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September 11, 2002

Honourable Geoff Plant
Attorney-General of British Columbia
PO Box 9044 STN PROV GOVT
Victoria, B.C.
V8W 9E2

Dear Mr. Plant,

**Re: Bill 53 – the Human Rights Code of British Columbia**

We are writing to submit to you our concerns about Bill 53 – *An Act to Amend the Human Rights Code*. These comments build on our submission to you in May and our letter of July 17th of this year. In particular, we would like to reiterate our deep concern at the lack of openness involved in the 'consultation' process you say you have engaged in over the summer. We invite you to meet with us as soon as possible to discuss this submission further.

It is West Coast LEAF's position that the model for protecting Human Rights in British Columbia contemplated by Bill 53 will not provide a clearer and more efficient system for handling complaints of discrimination. It will not enhance the administration, enforcement and promotion of human rights. It does not meet the obligations the government has under the Charter and International agreements. The elimination of the Commission is not ion the interests of B.C. residents.

In short, this model will not meet the needs of women, or anyone, facing discrimination in British Columbia.

West Coast LEAF asks that you put aside the Bill as it stands and engage in a thorough public consultation. It appears that the government has decided that the Commission will be replaced by a legal clinic. West Coast LEAF disagrees fundamentally with this decision. If the government determines, after a thorough consultation, that a legal clinic is the answer to concerns raised about the Commission, then we urge you to accept proposals from the community at large for the provision of clinics that can separate the needs of complainants from those of respondents.

West Coast LEAF submits that

A. In eliminating the Commission and the education and investigation components of the Code, Bill 53 does not meet the requirements of the U.N.'s 'Paris Principles' and profoundly undermines Human Rights in British Columbia;

B. There is no effective means for attacking systemic discrimination – expecting non-profit agencies to intervene while functioning on limited and dwindling resources is unrealistic;

C. The elimination of the Commission and the Human Rights Advisory Council leaves the entire process without any adequate form of public accountability;

D. The new legislation provides the Tribunal with the power to coerce a complainant in a number of ways that will affect the ability of those discriminated against to access remedies under the Code. This – and other aspects of Bill 53 – undermines equality principles embodied in the Charter of Rights and Freedoms and threatens fundamental principles in the administration of justice; and,

E. The flagrant lack of openness and transparency in the decision to go ahead with a legal clinic and dismantle the Commission before the Bill is passed is appalling.

## A. The Elimination of the role of the Commission

In your letter of August 1st you state that the new model complies with the United Nations "Paris Principles" by providing a number of elements including "adequate powers of investigation and sufficient resources". It is shocking that you can make this statement when Bill 53 eliminates investigation entirely by striking out sections 23 and 24 of the Human Rights Code.

It has been suggested that the Tribunal has the power to investigate through the process of hearing complaints. The argument is that by requesting documents and inviting others to present argument at hearings, the Tribunal will get to the heart of the matter, which, ultimately, is the purpose of investigation. But Bill 53 does not describe how the Tribunal will conduct itself. By leaving it up to the Tribunal to set its own rules, we have no idea what a complainant will face in terms of investigation. This process must be set out to allow the public to respond before the model is adopted.

The Paris Principles clearly describe the role of a Human Rights body as one that advises government and other bodies through the production of opinions, recommendations, proposals and reports. Under Bill 53, no public body will have that role.

Bill 53 is also silent on the issue of sufficient resources. While we understand that budgets are the purview of annual budget processes, the question must be answered unequivocally by the Attorney General. Will the Tribunal be able to

manage close to 20,000 inquires and complaints on their current budget? How will the Tribunal do this and with what staff?

Bill 53 also eliminates any statutory responsibility for education. In your letter you state that the proposed changes "remove the education mandate from the Human Rights Code. However this does not mean that education on human rights will be eliminated". Then why eliminate it from the statute? There is no justification for this action, except a plan to eliminate Human Rights education as a fundamental responsibility of the government. The government's obligations under the Paris Principles demand that education be included as a statutory requirement.

## B. Bill 53 and Systemic Discrimination

West Coast LEAF and our parent organization LEAF (Women's Legal Education and Action Fund) have been intervening in cases to make broad equality-rights arguments for the past 17 years. While the proposal of S 36(2) is laudable in allowing the Tribunal to ask outside parties for an opinion on the matter before them, our experience has established a number of advantages and disadvantages in relying on an intervention model. While we are happy to discuss the advantages with you, for the purposes of this submission we would like to point out some of the disadvantages, such as:

- Intervenors have no control over the timing of the case, even if there is a pressing matter at hand that should be considered;
- Any genuine submission by a non-profit agency may require extensive consultation in order to be well-grounded in the needs of their constituents, a process that can be outside the timing needs of the Tribunal and case at hand;

- The facts in the particular case may not provide the best basis for making an argument relevant to the NGO's constituents;
- A reliance on intervenors may undermine the importance of a case by bringing political debate into a legal arena – what credentials will an organization be required to have before the Tribunal can ask them to intervene?; and,
- The success and ultimately the value of any given intervention will depend on how well the work is carried out, which in turn depends on resources, access to information and the history of the non-profit involved.

It is important to note that very few organizations in British Columbia have the mandate to intervene in cases before Tribunals or courts. It is even more vital to point out that intervention of non-profit agencies, NGOs and public interest organizations may be impossible in the current atmosphere of cutbacks and restructuring. This is particularly true of women-serving organizations.

The actions of this government, in cutting funding and services to anti-violence, women's, immigrant and anti-poverty organizations, the slashing of access to income assistance, disrespect for the experiences of single mothers, and the dismantling of civil legal aid have profoundly undermined the ability of women in this province to assert their basic human rights. Those of us who advocate for women are left with very little ability to intervene in cases before the Human Rights Tribunal when faced with the urgent and pressing survival needs of the women of British Columbia.

## C. Public Accountability

Bill 53 also eliminates any body that is directly accountable to the public. There is no mechanism under Bill 53 to allow for input from people whose interests are at stake. It may be the government's intention that the Ministry of the Attorney-General take this on themselves, as they are accountable to the Attorney-General, an elected member of the Legislature. This approach does not address the reality that government is often a respondent in a Human Rights matter.

In addition, the elimination of the Human Rights Advisory Council takes away any possibility for community input. There is no justification for this. With the proposed legal clinic, unconnected to a democratically elected government, it is even more important for an arms length body to review, assess the status of Human Rights in B.C. The individual members of the Council represented a committed, voluntary group of individuals with a variety of backgrounds and professional and personal experiences. The cost to the government was minimal as the individuals were volunteers.

West Coast LEAF urges the government to maintain the Commission and the Advisory Council, and make a statutory commitment to some form of regular review process.

## D. The Coercive nature of Bill 53

*S 22(3) – Filing a complaint outside the time limits*

The Code as it stands today allows the Commission to consider a complaint even if it is outside the time limits if the delay was incurred in good faith and no one would be prejudiced by the delay. Under Bill 53, not only has the time limit been reduced from one year to six months, but the Tribunal can only accept a complaint after the time limit if it is in the public interest to accept it. The language implies that the onus will be on the complainant to establish the public

interest if her complaint is to be accepted late. The evidence and argument necessary to establish such a public interest is beyond the resources of most British Columbians. It is an unrealistic expectation and will result in legitimate complaints being put aside.

These two amendments will severely undermine a complainant's ability to bring a human rights complaint forward.

*S 27(1)(f.1) – Dismissing a complaint because a reasonable settlement offer is refused*

This proposed change illustrates a lack of understanding on the part of the government as to the purposes and goals of Human Rights legislation. The history and evolution of Human Rights, both in law and policy, has established that Human Rights legislation is meant to protect British Columbian residents from discrimination and is therefore accorded quasi-constitutional status. There is a public interest in having complaints brought forward; it is not a simple matter of private parties seeking individual remedies. Forcing settlements on complainants suggests that the government sees only the remedy for the individual as the primary purpose of the scheme.

There are many monetary and non-monetary reasons for accepting or rejecting a settlement offer, reasons that may only be understandable in the context of a full hearing.

*S 35(1.1)(g) – The Tribunal may make mediation mandatory*

While mediation can be a very effective tool in many circumstances, it must be voluntary by nature and is best used where an on-going relationship is expected. Mandatory mediation defeats that purpose and ignores genuine power imbalances that exist between most complainants and respondents.

S 35(1.1)(g) does not make mediation mandatory, but it is a very explicit statement allowing the Tribunal to do so. It should be removed from the legislation.

## E. The Proposed Legal Clinic

West Coast LEAF is very disturbed by the structural changes that are already being made to the Commission, and the lack of transparency involved in negotiating a legal clinic prior to passing Bill 53.

What process was used to decide that the B.C. Human Rights Coalition should provide these services? With whom did they consult? It is West Coast LEAF's understanding that the clinic concept is based on a proposal presented to the Human Rights Commission in 1998. Four years ago, two community organizations suggested a clinic model that was rejected by the Commission at the time.

It is possible that a clinic model may enhance Human Rights in British Columbia, but if this is true (and only a broad-based analysis of community concerns beyond the statement published in the Westmacott/Lovett paper would allow a conclusion on the question), how can this government justify the acceptance of simply one proposal? When was that proposal made upon which this plan is based?

The Tribunal and the Clinic contemplated by the government reduces the role of Human Rights legislation to addressing a matter between two parties with a private dispute. The lack of legal aid or any reasonable opportunity to choose and retain counsel, the contradictory role of advocating for respondents and

complainants, and the elimination of any public oversight of the system deepens the problem.

A fundamental principle of Human Rights legislation is that the elimination of discrimination is in the public interest. Bill 53 and the accompanying negotiations with the Coalition erode this fundamental principle to an alarming degree.

**Conclusion**

We strongly urge you, Mr. Plant, to put aside Bill 53, hold meaningful public consultations and make a public commitment to the fundamental principles of justice, equality and the elimination of discrimination in British Columbia.

We look forward to hearing from your office,

Sincerely,

West Coast LEAF

Please contact us through our Program Director, Alison Brewin

cc LEAF National
Ms Lynn Stephens
Mr. Gordon Campbell
B.C. Human Rights Coalition
Mary Woo Sims
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