

**SUBMISSION OF YUKON HOSPITAL CORPORATION
REGARDING AMENDMENTS TO THE YUKON *HUMAN RIGHTS ACT***

Yukon Hospital Corporation provides this submission in response to the request from the Select Committee on Human Rights for views and opinions on legislative options for amending the *Yukon Human Rights Act* and Bill #102, *Act to Amend the Human Rights Act*.

A. Recommendations for Change

The Yukon Hospital Corporation (or the “Hospital”), has a number of issues with the current legislation because the human rights process provided for under the *Act* is unnecessarily lengthy, time-consuming and expensive. Because of this, both Complainants and Respondents are disadvantaged. We believe that certain changes to the *Act* will reduce delay and cost and will facilitate the achievement of fair and timely resolutions to human rights complaints.

The changes we recommend are as follows:

1. Develop a more structured mediation process which would require a mediation meeting, either in person or via teleconference, with the Director of the Commission, the Complainant and the Respondent.
2. Eliminate the investigation process and develop a process which would allow the Commission to dismiss a complaint or refer it to a Board of Adjudication on the basis of written submissions.

We now elaborate on these recommendations.

1. Develop a More Structured Mediation Process

The Hospital recognizes and supports the Commission's settlement initiatives, and we appreciate the Commission's willingness to assist with settlement discussions at any stage of the process. However, if the parties indicate an interest in pursuing settlement, we believe it will be helpful to have a more structured mediation process. This process should include a settlement meeting which the parties are required to attend, either in person or by teleconference. Reasonable timelines by which the meeting should occur should be established, and if the meeting does not occur by the deadline, then absent unusual circumstances, the parties should be required to advance to the next stage of the process.

A timely process which all parties are required to attend will greatly enhance the communication between the parties, and the immediacy of the exchange of points of view and settlement proposals will assist each party to understand the concerns of the other and thereby increase the parties' ability to fashion a settlement which addresses those concerns.

Furthermore, such a process would speed up the time frame in which complaints are settled through mediation. Currently, because settlement discussions are often conducted through the Director, there is a significant delay between the time a settlement proposal is communicated by one side through to the other, and a response is then communicated back.

If such a tripartite mediation process were introduced, the possibility for early settlement of human rights complaints will be substantially enhanced.

2. Eliminate the Investigation Process

Currently, if the parties are unable to settle their differences, the complaint is investigated. This involves a Commission Investigator interviewing witnesses, transcribing the interview notes, and then sending them to each witness for review, correction if necessary, and further

comment. An Investigation Report is written by the Commission Investigator, based on the facts gleaned through the interview process.

Once the Investigation Report is written, it is circulated to the parties for written submissions on the question of whether the complaint should be dismissed or referred to adjudication. These submissions, along with the Investigation Report, are provided to the Commission. Under section 21 of the *Act*, the Commission then decides whether to dismiss the complaint, to further attempt to settle it on terms agreed to by the parties, or refer it to a board of adjudication for decision.

If the matter is referred to adjudication, the text of the complaint is formulated by the Commission and delivered to the Complainant, the Respondent and the Chief Adjudicator, and a request is made to the Chief Adjudicator to establish a board of adjudication to hear the complaint. The Board of Adjudication then holds an evidentiary hearing, which in most circumstances, is open to the public.

The investigation process is costly and time consuming for Complainants, Respondents and the Commission. We recommend the investigation process be eliminated, and instead be replaced by a process in which the Commission requires the parties to file written submissions within certain timelines, and then makes its determination about whether the complaint should be dismissed or referred to a board of adjudication on the basis of those submissions.

Part of an effective written submission process is the imposition of the limits for filing the submissions, and the development of a mechanism whereby the Commission can enforce compliance with those time limits. Therefore we recommend that any process that is developed have some clear, but reasonable timelines which must be complied with, except in unusual circumstances, and that there be a mechanism to enforce those timelines. This would force the parties to address the issues raised in the complaint in a timely fashion, and thereby reduce delay.

As well, the requirement of timely filing of submissions may also enhance the number of opportunities to settle the complaint, as each party will have a better idea of the other's position once the submission process is completed.

As part of this process, the Commission should be granted clear statutory power to dismiss all or part of a complaint on the basis that:

- 1) the complaint is beyond the jurisdiction of the Tribunal;
- 2) the complaint is frivolous or vexatious;
- 3) the acts or omissions complained of do not contravene the *Act*;
- 4) there is no reasonable prospect that the complaint will succeed;
- 5) proceeding with the complaint would not benefit the person or group alleged to have been discriminated against;
- 6) the substance of the complaint or part of the complaint, has been appropriately dealt with elsewhere, for example in an arbitration or court action;
- 7) proceeding with the complaint would not further the purposes of the *Act* (for example, if the complaint had been settled, or if the complainant has refused a reasonable settlement offer); or
- 8) the complaint is filed outside the time limits.

The inclusion of provisions of the nature outlined above would set out the basis upon which the Commission could dismiss a complaint.

The current *Act* already grants the Commission the power to refuse to investigate a complaint if it: is beyond the jurisdiction of Tribunal; is frivolous or vexatious; the victim of the contravention asks that the investigation be stopped; or it is filed outside the time limits. Further, under section 21, the Commission has the power to dismiss the complaint after investigation. This proposed change would simply eliminate the costly and time consuming investigation process, clearly set out the grounds for dismissal of a complaint, and allow the Commission to dismiss based on written submissions and affidavit material, if appropriate.

The written submission process would also provide the Commission with a basis upon which to decide whether to refer the complaint to adjudication. This would eliminate the delay which results from the current requirement that the parties first go through a full investigation process, with witnesses, before any decision to dismiss or refer the complaint to adjudication is made.

Eliminating the investigation process and substituting it with a written submission process will reduce both delay and cost, but will still allow the parties an opportunity to set out the merits of their respective cases before an impartial decision-maker. Further, the written submissions would make unnecessary the reformulation of the complaint by the Commission, as the parties will have formulated the complaint, as well as the response to the complaint, through the submission process.

Finally, the elimination of the investigation process would also have the benefit of freeing up some of the Commission resources to be utilized for further promotion of education and research.

We believe that these changes will benefit Complainants and Respondents, and will allow the Commission to better utilize its resources to achieve the objects of the Act.

B. Bill #102

The Select Committee is also seeking opinion on Bill #102, which would:

- a) increase the time limits for filing a complaint from the current six months to two years;
- b) specifically establish a time limit for complaints regarding continuing contraventions; and
- c) specifically grant to the Commission the discretion to accept a complaint outside the time limits if the delay was incurred in good faith and no substantial prejudice will result to anyone because of the delay.

The Hospital is opposed to extending the time limit by which a complaint must be filed. One of the critical factors in parties being able to successfully resolve a complaint without the necessity of going to hearing is timely notification of a complainant's concerns. This allows both parties to address the problem relatively quickly, before delay causes attitudes to harden and parties to become inflexible.

As well, it allows a respondent to properly investigate the matter while witnesses' recollection of events is relatively fresh, and it ensures that, if a matter must be adjudicated, the memories of both the complainants' and respondents' witnesses are not affected or diminished by the passage of time, so that the evidence before a board of adjudication is as accurate and complete as possible.

With respect to the proposed amendment regarding time limits for filing a complaint about a continuing contravention, the Hospital supports the specific mention of continuing contraventions in the legislation because that will assist in providing some clarity for potential complainants and respondents about time limits in such circumstances. However, the Hospital respectfully disagrees with any extension to the time limits.

Finally, the Hospital recognizes that there may be certain circumstances which result in a complainant being unable to file a complaint within the six month time limit. The Hospital does not oppose an amendment to the *Act* as outlined in Bill #102 which would grant the Commission the authority to accept a late filed complaint in exceptional circumstances.

We thank the Select Committee for this opportunity to provide our input, and if there are any questions you wish to ask or if you wish additional clarification or explanation about any of the matters raised above, we would be happy to meet with you to discuss this further.

All of which is respectfully submitted on behalf of Yukon Hospital Corporation.