

October 9, 2008

Submission to the Select Committee on Human Rights

I am herein endorsing the 6 following recommendations made in the Yukon Human Rights Commission Working Document dated October 1st, 2008 entitled: "Improving the Yukon Human Rights Act" and quoted below:

1. Issue – Homelessness, Right to Housing, and Social Condition

"Current Section of the Act – None.

However, section 6 provides: "Every individual has the right to the peaceful enjoyment and free disposition of their property, except to the extent provided by law, and no-one shall be deprived of that right except with just compensation."

Recommended Change - Add the underlined words as Part 1, section 7 and renumber following sections.

7. Everyone is entitled to adequate and affordable housing and to protection from eviction without cause, particularly in cases where it will result in homelessness.

Why?

Two important international human rights instruments which Canada has signed provide for a right to adequate housing as a basic human right. First, Article 25 (1) of the *Universal Declaration of Human Rights* says: "Everyone has the right to a standard of living adequate for the health and well-being of himself and his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or lack of livelihood in circumstances beyond his control." This year is the 60th anniversary of the Declaration and it is time to take responsibility for the rights and commitments it contains.

The other international treaty is the *International Covenant on Economic, Social, and Cultural Rights*, which Canada signed in 1976 as a State Party. This *Covenant* says in part in Article 11(1): "The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living including adequate housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right."

The Preamble to the current *Human Rights Act* says that "The Yukon Government has a responsibility to encourage a recognition of human rights that is consistent with Canada's international undertakings." The Preamble also specifically recognizes that "Canada is a party to the United Nations' *Universal Declaration of Human Rights* and other international undertakings." The change the Commission recommends will help to deliver on promises made under both the *Declaration* and the *Covenant* and will ensure that it is not just property owners but also tenants and those threatened with or experiencing homelessness that have their rights covered in the *Act's* Bill of Rights section as well as in section 7.

There is a shortage of low-income and affordable housing in the Yukon and there is also homelessness, as documented in *A Little Kindness Would Go a Long Way: A Study of Women's Homelessness in the Yukon* (Yukon Status of Women Council, March 2007). During the Commission's research on the human rights of women and girls, women said that they want the right to adequate housing. Women reported landlords sexually harassing them, refusing to rent to single mothers with children or to women with a criminal record. They also reported that some landlords take advantage of people on social assistance and that women fear retaliation if they complain about rental housing in need of repair or about discriminatory treatment by landlords. One woman said that a tenant making a complaint about discrimination against a landlord should be allowed to stay in her house until the complaint is investigated.

Housing is also a crucial issue for people with foetal alcohol spectrum disorder and other disabilities.

Recommended Change: add the underlined words to section 7(l) and provide a definition in section 37.

Section 7(l): "It is discrimination to treat any individual or group unfavourably on any of the following grounds . . . (l) source of income or social condition.

Section 37: "social condition" refers to disadvantage arising from low social and economic standing in life and from inter-generational trauma arising from the Indian residential school system and includes people who are poor, homeless, or unemployed and people who have difficulty with reading and writing or are subject to stereotypes based on intersecting or interrelated prohibited grounds such as race, sex, age and disability.

Why?

The only amendment ever made to the *Act* in December 1998 added unfavourable treatment based on someone's "source of income" as a form of discrimination. This was an important step forward in recognizing poverty as a source of inequality and discrimination.

The Commission recommends that this protection be strengthened by adding the broader term "social condition", using the definition above. This protection is already found in Quebec, New Brunswick and the Northwest Territories human rights laws. Adding this form of protection against discrimination will also protect vulnerable and disadvantaged people with no source of income and people who are homeless, which the term "source of income" does not adequately cover. This definition also recognizes the historic and ongoing disadvantage arising from the effects of the Indian residential school system on Yukon's First Nation citizens as a human rights issue."

2. Issue – Protection from Hatred

"Current Section of the *Act* - None

Recommended Change - Add to section 7 the following underlined words:

- (2) It is discrimination to publish, issue or display or cause to be published, issued or displayed, any statement, publication, notice, sign, symbol, emblem or other representation that:
- (a) exposes an individual or group to hatred or contempt, or
 - (b) disadvantages an individual or group by degrading, demeaning, dehumanizing, excluding or by unfavourably stereotyping or stigmatizing the individual or group in a way that is likely to harm the social image or reputation or the dignity or self-respect of the individual or group
 - (c) indicates discrimination or an intention to discriminate against an individual or group
- because of a prohibited ground of discrimination in subsection 7(1) of the Act.
- (3) Subsection (2) does not apply to a private communication or to a communication intended to be private.

Why?

Freedom of expression in Canada is an important constitutional and human right, but it is not absolute and can be limited if it meets the test in the *Canadian Charter of Rights and Freedoms* for limiting a right or freedom.

The proposed amendment uses the terms "hate" and "contempt" in subsection 7(2)(a) which have both been defined by the Supreme Court of Canada in the *John Ross Taylor*¹ case where the Court found that the hate protection provisions of the *Canadian Human Rights Act* were constitutional. The wording of the proposed 7(2)(a) is also based on the current B.C. legislation (which was also held to be constitutional by the B.C. Tribunal in the *Collins*² case) but incorporates an even higher standard for proving this form of discrimination.

The test for "hatred" in human rights case law is a high one and has required extreme expression of ill will which allows for "no redeeming qualities" in the person at whom it is directed. Similarly "contempt" has been defined by the Supreme Court of Canada as "unusually strong and deep-felt emotions of detestation, calumny and vilification." It is the Commission's view that many harmful and objectively and subjectively racist, sexist and homophobic public expression, for instance, would not be found to be discriminatory under s.7(2)(a).

Therefore, s.7(2)(b) incorporates the elements of "harm" and disadvantage, based, in part, on language in the Supreme Court of Canada's decision in *Butler*³ upholding the obscenity provisions of the *Criminal Code* as justified in a free and democratic society even though these parts of the *Criminal Code* breach the *Charter's* guarantee of freedom of expression in section 2(b). In *Butler*, the Court recognized the harm to women from violent or degrading and dehumanizing explicit sex materials which undermines the principle of equality and dignity of all human beings. The Court recognized the harm to society and in particular to women because of the negative impact exposure to such material has on perceptions and attitudes toward women. It is harm to society that is aimed at, not poor taste or vulgar material. Also, what is done privately cannot be the subject of a complaint."

3. Issue – Add Protection for People Who Are Victims of Violence

“Current Section of the *Act* - None

Recommended Change - Add “being a victim of violence on any of the other prohibited grounds” to Part 2, section 7’s list of prohibited grounds.

Why?

Male violence against women has been recognized as one of the most pervasive and persistent human rights abuses in the world. According to Statistics Canada, Canadian rates of spousal violence are higher in the territories than in the provinces and are even greater for aboriginal women in terms of the severity and impact of the violence.

As part of the Commission’s research into the human rights of Yukon women and girls, the lack of protection for women experiencing violence came up frequently in both the focus groups and surveys. Women experiencing violence told us that they are forced to leave their homes and communities for their safety. A senior woman reported experiencing violence in a senior’s residence but the manager would not do anything about it. Another woman reported she was evicted from her new apartment because of damage done by her ex-partner which she believed he did because she had left him. One woman spoke about her worries about being hurt at work by her abusive partner (where he would know to find her) and also about not being allowed by her boss to take enough time off work to heal from injuries due to the violence she experienced.

Currently human rights laws in Canada do not expressly include sex or gender-based violence as a form of sex discrimination that would then come within the framework of “duty to accommodate” provisions. Amending the *Act* in this way would provide a strong message to members of the community of zero tolerance for violence against women and others who are protected under section 7 of the *Act*. It would also provide legal support to women who are victims of violence by providing a remedy for discrimination against these victims. This change to the law would require a landlord or employer to take reasonable steps to accommodate the woman’s needs unless it was undue hardship for the landlord or employer to do so.

This protection also extends to others who experience violence because of other characteristics protected in our human rights law. For instance, Yukon people have reported to the Commission that they have experienced violence because of their sexual orientation.”

4. Issue – Harassment

“Current Section of the *Act* - Section 14 says “ (1) No person shall (a) harass any individual or group by reference to a prohibited ground of discrimination; (b) retaliate or threaten to retaliate against an individual who objects to the harassment. (2) In subsection (1), “harass” means to engage in a course of vexatious conduct or to make a demand or a sexual solicitation or advance that one knows or ought reasonably to know is unwelcome.”

Recommended Change – Substitute the following underlined words in section 14(1)(a) and (b) and delete section 14(2) and provide a better definition of harassment and sexual harassment in section 37 of the *Act*:

14. No person shall (a) harass any individual or group protected by section 7 and 9 of the *Act*.

In section 37, provide the following definition: “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.

“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.

Why?

During the Commission’s research into the human rights of Yukon women and girls, women said they wanted a better and broader definition of harassment which makes clear what behaviour is against the law. The recommended change also makes it clear that harassment is a form of discrimination and provides a much more detailed definition and description of harassment. The recommendation also clarifies that harassment refers to certain types of conduct occurring in areas set out in section 9, such as employment, services to the public, etc.”

5. Issue – Pay Equity

“Current Section of the Act – Section 15(1) says: “This section applies only to the Government of Yukon and municipalities and their corporations, boards, and commissions.” Section 15(2) says: “It is discrimination for an employer to establish or maintain a difference in wages between employees who are performing work of equal value”.

Recommended change – Delete section 15(1) so that “equal pay for work of equal value” covers all employers, not just public sector ones. Change section 15(2) so that it covers differences in pay for “the same work, or substantially the same work”, as well as “work of equal value”.

Why?

During the Commission’s research into the human rights of Yukon women and girls, women said that pay equity is still an issue for them, particularly in the private sector, as did some of the youth that responded to the Commission’s youth survey. Both women and youth reported being paid less money than men or older workers for the same or substantially the same work. The Commission has dealt with complaints on this basis in the past, as part of the general provisions making it illegal to discriminate on the basis of age or sex.”

6. Issue – Time Limit

“Current Section of the Act - Section 20(2)

Recommended Change - Repeal section 20(2) and substitute it with:

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

Add the following subsections as underlined:

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

(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 complaint was incurred in good faith; and

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

Why?

The Commission previously proposed a two year limitation period, based on its research into the human rights of Yukon women and girls, who told us that the 6 month time limit is too short. For instance, some women said that they experienced clinical depression as a result of severe sexual harassment that prevented them from being able to make a complaint within 6 months. This amendment will bring our limitation provision in line with similar provisions in the two other northern jurisdictions (Nunavut and NWT) which both have a two year time limit.

Add the following definition of “Continuing Contravention” to section 37

“A continuing contravention” is a contravention consisting of a series of discriminatory acts.

Why?

This provision will clarify the ability to investigate matters prior to the last incident alleged if there is an ongoing series of discriminatory acts.”

I feel the above issues are of outmost importance in our society and to vulnerable groups. I strongly support the recommendations above and seriously hope that the suggested changes and additions make their way into the new *Yukon Human Rights Act*, one that is progressive, innovative and that provides full protection against discrimination to all.

Sincerely,

Gisele Maisonneuve
Whitehorse, YT