



Charitable Registration
#119292464RR0001

WEST COAST LEGAL EDUCATION AND ACTION FUND (LEAF)
555 – 409 GRANVILLE STREET
VANCOUVER, B.C. V6C 1T2
TEL: (604) 684-8772
FAX: (604) 684-1543
E-MAIL: info@westcoastleaf.org
WEBSITE: www.westcoastleaf.org

October 3, 2011

Bernd Walter, Chair
BC Human Rights Tribunal
1170 – 605 Robson St.
Vancouver, BC, V6B 5J3

Re: BC Human Rights Tribunal Policy and Procedural Review

Thank-you for inviting West Coast LEAF to make submissions to the BC Human Rights Tribunal Policy and Procedural Review. West Coast LEAF's mandate is to achieve equality by changing historic patterns of discrimination against women through BC-based equality rights litigation, law reform and public legal education. A portion of our work involves intervening in cases of strategic importance to women's equality in order to provide our unique perspective and expertise to the courts. While West Coast LEAF does not represent clients at the Tribunal, as a human rights and equality seeking organization we have a strong interest in the Tribunal's policies and procedures, and we monitor the outcome of its cases with an eye to cases in which we may wish to intervene if and when they reach the courts. We are grateful for this opportunity to share our thoughts and concerns and appreciate the Tribunal involving us in this review of its policies and procedures.

As a specialized administrative body, the BC Human Rights Tribunal plays a critical role in the protection and promotion of human rights in British Columbia. The essential contribution made by human rights tribunals was recognized internationally with the 1993 adoption by the United Nations of the Paris Principles Relating to the Status of National Institutions.¹ The Paris Principles highlight the importance of having an institution "vested with competence to promote and protect human rights", with a broad mandate to examine "any situation of violation of human rights which it decides to take up". While the Paris Principles are directed at national institutions, in a federal system such as Canada's this vision and mandate can be equally applied to provincial institutions such as the BC Human Rights Tribunal, which hears and decides matters that are outside the jurisdiction of the federal human rights system. The effective functioning of the BC Human Rights Tribunal is essential to ensuring that the full spectrum of human rights cases can be adjudicated and resolved.

¹ Online: <<http://www2.ohchr.org/english/law/parisprinciples.htm>>.

As a women's equality-seeking organization, we were interested to learn that the second-most common ground of discrimination alleged by complainants to the Tribunal in 2009-10 was discrimination on the basis of sex (15%), which includes harassment and pregnancy. Presumably, most of these cases were brought by women, although women most certainly brought discrimination claims based on grounds other than sex. It would be useful to West Coast LEAF to know the gender breakdown of the complaints filed and processed in order to undertake a gendered analysis of the kinds of discrimination claims being pursued by women and men, and we respectfully request the Tribunal to begin collecting and publishing this data.

Whether the discrimination a woman has experienced is based on her sex, race, ability, poverty or other and intersecting forms of marginalization and disadvantage, discrimination impacts women's lives in critical ways. Access to a competent and effective tribunal with the ability to order meaningful remedies for human rights violations is a vital component of women's equality and ability to participate in the public life of this province.

Access to Justice

Access to justice is an issue of major concern in British Columbia, particularly for people with low incomes – a class in which women are disproportionately represented. The BC Human Rights Coalition reports that 59.2% of those applying for its assistance indicate a household income of under \$34,999; 25.1% indicate a household income of under \$15,000.² BC's poor are disproportionately single mothers, low-wage workers, recipients of social assistance, elderly residents living alone, people with disabilities or chronic health conditions – groups predominantly comprised of women – as well as children, recent immigrants, and men and women of aboriginal descent. The fact that there is no cost to file a human rights complaint is an important component of fostering access to justice for those whose rights have been violated. However, vulnerable groups including youth, non-English-speaking immigrants and other marginalized women are still falling through the cracks.

West Coast LEAF conducts workshops with youth to empower them to know and access their rights in the workplace. We advise working youth about their rights under the Human Rights Code, in particular their right to be free from discrimination in the workplace. Young people are particularly vulnerable to workplace discrimination and harassment. Youth are largely unaware of their rights, and are often unsure of what to do or who to talk to when they experience racism, sexual harassment, and other forms of discrimination in the workplace. Even when youth are aware of their rights and the procedures available to enforce them, they may be intimidated by the claims form and unlikely to fill it out without support and assistance. Improved assistance for youth in filling out the claims form would go a long way towards improving access to justice for this vulnerable population.

A simplified claims form that is more accessible to youth, immigrant communities for whom English is not their first language, people with literacy challenges, and others, and which better

² BC Human Rights Clinic Fourth Quarter Report, 2009-2010.

enables them to tell their story, could also prove extremely helpful; conversations about possible reforms should be undertaken in consultation with organizations that work with vulnerable populations, in order to ascertain the best structure for a revamped claims form that would meet their clients' needs.

There should also be more support for other vulnerable groups in the drafting of their human rights complaints. Statistics from the BC Human Rights Coalition suggest that people who do not have English as their first language are less likely to file human rights complaints than native English speakers.³ It seems unlikely that people who have immigrated to Canada from non-English speaking countries experience less discrimination than English speakers. Some likely explanations for why immigrants file fewer human rights complaints are a lack of awareness of their human rights and the remedies available when they are violated, a lack of information on how to file a complaint, fear of repercussions, and lack of support from advocates who can assist them through the process.

The Ministry of the Attorney General publishes information sheets and guides in English, Chinese and Punjabi, leaving out many other languages. Further, a non-English speaker must navigate through the rest of the website – which is written only in English – in order to find and access those translated information sheets. Clear, straightforward and easily accessible information in a variety of languages that informs newcomers of their rights, responsibilities, and the mechanisms available to them if they experience discrimination are necessary for ensuring that rights protections are equally available and accessible to all.

Even for individuals for whom English is their first language, literacy barriers may impact their ability to access and use legal information. Forty percent of British Columbians have literacy rates that affect their capacity to function in the modern world, a proportion that is expected to increase in coming years.⁴ Anyone who has dealt with even a relatively straightforward legal problem will understand that the justice system is complex and challenging to navigate for any non-lawyer, let alone for someone who faces additional literacy and language barriers.

What is truly needed is legal advice and representation, and not simply legal information or what some refer to as “pamphlet law”. Even the best information in the world cannot adequately equip most people to research, prepare, submit and pursue their human rights cases. Lawyers who take on cases that have been prepared by their clients almost invariably re-write the claim, resulting in inefficiencies for both the Tribunal and counsel. As emphasized above, improved access to advice and representation in the preparation, framing and filing of human rights cases will contribute to a more effective, efficient and fair human rights system.

The efficiency and fairness of the human rights system would also benefit from simpler rules of procedure. The current rules are complex and formalistic, and appear to be written for lawyers

³ BC Human Rights Coalition, “Overview of the effectiveness of the BC Human Rights Tribunal”, online: <<http://www.bchrcoalition.org/files/documents/AnoverviewoftheEffectiveness.pdf>> at 12.

⁴ Literacy BC, “Fact Sheet: Literacy in British Columbia,” online: <<http://www.literacybc.ca/Info/literacyinbc.pdf>>.

and others with expertise in human rights matters, rather than for self-represented victims of human rights violations. Plain language, easily understood rules of procedure that clearly set out what is required of complainants and respondents and the deadlines by which those requirements must be met would be extremely beneficial to the people who access the system.

Other concerns

Our consultations with lawyers who represent clients at the Tribunal suggest that, in general, the Tribunal is working fairly well. However, delay is always a concern, particularly in the workplace context where people with disabilities, pregnant women, and other vulnerable individuals have lost their jobs as a result of discrimination. Clearly, it is essential that the Tribunal be well funded and properly staffed to ensure that claims which necessitate a full hearing can be determined in a timely fashion, while claims that do not require a full hearing can effectively be filtered out. An expansion of the mediation and early settlement procedures may be helpful in this regard. It is also important for Tribunal Members to maintain effective control over the cases that come before them, and to engage in efficient case management practices, particularly in cases involving parties who are self-represented.

Despite delay concerns, the 6-month time limit for filing complaints is problematic. It can take significant time for individuals who have experienced discrimination to recover from that trauma, recognize that they have suffered a human rights violation, make the decision to file a complaint, and then navigate the procedure for doing so. Youth, immigrant women, women with disabilities, and other vulnerable groups may be especially disadvantaged by the short timeframe in which they must file their complaints. West Coast LEAF advocates that, at the very least, the one-year time limit be reinstated, and that a longer time limit be considered, in consultation with affected groups. While this may in turn give rise to additional delays, adequate resourcing for the rest of the complaints process would help to alleviate those concerns.

West Coast LEAF has heard from advocates that the application to dismiss procedure can also be problematic. Respondents file their application to dismiss before disclosure has taken place, and will often allege that the complainant has failed to provide sufficient evidence of the discrimination in their application. Of course, very often the evidence of that discrimination is in the possession or control of the respondent, and is not accessible to the complainant prior to disclosure. One possible remedy would be a requirement that disclosure coincide with the respondent's application to dismiss, in order to better ensure that complainants can properly respond to these applications.

West Coast LEAF welcomes the Tribunal's commitment to transparency, but questions the need for all of its interim decisions to be published online. Decisions on disclosure applications and adjournments, for example, are unlikely to contribute any new points of law or provide useful guidance to other litigants, and may in fact contribute to the burden faced by self-represented parties who are attempting to research and prepare their own cases. Only final decisions, as well as interim decisions that add to the development of human rights jurisprudence and will

contribute to the analysis of future cases should be published online. Further, privacy concerns may be engaged by the publication of the names and highly personal details involved in many human rights cases. Greater care should be taken to ensure that only essential personal details are revealed in the Tribunal's decisions.

While West Coast LEAF understands that law reform is not within the purview of the Tribunal or this review, we would like to briefly emphasize our support for the proposed amendment to the Code that would add "social condition" to the list of prohibited grounds of discrimination. The absence of protection for people receiving income assistance or who are perceived as poor has been a major gap in human rights protection in BC, and has forced claimants to fit their claims into narrow boxes that do not provide a full picture of the discrimination they have suffered. The addition of social condition to the Code may provide for a more holistic analysis of the ways in which social and economic disadvantage intersect with other forms of discrimination, and highlight the ways in which discrimination intensifies the negative impacts of poverty.

Thank-you for considering our submissions. For your reference, West Coast LEAF also prepared submissions to the BC Law Institute last year, in which we set out our concerns regarding a proposed "super-tribunal" with jurisdiction over all workplace complaints, including human rights cases. These submissions are available on our website at: <http://www.westcoastleaf.org/userfiles/file/WCL%20submissions%20on%20HR%20and%20workplace%20tribunal.pdf>. I have also attached them to the email containing the present submissions. We look forward to opportunities for further consultation with you on these important issues.

Yours truly,

A handwritten signature in black ink, appearing to read 'Laura Track', written in a cursive style.

Laura Track
Legal Director