



November 17, 2017

To: Parliamentary Secretary Ravi Kahlon, BCHumanRights@gov.bc.ca

Re: Consultation on the formation of a new Human Rights Commission in British Columbia

Dear Parliamentary Secretary Kahlon,

West Coast LEAF's mandate is to achieve substantive equality and justice for all women and all genders in BC by challenging systematic discrimination through litigation, law reform, and public legal education. Our work is particularly focussed on the right to parent, criminalization and incarceration, access to healthcare, economic security, access to justice, and gender based violence. We welcome the government's commitment to implement the United Nations *Declaration on the Rights of Indigenous Peoples (UNDRIP)*, to adopt a poverty reduction plan, and to introduce a new Human Rights Commission in British Columbia. We believe that an independent, authoritative and empowered Commission is essential to the promotion of human rights and gender equality in BC, and are pleased to provide these submissions about the structure that will best meet our shared goals.

Commission Mandate

The Commission must have the mandate to enforce human rights broadly, including but not limited to those protected by the BC *Human Rights Code*, [RSBC 1996], c.210 and international human rights instruments such as *UNDRIP* and the *Convention on the Elimination of all forms of Discrimination Against Women (CEDAW)*. At the end of this submission, we have included draft legislative wording to capture this broad mandate.

The Commission should work to promote and enforce human rights, to engage in relationships that embody the principles of dignity and respect, and to create a culture of human rights compliance and accountability. It must act as a driver for social change based on principles of reconciliation and substantive equality.

Functions of the Commission

The Commission should have three key functions: (1) educational; (2) investigative and advisory; and (3) systemic advocacy, each of which is explained below. The draft legislative wording suggested at the end of this submission incorporates these key functions, including:

1. Educational, including the following tasks:

- Producing public educational resources on topics such as employer responsibility to address sexual harassment in the workplace and protect the rights of pregnant employees; and
 - Providing workshops to the public, public service providers, landlords, and employers on how to protect human rights and comply with the law.
2. Investigative and advisory, including the following authority:
- Conducting systemic investigations comparable to those conducted by the Ombudsperson on broader issues or trends of concern, which would then be presented to the Legislature with recommendations;
 - Auditing employers within provincial jurisdiction (including government), service providers, and providers of housing for compliance with the *Code* (by way of example, the Canadian Human Rights Commission can audit employers under federal jurisdiction), as well as other institutions (for example, the Ontario Human Rights Commission’s investigation into racial profiling by police);
 - Advising government regarding potential or actual human rights violations; and
 - Compelling disclosure of information when undertaking an investigation (from both public and private bodies).
3. Systemic advocacy, including the following authority and scope:
- Speaking to the media as a public voice on human rights;
 - Initiating systemic complaints through the Tribunal; and
 - Acting as an intervener in the Tribunal and courts.

Authority of Commission

The Chief Commissioner should have the status of an officer of the Legislature, similar to the Representative for Children and Youth and the Ombudsperson. In this capacity, the Chief Commissioner would be able to present their systemic reports and key recommendations directly to the legislature. This will have the dual function of preserving the independence of the office (as per the [Principles relating to the Status of National Institutions \(The Paris Principles\)](#)) as well as increase the authority of the Commission to instigate substantive and systemic change.

The Chief Commissioner could report to a Standing Committee of the Legislature. Reporting would entail regular meetings to update the Committee on the goings on at the Commission, and the Committee will be responsible for facilitating access to the Legislature for the purposes of the Commission presenting its Annual Reports, Service Plans, Investigative Reports, and recommendations to create systemic change to the Legislature. The Commission must be empowered to hire its own staff in order to preserve its independence. Adequate resources are also essential to independence.

Relationship between Commission and Tribunal

Feedback from the Ontario Human Rights Commission model suggests that information sharing within the tripartite human rights structure is essential to both the smooth functioning of the system as well as to identifying systemic issues for the Commission to address. The Commission must be established in such a way as to facilitate such information sharing, including regular meetings between the Tribunal and Commission that could be used to identify systemic issues and trends appearing through complaint

process. However, the Commission should not play a gatekeeper function for the Tribunal as it did in the past. The Tribunal should remain a direct access model.

The Commission's mandate to enforce the *Code* must also include intervening in judicial reviews of Tribunal decisions and initiating systemic complaints before the Tribunal.

Working in community

In order to be as effective and transparent as possible, the Commission must have structural connections to the community and to the voices and experiences of marginalized and vulnerable communities. For example, the Commission could have advisory committees composed of community based human rights experts (see for example, the [San Francisco Human Rights Commission Equity Advisory Committee](#), and the [Ontario Human Rights Commission Community Advisory Group](#)).

Further, the Commissioners should be appointed based on strong community ties and should be representative of the diversity of the general population including those most likely to experience discrimination in our society.

Finally, while we recommend that the main Commission office be centrally located in Vancouver, the Commission must have a significant travel budget and/or satellite offices in communities outside the Lower Mainland. Building relationships outside of the Lower Mainland is essential to fulfilling its provincial mandate, particularly in Indigenous communities.

Other proposed amendments to the Code

While recognizing that this particular call for feedback is focused on the Commission rather than the *Human Rights Code* more generally, we take this opportunity to highlight one particular change that we would like to see implemented in the *Code*. That is, we urge the provincial government to add "social condition" to the list of prohibited grounds of discrimination in ss.7(1), 8(1), 9, 10(1), 11, 13(1), 14, 41(1), and 42(1)(a). We recommend that the following definition be added to s.1 of the *Code*:

"social condition" means social or economic disadvantage resulting from,

- (a) employment status,
- (b) source or level of income,
- (c) housing status, including homelessness,
- (d) level of education, or
- (e) any other circumstance similar to those mentioned in clauses (a), (b), (c) and (d);

Section 10(2) also should be amended to provide for an exception to 10(1) for low income, subsidized or other forms of social housing.

While the addition of social condition is not essential to the functioning of the Commission as the mandate is broadly framed here, since the *Code* will likely be amended to provide for the Commission, we urge the government to take this opportunity to add this long overdue protection for people living in poverty.

As it currently stands, discrimination on the ground of social condition often disproportionately impacts women, people with disabilities, Indigenous people and others covered by existing grounds of protection. However, the requirement to prove that the discrimination is connected to these additional grounds creates additional evidentiary burdens for claimants in these types of claims, creating an unfair and arbitrary obstacle to accessing justice for those who are already most marginalized. Adding the additional ground of social condition to the *Code* not only recognizes an important part of the problem of inequality – and the lived reality of those experiencing violations of their rights – but it will also level the playing field for claimants living in poverty seeking to access human rights protections.

Conclusion

Despite the fact that British Columbians, and in particular those most marginalized and vulnerable in our society, experience deep systemic inequalities impacting their rights, dignity, and safety, BC is the only province without a human rights commission. In creating a new commission, we urge the government to be guided by the Paris Principles and the [Strengthening Human Rights](#) report authored by Gwen Brodsky and Shelagh Day, and we recommend adopting a commission model similar to that of the Ontario Human Rights Commission (with additional protections for independence of the commission as discussed above).

The world envisioned in our *Charter of Rights and Freedoms*, our *Human Rights Code*, and the international human rights instruments is a world in which differences are respected and all people have equal opportunities to survive and thrive; a robust and independent human rights commission is essential to realizing this vision. We look forward to working with the Province to further our shared vision for human rights.

Respectfully submitted by:



Kasari Govender
Executive Director
West Coast LEAF

Appendix A – draft amendment to the *Human Rights Code* to provide for Human Rights Commission mandate and functions.

For the purposes of this section, “human rights” include, but are not limited to, the rights contained in this *Act* and the rights contained in international human rights instruments.

The functions of the Commission are to promote and advance respect for and protect human rights in British Columbia and, recognizing that it is in the public interest to do so and that it is the Commission’s duty to protect the public interest, to identify and promote the elimination of discriminatory practices and, more specifically,

- (a) to forward the policy that the dignity and worth of every person be recognized and that equal rights and opportunities be provided without discrimination that is contrary to domestic and international law;
- (b) to develop and conduct programs of public information and education to promote awareness and understanding of, respect for and compliance with this *Act* and other human rights instruments;
- (c) to undertake, direct and encourage research into discriminatory practices, including systemic discriminatory practices, and to make recommendations designed to prevent and eliminate such discriminatory practices;
- (d) to examine and review any statute or regulation, and any program or policy made by or under a statute, and make recommendations on any provision, program or policy that in its opinion is inconsistent with human rights protections;
- (e) to initiate reviews and inquiries into incidents of tension or conflict, including those arising from systemic discrimination, or conditions that lead or may lead to incidents of tension or conflict, in a community, institution, industry or sector of the economy, and to make recommendations, and encourage and co-ordinate plans, programs and activities, to reduce or prevent such incidents or sources of tension or conflict;
- (f) to promote, assist and encourage public, municipal or private agencies, organizations, groups or persons to engage in programs to alleviate tensions and conflicts based upon identification by a prohibited ground of discrimination in this *Act*;
- (g) to designate programs as special programs in accordance with section 41;
- (h) to approve policies to provide guidance on the implementation of human rights;
- (i) to make applications to the Tribunal for resolution of systemic complaints;
- (j) to report to the people of British Columbia on the state of human rights in the Province and on its affairs;
- (k) to perform the functions assigned to the Commission under this or any other *Act*.