



Advancing Dignity, Equality and Justice Since 1971

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Honourable David Eby
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Dear Minister Eby,

It has never been more important to defend and uphold human rights. As the COVID-19 pandemic rages on, sparking acts of racial violence and hateful conspiracy theories, we have also seen communities come together to oppose division and injustice and demand better from their leaders and institutions.

While racism and hate are not new phenomena, we know that the only way to challenge them is through education and accountability. A well-functioning human rights system is critical to creating the just and inclusive society we need.

As a non-profit organization providing front-line legal services to some of the most marginalized people in BC, CLAS has extensive experience and expertise in the area of human rights law. We represent clients every day challenging racism, exclusion, and other forms of individual and systemic discrimination. Through the experiences of our clients, we understand the gaps and shortcomings of BC's human rights system. We are calling on your government, if re-elected, to commit to the following changes to the BC human rights system:

Add the ground of "Indigenous identity" to the Code

In her report entitled *Expanding our Vision: Cultural Equality and Indigenous People's Human Rights*,¹ Ardith Walkem, QC, found that Indigenous Peoples do not see themselves and their needs and worldviews reflected in BC's human rights system. Her report makes a number of recommendations to strengthen BC's human rights system for Indigenous Peoples, and deserves a deep and considered response from your government.

One primary recommendation that should be implemented immediately is her call to add "Indigenous identity" to the *Human Rights Code* (the "Code") as a prohibited ground of discrimination. This recommendation has been endorsed by a number of prominent Indigenous and human rights groups

¹ Available here: <http://www.bchrt.bc.ca/shreddocs/indigenous/expanding-our-vision.pdf>.

including the Union of BC Indian Chiefs, the BC Assembly of First Nations, and BC's Office of the Human Rights Commissioner, among many others.² We endorse and add our voice to this call.

Add the ground of “social condition” to the Code

Presently, the *Code* does not prohibit discrimination on the basis of poverty. Yet we know that homeless, impoverished, and otherwise disadvantaged communities experience myriad forms of discrimination and exclusion in many areas of their daily life, compounding other challenges and barriers they may face.

The call to add “social condition” to the *Code* has been echoed by numerous anti-poverty groups over the years, and was the position of your party when the NDP was in opposition. MLA Ravi Kahlon's recommendation to begin work on this overdue reform was made nearly two years ago in his report recommending the reinstatement of the Human Rights Commission. This amendment is urgently needed to combat the discrimination faced by people living in poverty.

Eliminate the definition of “age” in the Code, which limits protection to those 19 years or older

The cut-off for age-related protection in the *Code* for people over 65 was eliminated many years ago, in recognition of the fact that people over 65 can and do experience unjustifiable discrimination on the basis of their age, and that exempting them from protection is itself discriminatory. Yet, the *Code* is still applying the anachronistic and ageist idea that those under 19 can legitimately be discriminated against because of their youth. While age-related distinctions may be justified in some circumstances, the burden to show a reasonable justification for differential treatment should rest with those seeking to impose it.

The *Code's* definition of age, which exempts those under 19 from protection, is itself discriminatory and, in our view, likely unconstitutional. The *Code* should be amended to eliminate the definition of age, as recommended in the report of the Human Rights Tribunal Working Group on strengthening Tribunal processes for representative complaints.³

Abolish the exemption for shared accommodations

Section 10(2) of the *Code* states that the protections from discrimination in tenancy do not apply if the space involves shared sleeping, cooking, or bathroom facilities. Differential treatment in these circumstances may be justified in a number of situations, but the present exemption is vastly overbroad. For instance, it could be interpreted to allow a landlord to refuse to rent to someone because they are Black or gay, simply because they will share a kitchen or bathroom. Such a broad exemption is inconsistent with the purposes of human rights legislation and must be amended.

² The joint letter is available here: <https://bccla.org/wp-content/uploads/2020/05/BC-Human-Rights-Tribunal-Human-Rights-Code-Amendment.pdf>

³ That report is available here: <http://www.bchrt.bc.ca/shareddocs/reports-submissions/strengthening-process.pdf>.

Allow a representative to advance a human rights complaint in the event the complainant dies

BC's Court of Appeal has held that human rights are individual rights that die with the complainant.⁴ Even in cases alleging systemic discrimination and seeking broad remedies that would impact many other people, the Human Rights Tribunal has found itself bound by this precedent and unable to proceed with cases where the complainant has died. In a recent systemic case litigated by our office, the complainant died after nine days of hearing had been held, and all of the evidence had been heard. Even then, the Tribunal refused to issue a decision on the basis of the appellate court precedent.⁵ This was a tragic waste of public resources, not to mention a missed opportunity for the Human Rights Tribunal to issue an important decision on an issue of immense public importance (the rights of transgender people while incarcerated).

BC should follow the example set by other provinces and allow a representative to continue a complaint in the event a complainant passes away during the litigation.

Ensure the Human Rights Tribunal is properly resourced to accomplish its mandate

The number of complaints made to the BC Human Rights Tribunal has increased by 60% over the last four years, while the staffing levels have remained the same since the Tribunal's creation in 2003. The reforms set out above will have little value if the body charged with enforcing them does not have the resources it needs to do its work.

BC cannot become a leader on human rights issues without properly funding the adjudicative branch of our human rights system. Inadequate resources cause significant and harmful delays for individual cases and prevent the timely development of the law. This is a major detriment to the Province's ability to address current human rights issues, let alone any new issues brought to light by the Commission. We are calling on the government to commit to increasing the funding for the Tribunal to a level commensurate with its increased case load.

It has also come to our attention that the Tribunal Chair has recently been reappointed to her position for only a one-year term. This creates serious concerns about judicial independence and the stability of leadership at the Tribunal during this challenging period. Lastly, we echo the calls in the *Expanding our Vision* report, referenced above, to improve the diversity and representation of Indigenous people at all levels of the Tribunal including members, mediators, and staff.

Conclusion

Many of the above recommendations have been called for by advocacy organizations for years. They can and should be implemented now. There are also many other opportunities to improve our human

⁴ *British Columbia v. Gregoire*, 2005 BCCA 585.

⁵ *Lovado v. BC Ministry of Public Safety and Solicitor General (No. 2)*, 2020 BCHRT 25.

rights system in BC, and we would welcome the opportunity to consult with you further about these issues, should your party form government after the upcoming election.

Sincerely,



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