



Strengthening Human Rights

Gwen Brodsky
and Shelagh Day

WHY BRITISH
COLUMBIA NEEDS
A HUMAN RIGHTS
COMMISSION

DECEMBER 2014



CCPA
CANADIAN CENTRE
for POLICY ALTERNATIVES
BC Office

the **POVERTY** and
HUMAN RIGHTS
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This report may be cited as: 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).

ISBN: 978-1-77125-158-7

Acknowledgements

The authors acknowledge the support of the Law Foundation of British Columbia, the Canadian Human Rights Reporter, and the Community University Research Alliance Programme of the Social Sciences and Humanities Research Council.

The authors also thank the following individuals for sharing their advice and expertise: Susan O'Donnell, Executive Director, BC Human Rights Coalition; Bernd Walters, Chair, British Columbia Human Rights Tribunal, Katherine Hardie, Counsel, and Steve Adamson, Registrar; Seth Klein, Director, Canadian Centre for Policy Alternatives – BC Office, and two anonymous reviewers; Josh Paterson, Executive Director, BC Civil Liberties Association and Micheal Vonn, Policy Director; Sarah Khan, Counsel, BC Public Interest Advocacy Centre; Aleem Bharmal, Executive Director, and Frances Kelly, Counsel, Community Legal Assistance Society; Thérèse Boulard, Former Director, Human Rights Commission of the Northwest Territories; Kasari Govender, Executive Director, West Coast Legal Education and Action Fund; Kendra Shupe, Poverty and Human Rights Centre Research Assistant; Bill Black, and Mary Liston, University of British Columbia, Faculty of Law; Glenn Gallins, University of Victoria, Faculty of Law, and Executive Director of the Law Centre; Ken Norman, University of Saskatchewan, College of Law; Elaine Littmann, Layout.

The opinions and errors in the report are those of the authors, and do not necessarily reflect the views of the publishers and funders.



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**CANADIAN HUMAN
RIGHTS REPORTER**

PUBLISHER OF CANADIAN HUMAN RIGHTS LAW

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Summary

In British Columbia today, there are many pressing human rights issues: not enough supports for youth with mental health problems; race and sex bias in policing; the concentration of Aboriginal, immigrant and racialized women and youth in low wage employment; homelessness and lack of affordable housing, just to name a few. Housing, employment, and certain kinds of services are necessities for all of us – we all need an adequate place to live and decent conditions of work, and, in emergency situations, the ability to obtain the assistance of a police officer or a mental health service. It is fundamental public policy in British Columbia that these basics of life should be available to everyone without discrimination. Unfortunately, we are missing a key institution for achieving this.

In 2002, the provincial government eliminated the BC Human Rights Commission, leaving the province with only a Human Rights Tribunal. While the tribunal plays a vital role – adjudicating individual complaints – it deals only with discrimination after the fact. The Commission’s mandate, by contrast, included important preventive and educational functions that BC has now been without for more than 10 years.

This report assesses BC’s experience with a Tribunal-only model over the past decade, through interviews with key stakeholders; comparison with human rights systems in other provinces, in particular Ontario; and, evaluation in relation to Canadian standards and international human rights obligations.

We find that the absence of a human rights commission has resulted in a gaping hole in the province’s system of human rights protection, with no public body in BC mandated to prevent discrimination, educate the public, undertake inquiries on broad systemic issues, develop guidelines, or promote human rights compliance. Instead, BC’s human rights system has been narrowed to settling disputes between private parties (via the

Tribunal), rather than addressing the broader issues in which the whole community has a stake. Right now, British Columbia does not have the institutional means to carry out the express purposes of its *Human Rights Code*.

Comprehensive human rights legislation first introduced in Canada during the 1960s and 70s recognized that discrimination is an offense against shared public values of equality and fairness for all individuals and groups. It has long been understood that human rights commissions are stewards with a responsibility to support the public interest by working to eliminate discrimination partly through providing a forum for handling complaints, but more broadly by promoting compliance with human rights law and policy. Meaningful human rights education and prevention is key to realizing the equality rights set out in the *Canadian Charter of Rights and Freedoms* and in international human rights treaties that Canada has signed.

Today, BC is the only province in Canada that does not have a human rights commission, and it is the weakest province when it comes to fostering human rights awareness. Without the capacity to review legislation, conduct research, educate the public, or investigate systemic discrimination, BC is failing to address the needs of its residents, and at the same time failing to live up to international standards established by the United Nations.

Commission Roles

- **Education:** Every British Columbian's quality of life depends directly on the state of human rights compliance in their community, workplace and province. Educating the public – in particular employers, service providers and members of disadvantaged groups – about their rights and obligations can foster a culture of respect for human rights. In turn, education can reduce the likelihood that violations will occur.
- **Research:** Research on human rights issues can assist the community as a whole to get ahead of a problem and work on solving it. For example, in Ontario, the Human Rights

Commission produced a research report about discrimination based on family status, an emerging issue in human rights law. This research has given everyone in Ontario a ‘heads up’ on the rights of workers who are also caregivers for children or other family members. Research and consultation on this issue in British Columbia could help workers and employers, and prevent complaints.

- **Guidelines or policies:** The development of guidelines is a key commission function. Most employers, service providers and landlords want to respect the law. But to do so, they need access to current, reliable and authoritative information and advice so that they can incorporate the requirements of the *Human Rights Code* into their management practices. In British Columbia, women still regularly face discrimination when they are pregnant. Guidelines on this topic would help everyone to better understand their legal rights and duties.
- **Inquiries, reviews, or special reports:** The goal of an inquiry, review, or special report is not to find fault, but to air an issue of discrimination, hear those involved and affected, and make recommendations about steps that would prevent or ameliorate the discrimination. Such inquiries are a significant, and often highly effective, part of the work of human rights commissions. They allow a human rights commission to address broader issues, which individual complaints may not adequately illuminate or resolve. For example, in 2003, the Ontario Human Rights Commission initiated an inquiry into the effects of racial profiling on individuals, families, communities, and society as a whole. This has resulted in much broader awareness in Ontario, including among police forces, of the realities of racial profiling and its effects. Following that inquiry, the Commission issued guidelines and policies, and engaged in collaborative work with a number of police institutions in the province of Ontario.
- **Complaints and interventions:** Human rights commissions can also initiate systemic complaints. This is a significant

function that permits commissions to proactively address discrimination that affects whole groups of people, where other efforts at resolution have failed, and where individual complaints are likely to be ineffective and wasteful of institutional and human resources.

Recommendations

We recommend that the provincial government amend BC's *Human Rights Code* to establish a new independent human rights commission appointed by and responsible to the provincial legislature, with the mandate to carry out educational, preventive and investigative functions. A commission appointed in this way would have independence and authority, like the Representative for Children and Youth, the Ombudsperson, and the Auditor General, to play a central role for the province in ensuring that standards of non-discrimination and fairness are understood and adhered to. An independent commission appointed by the legislature would also ensure a stable human rights system for BC.

The express purposes of BC's *Human Rights Code* are:

- to foster a society in British Columbia in which there are no impediments to full and free participation in the economic, social, political and cultural life of British Columbia;
- to promote a climate of understanding and mutual respect where all are equal in dignity and rights;
- to prevent discrimination prohibited by the *Code*;
- to identify and eliminate persistent patterns of inequality associated with discrimination prohibited by the *Code*;
- to provide a means of redress for those persons who are discriminated against contrary to the *Code*.

A History of Human Rights Law Reform in British Columbia

In 2002 British Columbia's Human Rights Commission was eliminated.¹ The new legislative scheme provided for a tribunal only.² A tribunal, as distinct from a commission, is concerned solely with the processing and adjudication of complaints. Its function is to address discrimination after it has occurred. It has no mandate to engage in preventive or promotional activities that will foster compliance with the *Code* and a human rights-respecting social climate in the province.

The ostensible rationale for eliminating the BC Human Rights Commission in 2002 was to get rid of the Commission's time-consuming 'gate-keeper function' and to ensure that claimants got 'directly' to a hearing on the merits of their complaints. The 'gate-keeper function' refers to the power, still retained by most commissions in Canada, to decide whether a complaint should go forward to a hearing on the merits or be settled or dismissed. Commissions in Canada were designed originally with powers to accept, investigate, dismiss, settle, or refer complaints for hearing. In BC in 2002, some individuals and groups were of the view that the gate-keeper function should be removed from the Human Rights Commission because it caused delay and because too few complaints made it through the screen and to hearings.³

However, the gate-keeper role was not really eliminated, nor can it be. It was transferred, in part, to the BC Human Rights Tribunal (BC Tribunal), where (often unrepresented) claimants now deal with the same gate-keeping issues through pre-hearing procedures, which respondents initiate.⁴ It was also transferred, in part, to the BC Human Rights Coalition, with whom the Government of British Columbia contracts to provide preliminary advice and referral to the Community Legal Assistance Society, which provides some legal representation.⁵

The new legislative scheme provided for a tribunal only.

Although technically the Coalition cannot dismiss a case, effectively it acts as a gate-keeper through its advisory and referral functions in that it can determine whether an individual will have meaningful access to the Tribunal. Unrepresented complainants are severely disadvantaged.

Thus, the 2002 reforms in British Columbia addressed concerns about the Commission's procedures for gate-keeping by, in effect, reassigning the role to other bodies. We do not propose that the decision to remove the gate-keeper function from the Commission be revisited. But in ostensibly addressing concerns about gate-keeping, the government eliminated the Commission in its entirety, thereby eliminating from the human rights system all of the other capacities of the Commission, including the capacities to undertake education of the public; to conduct inquiries, reviews, and studies; to produce special reports; to develop guidelines regarding the interpretation and application of rights, and to initiate or intervene in complaints alleging systemic discrimination.

In sum, two essential things were lost with the abolition of the BC Commission: first, the roles of the BC Commission that support the public interest in the elimination of discrimination that are not specifically related to complaint-handling; and, as a consequence, the understanding that the elimination of discrimination is in the public interest.

Comprehensive human rights legislation introduced in the 1960s and 1970s was founded on the recognition that the elimination of discrimination is in the public interest. Discrimination was understood to be an offense against shared public values of equality and fairness for all individuals and groups. Because of this, for many years, complaints of discrimination were not viewed merely as disputes between private parties, but, rather, as matters in which the community as a whole has a stake. Among other things, commissions were seen to be stewards of human rights jurisprudence with a responsibility to advance robust interpretations of human rights legislation that would ensure its

Discrimination was understood to be an offense against shared public values.

responsiveness to the various forms of discrimination experienced by different groups.

Through the 1980s and 1990s in a succession of cases, the Supreme Court of Canada enunciated fundamental principles for the interpretation of human rights legislation. These principles include that: human rights legislation sets out comprehensive procedures for the vindication of the right to non-discrimination;⁶ human rights legislation is fundamental public policy intended to benefit the community as a whole as well as individual victims of discrimination;⁷ human rights laws are quasi-constitutional, have primacy, and cannot be waived or varied by private contract;⁸ and they are remedial and directed to the removal of anti-social conditions, without regard to the intention of those who cause them.⁹ Commissions, as legal advocates for complainants, have been the builders of human rights jurisprudence in Canada. The major cases that are considered the pillars of human rights law were mounted and argued by human rights commissions.¹⁰

In British Columbia, with the BC Human Rights Tribunal alone and no commission, the character of human rights protection has changed dramatically. The Tribunal is an adjudicator and, as such, must be seen to be impartial. The Tribunal can only deal with the arguments made by the parties to a complaint, and schematically, with no commission, there is no advocate for the public interest in the elimination of discrimination; there are only the individual or group claimants who bring their particular cases forward, and those who are alleged to have discriminated against them. With no commission presence in Tribunal hearings, human rights complaints have become disputes between these private parties.¹¹

It might be argued that the public interest remains sufficiently protected because of the established character of the rights. But when that public interest has no institutional means of expression, it is hard to hold on to. It is not just that with the elimination of the Commission, there is no steward of the jurisprudence, but also that a number of the other functions that

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are necessary to protect the broad public interest in the elimination of discrimination have vanished.

In the BC *Human Rights Code*¹² (BC *Code*) now, there is no public body with a mandate to:

- provide broad human rights education to the residents of British Columbia
- provide information and education to respondents about compliance with the *Code*
- provide information and education to those who need *Code* protection
- undertake studies, research, or inquiries
- develop guidelines or policies, or
- address concerns about systemic discrimination.

British Columbia's Volatile History

British Columbia's human rights system has a particularly volatile history. The first comprehensive *Human Rights Code* was enacted in 1973.¹³ The new *Code* was intended to address numerous deficiencies in the predecessor *Human Rights Act*.¹⁴ Under the pre-1973 legislation, there had been a commission "in name only."¹⁵ In reality, the Human Rights Commission was the Labour Relations Board sitting in another capacity; the Director of Human Rights had no staff; and little effort was made to publicize the legislation. Only two decisions were issued in the four years that the scheme was in existence.¹⁶

Under the new *Code*, for the first time, there was an independent human rights commission empowered to promote human rights and eliminate discriminatory practices in the province through public education and advocacy.¹⁷ The Commission was not responsible for processing complaints. There was a Director of Human Rights who was authorized to process and investigate

With no commission, there is no advocate for the public interest in the elimination of discrimination; there are only the individual or group claimants who bring their particular cases forward.

complaints, and, if conciliation efforts failed, to request that a board of inquiry be appointed to adjudicate a complaint.

For some years, this first BC Human Rights Commission was very active in carrying out its educational and advocacy functions, making the Commission the vital force for human rights in the province that the government had intended.¹⁸ This was a period of great vitality in the human rights field, when new community organizations were active, and ground-breaking issues, such as discrimination against gay organizations,¹⁹ were publicly debated and addressed.

The establishment of a Human Rights Commission for British Columbia, with proactive powers to educate and advocate, was consistent with developments in other jurisdictions in Canada where human rights law was already more advanced. Ontario was the first province to enact comprehensive human rights legislation in 1962. Other provinces followed with their own human rights statutes. British Columbia's Human Rights Commission had powers that were similar to the powers of commissions in other provinces.

However, by the late 1970s after a change in government, steps were taken to roll back the new human rights system. Initially, the roll back consisted of such measures as cutting funds; delaying appointments; footdragging about appointing boards of inquiry; reducing the number of investigators; resurrecting the practice of using Industrial Relations Officers as investigators; and appointing people with little or no experience in human rights.²⁰ Then, in 1984, the Government of British Columbia dismissed the Human Rights Commission, fired the staff, and closed the regional offices. The British Columbia *Human Rights Code* of 1973 was repealed and replaced by a new *Human Rights Act*, which provided only a barebones structure.²¹ The Commission was replaced by the BC Human Rights Council, which was responsible for processing and adjudicating complaints. Although the *Human Rights Act* of 1984 still contained human rights protections, the legislation had been

The first independent BC Human Rights Commission was very active in carrying out its educational and advocacy functions, making the Commission the vital force for human rights in the province that the government had intended.

stripped of the institutional machinery needed to make those protections effective.

In 1991 when the government changed again, there was a commitment to rebuilding British Columbia's human rights system.²² There was a public review and extensive consultations were held. As Bill Black, former Human Rights Commissioner and Special Advisor to the Government explained in his 1994 Report,²³ the Human Rights Council model had serious deficiencies. One issue was a lack of resources, which, once again, required the Council to rely on staff from the Ministry of Labour to carry out investigations and mediations. The lack of resources also resulted in delays and a backlog of complaints, causing frustration for complainants and respondents. The most serious issue was reducing the system to a single agency that was responsible for screening, seeking settlements, and adjudicating complaints. There was no human rights institution that had the legal and practical authority to carry out the proactive educational and advocacy functions of a human rights commission. The powers of the Council were at once too limited and potentially conflicting. The Human Rights Council was in place until 1997.

The Black Report included detailed recommendations to address the problems of delay and backlog. It proposed that a separate British Columbia Human Rights Tribunal be assigned responsibility for adjudicative functions. Black also recommended that a human rights commission be re-established and empowered to initiate, investigate and mediate complaints; intervene in complaints with a public interest component; develop and implement education and information programs; conduct research into equality issues; and inquire into discriminatory practices.

In 1997, British Columbia regained a human rights commission. A new *Human Rights Code*²⁴ came into effect on January 1. The structure of the agencies established by the *Code* reflected Black's recommendations. Once again, British Columbia was in step with other jurisdictions in Canada. It had a human rights system with a tribunal responsible for the adjudication of human rights

In 1997, British Columbia regained a Human Rights Commission. A new Human Rights Code came into effect.

complaints, and a commission responsible for screening and referring complaints, public education and advocacy.

However, in 2002, the Commission was abolished again. A new provincial government, which came to power in 2001, eliminated British Columbia's Human Rights Commission for a second time.²⁵ As mentioned at the outset, the rationale given for the 2002 legislative reforms was dissatisfaction with the Commission's role in screening and referring complaints to hearing. However, this was not a valid reason for having no human rights commission. A commission's public education and advocacy functions are completely separate, distinct and severable from the gate-keeper function. Moreover, there was no public consultation about any of the 2002 reforms. In particular, British Columbians were not consulted about the elimination of the Commission's prevention and promotional roles. Further, although there was a call from some groups to take the Commission out of the gate-keeper role, there was no call for the elimination of the education and advocacy functions. In spite of this, what British Columbians got, as a result of the 2002 reforms, is a legislative scheme providing for a tribunal only.²⁶

This history of British Columbia's human rights system is not only a volatile one; it is also, unfortunately, a highly partisan one.

Having an adequate and stable human rights system is too important to the people of the province for it to be a 'political football' in this way. This is not an issue of whether complainant interests as opposed to respondent interests have the upper hand. In Canada today, governments, regardless of their political stripe, need to be committed guarantors of human rights and supporters of strong, stable human rights institutions. All British Columbians have an interest in building a vigorous human rights culture. Giving life to human rights depends on the willingness of governments to establish, respect, and maintain the institutional means of their realization.

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This Review

This review is timely and needed. British Columbia has been without a commission for more than decade. It is therefore possible to reflect on the current structures for human rights in British Columbia with the benefit of direct experience, as well as awareness of the evolution of human rights systems in other jurisdictions in Canada, and of international human rights standards. The project of advancing human rights in British Columbia and improving institutional mechanisms for the enforcement of human rights, in light of experience, can and should be ongoing.

We consulted key stakeholders: members of the British Columbia Human Rights Tribunal, staff and legal counsel; staff and legal counsel from non-governmental organizations that interact with the Human Rights Tribunal and provide advice to those interested in claiming their rights; community advocates; and experts on human rights systems in British Columbia and other jurisdictions in Canada.

This report has a specific focus: the adequacy of the tribunal-only model for the protection of human rights in British Columbia. In particular, this report is concerned with the capacity of the tribunal-only model to discharge the education and advocacy functions of a human rights system. The report does not revisit the government's decision to remove the gate-keeper function from the Commission. It does not evaluate the BC Tribunal's effectiveness in discharging its responsibility to process, mediate, and adjudicate complaints. Nor does this review attempt to evaluate the effectiveness of the BC Human Rights Coalition, the Community Legal Assistance Society and the Victoria Human Rights Clinic in their provision of advice and legal representation for complainants and respondents. We note, however, that groups with whom we consulted raised serious concerns about shrinking and inadequate budgets for advice and legal representation in the human rights system and the resulting large numbers of unrepresented parties before the BC Tribunal.²⁷

This report has a specific focus: the adequacy of the tribunal-only model.

New Directions: Re-Inventing a Human Rights Commission for British Columbia

This Report is concerned with a serious structural problem that must be fixed if the BC *Human Rights Code* is to fulfill its purposes. Specifically, certain essential functions are missing from British Columbia's human rights system.

Since 2002, BC has had a direct access, stand-alone adjudicative body, the BC Tribunal. Individuals who believe that they have experienced discrimination in employment, services, or housing in British Columbia can contact the Tribunal and file a complaint. The Tribunal has a mandate to adjudicate the merits of complaints and deal with all matters incidental to adjudication, including determining whether a complaint falls within its jurisdiction or should not proceed because it is out of time or is not likely to succeed. The Tribunal also engages parties in mediation.

Groups with whom we consulted identified a number of functions not provided for in the current *Human Rights Code*, which, given the experience of the last twelve years, they now consider essential to making the *Code* effective for the people of the British Columbia. As recounted to us, the experience of the BC Tribunal, and those interacting with it over the last decade, has made it evident that British Columbia needs the educational and advocacy functions that are usually discharged by a human rights commission. This is not a criticism of the Tribunal. These are functions that cannot or should not be carried out by the BC Tribunal because its core responsibility is adjudication, and the Tribunal must be, and be seen to be, neutral.

But the roles that are missing are essential ones. As mentioned at the outset, there is no human rights institution with a mandate to provide education to those who need the protections of the

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Code; to develop guidelines and policies to assist and inform employers, landlords, and services providers about how to comply with the *Code*; to undertake studies, research, or inquiries that could assist British Columbians to deal with broader human rights issues that affect whole groups or communities; or to proactively address concerns about systemic discrimination. Groups and individuals with whom we consulted reported that these functions are now sorely missed by the people they work for and with.

In all other provinces in Canada these powers are vested in human rights commissions. Apart from British Columbia, the only jurisdiction in Canada that does not have a human rights commission is Nunavut, where the human rights system is very new and still not fully developed.²⁸

Apart from British Columbia, the only jurisdiction that does not have a human rights commission is Nunavut.

Criteria for Evaluating a Human Rights System: The Purposes of the *Code*

The adequacy of human rights institutions in British Columbia must be judged in relation to the purposes of human rights legislation.

In British Columbia the purposes of the *BC Human Rights Code* are explicitly set out in section 3:

- (a) to foster a society in British Columbia in which there are no impediments to full and free participation in the economic, social, political and cultural life of British Columbia;
- (b) to promote a climate of understanding and mutual respect where all are equal in dignity and rights;
- (c) to prevent discrimination prohibited by this *Code*;
- (d) to identify and eliminate persistent patterns of inequality associated with discrimination prohibited by this *Code*;

(e) to provide a means of redress for those persons who are discriminated against contrary to this *Code*;²⁹

The powers necessary to fulfill these purposes do not currently exist in British Columbia's human rights system. The powers to promote human rights in the province, to prevent discrimination, and to identify and eliminate persistent patterns of inequality are absent.

All of the *Code*'s purposes are important to the protection of the human rights of British Columbians and to the building of a human rights culture. And yet the only purpose the current *Code* is designed to satisfy is redress, as described in ss. 3(e), through the important, but limited, tool of adjudication.

It bears emphasizing that human rights legislation has a quasi-constitutional status because of the fundamentality of the values that it seeks to protect. In Canada, human rights legislation is a primary vehicle for the realization of rights to equality and non-discrimination that are embodied in international treaties to which Canada is a signatory, and in the *Canadian Charter of Rights and Freedoms*. That is the context in which the express purposes of the *Code* must be viewed.

The *Code*'s purposes reflect what is necessary to give effect to rights to equality and non-discrimination that have been guaranteed to all residents of British Columbia, constitutionally and under international human rights instruments that are binding on Canada and British Columbia. Such purposes cannot be ignored or scaled back to suit variable political priorities.

The powers necessary to fulfill these purposes do not currently exist in British Columbia's human rights system.

International Human Rights Standards

There are international standards that are helpful in thinking about the mechanisms that are needed to protect human rights. Human rights legislation flows from Canada's obligations under international human rights law, beginning with the Universal Declaration of Human Rights.³⁰ Subsequent instruments emphasize and particularize the governmental obligation to remove discriminatory barriers; to develop positive equality measures; and to create human rights institutions that have the mandate to take steps to build a culture of respect for human rights.

The United Nations 1993 *Paris Principles*³¹ affirm that human rights systems³² are to be vested with a mandate to remove discriminatory barriers and protect human rights and be given as broad a legislative mandate as necessary to fulfill this aim.

The *Paris Principles*, which represent the collective wisdom of the international community, identify key responsibilities and roles necessary to an effective human rights system, and provide detailed guidelines that have implications for the structure of the component institutions.

According to the *Paris Principles*, human rights institutions should have the following functions:

- review legislation and administrative decisions
- examine alleged violations of human rights
- prepare reports
- express opinions on the position or reaction of government to human rights evaluations
- conduct research, education, and publicity programs

The Paris Principles identify key responsibilities and roles necessary to an effective human rights system.

- promote and ensure the harmonization of legislation, regulations and practices with international human rights instruments, and
- protect and promote the public interest.

Elaborating on the *Paris Principles*, the United Nations Centre for Human Rights has identified seven “effectiveness factors”³³ against which human rights systems should be measured. Most relevant to this report are factors 2, 3, and 6, but we have set them all out here:

- (1) Is the system capable of acting independently from government and other powerful interests?
- (2) *Does the system have a defined, sufficient mandate to protect and promote human rights? This includes the responsibilities to adjudicate complaints, prepare reports, recommendations and opinions, review laws and administrative practices, highlight human rights violations and conduct public human rights education?* [emphasis added]
- (3) *Is the system structured to establish and strengthen collaborative relationships with the full range of human rights stakeholders? This includes those with equality obligations, claimants, as well as community advocacy groups and other human rights organizations?* [emphasis added]
- (4) Is the system vested with sufficient power to accomplish its objectives while also structured to prevent abuse of respondents’ rights?
- (5) Is the system readily accessible and fairly administered so that rights and responsibilities can be enforced effectively? Do claimants have sufficient supports (legal and otherwise) to make their claims?
- (6) *Is the system structured and funded so that it operates efficiently and effectively?*

*...an effective
adjudication
mechanism is only
one part...*

(7) Is the system structured to be fully accountable to the government, to the public, and to its users?

When one considers the *Paris Principles* and the effectiveness factors identified by the UN Centre for Human Rights, it is apparent that a human rights system for British Columbia that is not capable of addressing discrimination proactively and systemically, that does not have powers of study, reporting, commentary, public education, and review, or the capacity to interact with human rights stakeholders, does not meet international standards for human rights institutions.

Trajectory of this Report

The only institutional capacity that the BC human rights system has is to deal with after-the-fact enforcement by means of adjudication and mediation of individual complaints. While important, providing an effective adjudication mechanism is only one part of building a province-wide culture of human rights compliance. BC's system is not capable of fulfilling the purposes set out in the *Code*, nor does it satisfy international human rights standards. To foster a culture of understanding and compliance,³⁴ in addition to adjudication, British Columbia needs a human rights system in which the proactive prevention of human rights violations and promotion of respect for human rights are vigorously undertaken.

Consequently, we recommend in this report that the Government of British Columbia amend the *Human Rights Code* to establish a British Columbia Human Rights Commission.

We agree with the Ontario Human Rights Commission which has explained:

No human rights institution, no matter how constituted or resourced, can single-handedly protect and advance human rights. An effective human rights system relies on the cooperation and participation of many players, including

...*British Columbia needs...proactive prevention of human rights violations.*

government, NGOs, advocates, unions, and associations, to name just a few. *However, human rights commissions in Canada and abroad have played a distinct and important role in society. Commissions have been a cornerstone of a Canadian human rights system that has been lauded, envied, and modeled around the world.*³⁵ [emphasis added]

We also agree with the following observation of the Canadian Association of Statutory Human Rights Agencies concerning the importance of human rights commissions with broad mandates:

... there is a need for independent human rights commissions with broad mandates...the capacity to identify issues and to speak out is an important part of a commission's mandate to promote awareness of and respect for human rights... Particularly important as well...is its capacity to initiate, join in or intervene in human rights cases before a tribunal or at a higher court as an expert and independent body representing the public interest.³⁶

In proposing a new British Columbia Human Rights Commission with a variety of tools at its disposal to fulfill responsibilities, we have considered the structure of statutory human rights systems in other jurisdictions in Canada, and related trends. We turn now to a closer examination of the functions that are missing from British Columbia's human rights system, and structures and trends in other jurisdictions in Canada.

Commission Roles

A. Education

Human rights education matters. A significant role for human rights commissions in Canada is educating the public, and specific sectors of the public – employers, service providers, members of disadvantaged groups – about various aspects of human rights:

- their meaning
- the interpretation and application of statutory human rights law in Canada
- the connections between Canada’s international human rights commitments and domestic human rights law
- what human rights mean in daily life
- how discrimination in employment and services affects the opportunities of individuals and members of groups in our communities
- what compliance with human rights law requires
- how workplaces and services can be made discrimination-free.

*Human rights
education matters.*

When human rights schemes were designed in the 1970s, education was seen as a key function of human rights institutions. Governments and community advocates wanted to ensure that institutions were given authority and resources, not only to enforce the law through investigating and adjudicating complaints, but also to educate the public so that discrimination could be prevented, and understanding and behaviour could change. The intention was to foster a culture of respect for human rights by promoting dialogue, discussion, and knowledge about discrimination and its causes and consequences.

In its June 2000 report, the Canadian Human Rights Act Review Panel, which was chaired by former Justice of the Supreme Court of Canada, the Honourable Gerard V. La Forest, wrote:

One of the most important aspects of promoting equality is the need to educate those who must provide equality and those who need equality about the meaning and intent of the Act with respect to how equality should be achieved.³⁷

Human rights education is never finished. The need for it is perpetual, and always urgent, because the quality of the lives people are able to live depends directly on the state of human rights compliance in their communities and province.

From an educational standpoint, the experience in British Columbia of the past twelve years does not commend the tribunal-only approach. The absence of a human rights commission in British Columbia means that our province lags behind other jurisdictions nationally and internationally, in human rights education.

In a 2011 paper, Heather MacNaughton, who was then the Chair of the BC Human Rights Tribunal,³⁸ observed:

A tribunal's adjudicative role prevents it from taking or publicizing a position about human rights issues. A tribunal may only speak through its decisions.

BC does not have an agency, independent of government, which is responsible for human rights education. Under the BC Code, the responsibility for education falls on the Attorney General's Ministry which, apart from providing funding to the BC Human Rights Coalition for some educational programs, and providing some general information on its website, does little else to fulfill its statutory mandate. As a result, *human rights*

“One of the most important aspects of promoting equality is the need to educate those who must provide equality and those who need equality...”

*education in the Province is falling behind some of the other Provinces.*³⁹ [emphasis added]

We agree and would add that BC is falling *very far* behind other provinces. Groups told us that the absence of a human rights commission means that there is now a “void” or a “vacuum” in British Columbia when it comes to human rights education and awareness. Public awareness of the *Human Rights Code* and the evolving jurisprudence of the BC Tribunal is poor.

The need to ensure that residents of British Columbia, including children in BC schools, have basic information about rights and responsibilities set out in the *Code* is the minimum threshold. The BC Human Rights Coalition, the Ministry of Justice, and the BC Tribunal provide some basic information online about rights protections and procedures.⁴⁰ The BC Human Rights Coalition provides a training workshop for small employers.⁴¹

Some non-governmental organizations provide some public education and media commentary on human rights issues and Tribunal decisions from time to time. But they are not, and do not perceive themselves to be, any substitute for a human rights commission. There is no non-governmental organization that is charged with comprehensively educating the public about human rights principles, policy, and law. Each non-governmental organization works within its own sector to fulfill a specialized mandate, such as mental health or civil liberties, for example. Even more significantly perhaps, the non-governmental organizations are essentially private entities, albeit dedicated to the public interest. The value of a human rights commission is that it is a public agency with a publicly constructed mandate and public funding. Human rights education deserves such public commitment, and credibility.

Human rights education in British Columbia needs to go far beyond a minimalist offering. A commission with a broad education mandate can actively educate employers, landlords, and service-providers, large and small, so that they can implement policies and practices that promote human rights. It can educate individuals and groups who need human rights protection, so

The absence of a human rights commission means that there is... a “vacuum”...when it comes to human rights education.

that they understand how rights protections work and when they can be used. It can give members of the public a framework for understanding human rights concepts and values.

A commission can also identify and speak publicly about new human rights issues as they arise, and can, in various ways, foster a larger understanding of equality as a social and legal commitment, and of conditions required to make equality a reality, both in Canada and in British Columbia.

We heard many comments about how poorly British Columbia does on human rights education when compared with other provinces. But we also heard that human rights education fares poorly when compared with the public education that the Representative for Children and Youth has been able to do on issues of child protection. Mary Ellen Turpel-Lafond's high profile and influential public reports both educate the public and illuminate the obligations of government, police, child welfare agencies, and parents to children in care.⁴² The groups we talked to pointed to the legislation, and the government support, that underpins the Office of the Representative for Children and Youth as a model for the effective public role that could be played by a human rights commission in promoting understanding of human rights and preventing violations.⁴³

As Mary Cornish has observed:

Eliminating discrimination is not simply a matter of designing a good tribunal complaints process, although that is a key building block. A human rights system must also support and enforce the broader actions required to transform the dynamics that support discrimination.⁴⁴

Ontario's human rights legislation provides a helpful model for the delineation of a commission's educational function. The *Ontario Human Rights Code* enacted in 2006, following a comprehensive public review of the scheme,⁴⁵ sets out education

But we also heard that human rights education fares poorly when compared with the public education that the Representative for Children and Youth has been able to do.

functions for the Ontario Human Rights Commission in this way:

The functions of the Commission are to promote and advance respect for human rights in Ontario, to protect human rights in Ontario 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 law;
- (b) to develop and conduct programs of public information and education to,
 - i. promote awareness and understanding of, respect for and compliance with this Act, and
 - ii. prevent and eliminate discriminatory practices that infringe rights under Part I;...⁴⁶

Statements of this education function are consistent in statutes in all other jurisdictions, except Nunavut, which, as previously mentioned, is the only other jurisdiction in Canada that does not have a commission.⁴⁷

B. Research, Development of Guidelines or Policies, Inquiry, Initiation of Complaints

There are other functions regularly assigned to human rights commissions that are integrally related to their promotion and prevention roles: these are the roles of research, review, development of guidelines or policies, inquiry, and initiation of

complaints. In the Ontario *Code*, these functions are set out this way:

The functions of the Commission are... more specifically,...

- (c) to undertake, direct and encourage research into 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...is inconsistent with the intent of this *Act*;
- (e) to initiate reviews and inquiries into incidents of tension or conflict, 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;
- (g) to designate programs as special programs in accordance with section 14;⁴⁸
- (h) to approve policies under section 30;⁴⁹
- (i) to make applications to the Tribunal under section 35;⁵⁰

... to undertake, direct and encourage research into discriminatory practices and to make recommendations designed to prevent and eliminate such discriminatory practices...

- (j) to report to the people of Ontario on the state of human rights in Ontario and on its affairs;
- (k) to perform the functions assigned to the Commission under this or any other Act.⁵¹

The *Canadian Human Rights Act* has similar wording. Along with its education functions, the Canadian Human Rights Commission:

- (b) shall undertake or sponsor research programs relating to its duties and functions under this Act and respecting the principle described in section 2 [purpose clause];
- (c) shall maintain close liaison with similar bodies or authorities in the provinces in order to foster common policies and practices and to avoid conflicts respecting the handling of complaints in cases of overlapping jurisdiction;...
- (d) may consider such recommendations, suggestions and requests concerning human rights and freedoms as it receives from any source and, where deemed by the Commission to be appropriate, include in a report referred to in section 61, reference to and comment on any such recommendation, suggestion or request;
- (e) shall carry out or cause to be carried out such studies concerning human rights and freedoms as may be referred to it by the Minister of Justice and include in a report referred to in section 61 a report setting out the results of each study together with such recommendations in relation thereto as it considers appropriate;⁵²

... shall carry out or cause to be carried out such studies concerning human rights and freedoms...

- (f) may review any regulations, rules, orders, by-laws and other instruments made pursuant to an Act of Parliament and, where deemed by the Commission to be appropriate, include in a report referred to in section 61 reference to and comment on any provision thereof that in its opinion is inconsistent with the principle described in section 2;...⁵³

These functions are beneficial and essential to a fully functioning human rights system.

RESEARCH

Research conducted by or supported by a human rights commission can foster a deeper understanding of human rights issues that affect groups in the community. Research can address local issues and develop jurisdiction-specific approaches to human rights issues, such as housing discrimination, racial profiling by police, or inadequate accessibility to services for persons with disabilities.

Human rights commissions have conducted research on diverse topics and in different ways: through their own research; through contracting with independent researchers; through commission-university collaborations; and through community consultations.

Research papers that have been published by the Canadian Human Rights Commission include:

- *No Answer: A Review of Government of Canada Telephonic Communication with People Who Are Deaf, Deafened, Hard of Hearing, or Have a Speech Impediment*⁵⁴
- *No Answer II: A Review of Federally Regulated Organizations' Telephonic Communications with People Who Are Deaf, Deafened or Hard of Hearing*⁵⁵
- *No Alternative: A Review of the Government of Canada's provision of alternative text formats for people who are blind, deaf-blind or visually impaired*⁵⁶

Research conducted by a human rights commission can foster a deeper understanding ...

- *Bona Fide Occupational Requirements and Bona Fide Justifications under the Canadian Human Rights Act: The Implications of Meiorin and Grismer*⁵⁷
- *International Best Practices in Universal Design: A Global Review*⁵⁸
- *Alternative Dispute Resolution (ADR) in Aboriginal Contexts: A Critical Review*⁵⁹
- *Now a Matter of Rights: Extending Full Human Rights Protection to First Nations*⁶⁰
- *Human Rights Accountability in National Security Practices: A Special Report to Parliament*⁶¹
- *Report on Equality Rights of People with Disabilities*⁶²
- *Accommodation in the 21st Century*⁶³
- *Report on Equality Rights of Aboriginal People.*⁶⁴

Here are some examples from Ontario, Manitoba, Yukon, and Quebec.

The Ontario Human Rights Commission has published numerous reports, grounded in community consultations, including:

- *The Opportunity to Succeed: Achieving Barrier-Free Education for Students with Disabilities: Consultation Report*, a response to consultations with stakeholders regarding policies that provide accommodation for students with disabilities, which makes recommendations to the Ministry of Education⁶⁵
- *The Cost of Caring: Report on the Consultation on Discrimination on the Basis of Family Status*, which identifies concerns regarding the protected ground of family status, and highlights the need for a better understanding of ‘family status,’ a broader definition than the one in the Code and the need for social services to accommodate family status⁶⁶
- *Right at Home: Report on the consultation on human rights and rental housing in Ontario*, which discusses discrimination in

housing on various intersecting grounds, and makes recommendations to the Governments of Canada and Ontario about affordable housing needs⁶⁷

- *Human Rights and Policing: Creating and Sustaining Organizational Change*, a guide that encourages organizational change within policing services as a necessary shift for a diverse community, and incorporation of human rights into the policies and procedures of the police⁶⁸
- *Minds that Matter: Report on the Consultation on Human Rights, Mental Health and Addictions*, which highlights the issues faced by persons with mental health problems, delineates how the *Human Rights Code* provides legal protection for these individuals, and connects *Code* rights to the obligations set out in the *Convention on the Rights of Persons with Disabilities*⁶⁹
- *In The Zone: Housing, Human Rights and Municipal Planning*, a guide that discusses the need for affordable housing in the context of housing as a human right, and considers various legislative tools for increasing affordable housing in Ontario.⁷⁰

The Manitoba Commission undertook a collaborative research project with the University of Winnipeg on racialized communities and police services.⁷¹ This research resulted in, among other things, the Manitoba Human Rights Commission making a submission to the Government of Manitoba on proposed amendments to the *Provincial Police Act*.⁷²

The Yukon Human Rights Commission produced a research report on the human rights of women and girls in the Territory of Yukon, which contributed to the consideration of amendments to the *Yukon Human Rights Act*.⁷³

The Quebec Human Rights Commission, among other recent reports, has issued two on racial profiling and systemic discrimination against racialized youth,⁷⁴ a report on systemic

discrimination against migrant workers,⁷⁵ and a report on social profiling and homelessness.⁷⁶

A commission with power to undertake research could design and support study, inquiry, community consultation and the development of policy approaches to human rights issues that are of specific concern to British Columbians.

DEVELOPMENT OF GUIDELINES OR POLICIES

A research capacity can support another key education-related function – the development of guidelines or policies – which can help employers and other potential respondents, and promote voluntary compliance. We consider this a key function. Most employers, service providers, and landlords want to respect the law. It is essential that they have access to current, reliable, and authoritative information and advice so that they can incorporate the requirements of the *Code* into their management practices. Human rights commission guidelines or policies issued on different forms of discrimination, and on measures that will prevent, or address them, assist employers, service-providers and landlords, and also workers, tenants, and service recipients regarding their rights and responsibilities under the *Code*.

Guidelines or policies can provide pro-active, issue-specific education and guidance. For example, the Canadian Human Rights Commission has published the following policies and guides:

- *Anti-Harassment Policies for the Workplace: An Employer's Guide*⁷⁷
- *Place for All: A Guide to Creating an Inclusive Workplace*⁷⁸
- *A Guide for Managing the Return to Work*⁷⁹
- *The Human Rights Impact Assessment for Security Measures*⁸⁰
- *Canadian Human Rights Commission's Policy on Alcohol and Drug Testing*⁸¹
- *Aboriginal Employment Preferences Policy*⁸²
- *Policy and Procedures on the Accommodation of Mental Illness*⁸³
- *Policy on Environmental Sensitivities*⁸⁴

Most employers, service providers, and landlords want to respect the law. It is essential that they have access to current, reliable, and authoritative information and advice...

- *Policy on Special Programs*⁸⁵
- *Pregnancy & Human Rights in the Workplace - Policy and Best Practices.*⁸⁶

Here are some examples of policies and guidelines that have been developed by several provincial jurisdictions. Recently, the Alberta Human Rights Commission has published interpretive bulletins concerning the *Alberta Human Rights Act*, on:

- the duty to accommodate in employment⁸⁷
- the duty to accommodate students with disabilities in post-secondary institutions⁸⁸
- rights and responsibilities relating to pregnancy, childbirth and adoption⁸⁹
- human rights in the hospitality industry.⁹⁰

The Manitoba Human Rights Commission has developed guidelines regarding:

- the use of guide dogs and service animals⁹¹
- housing⁹²
- drugs and alcohol issues in the context of both employment and services⁹³
- pre-employment inquiries⁹⁴
- discrimination based on gender identity.⁹⁵

British Columbia has no official guidelines...on the implementation of human rights in the province.

Some of the recent policies and guidelines promulgated by the Ontario Human Rights Commission include:

- a policy on discrimination against older people based on age⁹⁶
- a policy on competing rights,⁹⁷ and
- a policy on “Canadian experience” as a discriminatory barrier to employment.⁹⁸

Although there is some commonality in issues across various jurisdictions, there are also differences in conditions and priorities, and unique language in each of the thirteen human rights statutes, federal, provincial, and territorial. Consequently,

there cannot be a one size fits all approach to the development of policies and guidelines.

British Columbia has no official guidelines or policies on the implementation of human rights in the province. This is a significant and damaging silence. For British Columbia, issue-specific and jurisdiction-specific guidelines and policies developed by a human rights commission are sorely needed.

INQUIRIES, REVIEWS, STUDIES, SPECIAL REPORTS⁹⁹

A capacity to conduct an inquiry or review is also a key element of a human rights commission's authority. The goal of an inquiry, review, study or special report is not to find criminal or civil fault, but to air an issue of discrimination, hear those involved and affected, and make recommendations about steps that would prevent or ameliorate the discrimination. Such reviews are a significant, and often highly effective, part of the work of human rights commissions. They allow a human rights commission to address broader issues, which individual complaints may not adequately illuminate or resolve.

Such inquiries can be important, even if a commission has the power to engage in litigation, because evidentiary rules and procedural formalities intrinsic to legal adversarial proceedings, combined with the vulnerability of some groups, make it extremely difficult to litigate some issues of systemic discrimination.

The Canadian Human Rights Commission, for example, undertook a broadly-based review of the treatment by Corrections Services Canada of federal women prisoners in 2003.¹⁰⁰ The CHRC undertook this review after being approached by key non-governmental organizations, knowledgeable and concerned about the treatment of the federal women prisoners, including the Canadian Association of Elizabeth Fry Societies and the Native Women's Association of Canada.

Federal women prisoners are among Canada's most disadvantaged women, and are disproportionately Aboriginal or

A capacity to conduct an inquiry is also a key element of a human rights commission's authority.

otherwise “racialized”¹⁰¹ and poor. Their treatment in the prison system was understood to be a critical issue. Individual complaints could not illuminate the systemic problems in the prison system, nor could individual women feel secure enough to exercise their human rights from the confines of a prison cell. This review permitted the Commission to examine and assess 1) the characteristics of the inmates; 2) the facilities in which they are held; 3) the policies and conditions that determine their treatment; and 4) whether the human rights of federal women prisoners are being respected by Corrections Services Canada.

In its press release issued in January 2004, prison rights expert Michael Jackson summarized the report:

The report’s main finding is that the correctional system needs to be more tailored to the unique needs and generally lower security risks posed by women offenders. Specifically, the correctional system should take a more gender-based approach to custody, programming and reintegration for women offenders.

The Commission found that, while Correctional Service Canada has made some progress in developing a system specifically for women offenders, systemic human rights problems remain, particularly with regard to Aboriginal women, racialized women and women with disabilities.

The report puts forward 19 recommendations for action and sets out guiding principles to ensure that the treatment of federally sentenced women is consistent with human rights laws.¹⁰²

The Canadian Human Rights Commission also undertook a review of the treatment of the Innu of Labrador by the Government of Canada. The first report was released in 1993, and in 2002, the Commission issued a follow-up report, which found that the recommendations in the 1993 report had still not

been implemented. In 2002, the Canadian Human Rights Commission explained the history and the issue this way:

The Innu Nation first approached the Commission in 1992 to complain that the federal government had failed to meet its constitutional responsibility for the Innu since Newfoundland's 1949 entry into Confederation. The Commission responded by issuing a report in 1993 that identified five recommendations that the federal government should implement to address the concerns of the Innu.

At the time today's report [November 26, 2002] was written, the government had fully implemented only one of the 1993 recommendations: recognizing its responsibility towards the Innu. It had failed the Innu with respect to efforts towards Innu self-government, and had made some progress under the remaining three recommendations. As recently as last week, however, the government officially recognized the members of the Innu of Labrador as status Indians, effectively fulfilling another of the 1993 recommendations.¹⁰³

*...the reviews by
the Commission
...set a base line
for government
action...*

In both instances, the reviews by the Commission and the resulting recommendations established a base line for government action, and have assisted federal women prisoners and the Innu of Labrador to assert their rights through a non-adjudicative process.

Similarly the reviews and reports produced by the Ontario Human Rights Commission (Ontario Commission) regarding racial profiling by the police have been important to raising the profile of this issue. In 2003, the Ontario Commission initiated an inquiry into "the effects of racial profiling on individuals, families, communities, and society as a whole."¹⁰⁴ The Ontario Commission produced an inquiry report entitled *Paying the Price: The Human Cost of Racial Profiling*, based on over 400 personal

accounts.¹⁰⁵ The Ontario Commission hoped ultimately to “bridge the divide between those who deny the existence of profiling and communities that have long felt that they are being targeted.” Since that time, the Ontario Commission has produced *Policy and Guidelines on Racism and Racial Discrimination*,¹⁰⁶ and a guide for organizational change in police institutions – *Human Rights and Policing: Creating and sustaining organizational change*¹⁰⁷ – which is the result of a three-year collaborative project with the Toronto Police Services and the Toronto Police Services Board. This report sets out strategies that police organizations can use to disrupt discriminatory practices and foster a human rights culture in their own institutions. There is also a new Commission-mandated study on racial profiling in traffic stops in Ottawa which is at the planning stage.¹⁰⁸

This stream of consultations, reports, guides, and studies has increased public awareness in Ontario of racial profiling by the police, particularly of African-Canadian men, and, along with the pressure of a significant number of complaints, has encouraged some police organizations to begin to try to change their practices.

The Ontario Commission has also undertaken initiatives to address the lack of accessibility in public services, resulting in the issuance of special reports: a report on audits conducted at seven restaurant chains in Ontario, which revealed that some restaurants were not accessible to persons with disabilities as required by the *Code*;¹⁰⁹ a follow-up report identifying twenty-six restaurant chains that had committed to taking steps to make their locations accessible;¹¹⁰ and a report on a Commission initiative to encourage public transit authorities in Ontario to improve the accessibility of transit to persons with disabilities.¹¹¹

The Quebec Human Rights Commission has conducted inquiries into the Oka crisis, into racism in the taxi industry, and into racism in Montreal police forces.¹¹²

Regarding the inquiry function of the Ontario Human Rights Commission, the Ontario Human Rights Code, provides:

31. (1) The Commission may conduct an inquiry under this section for the purpose of carrying out its functions under this Act if the Commission believes it is in the public interest to do so.¹¹³

The Ontario *Code* then goes on to stipulate in more detail the processes and powers for the conduct of an inquiry by the Commission.¹¹⁴

Assigning an inquiry or review role to a human rights commission gives such a commission authority to address systemic human rights issues through a public process. The commission can make recommendations to appropriate officials or agencies to prevent discrimination in future, and can monitor progress in implementing those recommendations. A British Columbia Human Rights Commission could establish criteria for conducting inquiries, and design flexible processes that fit the issue and circumstances. For example, some human rights issues may affect British Columbia as a whole; other issues may be of particular importance in certain communities.

Assigning an inquiry role to a human rights commission gives it authority to address systemic human rights issues.

Many of the topics that human rights commissions have focused on are relevant to the implementation of human rights in British Columbia. Stakeholders in this review identified issues in British Columbia that would benefit from the attention of a human rights commission, deploying a combination of education, study, research, inquiries, guideline-making, reports, and advocacy. Some of those issues include:

- conditions of employment and living for temporary foreign workers
- barriers to employment for internationally trained professionals
- discrimination against pregnant women in employment
- recognition of the caregiving obligations of workers and discrimination on the basis of ‘family status’

- disproportionate effects of homelessness and lack of adequate housing on groups that are vulnerable to discrimination, such as single mothers, Aboriginal people, and persons with mental disabilities
- municipal policies and zoning bylaws regarding issues such as safe injections sites
- health care services for Aboriginal people
- access to health care and support services by adults and children with mental health problems
- access to education for children with learning disabilities, and for immigrant and refugee children
- incorporating human rights into policing standards and practices
- police response to violence against women.

INITIATION OF COMPLAINTS AND INTERVENTIONS

Another significant function of a human rights commission is the capacity to initiate complaints before the Human Rights Tribunal. This permits commissions to address issues of systemic discrimination, where other efforts to resolve human rights disputes have failed.

This has been a too little-used power by human rights commissions in Canada, which often appear uncertain about exercising it. Governments sometimes treat such pressure from human rights commissions for systemic and structural change as an intrusion on the authority of government or the legislature, and therefore as "undemocratic," though these are their own institutions, carrying out assigned tasks. And, if human rights commissions initiate complaints against large corporations, they may be concerned about "inequality of arms" that is, an imbalance between the resources available to the human rights commission and the much greater resources available to the corporation.

Stakeholders identified issues that would benefit from the attention of a human rights commission.

Notwithstanding this history, it remains our view that litigation is an important authority for a human rights commission to have. Although litigation will not be a first avenue of resort for a commission, there are instances in which litigation can help to break a log jam. Particularly in cases involving recalcitrant respondents, and entrenched patterns of discrimination, the ability to take a complaint to the Tribunal can be an important companion to a commission's power of inquiry or review. Commissions can also have positive effects by intervening in individual cases to adduce evidence of a pattern of discrimination and to make public interest arguments.

The Pinto Report,¹¹⁵ a 2012 review of the Ontario Human Rights system, observes that:

The Commission [which has a mandate to promote human rights through education, outreach, and through inquiries, complaints and interventions] cannot champion human rights without becoming more involved in litigation at the Tribunal, specifically by initiating cases against recalcitrant respondents.¹¹⁶

The Pinto Report urged the Ontario Human Rights Commission to make increased use of powers to initiate public interest complaints and intervene in cases before the Tribunal.¹¹⁷

The Pinto Report recommended that:

The [Ontario] Commission should develop a litigation strategy at the Tribunal that is focused on cases where applicants would have difficulty advancing and proving a systemic deprivation of rights. The Commission should initiate applications and intervene at the Tribunal consistent with this strategy.

The Commission should have a process based on established criteria whereby community

The ability to initiate a complaint can be an important companion to a commission's power of inquiry or review

organizations can request the Commission to initiate a public interest application.¹¹⁸

In turn, the Ontario Human Rights Commission, acknowledging the Pinto Report, reported in its 2012-2013 Annual Report that it had undertaken a substantial volume of interventions in the year,¹¹⁹ and, with respect to housing issues, the Commission reported that it had become involved in a number of cases with municipalities at the Human Rights Tribunal of Ontario and the Ontario Municipal Board, as companions to other strategies.

It would further the purposes of the British Columbia *Human Rights Code* if a British Columbia Human Rights Commission had the authority to initiate complaints before the Tribunal, where it is in the public interest to do so, and to intervene in individual cases that have systemic dimensions.

National Trends

There has never been a review by an expert, or a panel of experts, that has called for the elimination of a human rights commission. The most recent comprehensive reviews of human rights systems in other jurisdictions in Canada have recommended a tripartite system consisting of:

- (a) commission with broad responsibilities for human rights education and advocacy;
- (b) a tribunal responsible for adjudication;
- (c) a clinic to provide legal advice and representation.

That was the model recommended by the Ontario Human Rights Code Review Task Force in 1992. Similarly, in 2000 the Canadian Human Rights Act Review Panel recommended a tripartite model.¹²⁰

This model has been implemented in Ontario, and it is considered the most successful model in the country. The *Human Rights Code Amendment Act, 2006* established Ontario's tripartite system, which is sometimes referred to as a hybrid direct access

There has never been a review by an expert, or a panel of experts, that has called for the elimination of a human rights commission.

model.¹²¹ It allows claimants to access the Tribunal without screening by the Commission, but retains the Commission, and provides for legal representation through a specialized human rights legal support centre that works in partnership with community legal clinics, other community organizations, and the Commission.¹²²

Amending the British Columbia *Human Rights Code* to include a human rights commission, and establishing the commission through appropriate procedures and with adequate resources, are the essential next steps in advancing knowledge and the realization of human rights in British Columbia.

Conclusion and Recommendations

Our conclusion is that the Government of British Columbia should establish a new human rights commission, as an independent, arm's length agency of the provincial government, accountable to the Legislature, with the powers and associated resources to carry out the functions that are missing from the current human rights system in British Columbia, including the capacity to:

- provide broad human rights education to the residents of British Columbia
- provide pro-active education to respondents about compliance with the *Code*
- provide pro-active education to those who need the *Code*'s protections
- undertake studies, research, or inquiries
- develop guidelines or policies
- proactively address concerns about systemic discrimination.

The Government of British Columbia should establish a new Human Rights Commission.

We believe that there is much to commend Ontario's legislation governing its current human rights system, as a model for delineating the roles and responsibilities of a re-invented British Columbia Human Rights Commission. The Ontario Human Rights Commission has broad functions and powers under the Ontario *Human Rights Code* and acts independently on behalf of the public interest. The recommendations which follow have been informed by the Ontario *Code*.¹²³

Finally, in light of British Columbia's volatile history and partisan treatment of its human rights system, we recommend that Commission members be appointed by a Special Committee of the Legislature and that the Human Rights Commission report directly to the Legislature, mirroring the appointment

process and reporting authority of BC's Ombudsman and Representative for Children and Youth.¹²⁴ These procedural measures would ensure the independence of the Commission from political interference, and the all-party support that is necessary to make BC's human rights system strong and stable.

We find support for this recommendation in the first of the effectiveness factors articulated by the UN Centre for Human Rights, pursuant to the *Paris Principles*: a human rights system must be capable of acting independently from government and other powerful interests. We also note that in the Northwest Territories, the Human Rights Commission reports directly to the Legislature on budgetary and other matters.¹²⁵

British Columbia Human Rights Commission

RECOMMENDATION #1

That the Government of British Columbia amend the British Columbia *Human Rights Code* to include a British Columbia Human Rights Commission.

Commission Functions

RECOMMENDATION #2

That the *Code* include the following statement concerning the functions of the British Columbian Human Rights Commission:

The functions of the Commission are to promote and advance respect for human rights in British Columbia, to 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.

Specific Commission Functions

RECOMMENDATION #3

That the *Code* include the following specific functions for the British Columbia Human Rights Commission:

- (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 law;
- (b) to develop and conduct programs of public information and education to,
 - i. promote awareness and understanding of, respect for and compliance with the *Code*, and
 - ii. prevent and eliminate discriminatory practices that infringe rights under the *Code*;
- (c) to undertake, direct and encourage research into 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 the intent of the *Code*;
- (e) to initiate reviews and inquiries into practices, incidents or conditions in a community, institution, industry or sector of the economy that may cause or lead to tension or conflict or to discrimination against a group protected by the *Code*, and to make recommendations, and encourage and co-ordinate plans, programs and activities, to reduce or prevent such discrimination or such 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;
- (g) to designate programs as special programs¹²⁶ in accordance with the *Code*;
- (h) to approve policies and guidelines prepared and published by the Commission to provide guidance in the application of the *Code*;
- (i) to make complaints to the Tribunal under the *Code* if the Commission is of the opinion that, it is in the public interest to make an application; and an order under the *Code* could provide an appropriate remedy;
- (j) to report to the people of British Columbia on the state of human rights in British Columbia and on its affairs;
- (k) to intervene in the hearing of a complaint on such terms as the Tribunal may determine having regard to the role and mandate of the Commission under the *Code*;
- (l) to intervene as a party to a complaint if the person or organization who made the application consents to the intervention as a party.
- (m) to perform other functions assigned to the Commission under this *Code* or any other Act.

RECOMMENDATION #4

That the British Columbia *Human Rights Code* stipulate the following specific reporting powers and duties for the British Columbia Human Rights Commission:

- (1) Every year, the Commission shall submit to the Speaker an annual report on the affairs of the

Commission, which the Speaker shall cause to be laid before the Legislature as soon as possible.

- (2) In addition to the annual report, the Commission may make any other reports respecting the state of human rights in British Columbia and the affairs of the Commission as it considers appropriate, and may present such reports to the public or any other person it considers appropriate.

RECOMMENDATION #5

Appointment and Reporting

That the Human Rights Commission be appointed by a Special All-Party Committee of the Legislature of British Columbia, and that the Commission report directly to the Legislature.

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¹ *Human Rights Code Amendment Act, 2002*, S.B.C. 2002, c. 62, s. 5 (Bill 64, 3rd Sess, 37th Parl, BC, came into effect on 31 March 2003).

² *Human Rights Code*, R.S.B.C. 1996, c. 210 [BC Code], as amended since 2002 by *Human Rights Code Amendment Act, 2002*, SBC 2002, c. 62; *Residential Tenancy Act*, SBC 2002, c. 78, s. 108; *Administrative Tribunals Appointment and Administration Act*, SBC 2003, c. 47, ss. 34-35; *Administrative Tribunals Act*, SBC 2004, c. 45, ss. 104-106; *Attorney General Statutes Amendment Act, 2007*, SBC 2007, c. 14, s. 35; *Human Rights Code (Mandatory Retirement Elimination) Amendment Act, 2007*, SBC 2007, c. 21.

³ This is sometimes said to create “direct access” to the Tribunal. However, this does not mean that every unresolved complaint gets to hearing. The Tribunal procedures for gate-keeping are more akin to processes used by courts in civil litigation. However, the function is the same.

⁴ BC Human Rights Tribunal, *Annual Report 2011–2012* (Vancouver: BCHRT, 2012) at 11, online: BCHRT www.bchrt.bc.ca/annual_reports/info/Annual_Report_2011-2012.pdf; BC Human Rights Tribunal, *Annual Report 2010–2011* (Vancouver: BCHRT, 2011) at 12 & 13, online: BCHRT www.bchrt.bc.ca/annual_reports/info/Annual_Report_2010-2011.pdf; BC Human Rights Tribunal, *Annual Report 2009–2010* (Vancouver: BCHRT, 2010) at 19, online: BCHRT www.bchrt.bc.ca/annual_reports/info/Annual_Report_2009-2010.pdf; BC Code, *supra* note 2, ss. 21(5) [refusal to accept complaint], 22 [time limit for filing a complaint], 27(1) [criteria for dismissing a complaint], 27.5 [dismissal if complaint is not pursued, on the initiative of the Tribunal or another party]. See also BC Human Rights Tribunal, *Rules of Practice and Procedure* (1 January 2008), Rule 4 – Effect of Non-compliance with these Rules, especially (5),(6) [notice and dismissal for not pursuing claim]; Rule 11 – Screening of Complaints; Rule 26 – Deferral or Dismissal of Complaints, online: http://www.bchrt.bc.ca/rules_practice_procedure/info/Rule_Practice_Procedure.pdf; See, e.g. *Agyekum v. British Columbia Ferry Services*, CHRR Doc. 14-0140, 2014 BCHRT 140; *Wilson v. Selkirk Place Holdings and another*, CHRR Doc. 14-0134, 2014 BCHRT 134; *McAlorum v. Greenwoods Eldercare Society and others*, CHRR Doc. 14-0108, 2014 BCHRT 108 for application of BC Code, *supra* note 2, s. 27.

⁵ See BC Human Rights Coalition, *Annual Report 2011–2012* (Vancouver: BC HR Coalition, 2012) at 17, online: BC HR Coalition www.bchrcoalition.org/files/documents/11-12AnnualReport.pdf.

⁶ *Seneca College of Applied Arts and Technology v. Bhadauria*, (1981), 2 C.H.R.R. D/468 (S.C.C.), [1981] 2 S.C.R.181 at 183 and 195.

⁷ *Ontario (Human Rights Commission) v. Borough of Etobicoke*, (1982), 3 C.H.R.R. D/781 (S.C.C.), [1982] 1 S.C.R. 202 at 213 and 14 [Etobicoke]; *O'Malley v. Simpsons-Sears Ltd*, (1985), 7 C.H.R.R. D/3102 (S.C.C.), [1985] 2 S.C.R. 536 at 547 [O'Malley].

ENDNOTES

⁸ O'Malley, *supra* note 7 at 547; *Winnipeg School Division No 1 v. Craton*, (1985), 6 C.H.R.R. D/3014 (S.C.C.), [1985] 2 S.C.R. 150 at 156; *Insurance Corporation of British Columbia v. Heerspink*, (1982), 3 C.H.R.R. D/1163 (S.C.C.) , [1982] 2 S.C.R. 145 at 158; *Action travail des femmes v. Canadian National Railway Company*, (1987), 8 C.H.R.R. D/4210 (S.C.C.), [1987] 1 S.C.R. 1114 at 1136 [Action travail]; *Etobicoke*, *supra* note 7 at 213 and 214.

⁹ *Action travail*, *supra* note 8 at 1136 and 1137; *Robichaud v. Canada (Treasury Board)*, (1987), 8 C.H.R.R. D/4326 (S.C.C.), [1987] 2 S.C.R. 84 at 90-95 [Robichaud]; *Brooks v. Canada Safeway Ltd.*, (1989), 10 C.H.R.R. D/6183 (S.C.C.) , [1989] 1 S.C.R. 1219 at 1239 [Brooks].

¹⁰ *Brooks*, *supra* note 9; *Janzen v. Platy Enterprises Ltd.*, (1989), 10 C.H.R.R. D/6205 (S.C.C.), [1989] 1 S.C.R. 1252; *Robichaud*, *supra* note 9.

¹¹ The BC Code and the BC Tribunal's rules permit intervenors who could have a broader, public interest in an issue raised in a particular case. But in practice, such interventions are rare. BC Code, *supra* note 2, s. 22.1; BC Human Rights Tribunal, *Rules of Practice and Procedure*, *supra* note 4, r. 28.

¹² BC Code, *supra* note 2.

¹³ *Human Rights Code of British Columbia Act*, S.B.C. 1973, c. 119 [1973 Code].

¹⁴ *Human Rights Act*, S.B.C. 1969, c. 10.

¹⁵ See William W. Black, "Human Rights Reform in B.C." (1997) 31 U.B.C. Law Review 255 at 265.

¹⁶ *Ibid.*, 255-292.

¹⁷ The functions of the Commission are contained in s. 11 of the 1973 Code, *supra* note 13. Both the Director and the Commission could be a party to a proceeding before the board of inquiry.

¹⁸ When the Human Rights Commission was established in 1973, BC's NDP Minister of Labour explained in the Legislature that the Commission would be in a position to make itself "a vital force in the community, not only in terms of educating the public, employers and trade unions about their obligations, but also in terms of coming to grips with violations, rather than sitting and waiting until a complaint is received" (British Columbia, Legislative Assembly, *Debates of the Legislative Assembly*, 30th Parl, 3rd Sess (5 November 1973) at 1257 (Hon. William Stewart King). See also Dominique Clément, *Equality Deferred: Sex Discrimination and British Columbia's Human Rights State, 1953-84* (Vancouver: UBC Press, 2014) at 169-196.

¹⁹ *Gay Alliance v. Vancouver Sun*, [1979] 2 S.C.R. 435.

²⁰ British Columbia, Legislative Assembly, *Debates of the Legislative Assembly*, 31st Parl, 2nd Sess (2 August 1977) at 4198 (G. Scott Wallace). See also Clément, *supra* note 18 at 176-196.

²¹ *Human Rights Act*, S.B.C. 1984, c. 22. of 1984.

²² Black, "Human Rights Reform in B.C.", *supra* note 15.

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²³ William W. Black, “B.C. Human Rights Review: Report on Human Rights in British Columbia” (Victoria: Government of BC, 1994) online: Legislative Library <http://www.llbc.leg.bc.ca/public/pubdocs/bcdocs/192467/bblackreport.pdf> [Black Report].

²⁴ *Human Rights Amendment Act*, S.B.C. 1995, c. 42.

²⁵ *Supra* note 1.

²⁶ *Supra* note 2.

²⁷ In many jurisdiction in Canada legal representation for complainants is provided by human rights commissions, which have “carriage” of complaints. There are other models, such as Ontario’s system, which we describe later in this report. Regardless of the model, the adequacy of resources for advice and representation is crucial if meaningful access to remedies is to be assured.

²⁸ *Alberta Human Rights Act*, R.S.A. 2000, c. A-25.5 [Alberta Act]; *BC Code*, *supra* note 2; *Canadian Human Rights Act*, R.S.C. 1985, c. H-6 [Canadian Act]; *The Human Rights Code*, C.C.S.M. c. H175 [Manitoba Code]; *Human Rights Act*, R.S.N.B. 2011, c. 171 [New Brunswick Act]; *Human Rights Act*, 2010, S.N.L. 2010, c. H-13.1 [Newfoundland and Labrador Act]; *Human Rights Act*, S.N.W.T. 2002, c. 18 [Northwest Territories Act]; *Human Rights Act*, R.S.N.S. 1989, c. 214 [Nova Scotia Act]; *Human Rights Act*, S.Nu. 2003, c. 12 [Nunavut Act]; *Human Rights Code*, R.S.O. 1990, c. H.19 [Ontario Code]; *Human Rights Act*, R.S.P.E.I. 1988, c. H-12 [Prince Edward Island Act]; *Charter of human rights and freedoms*, C.Q.L.R. c. C-12 [Québec Charter]; *The Saskatchewan Human Rights Code*, S.S. 1979, c. S-24.1 [Saskatchewan Code]; *Human Rights Act*, R.S.Y. 2002, c. 116 [Yukon Act].

²⁹ *BC Code*, *supra* note 2, s. 3.

³⁰ *Universal Declaration of Human Rights*, 10 December 1948, G.A. Res 217 A (III).

³¹ *Principles Relating to the Status of National Institutions*, 20 December 1993, G.A. Res 48/134, online: UN <http://www.un.org/documents/ga/res/48/a48r134.htm> [*Paris Principles*].

³² Human rights commissions are referred to in the *Paris Principles* as “national institutions.” Because Canada is a federal state its national human rights institutions are federal, provincial and territorial.

³³ 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, online: <http://www.ohchr.org/Documents/Publications/training4en.pdf>.

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³⁴ Mary Cornish and Jennifer Quito use the expression, “building an overall province-wide culture of human rights compliance” (Mary Cornish and Jennifer Quito, “Moving Beyond a Narrow Focus on the Adjudication System: Challenging Governments to Effectively Carry out their Role as the Guarantor of Human Rights Protection” (Working Draft, 2013) at 2, online: http://ifls.osgoode.yorku.ca/wp-content/uploads/2013/01/Cornish_Quito-The-Role-of-Government-as-Guarantor-of-Human-Rights-C0696997.pdf).

³⁵ Ontario Human Rights Commission, *Reviewing Ontario’s Human Rights System Discussion Paper* (Toronto: Ontario Human Rights Commission, 2005) at 9.

³⁶ “Submission by the Canadian Association of Statutory Human Rights Agencies Regarding The Government of British Columbia’s Draft Human Rights Code Amendment Act: Bill 53” (Submission to the Attorney General of British Columbia, September 2002).

³⁷ Canadian Human Rights Act Review Panel, *Report of the Canadian Human Rights Act Review Panel*, (Ottawa: Canadian Human Rights Review Panel, 2000) Ch 8, at 4, online: <http://publications.gc.ca/collections/Collection/J2-168-2000E.pdf> [CHRA Panel Report].

³⁸ Heather McNaughton also served as a member of the Ontario Human Rights Tribunal, and in 2011 was appointed as a master of the British Columbia Supreme Court.

³⁹ Heather MacNaughton, “Lessons Learned: the BC Direct Access Human Rights Tribunal,” (Whitehorse: Government of Yukon, 2011) online: http://www.justice.gov.yk.ca/pdf/Heather_MacNaughton_Article.pdf.

⁴⁰ See <http://www.bchrcoalition.org/>; <http://www.ag.gov.bc.ca/human-rights-protection/>; <http://www.bchrt.bc.ca/>.

⁴¹ See BC Human Rights Coalition http://www.bchrcoalition.org/files/documents/HumanRightsToolkit_2014_000.pdf.

⁴² See <http://www.rcybc.ca/Content/Publications/Reports.asp> for report published by the Representative for Children and Youth.

⁴³ See *Representative for Children and Youth Act*, S.B.C. 2006, c. 29; RCY Mandate and Scope, online: <http://www.rcybc.ca/Content/AboutRCY/MandateAndScope.asp>.

⁴⁴ Mary Cornish, “Building a Culture of Equality Through Human Rights Enforcement,” (Whitehorse: Government of Yukon, 2011) at 3, online: http://www.justice.gov.yk.ca/pdf/Mary_Cornish_Article.pdf; See also Cornish and Quito, “Moving Beyond a Narrow Focus”, *supra* note 33. The authors state: “...pro-active compliance is key ... since the pro-active auditing of laws, policies, and practices properly leads to the removal of discriminatory barriers along with the development of equality measures” (at 4).

⁴⁵ Ontario Human Rights Code Review Task Force, *Achieving Equality: A Report on Human Rights Reform* (Toronto: Ontario Human Rights Code Review Task Force, 1992) (Chair: Mary Cornish) [Cornish Report].

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⁴⁶ Ontario Code, *supra* note 27, s. 29 as amended by *An Act to Amend the Human Rights Code*, S.O. 2006, c. 30, s. 4.

⁴⁷ See for comparison, Alberta Act, *supra* note 27, s. 16(1); Canadian Act, *supra* note 27, s. 27; Manitoba Code, *supra* note 27, s. 4; New Brunswick Act, *supra* note 27, s. 13; Newfoundland and Labrador Act, 2010, *supra* note 27, s. 23; Northwest Territories Act, *supra* note 27, s. 20; Nova Scotia Act, *supra* note 27, s. 24; Prince Edward Island Act, *supra* note 27, s. 18; Quebec Charter, *supra* note 27, s. 71; Saskatchewan Code, *supra* note 27, s. 25; Yukon Act, *supra* note 27, s. 16(1).

⁴⁸ A special program under section 14(1) is one that is “designed to relieve hardship or economic disadvantage or to assist disadvantaged persons or groups to achieve or attempt to achieve equal opportunity...” (Ontario Code, *supra* note 27).

⁴⁹ Under the Ontario Code, an ‘application’ is equivalent to a ‘complaint’ under the BC Code. Policies under section 30 are policies “prepared and published by the Commission to provide guidance in the application of Parts I and II” (Ontario Code, *supra* note 27). An example of such a policy is Ontario Human Rights Commission, *Human Rights and Policing: Creating and Sustaining Organizational Change* (Toronto: Ontario Human Rights Commission, 2011) online: http://www.ohrc.on.ca/sites/default/files/attachments/Human_rights_and_policing%3A_Creating_and_sustaining_organizational_change.pdf. Racial profiling by police has been a contentious and significant issue for the Ontario Human Rights Commission. The Commission’s work on it through research, study, and policy-making has made a significant difference to police practices in Ontario.

⁵⁰ Under section 35, “[t]he Commission may apply to the Tribunal for an order under section 45.3 [remedial order] if the Commission is of the opinion that, (a) it is in the public interest to make an application; and (b) an order under section 45.3 could provide an appropriate remedy” (Ontario Code, *supra* note 27). Section 35 permits the Commission to make a complaint to the Tribunal on its own initiative. Section 37 permits the Commission to intervene in individual cases before the Tribunal, with the applicant’s consent (Ontario Code, *supra* note 27).

⁵¹ *Supra* note 46.

⁵² Section 61 refers to the Commission’s annual reports to Parliament. It should be noted that section 61(2) also permits the Commission to make special reports to Parliament “referring to and commenting on any matter within the scope of its powers, duties and functions if, in its opinion, the matter is of such urgency or importance that a report on it should not be deferred until the time provided for submission of its next annual report...” (Canadian Act, *supra* note 27).

⁵³ Canadian Act, *supra* note 27, s. 27(1).

⁵⁴ Canadian Human Rights Commission, *No Answer: A Review of Government of Canada Telephonic Communication with People Who Are Deaf, Deafened, Hard of Hearing, or Have a Speech Impediment* (Ottawa: Minister of Public Works and Government Services, 2005) online: <http://www.chrc-ccdp.ca/sites/default/files/ttyreport.pdf>. This report analyzes the accessibility of government services over the phone for persons who are deaf or hard of hearing. It concludes that TTY (teletypewriter) services are inconsistent and there is not equal access through TTY or any other technology.

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⁵⁵ Canadian Human Rights Commission, *No Answer II: A Review of Federally Regulated Organizations' Telephonic Communications with People Who Are Deaf, Deafened or Hard of Hearing* (Ottawa: Minister of Public Works and Government Services, 2006) online: <http://www.chrc-ccdp.ca/sites/default/files/tty2report.pdf>.

⁵⁶ Canadian Human Rights Commission, *No Alternative: A Review of the Government of Canada's Provision of Alternative Text Formats for People Who Are Blind, Deaf-Blind or Visually Impaired* (Ottawa: Minister of Public Works and Government Services, 2006) online: http://www.chrc-ccdp.ca/sites/default/files/noalternative_en.pdf. This report is a follow-up to the 2005 report *No Answer: A Review of Government of Canada Telephonic Communication with People Who Are Deaf, Deafened, Hard of Hearing, or Have a Speech Impediment*. This report suggests that all federally regulated entities have equally accessible technology to communicate with individuals who are deaf or hard of hearing including TTY and Voice-over-Internet Protocol (VoIP).

⁵⁷ Canadian Human Rights Commission, *Bona Fide Occupational Requirements and Bona Fide Justifications under the Canadian Human Rights Act: The Implications of Meiorin and Grismer* (Ottawa: Minister of Public Works and Government Services, 2007) online: http://www.chrc-ccdp.ca/sites/default/files/bfore_0.pdf. This brief report highlights and interprets the cases of *Meiorin* and *Grismer*. These two cases clarify the law on *bona fide* occupation requirement and *bona fide* justification in cases of human rights discrimination.

⁵⁸ Canadian Human Rights Commission, *International Best Practices in Universal Design: A Global Review* (Ottawa: Canadian Human Rights Commission, 2006) online: http://www.chrc-ccdp.ca/sites/default/files/bestpractices_en.pdf. This review surveys the building codes of various countries to assess whether the accessibility provisions conform to best practices. The specific building components, such as bathtubs, libraries, and handrails are presented alphabetically.

⁵⁹ Victor, Wenona (Stó:lo Nation). *Alternative Dispute Resolution (ADR) in Aboriginal Contexts: A Critical Review*, (Ottawa: Canadian Human Rights Commission, 2007) online: http://www.chrc-ccdp.ca/sites/default/files/adrred_en_1.pdf.

⁶⁰ Canadian Human Rights Commission, *Now a Matter of Rights: Extending Full Human Rights Protection to First Nations* (Ottawa: Minister of Public Works and Government Services, 2011) online: http://www.chrc-ccdp.ca/sites/default/files/nmr_eqd-eng.pdf.

⁶¹ Canadian Human Rights Commission, *Human Rights Accountability in National Security Practices: A Special Report to Parliament* (Ottawa: Minister of Public Works and Government Services, 2011) online: <http://www.chrc-ccdp.ca/sites/default/files/chrc-specialreport-28112011.pdf>. This report attempts to address the difficult balance between security and human rights that has emerged in the decade since 9/11. The Commission recommends that security organizations should present evidence which demonstrates they are practically committed to human rights.

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⁶² Canadian Human Rights Commission, *Report on Equality Rights of People with Disabilities* (Ottawa: Minister of Public Works and Government Services, 2012) online: http://www.chrc-ccdp.ca/sites/default/files/rerpd_rdepad-eng.pdf. This report intends to be a comprehensive report on human rights and people with disabilities after Canada's ratification on the United Nations *Convention on the Rights of Persons with Disabilities* in 2010. The report presents various statistics on persons with disabilities (often further delineated by gender and age) in Canada in areas including health, education and employment.

⁶³ Brodsky, Gwen, Shelagh Day and Yvonne Peters, *Accommodation in the 21st Century* (March, 2012) online: http://www.chrc-ccdp.ca/sites/default/files/accommodation_eng.pdf. This initiative was also supported in various ways by the Canadian Human Rights Reporter, the Community University Research Alliance Programme of the Social Sciences and Human Research Council, and the Canadian Bar Association Law for the Future Fund.

⁶⁴ Canadian Human Rights Commission, *Report on Equality Rights of Aboriginal People* (Ottawa: Canadian Human Rights Commission, 2013) online: http://www.chrc-ccdp.ca/sites/default/files/equality_aboriginal_report_2.pdf. This report uses statistics on Aboriginal Canadians to highlight inequalities in various areas, including socio-economic status, housing and health. The report also compares Aboriginal and non-Aboriginal persons in certain areas as well as breaking down the statistics by gender.

⁶⁵ Ontario Human Rights Commission, *The Opportunity to Succeed: Achieving Barrier-Free Education for Students with Disabilities: Consultation Report* (Toronto: Queen's Printer for Ontario, 2003) online: http://www.ohrc.on.ca/sites/default/files/attachments/The_opportunity_to_succeed%3A_Achieving_barrier-free_education_for_students_with_disabilities.pdf.

⁶⁶ Ontario Human Rights Commission, *The Cost of Caring: Report on the Consultation on Discrimination on the Basis of Family Status* (Toronto: Queen's Printer for Ontario, 2006) online: http://www.ohrc.on.ca/sites/default/files/attachments/The_cost_of_caring%3A_Report_on_the_consultation_on_discrimination_on_the_basis_of_family_status.pdf.

⁶⁷ Ontario Human Rights Commission, *Right at Home: Report on the consultation on human rights and rental housing in Ontario* (Toronto: Queen's Printer for Ontario, 2008) online: http://www.ohrc.on.ca/sites/default/files/attachments/Right_at_home%3A_Report_on_the_consultation_on_human_rights_and_rental_housing_in_Ontario.pdf.

⁶⁸ Ontario Human Rights Commission, *Human Rights and Policing*, *supra* note 49.

⁶⁹ Ontario Human Rights Commission, *Minds that Matter: Report on the Consultation on Human Rights, Mental Health and Addictions* (Toronto: Queen's Printer for Ontario, 2012) online: http://www.ohrc.on.ca/sites/default/files/Minds_that_matter_Report_on_the_consultation_on_human_rights_mental_health_and_addictions.pdf.

⁷⁰ Ontario Human Rights Commission, *In The Zone: Housing, Human Rights and Municipal Planning* (Toronto: Queen's Printer for Ontario, 2012) online: http://www.ohrc.on.ca/sites/default/files/In_the_zone_housing_human_rights_and_municipal_planning_0.pdf.

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- ⁷¹ Manitoba Human Rights Commission, *The Racialized Communities and Police Services Project*, Interim Report, (November, 2007) online:
<http://www.manitobahumanrights.ca/publications/rcaps.html>.
- ⁷² Manitoba Human Rights Commission and the University of Winnipeg, *Submission to the Government of Manitoba by the Racialized Communities and Police Services Project (RCAPS Project) Working Committee on Proposed Amendments to The Provincial Police Act before Mr. R. Perozzo* (17 March 2009) online:
http://www.manitobahumanrights.ca/publications/reportsandsubmissions/rcaps_police.html.
- ⁷³ Yukon Human Rights Commission, *Report on the Human Rights of Women and Girls in Yukon* (2 April 2008) online:
<http://www.yhrc.yk.ca/pdfs/ReportOnHumanRightsOfWomen-finalApr1508.pdf>.
- ⁷⁴ Quebec Human Rights Commission, *Racial Profiling And Systemic Discrimination Of Racialized Youth: Report on the Consultation on Racial Profiling and its Consequences* (2011) online:
http://www.cdpcj.qc.ca/publications/profiling_final_en.pdf [*Racial Profiling Report*].
- ⁷⁵ Quebec Human Rights Commission, *Systemic Discrimination Towards Migrant Workers: Summary* (December, 2011) online:
http://www.cdpcj.qc.ca/publications/Opinion_migrant_workers_summary.pdf.
- ⁷⁶ Quebec Human Rights Commission, *The Judicialization of the Homeless in Montréal: A Case of Social Profiling: Executive Summary* (6 November 2009) online:
http://www.cdpcj.qc.ca/Documents/Homeless_Summary.pdf.
- ⁷⁷ Canadian Human Rights Commission, *Anti-Harassment policies for the workplace: an employer's guide* (Ottawa: Minister of Public Works and Government Services, 2006) online:
http://www.chrc-ccdp.ca/sites/default/files/ahpoliciesworkplace_en_1.pdf. This guide is aimed at all federally regulated employers with the goal of assisting them in creating anti-harassment policies in the workplace. Along with detailed information for employers, the guide also provides procedural advice for victims of workplace harassment.
- ⁷⁸ Canadian Human Rights Commission, *A Place for All: A Guide to Creating an Inclusive Workplace* (Ottawa: Minister of Public Works and Government Services, 2006) online:
http://www.chrc-ccdp.ca/sites/default/files/aplaceforall_1.pdf. This guide concerns the duty to accommodate, in workplaces covered by the Canadian Human Rights Act, and provides sample policies for employers.
- ⁷⁹ Canadian Human Rights Commission, *A Guide for Managing the Return to Work* (Ottawa: Minister of Public Works and Government Services, 2007) online:
http://www.chrc-ccdp.ca/sites/default/files/gmrw_ggrt_en_2.pdf. This guide aims to decrease the incidence of complaints arising from situations in which an employee is returning to work after an extended absence due to illness or injury. The guide identifies steps that an employer can take after an employee returns as well as five case studies.

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- ⁸⁰ Canadian Human Rights Commission, *The Human Rights Impact Assessment for Security Measures* (Ottawa: Minister of Public Works and Government Services, 2011) online: http://www.chrc-ccdp.ca/sites/default/files/security_guide_secutrite-eng_0.pdf.
This guide outlines steps that should be taken to ensure that national security measures, such as no fly lists, are consistent with the Canadian Human Rights Act.
- ⁸¹ Canadian Human Rights Commission, *Canadian Human Rights Commission's Policy on Alcohol and Drug Testing* (Ottawa: Canadian Human Rights Commission, 2009) online: http://www.chrc-ccdp.ca/sites/default/files/padt_pdda_eng_2.pdf.
- ⁸² Canadian Human Rights Commission, *Aboriginal Employment Preferences Policy* (25 March 2003) online: http://www.chrc-ccdp.ca/sites/default/files/aboriginalemloymentpreferencepolicy_0.pdf.
- ⁸³ Canadian Human Rights Commission, *Policy and Procedures on the Accommodation of Mental Illness* (October, 2008) online: http://www.chrc-ccdp.gc.ca/sites/default/files/policy_mental_illness_en_1.pdf.
- ⁸⁴ Canadian Human Rights Commission, *Policy on Environmental Sensitivities* (January, 2014) online: http://www.chrc-ccdp.ca/sites/default/files/policy_sensitivity_0.pdf.
- ⁸⁵ Canadian Human Rights Commission, *Policy on Special Programs*, no date, online: http://www.chrc-ccdp.ca/sites/default/files/policyspecialprograms_eng_0.pdf.
- ⁸⁶ Canadian Human Rights Commission, *Pregnancy & Human Rights in the Workplace: Policy and Best Practices* (Ottawa: Canadian Human Rights Commission, no date) online: http://www.chrc-ccdp.gc.ca/sites/default/files/pregnancy_policy_0.pdf.
- ⁸⁷ Alberta Human Rights Commission, *Duty to Accommodate: Interpretive Bulletin* (Edmonton: Alberta Human Rights Commission, 2010) online: http://www.albertahumanrights.ab.ca/Bull_DutytoAccom_web.pdf [These employment accommodation guidelines encompass the responsibilities of both the employer and the person being accommodated as well as the analysis for *bona fide* occupational requirement and undue hardship].
- ⁸⁸ Alberta Human Rights Commission, *Duty to Accommodate Students with Disabilities in Post-secondary Educational Institutions: Interpretive Bulletin* (Edmonton: Alberta Human Rights Commission, 2010) online: http://www.albertahumanrights.ab.ca/Bull_Duty_to_accom_students.pdf [These guidelines discuss the duty to accommodate in the educational context rather than the employment context, providing in-depth coverage of the relevant case law regarding the responsibilities of both parties to ensure that students receive reasonable accommodation in all aspects of learning].
- ⁸⁹ These guidelines discuss the human rights protection in Alberta for women who are pregnant, with regard to employment. They encompass maternity leave, medical leave, as well as the law on breastfeeding and other issues related to pregnancy.

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⁹⁰ Alberta Human Rights Commission, *Human Rights in the Hospitality Industry: Interpretive Bulletin* (Edmonton: Alberta Human Rights Commission, 2010) online: http://www.albertahumanrights.ab.ca/Bull_hospitality.pdf [These guidelines discuss human rights protections for services that are customarily available to the public, especially restaurants and hotels, and the various ways in which the duty to accommodate and to refrain from discrimination, can be fulfilled].

⁹¹ Manitoba Human Rights Commission, *Guidelines under The Human Rights Code (Manitoba), on guide dogs and service animals* (Winnipeg: Manitoba Human Rights Commission, no date) online: http://www.manitobahumanrights.ca/publications/guidelines/guidelines_service_animals.html [These guidelines discuss the limits of the *Code's* protection of service animal use. They spell out which animals are covered and which are not as well as what questions can be asked about service animals].

⁹² Manitoba Human Rights Commission, *Guidelines on rental housing under The Human Rights Code (Manitoba) for tenants (renters), landlords, rental agencies and management companies* (Winnipeg: Manitoba Human Rights Commission, 2009) online: <http://www.manitobahumanrights.ca/publications/guidelines/pdf/housing.pdf> [These guidelines discuss how Manitoba's *Human Rights Code* protects tenants in rental situations. Among other grounds of protection, it focuses on the protection against discrimination based on source of income, such as when a tenant's only source of income is social assistance]; Manitoba Human Rights Commission, *Guidelines on condominium housing under The Human Rights Code (Manitoba) for condominium corporations, management companies and condominium unit owners* (Winnipeg: Manitoba Human Rights Commission, 2009) online: http://www.manitobahumanrights.ca/publications/guidelines/pdf/condo_guide.pdf [These guidelines discuss the protections required by *The Human Rights Code* regarding owners and potential owners of condominium units. They focus specifically on what a condominium corporation can and cannot restrict with regard to their units].

⁹³ Manitoba Human Rights Commission, *Guidelines under The Human Rights Code (Manitoba) for retailers controlling the sale of products containing an intoxicating substance* (Winnipeg: Manitoba Human Rights Commission, 2005) online: http://www.manitobahumanrights.ca/publications/guidelines/pdf/intoxicating_substances.pdf [These guidelines discuss discrimination in the context of selling intoxicating substances. The focus is on the discriminatory denial of alcohol sales to Aboriginal persons]; Manitoba Human Rights Commission, *Guidelines for Employers under The Human Rights Code (Manitoba) on Drug and Alcohol Testing* (Winnipeg: Manitoba Human Rights Commission, 2008) online: <http://www.manitobahumanrights.ca/publications/guidelines/pdf/drug-alcohol-testing.pdf> [These guidelines discuss dependency on alcohol or drugs as a disability covered by *The Human Rights Code* and the interaction in the employment setting between the right to be free disability discrimination and drug and/or alcohol testing].

⁹⁴ Manitoba Human Rights Commission, *Guidelines for employers on pre-employment inquiries and The Human Rights Code (Manitoba)* (Winnipeg: Manitoba Human Rights Commission, 2009) online: http://www.manitobahumanrights.ca/publications/guidelines/pamphlet_pre-employment.pdf [These guidelines discuss the rights of potential employees when looking for a job. They specifically discuss the limits of what an employer can ask and/or require of a potential employee to not be discriminatory under the *Manitoba Human Rights Code*].

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⁹⁵ These guidelines discuss discrimination based on gender identity and the Code's protections. There is a focus on employment, services and housing as well as a discussion about children and gender identity.

⁹⁶ Ontario Human Rights Commission, *Policy on Discrimination Against Older People Because of Age* (Toronto: Queen's Printer for Ontario, 2007) online: http://www.ohrc.on.ca/sites/default/files/attachments/Policy_on_discrimination_against_older_people_because_of_age.pdf [These guidelines discuss discrimination that people experience as they age and the protections available under the *Ontario Code*].

⁹⁷ Ontario Human Rights Commission, *Policy on Competing Human Rights* (Toronto: Queen's Printer for Ontario, 2012) online: http://www.ohrc.on.ca/sites/default/files/policy_on_competing_human_rights_accessible_2.pdf [This policy document discusses when a particular circumstance engages competing rights. This policy acknowledges that a right protected in *The Human Rights Code* may conflict with someone else's *Code*, *Charter* or common-law right and develops a framework to analyze such conflicts].

⁹⁸ Ontario Human Rights Commission, *Policy on Removing the "Canadian Experience" Barrier* (Toronto: Queen's Printer for Ontario, 2013) online: http://www.ohrc.on.ca/sites/default/files/policy_on_removing_the_Canadian_experience_barrier_accessible.pdf [The position of the Ontario Human Rights Commission is that the employment requirement of "Canadian experience" is discriminatory against persons with international experience except for very limited cases where that is justified. This policy discusses "Canadian experience" as part of discrimination based place of origin].

⁹⁹ These are different terms used to describe essentially the same function.

¹⁰⁰ Canadian Human Rights Commission, *Protecting Their Rights: A Systemic Review of Human Rights in Correctional Services for Federally Sentenced Women* (December, 2003) online: <http://www.chrc-ccdp.ca/sites/default/files/fswen.pdf>.

¹⁰¹ The term "racialized" means a person subject to discrimination because others perceive, experience or categorize them on the basis of race or racial stereotypes.

¹⁰² Michael Jackson, News Release, "Canadian Human Rights Report" (28 January 2004) online: <http://www.justicebehindthewalls.net/news.asp?nid=43>.

¹⁰³ Canadian Human Rights Commission, *Government Slow to Deliver for the Innu of Labrador*, (Ottawa: Canadian Human Rights Commission, 2002).

¹⁰⁴ Ontario Human Rights Commission, *Paying the Price: The Human Cost of Racial Profiling Introduction*, online: <http://www.ohrc.on.ca/en/paying-price-human-cost-racial-profiling>.

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¹⁰⁵ Ontario Human Rights Commission, *Paying the Price: The Human Cost of Racial Profiling* (Toronto: Ontario Human Rights Commission, 2003) online: www.ohrc.on.ca/sites/default/files/attachments/Paying_the_price%3A_The_human_cost_of_racial_profiling.pdf; See also Ontario Human Rights Commission, "Paying the Price: the Human Cost of Racial Profiling: Human Rights Commission releases report" (9 December 2003) online: www.ohrc.on.ca/en/news_centre/paying-price-human-cost-racial-profiling-ontario-human-rights-commission-releases-report.

¹⁰⁶ Ontario Human Rights Commission, *Policy and Guidelines on Racism and Racial Discrimination* (9 June 2005) online: www.ohrc.on.ca/en/book/export/html/2475.

¹⁰⁷ Ontario Human Rights Commission, *Human Rights and Policing*, *supra* note 46.

¹⁰⁸ Ottawa Police Service, online: <http://www.ottawapolice.ca/en/news-and-community/Traffic-Stop-Race-Data-Collection-ProjectTSRDCP.asp>.

¹⁰⁹ Ontario Human Rights Commission, *Dining Out Accessibly: An Accessibility Audit of Select Restaurant Chains in Ontario* (Toronto: Queen's Printer for Ontario, 2004) online: http://www.ohrc.on.ca/sites/default/files/attachments/Dining_out_accessibly.pdf.

¹¹⁰ Ontario Human Rights Commission, *Moving Towards Barrier-free Services: Final Report on the Restaurant Accessibility Initiative* (Toronto: Queen's Printer for Ontario, 2006) online: http://www.ohrc.on.ca/sites/default/files/attachments/Moving_towards_barrier-free_services%3A_Final_report_on_the_restaurant_accessibility_initiative.pdf.

¹¹¹ Ontario Human Rights Commission, "Next Stop Accessibility": *Report on Public Transit Stop Announcements in Ontario* (Toronto: Queen's Printer for Ontario, 2008) online: [http://www.ohrc.on.ca/sites/default/files/attachments/"Next_Step,_Accessibility"_Report_on_the_public_transit_stop_announcements_in_Ontario.pdf](http://www.ohrc.on.ca/sites/default/files/attachments/).

¹¹² Quebec Human Rights Commission, *A Collective Shock: Report of the Commission des droits de la personne du Québec* (1991); Quebec Human Rights Commission, *Rapport de l'enquête sur les allégations de discrimination dans l'industrie du taxi à Montréal* (1984); Quebec Human Rights Commission, *Racial Profiling Report*, *supra* note 74.

¹¹³ Ontario Code, *supra* note 27, s. 31(1).

¹¹⁴ See *ibid.*, ss. 31, 31.1-31.2.

¹¹⁵ Andrew Pinto, *Report of the Ontario Human Rights Review 2012* (Toronto: Queen's Printer for Ontario, 2012) online: http://www.attorneygeneral.jus.gov.on.ca/english/about/pubs/human_rights/Pinto_human_rights_report_2012-ENG.pdf [Pinto Report].

¹¹⁶ *Ibid.*, at p. 131.

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¹¹⁷ In Pinto's view the Commission had underused its powers to initiate public interest complaints, and to intervene in cases before the Tribunal, over a four year period after the reforms of 2008 took effect and the Commission was relieved of its burden of mandatory involvement in every individual human rights case. The Report suggests that it would also help to alleviate a problem of applicants being underrepresented if the Commission took on a greater responsibility for representing complainants with cases involving the public interest, involving a systemic deprivation of rights, and where the applicants would otherwise have difficulty advancing and proving their case.

¹¹⁸ Pinto Report, *supra* note 115 at 200.

¹¹⁹ Ontario Human Rights Commission, *Rights, Partners, Action!: 2012-2013 Annual Report* (Toronto: Ontario Human Rights Commission, 2013) online: http://www.ohrc.on.ca/sites/default/files/2012-2013_accessible_1.pdf.

¹²⁰ CHRA Panel Report, *supra* note 37, Ch. 10.

¹²¹ Mary Cornish uses the term "hybrid direct access" and describes the British Columbia, Ontario, and federal situation in "Building a Culture of Equality Through Human Rights Enforcement," *supra* note 41.

¹²² For online information about Ontario's Legal Support Centre, see <http://www.hrlsc.on.ca/en/about-us>.

¹²³ *Supra* note 27.

¹²⁴ The Representative for Children and Youth in BC is appointed through resolution by the Legislative Assembly after he or she is unanimously recommended by a special committee, and the Representative is an officer of the Legislature (*Representative for Children and Youth Act*, S.B.C. 2006, c. 29, ss. 2(1), (2)), online at: <http://www.canlii.org/en/bc/laws/stat/sbc-2006-c-29/latest/sbc-2006-c-29.html>. The Representative must report annually to the Speaker of the Legislative Assembly (*Representative for Children and Youth Act*, S.B.C. 2006, c. 29, s. 19(1)). Mary Ellen Turpel-Lafond's position is described this way at http://www.rcybc.ca/Images/Who%20We%20Are/METL%20Bio%202014_web.pdf: "The Representative is an independent Officer of the Legislature who supports children, youth and families who need help in dealing with the child welfare system. She also provides oversight to the Ministry of Children and Family Development and advocates for improvements to the child welfare system."

The Ombudsperson of BC is appointed by the Lieutenant Governor on the recommendation of the Legislative Assembly, after recommendation by a special committee (*Ombudsperson Act*, R.S.B.C. 1996, c. 340, ss. 2(1), (2)). The Ombudsperson of BC must also report annually to the Speaker of the Legislative Assembly (*Ombudsperson Act*, R.S.B.C. 1996, c. 340, s. 31(1)), online at: <http://www.canlii.org/en/bc/laws/stat/rsbc-1996-c-340/latest/rsbc-1996-c-340.html>. The Ombudsperson is described at <https://www.ombudsman.bc.ca/> as "an Officer of the provincial legislature; independent of government and political parties; and responsible for making sure that the administrative practices and services of public agencies are fair, reasonable, appropriate and equitable."

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¹²⁵ Human Rights Act, S.N.W.T. 2002 c. 8, s. 21.

¹²⁶ Currently s. 42 of the *Code* states:

42 (1) It is not discrimination or a contravention of this Code to plan, advertise, adopt or implement an employment equity program that

(a) has as its objective the amelioration of conditions of disadvantaged individuals or groups who are disadvantaged because of race, colour, ancestry, place of origin, physical or mental disability, or sex, and

(b) achieves or is reasonably likely to achieve that objective.

(2) [Repealed 2002-62-23.]

(3) On application by any person, with or without notice to any other person, the chair, or a member or panel designated by the chair, may approve any program or activity that has as its objective the amelioration of conditions of disadvantaged individuals or groups.

(4) Any program or activity approved under subsection (3) is deemed not to be in contravention of this Code (BC *Code*, *supra* note 2).



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