



18th Legislative Assembly of the Northwest Territories

Standing Committee on Government Operations

Report on the Review of the
2017-2018 Northwest Territories
Human Rights Commission
Annual Report

Chair: Mr. Kieron Testart

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**STANDING COMMITTEE ON
GOVERNMENT OPERATIONS**

**REPORT ON THE REVIEW OF THE
2017-2018 NORTHWEST TERRITORIES
HUMAN RIGHTS COMMISSION ANNUAL REPORT**

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STANDING COMMITTEE ON GOVERNMENT OPERATIONS

REPORT ON THE REVIEW OF THE 2017-2018 NORTHWEST TERRITORIES HUMAN RIGHTS COMMISSION ANNUAL REPORT

INTRODUCTION

The Standing Committee on Government Operations (“the Committee”) completed its review of the 2017-2018 Annual Report of Northwest Territories Human Rights Commission (“the Commission”). The Standing Committee would like to thank Mr. Charles Dent, Chair of the Northwest Territories Human Rights Commission, Ms. Deborah McLeod, Director of Human Rights, and Mr. Sheldon Toner, Chair of the Adjudication Panel for their appearance before the Committee on January 16, 2019.

ABOUT THE HUMAN RIGHTS COMMISSION

The NWT Human Rights Commission is in the midst of a process of renewal and revitalization that commenced with a review of the NWT *Human Rights Act*, undertaken by the Commission in 2014, to reflect on how the Act and the NWT human rights system have been functioning since their inception ten years earlier.

That review culminated in the introduction of *Bill 30 – An Act to Amend the Human Rights Act*, which received assent in the Legislative Assembly on June 6, 2019. When the amended Act comes into force, it will substantively alter the administrative structure and functioning of the human rights system in the Northwest Territories. For the 2017-2018 year, however, the system was governed under the *Human Rights Act* as it was originally structured. The Act established three independent but interrelated agencies: the Human Rights Commission, the Office of the Director of Human Rights, and the Human Rights Adjudication Panel.

The Human Rights Commission is made up of three to five members of the public, each for a term of four years. They are appointed by and responsible to the Legislative Assembly for the general administration of the Act. For 2017-2018, Mr. Charles Dent continued to serve as Chair of the Human Rights Commission and Mr. Yacub Adam as Deputy Chair. Ms. Marion Berls and Ms. Gerri Sharpe also continued to serve as Members of the Commission. They were joined by Ms. Gail Cyr, who replaced Ms. Bronwyn Watters.

The Director of Human Rights position is also appointed by the Legislative Assembly. The Director is responsible for the administration of the complaint process and for overseeing administrative support for the Commission's outreach and education efforts. The Office of the Director of Human Rights includes the Director, Ms. Deborah McLeod, and Commission staff members who are all members of the public service.

The Adjudication Panel hears complaints referred by the Director, as well as appeals of the Director's decisions to dismiss complaints. The Adjudication Panel is composed of at least three lawyers appointed by the Legislative Assembly, each for a term of two to four years. In 2017-2018, the Adjudication Panel was chaired by Mr. Sheldon Toner, with Mr. Adrian Wright, Mr. Colin Baile, Ms. Emerald Murphy and Mr. Paul Parker serving as adjudicators during that time period.

The Committee wishes to thank all members of the Commission and the Adjudication Panel for their service.

LETTER FROM THE CHAIR

Mr. Dent's 2017-2018 Letter from the Chair focused on an important aspect of the changes taking place to the NWT human rights system; the movement away from a system that is adversarial and legalistic to one that is more restorative in nature. As Mr. Dent noted,

"The aim of a restorative practice is to develop community and to manage conflict and tension by repairing harm and building relationships. A restorative approach can be used in both informal interactions as well as in formal processes. It is an approach that

focuses on working with people and assisting them to address their human rights conflicts with each other. The Commission believes that a move to a more restorative approach in all of our work, including our complaint process and how we engage the community, is key to creating and maintaining a culture that values and promotes equality.”

To help ready itself for this restorative approach, the Commission sponsored the Director of the International Institute for Restorative Training (Canada) to speak about and provide workshops on restorative practices to Commission Members, the Director and her staff, the Adjudication Panel, and to the NWT Teachers' Association's 2018 NWT Educators' Conference.

As evidence of the positive results the Commission is beginning to see in this area, Mr. Dent pointed out that almost half of the complaint files closed by the Director in 2017-2018 were resolved by the parties through the use of alternative dispute resolution processes.

COMMUNITY OUTREACH

Community outreach makes up a large component of the Commission's work. The Commission provides free workshops tailored to employers, businesses and community groups, about their rights and responsibilities under the Act. The Commission also participates in community events, where Members talk to the public about the NWT human rights system and distribute Commission publications. The Commission also reaches out to the public through its social media presence.

Over the past five years, Facebook has become an integral part of the Commission's education work. The Commission shares positive human rights related stories and encourages inclusion, kindness and accessibility. The Commission has implemented a strategy that has increased their reach into the remote communities and developed a community of followers who are engaged in positive discussions about human rights. As of March 31, 2018, the Commission had 1,967 Facebook followers in 28 communities, making theirs the fourth largest following of Canadian human rights commissions, behind Ontario, Quebec and Canada.

The Commission also promoted its Stories for Peace initiative, encouraging audiences to engage with stories having human rights themes and promoting inclusion and diversity. This undertaking helps the Commission build relationships with other NWT organizations with similar interests. In 2017-18, the initiative gave books, movies and other LGBTQ+ resources to Paul William Kaeser High School in Fort Smith for Rainbow SAGE, the school's gay-straight alliance, and donated crayons and colouring books to Sutherland House, the women's shelter in Fort Smith. The Commission has developed a publication about this initiative.

The following are but a few examples of events the Commission participated in during 2017-2018, demonstrating the breadth of the Commission's outreach program:

The Commission gave the following presentations and workshops:

- **The duty to accommodate in human rights law** to the Canadian Bar Association's Pro Bono Law Section;
- **Human rights principles and the duty to accommodate** to superintendents and regional inclusive school coordinators;
- **Human rights in the Indigenous workplace and managing accommodation and addiction in the workplace** at the Human Resources Management for Indigenous and Northern Organizations conference held in Yellowknife;
- **Accommodation and undue hardship in an education setting** to Yellowknife District No. 1 administrators.

The Commission participated in eleven community events, including:

- **Disability Awareness Week:** Commission Chair Charles Dent presented the NWT Disabilities Council's Community Champion Award at the annual Minister's Tea marking Disability Awareness Week.
- **National Indigenous People's Day and Canada Day:** Commission Member Gerri Sharpe hosted the extremely popular bannock table at both events. She was joined by Commission Chair Charles Dent and Vice Chair Yacub Adam who served the bannock and encouraged people to pick up materials, including pocket guides, SOS Safety Magazines and

copies of the Truth and Reconciliation Commission's Calls to Action.

- **Days of Pink and NWT Pride:** The Commission donated \$2,000 to the NWT Rainbow Coalition for its annual Days of Pink Celebrations, a week-long campaign bringing awareness to LGBTQ+ issues. Commission Chair Charles Dent and Member Gerry Staples handed out rainbow cupcakes in front of the Yellowknife post office and also set up a booth for Rainbows in the Park, where participants could win prizes for spinning the wheel and answering human rights-related questions.
- **Dene National Assembly:** Commission Chair Charles Dent made a short speech offering information on human rights to communities.
- **Local Government Administrators of the NWT (LGANT) Trade Show:** Commission Vice Chair Yacub Adam attended the marketplace trade show portion of LGANT's annual meeting. The Commission also provided LGANT with information on federal funding that is available for improving disabled access.
- **Anti-poverty Roundtable:** Commission Vice Chair Yacub Adam attended this event held in Norman Wells.

AREAS AND GROUNDS FOR COMPLAINT

The *NWT Human Rights Act* protects all people in the Northwest Territories from discrimination in the areas of: employment; access to public services such as hospitals, schools and stores; tenancy, including business leases; membership in trade unions or professional associations; and in published materials such as signs, newspapers or other advertising.

The Act also protects people against harassment based on a protected ground and retaliation for participating in a complaint. A ground is a specific characteristic of an individual. There are 21 protected grounds under the Act, including age, disability, race, ancestry, sex, sexual orientation, gender identity, family and marital status, religion, social condition and political association, to name just some. A complaint may allege discrimination on the basis of more than one ground.

Disability was the most common ground for complaint in 2017-2018, with 72% of complaints alleging discrimination on the basis of disability this year, as compared with 63% in the previous year. Race and ethnic origin were the next most frequently cited grounds for complaint in 2017-2018.

INQUIRIES, COMPLAINTS AND ADJUDICATION

The Director's Office received 291 inquiries in 2017-2018, down from 361 in the previous year. Inquiries made at trade shows, community visits and other public events are not included in these statistics. Not all inquiries received by the office are related to equality human rights. Wherever possible, Human Rights officers will direct a person to the agency or organization best equipped to help them.

Thirty-nine new complaints were filed in 2017-2018, as compared with 41 in the previous year. Of these, 18 originated from Yellowknife. Committee found it interesting to note that the next highest number of complaints (8) came from remote camps.

In the Director's Office, these 39 new complaints were added to 53 files already in process for a total of 92 files. Of these, 33 files were closed (2 dismissed; 3 withdrawn; 13 referred to the Adjudication Panel; 15 settled).

Complaints that cannot be dismissed at an early stage, or resolved by the Director through alternative dispute resolution processes, such as mediation, are referred to the Human Rights Adjudication Panel for a hearing.

The Adjudication Panel is a quasi-judicial body with the power under the Act to hear complaints, render findings and, where warranted, impose penalties or restitution. The panel may determine if discrimination occurred and decide on an appropriate remedy. The Adjudication Panel also hears appeals in which a complainant is dissatisfied with the Director's decision to dismiss their complaint.

The Adjudication Panel dealt with 31 files in 2017-2018: 16 files already in progress; 13 new files referred by the Director; and 2 appeals of the Director's decision to dismiss a complaint. Of the 31 files, the Adjudication Panel closed 8 files (1 settlement; 3 withdrawals; 4 decisions). This is compared with 2016-2017, during which the Panel dealt with 1 new file and 26 files in progress and

closed 11 files (1 settlement; 3 withdrawals; 7 decisions).

All hearings of the Human Rights Adjudication Panel are public and can be reviewed on the Panel's website at hrap.nt.ca.

PUBLIC HEARING

As noted in the introduction, the Committee held its hearing on the review of the *2017-2018 Annual Report of the Human Rights Commission* on January 16, 2019.

The Commission Chair opened his remarks by acknowledging that the Human Rights Commission works in the traditional territories of the Dene, Inuvialuit and Métis peoples and recognizes its obligations under Treaties 8 and 11. Stating that the *"Commission's celebration of International Human Rights Day in 2017 focused on reconciliation and what ordinary people can do to foster reconciliation,"* he further noted that *"attendees at the event were invited to commit to an act of reconciliation."*

The Commission Chair spoke about the Commission's move to a more restorative human rights system and its belief that this approach will result in a fairer and more effective system that will encourage a culture that values and promotes equality. He echoed the observation made in the annual report that *"this year almost half of the complaint files closed by the Director were resolved by the parties through alternate dispute resolution."*

The Commission Chair concluded his opening remarks by informing Committee that *"recognizing the importance of language to human rights and reconciliation, and to make human rights information more accessible to everyone in the Northwest Territories, the Commission has had the Pocket Guide to Human Rights in the NWT translated into all eleven official languages."*

Noting the high number of complaints (8) arising from remote camps in 2017-2018, Committee asked what grounds formed the basis for those complaints. The Director of the Human Rights Commission replied that "disabilities" is a common ground, as is "employment," and that disagreement with respect to drug testing in the workplace also formed the basis of a complaint.

In response to a question about any perceived trends in the number of complaints received, the Director noted that the number of complaints received in 2017-2018 (39) was in the same range as the previous year (2016-2017 – 41). She indicated that the lowest number of complaints received was 15 in 2012-2013, that the highest ever received was 47, and that there tends to be a slight trend upwards over time.

At the time the hearing took place, Committee was in the process of reviewing *Bill 30 – An Act to Amend the Human Rights Act*. While the Committee Chair cautioned Members not to venture too far into a discussion of the bill itself, Committee took the opportunity to question the Commission's representatives in order to gain a better understanding of how the system works now. In particular, Committee was interesting in learning about how the Commission currently uses the offence and punishment provisions in the *Human Rights Act* and how the proposal to remove these provisions from the Act would impact the ability of the Commission to address human rights transgressions.

Committee learned that the Commission has never triggered the use of the offence and punishment provisions under the Act as a means to sanction human rights transgressions, because the Human Rights Adjudication Panel already has the authority to make orders which may include financial penalties for offenders. The Chair offered that the Commission views the application of the offence and punishment provisions, which would be effected through the court system, to be inconsistent with a restorative approach, which is meant to reconcile the complainant and respondent by finding a solution to the dispute that builds trust and understanding.

The Adjudication Panel Chair added that the proposal in the bill, to prescribe remedies designed to help prevent future transgressions, would broaden the Panel's ability to make findings consistent with a restorative approach.

Committee asked the Commission for its assessment of the manner by which the restorative approach might impact the length of time taken to deal with a complaint. The Commission responded by first addressing the process from the perspective of the Office of the Director, which accepts and considers complaints and decides which will be referred to the Adjudication Panel for settlement.

The Director explained that she has the authority to defer the formal process for dealing with a complaint (ie. referral to the Adjudication Panel) while another process, such as mediation, is unfolding. In such a case, the complaint would only be referred to the Adjudication Panel if mediation was unsuccessful. Noting that the complexity of a complaint has an impact on the length of time taken to resolve it, she observed that “just by changing how we approach the parties has increased the uptake of people who want to settle (their matters of concern).” She also noted that part of the restorative approach is to prevent parties from being “positional” and helping them better understand one another.

The Chair of the Adjudication Panel advised Committee that the Panel receives complaints in two forms: human rights complaints and appeals of the Director’s decision to dismiss a complaint. Noting that the complexity of a complaint also has an impact on the length of time for this stage of the process to unfold, Mr. Toner informed Committee that an appeal hearing can take from 6 months to a year, while more complex cases tend to take from 1 to 2 years. Noting the Adjudication Panel’s desire to issue decisions more quickly, he added that preliminary hearings, motions, the number of witnesses, losing track of a complainant, and going to court for a judicial review are all factors that may impact the length of the process or cause delays.

In summing up its response to the question of how a restorative approach can impact the length of the process, the Commission noted that any time an alternative dispute resolution process can be used to divert a complaint from being referred to the Adjudication Panel, the likelihood of timely resolution increases.

The hearing concluded with a question from Committee about the meaning of the term “equality human rights” which appears throughout the annual report. The Commission Chair explained that the *Canadian Charter of Rights and Freedoms*, which forms Part 1 of the *Constitution Act, 1982*, sets out the rights and freedoms guaranteed to Canadians, including: fundamental freedoms (freedom of conscience and religion; freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication; freedom of peaceful assembly; and freedom of association); democratic rights; mobility rights; legal rights; language rights and equality rights. Section 15(1) of the Charter describes equality rights in the following way:

“Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.”

Mr. Dent concluded by noting that, of all the rights and freedoms set out in the *Canadian Charter of Rights and Freedoms*, equality rights are the only ones falling under the jurisdiction of the provinces and territories.

CONCLUSION

The Standing Committee on Government Operations has followed the work of the NWT Human Rights Commission with interest during the 18th Legislative Assembly. This has been an especially interesting time for the Commission, given the work it has done on the review of the *Human Rights Act*. Committee is pleased to have had a role to play in the development of this revised legislation and thanks the Commission for its insight, which assisted the Committee in its review.

In this, the final review of the Commission’s work during the 18th Assembly, the Standing Committee wishes the Commission well in its ongoing efforts to implement a more restorative human rights system, particularly as the new provisions of the amended *Human Rights Act* come into force of the next four years.