



A Human Rights Commission for British Columbia:

Written Submission by the BC Civil Liberties Association (BCCLA)

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About the BCCLA

The BCCLA is a non-profit non-partisan, unaffiliated advocacy group with approximately 2,300 members. It has been registered as a society under British Columbia law since its incorporation in 1963. The objectives of the BCCLA include the promotion, defence, sustainment and extension of civil liberties and human rights throughout British Columbia and Canada.

Top Issues to Consider in Establishing a BC Human Rights Commission

The BCCLA welcomes the opportunity to provide the Parliamentary Secretary for Sport and Multiculturalism with the top issues that he should consider in preparing his recommendations for a Human Rights Commission for British Columbia (“Commission”).

British Columbia needs a Human Rights Commission with a strong mandate and the resources required to carry it out successfully. We wholly endorse the recommendations included in the December 2014 report “Strengthening Human Rights: Why British Columbia Needs a Human Rights Commission”¹, and we adopt it as part of our submission.

¹ Gwen Brodsky and Shelagh Day, *Strengthening Human Rights: Why British Columbia Needs a Human Rights Commission* (Vancouver: The Poverty and Human Rights Centre and Canadian Centre for Policy Alternatives – BC Office, 2014).

We would like to draw your attention to some specific recommendations that we think are especially important in designing an effective Human Rights Commission:

Independent and Strong Voice: The overarching recommendation is that the Commission should be empowered to participate as a strong and independent voice for equality and human rights in public debates. This recommendation is grounded in the first of the effectiveness factors articulated by the UN Centre for Human Rights, pursuant to the international standards for human rights institutions known as the Paris Principles: a human rights system must be capable of acting independently from government and other powerful interests.²

Well-resourced: The Commission must have the resources it needs to nimbly and appropriately respond to important issues in discrimination in British Columbia. We know that Human Rights Commissions at the federal level and in the provinces too often are unable to respond robustly or in a timely way to issues of serious importance due to a lack of resources. After years of having no Commission at all, the Commission should have enough resources to allow it a reasonable degree of freedom in pursuing its mandate on behalf of British Columbians.

Access to justice must be ensured: The Commission should be a part of a tripartite system that includes the Human Rights Tribunal and a Legal Support Centre or similar agency that assists individuals in accessing the Tribunal and judicial reviews, working in collaboration with existing community legal advocates and agencies. These services must be available province-wide, including in remote areas and Indigenous communities. This centre could be established along the lines of the Human Rights Legal Support Centre in Ontario, and build on the lessons learned in Ontario from several years of operation.³ A legal support centre though be sufficiently well resourced to meet the demand for its services.

² Centre for Human Rights, United Nations, National Human Rights Institutions: A Handbook on the Establishment and Strengthening of National Institutions for the Promotion of Human Rights, Professional Training Series No. 4, (New York and Geneva: UN, 1995) Ch. II (A) at 66.

<http://www.ohchr.org/Documents/Publications/training4en.pdf>.

³ See the *Report of the Ontario Human Rights Review 2012*, accessed at:

https://www.attorneygeneral.jus.gov.on.ca/english/about/pubs/human_rights/#_Toc436831404.

Appointment of the Commissioners: The Commission should be composed of persons who are appointed by a special All-Party Committee of the Legislature of British Columbia. This reduces the risk of partisan appointments that could compromise the independence of the Commission and is currently the model of appointment in use for the provincial Representative for Children and Youth.

Reporting Structure: To sustain and reinforce its independence and strong voice, the Commission should report directly to the Legislature and not to a specific Minister or to the Government of British Columbia.

Tenure: To bolster the independence of the Commissioners, they should be appointed for a set tenure. We think that seven years is an ideal length of tenure as it ensures that the Commissioners' terms last longer than the four-year term of a legislature. This seven-year tenure is also the model generally used for members of the Canadian Human Rights Commission.⁴

Public Education and Guidance: Human rights education helps to prevent discrimination and it is a significant and perpetual role for a Commission. The Commission should engage intensively in public education and provide interpretations and guidance on the meaning and requirements of the Human Rights Code (especially for schools, employers and landlords). A broad education mandate would further enable the Commission to educate vulnerable groups and individuals who are at risk of discrimination so that they understand how rights protections work and when they can use them.

Research: Research conducted or supported by the Commission can promote a deeper understand of human rights issues in a community or the province. The Commission needs to have the resources to become the premier centre for research on discrimination in the province, and be able to sponsor and commission research that it considers desirable.

⁴ Members of the Canadian Human Rights Commission may be appointed for terms not exceeding seven years.

Public Inquiries and Consultations: A key element of a human rights commission's authority is the capacity to conduct a formal inquiry with the powers generally associated with public inquiries, or less formal consultations. These tools allow a commission to expose broad or particular issues of discrimination, hear from those affected, and make recommendations aimed at preventing the discrimination that was uncovered. They can be useful in addressing broader issues that are not resolvable through individual complaints. The Commission should therefore be authorized to engage in public consultations and inquiries that it considers to be in the public interest.

Systemic investigations: The Commission should have the power to conduct investigations and research on systemic discrimination issues, separate from the power to conduct a public inquiry.

Power to Initiate Complaints: The Commission should be empowered to file complaints at the Human Rights Tribunal on systemic issues or where there are complaints of a systemic nature, where there is an entrenched pattern of discrimination or where there is a recalcitrant respondent. This authority is an important complement to a commission's power of inquiry. For clarity, this is not a recommendation that the Commission screen and assume carriage of individual complaints.

Power to Intervene: The Commission should be authorized to intervene in individual cases at the Human Rights Tribunal and the courts that have systematic dimensions in order to make public interest arguments or to provide evidence of a pattern of discrimination.

Advisor to Legislature and Government: The Commission should have a strong role in providing recommendations to government and the legislature after examining and reviewing policies, statutes, bills and law reform in general. The Commission should be able to appear before legislative committees provincially or nationally, as appropriate.

Related issues in connection with the *Human Rights Code*: While the government considers any changes to the *Human Rights Code* in tandem with its consideration of a new Human Rights Commission, we emphasize that:

- The statutory timeline for filing a complaint should be extended to at least 12 months, consistent with the recommendation of the Human Rights Tribunal. The current 6 month timeline is a real barrier to access to justice in many cases.

- Social condition should be added to the *Code* as a further protected ground of discrimination.
- Access to the Tribunal and to remedies under the *Code* should continue to be without regard to immigration status in Canada.