

**British Columbia
Human Rights Tribunal**

**Report on Implementation of
*Expanding Our Vision: Cultural Equality
& Indigenous Peoples' Human Rights***

June 2020

Introduction

In *Expanding Our Vision: Cultural Equality & Indigenous Peoples' Human Rights*, Ardith Walpetko We'dalx Walkem, QC, made recommendations for the BC Human Rights Tribunal to “develop an Indigenous Justice Initiative that is open and responsive to the experiences of Indigenous Peoples”. She recommended that the Tribunal begin by creating a committee tasked with developing the *Expanding Our Vision* Implementation Plan and to report on its progress within six months.

This is the Tribunal's first progress report under its *Expanding Our Vision* Indigenous Justice Initiative. This report covers the first six month period after the release of *Expanding Our Vision*, from January until June 2020.

Expanding Our Vision Implementation Committee

Recommendation 2.2 *Create a staff/tribunal committee tasked with developing the Expanding our Vision Implementation Plan. Indigenous lawyers and cultural leaders or academics with knowledge of human rights should be recruited to join these efforts. The Expanding Our Vision Implementation Plan should include immediate steps to be taken in the first 6 months, and then be renewed on a yearly basis.*

In January 2020, the Tribunal sought members for its *Expanding Our Vision* Implementation Committee [**EOV Committee**]. The composition of the Committee expanded over the following weeks. The membership of the Committee is now comprised of a diverse group of Indigenous lawyers, community leaders, youth, and academics from across the province, as well as a representative from BC's Office of the Human Rights Commissioner. A full list of Committee members is attached as **Appendix A** to this report. The Committee first met on March 2, 2020.

The Committee meets monthly to oversee and guide the Tribunal's efforts in implementing *Expanding Our Vision*. In this first period, it identified immediate priorities for the Tribunal in respect of hiring and training. It continues to identify priorities and direct the Tribunal's initiatives.

Hiring

Recommendation 1.3 Increase the number of Indigenous Peoples at all levels of the BCHRT, including staff, tribunal members and contractors.

Recommendation 4.1 Priority should be given to hiring or appointing Indigenous staff and tribunal members.

Recommendation 4.2 Audit the current HR process to identify why Indigenous Peoples are not being recruited or hired. Provide specific training to HR staff on how to actively recruit and fairly assess Indigenous applicants. Seek specific mentoring advice from other organizations with higher Indigenous staff ratios about how to address this underrepresentation. The BCHRT should set yearly hiring targets for the first five years, and report on success in meeting those targets in annual reports.

Recommendation 4.3 Audit the tribunal appointment process to identify why Indigenous Peoples are not applying or being appointed as tribunal members. Set specific recruitment and appointment goals for BCHRT Indigenous tribunal members.

Recommendation 4.4 Implement options for part-time appointments to qualified Indigenous tribunal members, who may not be available full-time. This could provide a way to reflect Indigenous adjudicative and dispute resolution traditions within the Tribunal's expertise.

The EOVC Committee identified increasing Indigenous representation within the Tribunal as the first priority. The Tribunal has taken a number of steps towards this goal.

In February 2020, the Tribunal appointed two Indigenous members under s. 6 of the *Administrative Tribunals Act*. These appointments are for six months.

On January 22, 2020, the Tribunal advertised a Notice of Position seeking applicants for the position of Tribunal Member. The Tribunal advised it may prefer Indigenous applicants for the position, and that part-time options are available. To attract Indigenous candidates, the Tribunal held an Information Session for Indigenous Lawyers, to share information about becoming a member.

That hiring process is now under way. The position posting has attracted many qualified Indigenous candidates.

The Tribunal has also concluded an internal audit of its hiring process to identify barriers to the recruitment and hiring of Indigenous Peoples. That audit identified a number of factors that may create such barriers:

1. Failure to give weight to the need for the Tribunal to reflect Indigenous Peoples or otherwise reflect the diversity of people coming to the Tribunal, social context understanding, lived experience, cultural competency, or trauma-informed practice;

2. Limited advertisement of the position and failure to actively reach out to diverse communities;
3. Reliance on personal connections or word of mouth;
4. Political influence from government;
5. Bureaucratic process can take a long time;
6. Lack of Indigenous members and staff at all levels, including leadership positions;
7. Highly structured application process; and /or
8. Job application process that is exclusively online.

In response to this audit, the Tribunal has prepared a draft *Framework for Recruitment, Hiring and Retention of Indigenous Peoples*. That framework identifies practices to guide the Tribunal's recruitment, hiring and retention initiatives going forward. A subcommittee comprised of Tribunal legal counsel, one Tribunal member, and a number of Committee members, will oversee and assist with the continued development and implementation of this framework.

Training

Recommendation 8.1 *Develop a baseline of information and understanding of the racism that Indigenous Peoples experience so that individual complainants are not put to a process of proof again and again...*

Recommendation 10.1 *Adopt a trauma-informed practice overall, including for assessing and accommodating delays or requests for extensions. The BCHRT staff and tribunal members should be provided with training on how trauma may impact Indigenous Peoples' actions or interactions within the BCHRT system.*

In tandem with increasing Indigenous staff and members at the Tribunal, the EOV Committee directed the Tribunal to prioritize developing cultural competency, humility, and safety among its staff and members. To that end, the EOV Committee is overseeing the development of a *BC Human Rights Tribunal Indigenous Cultural Competency and Humility Framework [Cultural Training Framework]*. A subcommittee of Tribunal members and Committee members will work on its further development and implementation.

Under the *Cultural Training Framework*, the Tribunal seeks to be a safe and welcoming place for Indigenous Peoples, as staff, Tribunal Members, mediators, parties, and communities which we serve. Specific learning initiatives for staff, members and mediators include:

- Monthly meetings for Tribunal members which incorporate Indigenous cultural learning, cultural humility, and competence
- Monthly small group work for all staff and members

When the restrictions of the current pandemic are lifted, the Tribunal will also be organizing site visits to Indigenous organizations or communities and be participating in a blanket exercise.

Seeking amendments to the *Human Rights Code*

Recommendation 1.2 *Advocate to add Indigenous identity as a protected ground to the Code. Current grounds of discrimination under the Code (including based on race, colour, ancestry or religion) do not adequately address the discrimination Indigenous Peoples report experiencing. This would send a message of inclusion and reflect the individual and collective nature of Indigenous human rights.*

On May 7, 2020, the Tribunal wrote to the Ministry of the Attorney General to advocate, on an urgent basis, for an amendment to ss. 7-14 of the *Human Rights Code* to add Indigenous identity as a ground of discrimination. That letter was updated with an expanded list of supporting organizations on May 19, 2020. A copy of this letter is attached as Appendix B to this report. The request was supported by Indigenous and human rights organizations, including:

- Union of BC Indian Chiefs
- BC Assembly of First Nations
- Métis Nation British Columbia
- Office of the Human Rights Commissioner
- Aboriginal Front Door
- Aboriginal Women's Action Network
- ATIRA Group of Women Serving Agencies
- BC Civil Liberties Association
- Community Legal Assistance Society (CLAS)
- Downtown Eastside Women's Center
- Ending Violence Association of BC
- First United Church Community Ministry Society
- Human Rights Clinic
- Indigenous Community Legal Clinic, UBC
- Native Education College
- Pacific Association of First Nations Women
- The Provincial Council of Women of British Columbia
- Residential School History and Dialogue Centre, UBC
- Rise Women's Legal Centre
- Vancouver Aboriginal Community Policing Centre
- WAVAW Rape Crisis Centre
- West Coast LEAF
- Bradford W. Morse, Professor of Law, Thompson Rivers University

This is an ongoing area of advocacy alongside the Human Rights Commissioner.

Communications and Forms

Recommendation 14.1 *Use plain language, easily understood by the average person with a grade five education, when communicating with complainants. Review communications, including forms and template letters, to ensure that they use plain language.*

Recommendation 9.4 *Amend BCHRT forms to contemplate Indigenous Peoples, including Indigenous names, where a delay may be reflective of historic trauma, or to allow for exploration of options to resolve an issues, as required by Indigenous protocols.*

The Tribunal is revising its forms. The new forms will use plain language and will identify a place for people to identify traditional or other names. The forms will acknowledge that trauma may be a cause of delay in filing complaints. The new forms will also collect demographic information on a voluntary basis, including Indigenous identity. The Tribunal will introduce the new forms in June 2020, and will revise them with user feedback.

Next steps

The Tribunal continues to work with the EOV Committee to implement the *Expanding Our Vision* recommendations. The Committee is currently mapping the recommendations to identify which ones fall within or outside the Tribunal's mandate, which ones will require additional funding, and which ones the Tribunal can take immediate steps on. The Committee will then set further priorities and timelines.

The Tribunal will continue to report on its progress.

Appendix A: EOJ Committee Members

Patricia M. Barkaskas

Academic Director, Indigenous Community Legal Clinic
Instructor I (Tenure Track), Peter A. Allard School of Law
The University of British Columbia

Jade Baxter

Union of BC Indian Chiefs Youth Representative
Nlaka'pamux Nation

Romona Baxter

Cynthia Callison

Callison & Hanna Indigenous Advocate
Tahltan Nation Member

Rosalind Campbell

Musqueam Indian Band
Councillor, Musqueam Indian Band

Dylan Cohen

Red River Métis

Devyn Cousineau

Member
Human Rights Tribunal

Trish Garner

Executive Director, Research and Policy
Office of the Human Rights Commissioner for British Columbia

Andrea Glickman

Policy Director
Union of BC Indian Chiefs

Katherine Hardie

Legal counsel
Human Rights Tribunal

Andrea Hilland

Policy counsel
Law Society of British Columbia

Jo Ann Nahanee

Amber Prince

Member, Sucker Creek Cree Nation
Staff lawyer, Atira Women's Resource Society

Lissa Dawn Smith

Vice-President
Metis Nation BC



**British Columbia
Human Rights
Tribunal**

1170 – 605 Robson Street
Vancouver BC V6B 5J3

Phone: 604-775-2000

Fax: 604-775-2020

TTY: 604-775-2021

Toll Free: 1-888-440-8844

www.bchrt.bc.ca

May 7, 2020

Richard Fyfe, QC
Deputy Attorney General
PO Box 9290, Stn. Prov. Govt.
Victoria BC V8W 9J7

Dear Mr. Fyfe:

RE: Amendment to the *Human Rights Code*

I am writing to request, on an urgent basis, an amendment to ss. 7-14 of the *Human Rights Code* to add Indigenous identity as a ground of discrimination.

These sections of the *Human Rights Code* set out the protections from discrimination under the *Code*. Each prohibits discrimination based on race, colour, ancestry, and place of origin. These grounds have been interpreted to encompass a person's Indigenous identity. However, in *Expanding Our Vision: Cultural Equality & Indigenous Peoples Human Rights [Expanding Our Vision]*, Ardith Walkem Q.C. explains that these grounds "do not adequately address the discrimination Indigenous Peoples report experiencing" and that amending the *Code* to add "Indigenous identity" would "send a message of inclusion and reflect the individual and collective nature of Indigenous human rights" (see p. 7). Accordingly, the report's recommendation 1.2 is to add Indigenous identity as a protected ground.

This amendment would also advance BC's commitment to the United Nations Declaration on the Rights of Indigenous Peoples. The *Declaration of the Rights of Indigenous Peoples Act* aims to, among other things, affirm the application of the Declaration in BC and contribute to the implementation of Declaration. Article 2 of the Declaration provides that Indigenous Peoples "have the right to be free from any kind of discrimination, in the exercise of their rights, in particular that based on their indigenous origin or identity".

The *Expanding Our Vision* Implementation Committee, established under recommendation 2.2, has asked the Tribunal to bring forward this request on an urgent basis. The urgency of this request flows from two sources. First, the urgency of taking concrete steps to implement the Declaration in BC. Second, the urgency arising from the current pandemic, which has disproportionate impacts across society, including on Indigenous Peoples. Viewed in the twin

contexts of inequalities in health for Indigenous Peoples and the history of colonization and its negative health effects, the current pandemic is the appropriate time to send the powerful message that Indigenous Peoples have the right to freedom from discrimination under BC's *Human Rights Code*, on the ground of their Indigenous identity.

The people and organizations listed below have already expressed their support for this request. I will update you as others confirm their support.

Thank you for your time and consideration.

Yours truly,

A handwritten signature in black ink, appearing to read "Diana Juricevic". The signature is written in a cursive style with a large initial "D" and "J".

Diana Juricevic
Chair