

SUBMISSION TO THE BC HUMAN RIGHTS COMMISSION CONSULTATION

November 10, 2017



In response to the invitation from Parliamentary Secretary Ravi Kahlon for input about re-establishing the B.C. Human Rights Commission, the BCGEU makes the following submission.

Introduction

The BCGEU is uniquely situated to provide input on this issue. Our union is incredibly diverse, encompassing a broad spectrum of interests and perspectives. The BCGEU represents approximately 73,000 workers in various sectors and occupations in more than 550 bargaining units throughout British Columbia. Our membership includes direct government employees who protect children and families, provide income assistance to vulnerable individuals, fight forest fires, protect the environment, manage our natural resources, deliver care to people with mental health issues and addictions, administer B.C.'s public system of liquor control, licensing and distribution, staff correctional facilities and the courts, and provide technical, administrative and clerical services.

Our membership also comprises workers throughout the broader public and private sectors where members provide clinical care and home support services for seniors, a diverse range of community social services, highway and bridge maintenance, post-secondary instruction and administration, as well as other non-governmental industries, including financial services, hospitality, retail and gaming.

The BCGEU is also one of the few entities that regularly appears in human rights litigation as both a complainant and a respondent, particularly in matters concerning the Provincial Government as respondent. We routinely litigate violations of the *Human Rights Code* (B.C.) before labour arbitrators who have jurisdiction to hear such complaints in employment matters in unionized workplaces. From time to time, we are named as respondents in complaints to the BC Human Rights Tribunal.

Based on this significant knowledge and experience, and after careful consideration, we have identified the following principles and objectives that should guide the re-establishment of the commission. Where appropriate, we set out specific steps toward realizing these aims.

Truth and reconciliation

We begin by emphasising that, where the commission intersects with Indigenous persons or interests, it should be directed to do so through the lens of the United Nations Declaration on the Rights of Indigenous Peoples and the reports issued by the Truth and Reconciliation Commission.

This perspective must go beyond mere pronouncements and mission statements, so that the make-up and the tangible, day-to-day functioning of the commission reflects respect for the rights of Indigenous peoples and sensitivity to the trauma inflicted upon generations of Indigenous persons by government and society.

Independence

Independence is critical to ensure the credibility of any future commission.

First, a re-established commission must be independent from the tribunal. With respect to this issue, we submit that the future commission should not return to the "gatekeeping" function of screening complaints to the tribunal. We believe returning to this past approach would divert resources that could be better spent elsewhere. More critically, in our view the "gatekeeping" function is incompatible with the advocacy role we propose for the commission later in this submission.

The new commission must also be independent from the communities that often appear in front of the Tribunal, most notably various levels of government. Independence from the provincial government is particularly critical. The Province is often a respondent

in complaints before the Tribunal, and in human rights labour arbitrations. It is also the very entity that dismantled the past commission in 2002.

For any future commission to properly fulfill its mandate and maintain its credibility, it must be - and be perceived to be - free from any government interference. Its perspective, even its existence, must not hinge on the political affiliation of the government in power. Human rights must be set above politics.

To that end, we propose that the head of a new commission be an independent Officer of the Legislature, comparable to the Conflict of Interest Commissioner or the Ombudsperson.

Funding and staffing

The BCGEU has experienced first-hand the negative effects of insufficient funding and staffing levels in entities comparable to the commission. The 16 years of shameful budget constraints imposed on the Human Rights Tribunal and the Labour Relations Board by the BC Liberals have hampered access to justice in very real ways.

We submit that the re-established commission must be protected from being diminished in this manner. This objective could be partly accomplished through our above-noted request to make the commissioner an independent Officer of the Legislature. Legislation should also be used to entrench the commission's work, including defining and protecting things like its overall mandate, local offices, staffing levels, and timelines to conclude matters.

Centre for research

The commission should act as a leading human rights research centre, working in partnership with B.C. communities and post-secondary institutions. This function will compliment and further the education, public inquiry and advocacy roles we propose below.

The Commission's research role should not be an abstract, academic exercise. Rather, it should focus on engaging with British Columbians and their lived experiences. Active listening and dialogues with Indigenous peoples and other equity groups to get their perspectives on why and how they face discrimination should be a priority.

Another important part of the new commission's research role should be to simplify and streamline the language of human rights law. At present, human rights disputes are often subject to lengthy and complex hearings and judgments. Human rights law should not be exclusive to lawyers, but articulated in a way that is easily accessible for ordinary British Columbians.

Education, advice and public inquiries

In our view, the most important role for the future commission is education and outreach. Human rights should not be about litigation, but the prevention of discrimination. The commission should be on the leading edge of promoting an inclusive society where all persons are able to flourish without being subject to oppression and intolerance.

To that end, we urge you to task the future commission with providing broad education and outreach at all levels of schooling and in the community. The commission should work with the Ministry of Education to integrate human rights education into the provincial curriculum. The commission should also play a role in developing resources and providing support for teachers.

The commission should be available as a resource for members of the public who wish to educate themselves about their rights or seek confidential advice. The commission should embrace accessible, easy-to-navigate technology in fulfilling this role. That said, it should not be limited to the online sphere. Many British Columbians, particularly those who are the most marginalized, do not have access to online tools or may be reluctant to seek advice from anything but a real person. Advisors should be

accessible in local offices and trained in working with marginalized people in a sensitive, confidential manner.

The commission's role should also include both educating and auditing employers, landlords, and other parties or persons that may otherwise find themselves the subject of complaints to the tribunal. Further, the commission should be available for such parties to seek an opinion or advice regarding any current or prospective policies and whether they comply with the *Human Rights Code*.

That said, in many cases the most egregious human rights violators will also be the most resistant to such education or auditing. For that reason, the commission should have the statutory authority to order education or audits in workplaces.

Where appropriate, the commission should also be empowered to conduct large-scale inquiries about human rights issues in British Columbia.

Advocacy

Further to our themes of ensuring independence and improving access to justice, we believe the future commission should act as an advocate.

The commission should provide representation to complainants who lack the resources to do so themselves. Human rights litigation is often lengthy, complex and expensive. These barriers to justice are often exacerbated by lawyers representing deep-pocketed employers, landlords and other respondents.

The commission should also have the capacity and the mandate to participate in public interest litigation as an independent party with expertise in human rights law. For example, a future B.C. Human Rights Commission modelled along the lines we propose would likely be able provide very useful submissions as an intervener in the forthcoming proceedings before the Supreme Court of Canada regarding Trinity Western University's Faculty of Law and various law societies.

Conclusion

The BCGEU looks forward to the re-establishment of the B.C. Human Rights Commission. A strong, independent commission will serve to make our province a better, more just, and more inclusive place for all British Columbians. We thank Parliamentary Secretary Ravi Kahlon for this opportunity to provide our perspective.

