



FAIR PRACTICES OFFICE ANNUAL REPORT

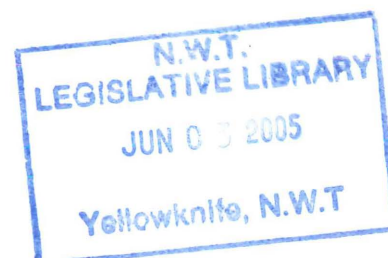
January 1 to June 30, 2004

THE FAIR PRACTICES ACT

This will be the final report of the Fair Practices Office, established pursuant to the *Fair Practices Act* of the Northwest Territories. Effective July 1st, 2004, the Fair Practices Office closed and the Human Rights Commission took over the role of protecting human rights in the Northwest Territories.

Universal respect for diversity is the ultimate goal of human rights legislation. This is a difficult goal, especially in today's world, where political, national and religious beliefs often collide and modern transportation systems allow people to travel easily throughout the world. Canada's history of encouraging cultural diversity and cultural acceptance makes it one of the most multi-cultural countries in the world. The new Human Rights Commission will now take over responsibility for protecting human rights in the Northwest Territories. In addition to investigating complaints and making orders, however, the Commission will have the additional positive obligation of educating the public about the Act. Protecting human rights is about changing mind sets and it is difficult to change attitudes without a good public education component which starts in the school system.

The *Fair Practices Act* prohibited discrimination on the basis of race, creed, colour, sex, marital status, nationality, ancestry, place of origin, disability, age, family status, or because of conviction for which a pardon has been granted. The Act further provided for an independent forum for the investigation and adjudication of complaints from individuals who felt that they had been discriminated against in their employment, in seeking and maintaining accommodations, in obtaining services or in the using facilities generally open to the public.



ROLE OF THE FAIR PRACTICES OFFICER

Under the *Fair Practices Act*, Fair Practices Officers were appointed to receive, investigate, mediate and adjudicate complaints of human rights abuses and discrimination. The three Fair Practices Officers in this role for 2004 were Elaine Keenan Bengts, James Posynick and Shannon Gullberg.

Complaints received by the Fair Practices Office were assigned to one of the Officers who generally had conduct of the file from the receipt of the complaint to the finalization of the matter.

It was the responsibility of the Fair Practices Officers to investigate all written complaints received. The process provided for in the Act emphasized mediation and negotiation and gave the Fair Practices Officer the authority to assist the parties to resolve misunderstandings and disputes without a formal hearing. If no resolution could be achieved, however, the Fair Practices Officer was empowered to conduct a hearing and make an order.

A general practice was developed during the tenure of the three Fair Practices Officers named above that the officer to whom a file was assigned would do an initial investigation and, if a *prima facie* case was made out by the Complainant, would refer the matter to another of the Officers for mediation. If the mediation was unsuccessful, it was then referred back to the investigating officer to hold a hearing.

A finding of discrimination at a hearing could result in any Order which the Fair Practices Officer considered appropriate to the circumstances. An order of a Fair Practices Officer could be filed in the Territorial Court of the Northwest Territories and enforced as an Order of that Court

THE COMPLAINT PROCESS

The Northwest Territories *Fair Practices Act* provided the mechanism by which individuals who felt that they had been discriminated against could have their concerns heard. Complaints to the Fair Practices Office were required to be in writing and be signed by the person making the complaint. If a Complainant had a problem in reducing his or her complaint to writing, assistance was provided by our staff to put the complaint in writing.

Once received, the complaint was assigned to a Fair Practices Officer who began an investigation of the complaint. The Fair Practices Officer first determined whether there was jurisdiction under the Act to deal with the complaint. If it did not fall under one of the prohibited grounds, or there was some other reason that the complaint was not covered by the Act, the complaint would be dismissed. Provided that the matter complained of was within the Fair Practice Officer's jurisdiction, the Officer began by obtaining information in writing from both parties to the dispute.

If a *prima facie* case and jurisdiction was established, the investigation continued. The *prima facie* test created a fairly low threshold. The complainant merely had to establish that, if the facts set out in the complaint were true, the actions complained of would be prohibited under the Act. As a result, unless there was a jurisdictional issue (i.e. the complaint did not fall under one of the prohibited grounds of discrimination, or the matter was one within federal jurisdiction) most complaints made proceeded to either mediation or a hearing. Before a hearing, the Fair Practices Officer would make efforts to assist the parties in resolving the concerns raised through negotiation and/or mediation. In an effort to encourage the parties to discuss their concerns and attempt to resolve their disputes without the need for a full hearing, the Office developed a general policy to refer all matters to mediation prior to setting a hearing date. The Fair Practices Officers also developed a policy that the Officer who participated with the parties in a mediation would not sit as the hearing officer.

There were some cases in which, because of the circumstances, the Fair Practices Officer did not feel that mediation would be of any benefit or would be inappropriate. In these cases, the matter proceeded directly to a hearing once a *prima facie* case had been established.

Where no resolution could be achieved through mediation or otherwise, a hearing was set at which all parties were invited to present their case, under oath. Based on the evidence presented, the Fair Practices Officer made a finding as to whether or not discrimination had been shown to have occurred and, if so, an order was made to that effect. The Fair Practices Office could also impose penalties and award compensation for discriminatory actions. If no discriminatory action was found to have taken place, the complaint was dismissed.

This system has worked very well over the last few years. It allows both complainants and respondents the opportunity, in mediation, to take a second look at the situation from a different point of view and to discuss the incident or incidents in question before the hearing begins. In almost every case in which the parties agree to mediation, the mediation results in a resolution to the matter.

Most complaints received by the Fair Practices Office were resolved within 6 months from the date the complaint was submitted.

The majority of complaints received in the Fair Practices Office arise out of employment situations but in many cases, the complaints do not fall under one of the prohibited grounds of discrimination as defined in the Act. These complaints are often directed to unions, to Labour Services or some other agency which may be of assistance.

COMPLAINTS AND INQUIRIES

The Fair Practices Office received many telephone inquiries. Most of these were simple inquiries for which an immediate response could be given, and these were handled by the office administrator. From January to June of 2004, there were approximately 48 general inquiry calls, visits and e-mails made to the office. As a result of these inquiries, 14 packages regarding the Act were given out. Twenty one matters were referred to other agencies or otherwise dealt with by the office administrator. There was one call from the Minister's Office regarding process and one request from another government agency for information which would assist them in drafting departmental policies. One individual requested a copy of the Annual Report, which

was provided. Ten individuals were given more information about how to file a complaint or were assisted in filing a complaint.

In addition to these general inquiries, the Office also received a number of other inquiries. For example, other Human Rights Commissions called from time to time seeking information on policies and/or procedures in our office. There was also an active and ongoing exchange of information between our office and our counterparts in other parts of Canada.

FORMAL COMPLAINTS

Nine (9) new files were opened in 2004. In addition there were eleven ongoing files from 2003.

Of the eleven files outstanding from 2003, two of them were transferred to the Human Rights Commission for completion.

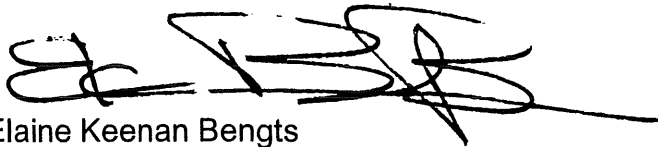
The remaining nine outstanding files were completed as follows:

- a) three were withdrawn by the Complainant and the Fair Practices Officer accepted the withdrawal
- b) two were dismissed for want of jurisdiction
- c) two went to hearing and Orders were made
- d) two were closed by the Fair Practices Officer before hearing because the complainant failed to prove a *prima facie* case of discrimination under the Act.

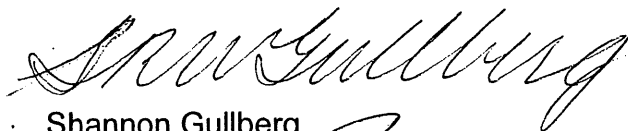
Of the new files opened in 2004, five (5) were referred to the Human Rights Commission for continuation. Three complaints were dismissed for want of jurisdiction and one was closed by the Fair Practices Officer because the complainant failed to show a *prima facie* case of discrimination under the act. All but one of the new files in 2004 arose from an employment situation. The one that did not arise in respect of the provision of services.

Of the new files opened, the issue raised in the most instances was discrimination on the basis of disability (3 files). This is up dramatically from the previous year when only one of 18 files dealt with a disability. In the first six months of 2004, 3 of 9 complaints were based on a disability. There was, in addition, one complaint based on sexual harassment, one complaint based on family status, one on religion and one based on race or nationality. Two of the complaints did not fall under any of the prohibited grounds of discrimination outlined in the Act.

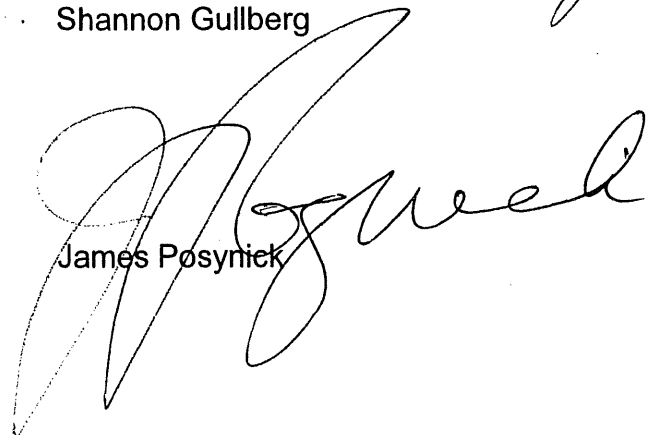
Respectfully Submitted

A handwritten signature in black ink, appearing to read 'Elaine Keenan Bengts', with a long horizontal flourish extending to the right.

Elaine Keenan Bengts

A handwritten signature in black ink, appearing to read 'Shannon Gullberg', written in a cursive style.

Shannon Gullberg

A handwritten signature in black ink, appearing to read 'James Posynick', written in a cursive style with a large initial 'J'.

James Posynick