

**Submission to Select Committee on Human Rights
Legislative Assembly of Yukon Territory
Whitehorse, Yukon**

from

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► *Employment Equity in Context of Yukon Human Rights Legislation* ◀

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It was a pleasure to attend the public hearing on legislative options for amending the *Yukon Human Rights Act* (YHRA), October 8, 2008, at Whitehorse, Yukon.

To give you some background, I have lived in the Yukon since 1973, with exception of a 10-year sojourn in Ottawa during 1996-2006. Following a managerial career with federal and territorial governments from 1969 to 1991, I set up practice as an independent management consultant in Yukon/Ontario, specializing in strategic management and planning, human resource management, organizational design and development, management/staff training and development, alternative service delivery transitions, and public consultation processes. Much of my work experience with federal, provincial and territorial governments, non-profit NGOs and First Nations includes direct or peripheral involvement in policy development, administration, implementation and training related to human rights, workplace diversity and employment equity. Human rights, diversity and equity are a pervasive personal commitment and integral part of the work I do.

As a follow-up to the October 8th hearing, this submission is provided for your consideration. It relates to employment equity [currently loosely and outdatedly covered in section 13 of the current YHRA, Special programs and affirmative action], and the related proposals made in the Yukon Human Rights Commission working document, *Improving the Yukon Human Rights Act*, dated October 3, 2008.

- Changing and updating section 13 of the YHRA to encompass the principles of employment equity (EE) is a great idea. It is definitely timely. However, what is meant by ‘employment equity’ and the designated or target groups to whom it applies need definitive clarification.

- There are currently substantive gaps in Yukon legislation that address the importance, clarity and application of principles surrounding EE.
- The fabric and diversity of the Yukon population are fast changing. In part, this is new over the past decade or so due to changes in the composition and demographics of Yukon society. We are increasingly experiencing unprecedented immigration from around the world – people seeking a new life, and employers seeking and acquiring needed human resources based on evolving labour market demands. One object must be to ensure that every foundational aspect of our valued human rights in Canada and the Yukon is demonstrated, clearly articulated and validated as an integral part of our society through our respect, legislation, regulations and processes related to human rights, and that these rights are extended to all who reside or seek to reside here.
- There is an obvious serious gap about what employment equity (EE) is and to whom it applies, in both the current YHRA and in the YHRC working document. The YHRA has fallen way behind other Canadian jurisdictions in this regard. Background includes:
 - o Clear historic and current evidence indicate that members of visible minorities have been and continue to be discriminated against in many hiring and promotional opportunities, as well as in other aspects of human resource management. There are no valid and articulated best practice principles, expectations and standards in the workplace reflected in the currently proposed changes to the YHRA (or prospective regulations) with respect to recruitment, hire, orientation, accommodation, performance and retention of members of visible minorities.
 - o The Yukon Government itself is not generally acting, nor recognized, as a leader or model employer when it comes to employment equity, particularly with respect to members of visible minorities. Although some specially targeted EE initiatives exist, particularly for aboriginal peoples and in response to aboriginal land claims and self-government agreements, there is no modern recognition of broad-based employment equity in legislation or policy. Specifically for example, the Yukon Government EE policy [policy #3.55, General Administration Manual, Volume 3 – Human Resource Policies] identifies women, aboriginal people, and people with disabilities as the target groups. It is generally grossly outdated as a policy for what should be a model employer and, further, sorely lacking in inclusion of members of visible minorities. As is, of course, the YHRA.
 - o Many leading private sector employers (e.g., NorthwesTel) have already better addressed employment equity and make it clear in their policy and processes that EE applies to women, aboriginal peoples, persons with disabilities, *and* visible minorities.

- o One option to address this issue is to institute an “Employment Equity Act” similar to what exists federally and elsewhere in other Canadian jurisdictions. However, I am not a proponent of more laws, and think that a more viable and acceptable solution in the Yukon context may be to institute the foundational principles, with definitions as necessary, for EE in the YHRA.
- o In this context, the title for section 13 of the YHRA should be changed from “Special programs and affirmative action” to simply “Employment equity”.
- o The designated/target groups to whom employment equity applies should be made patently clear in the YHRA – i.e., the prevailing Canadian standards are that such legislation applies to women, aboriginal peoples, persons with disabilities, *and* members of visible minorities. Definitions are likely needed in the YHRA, and examples of simple straightforward definitions (which have generally withstood the scrutiny of complaints, appeals and court challenges) of employment equity, aboriginal peoples, persons with disabilities, visible minorities, and so on, are readily available from legislation and regulations in federal and provincial jurisdictions.
- o Further discussion, decision and clarity are also needed with respect to employers to whom any EE provisions in a new YHRA may or may not apply – e.g., minimally to the Yukon Government and its crown corporations/agencies/boards/commissions, etc.; and/or to broader private sector employers; and/or to in-Yukon and outside Yukon businesses (usually with a minimum specified number of employees for the policy to apply) to be eligible to bid on Yukon Government contracts; and/or to ...?
- In the interim, and in your roles as both MLAs and members of the Select Committee on Human Rights, I hope that you will proactively demand and support action on the part of the Yukon Government to forthwith update their (1994) employment equity policy – and importantly as part of that, to recognize that attention to inclusion of visible minorities is now a priority.
- The role and mandate of the current Women’s Directorate within the Yukon Government, most of which has been accomplished, could or should be changed to something along the lines of a more meaningful, active and proactive, relevant ‘equity directorate’ and should perhaps encompass the roles carried out by the Workplace Diversity Employment Office (currently part of the Yukon Government PSC).
- In short, section 13 of the YHRA cannot simply be changed to “Employment Equity” or similar designation without appropriately covering in the Act and pursuant regulations what EE is and to whom it applies (from the perspective of both designated/target groups and employers), or without including concomitant reporting and accountability requirements.

- In summary, legislative change in this area in appropriate form would bring the YHRA in line with what has been longer embraced, entrenched and implemented in other forward-looking Canadian jurisdictions. An updated employment equity framework must be developed and put in place in the legislative and regulatory context for the Yukon, and there is no exception to the fact that it must encompass recognition of women, aboriginal peoples, persons with disabilities, *and* members of visible minorities, with respect to access, success and retention in the workplace.

Thank you again for the opportunity to be heard. There were many other areas of interest raised on October 8th where I would like to comment or provide feedback, but will wait to see how the inputs to the Select Committee are first addressed in the results so far, then what next steps in the legislative reform process will be. The YHRA is such an important piece of legislation that a considered, staged approach is best – and will include, I hope, further public consultation and input. Looking forward to continued pursuit of the goals to improve and reform the Yukon human rights framework,

Respectfully submitted,
Gillian Fitzgibbon

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