

Efficient but invisible

Critics say human rights undermined since HR Commission closure 10 years ago

LAW
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A decade after the BC Liberals abolished the Human Rights Commission, critics say the shift to a tribunal-only system has hindered the pursuit of human rights, while proponents argue the process is more efficient.

“Ten years ago, the British Columbia Human Rights Tribunal as we now know it was created and the new direct access model — the first of its kind in Canada — strengthened our dispute resolution mechanisms for ensuring that the rights of individuals are protected,” BC Justice Minister Shirley Bond recently wrote. “Under the direct access model, human rights complaints go directly to the tribunal, which handles the complaint from start to finish. This process is efficient and accountable.”

Prior to 2003, the BC Human Rights Code was administered by the tribunal and the Human Rights Commission. The commission, established by the NDP government in 1997, received, investigated and referred complaints to the tribunal, which was a strictly adjudicative body.

The commission comprised a chief commissioner, who educated the public about human rights; a deputy chief commissioner, who represented the public interest in cases that involved systemic discrimination in addition to individual complaints; and a commissioner, who investigated complaints, provided mediation and decided whether or not to send a case to the tribunal.

Harinder Mahil, who was deputy chief commissioner from 1997 until 2002, believes BC still needs “a body responsible for protecting the public interest in the enforcement of human rights law.”

“You have an independent officer of auditor general, and we also have a privacy commissioner,” he says. “Why is it we don’t have an independent officer reporting to the legislature on human rights? Don’t we consider that important?”

But critics of the former commission say it was inefficient and unfair in resolving complaints,



What happened to the public protection and promotion of human rights? asks Harinder Mahil, who was deputy chief commissioner of BC’s old Human Rights Commission from 1997 until 2002.

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which sometimes dragged on for three years.

“Nobody liked it because it all took too long,” says former tribunal member Lindsay Lyster. “People who were concerned about systemic discrimination didn’t like it because the deputy chief commissioner wasn’t fulfilling their statutory role [to file systemic complaints]. The commission was getting really criticized from all sides. So the government reviewed all of this and decided to eliminate the commission and put all authority in the tribunal. But in doing that they eliminated a couple of things that were potentially useful.”

Lyster laments the loss of the chief commissioner role, which provided public education

about the commission, tribunal and human rights.

Under the current legislation, the minister is responsible for public education on human rights. Bond notes that the Ministry of Justice funds a human rights education program, which is delivered on contract by the BC Human Rights Coalition.

“The coalition’s education program, which includes distribution of the Ministry of Justice’s educational materials, focuses on preventing discrimination before it happens,” Bond wrote in an email statement to *Xtra*.

“The coalition responds to thousands of requests for information per year, and presents workshops and training on the Human Rights

Code,” Bond says. “The BC Human Rights Tribunal also plays an important role in educating the public about the human rights complaint process in British Columbia. The tribunal has an excellent, up-to-date informative website that includes guides and information sheets that explain the tribunal’s processes, all of which are available in English, Chinese, and Punjabi.”

The commission’s elimination removed a mechanism to address systemic issues of discrimination by intervening in complaints or initiating complaints of its own. While the commission never did file a systemic complaint, Mahil recalls that it intervened in several cases.

“I remember one situation where it was a lesbian relationship and one of the individuals had died,” he says. “At one point, there had been an offer made by her partner’s employer, which was very attractive to her, but we wanted the policy change. We wanted the pension plan amended, and that was done as a result of the commission’s involvement. If you file a complaint, someone could give you a pile of money and go away but without achieving any legislative change of policy.”


While the current model allows for any individual or group to file a systemic complaint, Mahil says the process is cost-prohibitive for most British Columbians.

Bond says the provincial government provides approximately \$1.85 million in annual funding to the BC Human Rights Clinic, which provides education and information with respect to the code, as well as legal representation to complainants who appear before the tribunal.

Lesbian lawyer Barbara Findlay describes the coalition, which assumed many of the commission’s duties, as a vastly overworked and underfunded body. She says the current system is virtually invisible, difficult to access, technical to negotiate and uncertain in its outcomes.

“Gone is the legal aid tariff, which permitted complainants to hire a lawyer for human rights issues,” she says. “In its place, the Community Legal Assistance Society has a few lawyers. But they cannot begin to take all of the cases that are set for tribunal.”

Lyster says that despite its flaws and limitations, the tribunal does an excellent job of mediating disputes in a process that she describes as public and transparent. X

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