NEW BRUNSWICK HUMAN RIGHTS COMMISSION

COMMISSION DES DROITS DE LA PERSONNE DU NOUVEAU-BRUNSWICK

The Changing Framework of Human Rights in New Brunswick

Looking Toward the Next 50 Years

November 2017

This paper was written to commemorate the 50th Anniversary of the New Brunswick Human Rights Commission.

Contents

Introduction

Modern human rights doctrines have advanced considerably since their articulation in the postwar decades of the Twentieth Century. Now, in the first quarter of the Twenty-First Century, our changing socio-political, economic, and cultural realities impel us to rethink the administration and implementation of human rights mechanisms. To project and prepare for the human rights landscape of the future, it may be instructive to cast a backward glance at the processes and developments that shaped human rights in the preceding decades. Then, taking our cue from past struggles, we can devise new, innovative human rights paradigms to meet the challenges of our changing contemporary society.

This document presents a brief summary of the genesis of modern human rights ideas in the international sphere, and traces their emergence in European, Canadian, and New Brunswick contexts. This historical synopsis offers a broad sketch of the contemporary human rights environment, and it positions the reader to imagine new pathways toward the next human rights phase of the future.

The first section of this paper begins with a brief overview of the origins of the rights revolution during the postwar years, spotlighting salient UN initiatives and preliminary human rights models in national jurisdictions. It maps the three stages of human rights legislation in Canada and concludes with an examination of *The Paris Principles*, the iconic UN document which articulates the conceptual frameworks that inform this study.

The second section offers an empirical case study of the New Brunswick Human Rights Commission, presenting an overarching account of its composition, mandate, and governance structure. The concluding parts of this section foreground the ideas presented in the final segment of this document, setting up frameworks for rethinking paradigms of governance for the Commission.

The last section opens with a digression on the historical origins of citizen-based judicial and quasi-judicial forums. The section returns to the framing ideas of *The Paris Principles*, contemplates the rationale for more inclusive human rights commissions, and projects a roadmap for the New Brunswick Human Rights Commission that is more aligned with contemporary contexts and realities.

Section A

Twentieth-Century Developments

The idea of the inherent dignity of the human person originates in religious tradition, moral philosophy, and the thought of political reformers; however, human rights as we understand them today, especially in the West, began to acquire legal form in the postwar decades of the Twentieth Century.[1] With the formation of the United Nations in 1945, and the emergence of the modern nation state as a political player in international relations, the task of promoting and protecting human rights has progressively devolved on state actors.

The UN Commission on Human Rights (now the UN Human Rights Council) was established in 1946, and in the same year the UN Economic and Social Council invited member states to "consider the desirability of establishing information groups or local human rights committees within their respective countries."[2]

The *Universal Declaration of Human Rights* (1948) articulated a comprehensive list of rights, derived from an aspirational belief in fundamental privileges, protections, and freedoms for all global citizens. These rights were further expanded in the *International Covenant on Economic, Social, and Cultural Rights* and the *International Covenant on Civil and Political Rights* (both adopted by the UN General Assembly in 1966), which, together with the *Universal Declaration*, constitute the *International Bill of Rights*.

During the 1960s and 1970s, as more and more member nations ratified these instruments, the guiding principles articulated in these documents started getting enshrined in new human rights legislations within national jurisdictions.[3] These international developments form the backdrop for the emergence of national human rights institutions (NHRIs) or human rights commissions.

---

[1] Contemporary international human rights may be seen as a particularly European development, with philosophical origins in the Enlightenment tradition; in this context, two Eighteenth-Century documents, the US *Declaration of Independence* (1776) and the French *Declaration of the Rights of Man and of the Citizen* (1789), even though marred by glaring omissions, such as the exclusion of African-Americans from the liberatory vision of the *Declaration*, are early milestones in the articulation of human rights principles.

[2] ECOSOC Resolution 29, 13 July 1946.

[3] Birgit Lindsnaes & Lone Lindholt, "National Human Rights Institutions: Standard Setting and Achievements" (1998) 5.1 Human Rights in Development xi-33. (citation styles check)

1.0 Evolution of NHRIs: International Overview

Three models of human rights institutions, with variations in scope, power, and structure, emerged across different national jurisdictions in the Twentieth Century: 1. the classical ombudsman; 2. the (hybrid) human rights ombudsman; and 3. the human rights commission.[4]

The classical ombudsman addressed complaints about procedural irregularities in the public administration rather than human rights, yet it is regarded as the institutional predecessor of contemporary NHRIs.[5] The Swedish Ombudsman (established 1809), the pioneering ombudsman office in Europe, was mandated to oversee administrative fairness in government bureaucracy but its wide investigative powers did not include a human rights mandate.[6] Denmark created the first example of a modern hybrid human rights ombudsman, with powers as a watchdog of public institutions combined with a restricted human rights function.[7] In 1981, Spain created an ombudsman's office vested with a full human rights mandate.[8]

National human rights commissions began to be established from the 1950s onwards, notably in several Commonwealth countries. While these early commission models dealt with human rights issues, the range of rights they could protect was still narrow. In terms of mandate, human rights commissions can be divided into two models: commissions that exercise strong remedial powers to address individual complaints, and those that prioritize advisory, educational, and research roles.[9]

France (1947) established the first commission mandated to advise the state on human rights, while other nations set up commissions that combined investigative and advisory functions. By the 1970s, NHRIs had been established in most nation states, including those established in the "transition from dictatorship (Philippines) or to pre-empt international criticism (Togo)."[10]

---

[4] Thomas Pegram, "Diffusion Across Political Systems: The Global Spread of National Human Rights Institutions", (2010) 32 Human Rights Quarterly 729–760.
[5] Linda Reif, *The Ombudsman, Good Governance, and the International Human Rights System* (New York: Springer Publishing, 2004). Reif acknowledges the vital contribution of the classical ombudsman to good governance in national and international human rights systems.
[6] *Ibid.*
[7] Michael Gotze, "The Danish Ombudsman: A National Watchdog with Selected Preferences", (2010) 6.1 Utrecht Law Review.
[8] Pegram, *Supra* note 5.
[9] *Ibid.*
[10] Richard Carver, "A New Answer to an Old Question: National Human Rights Institutions and the Domestication of International Law", (2010) 10.1 Human Rights Law Review.

2.0 Human Rights Legislation in Canada

The Second World War and its political aftermath are regarded as turning points in the rights revolution in Canada.[11] A few early attempts to end discriminatory practices had been made in some provinces, but awareness about the horrors of the Holocaust and state-sponsored racism during the war years spurred nationwide attempts to protect human rights through legislative enactments.[12] Canadian human rights laws transitioned through three stages: 1. anti-discrimination legislations beginning in the 1930s; 2. fair employment and accommodation practices acts of the 1950s onwards; and 3. human rights laws, 1960s-70s.

2.1 Anti-Discrimination Laws

British Columbia's *Unemployment Relief Act* (1931) is regarded as the inaugural anti-discrimination legislation in Canada.[13] It was meant to assist people suffering from the effects of the Great Depression, and one of its sections prohibited discrimination in relief distribution on the basis of political affiliation, race, and religion.[14]

The early anti-discrimination statutes contemplated discrimination as a criminal offence, which had to be regulated by police and the courts. This made these laws ineffective, because they required strict standards of proof to establish discrimination beyond reasonable doubt. Consequently, both victims and police were reluctant to initiate proceedings, and if a case did come to trial an accused could be let off with a reprimand and a nominal fine. The laws did not provide compensation or other substantial remedies for victims of discrimination.[15]

---

[11] Robert Brian Howe and David Johnson, *Restraining Equality: Human Rights Commissions in Canada* (University of Toronto Press, 2000).

[12] *Ibid.* Howe and Johnson sum up the Canadian rights environment in the prewar decades: "Examples of state-sponsored and legislative discrimination were many: the denial of voting rights to women, Asian Canadians, and native peoples; the highly restrictive federal Indian Act, which barred native people from political and other activities; exclusionary immigration policies that discriminated against nonwhites; segregate schools in Nova Scotia and Ontario that disadvantaged black communities; and restrictive labour and employment laws, especially in British Columbia, that prohibited Asian Canadians from employment in certain sectors of the economy." (4)

[13] Other early anti-discrimination legislations include Ontario's *Insurance Law* (1932), prohibiting racial and religious discrimination in insurance; Manitoba's *Libel Act* (1934), proscribing "libel against race or creed"; Ontario's *Racial Discrimination Act* (1944), banning signs or publications expressing racial or religious bias; and Alberta (1946) and Saskatchewan's (1947) *Bill of Rights*. Canada's Human Rights History (Clement Consulting: University of Alberta, 2017), online: http://www. historyofrights.ca/history.

[14] *Ibid*. The latter two categories (race and religion) were added by amendment in 1932.

[15] Howe and Johnson, *Supra* note 12.

2.2 Fair Employment and Accommodation Acts

Ontario promulgated fair employment practices and fair accommodation practices acts in the 1950s, prohibiting discrimination in employment, housing, and services. These were followed by fair pay legislations, protecting women from wage discrimination in the workplace. By the 1960s, most jurisdictions in Canada had passed fair practices and fair pay laws.[16]

The fair practices legislations parted ways with the criminal approach, opting instead for conciliation and settlement based on procedures used in labour disputes. Complaints of discrimination were heard by designated civil servants in the Department of Labour who attempted conciliation through mutual consent of the parties. If settlement efforts failed, the matter was referred to a board of inquiry set up to hear the case; criminal prosecution could be a last resort in the process.[17]

This method was more effective than the criminal approach: the required standard of proof was measured on a balance of probabilities, which promised increased protection for victims; complainants had support of government officials investigating complaints; the legal costs of criminal proceedings were eliminated; and remedies were more tangible, like reinstating a complainant to a job or financial compensation.

Despite these improvements, the system remained ineffective, primarily because civil servants tasked with administering human rights cases were not assigned to these duties on a full-time basis. Furthermore, the Labour Department did not have a duty to educate people on human rights, so the public remained unaware of their rights and responsibilities and few complaints were filed and/or settled.

These shortcomings led to the realization that human rights administration needed to be entrusted to dedicated agencies with full-time staff, with a mandate to administer complaints and develop education and research initiatives.

2.3 Human Rights Legislations

The *Ontario Human Rights Code* (1962) began the process of human rights legislations in Canada, consolidating its anti-discrimination laws into a single statute enforced by its Human Rights Commission (established 1961). The Ontario statute became the legal

[16] *Ibid.*
[17] *Ibid.*

model that was replicated in most other Canadian jurisdictions within the next 15 years, establishing a uniform human rights network across the country.[18]

Human rights codes ensured protection in employment, housing, and services; they created human rights commissions mandated to enforce these protections, conduct research, educate the public, and monitor the government's human rights performance. The administration of the commissions was delegated to full-time civil servants specialized in human rights enforcement, who were provided resources and infrastructure to offer in-house complaint resolution and conciliation, with litigation as a last option.[19]

The mandate, administration, and role of human rights commissions in Canada have continued to evolve over the years. The national human rights landscape has undergone a paradigm-shift in recent decades, with newer category of rights earning recognition and changes in the social, economic, and political spheres requiring new approaches and initiatives to address human rights. To meet these challenges effectively, human rights commissions need to revamp and modernize their operations, and streamline their governance models. For insight and guidance on the essential functions of human rights commissions, and their role in human rights management, it is pertinent to examine an iconic international human rights document, which is regarded as a benchmark and trendsetter for human right institutions around the world.

3.0 *The Paris Principles*: Setting Standards for NHRIs

The Paris Principles[20] define essential features of composition, mandate, and governance that would create vibrant and effective human rights institutions. The document provides strategic guidelines on the administration of human rights commissions, with recommendations that anticipate potential directions in human rights evolution, offering, in the process, a progressive human rights roadmap for the future.

---

[18] *Ibid.*

[19] Walter Tarnopolsky described the complaint resolution process of commissions as the "iron hand in the velvet glove": Commissions offered conciliation (the velvet glove) as the first option, which could be followed by tougher measures (the iron hand) if conciliation failed. Walter S. Tarnopolsky, "The Iron Hand in the Velvet Glove: Administration and Enforcement of Human Rights Legislation in Canada", (1968) 565 The Canadian Bar Review.

[20] *The Principles Relating to the Status of National Institutions* (*The Paris Principles*) were drafted at the inaugural meeting of the International Workshop on National Institutions for the Promotion and Protection of Human Rights held at Paris in 1991. The document was adopted by the UN Human Rights Commission in 1992 and by the UN General Assembly in 1993.

3.1 NHRI Composition: Independence and Pluralism

The Paris Principles set down the minimum standards for NHRIs, mapping the broad parameters of their composition and functions.

3.1.1 Independence

According to *The Paris Principles*, NHRIs should have "a broad mandate"; they should be created by a "constitutional or legislative text" and must be granted independent decision-making powers.

A NHRI should possess financial and operational autonomy to ensure its impartiality, separation from government, and freedom from political influence. Financial autonomy is the bedrock of NHRI independence, because it enables self-regulated infrastructure, staff, and operations. Operational autonomy implies competence to appoint staff, manage day-to-day functions, and powers to make decisions on priorities and initiatives free from government oversight.

3.1.2 Pluralism

In composition and membership, NHRIs are urged to "afford all necessary guarantees [of] pluralist representation of social forces", including representation from NGOs, trade unions, professional organizations, and "trends in philosophical or religious thought". *The Paris Principles* envision a human rights commission as an inclusive and representative institution; they advocate for a diverse and pluralist commission, with potential representations from Indigenous groups, racial/ethnic minorities, 2SLGBTQ2IA+ communities, persons with disabilities, migrants and refugees, youth representatives, and other social actors disempowered through poverty, disability, or lack of education.[21]

By insisting on diversity and pluralism, *The Paris Principles* suggest that a human rights commission needs to constantly reinvent itself to embrace the socioeconomic, cultural, and demographic changes taking place in the communities it serves. This vision expands the conceptual space of NHRIs and positions them as vibrant, forward-looking institutions, attuned to the cultural, economic, and political undercurrents of society.

[21] Pluralism is mentioned in the composition clause of *The Paris Principles*, and it is emphasized again in clause g under "Methods of Operation", urging NHRIs to play a role in "social and economic development", "combatting racism", and protecting "vulnerable groups (especially children, migrant workers, refugees, physically and mentally disabled persons)".

3.2 Functions and Mandate: The Four Walls of NHRIs

According to *The Paris Principles*, NHRIs must play their role in four broad areas: advisory role, international obligations, education and research initiatives, and quasi-judicial dispute resolution.

3.2.1 Advisory Role

The Paris Principles vest NHRIs with a broad advisory function, which includes submitting recommendations, opinions, proposals, and reports on government policies and actions, and on any violations of human rights in their jurisdiction. This role envisions NHRI oversight of legislative, administrative, and judicial organizations, giving them a broad mandate to scrutinize specific cases of human rights violations and situations of systemic discrimination.

3.2.2 International Obligations

NHRIs must play a role to ensure that “national legislations, regulations and practices” are harmonized with international human rights instruments ratified by the state. As part of these international obligations, NHRIs should collaborate with international and national human rights organizations, and contribute to the reports their governments submit to the UN and regional human rights bodies.

3.2.3 Education and Research

NHRIs have a responsibility to educate the public on human rights issues, including implementation of teaching and research initiatives, targeted human rights campaigns in schools, universities, and professional circles, and public awareness through mainstream and social media.

3.2.4 Resolution of Complaints

A human rights commission has the mandate to hear and resolve individual human rights complaints. The quasi-judicial function of complaint resolution is proposed in the “Additional principles” section of *The Paris Principles*, which may suggest that complaints resolution was contemplated as subsidiary to the commission’s advisory, international, and education/research roles.

Note: *The Paris Principles* are addressed to national institutions, but the standards they prescribe apply equally to provincial and territorial human rights institutions. The federalist scheme of the Canadian constitution rests on the doctrine of division of powers, which extends the same legal protections to citizens in all Canadian jurisdictions. Within this constitutional arrangement, Canada's provincial human rights networks are integrated in the human rights system, both within the country and in its regional and international manifestations. [22]

The dictates of *The Paris Principles*, therefore, apply in the same measure to provincial and territorial human rights institutions.

[22] Pearl Eliadis, *Speaking Out on Human Rights: Debating Canada's Human Rights System* (Montreal: McGill-Queen's University Press, 2014).

Section B

The New Brunswick Human Rights Commission

Introduction

The New Brunswick Human Rights Commission (Commission) is established by the New Brunswick *Human Rights Act* (*Act*) as a government agency, mandated to protect and promote human rights in the province. The *Act* grants powers to the Commission to receive complaints of human rights infringement, investigate and record evidence, offer mediation to the parties, and dismiss complaints or refer them to a provincial judicial tribunal for adjudication. The *Act* also defines the Commission's mandate to promote human rights by developing educational and awareness initiatives to educate the public about their rights and responsibilities under the *Act*.

The Commission reports to the provincial legislature through the Minister of Post-Secondary Education, Training and Labour (PETL) on budgetary and administrative matters, and PETL also provides ancillary services like IT, accounting, and staffing to the Commission. The Commission is independent from government in its day-to-day operations, which are managed by its staff of civil servants headed by a Director.

Funding for the Commission comes through program expenditure under the Department of PETL, and its budget gets approved by PETL. The Commission develops programs to educate the citizens of New Brunswick, including employers, government, and service providers about their rights and obligations under the *Act*. The Commission conducts its business from a central office in Fredericton, assisted by offices in Dieppe and Saint John.

The Commission is a quasi-judicial body, one step removed from the judicial hierarchy. It settles cases of complaints alleging discrimination through mediation; when parties do not accede to mediation and the Commission deems that a case merits further inquiry and adjudication, it forwards it to the Labour and Employment Board, an independent quasi-judicial tribunal located at the lowest tier of the provincial judicial architecture.[23] The Commission does not represent either party before the Board, but it represents the public interest and has carriage of the complaint during adjudication proceedings.

[23] Established by the *Labour and Employment Board Act*, the Labour Board has all the powers of a conciliation board under the *Industrial Relations Act*.

1.0 Commission Members

Commission members are appointed by the Lieutenant-Governor in Council, with one member designated as Chair. The *Act* requires a minimum of three Commission members, including the Chair (at the time of writing, the Commission has seven members). Members are responsible for administering the *Act,* promoting compliance, and forwarding the principles of freedom and equality.

Commission members meet on average eight to ten times a year to review cases that have been processed by the Director's office, and they make a final decision either to refer a case to the Labour and Employment Board or to dismiss it – the Director's office has already made recommendations to that effect on the case files. Commission members do not have the authority to make a finding of discrimination, or to order a remedy to a complainant.

2.0 Director's Office

Although the *Act* only mentions the Commission members, the strategic direction and daily operations of the Commission are overseen by personnel of the Director's office: reception, complaint intake, mediation, investigation, legal, and education. The officers and the legal team receive, review, mediate, and investigate complaints, and the Director with the leadership team oversees strategic planning, outreach, resource allocation, budgetary operation, complaints process, and educational initiatives.

3.0 Independence

It is an index of the Commission's independence that PETL has no oversight over Commission staff, allocation of resources, choice and conduct of complaints, formulation of policies, education initiatives, and so on. To be an effective advocate and voice of the public interest, the Commission needs this level of independence to retain public trust and credibility as an impartial custodian of human rights.

4.0 The Complaints Process

The *Act* empowers the Commission to resolve disputes relating to incidents of discrimination based on the 16 protected grounds enumerated in the *Act*, giving it quasi-judicial powers that are exercised independently and as an alternative to the mainstream court system.

The mechanism of the complaint process is set down in the *Act* and entails the following steps. A person alleging discrimination under the purview of the *Act* contacts the Commission to register a complaint. An Intake Officer registers the complaint, assesses jurisdiction of the Commission, notifies the parties, and offers early mediation for complaint resolution. If the parties do not agree to mediation, the complaint, depending on the information obtained, moves either to the investigation stage or is dismissed if no further inquiry is required.

If a complaint moves to investigation, an Investigator interviews the parties, collects documentary and other evidence, does onsite inspection if required, and prepares a report based on the findings. The parties have the option to settle a complaint by mediation at any stage of the process, and the Commission provides these mediation services free of charge. The entire complaints process is documented in an electronic database, which tracks and keeps record of individual complaints at each stage of the process.

When the Investigator's report is finalized, including a review by a member of the legal team, and has been approved by the Director, recommendations are made by the Director's office either for dismissal of the complaint based on one of the reasons mentioned in the *Act* (Section 19(2)), or for referral of the complaint to the Labour and Employment Board for further inquiry. Commission members review the Director's recommendations at their meeting and make a final decision on the outcome of a file. In an overwhelming majority of cases, members endorse the Director's recommendations.

5.0 Education

A significant component of the Commission's mandate relates to developing and conducting educational programs to raise awareness, eliminate discriminatory practices, and apprise New Brunswickers of their rights and responsibilities under the *Act*. The Commission forwards its education mandate through a range of activities and policies, including human rights related publications, presentations on human rights to educational institutions, businesses, and community organizations, publishing of guidelines on the scope, operation, and mandate of the Commission, fostering collaborative partnerships with different organizations, and through proactive presence on the social media.[24]

[24] Senator Kinsella, the first Chair of the New Brunswick Human Rights Commission, emphasized the primacy of the Commission's educational role: "But the most important function of the Commission would be this public education, would be the proactive changing of attitudes, of changing social values of the community and being very much a human relations commission." *Equality in Action: The New Brunswick Human Rights Commission, 30 Years Review 1967-1997* (Fredericton: Government of New Brunswick,

Conclusion

The entire complaints process, beginning with the intake of a complaint, onward to mediation, investigation, and dismissal or referral, is managed by the Director's office, with its team of Intake Officers, Investigators, and Mediators, overseen by the legal team, heads of mediation and investigation, and the Director. Commission members meet periodically to hold deliberations on the reports prepared by Commission staff; review the Director's recommendation for dismissal or referral; and hear any appeals filed against the Director's decisions.

Under the present structure, complaint files approved by the Director's office must await confirmation by the Commission members, a process that amplifies delays and contributes to the backlog of Commission's work. Statistics from previous years indicate that Commission members endorse the Director's recommendations in an overwhelming majority of complaints, with the consequence that little tangible work or value is added to a complaint or the work of the Director's office by input from Commission members.

Pursuant to these facts, it is pertinent to reconsider the role of the Commission members in the workings of the Commission, and whether their functions need to be redefined in keeping with emerging social, cultural, and political developments.

In what ways can the role of the Commission members be amended or modified, so that the Commission's mission gets strengthened and more meaningful input is obtained from the designated Commission members?

It may also be critical to develop more pragmatic and cost-effective ways to improve the quality and efficiency of the work of Commission members.[25]

Following this line of thought, the next section opens with a look at the original models of citizen-based quasi-judicial bodies like commissions. After a review of these past models, the section contemplates modifications that can bring a contemporary citizen commission up to par with the pressures and demands of present times.

1998). Similar emphasis on the education function of Commissions is also underscored in *The Paris Principles*, and it should attain primacy during the next phase of the Commission's evolution.

[25] Annexure I shows the expenses of Commission meetings and related costs during the last three years.

Section C: Roadmaps for the Future

1.0 Citizen-Based Quasi-Judicial Bodies: A Snapshot from the Past

The practice of appointing "wise men (*sic*) of the realm" as local judicial adjudicators dates back to the English common law tradition that evolved in the feudal economy of medieval England.[26] The feudal legal system used citizens for judicial oversight in institutions like moot courts, manorial courts, Justices of the Peace, and Overseers of the Poor.[27] These officers were chosen as the King's representatives in the area, and served as lay judges, jurors, and adjudicators; they were not required to have formal legal education, and were not paid for their services. By the Eighteenth Century, the honorary citizen judges had begun to be replaced by official magistrates.[28]

The custom of citizen or lay judges thus found traction through the feudal tradition; the jury system, which emerged in English law from the Twelfth and Thirteenth Centuries, is another offshoot of this practice.[29] The philosophy of citizen-based judicial officers stemmed from the belief that local citizens would have a closer understanding of the needs of the community, and would dispense justice with a communal, people-centric consciousness.[30]

---

[26] Edward L. Glaeser and Andrei Shleifer, "Legal Origins" (2002) The Quarterly Journal of Economics. The authors note that the common law tradition tended to rely on lay judges and broader legal principles, as opposed to the French civil law system that leaned toward statutory principles and state-employed judges. The English King had the trust of local feudal lords who tended not to challenge his authority, which induced the Crown's reliance on independent local decision makers; contrarily, the feudal gentry remained powerful in France, which paved the way for a more centralized, statutory, and judge-based legal system.

[27] Dawson, John P., *A History of Lay Judges* (Cambridge, MA: Harvard University Press, 1960). In a manorial court, the lord of the manor appointed his servant to adjudicate on matters related to land; moot courts operated at the village level, with fellow villagers sitting in judgement on their peers. The Justice of the Peace (JP) presents a more pervasive model of citizen representation from the Twelfth-Century onward; JPs were chosen from "good and lawful men" of the locality to preserve "the King's peace" and oversee criminal investigations and infractions of local laws. JPs belonged to members of the gentry; the office carried prestige and retained its honorary status until the Eighteenth Century. Unlike the gentrified JPs, the Overseers of the Poor belonged to common stock. They were elected by the parish to administer the Poor Laws instituted as a poverty alleviation measure in the Seventeenth Century.

[28] *Ibid.*

[29] Theodore FT Plucknett, *A Concise History of the Common Law* (London: Butterworth, 1956). The jury was conceived as "a body of neighbors" or "an assembled body of local notables who would inform itinerant royal judges of local facts." The communal significance of the jury was critically acknowledged in the *Magna Carta*, which stipulated that legal penalties should be awarded only "by the lawful judgment of […] equals or by the law of the land" (Section 39).

[30] Glaeser and Shleifer, *Supra* note 28. However, at the same time, local groups could be more vulnerable to pressure from influential feudal lords, and thus subject to corruption and coercion, especially because they served on an honorary basis and not as salaried officers. This shows some of the slippages and tensions such citizen work can embody.

2.0 Citizen Commissions Today

Historically, community-based judicial administrators have been used as citizen watchdogs in quasi-judicial roles. The original models of citizen oversight do show certain problematic aspects. Although drawn from local populations, these ancient adjudicators hailed primarily from the elite and influential classes. Such a pattern, if replicated in contemporary contexts, would compromise the representative nature of citizen bodies and diminish the communitarian spirit and insight these groups are supposed to bring to their work.

Citizen commissions in the first quarter of the Twenty-First Century should reflect the multiple strands that constitute the economic, cultural, and political tapestries of contemporary society. To be truly pluralistic, any modern-day citizen board would have to represent society's various stakeholders, especially the weaker, disenfranchised segments inhabiting its margins: disempowered racial and ethnic minorities; stigmatized LGBTQ2S groups; working poor on the economic fringes; the unemployed and underemployed; those afflicted with mental and physical disability; and so on. In particular, representatives of Indigenous peoples need to be drawn into the decision-making and policy agendas of human rights commissions. By thus embracing the diversities that constitute society, commissions would be in a better position to fulfill the Canadian values of democracy, freedom, rule of law, and human rights.

In its 50th Anniversary year, the Commission looks forward to the next phase of its work to protect and promote human rights in New Brunswick. The Commission views this milestone as an opportunity to rethink its structural and administrative model; among other things, it seeks to develop better working partnerships with civil society, more robust intergovernmental relationships, both provincially and federally, and to synchronize its work with national, regional, and international human rights obligations.

To advance this vision, the Commission must further its partnerships with representatives of civil society: NGOs working to promote human rights; coalitions or networks speaking for vulnerable groups like women and children; community-based groups protecting Indigenous communities and racial minorities; trade unions and professional associations like journalists, bar associations, and student unions; public and semi-public institutions like schools, universities, and research bodies; and other organizations essential to human rights promotion like the judiciary, the media, and international human rights networks.

Furthermore, in its role to support Canada's international commitments, the Commission looks to foster more effective and direct cooperation with Canadian agencies and organizations, like the Canadian Human Rights Commission and Heritage Canada, in order to participate in policy reviews and analyses, contribute to national human rights obligations and reporting, and pursue emerging human rights trends and standards.

With these measures and initiatives, the Commission would not be doing its work in isolation, but in consultative partnership and as a joint actor with civic, national, and international institutions. This would strengthen the Commission's three-part role: its role as a bridge between civil society and government; between the responsibilities of the state and the rights of citizens; and between provincial/national laws and regional/international human rights systems.[31]

3.0 Future Directions

A human rights commission is located midway between government and civil society; it is neither a classic government agency nor an NGO.[32] This "conceptual space" gives the NHRI its distinct role in society, yet it also presents the paradox that an NHRI faces as an organization: it is set up and funded by the state and is financially accountable to it, yet it must remain outside of government influence to operate as a credible entity.

This middle position that NHRIs occupy creates their "multiple accountabilities": "downwards" to their partners, beneficiaries, and staff, and "upwards" to their funders, legislatures, and host governments.[33]

What kind of policy shifts does the Commission require to become an authentically pluralist, inclusive, and representative Commission, impartial and transparent in its operations and responsive to the human rights challenges of the next decades?

3.0.1 Commission Member Appointments

Like all order-in-council appointments, the selection process of members of the Commission may have slippages and weaknesses. Ian Greene identifies five potential

[31] *National Human Rights Institutions: History, Principles, Roles and Responsibilities* (2010). New York: United Nations.
[32] Smith, *Supra* note 24.
[33] *Ibid*.

risks in such appointments: patronage, conflict of interest, arbitrary pressure from provincial cabinets, lack of independence, and inability to follow rule of law.[34]

A better selection process needs to be imagined. The posts should be duly advertised, and the merit criteria should be clearly stated. One method to ensure inclusiveness in member selection is to involve civil society in making appointments through "wide consultation and a process for public nomination of candidates."[35] In short, a truly representative body of Commission members brought in by transparent evaluation standards is the way forward for the Commission.

To ensure plurality in its composition, the Commission could solicit representations from different social groups through outreach initiatives. This could be worked into the appointment process. Currently, the Director reviews the postings for Commission appointments and offers input about needs and priorities; however, the selection and appointment process does not admit wider participation and input from diverse sectors.

The competence of Commission members as human rights practitioners should also be given due consideration. For example, Commission members should be cognizant of the jurisdictional horizons of provincial and national human rights laws; they should be proactive in educational and information outreach; and they should be able to link human rights concepts expressed in international covenants and national/provincial laws to policymaking initiatives and implementation practices.

3.0.2 Pluralism

In order to expand its representative nature, the Commission should be able to request nominations from different sectors of civil society, such as universities, bar councils, disability advocacy groups, labour unions, women and gender advocates, healthcare practitioners, youth rights groups, and so forth. This would ensure multi-actor partnerships and political pluralism in the Commission's composition. With this manner of pluralist representation, the Commission may be reconceived as a Consultative Council, composed from society's diverse demographic and responsive to its economic, political, and cultural leanings.

A pluralist Commission would ensure that it has input from different sectors in society. It would bring various perspectives and inventive responses to human rights problems

[34] Ian Greene, "Independence of Human Rights Commissions" (2015). Article Commissioned by the Canadian Association of Statutory Human Rights Agencies (CASHRA).
[35] Anne Smith, "The Unique Position of National Human Rights Institutions: A Mixed Blessing?" (2004) Human Rights Quarterly 28.4 904-946.

and issues, and representatives of diverse groups would become channels for wider dissemination of human rights education and awareness. If its membership lacks pluralism or diversity, a human rights institution runs the risk of becoming self-contained in a narrow circle of like-minded persons from the elite or upper classes.[36] Such limitations can compromise the fundamental values and vision of a human rights institution.

3.0.3 A Consultative Council

Without being an independent office of the legislature or a Crown Corporation, the Commission can still operate as a fully empowered government agency, producing its annual report, drawing its own strategic plan, and making decisions on resource allocations, budgetary choices, and education priorities.

Marginalized segments like the LGBTQ2S communities, religious and linguistic minorities, persons with disability, and women and youth representatives would further ensure the Council's pluralist composition. The Commission should also look to members of the intellectual strata, from the professoriate, from circles of artists and writers, and from academics departments like gender and sexuality studies, critical theory, philosophy, and gerontology, which could provide cutting-edge intellectual thought and philosophic insight to the strategic direction of the Commission going forward. Similarly, bringing representatives from Indigenous groups, native New Brunswickers, newcomers to the province, and ethno-racial minorities into the Council would ensure its multicultural composition, commensurate with national policy imperatives. These steps would be commensurate with *The Paris Principles* and their emphasis on pluralism, inclusiveness, and philosophical opinion in the policy frameworks of human rights commissions.

An emancipatory and participatory Commission along the lines imagined above – or a multi-member Consultative Council – can set the tone to establish a modern, forward-looking 21st-Century Commission. An institution thus empowered can be at the vanguard of disseminating the egalitarian vision of human rights, raising social awareness, and addressing the new human rights frontiers emerging in our times.

Conclusion – A Futurist Commission

The Consultative Council should be a robust body that not only contributes to the compliance process, but which also has proactive roots within the community. It should

[36] Morten Kjærum, *National Human Rights Institutions: Implementing Human Rights* (Denmark: Martinus Nijhoff Publishers, 2003).

be able to mobilize public opinion, set the strategic direction and future policy frameworks of the Commission, form collaborative partnerships with social, cultural, and professional organizations, initiate educational activities, and reach out and be accessible to the diverse groups that constitute society.

Such a proactive and inclusive strategy would allow the Commission to align its efforts with Canada's vision of human rights in a multicultural future and reorient its strategic direction to become a leader in human rights innovation.

Members of a genuinely representative Consultative Council will have the potential to empower dispossessed and marginalized groups, and become effective mediators and leaders geared toward a rights-friendly future. Such a Council will be capable to realize the aspirations of *The Paris Principles*, bringing transparency, responsibility, accountability, and participation through a people's Commission; its conceived frameworks would be conducive to create an enabling environment for human rights implementation and education. A new Commission thus reconceptualized would also be able to synchronize its work with the stipulations of international human rights covenants, in keeping with the objectives enunciated in *The Paris Principles*.

With a future path oriented along these lines, a proactive, efficient, and representative Commission can make vital contributions toward the creation of a tolerant, equitable, inclusive, and democratic society.[37]

[37] **Note:** Any changes based on the above ideas could be statutorily determined; or they could be documented in guidelines, which could be implemented by invoking the delegation clause of the *Human Rights Act* (s. 18.1(1).

Annexure I

Commission Members: Operating Expenses

	2016-17	**2015-16**	**2014-15**
Member Per Diems	$11, 550	$10,650	$9,675
Chair's Salary	$25,684.77	$29,179.18	$25,096.19
Member Travel Costs	$12, 468.01	$9,746.85	$9,763.35
Business Meetings	$438.83	$193.12	$289.82
Total	**$50,141.61**	**$49,769.15**	**44,824.36**