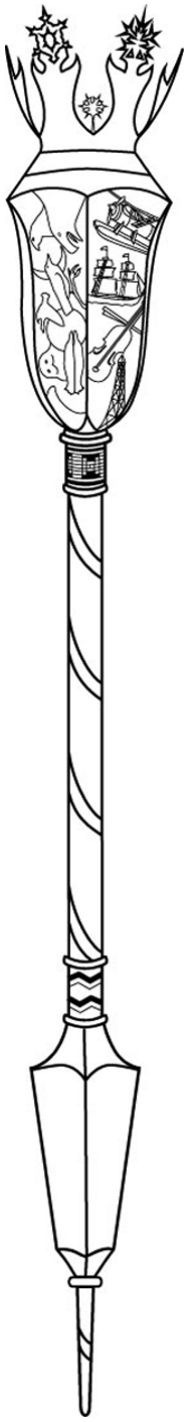

Northwest Territories Legislative Assembly

Standing Committee on Social Programs

Report on Bill 1: *Human Rights Act*

Chair: Mr. Brendan Bell

HON. ANTHONY (TONY) WHITFORD
SPEAKER OF THE LEGISLATIVE ASSEMBLY

Dear Mr. Speaker:

The Standing Committee on Social Programs is pleased to provide our report on our review of Bill 1, *Human Rights Act* and commends it to the House.

Sincerely,

Brendan Bell
Chairman

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Report of the Standing Committee on Social Programs
on the Review of
Bill 1, *Human Rights Act*

Introduction:

The Standing Committee on Social Programs is pleased to report on its review of Bill 1, *Human Rights Act*.

Instituting a comprehensive human rights organization is fundamental to the prevention of discrimination and promotion of equality in our society. Human rights legislation plays a key role in promoting respect, dignity and equal participation of all our citizens. It is a statement on our commitment to international human rights instruments and is the vehicle through which we promote and enhance equal opportunity for individuals by focussing on the elimination of discrimination.

With the exception of the Northwest Territories and Nunavut, every jurisdiction in Canada has enacted comprehensive human rights legislation to protect citizens from discrimination. Currently, the *Fair Practices Act* governs human rights protections in our jurisdiction. A review of the *Fair Practices Act* demonstrates that the current regime in the NWT is far from comprehensive. As a result, the Northwest Territories has not received an exemption under section 66 of the *Canadian Human Rights Act*, which means that the federal legislation continues to apply in the NWT. For instance, many provisions in the *Canadian Human Rights Act* govern employees of the Government of the Northwest Territories.

The *Fair Practices Act's* deficiencies have provided the impetus for the introduction of Bill 1, *Human Rights Act*. The proposed human rights legislation creates a comprehensive code for human rights promotion and protection in the territory. It now defines discrimination, offers greater protection through the expansion of the "prohibited grounds", is wider in its application than its predecessor and creates a Human Rights Commission to deal with complaints.

In particular, Bill 1 creates a legislative scheme to address discrimination in the delivery of services, employment, tenancy agreements, and other important areas of everyday life. By expanding the prohibited grounds and through the creation of the Human Rights Commission and the adjudication panel, Bill 1 brings the NWT up-to-date in human rights protection.

Background to Bill 1, *Human Rights Act* Review Process

Bill 1, *Human Rights Act* received Second Reading in the Legislative Assembly on February 22, 2002 and was referred to the Standing Committee on Social Programs for review.

Prior to this however, the development of a *Human Rights Act* was the focus of significant consultations by the Department of Justice. The Department advised us that in September and October 2000 a preliminary discussion paper on a *Human Rights Act* for the Northwest Territories was widely distributed for discussion and comment. This document was sent to 16 organizations that were thought to have an active interest in human rights issues and it was further distributed to 38 aboriginal organizations across the Territories.

In November 2000 the first draft of the *Human Rights Act* was tabled in the Legislative Assembly.

Following this, a brochure on the tabled *Act*, as well as the draft Bill itself were again broadly distributed to an expanded list of the interested parties. This list included 115 individuals and organizations, including aboriginal governments, non-governmental organizations, band councils and municipal councils.

In the summer of 2001 community consultations were conducted on behalf of the Department of Justice in 10 communities. As well, specific consultation meetings were conducted with approximately 30 representatives of municipal, aboriginal, labour and other organizations and societies.

As a result of the input received from these consultations, changes were made to the *Act*, including:

- It was requested that a definition of what constitutes discrimination be included in the *Act*. As a result, a number of interpretative sections were added on this point;
- It was recommended that a duty to accommodate be included in Bill 1 so that all individuals have the capacity to have their needs accommodated without discrimination based on one of the prohibited grounds. The revised Bill makes specific reference to the duty to accommodate in several sections of the *Act*;
- It was recommended that the Director of Human Rights need not be a lawyer and this change was incorporated into the existing draft;
- It was suggested that the application of the *Act* be extended to include domestic workers. The current *Fair Practices Act* does not include protections for domestic workers; Bill 1 has been revised to provide domestic workers with the same protection as all other workers covered by the *Act;* and

- There was concern that the original draft provided the Director of Human Rights with too much authority. In response, in the revised Bill the Director is no longer a member of the Human Rights Commission but sits as Secretary, is answerable to the Commission and answerable procedurally through the appeal process.

These are but a few of the recommendations which were received, assessed and in many instances added to the Bill before the legislation was introduced and referred to the Committee for consideration.

The task of the Standing Committee on Social Programs was to review Bill 1 in the context of human rights legislation across the country, and in particular to hear the views and suggestions of residents of the Northwest Territories.

Months prior to the hearings we contacted non-governmental organizations, communities, aboriginal governments and organizations in writing to invite all interested parties to participate in our review and provide their input.

Advertisements outlining our proposed review process and soliciting comments from all northerners were placed in all northern newspapers in April 2002 and again in July 2002. Public service announcements and media advisories were also broadcast in advance of the public hearing dates in each location.

To prepare for the public hearings, the Standing Committee on Social Programs met on several occasions to discuss background research material. The Standing Committee conducted public hearings on Bill 1 in Inuvik, Fort Smith and Yellowknife from September 4 to September 12, 2002.

While the number of responses and submissions were less than anticipated, the Standing Committee was impressed with the quality and depth of the presentations and written submissions presented to us.

Preamble

The Committee considered whether the preamble should be amended to refer to the international agreements entered into by Canada on equality and human rights.

The preamble provides the public with an indication of the purpose and the objectives of the legislation. It can also be used as an interpretative tool to assist decision-makers in their application of the statute.

During public hearings, presenters requested that the preamble be amended to recognize the international agreements to which Canada is a signatory. While most presenters were pleased with the current reference to United Nations *Universal Declaration on Human Rights*, a few of them felt that it was not a sufficient statement on our government's commitment to the protection and promotion of human rights.

Suggestions included expanding the preamble to make reference to the various international instruments on human rights, and to include language that makes it clear that the Legislative Assembly is responsible for human rights in the Northwest Territories. The Committee was also asked to clarify the role of aboriginal rights in our society.

The Committee suggested an amendment to the preamble to provide for more inclusive language, which makes clear links between the rights protected by the legislation and the responsibilities of our society to protect those rights.

The Committee put forward a motion to amend the preamble. The motion passed and received approval of the Minister of Justice. Consequently, the preamble has been amended to reflect the goals set out above.

Aboriginal Rights

Many presenters appearing before the Committee were concerned about the impact of Bill 1 on aboriginal rights and land claims agreements. Significant concern arose over the applicability of the *Human Rights Act* to aboriginal communities, and in particular about the scope of clause 2. Many presenters did not view the protection of individual rights in human rights legislation as automatically conflicting with the collective rights of aboriginal peoples; however, they wanted some assurance that aboriginal rights would be protected in the presence of such a conflict.

The *Constitution Act, 1982* provides constitutional protection to aboriginal rights and treaty rights in Canada. Clause 2 of the *Human Rights Act* provides

> "Nothing in the Act shall be construed so as to abrogate or derogate from the protection of existing aboriginal or treaty rights of the aboriginal peoples of Canada by the recognition and affirmation of those rights in clause 35 of the *Constitution Act, 1982*"

The Yukon *Human Rights Act* provides similar protection to aboriginal rights. Both Bill 1 and the Yukon *Human Rights Act* attempt to satisfy public concerns about the impact of human rights legislation on aboriginal rights in each territory. Notably, the constitutional protections contained in section 35 of the *Constitution Act, 1982* and the applicable case law make it clear that provinces and territories cannot affect the constitutional rights of aboriginal peoples in Canada.

It was generally understood that clause 2 was intended to be a non-derogation clause to protect aboriginal rights; however, its application remains unclear. While, most presenters were supportive of Bill 1, they are concerned about the extent to which the collective rights of aboriginal peoples conflict with individual rights. Two other presenters, for the same reason, did not support the legislation at all.

Presenters commented on the fundamental differences in the approach to "rights" amongst aboriginal communities and non-aboriginal communities in the NWT. Bill Erasmus, National Chief of the Dene Nation explained how aboriginal rights are tied to the land and to the collective wellbeing of the community of which one is a member, whereas human rights legislation is based on the rights of the individual. Mr.Erasmus expressed general support of Bill 1; however, he questioned why the wording in clause 2 differs from that used in clause 3, which deals with rights and privileges associated with denominational schools in the territory.

Chief Erasmus is also concerned about how the *Human Rights Act* will apply to future aboriginal governments. He encouraged the Committee to create flexible legislation that anticipates the creation of future aboriginal self-government arrangements. Noting that future aboriginal governments may want the *Human Rights Act* apply, Mr. Erasmus sought clarification on the applicability of Bill 1 to current and future aboriginal governments.

Richard Nerysoo of Inuvik expressed concern that the government may use the *Human Rights Act* to undermine land claims agreements despite the inclusion of clause 2. He urged the Legislative Assembly to ensure that it is serious about not abrogating or derogating from aboriginal rights through Bill 1 or any other legislation. Mr. Nerysoo supported the introduction of human rights legislation. He emphasized that his concerns about protecting the collective rights contained in land claims agreements should not be interpreted as a lack of support for the protections provided to individual rights in the *Human Rights Act*. In his view, collective rights are not a reason to override individual rights; both are interrelated. However, he stressed that the government must meet its land claims obligations, and that it should not use the *Human Rights Act* or any other legislation to undermine land claims rights.

A related issue raised at the public hearings was whether Bill 1 could provide aboriginal communities with any assistance in the recognition and implementation of their rights. The Committee heard about the struggles of aboriginal people for recognition of their aboriginal and treaty rights. The Committee also heard that many aboriginal people do not believe that the government is living up to its land claims or treaty obligations, and people wanted to know if their communities could use Bill 1 to implement those rights.

Finally presenters wanted to know whether the *Human Rights Act* protected them from discrimination within their own communities, such as when some band members receive preferential treatment over others.

Bill 1 is intended to provide protection to all people experiencing discrimination based on any of the prohibited grounds in areas of everyday life that fall within territorial jurisdiction. Aboriginal persons who feel that they are being denied access to services, accommodations or employment within the NWT can make a complaint to the new Human Rights Commission.

Due to the division of powers created under the *Constitution Act, 1867*, aboriginal governments fall within the jurisdiction of the federal government. Bill 1 is territorial legislation, and does not apply to aboriginal governments. For instance, because band councils fall under federal jurisdiction Bill 1 will not apply. However, anyone experiencing discrimination in areas of public life that fall under the jurisdiction of the federal government can seek assistance from the Canadian Human Rights Commission.

The Committee sought clarification from the Minister of Justice on the underlying purpose of clause 2. Through our discussions, it is evident that the purpose of clause 2 is to provide a clear statement that aboriginal and treaty rights cannot be infringed by the *Human Rights Act*. Therefore, clause 2 is there to let the public know that Bill 1 does not supersede existing aboriginal and treaty rights. The protection afforded by clause 2 is not "frozen in time", but rather is intended to extend to future aboriginal and treaty rights.

The *Human Rights Act* does not provide aboriginal communities a vehicle to enforce their existing aboriginal rights, nor does it provide a mechanism for the recognition of rights not yet realized. The Committee encourages the government and aboriginal communities to work together to ensure the full implementation of aboriginal and treaty rights in the NWT.

In response to these concerns, the preamble of Bill 1 has been amended to recognize and affirm the protection of aboriginal and treaty rights in the Northwest Territories.

Disability

The definition of disability in Bill 1 was the subject of much discussion. The Committee is concerned that the current definition is not sufficiently clear with respect to the protections it creates. In particular, the Committee is concerned with the inclusion of "perceived" and "predisposition" in the definition of disability.

Some presenters advocated for a narrower definition, while others sought an expanded definition. Others felt that a more clearly articulated definition is required. Elaine Keenan-Bengts, one of three Fair Practices Officers, was concerned because the current definition does not make specific reference to alcohol and drug dependencies.

A number of presenters thought that by providing a partial list of ailments, disfigurements and infirmities that the legislation is limiting the possibility of adjudicators and courts to recognize new and emerging disabilities. The representative from the NWT Council of Persons with Disabilities stated that the current definition would create misunderstandings because people may think that the list of ailments and disabilities in subsection (a) is exhaustive. She suggested

that the Committee consider using a definition that is similar to the one used in the *Canadian Human Rights Act*.

Others felt that the definition of disability was too broad in scope because it includes "perceived disabilities" and a "predisposition" to disabilities. "Perceived" disabilities created some confusion; for instance, the current definition does not make it clear as to whom is doing the "perceiving".

Also, it was pointed out that the use of the term "handicap" in the definition of disability in Bill 1 is outdated and should be amended accordingly.

The addition of "perceived" disabilities in Bill 1 is a reflection of the current case law on disabilities and its availability in other jurisdictions. Both Ontario and Nova Scotia incorporate perceived disabilities into their human rights legislation. Ontario's *Human Rights Code* includes disabilities that a person is "believed to have or have had". Nova Scotia's *Human Rights Act* applies to "actual or perceived" disabilities.

Recent decisions from the Supreme Court of Canada have affirmed the role of "perceived" disabilities in the analysis of what constitutes a disability. In *Quebec (Commission des Driots de la personne et es droits de la jeunesse) v. Montreal (City)* (hereinafter referred to as *Mercier*) (2000) the Supreme Court of Canada stated that the courts should adopt a multi-dimensional approach to interpreting human rights legislation. This requires courts to analyze disabilities from both an objective and subjective perspective. According to the court in *Mercier* discrimination on the basis of a perceived disability, whether there is an actual disability of not, will be considered unlawful.

The current definition of disability in Bill 1 reflects the principles articulated by the court in *Mercier*. With respect to the inclusion of "alcohol and drug dependency", the Committee is of the view that the case law indicates that the current definition will be interpreted in a manner that includes addictions to drugs and alcohol.

The Committee believes that changes are required to address some of the concerns raised at the public hearings. The Committee wanted it made clear that the list of examples provided in subsection (a) is not exhaustive, and is there to provide examples of the types of physical disabilities contemplated by the legislation.

The Committee proposed that the definition of disability be amended to clarify the meaning and scope of "perceived" and/or "predisposition to" disabilities and to make clearer that subsection (a) is not an exhaustive definition of the physical disabilities covered by the *Act*.

The Bill was amended to incorporate these suggestions. The reference to "handicap" has also been removed from the *Act*.

Analogous Grounds

The Committee considered whether clause 5(1) of the *Act* should be amended to include “analogous grounds” of discrimination. "Analogous grounds" is another way of saying "similar or same" grounds. Adding it to the *Act* empowers adjudicators to deal with complaints of discrimination that are based on grounds that, although not explicitly recognized in the legislation, should be prohibited because they are the same or similar to those currently listed in clause 5(1).

Both the NWT Federation of Labour and Egale Canada support the inclusion of “analogous grounds” into Bill 1. The Committee heard that by incorporating analogous grounds into clause 5 the legislation would provide adjudicators with sufficient flexibility to recognize new grounds of discrimination as they arise. One suggested methodology is to amend clause 5 to incorporate the language from section 15 of the *Canadian Charter of Rights and Freedoms*.

Presenters told the Committee that the significant Supreme Court of Canada jurisprudence in this area would temper the concerns over the uncertainty created by including “analogous grounds” in the *Act*.

The Committee raised this issue with the Minister of Justice. Through our discussions, the Committee has concluded that including “analogous grounds” into the legislation is not appropriate at this time. We have concerns over how such a provision would apply, particularly over its impact on the private sector. Unlike Bill 1, the *Charter* applies only to government. Unlike the *Charter,* the NWT human rights legislation will be easier to amend to incorporate new and emerging grounds of discrimination.

Therefore, the Committee determined that an amendment to incorporate “analogous grounds” into Bill 1 is not essential at this time.

Social Condition

The Committee considered whether the definition of social condition could be amended to provide for greater certainty in the application of it as a prohibited ground of discrimination. The purpose of including social condition as a prohibited ground of discrimination is to protect those who suffer discrimination as a result of being a part of a socially or economically disadvantaged group.

The Committee was interested to hear the views of the public about the inclusion of social condition in the list of prohibited grounds of discrimination. The public consistently supported its inclusion in the *Human Rights Act*.

The NWT Council for Disabilities, the National Anti-Poverty Organization, Status of Women Council, Egale Canada and the NWT Federation of Labour were among the presenters who supported the reference to social condition in Bill 1.

Of the presenters in support of "social condition" being part of the *Act*, a few of them are concerned that the current definition is unnecessarily narrowed by the requirement that the complainant be part of a "socially identifiable" group. The National Anti-Poverty Organziation is concerned with the possible strict interpretation that this ground may receive from the courts, citing Quebec case law as an example of this narrow approach.

Other presenters are concerned that the current definition is ambiguous. One presenter was opposed to including "social condition" in the prohibited grounds because it creates too much uncertainty and is difficult to apply in practice. This presenter requested an amendment to refer to "net source of income" or "poverty" rather than using social condition.

One presenter requested that the reference to "illiteracy" in the definition of social condition be changed to "levels of literacy" to accord with current language used to describe deficiencies in literacy.

The addition of social condition in Bill 1 addresses economic inequality in the Northwest Territories. Its inclusion in Bill 1 places the Northwest Territories ahead of most other jurisdictions in Canada in protecting residents from discrimination.

The Committee agrees that "social condition" is an imprecise term that will, over time, become unambiguous through interpretation by adjudicators and courts. However, the uncertainty created by its inclusion is far outweighed by the potential that the ground of social condition has to advance equality rights in our territory. The Committee believes that other terms, such as "source of income" or "receipt of social assistance", do not sufficiently protect residents from discrimination that is based on the complex socio-economic factors encompassed by the term social condition.

Canadian citizens sometimes face discrimination on the basis of their socio-economic status in the delivery of services, rental accommodations and employment. By including social condition as a prohibited ground, the Northwest Territories is able to provide assistance to those suffering discrimination because of their membership in a disadvantaged group. For instance, a single parent with a low income and several children may be denied access to accommodations because of his or her status as a low-income single parent. Our legislation would provide a remedy to this person, if the other party could not show that he had a *bona fide* justification for the discrimination.

Although Quebec is the only jurisdiction in Canada to include social condition in its legislation, several jurisdictions in Canada do provide protection on the basis of "source of income" or "receipt of social assistance" or "social origin". The federal government, the Northwest Territories, Nunavut and New Brunswick are the only

jurisdictions in Canada not to provide some protection on the basis of socio-economic status.

More recently, however, the Canadian Human Rights Review Panel conducted an extensive review of the issues surrounding the inclusion of social condition as a prohibited ground of discrimination in the *Canadian Human Rights Act*. In the end, the Review Panel recommended that the federal legislation be amended to include "social condition" as a prohibited ground of discrimination. After much consideration, the Standing Committee on Social Programs determined that the current definition should remain, with one minor change.

Recommendation:

The Standing Committee on Social Programs recommends that the reference to "illiteracy" in Clause 1 be changed to "levels of literacy".

Gender Identity

A number of presenters expressed general support for the inclusion of sexual orientation in the *Human Rights Act*. They also supported an amendment to the legislation to include "gender identity" as ground for protection. Although the most detailed submissions on gender identity were from Egale Canada and OutNorth, many other presenters appearing before the Committee expressed their support for extending human rights protections to include "gender identity".

The Committee was told that protection on the basis of "gender identity" is required because of the discrimination faced by transgendered residents of the Northwest Territories. OutNorth described gender identity as "how one perceives one's sex", noting that many people feel that they were born into the wrong body. Gender identity is distinct from one's sexual orientation.

The inclusion of "gender identity" as a prohibited ground of discrimination in our human rights legislation will be a first in Canada. Notably, the Canadian Human Rights Act Review Panel recommended that the federal government amend the *Canadian Human Rights Act* to include gender identity in the list of the prohibited grounds. The Panel cited the serious harm to those affected as a rationale for adding it to the federal legislation and recommended that the federal government recognize in statute what has been already been recognized in case law.

Even though no other jurisdiction provides explicit protection on the basis of gender identity, some provinces do provide similar protection through case law. In particular, tribunal decisions from British Columbia and Quebec have interpreted the ground of "sex" in a manner that provides protection from discrimination based on gender identity. Ontario has created a comprehensive policy that allows for complaints to be made based on gender identity under the ground of "sex".

As noted at the beginning of this report the fundamental purpose of human rights legislation is to prohibit discrimination and to promote equality so that *all* members of our community can participate freely in everyday life. Recognition of gender identity as a prohibited ground of discrimination falls squarely within this purpose.

Although some have argued that this protection is already available through case law, the Committee believes that it is more useful to be explicit about the types of discrimination the *Act* aims to prevent. Furthermore, by including it in the legislation, the Committee believes that we are furthering the educative goals of the *Human Rights Act*.

Recommendation

The Standing Committee on Social Programs recommends an amendment to clause 5(1) and to the preamble to include "gender identity" as a prohibited ground of discrimination.

Place of Residence

The Status of Women Council requested that the legislation be amended to include "place of residence" as a prohibited ground of discrimination.

The Committee received a request to amend the legislation to include "place of residence" as a prohibited ground of discrimination. The Status of Women Council reported that such an addition is necessary to protect people who are denied services because of their residency. It was argued that adding "place of residence" to the legislation would provide protection for residents who move from one community to another and who are denied services or access to programs because of their move.

"Place of residence" is not included as a prohibited ground in any other jurisdiction in Canada. Although Committee Members feel that there are some residents that may face discrimination in services, accommodations and facilities, we are concerned that including "place of residence" in Bill would detrimentally affect the ability of our government to administer regionally based programming.

Therefore, the Committee is unable to recommend the inclusion of "place of residence" as a prohibited ground of discrimination.

Language

The Committee considered whether it is necessary to include "language" as a prohibited ground of discrimination. Notably, the only jurisdiction in Canada to provide explicit protection on the basis of language is Quebec.

The Status of Women Council requested that "language" be added as a prohibited ground of discrimination in clause 5 of the *Act*. Their concern is that discrimination based on language is not sufficiently covered elsewhere in Bill 1.

After due consideration, it is the Committee's view that language rights in government services are adequately protected under the *Official Languages Act*. "Ethnic origin" has been added as a prohibited ground of discrimination, therefore providing some protection where the language discrimination is related to ethnic origin.

Political Belief, Political Association and Family Affiliation

The Committee considered whether the protection against discrimination based on political belief, political association and family affiliation should be extended beyond employment to include discrimination in the provision of services and tenancy and other areas covered by Bill 1.

A number of presenters supported the extension of protection from discrimination based on one's political association or belief to include all areas of everyday life covered by the *Human Rights Act*. The Status of Women Council and others supported an equivalent extension for "family affiliation". The Committee heard that some residents, particularly those in smaller communities, feel that they are being discriminated against because of their family affiliation. They stated that the discrimination they experience is not limited to employment, but also occurs in other areas, such as housing.

The Status of Women pointed out that "political belief" is protected under the *Universal Declaration on Human Rights*. Another presenter pointed out that discrimination because of a person's political belief or association can occur in accommodations, facilities and services as easily as it can in employment. The Committee heard that by not providing protection in these other areas the legislation is condoning discrimination in other contexts, including the provision of services or rental accommodations.

The Committee understands that clause 7(2) was added to Bill 1 during the public consultations held by the Department of Justice. It is unclear why the protections from discrimination based on "political association" and "political belief" were not included in the general prohibitions in clause 5. The protection from discrimination in employment based on "family affiliation" is unique to the Northwest Territories, and has been included to address concerns over difficulties in small close-knit communities.

Seven provinces and the Yukon Territory include protections for political beliefs or associations. However, there have been few complaints made on this ground in those jurisdictions. Currently, it is unclear to the Committee why the protection

against discrimination based on political belief, political association and family affiliation has not been included in the general prohibitions in clause 5.

Recommendation:

The Standing Committee on Social programs recommends that clause 7(2) be deleted and that the grounds of "political belief", "political association" and "family affiliation" be added to clause 5.

Criminal Convictions

The Committee was asked to consider an amendment to clause 5 to prohibit discrimination on the basis of a criminal conviction that is "unrelated to the employment, service or accommodation" or alternatively that the current reference to criminal convictions "for which a pardon has been granted" be deleted.

Currently, clause 5 protects residents from discrimination that is based on a criminal conviction for which a pardon has been granted. A few presenters pointed out that the reference to "for which a pardon is granted" is unduly restrictive because it does not protect people with a criminal record who have not received a pardon.

The Yellowknife Women's Centre told the Committee that most people with criminal convictions are vulnerable to discrimination because they lack the necessary pardon. The representatives from the Yellowknife Women's Centre requested that clause 5 be amended to prevent discrimination based on criminal convictions not relevant to the job. In their view, failing to provide protection for all people whose criminal convictions are not related to employment leads to recriminalization of people who have already served their sentences. Furthermore, they noted that many of our residents (more so than in other jurisdictions) have had some interaction with the criminal justice system, resulting in a higher number of persons with criminal records.

The Status of Women Council advocated for a similar approach asking that the legislation protect from discrimination based on a criminal conviction that "have no bearing on the employment or service being sought".

There was some discussion over the accessibility of the pardon system to residents in the Northwest Territories. It currently takes over two years for the National Parole Board to process pardon applications.

The Committee agrees that many of our residents may have criminal convictions for which a pardon has not been granted. However, we are concerned about the implications of expanding this protection to include criminal convictions "not relevant to the job or service". During our discussions, we were unable to reach a consensus on this issue.

As noted in the report of the Canadian Human Rights Act Review Panel, six jurisdictions do not offer any protection for persons with a criminal conviction or charge. Three jurisdictions prohibit discrimination on the basis of a pardoned conviction, while four others prohibit discrimination based on a conviction where the conviction is not relevant to the job or service.

While the Committee does not believe that this issue requires us to hold off on passing of Bill 1, it is an important issue that warrants further study. Therefore, we make the following recommendation.

Recommendation:

The Standing Committee on Social Programs recommends that the Department of Justice study the implications of expanding the current protections with respect to criminal convictions, and submit a discussion paper to the Legislative Assembly outlining whether or not it is necessary to amend the legislation.

"Hate" Material

The Committee was asked to amend clause 13 to include “hate” materials and to extend the protection from discrimination in publications to electronic mediums. The Committee heard that the publication of hate materials is harmful to members of our communities. The Yellowknife Women’s Centre suggested that the Committee consider adding a provision similar to that provided in the Saskatchewan *Human Rights Code* to prohibit the publication of hate speech. This legislation also extends the prohibition to include electronic and broadcasting media.

Currently, British Columbia, Saskatchewan, Alberta and Canada prohibit the publication of hate materials. The Committee is of the view that it would be useful to extend the prohibitions in clause 14 to include material that is “likely to expose” members of our communities to “hatred or contempt”.

Broadcasting and the Internet are both within the federal jurisdiction. In particular, broadcasting falls under the authority of the Canadian Radio-Television and Telecommunications Commission, which has regulations dealing with the broadcasting of discriminatory material. The federal government is currently studying the regulation of hate speech over the Internet.

Therefore, the Committee passed a motion to amend clause 14 to include the publication of "hate" materials.

Harassment

The Committee considered whether the prohibition against harassment based on the prohibited grounds should be extended to include all forms of harassment.

A number of presenters made recommendations to improve the protections in clause 14. Several presenters requested that clause 14 be amended to remove the requirement that the harassment be related to a prohibited ground of discrimination so that it covers all personal harassment.

The Status of Women Council highlighted the devastating effects of harassment in the workplace. They pointed out that harassment comes in many forms and may not be directly related to a prohibited ground of discrimination. However, harassment not directly related to a prohibited ground listed in clause 5(1) is not covered by the *Act*. They also requested that the *Act* create obligations for employers to provide a workplace free from harassment, including providing education programs.

Other presenters suggested that the *Act* explicitly refer to "sexual harassment" to make it clear that clause 14 prohibits that form of harassment. Another presenter suggested that a definition of sexual harassment be added to clause 5(3) of the *Act*.

The Committee agrees that harassment can be devastating and has detrimental effects on the individual in his or her participation in everyday life. However, no other jurisdiction in Canada has extended harassment provisions to include personal harassment.

Although the Committee does not believe that substantial revisions are required, we do believe that the legislation would benefit from a definition of harassment. Defining harassment provides the public with a clearer idea of what conduct is prohibited.

The Committee passed a motion to amend clause 14 to include the following definition:

> "harass", in respect of an individual or class of individuals, means engage in a course of vexatious comment or conduct that is known or ought reasonably to be known to be unwelcome by the individual or class".

Adverse and Direct Discrimination

A request was made to remove the distinction maintained between direct and adverse discrimination in the *Act*.

Recent Supreme Court of Canada jurisprudence on discrimination indicates that it is no longer necessary to maintain a distinction between adverse and direct discrimination. This means that discrimination analysis is the same regardless of whether the discrimination is direct or adverse in nature. The unified test for discrimination created by the Supreme Court of Canada is reflected in the legislation of Ontario, Manitoba and the Yukon Territory.

Therefore, a motion to amend clause 7(5), 8(3), 10(2), 11(2) and 12(2) to remove the reference to direct and adverse discrimination was passed by the Committee.

Commission Composition

The Committee considered several recommendations on the composition of the Commission, how Commission members should be appointed and what qualifications they should have.

In every community in which the Committee held public hearings, we were advised that membership on the Human Rights Commission must be independent from the government and must be representative of the population of the Northwest Territories. Presenters consistently suggested that the Commission membership be representative of the NWT population; however they differed in their approaches to achieving representation.

Three presenters requested that the Commission should be comprised of 50% women, or that gender parity be a primary goal of the Legislative Assembly. A few other presenters advocated for regional representation on the Commission. The Status of Women and OutNorth both recommended that the members be selected from various sectors representing disadvantaged groups, such as women, persons with disabilities, aboriginal people, and workers.

The NWT Federation of Labour suggested that there be 7 Commission members selected from specific sectors in the NWT. They suggested that the Commission be comprised of 1 labour representative chosen by the Federation of Labour, 1 non-governmental organization representative, one Elder chosen by the Legislative Assembly, 1 Aboriginal member and 1 Legislative Assembly nominee. The remaining two Commission members would be open nominees. They also request that gender parity be a goal in the selection process.

The Committee solicited the views of the presenters on whether nominees would represent their “sector” or not. Most presenters who answered this question stated that Commission members were not there to represent sectoral interests, but to promote human rights in the NWT. However, in OutNorth’s view, representation would be best achieved by appointing persons with experience in being disadvantaged.

Several presenters requested that the term of the Commission members be extended to promote independence from the Legislative Assembly. The Committee was also asked to amend clause 18 to allow the Commission members to choose their own Chairperson.

The Committee also heard that Commission members should have more than an "interest in" and "sensitivity" to human rights as required in clause 16(3). One suggestion is that the Commission members have experience with human rights issues within the diverse cultural composition of the NWT.

The Committee believes that members of the Commission should not be chosen to represent particular sectoral interests. Rather, the Commission members are there to educate the public about human rights, to promote the objects of the *Act* and to provide support for the development of human rights in the NWT. As Richard Nerysoo of Inuvik aptly stated the job of Commission members "…is not about representing individual regions or groups, it is about maintaining and protecting human rights and ensuring that the process has integrity and independence, even from members of the Legislative Assembly."

The Committee agreed that the qualifications of the Commission members should be more clearly stated in the *Human Rights Act*. The Committee has recommended that having "experience in" human rights be added as a qualification in clause 16(3). However, the Committee encourages the Legislative Assembly to take a flexible approach in determining what is relevant "experience".

The Committee does not agree that more Commission members are required. Bill 1 permits the appointment of 3 – 5 Commission members, allowing for regional representation in the appointment process if desired.

The Committee passed a motion to amend the length of Commission members' terms to four years. This will ensure that the terms of the Commission members will exceed that of the Legislative Assembly. Clause 17(2) has been amended to reflect this change.

The Committee also passed a motion to amend clause 16(3) to include a requirement that the members of the Commission have "experience in" human rights. This change has been incorporated into Bill 1.

Clause 18 has been amended to allow the Commission members to choose their own Chairperson. The Committee recommends that the Commission members create policy guidelines with respect to the length of term of the Chair.

Selection Process:

Almost all of the submissions made to the Committee requested that the Human Rights Commission appointment and selection process be transparent to avoid appointments being made based on "politics", rather than

on merit. Several suggestions were made as to how transparency may be achieved.

The Yellowknife Women's Centre recommended that the Legislative Assembly create a hiring committee that would select Commission members. OutNorth suggested that appointments to the Commission be made from various sectors of the Northwest Territories. In their view, the Legislative Assembly should seek nominations from the disadvantaged groups that the *Human Rights Act* aims to protect to create a "pool" of nominees. The Commission members would then be selected from the pool created during the application process. Any subsequent members would be chosen from the same pool. Expressing concerns over the ability of the Legislative Assembly to choose a representative Commission, OutNorth requested significant public participation in the selection process.

The Committee agrees with the public that Commission members should be representative of the population of the Northwest Territories. One possible approach is to create a "screening" committee made up of representatives of the Legislative Assembly and members of the public. This group would be responsible for accepting and screening nominations recommended for appointment to the Human Rights Commission. The Committee believes that public participation in the selection process will enhance public confidence in the Human Rights Commission.

Currently, no other jurisdiction in Canada sets out the selection process in the statute itself. Although all jurisdictions have a similar appointment process as the one included in Bill 1, none set out the mechanisms by which Commission members will be chosen. The rationale for not including a particular selection process in the legislation is to allow the Legislative Assembly to create a flexible selection process to appoint members that meet the needs of the jurisdiction.

In order to ensure public confidence in the Human Rights Commission, transparency should be fostered through public participation in the membership selection process. Therefore:

Recommendation:

The Standing Committee on Social Programs strongly recommends that the Legislative Assembly create an open and transparent selection process for the appointment of Commission Members.

Powers of the Commission

A number of presenters requested that the Committee consider increasing the powers of the Human Rights Commission. One such suggestion was that the legislation should provide the Commission with authority in the regulations to publish guidelines or policy statements on its interpretation of the *Act*. The Committee is of the view that the Commission already has the authority to create guidelines and policies.

Another presenter suggested that the Commission's regulation making authority be extended to include the ability to set standards for the promotion of human rights in the various settings. Presenters also requested that the Commission be granted the power to monitor the implementation of the *Act* and to make suggestions for the amendment of the *Human Rights Act*.

Other key suggestions focused on the education role of the Human Rights Commission. Several presenters suggested that the Commission have the authority to engage in research for the promotion of human rights in the NWT. Presenters also requested that orientation programs to educate employers, non-governmental organizations and the public about the new legislation be added to the Human Rights Commissions mandate.

Egale Canada made a useful suggestion to extend the Commission's powers in clause 22 to enter into agreements with community organizations to provide outreach, research and delivery of programs. When the Committee inquired whether the different community organizations appearing before it would consider delivering education programs, we were told that the community groups would be interested in doing it if provided with adequate funding.

It was also suggested that Bill 1 be amended to put all the decision-making powers into the hands of the Commission, rather than that of the Director. The NWT Federation of Labour also suggested that the Commission, rather than the Legislative Assembly, appoint the Director.

It is evident that the legislation envisages the Human Rights Commission as being responsible for promoting the objects of the *Human Rights Act* through education, hiring of staff, creating policy guidelines, and acting as an advisor on human rights issues. The decision to provide the Director with the authority to make decisions on complaints is designed to promote efficiency in

the complaints process. Because the Director is in a position to make decisions on complaints initiated by the Commission, the Committee believes that it is necessary that the Legislative Assembly appoint the Director.

The Committee agrees that allowing the Commission to engage in research on human rights furthers the goals of the *Human Rights Act*. The Committee also believes that expanding the powers of the Commission in clause 22(2) to contract with community groups to deliver education programs designed to eliminate discrimination or educate on human rights issues is warranted. Allowing community organizations to participate in the delivery of education programs potentially increases the number of people educated about human rights. It also allows the Commission to design flexible education strategies to meet regional needs.

The Committee subsequently passed a motion to amend clause 20 to allow for the Human Rights Commission to engage in research that it considers necessary to promote human rights and eliminate discriminatory practices.

An additional motion was passed to amend clause 22(2) to allow the Human Rights Commission to contract with community organizations to provide for education programs designed to promote human rights.

Complaint Process

The Committee considered whether changes could be made to improve the complaint process created in Bill 1.

Presenters made several recommendations on how the complaint process could be improved or made more accessible to residents of the NWT. The most significant recommendation was to create an arms-length independent advocate to assist parties through the complaint process. The arms-length advocate is dealt with later in this report.

The Fair Practices Officer told us that the proposed process is too complex. She cited the numerous difficulties experienced by southern human rights bodies, and recommended that the government consider using a format similar to the one currently used in the *Fair Practices Act*. Alternatively, she suggested that the Committee consider using a "direct access" type model. The "direct access model" is one that provides the parties with access to the ultimate decision-makers in their case because all complaints are made to the adjudication body.

Another suggested change was that the legislation should include timelines within which the Director must make his or her initial review and inquiry into a complaint under clause 30(2) of the *Act*. Presenters also requested an

amendment to clause 30 to reflect a commitment to protect the confidentiality of the complainant.

Some presenters thought that the Director should have greater authority in the settlement provisions of the *Act*. Clause 33 encourages parties to settle the complaint before adjudication. It was suggested that the Director should have the power to "veto" settlements that do not promote the objectives of the *Act* or that appear unfair. Another suggestion was that Bill 1 should incorporate clause 7.4 of the *Fair Practices Act*, which allows the Fair Practices Officer to continue a complaint even if the parties have settled where the Fair Practices Officer considers it in the best interest of the complainant. We were told that this right to continue a complaint would likely be used when a settlement appears to be unfair or runs contrary to goals of human rights legislation.

The Committee is aware that the current structure and process required under the *Fair Practices Act* runs contrary to some basic principles of natural justice. The *Fair Practices Act* creates an office of the "Fair Practices Officer", with the Fair Practices Officer bearing multiple and often conflicting responsibilities. The Fair Practices Officer is responsible for accepting complaints; facilitating settlements; investigating complaints; and where necessary, adjudicating complaints. This overlapping responsibility raises significant concerns regarding administrative fairness and independence in the decision-making process. For instance, having the same person investigate a claim and deciding that a hearing is necessary, then also determining whether there has been a violation of the *Act* can appear to be unfair.

The Committee is aware that other jurisdictions have considered modifying their human rights regimes to reduce costs and increase accessibility. With the exception of British Columbia, the Committee is not aware of any jurisdiction in Canada that is shifting towards a "direct access" model. Presently, most human rights regimes in Canada have three primary functions: education, investigation and adjudication. The adjudication function is separate from the investigation and education roles of the Commission to promote compliance with the principles of natural justice.

In 2000, the Canadian Human Rights Act Review Panel suggested an amendment to the *Canadian Human Rights Act* to remove the investigation role from the Canadian Human Rights Commission and shift it to the Tribunal to create a "direct access" model. The Panel was of the view that the Tribunal should determine whether a complaint warranted a hearing or not. However, when making this recommendation the Review Panel explicitly recognized that a direct access model would require significant additional resources and result in greater complexity.

The model that is proposed in Bill 1 does provide complainants with some "direct access" to the adjudication panel. Clause 45 allows complainants to appeal directly to the adjudication panel for a review of the Director's decision to dismiss a complaint.

The Committee is also sensitive to the concerns about unfair settlements, however in the interest of promoting mediation and encouraging parties to agree to the settlement process, the Committee declines to recommend changes to clause 33.

The Committee believes that our residents would benefit from a timely complaint process. Of particular concern to the Committee is the delay in the processing of complaints experienced in other jurisdictions in Canada and at the federal level. The Committee supports the creation of timelines on the Director's initial review and inquiry into a complaint, but believes that such timelines are better set by the Commission itself. Once created, the Human Rights Commission will be in the best position to determine what is a reasonable length of time to process complaints.

Finally, the Committee also believes that the Human Rights Commission and the Director will be in the best position to create policies and guidelines to protect the privacy interests of all parties to a complaint. Currently, only orders made by an adjudicator will be made public through the public registry created in clause 27(1)(b).

The Committee passed motions to amend clause 30(2) requiring the Director to inquire and review a complaint as soon as possible or within the time prescribed, and to grant the Commission the power to make regulations to create the timelines referred to in clause 30(2).

Accessibility

Presenters were greatly concerned about the accessibility of the complaint process. Adequate funding of the Human Rights Commission is seen as one of the primary ways to address issues of accessibility. Many presenters encouraged the Committee to make recommendations that the Human Rights Commission receive adequate funding to carry out its education and investigation functions.

In addition to requests for adequate funding, presenters consistently requested that the government create mechanisms to promote and enhance access to the protections provided in the *Human Rights Act*. The presenters identified three primary ways to increase access to the complaint process. The first method requires the legislature to create an arms-length advocate position to assist parties with their complaints. The second suggested method is to provide legal funding, including the funding of appeals, to parties of a complaint. The third method is to empower the Human Rights Commission to pay for travel costs of complainants.

Arms length Independent Advocate:

Almost all presenters that came before the Committee asked that the legislature to create an arms-length independent advocate position to assist parties through the complaint process. The Committee heard that the advocate would assist the parties to fill out the required forms, to gather the necessary evidence and support, and to prepare his or her case. Independence from the Human Rights Commission is

considered a key aspect of this position. Many suggested creating a position similar to that of the "Workers' Advisor" of the Workers' Compensation Board.

Legal Counsel:

A related proposal suggested to increase accessibility to the protections in the *Act* is the provision of legal services, particularly to complainants. A number of presenters requested that the Human Rights Commission provide both an independent advocate and legal counsel for complainants. Presenters viewed independent legal advice as a key component in addressing issues of access. They argued that, without assistance, the complexity of the complaint process would discourage people from coming forward to make a complaint.

Several presenters thought that legal counsel should be provided at every stage of the process. Others thought that it should be provided at the adjudication and appeal stages of the process. For instance, the Committee heard several recommendations that the Commission should pay for appeals made to the Supreme Court of the Northwest Territories.

Travel Expenses:

Many presenters recommended that the Human Rights Commissions absorb the travel costs of complainants. The Committee heard that paying travel costs of complainants is necessary to ensure that the human rights complaints process is accessible to residents of smaller communities. Supporters of this recommendation felt that people would be less likely to pursue complaints because of a lack of resources. In their view, travel funding would greatly promote access to the adjudication process.

The Committee agrees that having an accessible human rights regime is fundamental to the promotion and protection of human rights in the NWT. To that end, we suggest that the Legislative Assembly adopt measures that best promote access to the remedies provided under the *Human Rights Act*.

It is difficult to determine what kinds of resources the Commission will require to carry out its functions. To avoid overburdening the Commission at this time, the Committee is seeking to make recommendations that promote the objects of the *Act*, while recognizing the enormity of the task before the Commission.

The Committee encourages the Legislative Assembly to provide adequate resources to the Human Rights Commission to ensure that it can carry out its functions. The Human Rights Commission will play a significant role in educating the public about human rights issues, and having sufficient resources is essential to enable the Commission to fulfil this role. We wish to avoid the problems caused by inadequate funding experienced by human rights bodies elsewhere in Canada.

In order to promote accessibility, the Committee is recommending that clause 22(2) be amended to allow the Commission to appoint employees to advocate for or assist a party to pursue their remedies under the *Act*. This enables the Human Rights Commission to respond to the needs of a party as required.

The Committee questioned several presenters about the possibility of providing legal aid to parties to a complaint as opposed to providing legal counsel in every case. There was general support for this suggestion. For that reason, we encourage the Government of the Northwest Territories to consider extending legal aid coverage to include human rights complaints.

The Committee does not believe that an amendment to cover the costs of travel is necessary at this time.

Recommendations:

The Standing Committee on Social Programs recommends that clause 22(2) be amended to provide the Human Rights Commission with the authority to appoint an advocate to assist a party to a complaint on an as-needed basis.

The Standing Committee on Social Programs recommends that the government consider the possibility of amending the *Legal Services Act* to allow for the funding of human rights complaints for parties who qualify under the legal aid plan.

Adjudication

The Committee considered whether any changes are necessary to the appointment process and the powers of the adjudication panel.

The Committee was asked to consider expanding the remedial powers of the adjudicator under clause 62(3) to allow for an adjudicator to order reinstatement, payment of disbursements and costs. Adding exemplary damages to address situations where the respondent has acted "contemptuously of the complainant's rights" was also suggested.

Other presenters were concerned that only lawyers could be adjudicators. They requested that the requirement that an adjudicator be a member of a law society be removed from clause 48(3)(a).

Several presenters expressed concern over the possibility that complainants may be ordered to pay costs under clause 63. They are concerned that some complainants will be unduly penalized because they lack the resources to advance their claims. They suggested that cost awards only be made available against the respondent.

The Committee agrees that the *Act* would benefit from providing the adjudication panel with additional powers to order things like reinstatement and exemplary damages. Exemplary damages are available in Canada, Saskatchewan, New Brunswick, Yukon and Manitoba. Ontario allows for damages for "mental anguish". The Committee believes that it would be useful to place a cap of $10,000 on the amount of exemplary damages available under the *Act*.

The Committee heard about the complexity of the adjudication process. In light of this, Committee also believes that it would be useful to provide the Chair of the adjudication panel with sufficient flexibility to appoint more than one adjudicator to sit on more complex matters. The Committee believes that almost all complaints should be heard by one adjudicator, however, we do foresee some situations where it would be necessary to appoint more than one panel member to sit on a case.

With respect to the qualifications of the adjudication panel members, it is evident that the legislation provides the Legislation Assembly with the option of choosing non-lawyers to sit as adjudicators. Clauses 48(3)(a) and (b) operate to provide the Legislative Assembly with a choice between lawyers with 5 years experience or non-lawyers with 5 years experience on an administrative tribunal or court.

The Committee does not agree that cost awards should be awarded against the respondent only. The Committee is satisfied that the current provision sets a sufficiently high standard (frivolous and vexatious) that will protect complainants who create delay because of lack of resources from being penalized. The Committee also believes that costs should be available in other circumstances, such as in cases of particularly egregious breaches of the *Act* or where a respondent has repeatedly engaged in discriminatory behaviour. Enabling adjudicators in the NWT to award costs is also consistent with legislation in other jurisdictions in Canada. Currently, Ontario, Manitoba, Alberta, Quebec, Prince Edward Island and Newfoundland all grant the tribunal or adjudication panel with broad discretion to award costs in a complaint.

The Committee passed a motion to amend clause 62(3) to allow the adjudicator to order reinstatement of an employee.

Recommendations:

The Standing Committee on Social Programs recommends that clause 51 be amended to allow the Chair to appoint more than one adjudicator, where necessary.

The Standing Committee on Social Programs recommends that clause 62(3) be amended to allow the adjudicator to award exemplary damages to a maximum of $10,000.

The Standing Committee on Social Programs recommends that clause 63(3) be amended to allow the adjudicator to award costs in extraordinary circumstances.

Pay Equity

The Committee considered whether pay equity should be included in the *Human Rights Act* or whether it should be the subject of a separate piece of legislation. Currently, the *Fair Practices Act* provides for equal pay for the same work between men and women in the private sector. Bill 1 proposes to extend this protection to include all grounds of prohibited discrimination, so that it is not limited to differences in pay based on gender.

As noted previously, the NWT has not been granted an exemption from application of the federal human rights legislation. Consequently, the pay equity provisions under section 11 of the *Canadian Human Rights Act* govern employees of the Government of the Northwest Territories.

Several presenters were unsatisfied with the “equal pay” provisions in Bill 1. They argued that the *Human Rights Act* should provide for pay equity. Pay equity refers to the application of the principle of "equal pay for work of equal value". Alternatively, Bill 1 prohibits differences in pay based on any of the prohibited grounds of discrimination for work that is the same or substantially the same.

The *Fair Practices Act* and the proposed *Human Rights Act* are premised on the principle of "equal pay for same or substantially similar work". The application of this principle requires that where a male employee and a female employee perform the same or substantially similar work, they are to be paid the same wages. Whether work is the same or substantially similar is determined by considering the skills, responsibilities, effort required for each job and the working conditions under which the work is performed.

Pay equity refers to the application of the principle of "equal pay for work of equal value". This principle is reflected in a number of other statutes, including the *Canadian Human Rights Act*. Equal pay for work of equal value acknowledges that women and men are often segregated into different occupations in the workforce,

and are paid different wages based on that segregation. This means that there are jobs in the labour market that are predominantly performed by women, and others that are predominantly performed by men. Studies show that jobs predominantly performed by women are paid less than jobs predominantly held by men, resulting in a "wage gap".

It is believed that this gap in men and women's wages is based, at least in part, on the undervaluing of "women's work". Although there are a number of factors contributing to the wage gap between men and women, pay equity assumes that the appropriate way to address these inequalities is to address the inequality in the *valuation* of work performed by women. Thus, the focus of this approach is the *value* of the work performed.

Determining whether female employees are being paid the same as their male counterparts for work of equal value is a complex process. It requires employers to evaluate female-dominated job classes and male-dominated job classes and to assign a value to each job. The value of a job is determined through examination of the skill, effort, level of responsibility and conditions of the work. Once the jobs are assigned a point value, the female-dominated jobs are compared to male-dominated jobs of the same or similar point value. Wage discrepancies between the two groups are addressed through wage adjustments; however, only the female dominated job class is entitled to a wage adjustment.

The Status of Women Council argued that systemic gender discrimination in pay would not end unless the government adopts proactive pay equity in the NWT. They asked the Committee to extend the pay equity provisions beyond gender to include all the prohibited grounds of discrimination. We were told that extending the protections beyond gender would facilitate the recognition of other valuable skills, such as traditional knowledge.

The Committee was asked to amend the legislation to implement proactive pay equity in both the private and public sectors. Presenters suggested that the Committee adopt the approach taken in Ontario. This legislation requires employers with 10 or more employees to implement pay equity in their workplaces. Alternatively, one presenter, a small business owner, cautioned the Committee from implementing pay equity in the private sector because of the significant costs associated with evaluating and comparing jobs. In his view, pay equity places too great of a burden on small employers.

The Government of the Northwest Territories has informed the Committee that it is working on amendments to the *Public Service Act* that would implement pay equity in the public sector. The Government is of the opinion that because pay equity is a complex and a highly technical process, it is necessary to enact it in separate legislation.

Pay equity schemes can be proactive or complaints-based. Of the jurisdictions in Canada that have implemented pay equity, most do so by requiring the affected parties to negotiate pay equity in the workplace. Only Ontario and Quebec have implemented proactive pay equity schemes requiring employers to meet statutory standards of pay equity. The *Canadian Human Rights Act*, the *Fair Practices Act* and Bill 1, *Human Rights Act* all rely on complaints-based systems. This means that while discrepancies in pay on the basis of gender are prohibited, employers will not be held accountable until a complaint is laid.

Most jurisdictions that provide for pay equity do so in separate legislation; therefore, many human rights statutes do not include these initiatives. Ontario, Quebec, Manitoba, New Brunswick, Prince Edward Island, and Nova Scotia have all enacted separate pay equity legislation. The federal government and the Yukon are the only jurisdictions to have pay equity in their human rights legislation.

Of the six jurisdictions that have enacted separate pay equity legislation, all but two (Ontario and Quebec) apply to the public sector only. As a result, PEI, Nova Scotia, New Brunswick, Saskatchewan and Manitoba have all enacted separate "*equal pay for same/similar work*" provisions in their human rights legislation or employment standards legislation. These provisions are similar to what is provided in Bill 1.

Saskatchewan has implemented the *Equal Pay for Work of Equal Value and Pay Equity Policy Framework* within the public sector. Newfoundland has implemented pay equity in the public sector through collective bargaining. Of the jurisdictions without any form of pay equity, all include "equal pay for same/similar work" in their human rights or employment standards legislation. Again, this is similar to the standard provided in our legislation.

The Committee is concerned about applying a “made-in-Ontario” model of pay equity to the NWT. Accordingly, the Committee inquired with presenters whether they thought it was appropriate to apply the Ontario model to the NWT given the significant differences between the two jurisdictions. The Committee also pointed to the problems that both Ontario and Quebec were facing with non-compliance, particularly with smaller establishments.

The responses received by the Committee did not address the concerns raised. Many presenters were unable to offer any suggested alternatives to the Committee on these issues. Furthermore, of the presenters that answered this question, none were able to supply the Committee with information that would support the inclusion of pay equity in the *Human Rights Act* as opposed to including it in separate legislation.

The Committee is satisfied with the contention of the Government of the Northwest Territories that pay equity should not be included in the *Human Rights Act* at this time. We have assurances from the Government of the Northwest Territories that pay equity legislation for the public sector is forthcoming. We trust that this will be

sufficient to warrant an exemption under section 66 of the *Canadian Human Rights Act*.

Acknowledgements

The Standing Committee on Social Programs gratefully acknowledges the assistance of the Minister of Justice and the Department of Justice officials in the review process.

The Standing Committee on Social Programs would like to thank all the individuals and organizations who made their views known to the Committee at public hearings or through written submissions. The quality and detail of the presentations and written submissions demonstrate the effort and time dedicated to their preparation. The public input received by the Committee greatly enriched the review process, and has resulted in changes to the legislation.

The Standing Committee on Social Programs gratefully acknowledges the exemplary service of its Clerk, Researcher and Law Clerk throughout the course of our review.