki-Smith and Mr. Reddy:

RE: Bill 30

Comments on Bill 30 – An Act to Amend the *Human Rights Act*

I am writing to provide input to the Standing Committee, as Chair of the Human Rights Adjudication Panel, on the current wording of Bill 30.

There are two areas of the draft where the intentions of the legislation could be more clearly expressed through minor revisions. The suggestions outlined below occurred to me during a detailed review of the draft, and are purely technical in nature.

Appeals to the Commission - Subsection 12(2):

Subsection 12(2) of Bill 30 proposes to allow complainants to appeal to the Commission where the Director refuses to accept a complaint under subsection 29(2.1). Complainants will be able to appeal under subsection 29(2.3). Subsection 29(2.4) states that such an appeal is to be conducted “under Part 5, with such modifications as required in the circumstances.”

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This proposed wording of subsection 29(2.4) is potentially confusing. Part 5 concerns the adjudication panel. The reference to Part 5 therefore implies that the panel, not the Commission, hears appeals under subsection 29(2.3). If the intent is for the Commission to determine these appeals, the Commission should apply its own process. The Panel's procedures under Part 5 are not created by the decision-maker on these appeals (in the amended Act, this will be the Commission); and the Panel's procedures likely exceed what is needed for appeal of a threshold decision on whether to accept a complaint.

My proposed solution is to simply remove subsection 29(2.4). This would help to ensure the legislation maintains clear distinctions between the respective roles and functions of the Commission and the Panel. The Commission could then devise its own summary process, consistent with object and intent of subsection 29(2.3).

Carriage of Complaints - Subsection 21(2):

Subsection 21(2) of Bill 30 deals with the carriage of complaints. This is about who bears the onus of presenting evidence and argument before the Panel.

The proposed subsections dealing with "carriage" of complaints, namely subsections 46(3), (4) and (5), should be moved and revised to better align with the structure of the Act and related provisions. The following suggestions, taken together, would accomplish this object:

Suggestion 1:

Section 46 deals with the referral of complaints to adjudication. This comes at the end of the Commission's screening function in Part 4. The provisions giving the Executive Director carriage of complaints before the adjudication Panel should appear in Part 5. This is the part of the Act dedicated to adjudication Panel proceedings, which is where carriage is exercised.

The most suitable place for subsections 46(4) and (6) is section 53. Subsections 53(1), (2) and (3) set out who the parties in adjudication. More specific provisions concerning the role of the Commission as a party should follow in the section. I am suggesting that draft sub-sections 46(4) and (6) become subsections 53(4) and (5).

Suggestion 2:

There should also be consistent use of terms. The current draft of subsections 53(1), (2) and (3) makes the Commission a party before the adjudication Panel, not the Executive Director. Consistency could easily be achieved by changing the term "Executive Director" to "Commission" subsections 46(4) and (6), which I am suggesting become subsections 53(4) and (5). The Executive Director should still be the one "carrying" the complaint, but since they become a non-voting member of the Commission with these amendments it isn't necessary to address their role separately.

Suggestion 3:

Subsection 46(5) concerns appeal to the Supreme Court of the Northwest Territories, and proposes to limit the Executive Director from bringing an appeal without written approval from the Commission. This provision is not necessary if the other subsections are consistent in naming the Commission as the party having carriage. The Executive Director is a non-voting member of the Commission in any event, and the legislation need not govern approval processes internal to the Commission. I therefore suggest deletion of subsection 46(5).

Suggestion 4:

The changes I have proposed would require an incidental change to section 11 of Bill 30, along the following lines:

11.(1) Paragraph 27(1)(e) is repealed and the following substituted:

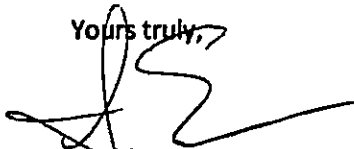
(e) exercise carriage of complaints, on behalf of the Commission, in accordance with subsections 53(4) and (5);

Conclusions:

The technical suggestions outlined above are intended to clarify two key changes to the legislation, with a view to ensuring the best expression of the legislation's intentions.

I would be pleased to address any questions or concerns by email with the Standing Committee or the Department of Justice.

Yours truly,



Sheldon Toner
Chair,
Human Rights Adjudication Panel

CC: Deborah McLeod, Director, NWT Human Rights Commission
Charles Dent, Chair, NWT Human Rights Commission