

SPECIAL COMMITTEE TO APPOINT A HUMAN RIGHTS COMMISSIONER



LEGISLATIVE ASSEMBLY
of BRITISH COLUMBIA

MAY 2019
FOURTH SESSION
OF THE 41ST PARLIAMENT



May 29, 2019

To the Honourable
Legislative Assembly of the
Province of British Columbia

Honourable Members:

We have the honour to present herewith the Report of the Special Committee to Appoint a Human Rights Commissioner containing our unanimous recommendation.

Respectfully submitted on behalf of the Committee,

Sheila Malcolmson, MLA
Chair

Shephanie Cadieux, MLA
Deputy Chair

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Composition of the Committee

Fourth Session, 41st Parliament

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|------------------------|--------------|-----------------|
| Sheila Malcolmson, MLA | Chair | Nanaimo |
| Stephanie Cadieux, MLA | Deputy Chair | Surrey South |
| Raj Chouhan, MLA | | Burnaby-Edmonds |
| Greg Kylo, MLA | | Shuswap |

Third Session, 41st Parliament

| | | |
|------------------------|--------------|---------------------|
| Raj Chouhan, MLA | Chair | Burnaby-Edmonds |
| Greg Kylo, MLA | Deputy Chair | Shuswap |
| Stephanie Cadieux, MLA | | Surrey South |
| Mitzi Dean, MLA | | Esquimalt-Metchosin |
| Dr. Andrew Weaver, MLA | | Oak Bay-Gordon Head |

Committee Staff

Kate Ryan-Lloyd, Acting Clerk of the Legislative Assembly

Karan Riarh, Committee Research Analyst

Terms of Reference

On November 26, 2018 and February 21, 2019, the Legislative Assembly agreed that a Special Committee be appointed to select and unanimously recommend to the Legislative Assembly the appointment of a Human Rights Commissioner, pursuant to the *Human Rights Code* [RSBC 1996] c. 210.

The said Special Committee shall have the powers of a Select Standing Committee and in addition is empowered:

- a. to appoint of their number one or more subcommittees and to refer to such subcommittees any of the matters referred to the committee and to delegate to the subcommittee all or any of its powers except the power to report directly to the House;
- b. to sit during a period in which the House is adjourned, during the recess after prorogation until the next following Session and during any sitting of the House;
- c. to adjourn from place to place as may be convenient; and
- d. to retain such personnel as required to assist the committee;

and shall report to the House as soon as possible, or following any adjournment, or at the next following Session, as the case may be; to deposit the original of its reports with the Clerk of the Legislative Assembly during a period of adjournment and upon resumption of the sittings of the House, the Chair shall present all reports to the Legislative Assembly.

Introduction

The Human Rights Commissioner is a new independent officer of the Legislature responsible for protecting and promoting human rights. The position was established following the adoption of amendments to the *Human Rights Code* on November 27, 2018.

The Commissioner's responsibilities include: identifying and promoting the elimination of discriminatory practices, policies and programs; developing and delivering public information and education about human rights; undertaking and supporting research respecting human rights; examining the human rights implications of any policy, program or legislation; and promoting compliance with international human rights obligations.

The Commissioner does not have jurisdiction over screening and adjudicating individual and group human rights complaints; this responsibility remains with the Human Rights Tribunal. The Commissioner may, however, call an inquiry into broader human rights issues or systemic discrimination.

Pursuant to section 47.01 of the Act, the Commissioner is appointed by the Legislative Assembly following the unanimous recommendation of a special committee of the Legislative Assembly. The Commissioner holds office for a term of five years and may be reappointed for one additional term of up to five years.

This report contains the Special Committee's unanimous recommendation to the Legislative Assembly regarding the appointment of the province's first independent Human Rights Commissioner.

Meeting Schedule

During the third and fourth Sessions of the 41st Parliament, the Committee met on the following dates for the purposes described below.

Third Session

| | |
|---------------------------|--|
| Tuesday, January 16, 2019 | Organizational meeting Technical briefing: Ministry of Attorney General |
|---------------------------|--|

Fourth Session

| | |
|------------------------------|--|
| Wednesday, February 27, 2019 | Organizational meeting Technical briefing: Harinder Mahil, Former Chief Commissioner of the former BC Human Rights Commission |
| Tuesday, March 26, 2019 | Deliberations |
| Thursday, March 28, 2019 | Deliberations |
| Wednesday, April 17, 2019 | Interviews |
| Thursday, April 18, 2019 | Interviews |

| | |
|------------------------|--------------------|
| Wednesday, May 1, 2019 | Interviews |
| Monday, May 6, 2019 | Deliberations |
| Monday, May 13, 2019 | Deliberations |
| Friday, May 24, 2019 | Adoption of Report |

Further information on the work of the Special Committee is available at: <https://www.leg.bc.ca/cmt/hrc>

Recruitment Process

The Committee was established in the third session of the 41st Parliament pursuant to a motion adopted by the Legislative Assembly on November 18, 2018 and reappointed in the fourth session pursuant to a motion adopted on February 21, 2019. At an organizational meeting on January 16, 2019, the Committee elected the Chair and Deputy Chair, and adopted a motion to hold all meetings and deliberations on a confidential, *in camera* basis in keeping with the usual practices for special committees of appointment. Following a technical briefing from the Ministry of Attorney General with respect to the Commissioner's statutory roles and responsibilities, the Committee developed and considered a comprehensive recruitment process for the position. As part of their process, the Committee also received a technical briefing from Harinder Mahil, a former Chief Commissioner of the former BC Human Rights Commission.

The Committee issued a call for applications on February 1, 2019. Advertisements were placed in major national and provincial newspapers as well as Indigenous, multicultural and LGBTQ media. The posting was also shared on the Legislative Assembly's social media accounts, and distributed to Indigenous organizations, human rights offices across Canada and other related stakeholders.

By the closing date of March 8, 2019, the Committee received 50 applications. Committee Members reviewed the applications for leadership and senior executive experience, knowledge and understanding of human rights laws, principles, obligations and issues, and communication and engagement experience. Six candidates were shortlisted for an interview.

Interviews were held with the shortlisted candidates on April 17 and 18, 2019. The interviews covered each candidate's knowledge and understanding of the position's statutory framework, and approaches to leadership and organizational management. Committee Members also inquired about stakeholder management, relationship building with diverse communities and analytical skills. Three candidates were subsequently shortlisted for a second interview, held on May 1, 2019, during which the Committee probed further into each candidate's experience with Indigenous peoples and reconciliation, administrative management, and their understanding of the Commissioner's mandate, role and independence. Following the interviews, in depth reference checks were conducted.

In considering the shortlisted candidates, the Committee was impressed by Kasari Govender's experience as an administrative manager and strategic thinker, as well as her depth of knowledge of the BC human rights context. They particularly appreciated the strength of her relationships with Indigenous communities, her commitment to women's rights, and her proven history of being able to work with a broad range of groups. Committee Members also noted her reputation as an open, collaborative and creative leader with the ability to listen and navigate divergent views, and were confident that she would be effective voice for enhancing human rights in BC.

Committee Members concluded their deliberations by unanimously agreeing to recommend to the Legislative Assembly that Kasari Govender be appointed as Human Rights Commissioner.

Recommendation

The Committee unanimously recommends to the Legislative Assembly that Kasari Govender be appointed as Human Rights Commissioner, pursuant to section 47.01 of the *Human Rights Code* [RSBC 1996] c. 210.

Biographical Information

Kasari Govender has practiced constitutional law since 2006, with a focus on the equality rights of marginalized people. In her legal work, she has worked closely with people fighting for gender equality, Indigenous rights, children's rights, the rights of people with disabilities and the rights of migrant communities. She is passionate about equality rights and using the law as a tool to build a more equal and just BC.

Since 2008, she has held leadership positions at West Coast LEAF and has been Executive Director since 2011. She has co-authored a number of key reports and articles, and speaks widely on issues such as violence against women, access to justice, balancing human rights and regulating hate speech. She led West Coast LEAF through a time of significant growth as it has become a leading voice on gender equality in the country, including the rights of all women and other people impacted by gender-based discrimination.



Ms. Govender has in-depth expertise in human rights, constitutional and administrative law. She has represented equity seekers at all levels of court, including the Supreme Court of Canada, with a particular focus on writing intervenor arguments. She has worked on cases engaging the spectrum of human rights issues as they arise in British Columbia, including ones involving single mothers leaving violent relationships, Indigenous women seeking access to the benefits of Indian status, parents seeking services for their children with autism and learning disabilities, access to justice for marginalized women in the Downtown Eastside, and missing and murdered Indigenous women.

She is the founding President of Rise Women's Legal Centre, and led the establishment of the Centre, a pilot project that has evolved into an independent, non-profit legal clinic. It is the only clinic of its kind in Canada outside of Ontario and has assisted hundreds of self-identified women to access justice in family law.

She earned her law degree from the University of Victoria and her Master's Degree in International Human Rights Law from the University of Oxford. She has sat on the board of Pivot Legal Society, the Coalition for Public Legal Services, and Society for Children and Youth. She has taught as an Adjunct Professor of Law at the University of British Columbia and as an Instructor at Simon Fraser University. In 2019, she won the Women Lawyers' Forum's Award of Excellence for breaking new ground for women in the legal profession in British Columbia.

She is inspired every day by her young son, niece, and nephew to continue the fight for a world free of hate, discrimination and inequality.

Appendix A: Advertisement

The advertisement was placed in provincial and national daily newspapers, including the Vancouver Sun, Times-Colonist, and Globe and Mail, as well as Indigenous, multicultural and LGBTQ media. It was also shared on social media, and distributed to Canadian human rights organizations and other related organizations.

LEGISLATIVE ASSEMBLY OF BRITISH COLUMBIA

Special Committee to Appoint a Human Rights Commissioner

Sheila Malcolmsen, MLA, Nanaimo, *Chair* Stephanie Cadieux, MLA, Surrey South, *Deputy Chair*

HUMAN RIGHTS COMMISSIONER

The Human Rights Commissioner is a new, independent officer of the Legislature responsible for promoting and protecting human rights in British Columbia through education, research and inquiry. The Commissioner's mandate and job description is provided by the *Human Rights Code*.

The successful applicant must have demonstrated executive management and leadership experience, excellent communication skills, and a solid record of achievement in public or private sector administration. The position requires a good understanding of administrative law, and human rights laws, principles, obligations and issues, including the human rights context in British Columbia. The successful applicant should also have experience working productively and collaboratively with Indigenous individuals and communities, and other diverse populations, as well as an understanding of the roles, responsibilities and activities of this new office and its relationship to the Legislative Assembly of British Columbia.

The appointment is for a term of five years, and may be renewed for one additional five-year term. The Commissioner is to be paid compensation at a senior executive salary level as may be set by the Lieutenant Governor in Council and is eligible for the public service plan as defined in section 1(1) of the *Public Sector Pension Plans Act*.

Applications should be received by email, fax or mail at the address below no later than **March 8, 2019**. Although the Committee appreciates the interest of all applicants, only those who are invited for an interview will be contacted. All applications received will be held in confidence.

For further information, please visit our website at www.leg.bc.ca/cmt/hrc or contact:

Kate Ryan-Lloyd, Acting Clerk of the Legislative Assembly
Parliamentary Committees Office
Room 224, Parliament Buildings
Victoria, B.C. V8V 1X4
Toll Free in BC 1.877.428.8337
T 250.356.2933 | F 250.356.8172
HRC2019@leg.bc.ca



LEGISLATIVE ASSEMBLY
of BRITISH COLUMBIA

Appendix B: *Human Rights Code*

Human Rights Code

R.S.B.C. 1996 c. 210

(This Act is current to May 15, 2019)

Human Rights Commissioner

- 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.

Resignation, suspension or removal of commissioner

- 47.02 (1) In this section, "**standing committee**" means the select standing committee of the Legislative Assembly that has been designated for the purposes of subsection (4).
- (2) The commissioner may resign at any time by giving written notice to the Speaker of the Legislative Assembly or, if there is no Speaker or the Speaker is absent from British Columbia, to the Clerk of the Legislative Assembly.
- (3) By a resolution passed by at least 2/3 of the members present, the Legislative Assembly may, for cause or incapacity, suspend the commissioner, with or without salary, or remove the commissioner from office.
- (4) If the Legislative Assembly is not sitting and will not be sitting within 5 days, the standing committee, by unanimous resolution, may, for cause or incapacity, suspend the commissioner, with or without salary, for a period that must be set by the standing committee to end not later than on the expiry of a further 20 sitting days of the Legislative Assembly.

Acting commissioner

- 47.03 (1) In this section, "**standing committee**" means the select standing committee of the Legislative Assembly that has been designated for the purposes of subsections (2), (3) and (4).
- (2) If the commissioner is suspended or temporarily absent because of illness or another reason, or if the office of commissioner is vacant, the Legislative Assembly, on the recommendation of the standing committee, may appoint an acting commissioner to exercise the powers and perform the duties of the commissioner until whichever of the following is the case and occurs first:

- (a) the suspension ends;
 - (b) the commissioner returns to office after the temporary absence;
 - (c) a person is appointed under section 47.01.
- (3) If the commissioner is suspended or temporarily absent because of illness or another reason, or if the office of commissioner is vacant, and the Legislative Assembly is not sitting and will not be sitting within 5 days, the standing committee may appoint an acting commissioner to exercise the powers and perform the duties of the commissioner until whichever of the following is the case and occurs first:
- (a) the suspension ends;
 - (b) the commissioner returns to office after the temporary absence;
 - (c) a person is appointed under section 47.01.
- (4) If the commissioner is suspended or temporarily absent because of illness or another reason, or if the office of commissioner is vacant, and the Legislative Assembly is not sitting and will not be sitting within 5 days and the standing committee has not been established, the Lieutenant Governor in Council may make the appointment referred to in subsection (3) of this section.

Salary, expenses and benefits of commissioner

- 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.

Oath of commissioner

- 47.05 Before taking office, a commissioner appointed under section 47.01 or 47.03 must make an oath or solemn affirmation before the Clerk of the Legislative Assembly to faithfully and impartially exercise the powers and perform the duties of the office.

Staff of commissioner

- 47.06 (1) The commissioner may appoint, in accordance with the *Public Service Act*, employees necessary to enable the commissioner to exercise the powers and perform the duties of the office.
- (2) The commissioner may engage or retain consultants or specialists the commissioner considers necessary to exercise the powers and perform the duties of the office and may determine their remuneration and other terms and conditions of their engagement or retainers.
- (3) The *Public Service Act* does not apply in respect of a person engaged or retained under subsection (2) of this section.

Delegation by commissioner

- 47.07 (1) The commissioner may, in writing, delegate to any person employed, engaged or retained by the commissioner any power or duty of the commissioner under this Code, except the power
- (a) to delegate under this section, and
 - (b) to make an annual report under section 47.23.
- (2) A delegation may be made subject to any terms the person delegating considers appropriate.
- (3) A delegation made under this section may be revoked, and does not prevent the person who delegated the power or duty from exercising that power or performing that duty.
- (4) If the person who delegated the power or duty ceases to hold office, the delegation continues in effect so long as the delegate continues in office or until the delegation is revoked by the person who succeeds the person who delegated the power or duty.
- (5) A person purporting to exercise a power or perform a duty through a delegation must, when requested to do so, produce evidence of the delegation.

Advisory council

- 47.08 (1) The human rights advisory council is established.
- (2) On recommendation by the commissioner, the Lieutenant Governor in Council may appoint members of the human rights advisory council and may set the terms and conditions of office of the members appointed.
- (3) The role of the human rights advisory council is to advise the commissioner on issues respecting human rights and to perform any other function specified by the commissioner.

Restrictions on disclosure by commissioner and staff

- 47.09 Except in the proper exercise of powers or performance of duties under this Code, the commissioner, and anyone acting for or under the direction of the commissioner, must not disclose any information received in the course of exercising those powers or performing those duties.

Non-compellability of commissioner and staff

- 47.10 (1) Subject to subsection (2), the commissioner, and anyone acting for or under the direction of the commissioner, must not be compelled to give evidence in court or in any other proceedings respecting any information received in the course of exercising powers or performing duties under this Code.
- (2) The commissioner, and anyone acting for or under the direction of the commissioner, may be compelled to give evidence in a prosecution of an offence under this Code.

Personal liability protection of commissioner and staff

- 47.11 (1) Subject to subsection (2), no legal proceeding for damages lies or may be commenced or maintained against the commissioner, or against a person acting for or under the direction of the commissioner, because of anything done or omitted

- (a) in the exercise or intended exercise of any power under this Code, or
 - (b) in the performance or intended performance of any duty under this Code.
- (2) Subsection (1) does not apply to a person referred to in that subsection in relation to anything done or omitted by that person in bad faith.

Powers of commissioner

- 47.12 (1) The commissioner is responsible for promoting and protecting human rights, including by doing any of the following:
- (a) identifying, and promoting the elimination of, discriminatory practices, policies and programs;
 - (b) developing resources, policies and guidelines to prevent and eliminate discriminatory practices, policies and programs;
 - (c) publishing reports, making recommendations or using other means the commissioner considers appropriate to prevent or eliminate discriminatory practices, policies and programs;
 - (d) developing and delivering public information and education about human rights;
 - (e) undertaking, directing and supporting research respecting human rights;
 - (f) examining the human rights implications of any policy, program or legislation, and making recommendations respecting any policy, program or legislation that the commissioner considers may be inconsistent with this Code;
 - (g) consulting and cooperating with individuals and organizations in order to promote and protect human rights;
 - (h) establishing working groups for special assignments respecting human rights;
 - (i) promoting compliance with international human rights obligations;
 - (j) intervening in complaints under section 22.1 and in any proceeding in any court.
- (2) The commissioner may not file a complaint with the tribunal under section 21 but may assist a person or group of persons with any aspect of a complaint.

Not in force

47.13-[Not in force.]

47.22

Annual report of commissioner

- 47.23 (1) The commissioner must submit to the Speaker of the Legislative Assembly an annual report on the activities of the commissioner's office.
- (2) The Speaker must lay the report before the Legislative Assembly as soon as practicable.

Special reports of commissioner

- 47.24 (1) The commissioner may, at any time, make a special report to the Speaker of the Legislative Assembly respecting any of the following:
- (a) the exercise of the commissioner's powers or performance of the commissioner's duties;
 - (b) research that has been undertaken, directed or supported by the commissioner;
 - (c) human rights in British Columbia.
- (2) The Speaker must lay a report made under subsection (1) before the Legislative Assembly as soon as practicable.

