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Tribunal**

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**Submission to
Parliamentary Secretary
Ravi Kahlon**

**Re-establishment of a Human Rights Commission
in British Columbia**

October 13, 2017

Thank you for providing the BC Human Rights Tribunal [**Tribunal**] with the opportunity to make this submission regarding a renewed human rights commission in British Columbia.

You have asked the Tribunal to respond to two broad issues:

1. With respect to the current system for human rights protection in BC, what is working well and what are the gaps?
2. With respect to the renewed human rights commission, what should the new commission look like, in respect of mandate and structure?

We address these issues below.

I. SUMMARY OF RECOMMENDATIONS

The Tribunal fully supports the re-establishment of a human rights commission. The current human rights system falls short of fulfilling the purposes of the *Human Rights Code* [**Code**]. While the current system has a means of redress for those who experience discrimination, many British Columbians are not aware of their rights and obligations or the existence of the Tribunal. The current system cannot adequately address systemic discrimination, as it relies on private individuals to bring forward those claims, usually without legal support. There is no public institution responsible for promoting and protecting human rights in the province through education, inquiries, advocacy, research and reporting.

A new commission should meet the minimum requirements set out in the *Principles Relating to the Status of National Institutions for the Promotion and Protection of Human Rights* [**Paris Principles**].¹ However, minimum standards must be exceeded to meet the government's stated purpose of building "a leading Human Rights Commission which will bring our province into the 21st century, and prepare us for the future".² We support a commission with a mandate to undertake three primary functions: education, inquiries and advocacy, and research and reporting. We envision a commission that works collaboratively with communities in British Columbia to foster a society in which human rights are valued and defended.

The Tribunal also supports a legislative mandate for a human rights legal support centre with adequate resources to advise and assist individuals with their human rights complaints, including complex and systemic cases.

¹ *Principles Relating to the Status of National Institutions for the Promotion and Protection of Human Rights*, GA Res. 48/134, UN GAOR Supp. No. 49, UN Doc. A/Res/48/49 (1993) [**Paris Principles**]: Competence and Responsibilities.

² [Parliamentary Secretary's Terms of Reference](#); The European Union Agency for Fundamental Rights, [Handbook on the establishment and accreditation of National Human Rights Institutions in the European Union](#) (Luxembourg: Publications Office of the European Union, 2012) [**EU Handbook**] says that "Above all, the Paris Principles should be seen only as a minimum, rather than a maximum standard" (p. 61).

Finally, the Tribunal supports expanded advice and representation services for respondents in human rights matters.

II. THE CURRENT SYSTEM

British Columbia's current human rights system has been in place since March 31, 2003, when the government eliminated the BC Human Rights Commission and the Human Rights Advisory Council, which had existed since January 1, 1997.³ The current system consists of:

- the BC Human Rights Tribunal, continued under s. 31 of the *Code*, with powers under ss. 21-27, 27.2-27.6, 37-39, and 42 to receive and resolve complaints through mediation or adjudication and approve special programs
- the Ministry of the Attorney General [**MAG**] which has functions under ss. 5 and 6 of the *Code* to educate the public about the *Code*
- the BC Human Rights Clinic [**Clinic**] and Law Centre, which operate under contract with the MAG to provide advice and representation to Tribunal participants

In this submission, the Tribunal will identify the functions of an effective human rights system and then identify the extent to which these bodies carry out these functions and where there are gaps. We observe, first, that the only body with a legislative mandate and a level of independence from government is the Tribunal. As discussed below, a legislated mandate and independence are two of the minimum criteria for a national human rights institution.

A. What are the functions of an effective human rights system?

Human rights legislation serves a fundamental public function, by working toward the elimination of discrimination.⁴ An effective human rights system must fulfil the broad purposes of the legislation. The purposes of the *Code* are set out in s. 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;

³ Many reports have outlined the history of BC's human rights system. See e.g.: 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) [**Strengthening Human Rights**] at pp. 9-15

⁴ *Blencoe v. British Columbia Human Rights Commission* (2000) 2 SCR 307: "The purpose of human rights proceedings is not to punish but to eradicate discrimination". See also: *Canadian National Railway Co. v. Canada (Canadian Human Rights Commission)*, [1987] 1 SCR 1114 at 1134; *Canada (Human Rights Commission) v. Taylor*, 1990 2 SCR 89 at 917.

- (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;

The following purposes were repealed in 2003:

- (f) to monitor progress in achieving equality in British Columbia;
- (g) to create mechanisms for providing the information, education and advice necessary to achieve the purposes set out in paragraphs (a) to (f).

The Tribunal supports a human rights system that complies with the Paris Principles. Those principles set out the minimum requirements for national human rights institutions. The Paris Principles identify the core responsibilities of a national human rights institution as: advising government on matters concerning human rights, ensuring the harmonization of national laws with international human rights instruments, ensuring ratification of international human rights instruments, contributing to State reports to the United Nations, cooperating with the United Nations with respect to matters of human rights, engaging in education and research respecting human rights, and publicizing human rights and efforts to combat all forms of discrimination.

In Canada, a human rights system must include efforts to establish and maintain respectful relationships between Indigenous and non-Indigenous people.⁵ While this is not expressly recognized in the purposes of the legislation, reconciliation is a core Canadian project that is necessary to move toward a more equal society.

Thus, to be effective in serving its public function, a human rights system should:

1. educate the public about their rights and responsibilities
2. identify persistent patterns of inequality
3. engage in initiatives to eliminate or reduce inequality
4. provide a system for seeking redress for discrimination
5. advise government on matters concerning human rights, including by making recommendations for policy change
6. monitor and advance compliance with Canada's international obligations, and international human rights norms

⁵ Final Report of the Truth and Reconciliation Commission of Canada, Vol. One: Summary.

7. advance initiatives which eliminate discrimination against Indigenous people and further the goal of reconciliation between Indigenous and non-Indigenous people

B. Evaluation: What is working well? What are the gaps?

1. Educate the public about their rights and responsibilities

There is no independent public body in British Columbia with a legislative mandate to educate the public about their rights and obligations under the *Code*, and the remedies available. It is evident to the Tribunal that many British Columbians are unaware of the *Code* or the Tribunal. Many people who experience discrimination are unaware of their rights or how to seek a remedy. Similarly, many respondents are unaware of their obligations. Most people and organizations want to comply with the *Code*, but do not know what is required of them.

The education function in the current system is limited.

In the absence of a commission, the Tribunal has created a [website](#) that includes fairly extensive information about the rights, duties and remedies under the *Code*, and the complaint process.

In addition to its website, the Tribunal's intake officers answer questions from the public by telephone and email. The majority of people call for information about human rights under the *Code*. Many also seek information about the complaint process. Inquiry officers provide general information, though not advice about specific situations. They may refer callers to other agencies.

The MAG's⁶ [website](#) includes some basic information about human rights protection, translated into 11 languages. The Clinic also has a [website](#) and receives some funding to do education.

There is a clear need for far broader information and educational initiatives, beyond internet accessible information, including engaging communities throughout the province and use of traditional and social media. Everyone in British Columbia should understand their rights and obligations and know how to seek a remedy. Employers, landlords and service providers need support and information to assist them to comply with the *Code*.

⁶ Under s. 5 of the current Code, the MAG is responsible for developing and conducting a program of public education and information designed to promote an understanding of the Code. This was formerly the responsibility of the Chief Commissioner.

2. *Identify persistent patterns of inequality*

There is no independent public body in British Columbia with a legislative mandate to identify persistent patterns of inequality.⁷

In some instances, deeply entrenched systemic discrimination may be the subject of a complaint to the Tribunal. The Tribunal's process has the potential to identify systemic inequality and order broad remedies to reverse it. The *Code* allows for complaints on behalf of groups and classes of persons. However, such complaints tend to be complex. In the current system, responsibility for pursuing such complaints rests entirely with individuals rather than on a public body that is specialized and mandated to pursue such work in the public interest. Generally, people need legal representation to appropriately set out the facts of the alleged discrimination, identify the issues, organize the evidence, and comply with procedural obligations.

The Clinic has limited resources to pursue broad or systemic cases. The Tribunal's resources for addressing large complaints are also limited. With a complement of nine FTE members, a complex representative complaint may require a considerable proportion of the Tribunal's resources over the life of the complaint.

The current system does not ensure that persistent patterns of inequality in BC are identified and eradicated.

3. *Engage in initiatives to eliminate or reduce inequality*

Under the *Code*, there is no body mandated to engage in initiatives to eliminate or reduce inequality.

Section 42 of the *Code* authorizes organizations to engage in employment equity plans and "special programs" which aim to ameliorate conditions of disadvantaged individuals or group. The Tribunal is authorized to approve such programs. It has developed [a policy](#) regarding special programs, as well as specialized forms, and is responsible for actively monitoring existing special programs. A commission would publicize this function.

The Tribunal is not aware of any other initiatives under the *Code* to eliminate or reduce inequality.

⁷ Section 6 of the *Code* provides that the minister may (a) conduct or encourage research into matters relevant to this *Code*, and (b) carry out consultations relevant to this *Code*. This power formerly resided with the Chief Commissioner and Deputy Chief Commissioner. The Tribunal is not aware of research currently being conducted by the MAG.

4. Provide a system for seeking redress for discrimination

An effective system of redress should be timely, fair, and accessible.⁸

The *Code* establishes the Tribunal to receive complaints, mediate complaints, determine which complaints will proceed to hearing, and conduct hearings. Generally, the Tribunal's process benefits from its institutional expertise, having been established in 1997 as a permanent standing tribunal. The Tribunal also has an established system for making complaints, and conducting mediations and hearings.⁹ Its screening process for complaints is efficient. It aims to offer parties mediation within two months of accepting a complaint for filing and its mediations services are highly used. The Tribunal's case managers work with the parties to move complaints through the process, including the disclosure of documents and preparation for applications and hearings. In addition to conducting mediations, the Tribunal's members make preliminary decisions, orders and directions. Its members also conduct hearings and issue decisions on the merits of complaints, though only a low percentage of complaints proceed to hearing. The Tribunal has broad remedial authority if it determines that a complaint is justified.

There are aspects of the Tribunal's processes that need improvement, including in relation to timeliness and accessibility. For instance, just as the Tribunal supports the need for a commission to reflect the diversity of the community it serves, it recognizes the same need among its membership.¹⁰ A human rights body must understand the perspectives of those who experience discrimination and, in particular, the perspectives of groups who have experienced historical disadvantage.

Time limit

As a preliminary matter, BC's six-month time limit for filing human rights complaints is the lowest in the country. The Tribunal observes that many of the complaints it rejects for filing on the basis of timeliness are between one to six months late filed. The effect for the complainant is that, unless the Tribunal exercises its discretion to accept their late complaint, they are

⁸ In his 2012 assessment of Ontario's human rights system, Andrew Pinto was asked to measure the effectiveness of the Ontario Human Rights Tribunal by reference to the speed with which complaints were resolved, and the degree to which the system was fair: Pinto Report, p. 2. In their Background Paper for the Administrative Project Human Rights Review, Deborah K. Lovett QC and Angela R. Westmacott examined the then system in light of the goals of human rights legislation, international criteria, and the characteristics of a sound administrative justice system: *Administrative Justice Project Human Rights Review* (Victoria: Her Majesty the Queen in Right of the Province of British Columbia, 2001) [**Human Rights Review**] pp. 136-137.

⁹ See the Tribunal's [Rules of Practice and Procedure](#)

¹⁰ As Chief Justice McLachlin has stated, "... appointments to the bench should reflect the diversity of the society they are called upon to judge. This is important to ensure that different perspectives are brought to the task of judging, and to maintain the confidence of all Canadians in the justice system." The Right Honourable Beverley McLachlin, P.C. Chief Justice of Canada, "[Canada's Legal System at 150: Democracy and the Judiciary](#)"

denied the protection of the *Code*. The Tribunal supports extending the limitation period for filing a complaint, which would improve access to the *Code*'s protections.

Legal advice and advocacy

An effective human rights system must be accessible, with sufficient supports for participants.¹¹

Most participants in the Tribunal's processes are self-represented.¹² Self-represented participants may face challenges in advancing their cases. Human rights law can be complex and human rights are determined in an adversarial system that counts on the participants to advance their own case. Further, persons who are members of historically disadvantaged groups may face additional barriers in bringing forward their cases effectively. In this context, legal expertise may be a necessary component of a fair and accessible process.

First, many individuals need advice about whether what happened to them could be discrimination. Each year, the Tribunal determines that about 30% of the complaints made do not set out facts that could violate the *Code*. Initial advice would reduce the resources involved in screening complaints.

Second, many individuals also require assistance to make a complaint. It can be difficult to set out the facts of discrimination in a complaint form. For many, it is not enough that the Tribunal has complaint forms and information in plain language. They need expert advocacy or legal representation to provide the necessary information. The Clinic runs a weekly short service legal clinic in the Tribunal's offices, but this serves only a small portion of people in British Columbia who need advice and assistance.

Third, complainants may require legal representation to advance their complaints through the complaint process, which may involve deciding to settle a complaint, responding to an application to dismiss a complaint without a hearing, or proving the complaint at a hearing. The Clinic offers representation to some complainants once a complaint is accepted for filing, and provides assistance on short-term issues, such as independent legal advice during a mediation, but most complainants do not have representation.

Fourth, the Clinic cannot represent complainants on judicial review, which is a common part of the human rights process. The judicial review process can be daunting for self-represented complainants, especially given that they face the risk of costs. In their decisions, courts develop human rights law as well as the law about the role of the Tribunal. Having expert counsel

¹¹ Centre for Human Rights, United Nations, *National Human Rights Institutions: A Handbook on the Establishment and Strengthening of National Institutions for the Promotion & Protection of Human Rights*, Professional Training Series No. 4 (New York and Geneva: UN, 1995), Ch. II (A) [UN Handbook] at 66

¹² This was a concern raised in *Strengthening Human Rights* at p. 16

present to address those issues would assist both the parties as well as the justice system more broadly.

Finally, while more respondents have legal representation at the Tribunal, many do not. Large organizations generally have legal representation, but small and medium sizes businesses have less access to legal advice and representation. They may need advice about whether their conduct violates the *Code*, and how to respond to a complaint. The Law Centre is the only place where respondents can find free representation and advice.

The Tribunal supports a significant expansion of advocacy services for both complainants and respondents.

Service gaps for rural British Columbians

The Tribunal and Clinic are located in Vancouver, while the Law Centre is in Victoria.

The Tribunal conducts hearings in the community where the events giving rise to the complaint occurred.

However, most complaints resolve through mediation. The Tribunal offers in-person mediation in the Lower Mainland and Victoria areas. For parties in other parts of the province, since 2016, the Tribunal offers telephone mediations. It provides in-person mediations if a matter does not resolve by telephone or on request. In-person mediation services probably plays a more significant role in rural settings where there is no Tribunal presence than in major centres. It provides an opportunity for rural participants and their advocates to learn about the Code and to inform others in their community.

5. Advise government on matters concerning human rights

Under the *Code*, there is no body mandated to advise the government on matters concerning human rights.

6. Monitor and advance compliance with Canada's international obligations, and international human rights norms

Under the *Code*, there is no body mandated to fulfil this function.

7. *Advance initiatives which eliminate discrimination against Indigenous people and further the goal of reconciliation between Indigenous and non-Indigenous people*

Under the *Code*, there is no body mandated to fulfil this function. The *Code* does not identify reconciliation with Indigenous persons as one of its purposes, or identify any other initiatives which would further this purpose.

C. Summary

The current human rights system provides a well-established process for making a complaint to seek redress under the *Code*, but lacks adequate legal advice and support for Tribunal participants. It provides internet and phone information about the rights and responsibilities under the *Code*, but does not provide information by other means or include a broad educational program. This is a serious gap in light of the Tribunal's impression that the public is generally not aware of the *Code*. The Tribunal has a special programs mandate, but otherwise the current system does not address any of the ways in which an effective human rights system advances human rights in the province. In particular, there is no organization mandated to promote awareness of and compliance with the *Code*, to monitor the state of human rights in the province, to address systemic issues and promote initiatives to fulfil the *Code's* purposes, and to advocate in the public interest.

III. A NEW HUMAN RIGHTS COMMISSION

The Tribunal supports a human rights system with separate organizations legislatively mandated to:

1. Provide advice and advocacy services to complainants (Human Rights Clinic) and respondents (Law Centre or Respondents' Legal Support Centre)¹³
2. Receive and address complaints of discrimination (Human Rights Tribunal)
3. Promote and protect human rights (Human Rights Commission)

The Tribunal supports a model similar to the one established in Ontario, whose human rights legislation establishes a Human Rights Legal Support Centre.¹⁴ In *Strengthening Human Rights*, the authors say that the Ontario model is considered the most successful in the country.¹⁵ This

¹³ Several reports have discussed models for legal representation. See, for example, *Report on Legal Representation Models Under the British Columbia Human Rights Code* (1998), cited in Human Rights Review at pp. 33-35; Bill Black, *Report on Human Rights in British Columbia* (Government of British Columbia, 1994) [**Black Report 1994**] at pp. 130-36

¹⁴ Ontario Code [Part IV.1](#)

¹⁵ *Strengthening Human Rights* at p. 43

model would include a mandate to assist people throughout British Columbia with making complaints, proceedings before the Tribunal (including complex and systemic matters), applications for judicial review, and enforcement of Tribunal orders.

Legal advocacy services should also be expanded for respondents. The Tribunal supports a body with a function similar to employer's advisors in the workers' compensation system to provide advice to employers, landlords, service-providers, and other who face complaints or seek advice about compliance with the *Code*.

A. Basic requirements for establishing a commission

The establishment of a commission must meet certain basic requirements.

The legislation must:

1. set out a broad but clearly defined mandate to both promote and protect human rights; ¹⁶
2. clearly define the commission's functions; ¹⁷
3. provide adequate powers for the commission to fulfil its functions; ¹⁸
4. establish the commission to operate independently from government; ¹⁹
5. articulate the commission's governance structure;
6. identify selection and appointment criteria; ²⁰ and
7. require reporting on the commission's work. ²¹

With respect to the selection and appointment criteria, the legislation should:

- require the appointment of commissioners through a merit-based process; ²²
- require human rights expertise as a qualification for commissioners; ²³
- provide that the commission should reflect the community it serves; ²⁴
- provide long-term appointments with the opportunity for re-appointment. ²⁵

¹⁶ UN Handbook at paras. 87-89; Summary of the main criteria of the Paris Principles as set out in the EU Handbook at p. 15

¹⁷ UN Handbook at paras. 6 and 86

¹⁸ Ibid.

¹⁹ UN Handbook at paras. 66 and 68ff and EU Handbook at p. 15

²⁰ UN Handbook at para. 78; EU Handbook at p. 18

²¹ UN Handbook at paras. 66 and 136-138 (accountability) and Ontario Human Rights Code, [s. 31.6](#)

²² EU Handbook at p. 76

²³ Ibid.

²⁴ UN Handbook at paras. 82-84

²⁵ UN Handbook at para. 79

The government must also ensure that the commission has adequate resources to fulfil its mandate.²⁶

The mandate and structure of the commission should further the goal of reconciliation between Indigenous and non-Indigenous people.

Finally, the government may consider separating functions within a new commission. For example, separating the education and inquiry functions may reduce any perception of conflict between these roles. Reports have highlighted perceptions about conflicts of interest among different commission roles,²⁷ perceptions about impartiality due to overlapping functions,²⁸ and distrust between the business community and commission being exacerbated by the dual mandates for education and advocacy.²⁹

B. Functions of a new commission

With respect to the functions of a human rights commission, the government has said that:

The role of the Commission will be to address the complex, intersecting conditions that foster and preserve systemic discrimination by promoting and enforcing human rights, and acting as a driver for social change based on principles of dignity and equality. The Commission will work to expose, challenge and end widespread entrenched structures and systems of discrimination through education, policy development and public inquiries.³⁰

In light of those terms of reference, and the gaps that the Tribunal has identified in the current system, a human rights commission should have at least three primary functions:

1. Education
2. Public inquiries and advocacy
3. Research and monitoring

In this section, the Tribunal will briefly address those functions.

²⁶ EU Handbook at p. 15; UN Handbook at paras. 73-76, 121-124

²⁷ Report of the Auditor General of Canada, Chapter 10, *Canadian Human Rights Commission and Canadian Human Rights Tribunal* (Canada, 1998) cited in Human Rights Review at p. 36

²⁸ Canadian Human Rights Act Review Panel Report, *Promoting Equality: A New Vision [La Forest Report]* (Canada, 2000) cited in Human Rights Review at p. 38

²⁹ Human Rights Review at p. 74

³⁰ Parliamentary Secretary's Terms of Reference for the Human Rights Commission

1. Education

Education should be a core component of the commission’s work.³¹ It can “foster a culture of respect for human rights.”³² Through education, the commission can support individuals and organizations in bringing the *Human Rights Code* to life and triggering the fundamental cultural shift which is necessary to move toward a more equitable society.

The United Nations Centre for Human Rights [UN Centre] identifies the following functions to promote human rights: informing and educating the public about human rights; fostering the development of values and attitudes which uphold human rights; and encouraging action aimed at defending human rights from violation.³³

This may entail:

- working with the Ministry of Education to incorporate human rights knowledge and learning into the basic curriculum for students
- creating materials and working with service providers, employers and landlords to facilitate compliance with the *Code*
- working with communities to identify institutions with which the Commission could collaborate to provide human rights information
- engaging in broader public education about human rights, for example through public advertisements or social media

The UN Centre identifies cooperation as one of the “effectiveness factors” for a national human rights institution.³⁴ In addition to relationships with the UN, and other national institutions, working closely with non-governmental organizations would enhance the visibility of the commission, expand support for the commission’s work, provide contact with persons who are vulnerable to human rights violations, and create partnerships for developing a climate in which human rights are respected.³⁵

A commission should work closely with businesses and other organizations to facilitate and encourage their compliance with the *Code*, as well as promote equity within their organizations more broadly.³⁶ To promote voluntary compliance, a commission should develop model

³¹ Without education human rights cannot be fully realized: UN Handbook at p. 8.

³² Strengthening Human Rights at p. 6; *Code*, s. 3

³³ UN Handbook at para. 140

³⁴ UN Handbook at paras. 66 and 106

³⁵ UN Handbook at paras. 108-111

³⁶ For example, Report of the Ontario Human Rights Review Task Force, *Achieving Equality: A Report on Human Rights Reform* proposed that a commission would have a chief commissioner and five commissioners with specific mandates, including compliance services. See also: *Human Rights Review* at p. 31 and at p. 74 regarding concerns expressed by business groups about the lack of assistance from the commission.

policies that organizations can adopt and guidelines to assist organizations to take necessary steps under the *Code*.³⁷

In this role, it is critical that the commission be perceived as a collaborator and facilitator, forging positive and constructive relationships with organizations that can nurture their ability to promote human rights. In that respect, it may be important to separate this aspect of the commission's functions from its more inquisitorial functions, which may be perceived as adversarial to the interests of the business community.

With a broad educational program in place, we expect that individuals and organizations would have increased sources of information about their human rights and obligations. An educational program would bring increased visibility to the human rights bodies in the province.³⁸ It is likely that people would see the Tribunal, Clinic, and commission as the main sources of information and advice. The public will be well-served if they can get answers to their basic questions from any of these agencies, which can then make referrals to other organizations where appropriate.

The legislation should set out the commission's education function. The Ontario Code, for example, identifies the general purpose of advancing the policy underlying the legislation, developing and conducting informational and educational programs, and assisting others to engage in programs to advance the legislation's purposes.³⁹

2. *Public inquiries and advocacy*

A commission should also have a mandate to eliminate systemic discrimination.⁴⁰ To further this end, a commission should be empowered to inquire into potential sites of systemic discrimination, make recommendations to eliminate discrimination, and commence or participate in complaints. This function is especially important as a means of addressing acute problems or negative trends.⁴¹

For a national human rights institution, the power of inquiry is considered "an important measure of its overall strength and probable effectiveness."⁴² The goal of an inquiry 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."⁴³ Accordingly, following an investigation, the commission should be empowered to make

³⁷ Strengthening Human Rights at p. 34 identifies this as a key function

³⁸ UN Handbook at para. 100

³⁹ Ontario Human Rights Code, [s. 29\(a\),\(b\),\(c\)](#)

⁴⁰ Black Report 1984 at pp. 11-12; La Forest Report cited in Human Rights Review at p. 40

⁴¹ UN Handbook at para. 287

⁴² UN Handbook at p. 8

⁴³ Strengthening Human Rights at p. 36

recommendations in respect of its findings, and to coordinate initiatives to reduce or eliminate the source of inequality giving rise to the discrimination.⁴⁴

Appropriate circumstances that could trigger a commission inquiry might include:

- trends in discrimination complaints that may point to broader systemic issues
- public attention on a particular topic
- matters of public interest identified by the Tribunal⁴⁵

The legislation must give the commission adequate statutory powers to exercise this authority,⁴⁶ with the power to sanction obstruction of its powers.⁴⁷

The legislation should address the ability of the commission to seek information from the Tribunal's complaint files. In this regard, the government should consider whether parties' privacy interests, protected under privacy legislation, should give way to the public interest in allowing the commission access to the information.

To address systemic discrimination, the commission should also be empowered to bring forward complaints to the Tribunal⁴⁸ and to participate as a party⁴⁹ or intervener in matters that engage the public interest, such as to address entrenched patterns of discrimination.⁵⁰ The responsibility appropriately lies on a commission to advance the public interest in eradicating all forms of discrimination so that responsibility does not fall to individuals.

As noted above, it will likely be beneficial to keep the inquisitorial and advocacy functions of the commission separate from its other work to ensure that it keeps the necessary trust and cooperation of the business community in respect of its education function.

3. *Research and monitoring*

A commission should research and monitor social trends.⁵¹ This will help to inform other aspects of its work and enable it to concentrate its efforts in the areas where inequality is the most entrenched and stereotypical attitudes the most persistent. In that regard, it should not be necessary for the commission to limit itself to discrimination that is prohibited by the *Code*.

⁴⁴ Ontario Human Rights Code, [s. 29\(e\)](#)

⁴⁵ Ontario Human Rights Code, [s. 45.4](#)

⁴⁶ UN Handbook at paras. 72, 257-267 and 290; Ontario Human Rights Code, [s. 31](#) and [s. 31.1](#)

⁴⁷ UN Handbook at para. 95; see Public Inquiry Act, SBC 2007, c 9, s. 17

⁴⁸ Ontario Human Rights Code, [s. 29\(1\)](#), [s. 31.2](#), and [s. 35](#).

⁴⁹ In the former *Code*, s. 36(1) provided that the deputy chief commissioner could require the Tribunal to add that commissioner as a party to a hearing

⁵⁰ Strengthening Human Rights at p. 42

⁵¹ Ontario Human Rights Code, [s. 29\(c\)](#)

Rather, it should be empowered to take a broad approach to the causes of social inequality and the possible solutions.

A commission should be empowered to approve policies to guide the interpretation and application of the *Code*.⁵² The Tribunal should be statutorily empowered (but not obliged) to consider such policies in its decisions.⁵³

As set out in the Paris Principles, a commission's functions should also promote compliance with international human rights instruments. It should have an international presence. It should forge relationships with other human rights commissions, NGOs, and governments to share and develop practices to advance equality. It should contribute to State reports to the United Nations, and undertake initiatives that promote compliance with international human rights treaties and norms.⁵⁴

A necessary corollary of these functions is the power to advise government with respect to matters concerning human rights and to report to the public.⁵⁵ This should include the power to review legislation and government policies and programs, and make recommendations for policy and legislative change.⁵⁶ It is also helpful to establish a mechanism in the legislation for using this advice.⁵⁷

Monitoring the state of human rights in the province is necessary since, without it, there is no means of measuring the effectiveness of the human rights system.⁵⁸

Finally, the commission was formerly empowered to oversee special programs under s. 42 of the *Code*. This function is currently performed by the Tribunal, and is working well. However, it may fit more comfortably once again with the commission.

IV. CONCLUSION

The Tribunal's view is that the current direct access system for human rights in BC is working effectively to address complaints of individual discrimination, except for the lack of awareness of the *Code* and the inadequate levels of advice and representation to Tribunal participants. The Tribunal process would be improved, in particular, by expanding the advocacy services

⁵² Ontario Human Rights Code, [s. 29\(h\)](#), [s. 30](#)

⁵³ Ontario Human Rights Code, [s. 45.5](#)

⁵⁴ Paris principles: ensure harmonization of national laws with international human rights instruments, ensure ratification of international human rights instruments.

⁵⁵ UN Handbook at pp. 23-27; Ontario Human Rights Code, [s. 29\(j\)](#)

⁵⁶ Ontario Human Rights Code, [s. 29\(d\)](#)

⁵⁷ UN Handbook at para. 187

⁵⁸ UN Handbook at para. 64

available to both complainants and respondents and ensuring that an equal level of service is provided to people residing outside of the Lower Mainland and Victoria.

The primary gap that a new human rights commission would fill is in relation to the public functions⁵⁹ of human rights legislation. In that regard, the Tribunal has identified a need for research and monitoring, education and outreach, and public inquiries and advocacy. Various structures could effectively fulfil this mandate, so long as the legislation meets the requirements summarized above and the government ensures adequate resources for the commission to fulfil its functions.

⁵⁹ William W. Black, "Human Rights Reform in BC" (1997) 31 U. Brit. Colm. L. Rev. 255 at 255-6