



**British Columbia  
Human Rights  
Tribunal**

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December 8, 2010

Jim Emmerton  
Executive Director  
British Columbia Law Institute  
1822 East Mall  
University of British Columbia  
Vancouver, BC V6T 1Z1

Dear Mr. Emmerton:

Re: Workplace Dispute Resolution Project Report to the Ministry of Labour and the  
Ministry for the Attorney General

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I write to thank you for making the Institutes' project managers available to consult with me and HRT counsel, and for providing a copy of its final Report with respect to this initiative.

In addition to the substantive comments contained in the BCHRT's Brief which was provided to your staff, I also shared with them (inter alia) the following observations:

- That it appeared that the dispute resolution model articulated in BCLI's consultation paper was proposed without any identification or validation of actual underlying issues or compelling rationales for change, or any consideration of alternatives to the proposed model.
- That BCLI's limited or selective consultation around a single model represents a flawed policy development process.
- That the discussion proposal ignores or minimizes HRT members' expertise in mediation and adjudication in the Human Rights context including the area of employment.

Having now had an opportunity to review the BCLI's Report, I was disheartened to find our concerns justified in the sense that the Report appears to contain inaccurate information about the Tribunal as well as its Members.

It appears that your invitation for expressions of "opinion and perception" from a limited (20-30) group of consultees, has produced the publication of bare assertions, by anonymous critics. I acknowledge that contrary views are noted but I find the publication of anonymous opinions about the Tribunal and its Members, absent any evidentiary basis, absent assessment, and without opportunity to respond, troubling.

In particular, I consider the notion of "a perception of institutional bias against employers" (p. 40), a shocking and serious allegation without empirical justification. If there exists objective evidence to support such a statement, it ought to be raised before the Tribunal or the Courts.

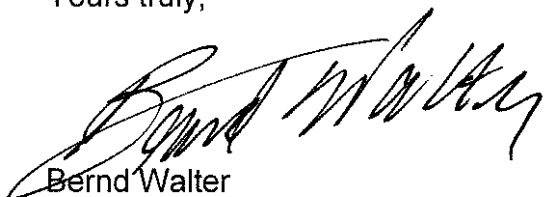
At pages 40-42, the Report asserts that Tribunal Members are not skilled mediators. This is concerning especially insofar as information was provided about the very high proportion of complaints that are in fact settled through mediation, as well as about an independent academic study of the Tribunal's mediation services, which concluded a "high level of satisfaction with the mediation process".

At page 43, the Report suggests the Tribunal is unable to attract "seasoned experts". This comment belies and diminishes the professional qualifications, experience and expertise of BCHRT Members. It is simply unfair as even a cursory review of Members' backgrounds would negate the statement. As I reiterated in the consultation meeting, these are among the most skilled, hardworking and expert professionals I have encountered in 30 years of senior public service, including as Chair of as many as eight Tribunals.

I suggest that the recording and publication of such unfounded "opinions" undermines the credibility, not only of the work product, but of your highly respected agency. It also harms the integrity of the Tribunal and in turn undermines the effectiveness of the *Code*.

Perhaps you would consider publication of this letter on your Institute's website. In addition, I do hope that, if BCLI undertakes further work in this area, we will be given the opportunity to provide information required to ensure a balanced and evidence-based analysis of issues which are so central to BC's Human Rights regime.

Yours truly,



Bernd Walter  
Acting Chair