Indigenous Women in a Colonial Legal Framework: An Intersectional Analysis of the British Columbia Human Rights Tribunal

Maeve McAllister
University of British Columbia

Abstract

The British Columbia Human Rights Tribunal is a space to heal and assign reparations for discriminatory action. But before the reparations can occur, the harm must be verified. To do this, the onus is on the potential victim of discrimination, the complainant, to prove a correlation between their 'characteristics' and the occurrence of discrimination. The format of the British Columbia Human Rights Tribunal (BC HRT), which operates on specific lines of discrimination and tackles instances of discrimination based on parcelled out categories, does not have a framework that allows for an intersectional analysis. As a result of this framework, the BC HRT cannot look at the whole picture and must instead fit narratives into the framework of colonial law, in which the whole experience is parcelled and judged. Looking at 21 cases brought to the BC HRT by Indigenous women complainants since 2015, I examine how intersecting lines of oppression are managed and approached by the BC HRT. I find that the format of the BC HRT is not conceptualizing discrimination as experienced by people with complex intersectional identities. Instead the HRT is forcing the complainants to parcel their experience into clear lines which serves to destabilize and make illegitimate the argument brought by the complainant.

Introduction

In this essay I will evaluate the way that the BC HRT approaches intersectionality through 21 hearings which occurred over the period of 2015-2020. I will situate this analysis in the broader societal context of colonial court systems as an oppressive system for Indigenous women. I am employing Indigenous Feminist Theory as it intersects with Feminist Legal Theory and Indigenous Legal Theory (Snyder 2014) to analyze the BC HRT and the 21 cases. This theorizing questions the neutrality of colonial law as law, and Indigenous theorizing as gender neutral. This is not applied as a critique of gender roles or equality within Indigenous theorizing or Indigenous legal systems, but a critique based on the unique positionally of Indigenous women in the colonial legal system on which the BC HRT is predicated. This analysis is on womanhood and the gender identity of individuals using she/her pronouns because there were no cases brought by two-spirit, non-binary, or other gender identities (not including men) in the Indigenous cases brought to the BC HRT since 2015. For this reason I limit my analysis to the form of discrimination experienced by Indigenous complainants identifying as women. Using theory which posits Indigeneity as a lens through which discrimination and oppression are examined runs the risk of employing a pan-Indigenous perspective which does not account for variations within Indigenous world

views and Indigenous law (Snyder 2014, 401). I recognize the multiplicity and unboundedness in the term Indigenous.

The British Columbia Human Rights Tribunal is a space to heal and assign reparations for discriminatory action. Discriminatory action occurs when rights protected under the BC Human Rights Code are violated. The BC HRT is a legal entity providing protection for people discriminated against based on certain characteristics, in certain areas. These characteristics are race, colour, ancestry, place of origin, religion, marital status, family status, physical and/or mental disability, sex, sexual orientation or age, and in some cases political belief, criminal conviction, and/or lawful source of income. Before reparations for a violation of the code can occur, the harm must be verified. The onus is on the potential victim of discrimination, the complainant, to prove a correlation between their identity markers and the occurrence of discrimination. When filing a complaint, you fill out a form and tick a box containing the protected characteristic(s) you identify with. Cases can be brought on the basis of any number of characteristics identified by the code (BC HRT 2020, Form 1.1). This filing then has a hearing in which a tribunal member reviews the evidence and determines whether the case will be heard by the tribunal; options to mediate outside of a hearing is offered. This first gatekeeping stage is the farthest many complaints get. At this stage, issues around timelines, jurisdiction, and inability to prove the discrimination which are not speculation or conjecture may dismiss the case.

The concept of intersectionality, as presented by Kimberlé Crenshaw, has at its heart the need to "account for multiple grounds of identity when considering how the social world is constructed" (Crenshaw 1991). The theory is that a unique expression of discrimination occurs at the nexus of multiple forms, and that structures which protect and serve one form of discrimination as well as the other may not adequately approach the needs of those sitting at the intersection of these forms of oppression. Crenshaw's (1997) analysis of three legal cases involving black women plaintiffs argues that these cases were subject to a "single-axis analysis" (1997, 23) which looked at the experiences of black men and white women, and so did not find discrimination on either race or gender in the cases involving black women. Here, Crenshaw argues that the experience of black women cannot be understood by isolating race and gender, but that the compounding factors create an experience that must be examined in its own context. The unique form of oppression which occurs is informed by, but not composite of, race and gender. Race and gender theorizing can both aid in understanding the intersectional experience but do not encompass it This argument goes on to further intersectional theorizing of many forms (Walby et al. 2012). Intersectional analyses' are reckoning with inherently un-categorical, fluid and situationally dependent forces. Sylvia Walby, Jo Armstrong, & Sofia Strid outline how "inequalities mutually shape each other rather than mutually constitute each other at their point of intersection" (2012, 237). This is incomparable with the form of analysis employed by the BC HRT as discrimination on multiple grounds cannot be properly understood when isolated.

As this applies to the BC HRT, the formatting of discrimination complaints on separate and defined characteristics does not allow for an intersectional analysis. For the BC HRT discrimination on the basis of certain characteristics is approached through isolated and separate categories which may have both occurred for the same individual in the same space, but are not co-created and interdependent characteristics resulting in a whole identity. It is

through this nuance that an intersectional analysis of discrimination is missed. The Ontario Human Rights Commission (2001) explores the lack of intersectional or multiple ground analysis occurring in Human Rights Tribunals and the boundaries through precedent and format which perpetuates a lack of intersectionality. It is important to note that "while some tribunal decisions acknowledge that discrimination may be experienced at multiple levels, this appears not to be reflected in awards or remedies" (2001, 23). This means that even if the tribunal recognizes that Indigenous women experience a unique form of discrimination in Canada, that recognition might not empower any realized action. In order for the reparations to occur, they must reflect the harm caused by the unique discrimination occurring at multiple axes, rather than the volume of discrimination occurring at a singular axis.

Situating the BC HRT in its historical context is paramount to this analysis. Cases brought to the BC HRT by Indigenous women are embroiled in the effects of ongoing colonialization. Violence against Indigenous women has gone unacknowledged in courtrooms for far too long (Razack 2016) and this unequal relationship in the BC HRT is apparent in Indigenous women having to prove their discrimination in a system which predominantly disvalues their bodies and experiences. Razack argues that Indigenous women are "pushed, prodded, and violently evicted from settler space" (2016, 300). For Indigenous women to occupy this settler space as complainants carries with it the history of attempted erasure and removal of Indigenous peoples under colonialism. The report done by Carol Muree Martin (Nisga'a – Gitanyow) and Harsha Walia titled "Red Women Rising: Indigenous Women Survivors in Vancouver's Downtown Eastside" (2019) contains a wealth of stories, statistics, and research showing how Indigenous women are isolated and oppressed by colonial government systems, including justice systems in British Columbia. While the BC HRT is a system and space predicated on protecting Human Rights and furthering equality for all people, its inherent value system as a representative of colonial law can be read as a violent and dangerous space for Indigenous women considering the excess of oppression in the legal system. An aspect of bringing intersectional analysis into the BC HRT must be self-reflexive, looking at the way the system itself is a form of oppression and how that informs the way Indigenous women operate in that space.

Methods

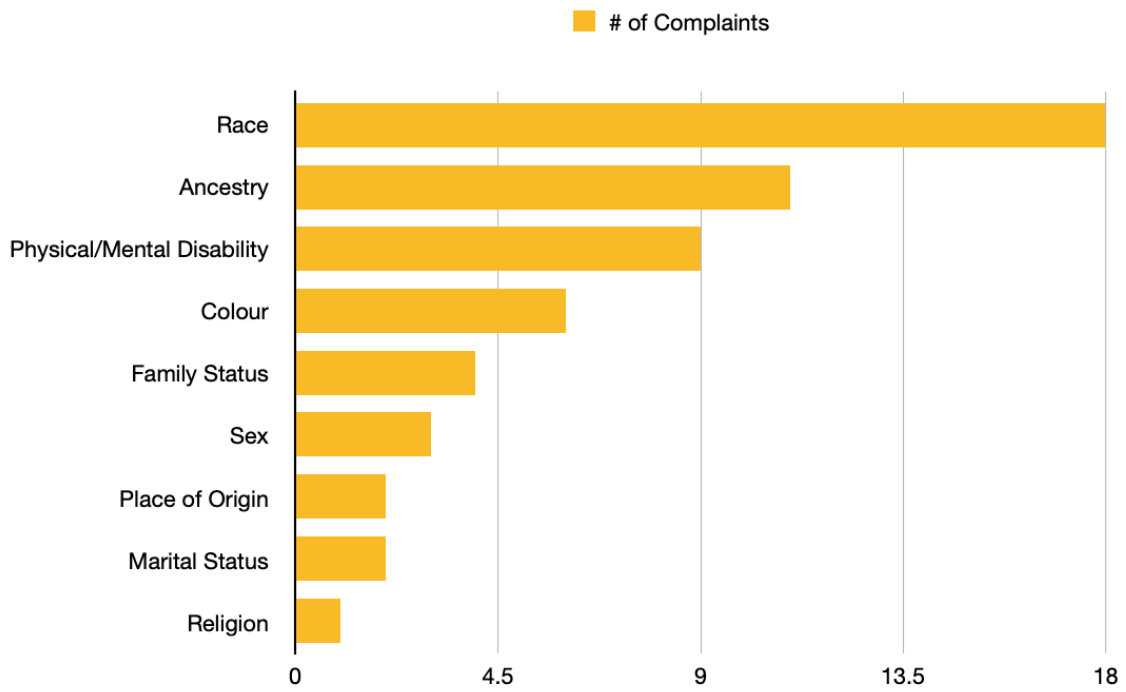
My sample for analysis are cases recorded by CanLII (Law Society of B.C.) since January 2015. Using search words including "Indigenous", "Métis", "Aboriginal", and "race", I collected all the cases from the past five years involving Indigenous complainants and respondents, and compiled all those filed by women. The vast majority of cases involving Indigenous complainants were brought by women. Through filtering out cases brought by male complainants or brought by non-Indigenous complainants, I isolated 21 cases to review, and identified the grounds on which their discrimination complaints were filed.

Table 1: Complainant Characteristics

Case:	Race	Colour	Ancestı	Religioı	Place o	Marital	Family	Physicɜ	Sex	Sexual	gender	age
BB v. B.C. (Min. of Childre	☑											
Thunderchild v. Frans' Flo	☑											
Skarbo v. Gateway Casinc	☑											
A v. Y and X Association,	☑											
Case v. Save on Foods, 2	☑	☑										
BB v. Pub and others, 201	☑	☑										
Grant v. Absolute Spa anc	☑		☑									
Ms. Y v. Clinic and anothe	☑		☑									
Campbell v. Vancouver Pc	☑	☑	☑									
Smith v. Mohan (No. 2), 2(	☑		☑	☑	☑							
Sugarman v. Douglas, 201	☑		☑			☑	☑					
Simpkin v. Stl'atl'imx Triba	☑		☑					☑				
Chubb-Kennedy v. Edgew	☑		☑					☑				
Talbot v. Strata Plan LMS			☑					☑				
Chalifour v. HepCBC Hepɜ	☑							☑				
A v. The Law Society of B	☑						☑	☑				
R.R. v. Vancouver Aborigi	☑	☑	☑				☑	☑	☑			
McCue v. UBC (No. 3), 20	☑	☑	☑		☑	☑	☑		☑			
Kostyra v. Victoria Police I	☑	☑	☑					☑	☑			
Cahoose v. Ulkatcho India								☑				
Dunkley v. UBC and anotl								☑				

The cases filed on the basis of race, colour, ancestry, religion, and place of origin far outweigh any other form of complaint. These 21 cases are all related to discrimination on the basis of Indigenous identity or the expression of the individual's Indigenous identity. The frequency of complaints filed in each category is shown below. When considering Indigenous identity as a form of oppression which encapsulates discrimination on the basis of race, ancestry, colour, place of origin, and religion we see that half of the cases examined are brought on the basis of race basis alone, and only two are completely devoid of some form of discrimination on the basic of Indigeneity. In the case of *Cahoose v. Ulkatcho Indian Band and another,* 2016 BCHRT 114 the respondent was an Indigenous Band and the complaint was dismissed due to lack of jurisdiction. In *Dunkley v. UBC and another,* 2015 BCHRT 100, the complainant identified as Métis and referenced this several times, however, it was only mentioned in passing and was not an aspect of any substantial analysis or a factor in any decision. For example the opening statement begins with "Dr. Jessica Dunkley is Deaf. She is of Aboriginal descent as a Métis. Dr. Dunkley has been Deaf since birth and is the daughter of Deaf parents" (*Dunkley* 2015, para.1), but then the next time anything related to her Indigeneity is mentioned is paragraph 66, when she mentions her experiences as a Métis child in childcare and how this inspired her to become a doctor. Her Indigenous status is mentioned in passing a few more times, but is not articulated as a factor in the decision, or explored further.

Graph 1: Number of Complaints



Mapping the forms these complaints took is shown in the table below, “yes” or “no” indicates the success of the complaint. The use of “yes” and “no” are a visual tool and an overview. The nuances and grounds on which a complaint was dismissed or accepted, and the stage of the proceeding may vary. For example “yes” could mean that the case will get a hearing, or that the case has been heard and won.

Table 2: Success of Complaint

Case:	Race	Colour	Ancest	religion	Place o	Marital	Family	Physica	Sex	Sexual	gender	age	Result:	Level:
BB v. B.C. (Min. of Childre	no												No	Initial Hearing
Thunderchild v. Frans' Flo	Yes												Yes	Initial Hearing
Skarbo v. Gateway Casino	yes												Yes	Initial Hearing
A v. Y and X Association,	yes												Yes	Initial Hearing
Case v. Save on Foods, 2	no	no											No	Initial Hearing
BB v. Pub and others, 201	yes	yes											Yes	Initial Hearing
Grant v. Absolute Spa and	no		no										No	Initial Hearing
Ms. Y v. Clinic and anothe	no		no										No/Yes*	Initial Hearing
Campbell v. Vancouver Pc	yes	yes	yes										Yes	Final Hearing
Smith v. Mohan (No. 2), 2	yes		yes	yes	yes								Yes	Final Hearing
Sugarman v. Douglas, 20	no		no			no	no						No	Initial Hearing
Simpkin v. Stl'atl'imx Triba	yes		yes					yes					Yes	Initial Hearing
Chubb-Kennedy v. Edgew	no		no					no*					No	Final Hearing
Talbot v. Strata Plan LMS			yes					yes/yes					Yes	Initial Hearing
Chalifour v. HepCBC Hep	yes							yes					Yes	Initial Hearing
A v. The Law Society of B	no						no	no					No	Initial Hearing
R.R. v. Vancouver Aborigi	yes	yes	yes				no	yes	no				Yes	Waiting Final He
McCue v. UBC (No. 3), 20	yes	no	no		no	no	no		no				No	Final Hearing
Kostyra v. Victoria Police I	no	no	no					no	no				No	Initial Hearing
Cahoose v. Ulkatcho India								no					No*	Initial Hearing
Dunkley v. UBC and anoth								yes					yes	Final Hearing

The vast majority of cases brought by the human rights tribunal do not end up in a final hearing. In the cases where a hearing was granted, this could be because they were resolved through mediation, or because they were not pursued further. Of the cases which were approved for further hearing but have not been updated, only three are within a timeframe where they could be awaiting a final hearing, the rest can be presumed to have been dealt with outside of the tribunal or through mediation with the tribunal, or not pursued further. In the report "Expanding Our Vision: Cultural Equality & Indigenous Peoples' Human Rights" done by Ardith Walpetko We'dalx Walkem (2020), the general consensus of those interviewed is that the BC HRT is a "waste of time" (2020, 32) and this is due to systemic racism within the BC HRT, burden of proof, and bureaucratic technicalities (2020, 32). If the resource is accessed to begin with, the process itself is not conducive to resolution for Indigenous complainants.

Analysis

Mental/Physical Disability is the third most commonly selected characteristic on which discrimination complaints were filed from this sample pool. Nine of the complainants selected mental/physical disability, of these, two filed on the basis of only mental/physical disability. In three of the cases, mental disability alone is specified, in two, physical disabilities are specified, and the remainder reference both. Three of these cases reference disability in relation to intergenerational trauma connected to residential schools, alcoholism, or some form colonial violence. Four of the claims did not specify the nature of the disability beyond physical or mental. However, in the transcripts of the remaining twelve cases in this analysis, eight of them contained some reference to the complainants trauma, mental, physical, or overall health, with a specific prevalence of references to Post-Traumatic Stress Disorder and Anxiety Disorders. Making mental and/or physical health present in the complainants narrative in 17 of the 21 cases analysed.

Parameters of mental and physical health are socially constructed. I reject the binary between the two as a reductionist classification which does not do justice to nuances and relationships within the body. Carol Muree Martin (Nisga'a – Gitanyow) and Harsha Walia argue that "Indigenous women's health is inseparable from the social and economic context within which Indigenous women are born, develop, live, and age" (2019, 145). The colonial impacts on Indigenous women's health shapes the way Indigenous women are perceived and are able to operate in the health care system. The Western medical system has a demonstrated history of oppression against Indigenous people, involving devaluing their needs. This system may not be a safe space for the complainants to be adequately assessed, or may be forced to schematize trauma and the expression of that trauma into the notion of disability. (Nelson & Wilson 2017). A report done by Sarah Nelson and Kathi Wilson (2017) points to a lack of research done on mental health in Indigenous populations not related to substance use and/or suicide and in populations living off- reserve. With gaps in the literature relating to urban Indigenous women, and with an overemphasis on certain forms of mental health issues, the form of mental disability as a discriminatory category in the BC HRT may lack a cohesive understanding of the intersection of Indigeneity and mental health, and may not adequately approach this form of discrimination. The "cumulative emotional and psychological wounding over the lifespan and across generations, emanating from massive group trauma

experiences" (Czyzewski 2011, 7) radiates into social structures which perpetuate this trauma. The impacts colonialism has had on Indigenous communities and individuals is integral to conversations and considerations around mental health brought by Indigenous people (Czyzewski 2011). In the BC HRT, when mental health is a direct basis for a discrimination claim, or is brought into the hearing implicitly or explicitly it cannot be considered isolated from this social context and other forms of discrimination which perpetuate, inform, and co-create these mental health issues.

Some cases are strong enough on one ground that they may not warrant the admission of another ground, for example in the case of *Dunkley v. UBC and another,* 2015 BCHRT 100. Dunkley's discrimination on the basis of disability through being visually impaired and not being given adequate support was enough for her to win the dispute and receive reparations, financial and otherwise. Her discrimination on the singular ground was so strong it would not necessitate an intersectional analysis. However, this approach still ignores the complexity of identity and the way people interact holistically (Ontario Human Rights Commission 2001). In this case the discrimination on the grounds of disability was apparent, but would she have been provided better aid or been treated with more efficiency and better accommodated throughout the entire process had her race and/or gender been different? There may not be enough evidence, or any evidence, to prove that her being an Indigenous woman navigating this situation with a disability all resulted in uniquely discriminatory treatment. But this points more to the infrastructure of the BC HRT than the question of whether discrimination on the basis of sex or race even occurred. A framework which necessitated the categorization of discrimination and proof of discrimination on each of these categories creates a certain threshold through which each category of discrimination needs to pass to be legitimized. If the category cannot pass that threshold, it does not make sense in this system to include it. Without removing the singularity of the characteristics on which discrimination occurs an intersectional analysis will not be possible.

This analysis rests not only on the grounds brought to the BC HRT, but on the grounds which may exist as implicit undercurrents in the way the complainant has been conditioned to interact with the world, and vice versa. For example in one case (*Smith v. Mohan* (No. 2), 2020 BCHRT 52) a single mother was renting an apartment and was evicted due to her smudging practice. She brought the complaint due to discrimination on the basis of race, ancestry, place of origin, and religion — all characteristics specific to her Indigeneity, and the expression of that, through her practice. There is no analysis of the power dynamic that may have contributed to their interactions, between a single mother renter, Smith, and Mohan, her male landlord. Since it is not brought to the BC HRT as grounds for discrimination, and since the discrimination inherent to that relationship may be too subtle to name, it has no place in these proceedings.

The BC HRT has power dynamics embedded into it because it is a venue of the Canadian settler-colonial legal system, which historically and presently imposes oppressive colonial law on Indigenous peoples. However, the BC HRT and colonial law at large, posits itself as a neutral space for conflict resolution. This evasion of positionality decontextualizes the way decisions are being made in the BC HRT, and the form colour blind racism (Carbado 2013) may take in these decisions. Dean Space in "Intersectional Resistance and Law Reform" (2013) argues that "The ability to avail oneself of supposedly universal rights in fact

often requires whiteness, wealth, citizenship, the status of being a settler rather than indigenous, and/or conformity to body, health, gender, sexuality, and family norms" (Spade 2013, 1039). These characteristics are essentially the opposite of those protected by the Human Rights Code. The power dynamic coupled with presumed neutrality allows for a space where tribunal members are not required to explore their implicit biases and are not directly analyzing the positions from which decision making occurs.

In the case of *RR v. Vancouver Aboriginal Child and Family Services Society* (No. 3), 2019 BCHRT 269 the complainant was a mother of four who claimed years of discrimination by the Society through their behaviour towards her, their decisions regarding the removal of her children, and their requirements for her actions with the children and conditions for their return. Her claim is on the basis of race, ancestry, colour, and mental disability. Her claim originally involved sex and marital status, but these characteristics were dropped. In the analysis, tribune member Devyn Cousineau showed an awareness of the overrepresentation of Indigenous children and families in the foster care system. In addition, she was sensitive to the way mental health issues and addiction are informed by, or a result of, violent colonialism. However, in the initial hearing Cousineau said her decision was not directly informed by the wider societal context through which Indigenous women are oppressed by foster care and child welfare systems because it was not raised by either party. In this case as well, several instances of discrimination were not admissible as evidence due to their not being raised in time (RR v. Vancouver Aboriginal Child and Family Services Society and another, 2018 BCHRT 32 [Timeliness Decision]).

This example, and others like it, show how the formatting and framework of a human rights tribunal which is not discursive, narrative, and predicated on examining the whole picture and wider societal context cannot adequately address situations of discrimination, especially those involving a myriad of intersecting forms of oppression. R.R. is existing in the world as an Indigenous woman with mental health issues, and as a parent with addiction. Her experience with a system and individuals in this system which has a legacy of discrimination against Indigenous women cannot be isolated and parcelled into singular events of discrimination. For her to prove discrimination by categorizing her experiences as they interact with individual avenues of discrimination, and to translate that experience into evidence for hearing, is to lose the complex relational whole of the discriminatory experience (Weiss 2007).

While Cousineau is clearly sensitive to the complexities of R.R. as a complainant and the societal context on which these complaints are brought, the format of the BC HRT limits her ability to properly examine the whole of the situation. Instead she must whittle down evidence and occurrences which are not admissible and portion out events into forms of discrimination. The report done by Carol Muree Martin (Nisga'a – Gitanyow) and Harsha Walia states that "It is undeniable that the child welfare system is the new residential school system, as children are being removed and their connections to their families, nations, lands, and cultures are being irreversibly destroyed" (2019, 112). This complaint must be examined within this context The respondent(s) are wielding the power of the settler-colonial state when they make decisions regarding an Indigenous woman's child. If these actions follow the patterning of settler-colonial mistreatment of Indigenous women and the destruction of Indigenous families, it must be analyzed in this context. R.R. claims she got no support in

raising her children, they were just separated time and time again, (2019, para.6) and when "Indigenous children are eight times more likely to be removed from their families than other children" (Martin & Walia 2019, 111) the patterning here is important. In the case of R.R., there is ongoing discrimination. Her situation as it stands before the BC HRT is still her lived reality, and as the BC HRT moves along with their validation of her claim, her kids get older and older. The BC HRT acts as a resource for Indigenous women, however, it transforms their intersectional experiences into a procedural and unilateral format (Weiss 2007) and then evaluates their legitimacy through a colonial legal lens.

Culpability

An aspect of the failings of the BC HRT to adequately assess situations through an intersectional lens rests on culpability. The discrimination claim is brought against a named respondent or respondents, the whole of the discrimination falls on them. The respondents are also a part of an inherently oppressive settler colonial system, and sometimes they are immediately recognizable as representatives of that system such as police officers or agents of a child protective service. An intersectional analysis requires us to situate people in their multiple forms of identity and analyze harm through the scope of its societal context. However, assigning blame to one respondent or respondents when analyzing the harm of colonialism and sex discrimination may result in misplaced culpability. In the case of *Kostyra v. Victoria Police Department,* 2015 BCHRT 124, the respondent filed her complaint on the basis of ancestry, race, colour, sex, physical disability, and mental disability. She filed this complaint against the Victoria Police Department after a few short interactions, with little evidence of direct discrimination. Kostyra identifies under multiple protected characteristics in the code. When questioned about her physical disability she states "I am a f.....g Indian" (*Kostyra v. Victoria Police Department* 2015, para.61) and then withdraws discrimination on these grounds. For her, the interactions she has had with the police all incorporate discrimination on her whole person as an Indigenous, disabled woman.

She traces minutiae from the police officer's activity that night to broader forms of police misconduct and racially charged discrimination. For example, she claims that they would not have approached the vehicle if she were a White woman (para.25), also, claiming that their decision to contact her by phone afterwards was due to their discomfort with her holding a position of power as an Indigenous woman security guard (para.65). Kostyra is experiencing discrimination from this event not as a direct response to the actions of the police officers, but as a wider response to the oppression by the settler-colonial government as represented by the police force. Her experiences of the events are predicated on a wider history of living with discrimination. In the BC HRT this worked against her, her conduct in the tribunal detracted from her arguments. The tribunal member analyzing writes that:

> Ms. Kostyra's conduct undermined her very apparent and evident strong feelings and beliefs about the injustice of the events, and the legitimacy of her own life experiences as a First Nations woman. This in turn made it difficult, especially in light of the dispassionate, fact-based testimony of the other witnesses, to give much weight to her evidence. (para.69).

This shows how Kostyra's compounding factors were not able to be translated in the format of the BC HRT without significant frustration for all those involved. As the complainant, Kostyra was entering this space significantly emotionally affected by the events. She had to formulate her existence and experiences with discrimination in a way that was palatable and enticing to the BC HRT. Her conduct was compared to the Victoria Police Department's behaviour which is situationally very different. The report done by Ardith Walpetko We'dalx Walkem (2020) recommends tribunal members be trained on how "trauma may impact Indigenous Peoples' actions or interactions within the BCHRT system" (Walkem 2020, 34). Tribunal members who are not sensitive to the oppressive form of the BC HRT itself and the emotional reactivity complainants may have in that space find cases less credible as shown here in *Kostyra*.

The entirety of Kostyra's oppression can not be appropriately handled by the BC HRT as the tribunal is assigning culpability to the agents of the VPD who had the interaction with her. In large part, her experience with discrimination is a representation of the oppression she endures as an Indigenous disabled women. The blame in this case is more so on the system which has affected Kostyra in this way. Taking the full breadth of her identity and feelings of discrimination and assigning the blame for this on the two police officers she had a brief interaction with may not be fair to them as individuals, or an accurate representation of those specific events. It also is not fair to completely invalidate Kostyra's experience and dismiss her complaint due to insufficient evidence and inappropriate conduct. The police officers are the figureheads, the tangible representations of a whole range of relationships, a whole system of fear and oppression. The BC HRT is not operating as an adequate form of reparation for colonial violence, violence against women, violent policing, violence against people with disabilities structurally in our able-bodied centric society. While these factors all exist in the complainants experience of discrimination, the respondents are not directly to blame for this. Creating an imbalance in the harm and the culpability for the harm.

Conclusion

Can the BC HRT reconcile its rule-oriented and unilateral framework predicated on colonial legal worldview with the inherent intersectional and complex experiences of discrimination brought to it by Indigenous women? In the report "Expanding Our Vision: Cultural Equality & Indigenous Peoples' Human Rights" (Walkem 2020), options for restructuring, advice for tribunal members, and recommendations for structural changes are offered to reconcile the BC HRT with the aims of intersectionality and to make it an accessible, beneficial tool for Indigenous peoples. However, in discussing the police and justice system as a violent space for Indigenous women, especially considering the crisis of missing and murdered Indigenous women, Carol Muree Martin (Nisga'a – Gitanyow) and Harsha Walia argue that "It is unclear whether this relationship can actually be reformed, or whether a more immediate and appropriate solution is Indigenous jurisdiction over Indigenous legal processes in order to end the criminalization and incarceration of Indigenous women and girls" (Martin & Walia 2019, 136). The format of the BC HRT is inherently non-intersectional as it approaches discrimination from isolated characteristics as separate issues to be reckoned with and it assigns culpability to individual respondents rather than situating the blame in its systemic complexity. Adequately approaching an intersectional

analysis in the BC HRT would require a restructuring of the space and framework on which cases are heard.

The BC HRT deals with human rights complaints, however it fails to deal with the whole human. An intersectional analysis of harms done requires examining situations in their wider societal context. In the case of Indigenous women's claims in the BC HRT, the societal context involves colonialism, and a multitude of factors of colonial oppression along with the embodied experience of this must be considered. The BC HRT does not have an infrastructure suited to an intersectional analysis, due to its isolation of individual characteristics upon which discrimination occurs, and due to the misplacing of blame as wholly on the respondent, when, in fact, responsibility is in large part systemic and societal.

Cases Cited

A v. The Law Society of British Columbia, 2018 BCHRT 256 (CanLII),

A v. Y and X Association, 2016 BCHRT 4 (CanLII),

BB v. B.C. (Min. of Children and Family Development) and others, 2015 BCHRT 188 (CanLII),

B.B. v. Pub and others, 2016 BCHRT 20 (CanLII),

Cahoose v. Ulkatcho Indian Band and another, 2016 BCHRT 114 (CanLII),

Campbell v. Vancouver Police Board (No. 4), 2019 BCHRT 275 (CanLII),

Case v. Save on Foods, 2017 BCHRT 131 (CanLII),

Chalifour v. HepCBC Hepatitis C Education and Prevention Society and another, 2019 BCHRT 216 (CanLII),

Chubb-Kennedy v. Edgewater Casino and another, 2013 BCHRT 213 (CanLII),

Dunkley v. UBC and another, 2015 BCHRT 100 (CanLII),

Grant v. Absolute Spa and others (No. 2), 2020 BCHRT 113 (CanLII),

Kostyra v. Victoria Police Department, 2015 BCHRT 124 (CanLII),

McCue v. The University of British Columbia (No. 4), 2018 BCHRT 45 (CanLII),

Ms. Y v. Clinic and another, 2018 BCHRT 261 (CanLII),

RR v. Vancouver Aboriginal Child and Family Services Society and another, 2018 BCHRT 32, [Timeliness Decision],

R.*R. v. Vancouver Aboriginal Child and Family Services Society* (No. 2), 2019 BCHRT 85

(CanLII),

RR v. Vancouver Aboriginal Child and Family Services Society (No. 3), 2019 BCHRT 26 (CanLII),

Simpkin v. Stl'atl'imx Tribal Police Board (No. 3), 2016 BCHRT 56 (CanLII),

Skarbo v. Gateway Casinos and Entertainment and others, 2019 BCHRT 267 (CanLII),

Smith v. Mohan (No. 2), 2020 BCHRT 52 (CanLII),

Sugarman v. Douglas, 2018 BCHRT 69 (CanLII),

Talbot v. Strata Plan LMS 1351 and another, 2017 BCHRT 69 (CanLII),

Thunderchild v. Frans' Flowers and another, 2019 BCHRT 36 (CanLII)

Bibliography

BC Human Rights Tribunal. n.d. accessed December 2, 2020. http://www.bchrt.bc.ca/

Carbado, Devon W.. 2013. "Colorblind intersectionality." *Signs: Journal of Women in Culture and Society* 38, 4: 811-845. doi:10.1086/669666

Crenshaw Kimberle. 1989. "Demarginalizing the intersection of race and sex: a black feminist critique of antidiscrimination doctrine, feminist theory, and antiracist politics." *University of Chicago Legal Forum*, 14: 538-54.

Crenshaw, Kimberle. 1991. "Mapping the margins: Intersectionality, identity politics, and violence against women of color." *Stanford Law Review* 43, 6: 1241-1299. doi:10.2307/1229039

Czyzewski, Karina. 2011. "Colonialism as a Broader Social Determinant of Health." T*he International Indigenous Policy Journal*, 2, 1. https://doi.org/10.18584/iipj.2011.2.1.5

Martin, Carole Muree (Nisga'a – Gitanyow) and Harsha Walia. 2019. "Red Women Rising: Indigenous Women Survivors in Vancouver's Downtown Eastside." Downtown Eastside Women's Centre. https://dewc.ca/wp-content/uploads/2019/03/MMIW-Report-Final-March-10-WEB.pdf

Nelson, Sarah E. and Kathi Wilson. 2017. "The mental health of indigenous peoples in canada: A critical review of research." *Social Science & Medicine (1982)* 176: 93-112. doi:10.1016/j.socscimed.2017.01.021

Ontario Human Rights Commission. Policy & Education Branch. 2001. "An intersectional approach to discrimination, addressing multiple grounds in human rights claims : Discussion paper." Toronto: the Branch. https://www3.ohrc.on.ca/sites/default/files/attachments/An_intersectional_approach_to_discrimination%3A_Addressing_multiple_grounds_in_human_rights_claims.pdf

Razack, Sherene H.. 2016. "Gendering disposability." *Canadian Journal of Women and the Law* 28, 2: 285-307. doi:10.3138/cjwl.28.2.285 20

Snyder, Emily. 2014. “Indigenous feminist legal theory.” *Canadian Journal of Women and the Law* 26, 2: 365-401. doi:10.3138/cjwl.26.2.07

Spade, Dean. 2013. “Intersectional Resistance and Law Reform.” *Signs* 38, 4: 1031-1055. doi:10.1086/669574

Walby, Sylvia, Jo Armstrong, and Sofia Strid. 2012. Intersectionality: Multiple inequalities in social theory. *Sociology (Oxford)* 46, 2: 224-240. doi.org/10.1177/0038038511416164

Walpetko We’dalx Walkem, Ardith. 2020. “Expanding Our Vision: Cultural Equality & Indigenous Peoples Human Rights.” http://www.bchrt.bc.ca/shareddocs/indigenous/expanding-our-vision.pdf

Weiss, J. 2007. Eliding Experience to Fit the Rules: The Transformation of Experience Inherent in the B.C. Human Rights Tribunal Process. “Humans: Anthropological Perspectives on Holism” 2007 UBC Anthropology Graduate Student Conference Proceedings. [Editor’s note: This source is not publicly available and will be updated with an accessible link]

Edited by: Laura Derby