



15th Legislative Assembly of the Northwest Territories

Standing Committee on Accountability and Oversight

Report on the Review of the
2004-2005 Annual Report
of the Human Rights Commission

Chair: Mr. Kevin Menicoche

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June 1, 2006

SPEAKER OF THE LEGISLATIVE ASSEMBLY

Mr. Speaker:

Your Standing Committee on Accountability and Oversight is pleased to provide its Report on the Review of the 2004-2005 Annual Report of the Human Rights Commission and commends it to the House.

Kevin Menicoche, MLA
Chairperson

**STANDING COMMITTEE ON
ACCOUNTABILITY AND OVERSIGHT**

**REPORT ON THE REVIEW OF THE
2004-2005 ANNUAL REPORT OF THE
HUMAN RIGHTS COMMISSION**

TABLE OF CONTENTS

Introduction	1
Recommendations	1
Systemic Remedies	1
Criminal Convictions	2
Other Issues	3
Conclusion	4

REPORT ON THE REVIEW OF THE 2004-2005 ANNUAL REPORT OF THE HUMAN RIGHTS COMMISSION

INTRODUCTION

The Standing Committee on Accountability and Oversight met on May 2, 2006 to review the 2004-2005 Annual Report of the Human Rights Commission. The Committee would like to thank Ms. Mary Pat Short, Chair of the Human Rights Commission, and Ms. Thérèse Boullard, Director of Human Rights, for appearing before us.

As the Human Rights Commission opened its doors on July 1, 2004, this was its first annual report and covers only the first nine months of operation, much of which was taken up by implementation matters. During the public hearing, Ms. Short and Ms. Boullard were also able to advise the Committee of more recent activities and developments.

The Committee was pleased to hear of the progress the Commission has made in raising awareness about human rights through its website, public service announcements and community meetings. We encourage the Commission to continue expanding its efforts to make people aware of human rights issues, particularly in the smaller communities where the Commission has not yet had a presence, and also through targeted outreach programs such as the one already under development regarding drug and alcohol testing in the workplace.

The Committee was also pleased with the Director's efforts to make the complaints process a relatively accessible one. However, we underline the importance of making it as easy as possible to obtain information and make complaints in all official languages.

RECOMMENDATIONS

The report includes two specific recommendations for amendments to the *Act*.

Systemic Remedies

The first recommendation is to amend the *Act* to explicitly allow the Human Rights Adjudication Panel to order systemic remedies in addition to remedies to address the situation of individual complainants. Systemic remedies might include requiring an organization to implement employment equity or to change

policies that have resulted in discrimination. The report cites the persistence of unequal pay for work of equal value between men and women as an example of systemic discrimination. In such a case, providing compensation or another remedy to one individual complainant would not address the overall issue or assist others being subjected to the same discrimination by the same employer.

The witnesses also suggested there is an inherent contradiction in the *Act* in that it currently allows the Commission to initiate complaints, which in practice it would most likely do in a case of systemic discrimination, but does not allow the Adjudication Panel to grant the corresponding remedies.

The Committee was made aware that some other Canadian jurisdictions explicitly allow for systemic remedies in their human rights legislation, and that in other jurisdictions, the courts have interpreted the *Acts* as allowing for systemic remedies even though they do not explicitly grant this power.

While the Committee does not necessarily disagree with the recommendation, we would like to be assured that it would not have unforeseen implications beyond those identified by the Commission. We would also point out that our *Act* is as yet new and untested and that it may be more appropriate to revisit this recommendation after we have gained a few years' experience and established our own precedents.

Recommendation

The Standing Committee on Accountability and Oversight recommends the GNWT review the implications and advisability of including systemic remedies in the *Human Rights Act* and report back on its findings in its response to this report.

Criminal Convictions

The *Act* currently prohibits discrimination on the basis of pardoned criminal convictions. The report recommends that the *Act* be amended in order to prevent discrimination on the basis of "unrelated" criminal convictions. The example provided in the report is of a person with a record for driving while impaired being refused a job that does not involve driving. The current *Act* would not protect that person unless he or she had received a pardon. With the recommended wording, the person would have grounds for a complaint by making the case that a conviction for a driving offense is unrelated to a job that does not involve driving. Similarly, a person refused a job on the basis of a conviction from many years ago might have grounds for a complaint.

The Committee had a lengthy and spirited discussion on this issue. Some Members are reluctant to support the recommendation because it would put employers in a very difficult position of making judgment calls about what is or is not an “unrelated” conviction. In some cases, it could be very difficult for them to balance their duties toward their clients or other employees with the legal requirement not to discriminate against a job applicant. For example, if a person had a twenty-year-old record for sexual assault and no subsequent convictions, would it be discrimination to refuse to hire him or her for a delivery job? On the other hand, would it be negligent to put customers and other employees in contact with a person whose history included a violent offence? Some Members are concerned that it would be unfair to expect employers to make these kinds of evaluations.

In support of the recommendation, Members pointed to some employers’ policies of not hiring anyone with a criminal conviction without giving any consideration to the relevance of the offence. Such policies are making it difficult for many responsible adults who made mistakes in their youth to find employment and provide for their families. Prohibiting discrimination on the basis of unrelated criminal convictions would prevent employers from automatically refusing to hire anyone with a record and force them to consider applicants on a case-by-case basis.

Recommendation

The Standing Committee on Accountability and Oversight recommends the GNWT review the implications and advisability of amending the *Human Rights Act* to prohibit discrimination on the basis of unrelated criminal convictions and report back on its findings in its response to this reportd.

OTHER ISSUES

In the course of our discussions on the annual report, some Members noted the *Act* uses the word “sex” to refer to discrimination on the basis of being male or female, and raised concerns that this terminology could be misunderstood or be offensive to some people. The Committee suggests the Government consider bringing forward an amendment to the *Act* to change the word “sex” to “gender”, which is in its opinion a less confusing and more appropriate term.

CONCLUSION

The Committee looks forward to monitoring the continued evolution of the Northwest Territories Human Rights Commission, and to reviewing its next annual report.

Recommendation

The Standing Committee on Accountability and Oversight recommends that pursuant to Rule 93(5), the GNWT table a comprehensive response to this report within 120 calendar days.