



West Coast Domestic Workers' Association

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A Submission Regarding the Re-Establishment of the British Columbia Human Rights Commission

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West Coast Domestic Workers' Association is a non-profit organization that facilitates access to justice for caregivers and other temporary foreign workers through the provision of legal assistance, legal information, public legal education, and advocacy.

WCDWA views the creation of a Human Rights Commission as a valuable opportunity to advance the protection of vulnerable workers' human rights. The majority of our clients are migrant women of colour and face discrimination on multiple bases including race, colour, place of origin, and sex. Our clients have low incomes and typically have temporary or precarious status in Canada, which are barriers to their seeking or achieving redress for the discrimination they face. Like many other vulnerable groups in British Columbia, they would benefit from an independent Commission with a mandate to proactively study and combat discrimination, rather than relying on a complaints-based Tribunal.

WCDWA recommends three key features of a Human Rights Commission that would best serve the needs of our community:

- The Commission should not perform a gatekeeping function.
- The Commission should investigate systemic human rights abuses rather than prosecuting individual cases, except where cases can have systemic impacts.
- The Commission should issue policy papers to guide the Tribunal's interpretation of the Human Rights Code.

The Commission should not perform a gatekeeping function

We support the continuation of direct access to the Tribunal for complainants. Having the Commission perform a gatekeeping functions, in which the Commission would be responsible for screening, investigating, and/or attempting to mediate complaints, would take up too many of the Commission's resources and unduly delay justice for complainants. Our present Tribunal model isn't perfect, but it isn't in need of a gatekeeper. Public resources available to the Commission should be directed to public education, prevention programs, Commission-instigated investigations, law reform initiatives, and the like.

The Commission should investigate systemic human rights abuses rather than prosecuting individual cases, except where cases can have systemic impacts



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If there are public resources available for representing individual complainants in their cases, these should be directed to the already existing, highly effective, and well regarding legal organizations already doing this work such as CLAS BC. The Commission's role should be at a systemic and not individual level.

The Commission should issue policy papers to guide the Tribunal's interpretation of the *Human Rights Code*

Human rights legal issues are complicated. They are embedded in their social context, and that social context is always changing. Issues like the accommodation of addiction disabilities in the workplace, or protection of transgender people from discrimination, require thoughtful, contextual, and fully informed study that is not always available to the Tribunal which is limited to considering the materials placed on the record by parties to a complaint. WCDWA is in favour of adopting the model used in Ontario, where the Commission develops detailed policies on emerging and complex issues which the Tribunal is required to use in interpreting the *Code*. These policies are also used by outside bodies, such as large employers, to set their own policies and ensure their own compliance with the *Code*.

This model would be especially helpful to advancing the rights of the migrant worker community we serve. The issues facing migrant workers are complex. Policy guidelines related to issues like human trafficking, forced labour, and precarious status would assist the Tribunal and other bodies to make decisions that advance and protect migrant workers' human rights. Last year our Executive Director co-authored a paper for the Continuing Legal Education Society of BC on human rights law and human trafficking, exploring the ways that human rights tribunals (in BC and Ontario) have dealt with human trafficking cases and the rights of migrant workers. This paper, which we have attached to this submission, sets out some of the ways that human rights processes and tribunals can be used to advance the rights of migrant workers where other forums cannot. We encourage you to review this paper and urge you to prioritize protecting migrant workers' rights in setting priorities for the new Commission.

Thank you for considering our submission.

Sincerely,

Susanna Quail
Treasurer, West Coast Domestic Workers' Association