

Chapter 12

HUMAN RIGHTS ACT
(Assented to November 5, 2003)

Chapter 12

HUMAN RIGHTS ACT

TABLE OF CONTENTS

PART 1

INTERPRETATION AND APPLICATION

Interpretation	1
Purpose	2
Land Claims Agreement	3
Aboriginal Rights	4
Paramountcy	5 (1)
Exception	(2)
Crown bound	6

PART 2

PROHIBITIONS

Prohibited Grounds of Discrimination and Intent

Prohibited grounds of discrimination	7 (1)
Affirmative action programs	(2)
Previously approved programs	(3)
Pregnancy and adoption	(4)
Multiple grounds, association	(5)
Harassment	(6)
Intent	8

Employment

Employment	9 (1)
Retirement, pension and insurance plans	(2)
Genuine retirement or pension plan	(3)
Justified occupational requirement	(4)
Duty to accommodate	(5)
Exception	(6)

Personal services in private residence	(7)
Employment applications and advertisements	10 (1)
Justified occupational requirement	(2)
Duty to accommodate	(3)

Organization and Associations

Organizations and associations	11 (1)
Duty to accommodate	(2)

Goods, Services, Facilities or Contracts

Goods, services, facilities or contracts	12 (1)
Duty to accommodate	(2)
Restrictions for insurance contracts	(3)

Tenancy

Discrimination regarding tenancy	13 (1)
Exceptions	(2)
Duty to accommodate	(3)

Publication

Notices, signs, symbols, emblems and other representations	14 (1)
Exceptions	(2)

Discharge, Suspension and Intimidation

Discharge, suspension and intimidation	15
----------------------------------------	----

PART 3

HUMAN RIGHTS TRIBUNAL

Establishment and Composition

Tribunal established	16 (1)
Qualifications	(2)
Terms of office	(3)
Service for unexpired term	(4)
Reappointment	(5)
Termination for cause	(6)
Continuation after expiry of term	(7)
Remuneration	(8)
Chairs, vice-chairs	17 (1)

Vice-chair	(2)
Employees	(3)
Consultants and specialists	(4)
Application	(5)
Rules	18 (1)
Application of <i>Statutory Instruments Act</i>	(2)
Panels	19 (1)
Chair of panel	(2)
Reassignment of panel	(3)
Restriction	(4)
Annual report	20 (1)
Laying report before Legislative Assembly	(2)

PART 4

NOTIFICATIONS

General

Notification	21
Filing by another person	22 (1)
Tribunal shall refuse filing	(2)
Combining of notifications	(3)
Time limit for filing a notification	23 (1)
Continuing contravention	(2)
Filing after time expired	(3)
Other Act	24 (1)
Consideration	(2)
Dismissal of notification	(3)
Settlement	25
Filing of settlement agreement	26 (1)
Enforcement of settlement agreement	(2)
Non-waiver	(3)
Waiver void	(4)
Tribunal to hold hearing	27 (1)
Pre-hearing	(2)
Notice of decision not to hold hearing	(3)
Parties to notification	28 (1)
Adding parties	(2)

PART 5

HEARING

Hearing	29
Evidence	30 (1)

Limitation	(2)
Pattern of practice	(3)
Absence of party	31
Public hearing	32
Powers of Tribunal	33
Decision of Tribunal	34 (1)
Dismissal order	(2)
Order	(3)
Findings against more than one party	(4)
Tribunal seized	(5)
Filing order of Tribunal	(6)
Enforcement of order	(7)
False claim	35
Order for costs	36
Availability of decision	37
Appeal	38 (1)
Grounds for appeal	(2)
Order	(3)

PART 6

GENERAL

Special Remedies

Application for court order	39 (1)
Where order may be issued	(2)
Injunction	40

Miscellaneous

Liability	41
Evidence not compellable in other proceedings	42 (1)
Evidence not compellable in proceedings under this Act	(2)
Defects and technical irregularities	43
Deemed acts of certain persons	44

Offence and Fines

Offence and fines	45
Consent to prosecute	46

Regulations

Regulations	47
-------------	----

Transitional

Definitions	48 (1)
Continuation of proceedings under this Act	(2)
Continuation of proceedings under former Act	(3)

CONSEQUENTIAL AMENDMENTS

<i>Fair Practices Act</i>	49 (1)
<i>Legal Services Act</i>	(2)

REPEAL

Repeal	50
--------	----

COMING INTO FORCE

Coming into force	51 (1)
Coming into force, certain sections	(2)

Chapter 12

HUMAN RIGHTS ACT

Whereas it is just and consistent with Canada's international undertakings to recognize and make special provision for Inuit culture and values that underlie the Inuit way of life;

Whereas recognition of the inherent dignity and the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world and is in accord with the Universal Declaration of Human Rights as proclaimed by the United Nations;

And whereas human rights must be protected by the rule of law;

The Commissioner of Nunavut, by and with the advice and consent of the Legislative Assembly, enacts as follows:

PART 1

INTERPRETATION AND APPLICATION

Interpretation

1. In this Act,

"Clerk" means the Clerk of the Nunavut Court of Justice, appointed under section 61 of the *Judicature Act*; (*greffier*)

"court" means the Nunavut Court of Justice established by subsection 31(1) of the *Nunavut Act*; (*Cour*)

"disability" means any previous or existing or perceived mental or physical disability and includes disfigurement and previous or existing dependency on alcohol or a drug; (*déficience*)

"discrimination" includes the conduct described in subsections 7(6), 9(1), 10(1), 11(1), 12(1), 13(1) and sections 14 and 15; (*discrimination*)

"employment" includes work that is paid or unpaid and "employ" has a corresponding meaning; (*emploi, employeur*)

"family status" means the status of being related to another person by blood, marriage or adoption; (*état familial*)

"harass" means to engage in a course of vexatious comment or conduct that is known or ought reasonably to be known to be unwelcome; (*harceler*)

"individual" means a human being; (*particulier*)

"Minister" means the Minister of the Government of Nunavut to whom the administration of this Act is assigned from time to time; (*ministre*)

"person", in addition to its meaning in the *Interpretation Act*, includes an individual, a partnership and an incorporated or unincorporated association, society or organization; (*personne*)

"personal services" means work of a domestic, custodial, companionship, personal care, medical care, child care, or educational nature, or other work within a residence that involves frequent contact or communication with persons who live in the residence; (*services personnels*)

"regulations" means the regulations made under this Act unless the context requires otherwise; (*règlement*)

"Tribunal" means the Human Rights Tribunal established under subsection 16 (1); (*Tribunal*)

"undue hardship" means excessive hardship as determined by evaluating the adverse consequences of a provision in this Act that requires a duty to accommodate, by reference to such factors as

- (a) health and safety;
- (b) disruption to the public;
- (c) effect on contractual obligations;
- (d) cost; and
- (e) business efficiency. (*contrainte excessive*)

Purpose

2. The purposes of this Act are to acknowledge within the framework of Inuit Qaujimajatuqangit that the Government, all public agencies, boards and commissions and all persons in Nunavut have the responsibility to guarantee that every individual in Nunavut is afforded an equal opportunity to enjoy a full and productive life and that failure to provide equality of opportunity threatens the development and well-being of all persons in the community.

Land Claims Agreement

3. Nothing in this Act shall be construed so as to abrogate or derogate from the protections provided for in the Nunavut Land Claims Agreement.

Aboriginal Rights

4. For greater certainty, nothing in this Act shall be construed so as to abrogate or derogate from any existing aboriginal or treaty rights of the aboriginal peoples of Canada under section 35 of the *Constitution Act, 1982*.

Paramountcy

5. (1) This Act supersedes every other Act or regulation, whether enacted or made before or after this Act, unless it is expressly declared by the other Act that it shall supersede this Act.

Exception

- (2) This Act does not apply to
- (a) structures which at the commencement of this Act were existing and complied with the applicable building requirements under any Act; or
 - (b) a provision under another Act that is prescribed under this Act as being a provision to which this Act does not apply.

Government bound

6. This Act binds the Government of Nunavut.

PART 2

PROHIBITIONS

Prohibited Grounds of Discrimination and Intent

Prohibited grounds of discrimination

7. (1) For the purposes of this Act, the prohibited grounds of discrimination are race, colour, ancestry, ethnic origin, citizenship, place of origin, creed, religion, age, disability, sex, sexual orientation, marital status, family status, pregnancy, lawful source of income and a conviction for which a pardon has been granted.

Affirmative action programs

(2) Nothing in this Act precludes any law, program or activity that has as its objective the amelioration of conditions of disadvantaged individuals or groups, including those who are disadvantaged because of any characteristic referred to in subsection (1), and that achieves or is likely to achieve that objective.

Previously approved programs

(3) Any program designed to promote the welfare of any class of individuals that was approved under section 9 of the *Fair Practices Act*, R.S.N.W.T. 1988, c. F-2, is deemed, for the purposes of subsection (1), to be a program that has as its objective the amelioration of conditions of disadvantaged individuals or groups and that achieves or is likely to achieve that objective.

Pregnancy and adoption

(4) Whenever this Act protects an individual from discrimination on the basis of sex, the protection includes, without limitation,

- (a) the protection of a female from discrimination on the basis that she may become pregnant or may adopt a child; and

- (b) the protection of a male from discrimination on the basis that he may adopt a child.

Multiple grounds, association

(5) Whenever this Act protects an individual from discrimination on the basis of a prohibited ground of discrimination, it also protects the individual from discrimination on the basis of

- (a) two or more prohibited grounds of discrimination or the effect of a combination of prohibited grounds; and
- (b) the individual's association or relationship, whether actual or perceived, with an individual or class of individuals identified by a prohibited ground of discrimination.

Harassment

(6) No person shall, on the basis of a prohibited ground of discrimination, harass any individual or class of individuals

- (a) in the provision of goods, services, facilities or contracts;
- (b) in the provision of commercial premises or residential accommodation;
- (c) in matters related to employment; or
- (d) in matters related to membership in an employees' organization, trade union, trade association, occupational or professional association or society, employers' organization or co-operative association or organization.

Intent

8. Discrimination on the basis of one or more prohibited grounds is a contravention of this Act whether or not there is an intention to discriminate.

Employment

Employment

- 9.** (1) No person shall, on the basis of a prohibited ground of discrimination,
- (a) refuse to employ or refuse to continue to employ an individual or a class of individuals; or
 - (b) discriminate against any individual or class of individuals in regard to employment or any term or condition of employment, whether the term or condition was prior to or is subsequent to the employment.

Retirement, pension and insurance plans

(2) In respect of the age and marital status of an individual or a class of individuals, subsection (1) does not affect the operation of any genuine retirement or pension plan or the terms and conditions of any genuine group or employee insurance plan.

Genuine retirement or pension plan

(3) For the purposes of subsection (2), a genuine retirement or pension plan is one that is established in accordance with an Act of Canada or Nunavut.

Justified occupational requirement

(4) Subsection (1) does not apply with respect to a practice based on a justified occupational requirement.

Duty to accommodate

(5) When a practice referred to in subsection (1) results in discrimination, in order for it to be considered to be based on a justified occupational requirement, it must be established that accommodation of the needs of an individual or class of individuals affected would impose undue hardship on a person who would have to accommodate those needs.

Exception

(6) It is not a contravention of subsection (1) for an organization, society or corporation to give preference in employment to an individual or class of individuals if the preference is solely related to the special objects in respect of which the organization, society or corporation was established and the organization, society or corporation

- (a) is a not for profit organization, society or corporation; and
- (b) is
 - (i) a charitable, educational, fraternal, religious, athletic, social or cultural organization, society or corporation, or
 - (ii) an organization, society or corporation operated primarily to foster the welfare of a religious or racial group.

Personal services in private residence

(7) For the purposes of this section and section 10, it is a justified occupational requirement where, in choosing a person to provide personal services in a private residence, the employer discriminates for the genuine purpose of fostering or maintaining a desired environment within the residence, if there is otherwise no contravention of this Act in the employment relationship.

Employment applications and advertisements

10. (1) No person shall use or circulate any form of application for employment, publish any advertisement in connection with employment, or make any written or oral inquiry of an applicant that

- (a) expresses or implies any limitation, specification or preference indicating discrimination against any individual or class of individuals on the basis of a prohibited ground of discrimination; or
- (b) requires an applicant to provide any information about the applicant in respect of a prohibited ground of discrimination.

Justified occupational requirement

(2) Subsection (1) does not apply with respect to a practice based on a justified occupational requirement.

Duty to accommodate

(3) When a practice referred to in subsection (1) results in discrimination, in order for it to be considered to be based on a justified occupational requirement, it must be established that accommodation of the needs of an individual or class of individuals affected would impose undue hardship on a person who would have to accommodate those needs.

Organization and Associations

Organizations and associations

11. (1) No employees' organization, trade union, trade association, occupational or professional association or society, employers' organization or co-operative association or organization shall, on the basis of a prohibited ground of discrimination, unless done in good faith and with reasonable justification,

- (a) exclude any individual or class of individuals from full membership;
- (b) expel, suspend or otherwise discriminate against any of its members; or
- (c) discriminate against any individual in regard to his or her employment by an employer.

Duty to accommodate

(2) When a practice referred to in subsection (1) results in discrimination, in order for the justification to be considered to be made in good faith and reasonable, it must be established that accommodation of the needs of an individual or class of individuals affected would impose undue hardship on a person who would have to accommodate those needs.

Goods, Services, Facilities or Contracts

Goods, services, facilities or contracts

12. (1) No person shall, on the basis of a prohibited ground of discrimination, unless done in good faith and with reasonable justification,

- (a) deny to any individual or class of individuals any goods, services or facilities that are customarily available to the public;
- (b) deny to any individual or class of individuals the ability to enter into any contract that is offered or held out to the public generally;
- (c) discriminate against any individual or class of individuals with respect to any goods, services or facilities that are customarily available to the public;

- (d) discriminate against any individual or class of individuals with respect to the ability to enter into any contract that is offered or held out to the public generally; or
- (e) discriminate against any individual or class of individuals with respect to any term or condition of any contract that is offered or held out to the public generally.

Duty to accommodate

(2) When a practice referred to in subsection (1) results in discrimination, in order for the justification to be considered to be made in good faith and reasonable, it must be established that accommodation of the needs of an individual or class of individuals affected would impose undue hardship on a person who would have to accommodate those needs.

Restrictions for insurance contracts

(3) Where this section protects an individual from discrimination, subsection (1) does not affect the operation of any

- (a) contract of automobile, life, accident, sickness or disability insurance;
- (b) contract of group insurance between an insurer and an association or person;
- (c) life annuity;
- (d) pension contract; or
- (e) type of contract, other than one referred to in clause (a) to (d), that is prescribed under this Act,

that differentiates or makes a distinction, exclusion or preference in good faith that is reasonable in the circumstances because of disability, sex, age, marital status or family status.

Tenancy

Discrimination regarding tenancy

13. (1) No person shall, on the basis of a prohibited ground of discrimination, unless done in good faith and with reasonable justification,

- (a) deny to any individual or class of individuals the right to occupy as a tenant any commercial premises or residential accommodation that is advertised or otherwise in any way represented as being available for occupancy by a tenant; or
- (b) discriminate against any individual or class of individuals with respect to any term or condition of occupancy of any commercial premises or residential accommodation.

Exceptions

(2) Subsection (1) does not apply to,

- (a) the choice of a tenant for a unit in a duplex by the owner of the duplex, if the owner occupies the other unit in the duplex;

- (b) the choice of a boarder or roomer for a private residence by the occupier of the residence; or
- (c) accommodation that is within a class that is prescribed under this Act.

Duty to accommodate

(3) When a practice referred to in subsection (1) results in discrimination, in order for the justification to be considered to be made in good faith and reasonable, it must be established that accommodation of the needs of an individual or class of individuals affected would impose undue hardship on a person who would have to accommodate those needs.

Publication

Notices, signs, symbols, emblems and other representations

14. (1) No person shall, on the basis of a prohibited ground of discrimination, publish or display or cause or permit to be published or displayed any notice, sign, symbol, emblem or other representation that expresses or implies discrimination or any intention to discriminate, or incites or is calculated to incite others to discriminate, against any individual or class of individuals

- (nn) in the provision of goods, services, facilities or contracts;
- (oo) in the provision of commercial premises or residential accommodation;
- (c) in matters related to employment; or
- (d) in matters related to membership in an employees' organization, trade union, trade association, occupational or professional association or society, employers' organization or co-operative association or organization.

Exceptions

(2) Subsection (1) does not apply with respect to the exceptions referred to in subsections 9(6), 12(3) and 13(2).

Discharge, Suspension and Intimidation

Discharge, suspension and intimidation

15. No person shall discharge, expel, evict, suspend, intimidate, coerce, impose any pecuniary penalty on, deny a right or benefit to or otherwise retaliate against any individual because the individual

- (a) has notified or attempted to notify the Tribunal with respect to a human rights issue under this Act;
- (b) has given evidence or otherwise participated in, or may give evidence or otherwise participate in, a proceeding under this Act;
or
- (c) has assisted in any way in,

- (i) notifying or attempting to notify the Tribunal with respect to a human rights issue under this Act, or
- (ii) the settlement, investigation or adjudication of a notification under this Act.

PART 3

HUMAN RIGHTS TRIBUNAL

Establishment and Composition

Tribunal established

16. (1) A Human Rights Tribunal is established composed of members appointed by the Commissioner in Executive Council.

Qualifications

(2) A person appointed as a member of the Tribunal must have an interest in and a sensitivity to human rights and to Inuit culture and values that underlie the Inuit way of life.

Terms of office

(3) A member of the Tribunal shall hold office for a term of four years, except that the first members appointed to the Tribunal shall hold office for a term of two to four years as expressed in their appointments.

Service for unexpired term

(4) If, for any reason, a member of the Tribunal ceases to be a member before the normal expiration of his or her term of office, the Commissioner in Executive Council may appoint another person to serve for the unexpired term of that member.

Reappointment

(5) A member of the Tribunal may be reappointed on the expiration of his or her term.

Termination for cause

(6) The appointment of a member of the Tribunal shall not be terminated except for cause.

Continuation after expiry of term

(7) Except in the case of resignation, a member of the Tribunal continues to hold office after the expiry of his or her term of office if, before the expiry, the member was designated to hear a notification and had commenced the hearing in respect of the notification.

Remuneration

(8) The Commissioner in Executive Council may fix the remuneration and allowance for expenses of members of the Tribunal.

Chair, vice-chairs

17. (1) The Commissioner in Executive Council shall appoint a chair and one or more vice-chairs of the Tribunal from among the members of the Tribunal.

Vice-chair

(2) If the chair is absent, unable to act or that office is vacant, a vice-chair may act as the chair and may exercise all of the powers and may perform all of the duties and functions of the chair.

Employees

(3) The employees of the Tribunal are appointed under the *Public Service Act*.

Consultants and specialists

(4) The Tribunal may engage or retain consultants and specialists that the Tribunal considers necessary to carry out the powers and duties of the Tribunal and may determine their remuneration.

Application of *Public Service Act*

(5) The *Public Service Act* does not apply to the retention, remuneration or engagement of consultants and specialists under subsection (4).

Rules

18. (1) Subject to this Act and the regulations, the Tribunal may make rules

- (a) governing the notification process; and
- (b) regulating its practice and procedure in both pre-hearings and hearings and generally for the conduct and management of its affairs .

Application of *Statutory Instruments Act*

(2) Rules made by the Tribunal under subsection (1) are not regulations within the meaning of the *Statutory Instruments Act*.

Panels

19. (1) The chair of the Tribunal shall appoint panels each of which is composed of one or more members of the Tribunal to hold hearings wherever the Tribunal is required to hold a hearing under this Act respecting a human rights notification and, where a panel holds a hearing, the panel has all the powers and duties, except the power in subsection 8(1), given to the Tribunal under this Act.

Chair of panel

(2) The chair of the Tribunal shall designate one member of each panel to preside over the panel's hearings unless it is a one-member panel.

Reassignment of panel

(3) Where a panel of the Tribunal is unable for any reason to exercise the powers under section 29 or subsection 34(3), the chair of the Tribunal may assign another panel in its place.

Restriction

(4) No person shall be selected for a panel who has taken part in the notification process, a determination by the Tribunal under subsection 24(1) or (3), or a pre-hearing of the notification that is the subject matter of the panel's hearing, or who has endeavoured to effect a settlement of the notification.

Annual report of Tribunal

20. (1) The Tribunal shall prepare an annual report and submit it to the Minister in accordance with Part IX of the *Financial Administration Act*.

Legislative Assembly

(2) Every report submitted under subsection (1) shall be laid before the Legislative Assembly at the earliest possible time after it is received by the Minister.

PART 4

NOTIFICATIONS

General

Notification

21. An individual or group of individuals having reasonable grounds for believing that a person has contravened this Act, and claiming to be aggrieved because of the alleged contravention, may file a notification with the Tribunal orally or in any other form or manner satisfactory to the Tribunal of the circumstances of the alleged contravention.

Filing by another person

22. (1) Subject to subsection (2), a notification under section 21 may be filed on behalf of

- (a) another person; or
- (b) a group or class of persons whether or not the person filing the notification is a member of that group or class.

Tribunal shall refuse filing

(2) The Tribunal shall refuse to accept a notification filed under subsection (1) on behalf of another person or a group or class of persons, if the Tribunal is satisfied that

- (a) the person alleged to have been discriminated against does not wish to proceed with the notification; or
- (b) proceeding with the notification is not in the interest of the group or class on behalf of which the notification is made.

Combining of notifications

(3) The Tribunal may proceed with 2 or more notifications together if the Tribunal is satisfied that it is fair and reasonable in the circumstances to do so.

Time limit for filing a notification

23. (1) A notification must be filed within two years of the alleged contravention.

Continuing contravention

(2) If a continuing contravention is alleged in a notification, the notification must be filed within two years of the last alleged instance of the contravention.

Filing after time expired

(3) The Tribunal may accept a notification filed after the expiration of the time limit referred to in subsection (1) or (2) if the Tribunal determines that

- (a) the delay in filing the notification was incurred in good faith; and
- (b) no substantial prejudice will result to any person because of the delay.

Other Act

24. (1) Where it appears to the Tribunal that a notification is one that could or should be dealt with under an Act other than this Act, the Tribunal may, in its discretion, decide not to deal with all or part of the notification.

Consideration

(2) In making a determination under subsection (1), the Tribunal shall consider all relevant factors, including the subject matter and nature of the other Act and the adequacy of the remedies available in the other Act in the circumstances.

Dismissal of notification

(3) The Tribunal shall not deal with a notification where

- (a) in the opinion of the Tribunal, the subject matter of the notification is trivial, frivolous, vexatious or the notification was made in bad faith;
- (b) the notification is not within the jurisdiction of the Tribunal;
- (c) the facts upon which the notification is based occurred more than two years before the notification was filed unless the Tribunal is satisfied that the delay was incurred in good faith and no substantial prejudice will result to any person affected by the delay;
- (d) in the opinion of the Tribunal, there is no evidence of discrimination on a prohibited ground or where undisputed facts clearly provide a defence; or
- (e) in the opinion of the Tribunal, the person who filed the notification has refused a reasonable offer of settlement.

Settlement

25. Subject to section 24, the Tribunal may endeavour to effect a settlement of the notification.

Filing of settlement agreement

26. (1) If a party to a settlement referred to in section 25 alleges that there has been a breach of the settlement agreement, the party alleging the breach may file the agreement with the Tribunal.

Enforcement of settlement agreement

(2) A settlement agreement filed under subsection (1) may be enforced in the same manner as an order of the Tribunal under subsection 34(3) but only to the extent that the Tribunal has the powers under that subsection to make an order regarding the terms of the agreement.

Non-waiver

(3) The right to file a settlement agreement under subsection (1) cannot be waived.

Waiver void

(4) A provision of a settlement agreement that purports to waive the right to file the agreement under subsection (1) is void.

Tribunal to hold hearing

27. (1) Where a notification has not been disposed of under subsection 24(1) or (3), or where the Tribunal does not effect a settlement of a notification, the Tribunal shall hold a hearing.

Pre-hearing

(2) Where in the opinion of the Tribunal the nature of the notification makes it necessary or advisable, the Tribunal may hold a pre-hearing.

Notice of decision not to hold hearing

(3) Where the Tribunal decides not to hold a hearing, it shall advise the person who filed the notification and the person against whom the notification was filed in writing of the decision and the reasons for it.

Parties to notification

28. (1) The parties to a notification before the Tribunal are

- (a) the person who filed the notification, if there is one;
- (b) the person on whose behalf a notification was filed, if the person wishes to be a party;
- (c) any person named in the notification who is alleged to have contravened this Act; and
- (d) any person who may have contravened this Act in respect of the notification.

Adding parties

(2) The Tribunal may add a party referred to in clause (1)(d) at any time after the referral of the notification on such terms and conditions as the Tribunal considers proper.

PART 5

HEARING

Hearing

29. If the Tribunal decides to hold a hearing respecting a human rights notification, the hearing shall be commenced within the time period that is prescribed.

Evidence

30. (1) Evidence may be given before the Tribunal, on oath, by affidavit or otherwise in any manner that the Tribunal considers appropriate and, subject to subsection (2), the Tribunal is not bound by the rules of evidence in civil actions or proceedings.

Limitation

(2) The Tribunal may not admit or accept as evidence anything that would be inadmissible in a court by reason of any privilege under the law of evidence.

Pattern of practice

(3) When holding a hearing, the Tribunal is entitled to receive and accept evidence led for the purpose of establishing a pattern of practice of resistance to or disregard or denial of any of the protections set out in this Act, and the Tribunal may place any reliance that it considers appropriate on the evidence and on any pattern of practice disclosed by the evidence in arriving at its decision.

Absence of party

31. The Tribunal may, on proof of service on a party of a notice of the hearing, proceed with the hearing in the absence of the party and determine the validity of the notification in the same manner as though that party was in attendance.

Public hearing

32. A hearing before the Tribunal shall be open to the public unless the Tribunal, at the request of any party or on the Tribunal's own initiative, decides that there are reasons sufficient to justify holding all or part of the hearing in private.

Powers of Tribunal

33. For the purposes of holding a hearing on a notification, the Tribunal has all the powers of a Board appointed under the *Public Inquiries Act*.

Decision of Tribunal

34. (1) After completing a hearing on a notification, the Tribunal shall decide whether or not the notification has merit in whole or in part.

Dismissal order

(2) If the Tribunal finds, under subsection (1), that a notification is without merit, the Tribunal shall order that the notification be dismissed.

Order

(3) If the Tribunal finds, under subsection (1), that a notification has merit in whole or in part, the Tribunal

- (a) may order a party against whom the finding was made to do one or more of the following:
 - (i) to cease the contravention that is the subject of the notification,
 - (ii) to refrain in the future from committing the same or any similar contravention,
 - (iii) to make available to any party dealt with contrary to this Act or the regulations, the rights, opportunities or privileges that the person was denied contrary to this Act or the regulations,
 - (iv) to compensate any party dealt with contrary to this Act or the regulations for all or any part of any wages or income lost, expenses incurred or other losses by reason of the contravention of this Act or the regulations,
 - (v) to pay to any party dealt with contrary to this Act or the regulations an amount that the Tribunal considers appropriate to compensate that party for injury to dignity, feelings or self-respect,
 - (vi) to take any other action that the Tribunal considers appropriate to place any party dealt with contrary to this Act or the regulations in the position the person would have been in but for the contravention of this Act or the regulations,
 - (vii) to pay to any party dealt with contrary to this Act or the regulations an amount that the Tribunal considers appropriate to compensate that party for any malice or recklessness involved in the contravention,
 - (viii) to adopt and implement a program that has as its objects the amelioration of conditions of disadvantaged individuals or groups or other affirmative action program of a type referred to in subsection 7 (2), if the evidence at the hearing has disclosed that the party engaged in a pattern of practice of contravening this Act or the regulations,
 - (ix) to apologize to any party dealt with contrary to this Act in such manner that the Tribunal considers appropriate,
 - (x) to take any further action that the Tribunal considers appropriate having regard to Inuit culture and values that underlie the Inuit way of life; and

- (b) may make a declaratory order that the conduct that was the subject matter of the notification, or similar conduct, is discrimination contrary to this Act or the regulations.

Findings against more than one party

(4) For greater certainty, the Tribunal may, under subsection (3), make a finding against more than one party, and may make an order in respect of each such party, including an order that apportions responsibility between those parties to provide compensation.

Tribunal seized

(5) The Tribunal remains seized of a matter to which an order made under this section relates until the order is fully implemented.

Filing order of Tribunal

(6) An order made by the Tribunal may be filed with the Clerk of the Court.

Enforcement of order

(7) An order filed under subsection (6) may be enforced in the same manner as an order of the court.

False claim

35. If the Tribunal concludes that the notification was based on information that the person who filed the notification knew to be false, the Tribunal may order that person to pay to the person named in the notification who is alleged to have contravened this Act

- (a) part or all of the second person's costs of defending against the notification; and
- (b) damages for injury to the second person's reputation.

Order for costs

36. Where, on hearing a notification, the Tribunal is satisfied that a notification or reply is frivolous or vexatious, or is satisfied that the investigation or hearing of the notification has been frivolously or vexatiously prolonged by the conduct of any party, the Tribunal may order the party responsible for the notification or reply or for the conduct to pay all or some of the costs of any other party.

Availability of decision

37. Any person may, on request made to the Tribunal, inspect and obtain a copy of any decision or order made by the Tribunal, including the findings of fact on which the decision or order were based and the reasons for the decision or order.

Appeal

38. (1) Any party to a notification may, at any time within 30 days after service of a decision or an order of the Tribunal on that party, appeal to the court to have the decision or order reversed or modified by filing a notice of appeal with the Clerk and serving it on all the parties to the notification.

Grounds for appeal

(2) An appeal under this section may be made on questions of law only.

Order

(3) The court may, on hearing an appeal made under subsection (1), make a decision or an order that affirms, rescinds or varies the decision or order of the Tribunal, as the case may be, and make any other decision or order that the court considers necessary.

PART 6

GENERAL

Special Remedies

Application for court order

39. (1) Where a notification is filed with the Tribunal, the person who filed the notification may apply to the court for an order restraining the person named in the notification who is alleged to have contravened this Act from engaging in the alleged contravention, or requiring that person to comply with this Act in specified respects or to do or refrain from doing any other act or thing, until the notification has been disposed of in accordance with this Act or for such other time as the application may specify.

Where order may be issued

(2) Upon hearing the application referred to in subsection (1), the court may grant the order on such terms and conditions as it considers appropriate, if the court is satisfied that

- (a) the person who filed the notification has established a sufficient case that, in the absence of evidence to the contrary, indicates that the person named in the notification who is alleged to have contravened this Act has contravened this Act; and
- (b) granting the order would further the objectives of this Act.

Injunction

40. Any person may, by statement of claim, bring action against any person for an injunction to restrain the person from interfering with, depriving or restricting or attempting to interfere with, deprive or restrict, on the basis of any prohibited grounds of discrimination referred to in subsection 7(1), any other person in the enjoyment of

- (a) the provision of goods, services, facilities or contract;
- (b) the provision of commercial premises or residential accommodation;
- (c) any matter related to employment; or
- (d) any matter related to membership in an employees' organization, trade union, trade association, occupational or professional association or society, employers' organization or co-operative association or organization,

and the court may grant the injunction on any terms and conditions it considers appropriate.

Miscellaneous

Liability

41. The Tribunal, a member of the Tribunal, an employee of the Tribunal or a consultant or specialist engaged by the Tribunal, or any other person having powers or duties under this Act, the regulations or the rules made by the Tribunal shall not be liable for anything done or not done by him or her in good faith in the exercise of his or her powers or in the performance of his or her duties.

Evidence not compellable in other proceedings

42. (1) No person who is

- (a) a member of the Tribunal, or
- (b) employed in the administration of this Act, including an employee of the Tribunal or a consultant or specialist engaged by the Tribunal,

may be required to attend or give evidence in an action or proceeding, except a proceeding under this Act, as to information obtained in the exercise of his or her powers or in the performance of his or her duties under this Act or the regulations.

Evidence not compellable in proceedings under this Act

(2) Notwithstanding subsection (1), in a proceeding under this Act, no person who has assisted the parties to a notification in attempting to settle the matter by agreement may be required to attend or give evidence respecting information obtained about the notification in the exercise of his or her powers or in the performance of his or her duties.

Defects and technical irregularities

43. No proceeding under this Act shall be deemed to be invalid by reason of any defect in form or any technical irregularity.

Deemed acts of certain persons

44. Any act or thing done or omitted by an officer, official or agent of an employees' organization, trade union, trade association, occupational or professional association or society, employers' organization or co-operative association or organization within the scope of his or her authority to act on its behalf shall be deemed to be an act or thing done or omitted by it.

Offence and Fines

Offence and fines

45. Every person who contravenes section 15 or who fails to comply with an order or decision made by the Tribunal or a court under this Act is guilty of an offence and liable on summary conviction to a fine not exceeding \$25,000.

Consent to prosecute

46. No prosecution for an offence under section 45 may be commenced without the consent in writing of the Attorney General.

Regulations

Regulations

- 47.** The Commissioner in Executive Council may make regulations
- (a) prescribing any matter or thing required or authorized by this Act to be rescribed;
 - (b) prescribing time periods for the purposes of this Act, the regulations, and rules made by the Tribunal;
 - (c) governing the extension of time periods for the purposes of this Act, the regulations, and rules made by the Tribunal;
 - (d) prescribing consequences for failure to meet time periods prescribed by the regulations; and
 - (e) respecting any matter necessary or advisable to carry out effectively the intent and purpose of this Act.

Transitional

Definitions

48. (1) In this section,

"former Act" means the *Fair Practices Act*, R.S.N.W.T. 1988, c.F-2; (*loi antérieure*)

"Fair Practices Officer" means a Fair Practices Officer appointed under the former Act. (*agent des pratiques non discriminatoires*)

Continuation of proceedings under this Act

(2) Any action taken or proceeding commenced under the former Act in respect of a complaint, other than one described in subsection (3), shall be continued under this Act and this Act applies, with such modifications as the circumstances require to the action or proceeding.

Continuation of proceedings under former Act

(3) Notwithstanding the repeal of the former Act, where a Fair Practices Officer has commenced, before this section comes into force, a hearing in respect of a complaint made under the former Act, on the coming into force of this Act

- (a) the Fair Practices Officer shall continue with, and the former Act shall continue to apply to, the complaint; and
- (b) the appointment of the Fair Practices Officer as Fair Practices Officer shall continue until the hearing is concluded.

CONSEQUENTIAL AMENDMENTS

Fair Practices Act

49. (1) A reference in any Act to the *Fair Practices Act* shall be deemed to be a reference to the *Human Rights Act*.

Legal Services Act

(2) Section 7 of the *Legal Services Act* is amended by adding the following subparagraph:

- (iii) providing public education and outreach with respect to human rights.

REPEAL

Repeal

50. The *Fair Practices Act* is repealed.

COMING INTO FORCE

Coming into force

51. (1) This Act, except sections 16 to 19 and section 47, comes into force on the anniversary of the day this Act is assented to.

Coming into force, certain sections

(2) Sections 16 to 19 and section 47 come into force on assent.