



The Government of Nunavut set the Tribunal up with a structure and Rules of Procedure but did not provide the appropriate level of staffing, training, technical support or monitoring for full implementation and accountability. It was obvious after a few years that the Tribunal was not making decisions or issuing orders, but little to no action appears to have been taken towards getting complaints resolved in a timely manner.

On our analysis, complaints are not resolved in a timely manner because the Tribunal process is completely different than the process set out in the Rules and in the Act itself.

The Process Used by the Tribunal Does Not Comply with the *Human Rights Act* or Rules

The form that starts a formal complaint, the notification, is missing basic and necessary information about the process that an applicant requires. That information is also missing from the Tribunal’s website. The notification form demands that the applicant provide unnecessary personal information and backs up those demands with a misstatement of the Act that gives the impression of a threat.

The *Human Rights Act* expressly states that the Tribunal *shall not deal* with complaints that are outside its jurisdiction, out of time, and so on. Instead of screening the complaint for such issues before proceeding, and then proceeding in a timely way, the Tribunal conducts a wholly different process. Despite the prohibition on dealing with a complaint that is not within the Tribunal’s jurisdiction, the Tribunal process deals with it in a number of ways that do not comply with the law.

First the Tribunal process discloses the complaint and all the personal information in it to the respondent (contrary to privacy law).

Then the Tribunal office waits for the respondent's reply no matter how long it takes, and never proceeds in default as provided for in the Rules.

If and when the Respondent files a reply, the Tribunal weighs the assertions and documentation in both forms as though they were evidence.

If the complaint is not accepted the Tribunal publishes an order to all parties dismissing the claim. In other words, despite the prohibition on dealing with such a complaint, the Tribunal deals with it in several ways, some of them contrary to law.

If the complaint is accepted, the Tribunal office does not generally set the matter for a pre-hearing conference and hearing, as required by the *Human Rights Act* and the Rules, but schedules mediation.

The Tribunal process appears to be designed and directed by staff and contractors, not by the Tribunal members appointed for their interest in and sensitivity to human rights and to Inuit culture and values.

No Human Rights Champion or Educator in Nunavut

Another problem is the lack of a human rights champion in Nunavut. The legislature intentionally did not establish a Commission in the *Human Rights Act*; the statute did not create an office to promote awareness of human rights or to provide public information about duties and remedies under the law. The result is that there is no real public information about human rights and remedies in Nunavut.

The Tribunal is the sole publisher of all information about human rights. Almost all of its publications are narrowly concerned with the Tribunal process, not human rights, and even that information is incomplete. For example, the Tribunal publications

- do not discuss or describe discrimination and harassment, or explain why those are wrong, and offer only a few trite examples of human rights violations.
- do not mention the duty to accommodate. Accommodation is the mechanics of how not to discriminate, and required by law (for example, to supply access for disabled people or to allow religious headgear as part of a uniform). Understanding the duty to accommodate is an essential part of complying with the Act; there should be a great many examples of how accommodation can be worked out, to enable people and businesses to craft their own.
- do not mention deadlines or the Rules about timing; and
- not include a complete list of the remedies which the Tribunal can order.

Good information about human rights prevents and reduces the harm of human rights violations. Ordinary people and businesses – governments and residents, landlord and tenants, employers and employees, businesses and customers – need to know what the law expects and what it entitles them to.

The law is of no use if nobody knows about it. A law that is not properly published cannot be enforced, and that undermines the purpose of the law even more.

2. The Government of Nunavut Should Support the Tribunal in Reforming its Process

The Government of Nunavut, and in particular the Minister Responsible for Human Rights, should support the Tribunal – as led by its Chair, not its Executive Director or GN Justice staff – in making the changes recommended above.

The Government of Nunavut should provide funding and sourcing for the professional and technical expertise the Human Rights Tribunal will need for this reform, particularly lawyers experienced in administrative, governance and privacy law, and also someone skilled in the collection and reporting of data.

3. The Government of Nunavut Should Appoint a Commissioner of Human Rights

We recommend the creation of a Commissioner of Human Rights, reporting directly to the Minister Responsible for Human Rights, a lawyer practicing in the area of human rights, mandated to:

- promote public awareness and ensure that there is adequate public information about human rights law and the Human Rights Tribunal, including the accommodations that can and should be made for those protected by human rights law, and the remedies available under the *Nunavut Human Rights Act*;
- monitor legislation and programs for compliance with the *Nunavut Human Rights Act* and report to the Legislature; and
- work with the Nunavut Human Rights Tribunal to ensure that its processes comply with and fulfill the purposes of the *Nunavut Human Rights Act*.

4. The Government of Nunavut Should Clarify Roles and Reporting Relationships

Finally, the Government of Nunavut should clarify roles and reporting relationships among

- the Chair, the Tribunal Members, the Executive Director and other staff of the Tribunal,
- the Commissioner of Human Rights if that role is created,
- the Government of Nunavut with respect to the reporting and budgeting process, and
- ultimately to the Nunavut Legislative Assembly and to Nunavummiut.

CONCLUSION

The *Nunavut Human Rights Act* is an important law whose purpose is to protect Nunavummiut from discrimination. It seeks to guarantee equal and fair treatment to all people regardless of traits that attract historical and current stereotyping or bias. It is important that all Nunavummiut know what types of discrimination are not permitted, why not, and what should happen instead. This is why a Human Rights Commissioner is needed: to be a provider of human rights information and an advocate for human rights.

It is also important that when discrimination occurs, individuals have timely access to the Human Rights Tribunal to adjudicate such claims. Justice delayed is justice denied. The goals should be to improve efficiency and effectiveness, to remedy harms at the individual level and reduce future harms, to comply with the *Nunavut Human Rights Act* and to fulfil its stated purpose: that every individual in Nunavut is afforded an equal opportunity to enjoy a full and productive life.