



Yukon Legislative Assembly
32nd Yukon Legislative Assembly

**Report of the Select Committee
on Human Rights**

November 2008

November 20, 2008

Honourable Ted Staffen, MLA
Speaker of the Yukon Legislative Assembly

Dear Sir:

Your Select Committee on Human Rights, appointed by Order of the Assembly on April 9, 2008, has the honour to present its report, and commends it to the House.

Hon. Marian C. Horne
Chair of the Committee
(MLA – Pelly-Nisutlin)

A handwritten signature in black ink, appearing to read 'M. Horne', written over a horizontal line.

Donald Inverarity
Member of the Committee
(MLA – Porter Creek South)

A handwritten signature in black ink, appearing to read 'D. Inverarity', written over a horizontal line.

Steve Cardiff
Member of the Committee
(MLA – Mount Lorne)

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Select Committee on Human Rights

Members of the Committee:

Hon. Marian C. Horne, Chair of the Committee, MLA (Pelly-Nisutlin)

Donald Inverarity, MLA (Porter Creek South)

Steve Cardiff, MLA (Mount Lorne)

Substitute Members:

Steve Nordick, MLA (Klondike), substitute for Hon. Marian C. Horne

Todd Hardy, (MLA – Whitehorse Centre), substitute for Steve Cardiff

Advisor to the Select Committee

Brian L. MacDonald, Barrister and Solicitor

Clerk to the Select Committee:

Linda Kolody, Deputy Clerk of the Yukon Legislative Assembly

Administrative Assistant to the Committee

Sue MacDonald, House and Committee Assistant

Acknowledgements

The Select Committee would like to thank the individuals and organizations who expressed their views to the Committee at the Committee's public hearings and through written submissions.

The Committee would especially like to acknowledge the efforts and contribution made by the Yukon Human Rights Commission through the Commission's written and oral submissions, and by the Yukon Human Rights Board of Adjudication.

As well, the Committee extends its sincere thanks to those individuals who came forward to share their personal, and often moving, experiences with the Committee, out of the desire to improve the *Human Rights Act*, and make the Yukon an even better place to live for others.

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Introduction

Twenty-one years ago, Yukon's human rights legislation came into being. After much controversy, a lengthy series of debates, and many passionate speeches in the House, on February 12, 1987, the Yukon Legislative Assembly passed the *Human Rights Act*. Since that time, the Act has remained virtually unchanged. While this legislation was groundbreaking at the time, decades have since passed. The Act needs to be updated.

In Spring, 2008, the Legislative Assembly created the Select Committee on Human Rights to begin to address this need. The House gave the Committee the existing version of the *Human Rights Act*, and Bill #102, a one-page amending bill, and a mandate to listen to Yukoners and report its findings and its recommendations to the Legislative Assembly.

Mandate

On April 9th this year, the Select Committee on Human Rights was established when the Assembly adopted a motion moved by Steve Nordick (MLA – Klondike). This private member's motion (Motion #374) sets out the Committee's mandate, or purpose. Part of the Committee's mandate is to review and report to the Legislative Assembly its findings and recommendations about public opinion on ways in which the *Human Rights Act* could be amended.

The Committee's mandate also refers Bill #102, Act to Amend the *Human Rights Act*, to the Committee, to seek public feedback on the bill. This one-page amending bill was introduced in the Assembly on April 23, 2007, by Donald Inverarity (MLA – Porter Creek South). Bill #102 seeks to extend from 6 months, to 2 years, the period of time in which a human rights complaint must be made to the Yukon Human Rights Commission. On May 23rd last year, this private member's bill received some Second Reading debate in the House, and the debate was adjourned. The bill remains on the Order Paper.

The motion establishing the Committee provides for the creation of an "all party" committee, which is to say that each of the three parties represented in the Legislative Assembly has one member on the Committee. The members of the Committee are the Hon. Marian C. Horne (Yukon Party), Chair of the Committee; Donald Inverarity (Liberal); and Steve Cardiff (New Democratic Party).

The role of this Committee is not to draft legislation, but (as laid out in the motion) to report to the House "its findings, if any, relating to public opinion for legislative change," and "its recommendations, if any, regarding what form legislation implementing changes recommended by the Committee should take."

Once the Select Committee presents its report to the House (the document you are reading constitutes that report), the Committee has fulfilled its mandate, and ceases to exist. (It is said that the Committee has "dissolved".) It is then up to the Legislative Assembly to accept or reject any or all of the Committee's recommendations.

The motion creating the Committee (Motion #374) reads:

THAT this House establish an all-party Select Committee on Human Rights,

THAT Hon. Marian Horne be the chair of the Committee,

THAT the honourable members Don Inverarity and Steve Cardiff be appointed to the Committee,

THAT Bill #102 entitled An Act to Amend the Human Rights Act be referred to the Committee,

THAT the Committee hold hearings for receiving the views and opinions of the Yukon Human Rights Commission, Yukon citizens and interested groups on legislative amendments to the *Human Rights Act*,

THAT decisions by the Committee require unanimous agreement by members of the Committee,

THAT the Committee report to the Legislative Assembly no later than the 15th sitting day of the next regular sitting of the Legislative Assembly:

(1) its findings, if any, relating to public opinion for legislative change,

(2) its recommendations, if any, regarding what form legislation implementing changes recommended by the Committee should take,

THAT in the event the Legislative Assembly is not sitting at the time the Committee is prepared to report, the Chair of the Committee forward copies of the report to all Members of the Legislative Assembly, thereafter make the report public, and subsequently present the report to the Legislative Assembly at the next regular sitting of the Legislative Assembly,

THAT during its review of public opinion on legislative options for amending the *Human Rights Act*, the Committee be empowered:

(1) to invite the members of the Yukon Human Rights Commission to appear as witnesses,

(2) to invite officials from the Government of Yukon to appear as witnesses on technical matters,

(3) to engage a technical expert who is not a Member of the Legislative Assembly or an employee of the Government of Yukon to act as a facilitator in providing information at the public hearings,

(4) to invite such other persons as it deems necessary to appear as witnesses on technical matters,

(5) to hold public hearings,

(6) to print such papers and evidence as may be ordered by it; and

THAT the Clerk of the Legislative Assembly¹ be responsible for providing the necessary support services to the Committee.

¹ The Clerk of the Yukon Legislative Assembly is Dr. Floyd McCormick.

Communications Strategy

The Committee held several meetings over the summer recess for planning and organization purposes, during which time it also developed and implemented a communications strategy.

On July 16, 2008 the Committee sent a letter to stakeholders to let them know about the Committee's existence and mandate. The letter indicated that the Committee intended to hold public hearings across the territory in September and October, and informed stakeholders of the opportunities to make oral submissions at public hearings, and to send in written submissions. The letter was sent to the Yukon Human Rights Commission, the Yukon Human Rights Board of Adjudication, and to the leadership of all Yukon First Nations, municipalities, and local area councils. On July 31st, the Committee sent out a second letter of invitation to these stakeholders, reiterating the opportunities to make oral and written submissions to the Committee, and providing the Committee's schedule of public hearings.

On August 27th, the Committee issued a news release to the *Whitehorse Star*, the *Yukon News*, the *Klondike Sun*, *L'Aurore boréale*, *Northern Latino*, the CBC; CHON, and CKRW. A second news release went out on September 18th, in anticipation of the start of the Committee's public hearings in Mayo on September 22nd.

The Committee also took out rolling television ads through WHTV. The rolling ads started running on September 8th. As well, radio ads, and public service announcements (the latter offered through the CBC) were arranged. Radio ads about the Committee's public hearings ran daily on CKRW from September 8th to October 10th. Advertising on CHON ran daily from September 19th through October 10th.

In terms of newspaper advertising, the Committee's ads in the *Whitehorse Star* began on September 8th. Advertising in the *Yukon News* began on September 10th. As well, the Committee advertised in *L'Aurore boréale*, *What's Up Yukon*, and the *Klondike Sun*. Wherever possible, the Committee also utilized community newsletters to get the word out. In addition, posters were put up in the Communities weeks in advance of hearings in a given community, to let residents know about the upcoming local hearing.

All Committee advertising referenced the Committee's website, where additional information about the Committee was posted. This information included the membership of the Committee, the Committee's mandate, the public hearings schedule, the existing *Human Rights Act*, Bill #102, Act to Amend the *Human Rights Act*, and the Committee's press releases. The deadline for written submissions appeared on the website and was featured in the newspaper ads, radio ads, and posters. Written submissions could be sent to the Committee electronically through a link on the Committee's webpage, by mail, or in person at public hearings.

Public Hearings

Somewhat more than 100 people attended the Committee's public hearings (108, by the Committee's count). Given the importance to Yukoners of human rights and freedoms, and in light of the Committee's communications strategy, we had hoped to engage more people in the process. Even so, we believe that the value of this process is not measured by numbers alone. Many of those attending the hearings were representative of community groups and First Nations. As well, the Committee found that even where one or two individuals spoke at a particular public hearing, some comments made in each community invariably provided unique insights into the Act not heard elsewhere. While certain themes did emerge repeatedly in different communities, the Committee was also exposed to new perspectives on the Act at each public hearing. Furthermore, across the territory, Yukoners told the Committee that (regardless of the number of people that may have come out to a given meeting) they appreciated that the Committee visited their community to hear their views, and felt that it was important for the Committee to have done so.

The Committee scheduled public hearings in 16 communities throughout the territory over three weeks in Fall, 2008. This was the Committee's public hearing schedule:

Community	Date
Mayo	Monday September 22, 7 p.m.
Old Crow	Tuesday, September 23, 6 p.m.
Dawson City	Wednesday, September 24, 7 p.m.
Pelly Crossing	Thursday, September 25, 7 p.m.
Carmacks	Friday, September 26, 7 p.m.
Faro	Monday, September 29, 7 p.m.
Ross River	Tuesday, September 30, 7 p.m.
Watson Lake	Wednesday, October 1, 7 p.m.
Marsh Lake	Thursday, October 2, 7 p.m.
Burwash Landing	Sunday, October 5, 1 p.m.
Beaver Creek	Sunday, October 5, 7 p.m.
Haines Junction	Monday, October 6, 7 p.m.
Teslin	Tuesday, October 7, 7 p.m.

Whitehorse	Wednesday, October 8, 7 p.m.
Carcross	Thursday, October 9, 7 p.m.
Tagish	Friday, October 10, 7 p.m.

Oral Submissions

All of the oral submissions at the public hearings were in favour of changing the *Human Rights Act*. While public opinion on Bill #102 did not universally support the bill, the majority of oral submissions were in favour of extension clauses seeking to increase the time limit to file a complaint. (See Appendix 1: What We Heard: Themes Raised in Oral and Written Submissions, which summarizes these suggestions.)

Written Submissions

In addition to the public hearings, the Committee also accepted written submissions. The Committee received 24 written submissions by the deadline of October 17th. (See Appendix 3.) Many of these submissions were quite substantial, and it was clear that considerable time, effort, and resources on the part of stakeholder groups and individual Yukoners had gone into the creation of written submissions to the Committee. All written submissions that addressed the *Human Rights Act* indicated it needed to be changed or updated. As well, the majority of feedback regarding Bill #102 in the written submissions supported implementing some variation of the provisions of the bill. (See Appendix 1: What We Heard: Themes Raised in Oral and Written Submissions, which summarizes these suggestions.)

Recommendations

The Committee would like to have included an in-depth discussion of each of its recommendations, however the reporting timeframe did not allow that to happen. We believe that virtually every recommendation could form the basis for a chapter of its own.

While we have focused on some particular considerations from the oral and written submissions, there are other good issues raised within the attached summary document that could form the foundation for further improvements to the Act. (See Appendix 1: What We Heard: Themes Raised in Oral and Written Submissions.)

A number of our recommendations are "process related". In general terms, we are of the opinion that there are fundamental flaws within the process of processing a complaint, and that there needs to be a broad discussion about how to fix the process. Other recommendations relate to clarifying and modernizing the language and concepts in the *Human Rights Act*.

The Select Committee on Human Rights unanimously recommends:

- (1) THAT the *Human Rights Act* 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 *Human Rights Act* be amended under Section 20 to expand the circumstances under which the Commission shall *not* investigate a complaint by adding after 20(1)(c):
 - (d) the commission decides to refer the complaint to the Board of Adjudication or to mediation;
 - (e) the complaint has either been abandoned by the complainant or the complainant fails to cooperate with the investigation; or
 - (f) the complainant has declined what the Director considers a fair and reasonable settlement offer; or
 - (g) 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 *Human Rights Act* 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 *Human Rights Act* 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 *Human Rights Act* 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.
- (6) THAT Section 7 ("Prohibited grounds [for discrimination]") of the *Human Rights Act* 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;
- (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;
- (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.,
 - a. change the name of the *Human Rights Act* to the *Yukon Human Rights and Freedoms Act*
 - 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";
- (10) THAT strong consideration be given to a plain-language approach when revising the Act;
- (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;
- (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;
- (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;
- (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;
- (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 at any one time 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;
- (22) THAT language in the Act be revised to reflect clarity on the issue of systemic discrimination;

- (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 *Canadian Human Rights Act*;
- (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";
- (25) THAT after the *Human Rights Act* is reviewed and amended, the regulations be reviewed for compliance as well.

Conclusion

While Yukon's *Human Rights Act* was viewed as cutting-edge legislation across Canada at the time it was passed twenty-one years ago, the Select Committee believes that the Act now needs to be reviewed and updated.

The Committee feels that the primary purpose of the Act is, and should remain, to protect the rights of all Yukoners. We believe that lofty principles must be kept in mind when the Act is amended, so that it continues to enhance the quality of life for all. The Act's preamble, which attempts to capture many of these principles, should guide the rest of the Act, and not remain a stand-alone section whose promise is not borne out in the nuts and bolts of the legislation. The preamble should also reflect the need to balance the interest of complainants and respondents, and the concept that along with rights come responsibilities. As well, any international conventions that Canada has signed on to in the intervening years since the Act first passed, should be reflected in the preamble to the Act.

There are systemic issues in the Act that need to be corrected. The Committee feels that amending the Act can be approached in two stages: there are some possible "quick fixes", as well as changes that will take a longer time to effect. The Committee believes that its recommendation to raise the threshold for filing a complaint will, in and of itself, go a long way to addressing process issues within the Act. As well, there are areas of possible change that this Committee has not formally recommended. In these cases, more discussion is needed.

The Committee is firmly of the opinion that its recommendations to the Legislative Assembly should be the starting point of a process that will continue to move forward, resulting in the best and most effective human rights legislation possible.

Appendix 1:

What We Heard: Themes Raised in Oral and Written Submissions

This chart summarizes the suggestions for changing Yukon's *Human Rights Act* made in submissions (both oral and written) to the Select Committee on Human Rights.

No.	Theme	Considerations	Discussion
1.	Preamble: Enhanced Understanding of Rights and Responsibilities	Build awareness of responsibilities associated with Rights	<ul style="list-style-type: none"> - Utilize preamble to expand concept;
2.	Preamble: Balancing interest of Complainant and Respondent		<ul style="list-style-type: none"> - Utilize preamble to enhance awareness of balance; - A number of submissions raise the issue of balance - Process should not support the settlement of complaints based on the cost of defending
	Rights:		
3.	Bill of Rights: Enhanced Education on Human Rights	Establish Right to Education on Human Rights; Establish requirement for curriculum development for k-12 Establish lifelong learning of Human Rights.	<ul style="list-style-type: none"> - May be set out in the Bill of Rights portion of the Act; - Significant interest in education and awareness
4.	Bill of rights: Right to Housing	Establish entitlement to adequate and affordable housing and to the protection from eviction without cause	<ul style="list-style-type: none"> - Supported by various submissions - Article 25 (1) Universal Declaration of Human Rights

No.	Theme	Considerations	Discussion
5.	Section 7: Aboriginal Identity	Establish as prohibited ground;	<ul style="list-style-type: none"> - Various submissions discussed the concept of "First Nations". If using the term then may need to consider how to extend to Inuit and Métis as well. - Expansion not supported by all - Current concepts may be interpreted to include in race.
6.	Section 7: Social Condition	Establish as prohibited ground; -addition of definition – "social condition"	<ul style="list-style-type: none"> - Supported by a number of submissions; - Expansion not supported by all
7.	Section 7: Protection From Hatred	Establish as a prohibited ground;	<ul style="list-style-type: none"> - Needs more public discussion
8.	Section 7: Gender Identity	Establish as prohibited ground;	<ul style="list-style-type: none"> - Needs more public discussion
9.	Section 7: Protection for People who are victims of violence;	Establish as prohibited ground; Being a victim of violence on any of the prohibited grounds;	<ul style="list-style-type: none"> - Issue of violence against women; - Supported by a number of submissions
10.	Definitions: Remove definition of "Sexual Orientation"	Submission: Definition not needed, remove and does not need to be replaced. Viewed as include in prohibited ground of "sex"	<ul style="list-style-type: none"> - Current definition seen as not including minors and therefore viewed and inconsistent with current law. - Supported by a number of submissions

No.	Theme	Considerations	Discussion
11.	Definition: Replace Mental and Physical Disability Definitions: New definition of "Disability"	Definitions in the Act need to be changed, but need further discussion, especially around whether to include specific illnesses, vs. defining disability as participatory and activity limitations. More current language needed.	<ul style="list-style-type: none"> - Supported by a number of submissions - Submission does not support using definitions to expand scope of protections.
12.	Change term in Definition of Disability	Change term to "guide dog" from "Seeing eye dog"	<ul style="list-style-type: none"> - Modernization of language
13.	Section 8: Change Language to "Duty to Accommodate" and add new language to expand thinking on duty to accommodate	Expand current language in Act; 8(1) Every person has a duty to accommodate the needs of people protected under section 7 and 9 of the Act by taking reasonable measures to the point of undue hardship to eliminate discrimination against them. (2) For the purposes of section 8(1), discrimination means unfavourable treatment resulting from a rule, standard, policy, decision, practice, law or physical barrier that has or may have an adverse impact on those protected under the Act in section 7 and 9. (3) For the purposes of section 8(1) "undue hardship" shall be determined by considering the accommodation needs and options for meeting them, based on factors such as but not limited to health, safety and cost.	<ul style="list-style-type: none"> - Expansion not supported by all - A submission did not support expanded language – though was not opposed to new terminology; - Concern in another submission that this could create issues in interpretation; - Language associated with Duty to Accommodate is consistent with current Human Rights Law and other jurisdictions; - Some comments that accommodation needs to appreciate scale of businesses – undue hardship.
14.	Delete section 8 (3) – Access to public builds exemption	Proposal to eliminate exemption for older buildings provision;	<ul style="list-style-type: none"> - Supported by a number of submissions - Some submissions did not support this provision;

No.	Theme	Considerations	Discussion
15.	Section 9: add Protection for Volunteers;	Proposal to add language to protect volunteers in section 9(b);	<ul style="list-style-type: none"> - Supported by a number of submissions - PEI and NS include this protection;
16.	Section 10 – Reasonable Cause – Public Safety	<ul style="list-style-type: none"> - Community comment that need for clarification that when programs are designed to protect the public that they should not be viewed as discriminatory; 	<ul style="list-style-type: none"> - Issue was with respect to sale of alcohol to pregnant women; - May want to consider a proactive power that could declare that action as exempt rather than reactive to a complaint (See N.S.).
17.	Section 12: Systemic Discrimination	<p>Submission to replace language:</p> <p>"In this Act, discrimination as set out in sections 7, 8, 9 and 15 includes laws, policies, procedures, standards, practices, or patterns of behaviour that are part of a system that by design or impact has the effect of limiting a person or group's access to opportunities generally available to others or which creates or perpetuates disadvantage for people protected under the Act."</p>	<ul style="list-style-type: none"> - Supported by a number of submissions - Expansion not supported by all - Concern expressed that could create issues in interpretation;
18.	Section 13: Special Programs and Affirmative Action Programs	<p>Change Title and language in provision to :</p> <p>"Employment Equity and Equity-promoting Programs"</p> <p>"Employment equity and other equity-promoting programs are not discrimination if they are designed to prevent or reduce disadvantages resulting from discrimination experiences by people protected in Section 7 and 9."</p>	<ul style="list-style-type: none"> - Supported by a number of submissions - Attempt to modernize language;

No.	Theme	Considerations	Discussion
19.	Section 14: Harassment and add definition of "Harassment" and "sexual Harassment" in section 37.	<p>Change language in provision to reference sections 7. and 9 of the and insert the following new definition of Harassment & Sexual Harassment:</p> <p>"Harassment" is discrimination in the form of behaviour that hurts, humiliates, frightens or embarrasses a person or group protected in sections 7 and 9. It includes bullying, unwanted actions, comments, displays or publications that the harasser knows or reasonably should know are unwelcome and offensive. Retaliating or threatening to retaliate against a person who objects to harassment is also a form of harassment. Harassment usually involves several incidents over a period of time but a single incident may be harassment if it is very serious.</p> <p>"Sexual harassment" is a particular form of harassment that includes a wide range of comments and conduct such as verbal abuse and threats, unwelcome sexually-oriented jokes or remarks, taunting, insults, name-calling or unwanted comments about weight, body shape or size, and displays of pornographic material. Sexual harassment also includes unwelcome sexual advances, unwanted requests or invitations to engage in sexual relations, unnecessary and unwanted physical contact such as patting, pinching, stroking or suggestively brushing up against someone else's body as well as sexual assault.</p>	<p>- See Report on Human Rights and Women and Girls April 2008</p>

No.	Theme	Considerations	Discussion
20.	Section 15: Pay Equity	Expand provision to apply to private sector and proposes expanded language: "the same work, or substantially the same work", as well as "work of equal value".	<ul style="list-style-type: none"> - See Report on Human Rights and Women and Girls; - A submission that did not support it noted it would affect collective bargaining relationships.
	Process Issues:		
21.	Section 16: Role of Commission & direct access needs to be clear	<p>Need distinction for role of Commission in process;</p> <p>Recommendation that the Commission not undertake role as quasi-judicial decision maker in process and advocate in process during hearings.</p> <p>Commission should not be party to hearing;</p>	<ul style="list-style-type: none"> - Recommendation for a direct access model; - Some submissions do not think that there is balance in the process, and think that there is greater support for the complainant (vs. the respondent) within the Commission's process
22.	Section 16: Role of Commission - Public Education and Policy Development	<p>16(1)(f) to examine and review any statute or regulation, and any program or policy made by or under a statute, and make recommendations to the appropriate person or body on any provision, program or policy that in the Commission's opinion is inconsistent with the intent of the Act.</p> <p>16(1) (g) to advise the Legislative Assembly on matters related to the Act.</p>	<ul style="list-style-type: none"> - Supported by a number of submissions
23.	Section 16: Accountability	Establish greater accountability and oversight for Commission	<ul style="list-style-type: none"> - A number of submissions requested greater oversight of Commission (i.e. Ombudsman; Auditor General)

No.	Theme	Considerations	Discussion
24.	Section 16: Role of Commission - Adjudication Process	Need greater guidance on role of Commission in Adjudication process	<ul style="list-style-type: none"> - Some submissions indicate there is a need to address the issue of balance in process and the purpose of Commission in process.
25.	Section 16: Role of Commission – Funding	<p>16(3). The Commission shall submit annually to the Members' Services Board in respect of each financial year, an estimate of the sum that will be required to be provided by the Legislative Assembly to defray the expenses of the Commission in that financial year.</p> <p>(4) The Members' Services Board shall review the estimate submitted pursuant to subsection (1) and, on completion of the review, the Speaker shall transmit the estimate to the Minister of Finance for recommendation to the Legislative Assembly.</p>	<ul style="list-style-type: none"> - Submission recommends clarification of the funding of the Commission. - Currently within the Department of Justice; - Connection to the Department of Justice viewed as too close;
26.	Section 20: Dismissal of Complaints that are abandon	-expand powers of Executive Director to dismiss complaints that have been abandoned by complainant.	<ul style="list-style-type: none"> - Supported by a number of submissions
27.	Section 20, 21, 34: Clarify Investigation process	<p>Act should set parameters on the scope of the investigation and firm timelines for completion;</p> <p>Suggestion language to be added to s. 34</p>	<ul style="list-style-type: none"> - Supported by a number of submissions

No.	Theme	Considerations	Discussion
28.	Section 20: increase threshold for file complaint	<p>“Having reasonable grounds to believe” – submission;</p> <p>“Dismiss complaints which are not meritorious under this Act”</p> <p>Another submission -- further considerations for assessing Complaint intake:</p> <ul style="list-style-type: none"> - There is not reasonable basis that the complaint will succeed; - Proceeding with a complaint would neither benefit the complainant or his/her protected group nor further the purpose of the Act; - The complaint does not warrant expenditures in the public interest; - maintaining part of a complaint may prejudice or delay the fair hearing of the rest of the complaint; - the complainant requests that the complaint not be pursued or demonstrates no interest in continuing to pursue the complaint; - the complainant fails to accept a reasonable settlement offer - it is otherwise an abuse of the process of the Commission or Board of Adjudication. 	<ul style="list-style-type: none"> – Supported by a number of submissions

No.	Theme	Considerations	Discussion
29.	Section 20: Commission- initiated complaint	Submission -- 20(5) The Commission may initiate a complaint in circumstances where no person or group complains of a contravention and where public interest requires that the Commission investigate whether or not there has been a contravention of the Act.	<ul style="list-style-type: none"> - Similar to other jurisdictions; - Allow Commission to bring forward complaints in public interest;
30.	Section 16: Role of Commission	Submission - An avenue for a review of the screening or dismissal decision, short of judicial review, should be made available	<ul style="list-style-type: none"> - May need to clarify review process for reviewing complaints.
31.	Section 20: Limitation Period	<p>Bill #102</p> <p>Submission – Limitation Period should not be changed or extended. The Limitation period should be enforces;</p> <p>Submission-- supports the extension of the Time limitation to 2 years, and other provisions of Bill #102</p>	<ul style="list-style-type: none"> - Community visits expressed broad range of views – support for 2 year, 1 year and remaining the same – some thought that the extension provisions would help address need for extension;

No.	Theme	Considerations	Discussion
32.	Section 20: "Continuing Contravention"	<p>Bill #102</p> <p>Would expand a contravention to include more the one similar action;</p> <p>Submission: "A continuing contravention" is a contravention consisting of a series of discriminatory acts"</p>	<ul style="list-style-type: none"> - Supported by a number of submissions - Submission raised concern that in some situations complaints have expanded once they have commenced. Effectively they are of the opinion that the complaint has been expanded to include aspects of incidences that may have occurred outside the current limitation period. (no examples and no appeals) - Submission -- Should specify criteria for or define on-going or continuing contraventions and whether and in what circumstances prior incidents can be included in a complaint of this of this nature. Incidents to be considered continuing contraventions must be of the same character as the prior incident.

No.	Theme	Considerations	Discussion
33.	Section 20: Extension of limitation is in good faith and does not negatively impact other party to a complaint	<p data-bbox="706 233 813 260">Bill #102</p> <p data-bbox="706 275 1062 457">Submission "discretion could be provided to the Commission to relieve against the time limit for filing complaints in certain limited circumstances:</p> <ul data-bbox="755 472 1062 1318" style="list-style-type: none"> <li data-bbox="755 472 1062 989">• the exercise of this discretion should be time-limited – for example, where the Commission determines that circumstances beyond the control of the complainant delayed the filing of the complaint, it could exercise discretion for no longer than a two year period prior to the filing of the complaint. <li data-bbox="755 1010 1062 1318">• the exercise of this discretion should also be limited to circumstances demonstrably beyond the control of the complainant and in which there would be no prejudice to the respondent. 	<ul data-bbox="1128 233 1398 961" style="list-style-type: none"> <li data-bbox="1128 233 1398 317">- Supported by a number of submission; <li data-bbox="1128 338 1398 583">- A submission recommends placing a cap on the length of time that the commission could go back to a maximum 2 years <li data-bbox="1128 604 1398 961">- A submission recommends that the process of extension provide opportunity to ensure that the respondent has opportunity to be considered (this is an issue that may be reflected in the regulations)

No.	Theme	Considerations	Discussion
34.	Section 20: Dismissal Powers	<p>Submission recommends the addition of the follow language;</p> <p>(e) the complaint has either been abandoned by the complainant or the complainant fails to cooperate with the investigation; or</p> <p>(f) the complainant has declined what the Director considers a fair and reasonable settlement offer; or</p> <p>(g) the substance of the complaint has been or could be dealt with in another proceeding or review procedure or under another Act;</p>	<ul style="list-style-type: none"> - Submission recommends that this will improve the efficiency and effectiveness of the Commission in dealing with complaints promptly and fairly;
35.	Section 21: Disposition of Complaints	<p>Submission recommends addition of language in existing provision:</p> <p>"in whole or in part"</p>	<ul style="list-style-type: none"> - Submission suggests that this would allow the Commission to screen and limit referral to the Board of Adjudication of matters for which there is not a reasonable basis in the evidence to proceed. - Other jurisdictions (Northwest Territories) have this power.
36.	Section 21: Review of Commission Decision	<p>Submission: Any party to a complaint may take a final decision of the commission on review to Supreme Court of Yukon by filing a petition with the court within 30 days after the decision of the commission is made.</p>	<ul style="list-style-type: none"> - Though power to review decisions and process of commission currently is available, may need to consider clarifying process in Act

No.	Theme	Considerations	Discussion
37.	Section 25: Dealing with substance of Complaint in other venues	<p>Submission recommends: the substance of the complaint has been or could be dealt with in another proceeding or review procedure or under another Act;</p> <p>Another submission recommends that complaints be screened out or dismissed if the complaint in on that could be dealt with more appropriately or has been dealt with, according to a procedure provided for under another Act;</p>	

No.	Theme	Considerations	Discussion
38.	Section 24: Remedies	<p>Submission recommends – Replace section 24(e) and add new 24(g) as underlined:</p> <p>(e) pay exemplary damages if the contravention was done maliciously or pursuant to (new) section 9(2) [*9(2) is the proposed improved retaliation provision</p> <p>(g) pay interest on any amount awarded pursuant to subsections (c), (d) and (e).</p> <p>Add the following to section 24:</p> <p>(3) If the board makes an order for damages for injury to dignity, feelings, or self-respect under subsection (1)</p> <p>(d) the Board shall award damages not less than \$5,000.</p> <p>(4) If the board makes an order under subsection (1) (a) or (1) (b) or both the Board shall monitor the implementation of the order(s).</p>	<ul style="list-style-type: none"> - The first proposed amendment to Section 24 is necessary because of the proposed change of a new section 9(2) to make retaliation discrimination under the Act. (See the "retaliation issue" section later in this document.) - The second proposed amendment to section 24 is in line with similar provisions in the Acts of other jurisdictions. - The third proposed amendment to section 24 is to bring remedies the board may order in line with awards in other jurisdictions and also to ensure there is strong deterrence for those who discriminate. - Setting minimum damages not supported by some submissions.
39.	Section 22: Adjudication	<p>Submission suggests changing name of Board of Adjudication to be more descriptive (for example: the "Yukon Human Rights Tribunal")</p> <p>Another submission recommended clarifying the names of the bodies Panel of Adjudication vs. Board of Adjudication.</p>	<ul style="list-style-type: none"> - There was confusion on the name of the board/panel. - Board of Adjudication suggests that it would be consistent with other jurisdictions. - Clarify numbers on the Panel

No.	Theme	Considerations	Discussion
40.	Section 22: Board Appointments	<p>Submission: establish merit-based appointments for Adjudicators;</p> <p>Membership appointments should not be limited to Yukon Residents</p>	<ul style="list-style-type: none"> - Submission suggests legal training, training and experience in the field of Human Rights, litigation ---- and administrative law; - Discussion of need for lay people to be involved; "jury of your peers" - A submission suggests lawyers would provide legal background; knowledge of human rights and administrative law. - A number of community meetings expressed an interest in broad representation from Yukon.
41.	Section 22: Size of Panel/board	Submission -- if Adjudicators were of a specific qualification could have individual hear a complaint;	<ul style="list-style-type: none"> - Similar to BC model;
42.	Section 22: Workplace complaints	Submission - Hearings relating to workplace discrimination should include Panel member with employment law specific knowledge;	<ul style="list-style-type: none"> - There is no reference to other areas of expertise specific knowledge; (ie. disabilities) - Interest in information on number of Employment related complaints;

No.	Theme	Considerations	Discussion
43.	Section 23: Alternative Dispute Resolution	Submission – should establish rules for mediation; Submission Board of Adjudication be provided the authority to develop rules for Alternative Dispute Resolution;	<ul style="list-style-type: none"> - Rules may be best set out in the regulations; but would have to grant authority in the legislation and identify at what stage this would occur and by whom. Should also set out timelines for completing mediation;
44.	Section 23: Rules of procedure	Submission – Rules of Procedure for Board of Adjudication	<ul style="list-style-type: none"> - No reference to rule for Commission; - Submission that current that procedures are unclear; - This may be a role for Regulations
45.	Section 26: Costs	Submission -- Should be able to award costs against Claimant if defendant successfully defends claim;	<ul style="list-style-type: none"> - Supported by a number of submissions; - Section 26 currently allows for the payment of costs if complaint was based on false information and the respondents reputation is damaged;
46.	Section 28: Appeals	Submission – eliminate the references to the Court of Appeal procedures; Submission – clarify role of Commission in appeals; Submission – limit ability to appeal decisions of the Board;	<ul style="list-style-type: none"> - Appeals are to the Supreme Court but reference the Court of Appeal rules. - Seek input on effectiveness of rules.

No.	Theme	Considerations	Discussion
47.	Direct Access Model	Submission – establish a direct access model that would allow for direct access to the Adjudication process;	<ul style="list-style-type: none"> - Submission has concerns with the resources and time dealing with complaints; - Submission - could provide the ability to clarify complaints that may appear to be frivolous or are without merit.
48.	Jurisdiction of Self Governing First Nations	Seek clarity to issue of how Human Rights law affects self-governing Yukon first nations	
49.	Plain language drafting	<p>Language in the Act needs to be written in a way that lay people have a better understanding of the Act;</p> <p>Act structure should consider interpretive sections within Act for greater guidance in understanding it.</p>	
50.	Regulations	Review regulations	<ul style="list-style-type: none"> - A number of recommendations dealt with processes that are more specifically set out in the Regulations;

Appendix 2: Written Submissions

The Committee received 24 written submissions by the October 17, 2008 submission deadline. In all cases, submissions referencing Yukon's *Human Rights Act* **supported** amending the Act.

The written submissions were received from:

1. Association of Yukon Communities
2. Braun, Pamela
3. Bringing Youth Towards Equality (BYTE)
4. Carty, Rod
5. Ewert, Dr. Gerry
6. Fitzgerald, Sean
7. Fitzgibbon, Gillian
8. Jewell, Jesse
9. MacFeeters, Laura
10. Maisonneuve, Gisele
11. Nacho Nyak Dun First Nation
12. Pereira, John
13. Public Service Alliance of Canada Yukon Equity Seeking Committees
14. Public Service Commission
15. Whitehorse Chamber of Commerce
16. Whitehorse Fire Fighters' Association
17. Yukon Anti-Poverty Coalition
18. Yukon Association for Community Living
19. Yukon Council on DisABILITY
20. Yukon Hospital Corporation
21. Yukon Human Rights Board of Adjudication

- 22. Yukon Human Rights Commission
- 23. Yukon Status of Women Council
- 24. Yukon Volunteer Bureau

(A further written submission, expressing support for some of the recommendations of the Yukon Human Rights Commission, was delivered electronically after the deadline.)

Appendix 3:

Note: Bill #102 is a Private Member's Bill that was introduced in the Yukon Legislative Assembly by Donald Inverarity on April 23, 2007. The Bill received some Second Reading debate on May 23, 2007, and the debate was adjourned. The motion appointing the Select Committee on Human Rights (Motion #374) referred Bill #102 to the Select Committee. The Select Committee sought opinions on the Bill.

BILL NO. 102 **An Act to Amend the Yukon Human Rights Act**

The Commissioner of Yukon, by and with the advice and consent of the Legislative Assembly,

enacts as follows

1 This Act amends the Human Rights Act

2 Paragraph 20 (2) of the act is repealed and the following paragraph is substituted for it.

20 (2) A complaint must be made within two years of the alleged contravention.

3 Paragraph 20 of the Act is amended by adding the following subsections

“(3) If a continuing contravention is alleged in a complaint, the complaint must be filed within two years of the last alleged instance of the contravention.

(4) The Commission may accept a complaint filed after the expiration of the time limit referred to in subsection (2) or (3) if the Commission determines that

(a) the delay in filing the notification was incurred in good faith; and

(b) no substantial prejudice will result to any person because of the delay.”

Coming into Force

4 This Act comes into force on a day to be fixed by the Commissioner in Executive Council.