BC HUMAN RIGHTS CODE AMENDMENTS
RECOMMENDED BY THE BC HUMAN RIGHTS COMMISSION

January 19, 1998

This report is available on audio tape, in regular and large print, in Braille and on computer diskette. For copies of the report in an alternate format, please contact us or download "Human Rights for the Next Millennium" in MS Word format, rich text format or text format.

* If you are using MS Internet Explorer to download one of the above documents, use menu item FILE / SAVE AS FILE when the document appears on the screen.

Consultant's Report table of contents

- **Introduction**
  Continuing the historic milestones in human rights legislation
- **The Consultations**
  Talking human rights with British Columbians
- **The Recommendations**
  Improving human rights protections for British Columbians
    - 1. Amend the definition of age in the BC Human Rights Code to "19 years or more" to protect people over the age of 65.
    - 2. Amend the Code to prohibit discrimination on the basis of age in
accommodation, services and facilities.

- **3. Include** "age" and "family status" in the Code to prohibit discrimination on the basis of age and family status in the purchase of property.
- **4. Add** a new provision in the Code that would protect people from discrimination because they are related to or associate with a person or group protected by the Code.
- **5. Prohibit** any request by employers for information from a job applicant about a prohibited ground of discrimination, including the "receipt of Workers' Compensation benefits.
- **6. Amend** the Code to prohibit discrimination on the basis of gender identity.
- **7. Amend** sections 12 and 13 of the Code to make successor employers liable for human rights obligations of their predecessors.
- **8. Amend** the Code to prohibit discrimination on the basis of pregnancy in the provision of life or employee insurance, retirement or pension plans.
- **9(a). Amend** the Code to include protections from discrimination based on "social condition."
- **9(b). In the** event that the Government decides not to proceed with this recommendation, the Commission recommends amending the Code to include protections from discrimination based on "lawful source of income."
- **9(c). And in** the event that the Government decides not to proceed with either of the two previous recommendations, the Commission recommends that section 10 of the Code be amended to prohibit discrimination in tenancy because of "lawful source of income."
- **10. Extend** coverage for British Columbians faced with retaliation because they refuse, have refused or will refuse to contravene the Code.
- **11. Amend** Section 41 which relates to exemptions so that the language is consistent with all grounds listed in the Code.

- **Conclusion**
- **Appendix A**

Other recommendations
so small that they cannot be seen on any map of the world. Yes, they are the world of the individual: the neighbourhood he (or she) lives in; the school or college he (or she) attends; the factory, farm or office where he (or she) works. Such are the places where every man, woman and child seeks equal justice, equal opportunity, equal dignity without discrimination. Unless these rights have meaning there, they have little meaning anywhere. Without concerted citizen action to uphold them close to home, we shall look in vain for progress in the larger world.

- eleanor roosevelt to the united nations, 1958

Forty years after Eleanor Roosevelt delivered this speech to representatives of the United Nations, British Columbians have taken her visionary words to heart. Through a historic public consultation process last fall, British Columbians participated in the design of recommended amendments to our Human Rights Code. British Columbians have been able to have a direct impact on the proposals concerning the law that protects them from discrimination.

And the consultations could not have been better timed. The architects of the UN's Universal Declaration of Human Rights, Roosevelt and Canadian John Peters Humphrey, established the first crucial footings of human rights legislation 50 years ago. We celebrate the anniversary of their landmark work by collaborating with British Columbians in every "neighbourhood, school, factory, farm and office" to improve our protections.

In this way, we can ensure that British Columbians enjoy the best human rights protections in Canada.

What follows is a summary of the recent public consultation process and recommended amendments to the BC Human Rights Code.

Consultant's Report table of contents

Home Page   All Pages   Top of This Page   Site Search

the consultations

Talking Human Rights With British Columbians

The most recent review of BC’s human rights legislation began in 1994 with University of British Columbia Professor Bill Black's assessment of human rights in this province. He undertook a study, on behalf of the provincial government, of the administrative processes that support human rights legislation as well as the human rights legislation itself.

Professor Black's report contained 163 recommendations for changes. The government chose to act on the specific changes that would improve the administrative structure of human rights management before considering any changes to the protections currently available under the Code. Those changes to the administrative structure were proclaimed by government on January 1, 1997.
The outstanding recommendations in Black’s report were reviewed by the staff of the BC Human Rights Commission to determine if any or all of them should be pursued.

On August 6, 1997, the BC Human Rights Commission embarked upon a consultation process to involve British Columbians in a discussion about human rights protections. The Commission posed this question:

"What human rights protections do we wish to leave to the next generation and which ones should accompany us into the next decade and the next millennium?"

By the time the public consultations concluded on October 10, 1997, the Commission had visited 10 cities: Nanaimo, Victoria, Fort St. John, Prince George, Terrace, Cranbrook, Kamloops, Kelowna, Surrey, and Vancouver. The Chief Commissioner presided over 13 public sessions, hosted 355 participants, heard 136 oral submissions and received 365 written submissions. More than 2,000 copies of the discussion paper, "Human Rights for the Next Millennium," containing a total of 17 proposed amendments to the Human Rights Code were distributed to the public.

Many views were expressed as the consultations prompted discussion about human rights and how far, as a society, we should go to protect the rights of British Columbians. Some comments were directed at the specific recommendations being debated and other comments took broader perspectives.

By e-mail, for example, the Commission representatives heard from those calling for a public inquiry into the incidents at Ipperwash in Ontario and Gustafsen Lake in BC. Some British Columbians expressed the view that the proposed recommendations did not go far enough to protect against discrimination that they have experienced.

We heard about the inequality experienced by aboriginal people and the elderly. We heard from British Columbians who felt that the "rights of the unborn" were being ignored. We heard from those who felt there was no recognition of "father's rights" when it came to access to children in the event of marriage or relationship breakdown. We heard about the proliferation of "poor bashing" and about blame being placed on the most disadvantaged for their condition. We heard from pet owners who have had to face eviction from their homes or euthanize or give away their pets because of "no pet" policies of landlords. We heard from those who experienced discrimination because the professional accreditation they received in their country of origin is not recognized in BC. We heard from those who said that human rights were only a part of the broader equality umbrella, which should include equal pay for work of equal value, pay equity and employment equity.

We also heard the views of those who felt that current human rights laws were sufficient and that any increased protections available under the Code would only increase the workload of the Commission. There were concerns that the Commission's resources were insufficient to deal with the current caseload, and that expanded rights protections would create further delays.

We also heard from a small minority who felt that current rights protections should be abolished or that the Human Rights Code should be repealed in its entirety.

Not every comment made to the Commission during the consultations appears in the recommended
amendments. Some fall outside the Commission's jurisdiction. Others have been tabled for further study.

In all cases, however, feedback from the public has been thoroughly reviewed by the Commission in order to draft these recommendations for amendments to the BC Human Rights Code.

Improving Human Rights Protections for British Columbians

It is precisely because people are subjected to prejudice and discrimination that we need to have human rights laws. These laws, in and of themselves, will not eliminate discrimination but provide recourse to the victims of discrimination.

-Elizabeth James, Surrey consultation

The following recommendations, submitted by the BC Human Rights Commission to the Minister Responsible for Human Rights, can be best described as having been designed by British Columbians for British Columbians.

In drafting the recommendations, the Commission considered submissions from the public, a review of current case law and a comparison of protections against discrimination existing in other provinces and under the federal human rights legislation.

It is important to note that some of the amendments listed in the original discussion paper- for example, the proposal to include the phrase "reasonable cause" in the Code-will not be recommended to government. British Columbians told the Commission that the language in some of the proposed amendments required clarity, or further study.

1. Amend the definition of age in the BC Human
Rights Code to "19 years or more" to protect people over the age of 65.

If we are to protect our senior citizens from discrimination, we need to protect them no matter how senior they are. It is no more acceptable to discriminate against a person once they attain the age of 66 than it is when they are 65.

-barbara leblanc, victoria

Right now, people aged 66 and older in BC have no recourse under the Code if they face discrimination because of their age. In fact, BC and Newfoundland provide the fewest protections for seniors under human rights legislation in Canada.

In recommending this amendment to the Code, the Commission urges the government to extend protection to seniors by removing the ceiling age of 65 years in the areas of accommodation, service, facility, purchase of property and in tenancy premises. Special seniors' discounts and programs should continue unaffected by this recommendation. The amendment should not affect the benefits that have been accorded to seniors by society.

Through the consultations, British Columbians expressed their concern that mandatory retirement will still be permitted. Women, especially, expressed their concern that mandatory retirement has the effect of displacing women into poverty. People do not want to be forced into retirement if they can still do the work for which they were hired.

The Supreme Court of Canada has determined that mandatory retirement is constitutional. The Commission will, however, conduct the necessary research to determine if mandatory retirement adversely affects women and to what extent further changes to the Code may be necessary.

The Commission also heard from young people who felt they experienced discrimination because they were not yet 19. It was argued that the Code should be expanded to provide protection against discrimination to cover all ages and to add specific exemptions to cover situations in which age distinctions are legitimate.

With respect to lowering the age discrimination protection, the Commission believes that all Provincial legislation affecting those under 19 should be examined in light of the United Nations Convention on the Rights of the Child. As a result, the Commission is not yet prepared to recommend any other changes with respect to the definition of age.
2. Amend the Code to prohibit discrimination on the basis of age in accommodation, services and facilities.

This amendment will become increasingly relevant in our society with its aging population. It also applies to the prohibition of discrimination in the purchase of property on the grounds of age or family status. The basic principle here, as elsewhere, is that there should be some rational and justifiable ground for an act of discrimination.

-chinmoy banerjee, burnaby

This recommendation should be read in conjunction with the preceding recommendation about the definition of age in the Code. The current Code does not protect against age discrimination in accommodation, services and facilities. As a result of this omission, a person can deny people on the basis of age any accommodation, service or facility customarily available to the public. BC is one of only three jurisdictions in all of Canada that does not extend protection against discrimination on the basis of age.

One possible reason for the omission of age from Section 8 of the existing Code is the concern that it would undermine legitimate limitations on children regarding matters such as liquor consumption and driving a car. Another reason is that the omission allows for bonuses traditionally granted to seniors, such as lower fares on public transportation. The Commission believes these concerns can be dealt with if the preceding recommendation about the definition of age is adopted. That is, that the definition of age be "19 and over" and that current benefits enjoyed by seniors be exempted.

3. Include "age" and "family status" in the Code to prohibit discrimination on the basis of age and family status in the purchase of property. Allow an exemption, as is currently the case in rental situations, for seniors' buildings (55 and over).

The proposed changes can set a climate of legitimacy for those who would like to change the way child residents and families with children are being treated, in terms of gaining fair access to accommodation, and being able to live reasonably in such accommodation.
The Commission believes this recommendation encompasses the concerns expressed by seniors. We heard that they should be able to live where they want and choose the environment in which they live and that some of these buildings are built with seniors in mind. Therefore, the buildings are ill-equipped for children as residents.

The current Code prohibits discrimination in tenancy premises on the basis of age and family status, but not for the sale of the same property. At present, it is legal to deny the sale of a property to someone because he or she has children, but it is illegal to deny a rental property to a tenant because he or she has children (unless the units are reserved for persons 55 or over). Including "age" and "family status" as prohibited grounds of discrimination in section 9 will render it consistent with section 10, and eliminate difficulties recognized in case law.

This inconsistency in law regarding the sale and rental of property also has a significant impact on manufactured home owners, who typically own their home, but rent the pad on which it sits. The prohibition of discrimination based on "age" and "family status" does not apply to the sale of their home, but does apply to the occupancy of the pad. This often results in unfair situations, especially since the homes are often immovable and must be sold or rented as attached to their pads.

The Commission heard that the issue of the legislation pertaining to manufactured homes and parks is in need of a major review and that amendments to the Human Rights Code alone would not suffice.

The Commission therefore recommends that the Attorney General and Minister Responsible for Human Rights direct his officials to undertake a comprehensive review of the concerns of manufactured home owners and manufactured home park owners. This review should include appropriate officials from other ministries with jurisdiction over manufactured homes issues, including the Ministry of Municipal Affairs and the Ministry of Finance and Corporate Relations.

4. Add a new provision in the Code that would protect people from discrimination because they are related to or associate with a person or group protected by the Code.

It is finally time to explicitly extend human rights protection to allies, the friends who work with, associate with, or are related to "targets."
Relatives, friends and co-workers of a person or group protected by the Code may also face discrimination and harassment. Currently, the Code does not expressly prohibit discrimination in these cases. Five other jurisdictions across Canada already have such provisions in their human rights legislation. Legislation in Manitoba, Ontario, Prince Edward Island, Nova Scotia and Yukon expressly prohibits discrimination against a person because he or she is related to or associates with persons protected by the Code.

Some British Columbians expressed concerns about the degree of association necessary to trigger this provision. They argued that this amendment will increase uncertainties surrounding the Code, become the subject of argument in proceedings concerning the protected grounds and will be counter-productive to the purposes of the Code.

The Commission believes that case law in provinces already providing such protection will assist in determining the parameters of this new protection. For example, this type of provision would make it possible for a Caucasian woman to file a complaint because she was fired from her job for being married to a man of African descent.

5. Prohibit any request by employers for information from a job applicant about a prohibited ground of discrimination, including the "receipt of Workers' Compensation benefits." An exemption would be available if such information is needed for a purpose permitted by the Code, such as a special program. This prohibition will not apply in the event that a decision has been made to hire a person and the information is needed for legitimate purposes.

[Such] questions will create a justifiable apprehension on the part of the applicant that he or she will not be treated fairly. Individuals will be reluctant to omit an answer or challenge the question unless the Code is clear on this point.
It is extremely important that potential employees not be compelled to report to employers whether or not they have claimed or received benefits under the Workers' Compensation Act. The absence of such a measure opens many injured or disabled workers up to discrimination on the part of employers.

At present, a human rights infringement claim cannot be made based on the wording of an application form. In addition, a person usually has to wait for a job denial before being able to proceed with a complaint. There is no justification for requiring an applicant to supply information if it cannot be used for legitimate purposes. Other information may be needed for administrative purposes, but there is no reason why it cannot be supplied after the hiring decision has been made.

Every other Canadian human rights statute has a section that explicitly or implicitly prohibits pre-employment inquiries about characteristics related to a prohibited ground of discrimination. For example, section 8(1) of the Human Rights, Citizenship and Multiculturalism Act of Alberta provides "No person shall ... make any written or oral inquiry of an applicant ... that requires an applicant to furnish any information concerning race ... or ... source of income."

British Columbia is the only province that allows for this type of information to be asked in pre-employment circumstances without bona fide justification.

The Commission heard from many individuals and groups who expressed concern that the receipt of Workers' Compensation benefits had been used to deny employment to those persons who had been in receipt of those benefits. In addition, the Commission met with Commissioners of the Royal Commission on Workers' Compensation in British Columbia who confirmed that this is an issue that has been raised with them during their review.

6. Amend the Code to prohibit discrimination on the basis of gender identity.

The adoption of gender identity as a prohibited ground will not silence the attacks, but it will blunt them in much the same way as has happened with sexual orientation.
There is little doubt that many of our patients experience discrimination and harassment, whether it be within the context of employment, housing or other fundamental aspects of their lives. I am aware that existing grounds (disability, sex and sexual orientation) may not be applicable in all cases. Therefore, it follows that adding a new ground for protection such as gender identity, would better serve the needs of our patients.

- Dr. R. Stevenson, Centre for Sexuality, Gender Identity & Reproductive Health, Vancouver Hospital

There is no explicit protection for transgendered people in current human rights legislation across Canada. Should BC proceed with this amendment, it would be the first jurisdiction in Canada to do so.

Few pieces of legislation in the world explicitly protect transgendered people from discrimination. European Convention articles extend some protection to transgendered people. There are four jurisdictions in Australia that specify "transgender" or "transsexual" in their anti-discrimination legislation.

In the United States, Minnesota was the first state to enact a non-discrimination statute that specifically includes transgendered persons within the definition of "sexual orientation." Many cities have since modelled their anti-discrimination legislation after Minnesota's definition, including Evanston, Illinois. Singapore, in 1996, announced that the government would recognize the new gender identity of transsexuals for all purposes including marriage laws.

In the few cases where transgendered people have filed human rights complaints in various provinces, including BC, their claims have been processed on the grounds of sex/gender, disability or sexual orientation. The Transgendered Law Reform Project, sponsored by the BC Law Foundation, showed the inadequacies in dealing with this type of discrimination under the existing categories. Adding "gender identity" as a ground for protection would ensure that adequate protection is accorded to all those who fall under the category.


Employers will no longer be able to abandon their obligations to
affected employees by selling their business. Successorship provisions are absolutely critical to protect employees in this event. Our experience clearly shows that too often employees are left to bear the brunt of emotional and financial costs when employers abandon their responsibilities.

-public service alliance of canada

There is currently no provision in the Code with regard to successor obligations when companies and/or businesses change ownership. It is unclear whether a successor employer can be named as a respondent to a previous complaint and whether a complainant is able to recover damages from the successor employer. Moreover, there is the possibility that an employer may "sell" the business to a successor just to avoid liability under the Code.

The obligations of successor employers are dealt with by the Labour Relations Code and Employment Standards Act. Section 35 of the Labour Relations Code states that successor purchasers are bound by any proceedings under that Code. Section 97 of the Employment Standards Act deems the employment of an employee of the sold business to be continuous and uninterrupted.

Those who supported the proposed amendment stated that employers should not be able to escape liability by selling their assets. Those opposed argued that it would be unfair to impose liability on a successor employer who is not aware of nor involved in any discriminatory conduct. This may create an unfair burden on someone purchasing assets. A "due diligence" search would not necessarily uncover the potential liability.

This concern would be lessened if there was a search capability. The Commission could adopt the practice of the Labour Relations Board and the Employment Standards Branch of providing prospective buyers of businesses with information concerning the complaint in order that the buyer can assess potential liability.

8. Amend the Code to prohibit discrimination on the basis of pregnancy in the provision of life or employee insurance, retirement or pension plans.

This change will bring the Code in line with the Supreme Court of Canada decision in Brooks v. Canada Safeway. The removal of ambiguity provided by such specific word[ing] ... allows employers and others to act with more certainty in the conduct of their affairs.
Section 8 of the Code, concerning services customarily available to the public, allows discrimination on the basis of sex or physical or mental disability in determining premiums or benefits under contracts of life or health insurance. Section 13, concerning employment, provides a similar exemption based on marital status, physical or mental disability, sex or age, regarding the operation of any bona fide retirement, superannuation or pension plan or bona fide group or employee insurance plan.

Exemptions authorizing discrimination based on sex could be interpreted as allowing health or group insurance plans to discriminate on the basis of pregnancy. However, the Supreme Court of Canada has stressed the importance of women being protected against discrimination because of pregnancy. Discrimination on the grounds of pregnancy falls under sex discrimination. There is a need to clarify that health and insurance policies/plans cannot discriminate on the basis of pregnancy.

9(a). Amend the Code to include protections from discrimination based on "social condition."

There is a real problem for people on social assistance being stigmatized, and often offered only low paying jobs or minimal wages in the false belief that that is all they are worth. In our economy all sorts of people have been driven to receiving legal non-wage incomes. They should not be penalized as they try to reintegrate into the workforce.

-anthony kennedy, quesnel

An overwhelming majority of submissions stated that "lawful source of income" does not adequately protect poor people in general from discrimination in accommodation, service, facility, purchase of property, employment and by unions and associations. They suggest that a more appropriate term would be "social condition," which has been judicially interpreted to include people in receipt of social assistance, as well as single women and single mothers. This amendment would also be in keeping with our obligations as a signatory of the United Nations' International Covenant on Economic, Social and Cultural Rights.
9(b). In the event that the Government decides not to proceed with this recommendation, the Commission recommends amending the Code to include protections from discrimination based on "lawful source of income."

People who live in poverty are subject to widespread systemic discrimination. These people are routinely denied housing and access to services and they are reviled in popular culture as being morally inferior. People who live in poverty are not even on the political agenda. They are marginalized to the point of invisibility. This is precisely the kind of societal disadvantage and exclusion that human rights legislation is meant to alleviate.

-CANADIAN BAR ASSOCIATION - BC BRANCH, human rights working group

A majority of the submissions supported this amendment. Those who opposed the amendment argued that it would not be viable to force businesses to contract with people who may not be able to live up to the agreement. They questioned whether this would mean that banks would have to lend money to people on social assistance to pay mortgages.

The Commission agrees that businesses have the right to take reasonable steps to determine whether people can fulfill their financial obligations. However, adopting the proposed amendment would not interfere with that right: the Code clearly entitles businesses to base decisions on bona fide and reasonable credit concerns. The Commission believes that it is unfair to treat people receiving income from social assistance differently from those with comparable income from a different source and that the Code should protect against such discrimination.

9(c). And in the event that the Government decides not to proceed with either of the two previous recommendations, the Commission recommends that section 10 of the Code be amended to prohibit discrimination in tenancy because of "lawful source
of income."

Currently, protection against discrimination on the basis of "lawful source of income" in tenancy is provided by section 81 of the Residential Tenancy Act. Section 81 effectively adds protection against discrimination based on source of income to the Human Rights Code. The provision is part of the Residential Tenancy Act, but enforcement is carried out under the Human Rights Code. The term "lawful source of income" refers to, but is not limited to, the receipt of government assistance. This amendment would make the Code consistent with the Residential Tenancy Act.

10. Extend coverage for British Columbians faced with retaliation because they refuse, have refused or will refuse to contravene the Code.

This amendment is a significant improvement in that employees would now have protection under the Code if they refuse to perform a discriminatory action when directed by their employer. Retaliatory action on the part of their employer, which often results in discipline or dismissal, would be prohibited.

"-bc federation of labour"

This amendment will strengthen the Code by encouraging people to refuse to contravene the Code. It will also send a clear message to those in subordinate positions, who have in the past felt that they had no choice but to comply with their superiors' orders to contravene the Code.

Section 43 protects a person who files or is named in a complaint, gives evidence or otherwise assists in the prosecution of a complaint. However, it does not cover retaliation against a person who refuses instructions to violate the Code.
11. Amend Section 41 which relates to exemptions so that the language is consistent with all grounds listed in the Code.

This amendment ensures consistency in managing the Code. The language used in Section 41 should remain the same throughout the provision. The same applies to the grounds listed in this section.

Conclusion

The public's input into these recommendations has been invaluable in refining the proposed amendments and mobilizing British Columbians to consider their priorities when it comes to protections. The BC Human Rights Commission is grateful to those who invested their time, resources and passion to voice their opinions during the public consultation process.

These recommendations have been delivered to the Honourable Ujjal Dosanjh, Minister Responsible for Human Rights. The input from British Columbians into the proposed amendments gives the Commission and Provincial Government confidence that the recommendations have been well considered and reflect the opinions of participants.

The next step for the recommendations is for the Minister Responsible for Human Rights to decide, in consultation with his colleagues, which of the recommendations will be forwarded to the Legislature and ultimately become law.

Appendix A

Other Recommendations

The Commission recommends to the Attorney General that he work with his colleagues to re-examine all Provincial legislation affecting those under 19 in light of the United Nations Convention on the Rights of the Child.
The Commission will conduct the necessary research to determine if mandatory retirement adversely affects women and to what extent further changes to the Code may be necessary.

This review should include appropriate officials from other ministries with jurisdiction over manufactured homes issues, including the Ministry of Municipal Affairs and the Ministry of Finance & Corporate Relations.

To file a complaint with the BC Human Rights Commission please call our office at our toll free number 1-800-663-0876 or (250) 387-3710 or (604) 660-6811.

If you would like to comment on this web site or suggest improvements, please email us at

bc.human_rights_commission@ag.gov.bc.ca

© 2001 BC Human Rights Commission