

PSAC Submission on the Review of the Yukon Human Rights Act

Yukon Regional Access Committee (Disabilities), Yukon Regional Racially Visible Committee, Yukon Pride Committee, Yukon Regional Youth Committee, Yukon Aboriginal Peoples Committee, Dawson Regional Women's Committee and Whitehorse Regional Women's Committee – representing Equity seeking members of the Public Service Alliance of Canada in the Yukon are respectfully submitting the following for consideration in your review of the Yukon Human Rights Act.

While preparation on input has been rushed due to the review process being done in a short time frame and are limited to available resources and expertise, the following analysis and comments are provided to aid in the discussion. As with all human rights legislation across Canada, this Act prohibits discrimination on a certain number of grounds, and it provides for a process to file complaints in cases of discrimination. Yet, like all laws, it is necessary to periodically review and assess the adequacy of different aspects of the Yukon Human Rights Act.

Comments on current legislation and areas for improvement consideration:

Along with the legislation, we believe that education is necessary to bring awareness of human rights and responsibilities. Human Rights education must be available to the general public, employers as well as delivery in the school curriculum for children and youth. While we applaud current policies and initiatives, more work needs to be done to establish a consistent standard. We hear vast differences in priority and content of current programs.

Another area that requires further consideration is the lack of recognition of basic entitlement to adequate and affordable housing --including issue of eviction without just cause.

Concern has also been raised over access and rights for youth and their ability to file complaints and have their rights protected. We hear of many struggling with bullying and other forms of discrimination. This is especially true for youth under attack regarding their sexuality.

Preamble

We are pleased that Yukon's current legislation contains a "Bill of Rights" that protects basic human rights: freedom of religion and conscience, freedom of expression, freedom of assembly and association and the right to enjoyment and disposition of property.

Part 2 Section 7

Discriminatory practices

Prohibited grounds.

This list is quite comprehensive, including “linguistic background” and “political belief”. However, one important ground of discrimination that is lacking: **gender identity, or gender expression**. This ground includes discrimination that is experienced persons, who are often the brunt of prejudice and discrimination because they do not conform to the gender expectations of society. While it may be possible to be covered under the grounds of sex or disability, it is more appropriate to explicitly include the ground of gender identity, and/or gender expression as a prohibited ground of discrimination.

The Act also prohibits discrimination on “source of income”. Several other provincial human rights codes also refer to sources of income. However, it would be preferable to prohibit discrimination on the basis of “**social condition**”, an expression that covers a broader range of situations, such as a person’s occupation, income, education level or family background. Participants in the community focus groups that were organized by the Human Rights Commission also recommended that social condition be included in the prohibited grounds of discrimination.

We also support the Commission’s recommendation to add “**aboriginal identity**” as a separate protected ground in Part 2, Section 7. The Alliance (PSAC) has moved towards recognizing that the terms “colour” or “race” are not a good fit to cover the rights of First Nations, Inuit and Metis people.

Part 2, Section 8

Duty to accommodate

- Section 8(1) of the Act outline a “duty to provide for special needs”
 - this is outdated language: replace with “duty to accommodate” and build in *Meiorin* analysis.
 - do not limit to ‘physical’ - expand to include accommodation all protected grounds
- Section 8(2) –factors to consider for undue hardship
Recommend this be amended to follow the Canadian Human Rights Act which includes: “cost”, “health”, and “safety” – to limit the number of “excuses” that employers can use to not accommodate people.
- Section 8(3) – Recommend to delete this section. Current legislation excludes buildings that pre-exist. There should be an attempt to have these buildings become accessible rather than provide employers and service providers an excuse to deny accommodations for people with disabilities.
- Section 10 – Reasonable cause
 - Language should be updated to Bona Fide Occupational Requirement – The Meiorin case clearly sets out a three part test. Better language under section 15 1(a) and section 15 (2) of the Canadian Human Rights Act.

Section 12 provides that “Any conduct that results in discrimination is discrimination”. This comes under the heading of “systemic discrimination”.

- this definition is not comprehensive enough – better language as suggested by the YHRC ‘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.”

- HR Commission should be able to initiate on its own complaint for systemic discrimination.

-Section 13 ‘Special programs and affirmative Action –would be better titled “Employment Equity and Equality-promoting Programs”

- We support the language proposed by YHRC: “Employment equity and other equality-promoting programs are not discrimination if they are designed to prevent or reduce disadvantages resulting from discrimination experienced by people protected in section 7 and 9.”

-Section 14 – Harassment

-Delete Sub-Section 2 and expand to definition of harassment in section 37

-Section 15 – Pay Equity

-Section 15(1) – Delete this section so that this section applies to all employers- not just public sector ones.

Pay equity remains illusive for many women in the Yukon, as in the rest of Canada. In the surveys done by the Human Rights Commission, when women were asked whether they had problems getting equal pay for work of equal value, half of the participants answered that they had.

Section 15 of the Act is entitled “equal pay for work of equal value”, and it provides that “It is discrimination for an employer to establish or maintain a difference in wages between employees who are performing work of equal value, if the difference is based on any of the prohibited grounds of discrimination”. This is an important provision to retain, because it establishes that all disadvantaged groups have a right to pay equity.

In addition, the current pay equity mechanism is entirely complaints-based: this means that workers – or their unions- must file a complaint and prove the fact that there is pay inequity. This is a long, hard process, and employers are known for using delay tactics and legal procedures that transform the process in a lengthy and costly exercise.

It may be preferable to have a pro-active pay equity regime for the Yukon. This could either be a special chapter in the Yukon Human Rights Act, or preferably a stand alone legislation, a Yukon Pay Equity Act. This type of legislation exists in several provinces, the Ontario and Quebec laws being the most comprehensive. In 2004, the Pay Equity Task Force, in a report entitled *Pay Equity: a Fundamental Human Rights* concluded that a complaints-based system is simply incapable of bringing about pay equity. It recommended that the federal government adopt a stand alone pay equity law.

Proactive pay equity legislation shifts the burden from the workers to the employers, who are required to analyze their pay practices using non sexist methodologies, identify potential discriminatory practices, discuss with workers and unions a pay equity plan to redress this discrimination, and adopt concrete timelines for implementing pay equity. This type of legislation has been proven to be effective, and can bring about long term change in pay practices that will really benefit women and other disadvantaged workers.

- Ensuring equality in the workplace

The Report on the Human Rights of Women and Girls in the Yukon clearly indicates that it is in the workplace that women encounter the most discrimination, since 70% of the complaints that have been filed by women alleged discrimination in employment. Aboriginal and non-aboriginal women alike reported their work as the place where most discrimination occurs, historically and at present. Reported prohibited grounds for discrimination in the workplace include ancestry, sex, physical or mental disability, criminal record and family status”.

Women who were interviewed in the course of the research initiated by the Human Rights Commission reported that Employers seem to be unaware that workers have human rights. They also seem to ignore that they have a duty to accommodate for reasons of pregnancy, family obligations and disability. Another important problem that has been identified is that harassed workers live in great fear of retaliation, and that 52% of the complainants for sexual harassment quit their jobs before proceeding any further to deal with the harassment by filing a complaint. Clearly, the current provisions in the Yukon Human Rights Act have not discouraged workplace discrimination on the basis of sex and are not protecting workers adequately.

The Yukon Human Rights Act could be amended in such a way as to establish that the employer has a responsibility to ensure equality in the workplace. Not only must an employer “not discriminate”, but he or she should also take positive measures to promote equality in the workplace. Just as an employer must promote health and safety in the workplace, he or she should promote equality. Indeed, it is the employer who has control of the workplace, and the responsibility to promote equality should follow this control.

In 2000, the Canadian Human Rights Act Review Panel recommended that the Canadian Human Rights Act make employers and services providers responsible for the acts of their employees to the extent that employers control the workplace that they work in. In the ground breaking report entitled *Promoting Equality: a new Vision*, the Panel recommended that the Act require all employers with more than five employees to establish an internal responsibility system to deal with human rights matters within their control. This responsibility system would involve management-labour cooperation, policies and programs promoting equality development; training and mechanisms for the internal resolution of complaints of discrimination, including effective remedies for discrimination and the monitoring and documenting equality issues in the workplace. This is a path worth exploring for the Yukon.

Section 16 – Human Rights Commission

- Recommend adding 16(1)(f) (as per recommendation from YHRC submission)– to allow and ensure YHRC vet and make recommendation for change to policies, programs or legislation in the Yukon to ensure that they are consistent with the Act.
- Recommend adding 16(1)(g) (as per recommendation from YHRC submission) to provide provision to allow the Commission to bring to the Legislative Assembly's attention the need for updates or revisions to the Act or the Regulations in a timely manner – based on section 29(f) of the NWT Human Rights Act.
- Re funding – This is another area that needs further consideration – with provision similar to the Yukon Ombudsman Act along with adequate funding.
- Need to have and maintain an arm's length relationship with Government departments – should be directly reporting to Legislative Assembly.
- Recommend to remain as Commission (rather than Tribunal only) to ensure accessibility and education.
- Support YHRC's recommendation for name change of current Board of Adjudication to 'Yukon Human Rights Tribunal'

Section 20 – Complaints

- Section 20(2) – Amend to increase time limit to make complaint from 6 months to 2 years.
- Consideration be given to include provision for Commission to initiate complaints.

Section 24 (1)– If complaint established

- Delete section 24(f) – the risk of paying costs may actually have a chilling effect for complainants who will be hesitant to go ahead with complaints in fear of paying costs.
- Further consideration is required to update payment of damages

Section 30 -Consideration is required to prevent retaliation against person involved in filing complaints similar to the provision in the NWT Act.

Section 35 of the Act provides that “employers are responsible for the discriminatory conduct of their employees unless it is established that the employer did not consent to the conduct and took care to prevent the conduct or, after learning of the conduct, tried to rectify this situation”. It would be important to research how this provision has been interpreted: Does it provide an easy escape to employers from their responsibilities? Is this provision bringing in the requirement for the employer to have intent?

We thank you for taking our submission into consideration and encourage further consultation prior to final changes to this important legislation.

Submitted on behalf of
PSAC Yukon Equity Seeking Committees