

BC Human Rights Commission Consultation Process Submission of the Community Legal Assistance Society

The Province is conducting a province-wide consultation process with respect to re-establishing the British Columbia Human Rights Commission (the “Commission”). As part of this process, the Province has invited interested groups and individuals to provide feedback to help guide decisions on the role, functions and priorities of the new Commission. The Community Legal Assistance (“CLAS”) makes the following submission.

Overview of CLAS and the BC Human Rights Clinic

CLAS was the first community law office in BC and was incorporated as a non-profit legal aid organization in 1971. CLAS provides legal assistance to disadvantaged people in BC in the areas of human rights, mental health, housing, income security, and workers’ rights.

CLAS operates the BC Human Rights Clinic (the “Clinic”), which has been providing legal assistance and representation to human rights complainants since 2003. The Clinic provides the following three major services throughout the province:

1. Early resolution and advocacy services to complainants whose complaints have been accepted by the BC Human Rights Tribunal (the “Tribunal”);
2. Legal assistance and representation to complainants where early resolution attempts were not successful; and
3. Information, education, and training to promote an understanding of the *BC Human Rights Code* (the “Code”) and the Tribunal complaints process; and
4. The Clinic is a regular resource for community groups throughout the province, who refer and consult on issues relating to human rights law.

Principles that Guide this Submission

BC’s new Commission should be guided by the purposes of the *Code*, which include the identification and elimination of persistent patterns of discrimination, the promotion of a climate of mutual understanding where all are equal in dignity and respect, and the fostering of a society in which there are no impediments to full and free participation in the economic, social, political, and cultural life of the province.

The Commission should also be guided by Canada’s obligations under international human rights law and principles of reconciliation with Indigenous peoples.

The Commission must be independent of government. Its Chief Commissioner should be an officer of the Legislature, similar, for example, to the Representative for Children and Youth, and should report directly to the Legislature. Its reports should be publicly available and accessible.

The Commission must strive to be representative of the diversity of the general population, including those most likely to experience discrimination in our society. While it should be based in Vancouver, it will require a budget and a mandate to conduct outreach and build relationships outside of the Lower Mainland, particularly with Indigenous and non-urban communities.

The Province should look to two main sources for guidance in its development of a Commission:

1. The model set out in the report entitled "*Strengthening Human Rights: Why British Columbia needs a Human Rights Commission*" by Gwen Brodsky and Shelagh Day, December 2014 (the "*Day Report*"); and
2. The current Ontario human rights system.

Ontario's human rights system has a Commission, which engages in research, outreach and systemic advocacy, a direct-access Tribunal which adjudicates human rights complaints, and a Legal Support Centre similar to the Clinic. These bodies work complementarily within their respective spheres to promote human rights. We believe that this model represents the "best of both worlds." It affords parties timely resolution of their complaints, while also ensuring that there is a body capable of addressing systemic human rights issues through education and advocacy, before litigation is required. This is the model we recommend for BC to adopt in its reinstatement of the Commission.

CLAS' Recommendations for BC's Human Rights Commission

A. The Commission should not be a gatekeeper for complaints

There is widespread agreement in the human rights community that the direct access model should be maintained and work in complement with the re-established Commission. The current Tribunal should remain the place where complainants go when they wish to make a complaint that their human rights have been violated. The Commission should not have a "gatekeeping" function. It should not be tasked with reviewing, investigating or delivering preliminary decisions on human rights complaints.

The direct access model offers the following major benefits:

1. Improved access to human rights adjudication for all complainants, including speedier resolution in the overall complaints process; and
2. Increased transparency, as all adjudication takes place before a tribunal which has rules governing procedure and produces public, written decisions.

The legal services currently provided by the Clinic are efficient and produce a high resolution rate and timely access to the Tribunal. In addition, the Clinic has advocates and lawyers who have knowledge and expertise in human rights law and who serve as a resource on human rights for community groups throughout the province.

With adequate funding and resources, the Tribunal can provide effective, fair, and timely mediation, adjudication and resolution of human rights complaints. A Commission acting as gatekeeper to the Tribunal's process would not serve the interests of justice or human rights in the province, and should be avoided.

B. The Commission should engage in law reform and systemic advocacy to promote a culture of human rights in BC

There are many urgent human rights issues facing our province. These systemic human rights issues, including discrimination against Indigenous peoples, the housing crisis, growing Islamophobia, the rise of the white nationalist movement, the overdose epidemic, access to educational services for special needs students, and many more, cry out for concerted and rights-based responses.

The Commission should have the authority and resources to conduct broad-based inquiries and investigations into these and other systemic and challenging human rights issues. It should have the mandate and funding to consult broadly and hear from diverse, affected communities, and should ensure that its processes and methodologies for doing so are trauma-informed and culturally appropriate.

The Commission must also be given the powers it needs to understand difficult human rights issues, including the power to compel evidence from major employers or institutions, such as government, police agencies and businesses.

The Commission's reports and law reform recommendations should be made directly to the Legislature, and should be publicly available, accessible in multiple languages, accessible to those with visual impairments and disseminated widely. The Commission should also have a robust communications department to ensure that it is able to engage effectively with media and community stakeholders.

The Clinic looks forward to strong and open lines of communication between it and the Commission. We expect to work with the Commission and advise each other of trends or developments that need to be addressed and develop joint strategies to tackle identified issues.

In some cases, litigation will be the most appropriate strategy to address a human rights matter and achieve the goals of the *Code* to remove systemic barriers. Given its expertise, experience, and infrastructure, the Clinic is well placed to pursue systemic litigation. Its ability to pursue systemic claims most effectively will, however, be subject to adequate funding and reinstatement of its mandate to pursue judicial reviews and appeals. In this regard, the Commission should be granted the power to intervene in significant human rights cases in the public interest. A robust structure will enhance the Commission's ability to fulfill its public interest role by participating, in conjunction with the Clinic, in systemic claims before the Tribunal and courts.

C. The Commission should raise awareness and understanding of human rights in BC

The Commission could make a valuable contribution to awareness and understanding of human rights in BC by developing model policies, guidelines, factsheets, and other public education tools relating to various human rights issues, and by providing education focused primarily on broader social issues.

To provide a brief background of the current educational services, the Clinic is the only organization in BC providing comprehensive training and education on a range of human rights topics. The Clinic's information and educational work is focused on providing general human rights information to the public; explaining the process and procedures of a human rights complaint; providing training for employers, unions, and service providers on their human rights duties and obligations; and responding to and addressing educational needs as they arise. The Clinic also offers a free weekly drop-in clinic and operates a summary information telephone service.

Because the Clinic advocates and lawyers work on the front lines of human rights, we see the types of issues brought forward and the difficulties various parties to complaints encounter as they navigate through the process. The Clinic is therefore ideally situated to continue providing information, education and training as it relates to the complaints process, working with communities to help them understand and assert their human rights, and assisting employer and service groups to prevent human rights complaints against them and to design inclusive workplaces.

We see many opportunities to expand our existing education services to respond to the needs we see from our work with our clients and with the community. However, the Clinic's education work is limited by its funding. For example, we receive many requests for training that we cannot accommodate because we lack the budget to travel to more remote communities or because we do not have the staff available.

We look forward to working with the Commission to identify areas for additional educational initiatives to ensure a complementary and non-duplicative use of our respective resources.

Further Recommendations

We recommend that the Government take this opportunity to address other issues concerning the *Code*, including:

1. Increasing the time limit to file a human rights complaint from six months back to one year. The one year time limit, which was in place for many years before it was changed in 2003, is a more reasonable and realistic timeframe in which to file a complaint, promotes access to justice and is consistent with other jurisdictions in Canada;
2. Adding "social condition" as a protected ground of discrimination, which should be defined as any social or economic disadvantage resulting from one's employment, source or level of income, housing status (including homelessness), level of education or other similar circumstance;

3. Consulting on the addition of other prohibited grounds of discrimination, including immigration status, genetic characteristics and police record, as is currently being done in Ontario with Bill 164;
4. Cleaning up many unjustifiable inconsistencies in terms of a number of grounds of discrimination that do not apply in all appropriate areas of protection (e.g. the ground of “political belief” is not protected in the areas of services or tenancy, but only in the area of employment); and
5. Applying a reconciliation framework to all of the above, and taking steps to ensure that the Tribunal’s processes are accessible and culturally relevant to Indigenous communities. Through consultation, the *Code* could be strengthened to take better account of Indigenous legal traditions, traditional knowledge and cultural practices, including restorative justice practices.

We congratulate the BC Government for taking the first step to reinstating the Commission. We strongly encourage the Government to maintain its commitment to public participation and transparency by publishing the report prepared by Parliamentary Secretary Kahlon at the close of these consultations, which we expect will form the basis of the newly constituted Commission. We would also encourage another short round of consultation and feedback on the report, before legislation is introduced. This would increase transparency and potential buy-in for whatever form of the Commission is ultimately re-established. We advocate for appropriate outreach to Indigenous communities in these efforts.

We appreciate the opportunity to participate in this consultation process.

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