

YUKON HUMAN RIGHTS PANEL OF ADJUDICATORS

2015-16 ANNUAL REPORT

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2015-2016 ANNUAL REPORT (April 1, 2015 to March 31, 2016)

LEGISLATIVE AUTHORITY

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

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

BOARD OF ADJUDICATION DECISIONS

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

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

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

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

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

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

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

THE PANEL OF ADJUDICATORS

The Panel's contact information is as follows:

Mailing Address: Yukon Human Rights Panel of Adjudicators
P.O. Box 33093, Ogilvie P.O.
Whitehorse, Yukon Y1A 5Y5

Office: 409 Black Street
Whitehorse, Y.T.
(867) 668-5767
registrar@yhrpa.ca

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

Membership

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

Chief Adjudicator:	Darcy M. Tkachuk (resigned as Chief Adjudicator) Penelope Gawn (appointed May 26, 2015)
Deputy Chief Adjudicator:	Genevieve Chabot* Carmen Gustafson (appointed December 11, 2015)
Panel Members:	Michelle Mbuto *** Maxwell Rispin** Raymond Kokiw Karen Keenan Jean-Sébastien Blais Michael Riseborough Michael Dougherty Darcy M. Tkachuk ****

* Member resigned during reporting period

** Member's term expired during reporting period

*** Members newly appointed during reporting period

**** Continued as member after resigning as Chief Adjudicator

Board Support

Panel support during this reporting period was provided by:

Registrar:	Colleen Henry Whitehorse, Yukon
Legal Counsel:	Nitya Iyer Lovett Westmacott Vancouver, British Columbia

FINANCIAL ARRANGEMENTS

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

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

In March of 2016, an office space suitable for the Panel's administrative needs was identified and a request put forward to the Finance Branch to secure that space.

THE YEAR IN REVIEW

Referrals at a glance (April 1, 2015 to March 31, 2016)

Complaints to the Panel of Adjudicators	
Number of Referrals	11
Number Carried Over from Previous Year(s)	6
Number of Dispositions (settlements/withdrawals)	2
Number of Decisions Released	6
Number of Case Management Conferences Held	13
Number of Board Hearings	0

Grounds for Complaints included:

- Sexual orientation in the provision of a service;
- Ancestry, including colour, race and physical or mental disability;
- Criminal charges and criminal record;
- Religion or creed, or religious belief, religious association or religious activity, religion in provision of a service;
- Marital or family status in connection to offering or providing services to the public and in connection with any aspect of employment;
- Physical or mental disability and physical disability and failure to accommodate;
- Systemic discrimination;
- Harassment in connection to offering or providing services to the public;
- Actual or presumed association with other individuals or groups whose identity or membership is determined by any of the grounds listed in sections 7(a) to 7(l) of the Yukon Human Rights Act.

Decisions of the Board of Adjudication are public documents. To request a copy of a decision, please contact the Panel's Registrar. The decisions are also available online at <http://www.yhrc.yk.ca/board-adjudication>.

Training

A seminar on Human Rights and the Workplace hosted by the Yukon Law Society on October 15, 2015 was attended by the Chief Adjudicator.

A general meeting of the Panel of Adjudicators was held October 23, 2015 which included a training session provided by Panel counsel Nitya Iyer on Tribunal Independence and Impartiality.

Rules of Procedure

A review of the Panel's *Rules of Procedure* and its Forms was commenced to improve and simplify the operations of the Panel and to expand the use of case management pre-hearing meetings to help with the resolution of complaints and with preparing them for hearing.