



**Human Rights Adjudication Panel
Tribunal d'Arbitrage des Droits de la Personne**

November 1st, 2020

RE: Implementation of Legislative Amendments – Overview of Transitional Phases

The Legislative Assembly of the Northwest Territories passed substantive amendments to the *Human Rights Act* in 2018. Changes to the legislation are coming into force over three transitional phases.

As a result, complaints before the Human Rights Adjudication Panel (HRAP) will proceed under different versions of the Act before final implementation of the amendments, depending on when each complaint was accepted by the Director.

Phase One:

Complaints accepted by the Director before August 1, 2019, will proceed under the legislation as it reads on July 31, 2019.

This essentially means complaints accepted before the amendments will proceed under the old legislation. Major amendments to the Act came into force on August 1, 2019. Parties can nonetheless expect that the amendments will not apply to any complaints accepted before that date. Complaints will proceed on the same legal foundation that existed at the time the complaint was started, ensuring that proceedings conform to parties' expectations entering complaint process.

**Mailing Address: PO BOX 382, Yellowknife, NT X1A 2N3
Phone: 1-867-920-3188 or Toll Free: 1-888-920-3188
Fax: 1-867-920-2511 Email: hrap_admin@hrap-nt.ca**

Phase Two:

Complaints accepted by the Director between August 1, 2019, and March 31, 2020, will proceed under the legislation as it reads on March 31, 2020.

Parties can expect HRAP to approach all complaints from this phase forward with a restorative approach. Changes to the legislation's preamble highlight that the human rights system as a whole is "committed to a restorative approach guided by overarching principles of flexibility, inclusion, remediation and participatory solutions to issues."¹ Adjudicators are empowered to use "practices and procedures that are alternative to traditional adjudicative or adversarial processes consistent with a restorative approach to dispute resolution."² Parties can expect to experience greater flexibility and creativity in how pre-hearing conferences and hearings are conducted, as the restorative approach comes into operation.

Phase Three:

Complaints accepted by the Director between April 1, 2020, and March 31, 2021 will proceed under the legislation as it reads on March 31, 2021.

The changes in this phase mainly relate to what happens with complaints before referral or appeal to HRAP. At this stage, the Director becomes the Executive Director of the Commission. The Commission assumes responsibility for appeals. Where the Executive Director has refused to accept a complaint, a complainant may appeal this refusal to the Commission. The Commission's decision not to grant an appeal and accept a complaint cannot be appealed to HRAP. If a complaint is accepted by the Executive Director, parties will be invited to participate in restorative dispute resolution to resolve the complaint. If the complaint is not resolved, the Commission may dismiss the complaint, under certain circumstances, or refer the complaint for adjudication. Complaints dismissed by the Commission in this circumstance can still be appealed to HRAP.

¹*Human Rights Act*, S.N.W.T. 2002, c.18, as amended, Preamble

²*Human Rights Act*, subsection 52(3)(d)

Final Implementation:

The complete set amendments to the *Human Rights Act* will apply to all complaints accepted on or after April 1, 2021. The Commission will have carriage of all complaints that are accepted by the Executive Director after April 1, 2021 and are referred for adjudication.

Final implementation involves a key procedural change for all complaints accepted by the Executive Director from this point forward. The Commission assumes the carriage of complaints, meaning the Commission becomes the primary party responsible for presenting evidence and argument on all complaints referred to HRAP.

All complaints before HRAP will proceed as required in each transitional phase. If any party has any questions regarding the law applicable to their complainant, HRAP adjudicators can address those questions at any point in the proceedings.

Sincerely,

Sheldon Toner
Chairperson, Human Rights Adjudication Panel