



SUBMISSION TO THE SENATE STANDING COMMITTEE ON INDIGENOUS PEOPLES: Alberta Human Rights Commission

Abstract

This is the Commission's written submission to the Standing Senate Committee on Indigenous Peoples, regarding the implementation of the National Inquiry into Missing and Murdered Indigenous Women and Girls' Call for Justice 1.7 following the Commission's appearance on April 19, 2023

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ALBERTA HUMAN RIGHTS COMMISSION
SUBMISSIONS TO THE
SENATE STANDING COMMITTEE ON INDIGENOUS PEOPLES
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I. Introduction

The Chief of the Commission and Tribunals of the Alberta Human Rights Commission (the Chief), Kathryn Oviatt, appeared before the Senate Standing Committee on Indigenous Peoples on April 19, 2023. The Chief testified about human rights frameworks in light of [Call to Justice](#) 1.7 from The Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls. This Call to Justice provides in part:

We call upon the federal, provincial, and territorial governments, in partnership with Indigenous Peoples, to establish a National Indigenous and Human Rights Ombudsperson, with authority in all jurisdictions, and to establish a National Indigenous and Human Rights Tribunal.

The Call to Justice is mirrored in recommendation 16 of the [113 Pathways to Justice](#) in Alberta, from the Alberta Joint Working Group on Missing and Murdered Indigenous Women and Girls.

The Chief's appearance in April came on short notice and without the opportunity to consult with the Commission's [Indigenous Advisory Circle](#) (IAC). We have now had the opportunity to consult with the IAC and provide these additional submissions in light of the input and feedback we received. Although the Commission has consulted with the IAC, these submissions are the Commission's own and come from our institutional perspective.

II. The Statutory Framework in Alberta

The Commission has a mandate under the *Alberta Human Rights Act*, R.S.A. 2000, c. A-25.5 (the *Act*) to:

- forward the principle that all people are equal in dignity, rights and responsibilities;
- promote awareness an appreciation of and respect for the multicultural heritage of Alberta;
- encourage all sectors of Alberta society to provide equal opportunity; and
- develop and conduct education programs designed to eliminate discriminatory practices.¹

¹ Act, s. 16

The Alberta statutory framework includes both commission and tribunal functions in one organization. The Alberta Human Rights Commission has three branches:

- Communication, Education and Engagement (CEE): Manages public education, marketing and communications, public policy, stakeholder engagement, data collection, the Commission’s annual report,² the Human Rights Education and Multiculturalism Fund,³ and grants to community groups.⁴
- The Director of the Commission has two statutory functions:
 - Complaints Management: The Director is responsible for intake, mediation and screening complaints.⁵ Prior to and at screening, the Director has a neutral role under section 21, and ultimately screens complaints by dismissing them or referring them to the Tribunal for a full hearing.
 - Legal Counsel to the Director: Following screening, the Director takes an advocacy role in the public interest and is a party before the Tribunal. The Director advances complaints he refers to the Tribunal (like a prosecutor) and appears in court on judicial review.⁶
- The Tribunal: Members of the Commission and the Chief play an adjudicative role in complaint resolution and settlement. This branch conducts appeals of complaints that the Director dismissed,⁷ Tribunal Dispute Resolution mediations, and full adjudication in an oral hearing process.⁸

III. The Commission’s Commitment to Indigenous Peoples

The Commission operates on the traditional lands and gathering places of many Indigenous Peoples, including:

- 48 First Nations;
- 138 First Nations reserves on the lands of Treaties 6, 7, and 8;
- 8 Métis Settlements;
- the 6 Regions of the Métis Nation of Alberta; and
- approximately 2,500 Inuit.

² Act, s. 19

³ Act, s. 13

⁴ Act, s. 14

⁵ Act, ss. 20-23

⁶ Act, ss. 28-29

⁷ Act, s. 26

⁸ Act, s. 30, 32

Indigenous human rights are a priority for the Commission. We have collaborated with Indigenous communities for decades, including providing grants to Indigenous groups to advance human rights initiatives and partnering on projects.

In 2021, the Commission developed a comprehensive [Indigenous Human Rights Strategy](#) (the Strategy). The [Backgrounder](#) to the Strategy outlined the need for the Strategy and increased prioritization on Indigenous human rights at the Commission. The Backgrounder recognized that while Alberta is home to over 260,000 Indigenous people (representing about 6.5 per cent of the population), Indigenous people do not access the Commission's human rights complaint system at the same rate as non-Indigenous people. The Commission recognizes that it needs to better serve Indigenous Peoples in Alberta, including by building trust and making substantive reforms that improve the experiences of Indigenous Peoples accessing the Commission's services.

The Strategy, and the strategic priorities under the Strategy, are guided by the IAC, currently comprised of 12 Indigenous leaders, 10 who are women and one of whom is two-spirit, from all regions of Alberta. Members have diverse backgrounds, experience, and expertise.

One of the first actions under the Strategy was to conduct an organization-wide [external review](#). This review was conducted by an independent, Indigenous third party and identified six areas in which the Commission can enhance services and responses affecting Indigenous Peoples:

1. communication and engagement;
2. awareness;
3. accessibility;
4. responsiveness;
5. collaboration; and
6. resources.

The review highlighted that Indigenous individuals do not regularly access the Commission's programs and services due to a lack of awareness of the Commission, accessibility challenges, process complexity, language barriers, and fear of being re-victimized or re-traumatized. Participants identified that:

- The human rights system is complex, challenging to navigate, and often frustrating for both Indigenous and non-Indigenous complainants; and
- There is a need to strengthen Alberta's human rights approach to ensure it is accessible, respectful, and culturally appropriate for Indigenous Peoples.

Nevertheless, one theme from the review was that participants believed the Commission was the right organization to address discrimination against Indigenous Peoples in Alberta, while needing reform.

The Commission has already taken steps to action some of the recommendations in the review. For example, it developed a [Tribunal Practice Direction](#) on Indigenous cultural/spiritual practices at Tribunal proceedings and has a blessed eagle feather for use in formal proceedings and other meetings of significance. Additionally, the Commission will begin collecting disaggregated demographic data in 2023, coinciding with the website launch. Anonymous collection of demographic data will help us better understand and address trends related to who is bringing human rights complaints to the Commission and how multiple protected characteristics intersect.

The Commission actively seeks to hire and appoint Indigenous employees and Members of the Commission. We also provide training to all new and existing staff on Indigenous issues, including [the Path](#) as a required baseline training course for all current and new staff, in addition to ongoing training on specific and emerging issues.

The Commission recognizes the need for restorative justice practices in its mediation processes and culturally appropriate navigation services for Indigenous complainants. These reforms require adequate resources, strategy, and Indigenous leadership.

IV. Recommendations on Call to Justice 1.7

The Commission does not take a position on whether a separate national Indigenous human rights tribunal and/or ombudsperson should be created. Based on consultations with our IAC and our own research, the Commission has the following recommendations that should be fully addressed if implementing any reform or new human rights mechanism:

1. Addressing systemic discrimination must be a priority;
2. Steps must be taken to eliminate bureaucratic complexity;
3. The full diversity of Indigenous experiences must be included; and
4. Robust funding must be part of any new mechanism or substantive reform.

Systemic Discrimination

Historically, human rights models and statutes have focused on individual rights and responsibilities. That continues to be the case in the Alberta model where the Commission cannot initiate a complaint on behalf of a person or groups of persons.⁹ However, systemic discrimination is a real barrier to full participation in society for Indigenous Peoples, particularly in justice and health systems. Systemic discrimination, meaning discrimination arising from systems, policies, or practices, is often unintended and unconscious, but nevertheless pervasive and pernicious.

In the Commission's consultations with its IAC and other Indigenous leaders and groups, we have repeatedly heard that systemic discrimination is one of if not the most pressing and persistent issue facing Indigenous Peoples. The lived experience of repeated systemic barriers across multiple industries and contexts compounds on Indigenous Peoples, leading to exhaustion, distrust, and resistance to use public systems.

Systemic complaints are also complex from an evidentiary perspective. This can be onerous for individuals coming forward, and funding for human rights commissions or legal clinics assisting complainants has often been inadequate to fully investigate and gather the complex evidence required to prove systemic complaints.

Bureaucratic Complexity

Indigenous Peoples in Alberta already face barriers from multiple forums for enforcing human rights, the Canadian Human Rights Commission, or the Alberta Human Rights Commission. In Alberta, this barrier can be amplified because of the short and strict one year limitation period for making a complaint.¹⁰ Unlike other jurisdictions, where there can be discretion on accepting a complaint after the time limit, in Alberta the one-year limit is a strict limitation period.¹¹

A new forum may lead to further barriers, including questions around if a non-Indigenous respondent is bound by the new forum or one of the already existing forums. Any new or reformed human rights system must account for the unintended consequences of barriers caused by multiple forums and actively take steps to eliminate such barriers. Additionally, we heard from our IAC that

⁹ Act, s. 20(1)

¹⁰ Act, s. 20(2)(b)

¹¹ *St. Albert and Area Student Health Initiative Partnership v Polczer*, 2007 ABQB 692 at para 87; *Rivard v Alberta (Human Rights Commission)*, 2014 ABQB 392

it may be beneficial to give Indigenous Peoples a choice of where they are most comfortable proceeding, if there are multiple forums.

Diverse Indigenous Experiences

The diversity amongst First Nation, non-status, Métis, and Inuit communities must be recognized. It is inadequate to speak generically about being “Indigenous led.” Of course, any new institution or process for Indigenous Peoples must be led by Indigenous Peoples, but there is great diversity in the Canadian landscape that must be recognized and incorporated. We heard skepticism from our IAC that a national human rights framework would adequately address the diverse experiences of Indigenous People in Alberta. That skepticism must be acknowledged and addressed by meaningful consultation and incorporation of diverse perspectives.

Alberta is home to 138 First Nations reserves and eight Alberta Métis Settlements. The Indigenous experiences here are diverse and divergent across this one province. “Indigenous law” or “Indigenous culture” is not a monolith; they differ by region and nation. Additionally, the urban Indigenous experience is a significant reality for many Indigenous people. In Alberta, 103,250 people who identify as First Nations (70.9%) live off reserve, primarily in Edmonton and Calgary.¹² Further, the eight Alberta Métis Settlements are unique in Canada as they represent the only lands governed exclusively by Métis communities for Métis use. This unique settlement arrangement brings different experiences and perspectives than in other jurisdictions.

Additionally, within these distinct Indigenous communities there are subsets of diverse voices, including Indigenous women, two spirit and LGBTQI+ communities, Indigenous persons with physical and mental disabilities, and non-status individuals. Initiatives will be stronger where this diversity and intersectionality is reflected in both planning and implementing new or reformed human rights mechanisms.

Fulsome consultations with diverse Indigenous communities must happen. The Commission is grateful that the Senate Committee is consulting with human rights bodies across the country about these important issues, and for the opportunity to share our institutional expertise. However, we are not a substitute for hearing directly from Indigenous Peoples, communities, Elders, and Knowledge Keepers.

¹² 2021 [Census of Canada: Indigenous People](#)

Adequate Funding

One of the most significant challenges facing human rights bodies across Canada is the financial support to fully meet their statutory mandates. Significant change cannot be achieved without substantial financial investment. That applies to both existing mechanisms and any new initiatives. There is much that can and must be done to improve human rights complaint processes, regardless of whether or not a new, separate national Indigenous human rights tribunal is established. This will only be achieved if governments adequately fund those initiatives.

V. Conclusion and Additional Resources

The Alberta Human Rights Commission thanks the Senate Committee on Indigenous Peoples for its interest in the critical topic of Indigenous human rights. The following resources were referred to in this submission and may be of interest for further reading:

- Indigenous Human Rights Strategy Backgrounder - [Backgrounder](#)
- AHRC Indigenous Human Rights Strategy - [Strategy](#)
- Indigenous Human Rights Strategy External Review Report - [Report](#)
- Biographies of Indigenous Advisory Circle Members - [Biographies](#)
- Indigenous Advisory Circle Terms of Reference - [Terms of Reference](#)