

**YUKON HUMAN RIGHTS PANEL OF ADJUDICATORS**

**2016-17 ANNUAL REPORT**

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## 2016-2017 ANNUAL REPORT (April 1, 2016 to March 31, 2017)

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### LEGISLATIVE AUTHORITY

The Yukon Human Rights Board of Adjudication is established pursuant to Section 22(1) of the Yukon *Human Rights Act* (the “Act”). This section provides:

- 22(1) There shall be a panel of adjudicators to be called on as required to adjudicate complaints.
- (2) The panel of adjudicators shall consist of not less than three members appointed by the Legislature for a term of three years.
  - (2.01) The Legislature shall designate one member of the panel of adjudicators as Chief Adjudicator and one member as Deputy Chief Adjudicator.
  - (2.02) If the Chief Adjudicator dies, resigns or is unable to act in their capacity as Chief Adjudicator, the Deputy Chief Adjudicator may exercise any of the duties of the Chief Adjudicator until
    - (a) in the case of death or resignation, a Chief Adjudicator is designated under subsection 2.01; or
    - (b) in any other case, the Chief Adjudicator is able to act in their capacity as Chief Adjudicator.
- (3) A member of the panel may only be removed from the panel by resolution of the Legislature.
- (4) When the commission asks that a complaint be adjudicated, the Chief Adjudicator shall establish a board of adjudication of members of the panel of adjudicators.
- (5) A board of adjudication established by the Chief Adjudicator shall consist of three members unless the Chief Adjudicator determines that circumstances warrant a smaller or larger board.
- (6) A board of adjudication may consist of only one member if so determined by the Chief Adjudicator.
- (7) The Chief Adjudicator shall be a member of each board of adjudication unless unable to act, in which case the Chief Adjudicator shall designate another member to chair that board of adjudication.
- (8) The panel of adjudicators shall be accountable to the Legislature and the Chief adjudicator shall submit to the Speaker of the Legislature in each financial year a report of its activities. The report shall not publish any names of individuals or businesses in which a complaint was dismissed or which has not yet been dealt with.

### BOARD OF ADJUDICATION DECISIONS

Section 23 of the *Act* requires that boards of adjudication conduct hearings in accordance with the principles of fundamental justice and states that they may exercise all the powers of a board appointed under the *Public Inquiries Act*.

Section 24(1) of the *Act* outlines what a board of adjudication may order if a complaint is established:

- 24(1) If a complaint is proven on a balance of probabilities the board of adjudication may order the party who discriminated to

- (a) stop the discrimination;
- (b) rectify any condition that causes the discrimination;
- (c) pay damages for any financial loss suffered as a result of the discrimination;
- (d) pay damages for injury to dignity, feelings, or self-respect;
- (e) pay exemplary damages if the contravention was done maliciously;
- (f) pay costs.

If the board of adjudication concludes that a complaint is frivolous or vexatious, or that the proceedings were frivolously or vexatiously prolonged, the Board of Adjudication may order that the Human Rights Commission pay the respondent's costs of defending against the complaint, or damages for injury to the respondent's reputation, or both, pursuant to sections 25 and 26 of the *Act*.

If the board of adjudication concludes that a complaint was based on information that the complainant knew to be false, it may order the complainant to pay the costs of defending against the complaint, or damages for injury to the respondent's reputation, or both, pursuant to section 27 of the *Act*.

A decision of the board of adjudication may be filed in the Supreme Court and is enforceable as an order of the court. The decisions of the board of adjudication are final, unless appealed successfully on a question of law to the Supreme Court of Yukon, in accordance with Sections 27 and 28 of the *Act*.

## THE PANEL OF ADJUDICATORS (“YHRPA”)

The YHRPA contact information is as follows:

Mailing Address:	Yukon Human Rights Panel of Adjudicators P.O. Box 33093, Ogilvie P.O. Whitehorse, Yukon Y1A 5Y5
Office:	409 Black Street Whitehorse, Y.T. (867) 668-5767 <a href="mailto:registrar@yhrpa.ca">registrar@yhrpa.ca</a>

The YHRPA retains an independent legal counsel and a part-time registrar on contract.

## Membership

YHRPA membership during the reporting period consisted of the following individuals:

Chief Adjudicator:	Penelope Gawn
Deputy Chief Adjudicator:	Carmen Gustafson
Panel Members:	Michelle Mbuto * Raymond Kokiw ** Karen Keenan ** Jean-Sébastien Blais Michael Riseborough Michael Dougherty Darcy M. Tkachuk **

\* Member resigned during reporting period

\*\* Member's term expired during reporting period

## Board Support

YHRPA support during this reporting period was provided by:

Registrar: Colleen Henry  
Whitehorse, Yukon

Legal Counsel: Nitya Iyer  
Lovett Westmacott  
Vancouver, British Columbia

## FINANCIAL ARRANGEMENTS

YHRPA financial expenses are the responsibility of the Yukon Department of Justice (Finance Branch). Funding for each fiscal year is approved based on financial appropriations by the Yukon Legislative Assembly.

The budget estimation process is often challenging and uncertain because the caseload of the YHRPA is almost entirely dependent on the number of matters that are referred by the Human Rights Commission each year. In an effort to ensure that the YHRPA is on track with its budget estimate, budget discussions may be held throughout the year, as necessary. When additional funding is required to carry out the responsibilities of the YHRPA, additional funding is requested through the supplementary appropriation process.

In March of 2016, an office space suitable for the YHRPA administrative needs was identified and negotiations conducted with the Finance Branch to secure that space.

## THE YEAR IN REVIEW

### Referrals at a glance (*April 1, 2016 to March 31, 2017*)

Complaints to the Panel of Adjudicators	
Number of Referrals in 2016-17	5
Number Carried Over from Previous Year(s)	6
Number of Dispositions (settlements/withdrawals)	2
Number of Decisions Released	3
Number of Case Management Conferences Held	14
Number of Board Hearings	1

## **Grounds for Complaints included:**

- Criminal charges, criminal record, and marital or family status in connection with offering or providing services to the public;
- Systemic discrimination and harassment in the provision of a service;
- Religion or creed, religious belief, religious association or religious activity, and religion in the provision of a service;
- Physical or mental disability, and disability with failure to accommodate;
- Sex and ancestry, including colour and race, with respect to employment;
- Sexual harassment in the course of employment;

Decisions of the Board of Adjudication are public documents. The decisions are available online at <http://www.yhrpa.ca/decisions>.

## **Training**

The Chief Adjudicator and Deputy Chief Adjudicator attended the National Human Rights Tribunal Forum in May 2016. The Deputy Chief Adjudicator attended training for adjudication for administrative agencies, boards, and tribunals, at the Osgoode School of Law in May 2016. A general meeting of the YHRPA was held in June 2016 which included training presentations provided by the Chief Adjudicator and Deputy Chief Adjudicator. One of the Panel members attended a Foundation of Administrative Justice course on decision writing in Whitehorse in September and then also delivered a presentation on the course training to the Panel of adjudicators in December 2016.

## **Office**

The YHRPA now has a small office located in the dāna Näye Ventures building on Black Street in Whitehorse.

## **Rules of Procedure**

The YHRPA has new simplified rules of procedure. A review of the Panel's *Rules of Procedure* and its Forms was completed in August 2016 and the new rules were put into force effective September 12<sup>th</sup>, 2016.

## **Website**

The YHRPA now has its own website which was designed and implemented by the YHRPA's Registrar with input from the Chief Adjudicator and was activated in March 2017. <http://www.yhrpa.ca>