

Submission to Select Committee on the Yukon Human Rights Act

In opening I am sorry to have to say I am disappointed in the select committee process. I would have expected a process designed to solicit the views of Yukoners about how our Human Rights Act might be changed to include substantive information and educational material about what our law says now, what issues those working with it have identified and how it compares with the protections elsewhere in Canada.

I am grateful that I was able to find some of this information, and I acknowledge that some of it was pointed out to me by your staff, but only after I sent a specific request. It is too bad you did not choose to make a more organized effort to promote informed discussion “regarding public opinion on legislative options for amending the *Human Rights Act*” as is your mandate.

I offer my thanks to the Yukon Human Rights Commission (YHRC) for producing a paper outlining their views on how the act should be amended. It provided an excellent framework for my consideration of how the act should be changed. I was also informed by the original Yukon community-based research reported in *Report on the Human Rights of Women and Girls in Yukon*, April 2008.

I agree with premises of the YHRC paper. We should look to amending and updating our act to enhance protections, prevent discrimination, promote responsibility and accountability, and improve efficiency and effectiveness.

I have reviewed the preamble and objects of the current legislation and the bill of rights. I believe they provide an important framework that is as valid today as when the act was originally passed and they should inform all of the following provisions of the act. I urge you to review and refer to them for guidance as you deliberate how to respond to the suggestions your committee receives.

I would like to frame my submission as response to the 28 issues the YHRC identifies as areas for changes in the act - for me they fall into three groupings:

1. Areas where I believe we should be making the amendment proposed.

This includes areas where we are behind most or all other Canadian jurisdictions, areas where we should reframe our language to be current and consistent with wording that has gone through the court and where case law on interpretation/application is established. Using language that has been adjudicated enables better, fair administration of the law for all concerned be they individuals, employers or service providers.

2. Areas where I feel what the YHRC is proposing makes some sense but where I would like to get a little more understanding of the implications. I would like there to be public discussion from a multitude of interests and the implications more fully explained. This includes some areas where what is proposed is different from what is in place in most provinces. While I certainly think Yukon is unique in many ways and that copying laws from provinces is often not right for us, I also think we need to have our eyes wide

open when we go “leading edge” and enact unique provisions in our legislation – either in terms of rights or processes.

3. Areas where I don’t really have an appreciation of the issue and defer to the views of others. This includes a number of the process issues.

The First Group – Issues where I endorse the proposal of the YHRC

Homelessness, Right to Housing and Social Condition

I support the three changes proposed to address these related issues. I support the rationale proposed by YHRC. I would mention that I am not sure I support the suggestion they mention of staying an otherwise lawful eviction when a complaint is under investigation as I would not like to create a loophole where a tenant being deservedly evicted could avoid the eviction by filing a frivolous human rights complaint against the landlord that could delay the justified and lawful eviction for months.

Protection from Hatred

Unfortunately hate crimes have increased in our society since the 1980s when the Human Rights Act was passed. In some cases the Criminal Code protections are apparently not enough. I support the YHRC’s recommendation that we address this issue in our Human Rights Act and that we use language that has been tested in Canadian courts.

Protection for Gender Identity

I support adding this as a prohibited ground. I think this change reflects simply catching up to social changes since our act was first passed. I cannot see why protections afforded to heterosexuals and homosexuals should not also be afforded to those who are transgendered, intersexed or crossdressers.

Protection for People who are Victims of Violence

Again I find the rationale provided by the YHRC persuasive.

Aboriginal Identity as a Prohibited Ground

While I defer to the opinion of First Nations people on this matter, I find the YHRC suggestion that in the Yukon making this explicit provision beyond the present reference to “ancestry, including colour and race” would ensure aboriginal people have their protection affirmed to be reasonable.

Definition of Sexual Orientation

I endorse the YHRC proposal that the act be amended to eliminate the implication that sexual orientation protection does not apply to youth. I believe this would put us in line with other jurisdictions and address a real gap in our present law.

Definition of Disability

I agree with the proposal to eliminate the outdated concept of “retardation” and I think it is appropriate in the Yukon to add explicit mention of FASD. I initially had some

question about the implications of effectively adding a prohibition against discrimination on the basis of alcohol and drugs as I can see employment situations where addictions would be very problematic (that's why we allow drug testing), however, I am persuaded there are processes to deal with this. If dependency on alcohol or drugs is a prohibited ground in every province in Canada I see no reason Yukon should be a Canadian anomaly in this regard.

Duty to Accommodate

I see this as a matter of updating the language of our legislation. It is helpful to use the same language as other jurisdictions so court direction is clear. This change would improve the effective administration of our act.

Protection for Volunteers

I understand this to mean that an organization could not discriminate in selecting or assigning work to volunteers any more than it can in selecting and assigning employees. I support this change.

Systemic Discrimination

Again I support keeping our provisions in line with wording that has meaning defined by the courts.

Protection for Employment Equity and Equity-promoting Programs

I support using modern Canadian terms and language.

Harassment

I believe the changes proposed by the YHRC update our provision to accept the unfortunate reality that harassment is often, but not always, sexual and occurs in public forums beyond the workplace.

Preventing Discrimination through Public Education and Policy Development

I support the proposed provision. I think it is appropriate to allow the YHRC to comment on any proposed statute, regulation, program or policy but I would not support making their review a pre-condition for proceeding. Where they can do a timely review and make comments when a proposal is in the development stage that is a good thing and should be encouraged but not allowed to delay important initiatives. I also support explicitly allowing the YHRC to advise the Legislative Assembly on matters related to the act.

Funding for the Commission

I support treating the YHRC like the Ombudsman.

Reasonable Belief Required to File a Complaint

I support changes that reduce trivial or frivolous complaints and allow the commission to focus on real work. It is important that we enable the staff administering our act to work efficiently and effectively, focusing on legitimate problems.

Retaliation

It seems only logical to extend the protections currently afforded to the act's administrators to other players in the process.

Group Two – Issues that I think are important and need informed discussion*Accessibility of Public Buildings and Facilities*

While I support the principle here, I think there needs to be a good analysis of what the real impact would be and a clear understanding of the “undue hardship” exemption.

Pay Equity

I support the broad application of pay equity protections. I understand that the reality of application with job descriptions and a classification system to compare classes of employees means it is very difficult to test an allegation of inequity in small workplaces but I believe equal pay for work of equal value should be the expectation nonetheless. This is an issue which I feel warrants analysis and discussion. I wonder if there is a minimum number of employees in a workplace for pay equity analysis to be applied (I believe Ontario uses 10 employees as their minimum).

Merit Based Appointment

While I appreciate the need for appointees to have a good understanding of administrative law, I do not feel appointments, should be restricted to lawyers. Having been a lay member of the Mental Health Review Board for a number of years, I appreciate the steep learning curve but I believe with support and some courses/workshops a sufficient understanding of administrative law can be acquired. It is important to have diversity of perspectives on these boards and I do not support an amendment which might restrict appointments to lawyers. I think there are a number of quasi-judicial boards in Yukon that work well. Appointment criteria such as that used for the Capacity and Consent Board might inform considering of any changes to the Human Rights Act.

Who May File a Complaint

In our small community I expect it is a reality that the victims of discrimination may feel too afraid/intimidated to be named a complainant and so it may be helpful for the YHRC to have the authority to investigate a situation without a specific complaint. I understand this provision is in place in some other jurisdictions but I would like to know more about how many jurisdictions and how the provisions are worded. I think it is important that investigation by the YHRC be complaint-driven in all but rare and exceptional circumstances.

And the remaining issues fall in to the category of those where I do not have strong opinion and I defer to the expertise of others. I urge you to seriously consider these and to have genuine dialogue with those who have informed opinions. This includes the issue of Time Limit which is what started your whole process with Bill 102.

In closing let me say that I hope from your hearings and the submissions you receive you will develop recommendations to **amend the Human Rights Act by amending Bill 102 currently before the Legislature to address the areas where there is a prudent case for change** and that you will also recommend a separate process to **undertake further public education and dialogue about the issues with complex implications that need consideration of Yukon-appropriate approaches**. Lack of response to your hearings certainly does not mean the issues are not important and improvements are not required. An act as key to social justice as the Human Rights Act must be reviewed every decade or two. We need to work to develop clear understanding of the issues and the implications of changes in the act. Simply ignoring the issues is not acceptable.

Thank you for your consideration.

Laura MacFeeters