

Topic: Indigenous Access to BCHRT in the Northwest

Personal Introduction:

Hello, my name is Linda Locke. I am the Executive Director of the Upper Skeena Counselling and Legal Assistance Society. I am a member of the Sto:lo First Nations, and a member of the Peters Band, I carry the name Siyamstawell meaning “bringer of the light” I am speaking with respect and gratitude from the unceded territories of the Gitksan peoples in Hazelton, BC. My pronoun is she/her and I am referred to as Ms.

I am here on this panel to speak on Indigenous peoples Access to the BC Human Rights Tribunal in the Northwest. I have been on the ground working with USCLAS for over 26 years. I work on family, criminal and poverty files. I can count on one hand how many human rights applications have been made in the area despite the many and varied complaints that have come through our office. As our staff capacity is challenged it is difficult for us to assist individuals to move forward on their human rights complaints particularly since the loss of the tribunal in 2002 and re-establishment of this body in 2019. As fast as we do this we experience the loss of access to justice provided by local institutions such as the Legal Aid office in Terrace. Since we have little human rights remedies over the last years there are few examples of people falling through the cracks and failing to have sought after remedies.

It is apparent that Indigenous people in the North are not using tribunals to access justice, and they are not accessing the BC Human Rights Tribunal. This is well investigated by Ardith Walpetko We'dalx Walkem, now the Honorable Justice of the Supreme Court, in the report for the BC Human Rights Tribunal, *Expanding our Vision*.

Some Stats from the Report Indicating why Indigenous people generally don't use it:

- 53% Didn't know they could or how to do it
- 39% responded - not sure if it was discrimination under the BC Human Rights Code
- 26% Indicated that the process was too confusing or overwhelming
- 10% ran out of time (There is a one year time limit from the time of the discriminatory incident to the time of filing a complaint)

Additionally, as reported in *Expanding our Vision*

- The western definition of Human Rights is not in line with Indigenous Definitions of Human Rights
 - A lack of Indigenous ways of knowing or understanding leads to mistrust of the process
- Much of the discrimination faced by Indigenous peoples is systemic and not necessarily discrete to one instance; this isn't addressed under the BC Human Rights Tribunal Framework
 - Additionally, there is the impression that is confirmed by the overrepresentation of Indigenous peoples in the Criminal Justice System and the Child Welfare System
 - And decisions like in the Colton Boushie Case, that this discrimination is socially acceptable - so they will not obtain the results they want

- Many incidents of discrimination are a result of microaggressions or insidious incidents of discrimination are hard to prove to the extent that the case will be accepted by the tribunal
- There are no Indigenous people employed by BCHRT
- Particularly Salient to our experience in the Northwest: BCHRT is located in an urban area, so resources and the tribunal itself are physically distant from the rural communities of the northwest
- There is need for culturally relevant, accessible resources in plain language for potential Indigenous clients

Furthermore

- To file a complaint with the BC Human Rights Tribunal -- You sign in as a “Guest” and lose your information after **30 minutes** of inactivity (if you turn away or walk away from your computer before completing) and have to complete it in **8 hours** (so if you’re not done filling everything out, you will lose it all)
 - OR you log in but need access to your BCeID or IRID.
 - OR you print it off and mail it, but need access to a printer and postage
 - In any case - **you need the internet**
- At the national level, there is reluctance to address systemic issues of discrimination that might be more relevant to Indigenous participants because they are hindered by the Supreme Court of Canada - see *Canada (Canadian Human Rights Commission) v. Canada (Attorney General)*, 2018 SCC 31 - The SCC decision that the Human Rights Tribunal cannot make claims that the Indian Act is discriminatory, but individuals can still make charter claims
- More resources need to be distributed in the Northwest and more lawyers, advocates, and service providers need to be trained on the process

What needs to Change:

- We need more service providers who are aware of the process
- We need accessible literature that makes the process clear
- We need funding

Expanding our Vision recommendations (Summarized)

1 - Guiding Recommendations for the process

- Broaden the concept of human rights to include international human rights principles reflected in UNDRIP
- Advocate to add Indigenous identity as a protected ground to the *BC Human Rights Code*
- Increase the number of Indigenous Peoples at all levels of BCHRT
- Create accessible educational materials and training for Indigenous Peoples, about the Code, and the BCHRT process
- Identify and remove procedural barriers
- Increase training and number of lawyers available to support Indigenous peoples in bringing Human Rights complaints (especially Indigenous lawyers)

2 - Procedural recommendations

- These recommendations are remedial, make a concerted effort to address underrepresentation of Indigenous Peoples
- Create staff/tribunal to develop and implement Expanding Our Vision recommendations

3 - Incorporate Indigenous Laws

- Work collaboratively across many avenues and agencies to develop and integrate Indigenous laws into a renewed Human Rights process
- Work with other Human Rights organizations

4 - Increase Indigenous involvement within the BCHRT

- Priority hiring to Indigenous staff and tribunal member
- Audit current hiring process to identify barriers
- Audit tribunal appointment process to identify barriers
- Create options for part-time appointments
- **Regularly offer human rights clinics in remote regions to teach and assist with filing claims**

5 - Establish a public outreach system to Indigenous Communities

- Create a campaign for Indigenous peoples, with Indigenous perspective
- Put materials in Band offices, Métis organizations, friendship centres, libraries, etc.
- Create step-by-step process, informational pamphlet
- Create instructional videos and fact sheets

6 - Micro- Discriminations

- Public education and awareness on micro-discriminations against Indigenous people

7 - Coordinating Human Rights Responses Across Jurisdictions

- Coordinate with Canadian Human Rights Commission the jurisdictions between the two tribunals to assist Indigenous clients

8 - Addressing Systemic Racism

- It's difficult to prove racism
- Create resources about common areas of discrimination, as well as education guidelines on the intersectionality of discrimination, to lower the burden of proof put on individual applicants.

9 - Create an Indigenous Specific Stream within the BCHRT

- Create training to promote cultural competency and safety, create an "Indigenous Advocates or Navigators" position to help with admin barriers, create a separate Indigenous stream for complaints, and amend BCHRT forms to have an Indigenous perspective.

10 - Trauma-Informed Approach

- Adopt a trauma-informed practice, and provide training on how trauma may impact Indigenous peoples.

11 - Clarify Special Exemption

- Educate employers about s. 42 (special programs approvals - special treatment in hiring an Indigenous person).
- To clarify that giving weight to Indigenous experiences or cultural knowledge when hiring does not risk a discrimination claim by non-Indigenous applicants, and does not require an exemption.

12 - Settlement

- Include Indigenous dispute resolution models, mediators and peacemakers in mediation and settlement discussions. Consider the use of co-mediator or joint processes.
- Track and report on settlement cases - follow up as to why they settled and satisfaction levels.

13 - Gatekeeping Function

- Track and report claims that are rejected at the application stage or under s. 27, or sent back for further detail and not pursued.
- Create an internal process for screening at first filing.

14 - Plain Language

- Use plain language, understandable by someone with a grade five education.

15 - Time Limits

- Provide public education about time restrictions and assess time extension requests with a trauma-informed lens, and consider circumstances raised in regard to traditional Indigenous ways of approaching conflict.

16 - Cultural Competency and Hearings

- Use culturally safe spaces for Indigenous complainants
- Ask participants what practices or protocols should be included in the hearing
- What cultural supports are necessary?
- Indigenous evidence protocols

17 - Develop a user friendly website with accessible language and a step-by-step guide.

18 - Provide more access to legal representation

- Fund advocates or other options for support
- Provide trainings for lawyers and law students; this would include articling and summer positions for law students to support claimants through the process
- **Create regional, circuit human rights clinics to service rural and remote areas**

Change is possible

- **There is a commissioner for the first time in 17 years**
- **There is connections happening regionally over their 5 year period**
- **Videos are being made: <http://bchumanrights.ca/human-rights/what-are-human-rights/?fbclid=IwAR1secdor7BQQM8TXuynR57rsikfByaz2qCIQyOh9Rx2iQpJVMvIHwTaMes>**

Expanding our Vision Report 2019/2020:

<http://www.bchrt.bc.ca/shareddocs/indigenous/expanding-our-vision.pdf>

Follow up Report 2020/2021: http://www.bchrt.bc.ca/shareddocs/annual_reports/2020-2021.pdf