



British Columbia's
Office of the Human Rights
Commissioner

September 2025 submission to the Special Committee to Review Provisions of the *Human Rights Code*

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SEPTEMBER 2025

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British Columbia's
Office of the Human Rights
Commissioner

**To the Indigenous Peoples of
this place we now call British
Columbia:**

**Today we turn our minds to you
and to your ancestors. You have
kept your lands strong. We are
grateful to live and work here.**



SEPTEMBER 2025

Mable Elmore, MLA
Chair of the Special Committee to Review Provisions of the *Human Rights Code*
Parliament Buildings
Victoria, B.C. V8V 1X4

Dear Ms. Elmore,

I am pleased to present these additional submissions to the Special Committee to Review Provisions of the *Human Rights Code* in response to the Committee's invitation. I welcome an opportunity to discuss this submission with the Committee and to respond to any issues raised by members of the public.

Sincerely,



Kasari Govender

B.C.'s Human Rights Commissioner

cc: Jennifer Arril
Clerk of Committees

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Introduction

British Columbia's Office of the Human Rights Commissioner (BCOHRC) welcomes the opportunity to make this submission to the Special Committee reviewing sections 47.01 to 47.24 of the *Human Rights Code*. We recognize the important role this review plays in preserving the integrity of the human rights system in British Columbia and ensuring the legislative framework continues to support the goals of the legislation, including equity, transparency and systemic change.

Overall, the Commissioner is of the view that the sections of the *Code* under review are sufficient and suitable for the execution of her powers and the effective functioning of the Office. The current provisions are adequate to define the independence, scope and tools necessary for the Commissioner to promote and protect human rights. They are also adequate to further the overall goals of the legislation, including fostering a society in which there are no impediments to full and free participation in the economic, social, political and cultural life of the province and promoting a climate of understanding and mutual respect where all are equal in dignity and rights. Accordingly, the recommendations put forth below consist only of minor or targeted amendments, aimed primarily at improving clarity and operational efficiency.

The key features of ss. 47.01–47.24—including the Commissioner's powers to conduct inquiries, publish reports, make recommendations, approve special programs and educate the public about human rights, as well as provisions to protect the Commissioner's independence—are essential tools for meeting the Commissioner's mandate to promote and protect human rights in B.C.

Given the relatively recent creation of the Office and the complexity of the issues with which it engages, the Commissioner is mindful of the importance of stability and consistency in BCOHRC's institutional role. At the same time, BCOHRC is committed to continuous improvement and evidence-informed policy and so the Commissioner offers these proposed amendments in a constructive spirit.

The Commissioner also offers this recommendation regarding the legislative review process: If the government undertakes revisions of the *Code*, we recommend they engage in consultations with Indigenous Peoples at the earliest stage of review. Early, meaningful engagement—rooted in the commitments set out in the *Declaration on the Rights of Indigenous Peoples Act* (DRIPA) and guided by the principle of free, prior and informed consent—ensures that any changes reflect and respect the rights, priorities and perspectives of Indigenous communities. Embedding this practice into the *Code's* review process would strengthen the legitimacy and effectiveness of reforms while aligning them with reconciliation commitments.

Independence

British Columbia has nine non-partisan independent statutory officers who support the work of the Legislature by performing key duties essential to protecting democracy. These duties range from overseeing government programs, law and policy development and performance to ensuring public and private entities adhere to provincial laws such as the *Human Rights Code*. Per their legislative mandates, the officers operate independently from the executive branch and are foundational to holding the government accountable to the Legislative Assembly and to the public.

The Human Rights Commissioner, as an independent officer of the Legislature, is responsible for protecting and promoting human rights in the province. Independence is vital to the fulfilment of the Commissioner's mandate under the *Code*, allowing the Commissioner to effectively examine the human rights implications of government policies, programs or legislation and make recommendations about any that are inconsistent with the *Code* and to initiate inquiries into systemic issues facing British Columbia. Maintaining and strengthening the independence of the Human Rights Commissioner is essential to ensure the integrity and effective operation of the Office and to remain free from real or perceived political influence.

However, the current provisions of the *Code* in section 47.01(4), which allows for reappointment, and 47.04(1)(a), whereby the Commissioner's salary is set by the Lieutenant Governor in Council, present potential risks to that independence. The prospect of reappointment may create a risk of, or perceptions of, pressure on the Commissioner to moderate or limit criticism of government actions in hopes of securing another term. Likewise, salary determination by the Lieutenant Governor in Council weakens the clear separation from the executive branch and the structural independence that are fundamental to public trust in the Commissioner's role.

All other full-time officers have salaries pegged to the same external benchmark, set outside the control of both the legislative and the executive branches of government, which both protects independence and creates parity between officers. To align the Human Rights Commissioner's structural framework with this best practice and statutory precedents in B.C., the Commissioner recommends implementing reforms that will reinforce the structural protections vital for the Commissioner's independent mandate, ensuring the Office remains free from real or perceived political influence and enhancing its capacity to effectively monitor and make meaningful recommendations on human rights issues.

Provision for amendment: Commissioner's term

The current *Code* provision states:

- 47.01** (1) The Legislative Assembly may, by resolution, appoint as the Human Rights Commissioner a person who has been unanimously recommended for the appointment by a special committee of the Legislative Assembly.
- (2) The commissioner is an officer of the Legislature.
- (3) Subject to section 47.02, the commissioner holds office for a term of 5 years.
- (4) The commissioner may be reappointed, in the manner referred to in subsection (1) of this section, for one additional term of up to 5 years as specified in the reappointment resolution.

The Commissioner recommends that s. 47.01(4) of the *Human Rights Code* be amended to provide for an eight-year fixed term with no possibility of reappointment. Remove reappointment provisions (section 47.01(4)) to minimize incentives that may compromise critical oversight functions or create the perception of such compromise. This would also bolster independence by removing concerns over job security linked to governmental approval.

Provision for amendment: Process for determining Commissioner salary

The current *Code* provision states:

- 47.04** (1) A commissioner appointed under section 47.01 or 47.03 is entitled
- (a) to be paid compensation as may be set by the Lieutenant Governor in Council, and
 - (b) to be reimbursed for reasonable travel and out-of-pocket expenses personally incurred in exercising the powers and performing the duties of the office.
- (2) The public service plan as defined in section 1 (1) of the [Public Sector Pension Plans Act](#) applies to the commissioner.

The Commissioner recommends that s. 47.04(1)(a) of the *Human Rights Code* be amended to provide for a compensation mechanism that ties the Commissioner's salary to an external benchmark separate from the executive branch of government such as statutory indexing to a judicial comparator, following the practice used for the salaries of the other independent officers. Embedding salary determination outside the executive branch reinforces the Commissioner's separation from executive influence, preserving legitimacy and public trust.

Mandate and powers

Intervening in other legal proceedings

The Commissioner's intervention mandate is found in section 47.12(1)(j) of the *Code* (reproduced below). This provides the Commissioner with a mandate to intervene in complaints before the Human Rights Tribunal and in any proceeding in any court. The Commissioner does not have a mandate to intervene in other legal proceedings where human rights issues are raised and decided.

The Commissioner intervenes in cases to advance various aspects of human rights law and endeavors to intervene in one to three cases per year.

In accordance with section 22.1 of the *Code*, reproduced below, the Commissioner can intervene in complaints before the Human Rights Tribunal as a matter of right, meaning that leave or permission from the Tribunal is not required.

To intervene in cases before a court, the Commissioner must apply for leave (permission) to intervene and follow the procedures established by the court. To date, the Commissioner has sought leave to intervene in 10 cases before the BC Supreme Court or BC Court of Appeal. She has been granted leave to intervene in every case.

Section 47.12(1)(j) of the *Code* currently prevents the Commissioner from intervening in legal proceedings other than Human Rights Tribunal hearings and court proceedings, including proceedings heard by administrative tribunals, the Coroner or other officers of the Legislature, despite the fact that the application of human rights standards is a cross-cutting issue. Many administrative decision-makers or tribunals may be faced with determining human rights issues; in fact they are required by law to do so (*Tranchemontagne v. Ontario (Director, Disability Support Program)*, [2006] 1 S.C.R. 513, 2006 SCC 14).

The Commissioner would like to ensure she can intervene in all types of cases to promote compliance with the *Code* and other human rights standards within her mandate. Notably, the Ontario Human Rights Commission (with which BCOHRC shares many meaningful similarities) has a broad mandate to intervene in legal proceedings, including administrative decision makers beyond their Human Rights Tribunal.

Provision for amendment: Powers of commissioner

The current *Code* provision states:

47.12 (1) The commissioner is responsible for promoting and protecting human rights, including by doing any of the following: ...

(j) intervening in complaints under section 22.1 and in any proceeding in any court; ...

The Commissioner recommends that s. 47.12(1)(j) of the *Human Rights Code* be amended to add the authority for the Commissioner to intervene in other legal proceedings. The clause could be amended as follows (the suggested change is italicized):

Powers of commissioner

47.12 (1) The commissioner is responsible for promoting and protecting human rights, including by doing any of the following: ...

(j) intervening in complaints under section 22.1 and in *any administrative or court proceeding*; ...

Clarification regarding powers to request information and privilege

The Commissioner relies on her ability to access information and records held by public bodies and others to fulfil her mandate and make evidence-based recommendations. The Commissioner has the power to compel the production of information when conducting inquiries. Her rights to information for inquiries are broad and subject only to assertions of privilege. While, for the most part, the Commissioner is able to access the information she requires to fulfil her mandate, she has experienced some challenges related to assertions of privilege and access to information, which are discussed in more detail below.

Privilege

In conducting an inquiry, the Commissioner is empowered to order a person to produce records in their custody or control, to attend an interview to answer questions and to create and produce records such as physical dimensions, photographs or video recordings of premises or vehicles (*Code* ss. 47.16(1)(a), (b) and (c)).

The Commissioner's order powers are very broad but are limited by s. 47.18, which restricts the Commissioner's access to Cabinet records.¹ Section 47.18 specifies the Commissioner cannot compel the

¹ "Cabinet records" means Cabinet documents and any information that would reveal the substance of deliberations of the Executive Council or any of its committees, including any decisions, advice, recommendations, policy considerations or draft legislation or regulations submitted or prepared for

production of information if the Attorney General certifies it might result in or involve disclosure of Cabinet information (*Code* s. 47.18).

In accessing information to fulfil her mandate, the Commissioner has faced other assertions of privilege such as solicitor-client privilege. The *Code* is silent on whether the Commissioner can access records that are subject to these privileges and on what process to follow when privilege is asserted. It is common for public inquiries to establish their own procedures for handling assertions of privilege.

In the Commissioner's view, the *Code* should be amended to clarify that the Commissioner's right to information is limited only by solicitor-client privilege and certifications by the Attorney General under s. 47.18(1), and not by any other claims of confidentiality or privilege. This is consistent with provisions in the statutes of other independent officers of the Legislature such as section 10 of the *Representative for Children and Youth Act* (RCY Act).

Access to information

The Commissioner relies on her power to compel the production of information when conducting inquiries and otherwise relies on the cooperation and goodwill of public bodies to obtain the information she needs to fulfil her mandate. Except for the Commissioner's production powers during an inquiry, the Commissioner does not have the power to compel information from public bodies or others to fulfil her mandate. In other words, public bodies and others are not required to provide requested information to the Commissioner outside of a production order during an inquiry.

The Commissioner has experienced some challenges in obtaining information needed to fulfil her mandate outside the context of inquiries, including delays, resistance to producing records and confusion around disclosure obligations with respect to personal information.

Even when conducting inquiries, the Commissioner is limited to ordering the production of "records or other things." Frequently the Commissioner orders the production of demographic data to inform her inquiries and has received some resistance to production of data in the format requested, where the available records may not already be in that format. The collection of disaggregated demographic data can be a powerful tool in advancing human rights because it reveals patterns obscured by aggregate data, potentially including inequalities and differences between sub-groups. The collection of demographic data is critical to the Commissioner's ability to fulfil her mandate to address the root causes of discrimination and inequality in the province.

In the Commissioner's view, the challenges noted above could be mitigated by more clearly outlining the Commissioner's rights to information and the limits to those rights. These amendments would benefit the Commissioner and her staff and would result in additional clarity for duty holders who receive requests for information and production orders from the Commissioner. In the Commissioner's view, the *Code* should be amended to clarify the following:

- The Commissioner has a right to order information to fulfil her whole mandate, not just for the purpose of conducting inquiries.

submission to the Executive Council or any of its committees, but excluding information described in s. 12(2) of the *Freedom of Information and Protection of Privacy Act*, RSBC 1996, c. 165.

- The Commissioner has a right to information in any format she requests. The Commissioner's right to information is not limited to information in existing records.
- The duty of public bodies and others to provide the requested information to the Commissioner is enforceable through the courts in the same way as the current inquiry orders.

These amendments would make the *Code* more consistent with the statutes of other independent officers of the Legislature. These officers have both the power to compel production of information for the purpose of conducting investigations/audits and the power to request information needed to fulfil other aspects of their mandate.

For example, section 10 of the *Representative for Children and Youth Act* provides that the representative has the right to any information that is in the custody or control of a public body and that is necessary to enable the Representative to exercise their power and duties under the *Act*. The *RCY Act* specifies that public bodies have a corresponding obligation to disclose the information to the Representative (s. 10(3)). Similarly, under s. 16 of the *Auditor General Act*, the Auditor General has the power to compel both information and testimony, including a right to records, information and any explanations required to fulfil their mandate.

Provision for recommendation: Privilege and information

With regard to Cabinet information, the current *Code* provision states:

Cabinet information protected

- 47.18** (1) The commissioner must not require any information or answer to be given or any record or other thing to be produced if the Attorney General certifies that giving the information, answering the question or producing the record or other thing might
- (a) interfere with or impede the investigation or detection of an offence,
 - (b) result in or involve the disclosure of deliberations of the Executive Council, or
 - (c) result in or involve the disclosure of proceedings of the Executive Council or a committee of it, relating to matters of a secret or confidential nature, and that the disclosure would be contrary or prejudicial to the public interest.
- (2) The commissioner must report each certificate of the Attorney General to the Legislative Assembly not later than in the commissioner's next annual report.

In addition, with regard to order powers from inquiries, the *Code* states:

Commissioner's order powers for inquiries

- 47.16** (1) For the purpose of conducting an inquiry, the commissioner may make an order, in writing, requiring a person to do one or more of the following:
- (a) attend, in person or by electronic means, before the commissioner and answer questions on oath or solemn affirmation or in any other manner;
 - (b) produce to the commissioner a record or other thing in the person's custody or control;

- (c) record physical dimensions, or take photographs, video recordings or audio recordings, of premises or vehicles, and produce the records, photographs, video recordings and audio recordings to the commissioner.

The Commissioner recommends the *Code* be amended to expressly provide the Commissioner with the right to information in the custody or control of public bodies and others to exercise the powers and perform duties of the Human Rights Commissioner. In particular, the following is recommended:

1. Despite any other enactment, the commissioner, in the conduct of the commissioner's duties, must be given access to records, information and any explanations required from a person or organization for the commissioner to exercise the powers and perform duties of the Human Rights Commissioner.
2. The public body or person must disclose to the commissioner the information to which the commissioner is entitled under subsection (1) above.
3. This section applies despite any claim of confidentiality or privilege, other than a valid claim based on solicitor-client privilege or a certification from the Attorney General under section 47.18.

Protection for people who participate in inquiries

The *Code* includes protections for people who participate in inquiries (s. 47.21). Specifically, s. 47.21 says that a person cannot retaliate against someone for participating in a Commissioner's inquiry.

The Commissioner has received questions from inquiry participants about what this protection means. Inquiry participants have expressed fear of facing retaliation in their ongoing interactions with duty holders.

In the Commissioner's view, this is a protection without teeth that should be strengthened. Statutes of other independent officers make it an offence to retaliate against a person for participating in an inquiry or investigation, including ss. 27 and 28 of the *Representative for Children and Youth Act* and ss. 16 and 32 of the *Ombudsperson Act*.

Provision for recommendation: Protection for inquiry participants

The current *Code* provision states:

Protection

- 47.21** A person must not evict, discharge, suspend, expel, intimidate, coerce, impose any pecuniary or other penalty on, deny a right or benefit to or otherwise discriminate against a person because that person participates in or might participate in an inquiry under this Code.

The Commissioner recommends that the *Code* be amended as follows to make it an offence to retaliate against a person for participating in an inquiry (the italicized portion is the suggested addition):

Offences

- 47.22** (1) A person who wilfully does any of the following commits an offence:

(a) makes a false statement to, or misleads or attempts to mislead, the commissioner in the exercise of powers or performance of duties under this Code;

(b) obstructs the commissioner in the exercise of powers or performance of duties under this Code

(c) *contravenes section 47.21*

(2) A person who commits an offence under this section is liable,

(a) for a first offence, to a fine of not more than \$25 000, and

(b) for a second or subsequent offence, to a fine of not more than \$100 000.

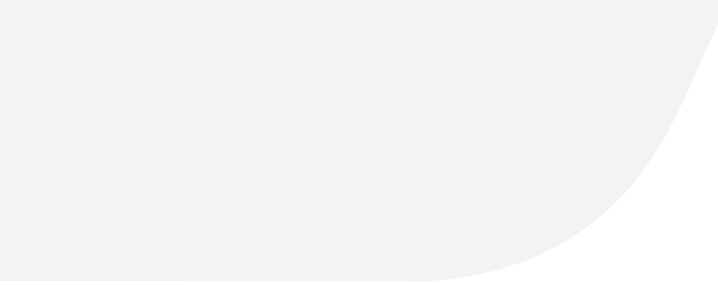
Conclusion

This review presents a timely opportunity to ensure the statutory framework reflects best practices used in the statutes of the eight other independent officers of the Legislature and that it continues to evolve in step with the complex realities of human rights work. As detailed earlier, the Human Rights Commissioner affirms that the current provisions of *Human Rights Code* that speak to the role of the Commissioner provide a workable and effective foundation for advancing systemic human rights in B.C. The Commissioner's recommendations are therefore limited and intended to enhance clarity, consistency and operational effectiveness without altering the essential scope of the role.

Strengthening the Commissioner's structural independence, modernizing provisions related to information access and interventions and providing clearer protections for inquiry participants are modest but meaningful steps that will reinforce public trust in the human rights system.

Ultimately, maintaining a robust, independent and effective Office of the Human Rights Commissioner is vital to the health of British Columbia's democratic institutions and to the protection and promotion of human rights across the province. By implementing the targeted amendments recommended in this submission, the Legislature can reinforce the Commissioner's ability to act without fear or favour or the perception of bias, to ensure accountability for systemic discrimination and to foster a culture of equity and inclusion that benefits all who call British Columbia home.









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