

Combatting Complex Inequality: The Importance of an Intersectional Approach to
Manitoba's Human Rights Complaint Process

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Abstract

In this paper, I present the need and reasons why the Manitoba Human Rights Commission (MHRC) should begin to create and eventually adopt an intersectional board policy for multiple ground human rights complaints. The policy is necessary because it would unite the Commission's approach to working on these complex complaints. The policy would guide the staff to consider the effect intersectionality has on the registered complaints during all stages of the process. In Canada, the Ontario Human Rights Commission is the only commission that has utilized an intersectional approach in 2001. I propose that Manitoba follow suit and create an approach that works in its complaint process, and a guiding policy using the OHRC's work as a baseline. My suggestions are for the MHRC to identify the importance of intersectionality in the human rights complaint process, conduct internal staff research and trainings regarding the subject, before eventually providing this information to the public. I recommend that the staff continue to maintain open dialogue with the parties, while discussing their protected characteristics and the relationships that may occur among them. The staff should consider the possibility that the discrimination the intersectional complainants face occur because their protected characteristics exist and interrelate to each other. Supplementing this idea, an educator role should be created at the MHRC to provide training to the staff and public about intersectionality as well as for other MHRC education sessions. I acknowledge that this is not a perfect nor complete recommendation; however, I hope that it can be used as the foundation in the development of an intersectional policy at the MHRC that will adapt to better address the multiple ground complaints in the years to come.

Keywords: Manitoba Human Rights Commission, Intersectionality, Intersectional discrimination, Multiple ground human rights complaints, Human Rights

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Part 1: Introduction

The Manitoba Human Rights Commission (MHRC) serves the population in the deliverance, maintenance, and protection of *the Manitoba Human Rights Code*. The MHRC's purpose is to educate the public about the rights and responsibilities of *the Code* and to administer the human rights complaints process.¹ In the fall of 2020, I completed my practicum requirement with the investigation team at the MHRC. During my time as an intern, I read different investigation reports on differential treatment, harassment, reasonable accommodation, and reprisal complaints. Generally, I noticed that many of the complaints were filed under a single protected ground such as age *or* sex. Typically, the Commission staff consider the following when working on these complaints:

- What was the complainant's protected characteristic?
- What adverse treatment did they experience?
- Was the protected characteristic a factor in the treatment?

It seemed like a simple process to follow. Then I was assigned to work on a systemic discrimination complaint that had listed more than one characteristic, like age *and* sex. I wondered if the approach was the same and the answer was unclear. Previous staff considered the characteristics separately in the process, which resulted in the dismissal of these complaints due to lack of evidence. Current staff want to consider the characteristics together but are unsure how to carry out the process in this way. From here, more questions began to arise. Should the staff consider the characteristics separately? Should they collect evidence to substantiate the adverse treatment connected to one characteristic and separate evidence to substantiate the other? Do the characteristics have a relationship with each other that affect the way the discrimination is perpetrated? Should staff consider this relationship? Should the staff analyze the complaint keeping in mind that the adverse treatment occurred not because of one characteristic, but due to the compounded nature of the complainant's identity? If so, how can this be done? I asked about these complex cases, as there remains a lack of Commission-led guidance in the approach.

The term "intersectionality" was coined by American lawyer and scholar, Kimberlé Crenshaw in 1989. Crenshaw used intersectionality to call attention to the multiple dimensions of

¹ Manitoba Human Rights Commission, "Province of Manitoba: v1 - Our Mandate," Province of Manitoba | v1 - Our Mandate, accessed December 15, 2020, <http://www.manitobahumanrights.ca/v1/about-us/index.html>.

Black women's experiences and examined how characteristics such as race and gender 'intersect' and overlap with each other. She states:

Intersectionality is a lens through which you can see where power comes and collides, where it interlocks and intersects. It is not simply that there is a race problem here, a gender problem here, and a class or LGBTQ problem there. Many times, that framework erases what happens to people who are subject to all of these things.²

The MHRC staff recognize that the current process, which I refer to as the single ground or axis framework, though there is no formal name for it within the organization, does not necessarily address the extent of multiple ground discrimination files. A more nuanced approach due to the multiple oppressions, historical contexts, and power dynamics would be better suited. A solution to achieving this, however, has not been put forward. I propose that the Commission study this area to eventually establish and utilize a board policy that operationalizes an intersectional approach to better advance these complaints. To eventually reach this result, the Commission should begin by researching intersectionality and its place in human rights, by analyzing past files to see what has been done, referencing what has been done by other human rights bodies such as the Ontario Human Rights Commission (OHRC), and by determining areas of strength and areas in need of development.

There are six sections to this paper. I begin by providing a reflection of my time at the MHRC as a practicum student. The second section covers human rights in Manitoba. In this section, I provide information about the Manitoba Human Rights Commission, the *Manitoba Human Rights Code*, the Code Amendments, and the complaint process. The third section focuses on intersectionality by defining it and examining its relationship with human rights. I focus on the numerous definitions of the term, and then move into how it relates to human rights. Following, I focus on why the MHRC should create and utilize an intersectional approach, then explain that the Ontario Human Rights Commission is the only provincial commission that has this type of approach. The fourth section is about the policy suggestions. I address the question of how the MHRC can operationalize intersectionality in practice specifically in its two areas of the complaints process and in human rights education. I want to note that I do not issue step-by-step instructions to how this can be accomplished. Instead, I put forwards suggestions for

² Columbia Law School, "Kimberlé Crenshaw on Intersectionality, More than Two Decades Later," Columbia Law School, June 8, 2017, <https://www.law.columbia.edu/news/archive/kimberle-crenshaw-intersectionality-more-two-decades-later#:~:text=Is%20that%20a%20misunderstanding%20of,class%20or%20LBGTQ%20problem%20there.>

consideration that I hope will begin the process of instituting an intersectional approach and policy. The penultimate section focuses on a recent Manitoba adjudication hearing decision that addressed the intersectional nature of the complainant's identity. The final section states my concluding thoughts.

1.1 Reflection on Time

From September to November 2020, I completed my practicum requirement at the Manitoba Human Rights Commission. I participated in training workshops that explained the roles and duties of the intake officers, mediators, investigators, and legal team. I learned that the Commission's main responsibilities are to preserve and protect *the Human Rights Code*, promote human rights principles while educating the public about *the Code*, and to administer the complaint process.³ I read reports to familiarize myself with the complaints the Commission has jurisdiction over, which are differential treatment, reasonable accommodation, harassment, and reprisal. I participated in interviews, data collection, and report writing. I learned how the investigators use the gathered evidence to analyze and conclude if on a balance of probabilities discrimination had occurred. I worked on investigation plans, assembled investigation reports, and attended board meetings and an adjudication hearing. Overall, I helped work on eleven investigation reports, which included files of discrimination in service, employment, reasonable accommodation, and harassment. A majority of my files were single ground complaints, but I was assigned a systemic discrimination file that named three protected characteristics in the registered complaint.

The MHRC has brought about substantial change for the province through precedent-setting decisions. One notable decision is *TA v. Government of Manitoba*, which established non-binary gender designation on birth certificates.⁴ Another notable case was *the Association of Foreign Medical Graduates in Manitoba Inc. v. Manitoba Health, the University of Manitoba, and the College of Physicians and Surgeons of Manitoba*, which resulted in the University of Manitoba changing the qualification process for foreign-trained medical graduates.⁵ I attended the *Webb v. LHS Holdings Inc. o/a Manigaming Resort, Sandra Carlson and Lennard Carlson*, adjudication hearing in September 2020, which resulted in the first substantive decision from the

³ Manitoba Human Rights Commission, "Our Mandate," Manitoba Human Rights Commission, accessed September 10, 2020, <http://www.manitobahumanrights.ca/v1/about-us/index.html>.

⁴ MHRC, "Our Mandate."

⁵ MHRC, "Our Mandate."

adjudication panel marking an important step towards the recognition of the rights of service animal users in Manitoba.

The Commission has and continues to create a great deal of positive change for the Manitoban population; however, there is always room for improvement. Currently, the MHRC staff do not have solid direction when navigating complaints containing more than one protected characteristic. The implementation of an intersectional policy would help unite the Commission's approach and bring awareness to the complexities that come with these files. Crenshaw explains intersectionality saying that it is "a lens... for seeing the way in which various forms of inequality often operate together and exacerbate each other. We tend to talk about race inequality as separate from inequality based on gender, class, sexuality, or immigrant status. What's often missing is how some people are subject to all of these, and the experience is not just the sum of its parts."⁶ Though Crenshaw is credited with coining the term, intersectionality has been an ongoing and evolving area of research.

Crenshaw's early work centered on heterosexual immigrant women of color, intersectional theory is now applied to understanding how we all carry multiple, albeit constructed and provisional, identities. The salience of such identities ... varies in different times and contexts, conferring either disadvantages or privileges on each of us, again in relation to time and context.⁷

Intersectionality forms the understanding that individuals are composed of unique characteristics, that interact within a series of connected systems and power structures such as laws, policies, and governments, that work together simultaneously to create experiences of privilege or oppression.⁸ The MHRC should establish and use an intersectional framework to challenge existing notions in anti-discrimination law that racism, sexism, ageism, ableism, and other forms of discrimination exist separate from each other. This framework would encourage critical thinking and prove that discrimination does not only come from a single source.

⁶ Katy Steinmetz, "She Coined the Term 'Intersectionality' Over 30 Years Ago. Here's What It Means to Her Today," Time (Time, February 20, 2020), <https://time.com/5786710/kimberle-crenshaw-intersectionality/>.

⁷ Anne Sisson Runyan, "What Is Intersectionality and Why Is It Important?," American Association of University Professors, December 2018, <https://www.aaup.org/article/what-intersectionality-and-why-it-important#.YR9jco5KhhE>.

⁸ Olena Hankivsky, "What Is Intersectionality?," in *Intersectionality 101* (Burnaby: The Institute for Intersectionality Research & Policy, SFU, 2016), 2.

Part 2: Human Rights in Manitoba

2.1 Manitoba Human Rights Commission (MHRC)

Human rights in Canada are maintained and protected both on the federal and provincial levels. Neither the federal nor the provincial government, however, has exclusive authority over equality rights or human rights claims in the Constitution Act, 1867.⁹ In our human rights system, human rights commissions and tribunals play integral roles in forming our public human rights infrastructure.¹⁰ Provincial commissions protect the provincial human rights code and hold the responsibility of promoting and protecting these rights by the complaints process and human rights education. “Commissions have a social mission to build a culture of human rights by undertaking education, policy development, and providing advice and assistance to governments, as well as liaising with other commissions.”¹¹ Canadian commissions stand at the forefront of where human rights complaints are heard and addressed. If the Executive Director at the MHRC thinks that there is sufficient evidence that suggests or establishes that discrimination took place, the report is sent forward to an adjudication hearing and in other provinces, the file is brought to a human rights tribunal.¹²

The Manitoba Human Rights Commission is an independent agency of the Government of Manitoba. The Commission reports to the Minister of Justice on an annual basis. *The Manitoba Human Rights Code* established the MHRC, which is responsible for its administration.¹³ The Commission has two crucial functions. The first is the promotion of human rights principles and public education to groups and conferences about the rights and responsibilities listed in *the Code*.¹⁴ The Commission works with the public to determine emerging human rights issues and uses the gathered research to develop educational tools to raise awareness about these issues.¹⁵ The second function of the Commission is to administer the complaints process.¹⁶ If individuals believed they have suffered discrimination on the basis of

⁹ Pearl Eliadis, “Introducing Human Rights Systems,” in *Speaking out on Human Rights: Debating Canada's Human Rights System* (Montréal & Kingston: McGill-Queen's University Press, 2014), pp. 25-62, 33.

¹⁰ Pearl Eliadis, “Introducing Human Rights,” 25.

¹¹ Pearl Eliadis, “Introducing Human Rights,” 26.

¹² Pearl Eliadis, “Introducing Human Rights,” 27.

¹³ Pearl Eliadis, “Introducing Human Rights,” 27.

¹⁴ Manitoba Human Rights Commission, “Our Mandate,” Manitoba Human Rights Commission, accessed September 10, 2020, <http://www.manitobahumanrights.ca/v1/about-us/index.html>.

¹⁵ MHRC, “Our Mandate.”

¹⁶ MHRC, “Our Mandate.”

any protected characteristic found in *the Code*, they can register the complaint at the Commission.

2.2 The Manitoba Human Rights Code

Manitoba's provincial human rights law, *The Manitoba Human Rights Code*, was established on International Human Rights Day on December 10, 1987, replacing *The Human Rights Act*, its 1970 predecessor.¹⁷ *The Code* recognizes the individual worth and dignity of every Manitoban.¹⁸ It was created to protect the individuals and groups in Manitoba from unreasonable discrimination.¹⁹ *The Code* sets out many things such as the establishment and responsibilities of the Manitoba Human Rights Commission, how discrimination is defined, who and what areas are protected, and what someone can do if they believe that they are being discriminated against.²⁰

Discrimination occurs when someone is treated differently to their disadvantage, and without a valid reason, or if steps were not taken to accommodate special needs that are based on characteristics found under *the Code*.²¹ It is often rooted in ignorance, prejudice, and stereotypes. Under *the Code*, the four types of discrimination are differential treatment, reasonable accommodation, harassment, and reprisal. Differential treatment occurs when an individual is targeted and treated differently on the basis of one or multiple protected characteristics.²² Failing to reasonably accommodate occurs when the respondent, i.e. the employer, property owner or service provider does not accommodate the needs of an individual that arise out of a protected characteristic.²³ The goal is to remove the barriers that block the individual from achieving equality; however, the accommodation "does not extend so far as to cause undue hardship to the respondent."²⁴ To simplify this point, if there is substantive evidence that proves the

¹⁷ Manitoba Human Rights Commission, "30 Years of the Human Rights Code 1987-2017," Canadian Knight Lab, accessed September 30, 2020, https://cdn.knightlab.com/libs/timeline3/latest/embed/index.html?source=1SWzykVi2SmuFfUVy5X6i0MDeYHhfF0FKzeRkVsoy_Vc&font=Default&lang=en&initial_zoom=2&height=650.

¹⁸ Province of Manitoba, *The Human Rights Code: Chapter H175 Code Des Droits De La Personne: Chapitre H175* (Winnipeg, 1980), https://web2.gov.mb.ca/laws/statutes/ccsm/_pdf.php?cap=h175, 1.

¹⁹ Province of Manitoba, *The Human Rights Code*, 1.

²⁰ Province of Manitoba, *The Human Rights Code*, 1.

²¹ Province of Manitoba, "Human Rights and Reasonable Accommodations," Human Rights and Reasonable Accommodations, accessed December 19, 2020, <https://www.gov.mb.ca/fs/imd/hr.html>.

²² Province of Manitoba, "Human Rights."

²³ Province of Manitoba, "Human Rights."

²⁴ Janet Baldwin, "Reasonable Accommodation: Religious Belief," Manitoba Human Rights Commission, May 21, 2003, <http://www.manitobahumanrights.ca/v1/education-resources/resources/policies-pages/policies-g-3.html>.

accommodation causes a disproportionate burden on the respondent, then the accommodation is no longer considered reasonable. The third type of discrimination is harassment, which can occur in four ways: through a prolonged experience of abusive conduct or comments, a series of objectionable and unwelcome sexual solicitations, sexual advances made by a person in a position of authority, or by reprisal or threat of reprisal for rejecting a sexual solicitation or advance.²⁵ Finally, the last type of discrimination is reprisal, which is the retaliation or threat of retaliation that may occur for several reasons such as a company firing an employee because they filed a human rights complaint against them.²⁶

The Commission also works on systemic discrimination complaints. The definition of systemic discrimination is the “interrelated actions, policies or procedures of a person that do not have a discriminatory effect when considered individually [but] can constitute discrimination under this Code if the combined operation of those actions, policies, or procedures results in discrimination.”²⁷ The focus of a systemic discrimination complaint places emphasis on the adverse effect discrimination has on the collective instead of solely focusing on the individual. It may be unintended or result from an unconscious discriminatory system.²⁸ It also considers how the structure of an organization or system can cause oppression and produce unequal opportunities for members of that group. An example of systemic discrimination is the Meiorin decision, or the *British Columbia (Public Service Employee Relations Commission) v. the British Columbia Government and Service Employees’ Union* case. The BC government enforced a minimum physical fitness requirement for all forest firefighters. Part of the requirements was an aerobic standard that inadvertently discriminated against women due to physiological differences.²⁹ Meiorin was terminated after three years as a forest firefighter because she failed this standard four times while her male counterparts passed. This case went to the Supreme Court of Canada and the arbitrator found that there was no evidence that showed the aerobic standard

²⁵ Province of Manitoba, *The Human Rights Code: Chapter H175 Code Des Droits De La Personne: Chapitre H175* (Winnipeg, 1980), <https://web2.gov.mb.ca/laws/statutes/ccsm/pdf.php?cap=h175>, 22.

²⁶ Province of Manitoba, *The Human Rights Code*, 22.

²⁷ Province of Manitoba, *The Human Rights Code*, 13.

²⁸ Province of Manitoba, *The Human Rights Code*, 22.

²⁹ *British Columbia (Public Service Employee Relations Commission) v. British Columbia Government and Service Employees Union*, Supreme Court Judgments (Supreme Court of Canada 1999), <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1724/index.do>

was necessary for employees to work as a forest firefighter.³⁰ They had found that “the claimant established a *prima facie* case of adverse effect discrimination and that the Government had not discharged its burden of showing that it had accommodated the claimant to the point of hardship.”³¹

The Human Rights Code prohibits unreasonable or unjustifiable discrimination on the basis of one or more protected characteristics. The thirteen protected characteristics are:

- Ancestry, including color and perceived race,
- Nationality or national origin,
- Ethnic background or origin,
- Religion or creed,
- Religious belief, association, or activity,
- Age,
- Sex,
- Gender identity,
- Sexual orientation,
- Marital or family status,
- Source of income,
- Political belief, association, or activity,
- Physical or mental disability including reliance on a service animal, and
- Social disadvantage.

Analogous characteristics or characteristics that are not listed under *the Code* but falls under its protection are size and weight-based discrimination, and criminal record. *The Code* protects people in services, employment, contracts, rental premises and signs and statements.³²

2.3 Bill 26 - The Manitoba Human Rights Code Amendments

Under *the Code*, the Commission is considered a “first generation” commission with gate-keeping responsibilities. Approximately 4000-5000 inquiries are received, but only 300 complaints are registered per year.³³ With only 18 staff members to work on all of the complaints in Manitoba, and the Commission’s lack of ability to decline to register or summarily dismiss

³⁰ *British Columbia (Public Service Employee Relations Commission) v. British Columbia Government and Service Employees Union*, Supreme Court Judgments (Supreme Court of Canada 1999), <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1724/index.do>

³¹ *BC (Public Service Employee Relations Commission)*.

³² Manitoba Human Rights Commission, “Bill 26 – The Human Rights Code Amendment Act.” PowerPoint presentation, Winnipeg: Manitoba Human Rights Commission, April 13, 2021.

³³ MHRC, “Bill 26.”

complaints, the wait time for a complaint to go to investigation is over 24 months. There is also a delay in the commencement of an adjudication hearing and in the issuance of written decisions.³⁴

In 2018, the Minister of Justice asked Allan Fineblit to conduct a government-initiated review of the MHRC. The goal of which was to address the delay by finding inefficiencies in the complaint system.³⁵ Through his research and investigations, he found that timeliness, mandate, and adjudication were areas that required positive change.³⁶ His report had 11 recommendations related to the MHRC's gatekeeping function. His recommendations included the re-alignment of decision-making ability from the Board of Commissioners to the MHRC's Executive Director, and giving the complainant the opportunity to apply to have a decision reviewed by the Board of Commissioners.³⁷ Fineblit also recommended that the Executive Director be given the authority to decline to investigate complaints when the complaint is frivolous or vexatious, when the acts or omissions do not contravene *the Code*, if the complaint is not within *the Code's* jurisdiction, if the subject matter has been dealt with appropriately under another Act, if additional proceedings would not benefit the person against whom *the Code* is alleged to have been contravened, or if there is insufficient evidence.³⁸ For adjudication, Fineblit recommended that hearings must begin within 120 days after an adjudicator is appointed, and the adjudicator must come to a decision within 60 days, if this is not followed, the chief adjudicator may revoke designation and designate a new adjudicator to hear the complaint.³⁹

In 2020-2021, Bill 26 *The Human Rights Code Amendment Act* passed first, second and third reading, and in May 2021 the bill received royal assent. The bill implements the majority of the amendments recommended in the Fineblit Report, but also introduces section 43(2.1), a statutory cap of \$25,000 on damages for injury to dignity, feelings, and self-respect, which was not recommended in Fineblit's report. In an April 2021 update, the MHRC released a statement that it is supportive of the amendments but is concerned with the implications of the statutory cap, quoting *Walsh v. Mobil Oil*,

³⁴ Manitoba Human Rights Commission, "Bill 26 – The Human Rights Code Amendment Act." PowerPoint presentation, Winnipeg: Manitoba Human Rights Commission, April 13, 2021.

³⁵ MHRC, "Bill 26."

³⁶ Allan Fineblit, "The Manitoba Human Rights Commission and Human Rights Adjudication Panel Review," Manitoba, December 2018, https://manitoba.ca/asset_library/en/proactive/2019_2020/mhrc_report_2018.pdf, 5.

³⁷ Manitoba Human Rights Commission, "Bill 26."

³⁸ Allan Fineblit, "The Manitoba Human Rights Commission," 5.

³⁹ Allan Fineblit, "The Manitoba Human Rights Commission," 5.

That remedial awards that do not provide appropriate compensation can “minimize the serious nature of the discrimination, undermine the mandate and principles that are the foundation of human rights legislation, and further marginalize a complainant. Inadequate awards can have the unintended but very real effect of perpetuating aspects of discriminatory conduct.”⁴⁰

Further, the MHRC stated that the Manitoba Human Rights Adjudication Panel has recognized that the damages should not be too low as it would “trivialize the importance of *the Code* by effectively creating a “license fee” to discriminate.”⁴¹ Despite these efforts, the amendments have come into effect as is on January 1, 2022.

2.4 The Complaints Process

Intake

The complaints process begins at the intake stage. The intake officers are the public’s first contact with the Commission. They are responsible for providing the public with general information about *the Code* to identify human rights issues, gather information about the complaints, or make referrals to other agencies if it does not fall under the Commission’s jurisdiction.⁴² If the complaint does fall under the Commission’s jurisdiction, the intake officer registers the complaint of discrimination. They gather information and evidence to identify the alleged contravention of *the Code*, such as essential facts and the parties that were involved. The complainants are not always aware of the complaints process and or what grounds to include when filing a complaint. The intake officer helps this issue by discussing the details of the complaint further with the individual. The officer then offers the complainant and respondent a chance at mediation or sends the complaint to the investigators. If both parties of the complaint agree, it is passed onto mediation.

Mediation

Mediation can occur at any point during the complaint process, in the beginning before registration, after the complaint becomes registered or after a complaint is referred to adjudication. In mediation, the human rights officer mediates the complaint’s resolution,

⁴⁰ Manitoba Human Rights Commission, “PDF,” Winnipeg, April 2021, 3, <http://www.manitobahumanrights.ca/v1/education-resources/public-consultations/pubs/public-consultations/april2021update.pdf>

⁴¹ MHRC, “PDF,” 3.

⁴² Manitoba Human Rights Commission, “Position Description – Human Rights Officer – Intake/Early Resolution” (Winnipeg, May 2018), 1.

balancing both the parties' and the public's interests in eliminating all forms of discrimination.⁴³ The mediator identifies the issues and assesses the most appropriate means of resolving the complaint such as mediation, negotiation, or conciliation.⁴⁴ The mediator also identifies potential remedies based on human rights principles and laws. The mediator prepares settlement documents for both parties to review and sign.⁴⁵ They facilitate the process of the respondent putting an offer before the Executive Director to assess if it is reasonable. If the parties do not agree on mediation or if mediation fails, the file is sent to investigation.

Investigation

At this stage, the investigator reviews the complaint, acting as a neutral party. They gather facts by interviewing both parties and by analyzing the provided documentary evidence, requesting additional documents if necessary. This information is used to build the analysis. The investigator must use the appropriate legal test when approaching the complaint. The legal tests are questions tailored to the different types of discrimination, i.e., differential treatment, reasonable accommodation, harassment, and reprisal. The investigator forms their analysis of the case by using the evidence to answer the questions provided in the test. The combination of these elements provides the investigator with an understanding that suggests or establishes that discrimination based on the specific characteristic(s) took place. The investigator uses all of the pieces from the investigation to analyze and create an investigation report. This report makes a recommendation to the Executive Director that the complaint should either be sent to adjudication or be dismissed. It is important to note that due to the varying stories and evidence from both parties, and sometimes the lack thereof, the investigation does not always result in a blatantly clear decision. The investigators make a recommendation using 'a balance of probabilities' meaning that there needs to be at least 51% of the evidence to substantiate that the alleged discrimination more likely than not occurred based on the protected characteristics. The completed reports are presented to the Executive Director, who reviews the files and decides at Commission-led meetings if the complaint is sent to adjudication or if it is to be dismissed. The Executive Director can go with the Investigator's recommendation or they can go against it.

⁴³ Manitoba Human Rights Commission, "Position Description – Human Rights Officer – Mediation" (Winnipeg, May 2018), 1.

⁴⁴ MHRC, "Position Description," 1.

⁴⁵ MHRC, "Position Description," 1.

Part 3: Intersectionality

3.1 Defining Intersectionality

There are various definitions for the term intersectionality. Generally, intersectionality is a concept or analytical framework that takes all aspects of disadvantage, like the protected characteristics, oppression, privilege, social structures, power, and the relationships they hold into consideration when analyzing an individual's experience of discrimination. It is important to not only note what the factors are but how they interconnect as well. The argument behind intersectionality is that oppression and privilege can shift depending on the context it is in, and that all experiences of marginalization are relevant.⁴⁶ Intersectionality highlights the complexities of the identity and shows that discrimination does not always occur on a single axis.

'Intersectionality' was coined by Kimberlé Crenshaw in 1989 in an article titled, "Demarginalizing the Intersection of Race and Sex," where she analyzed three legal cases where the plaintiff's claims of intersectional discrimination based on race and sex were rejected because the courts stated that they could not combine different types of discrimination (*DeGraffenreid vs. General Motors*), the judge stated that black females could not act as class representatives in race and sex discrimination actions (*Moore vs. Hughes Helicopter Inc.*), and the judge denied the plaintiffs' ability to represent all black employees at the company but were to represent black women only (*Payne vs. Travenol*). Crenshaw used these court cases to highlight the gap feminist and anti-racist advocacy had when it came to the marginalization of women of color.⁴⁷ "Because of their intersectional identity as both women *and* of color within discourses that are shaped to respond to one *or* the other, women of color are marginalized within both."⁴⁸ These court cases, though dated, exhibit the disadvantage and unfair treatment the plaintiffs experienced because of their unique placement between race and sex discrimination, which had become obscured by the single axis framework.⁴⁹

⁴⁶ Christine Kelly et al., "'Doing' or 'Using' Intersectionality? Opportunities and Challenges in Incorporating Intersectionality into Knowledge Translation Theory and Practice," *International Journal for Equity in Health* 20, no. 1 (August 21, 2021), <https://doi.org/10.1186/s12939-021-01509-z>, 1.

⁴⁷ Johanna Bond, "Foundations of Intersectionality Theory." In *Global Intersectionality and Contemporary Human Rights*. Oxford: Oxford University Press, 2021. Oxford Scholarship Online, 2021. doi: 10.1093/oso/9780198868835.003.0002, 1.

⁴⁸ Johanna Bond, "Foundations of Intersectionality Theory, 1."

⁴⁹ Kimberlé Crenshaw, "Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory, and Antiracist Politics," *University of Chicago Legal Forum* 1989, no. 1 (1989): pp. 139-167, <https://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=1052&context=uclf>, 140.

The single axis framework is the notion that disadvantage stems from a single component of the identity. Crenshaw writes that this framework dominates antidiscrimination law, feminist theory and antiracist politics but its presence does not attempt to acknowledge or resolve the issues of an individual with multiple protected characteristics.⁵⁰ “People’s lives are multi-dimensional and complex. Lived realities are shaped by different factors and social dynamics operating together.”⁵¹ The single axis approach causes their narrative to be “theoretically erased,”⁵² because their experience does not perfectly fit into the dominant forms of discrimination; thus, contributing to their marginalization.

Though the scope of Crenshaw’s original work presented the experience of Black women, intersectionality research has developed to incorporate a range of social identities and issues, and has spread across many disciplines such as law, academia, and even in health care. For example, the Covid-19 pandemic revealed how minorities and vulnerable populations face disproportionately higher risks of disadvantage, contagion and are more exposed to deaths.⁵³

Consider the case of a single mother working in an essential sector coping with the care and education of her children in the total absence of help from public services and primary networks. Her vulnerability does not merely emerge from the fact that she is female but from the contemporaneous presence of other disadvantaged conditions (being a single mother and a key worker) that magnify her vulnerability facing an adverse event (the social distancing due to pandemics).⁵⁴

It is important that the theory has grown across the disciplines because the “scholars and activists working at the intersection of, for example, race and disability...may seek to fully vindicate the rights of all the people in the communities with which they work.”⁵⁵ An intersectional approach brings insight to how people can find themselves oppressed in one community but privileged in another. People are not always similarly situated in their experience

⁵⁰ Kimberlé Crenshaw, “Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory, and Antiracist Politics,” *University of Chicago Legal Forum* 1989, no. 1 (1989): pp. 139-167, <https://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=1052&context=ucf>, 140.

⁵¹ Olena Hankivsky, “What Is Intersectionality?,” in *Intersectionality 101* (Burnaby: The Institute for Intersectionality Research & Policy, SFU, 2016), 3.

⁵² Kimberlé Crenshaw, “Demarginalizing the Intersection,” 139.

⁵³ Lara Maestripieri, “The COVID-19 Pandemics: Why Intersectionality Matters,” *Frontiers in Sociology* 6 (2021), <https://doi.org/10.3389/fsoc.2021.642662>, 1.

⁵⁴ Lara Maestripieri, “The COVID-19 Pandemics,” 4.

⁵⁵ Johanna Bond, “Introduction: Centering Intersectionality.” In *Global Intersectionality and Contemporary Human Rights*. Oxford: Oxford University Press, 2021. doi: 10.1093/oso/9780198868835.003.0001, 3.

of marginalization and an intersectional theory identifies this and can equip those who are disadvantaged with a voice to tell their story.

For change to occur for multiple ground individuals, more has to be done than simply including them into the existing structure of the single ground framework. The addition of the grounds does not equate to intersectional discrimination, but instead is called multiple discrimination. It does not focus on the relationships and interactions between the characteristics/factors.

The intersectionality approach explicitly focuses on the relationships between factors and mutually constructed processes that create difference. This allows for the generation of new and arguably more accurate information about any kind of problem or issue.⁵⁶

3.2 An Understudied Area: Intersectionality and Human Rights

Intersectionality is a generally known framework in a collection of spaces such as in feminist theory, antidiscrimination law, and political discourses.⁵⁷ It has its place in human rights especially in the complaints process; however, the direct study of intersectionality and human rights is not as common as it is in other fields of study like gender studies. In Clark, Matthew and Burns' article, "Power, Privilege and Justice: Intersectionality as Human Rights," they agree that "to date, attempts to make connections [to link intersectionality and human rights together] have been narrow in scope and ambition."⁵⁸ Part of the reason it is hard to implement this type of framework is because of the lack of capacity or resources at human rights organizations to study the area further and the

Lack of cross-referencing among the different human rights mechanisms. These practical difficulties, it is argued, may lead to an *ad hoc* application of intersectional analysis, thereby creating the risk of interpretative inconsistency and the multiplication of different approaches to the same problem.⁵⁹

⁵⁶ Olena Hankivsky, "What Is Intersectionality?," in *Intersectionality 101* (Burnaby: The Institute for Intersectionality Research & Policy, SFU, 2016), 12.

⁵⁷ Sumi Cho, Kimberlé Williams Crenshaw, and Leslie McCall, "Toward a Field of Intersectionality Studies: Theory, Applications, and Praxis," *Signs: Journal of Women in Culture and Society* 38, no. 4 (2013): pp. 785-810, <https://doi.org/10.1086/669608>, 791.

⁵⁸ Colin Clark, Dee Matthew, and Vicki Burns, "Power, Privilege and Justice: Intersectionality as Human Rights?" *The International Journal of Human Rights* 22, no. 1 (2017): pp. 108-126, <https://doi.org/10.1080/13642987.2017.1390333>, 109.

⁵⁹ Ivona Truscan and Joanna Bourke-Martignoni, "International Human Rights Law and Intersectional Discrimination," *The Equal Rights Review* 16 (2016): pp. 103-131, <https://www.sistersforchange.org.uk/wp-content/uploads/2020/docs/01-SFC-DB-FILES/119-Truscan-I-and-Bourke-Martignoni-J-2016.pdf>, 107.

More research and resources are needed to bridge the gap between the two disciplines so we can work towards integrating intersectionality into human rights discourse. An intersectional focus to human rights must be applied to properly account for the issues of experience distortion and exclusion that appear when one has multiple traits. Clark et al. make the point that

The greatest danger or threat to a genuine human rights-based approach to realizing rights and securing justice, dignity, and respect in public and private life is the splitting and dividing of class/gender/race interests.⁶⁰

They are not alone in that thought; many scholars have been trying to emphasize that notion when considering intersectional discrimination. Bond puts forward that the importance of an intersectional analysis in human rights is that it provides,

Critical insight into the lived experience of human rights violations. Most importantly, it provides a complete account of human rights violations and offers a broader scope of remedies to address them than does the unidimensional approach still prevalent in much of the UN's [United Nations'] work.⁶¹

Despite Bond speaking to the United Nations' work, the same goes for the smaller human rights bodies, such as the MHRC that work on rights violations that occur in their own vicinity. When a human rights organization fail to appreciate the scope and context of subordination, they further neglect those already harmed by human rights abuses.⁶² Though research into intersectionality and human rights is understudied due to the abstract nature of how to conceptualize it into human rights practices, there is an importance in using an intersectional theory as a tool in human rights violations. Bond states that intersectionality is a useful tool to “understand in full and remedy the complexity of rights violations that occur at the intersection of multiple subordinated identities.”⁶³ Bond analyzes and uses feminist theory, critical race theory, and human rights jurisprudence to show the underutilization of intersectionality theory in the global discourse of human rights by scholars and activists.⁶⁴ She calls for the structures and systems that enforce

⁶⁰ Colin Clark, Dee Matthew, and Vicki Burns, “Power, Privilege and Justice: Intersectionality as Human Rights?” *The International Journal of Human Rights* 22, no. 1 (2017): pp. 108-126, <https://doi.org/10.1080/13642987.2017.1390333>, 114.

⁶¹ Johanna Bond, “Introduction: Centering Intersectionality.” In *Global Intersectionality and Contemporary Human Rights*. Oxford: Oxford University Press, 2021. doi: 10.1093/oso/9780198868835.003.0001, 3.

⁶² Johanna Bond, “Introduction,” 3.

⁶³ Johanna Bond, “Introduction,” 2.

⁶⁴ Johanna Bond, “Introduction,” 2.

human rights, like the United Nations, to use intersectional theory and frameworks and to do more to embrace intersectionality as an analytical framework.⁶⁵

We can better serve and protect marginalized individuals and groups by realizing that dissecting their identity is unproductive and does not begin to help them in their attempt to reach justice. Intersectional discrimination occurs by the externalization of biases and prejudices based on multiple identities. If the grounds are separated, it takes the assumption that the discrimination can neatly be taken apart. It is easy to compartmentalize the experience by saying that they experienced X because of their disability and Y because of their gender identity but that assumes that their grounds altogether had no relation. If the discrimination occurs because of a combination of factors, the solution should not start by separating those same factors.

Each of us has a gender, sexuality, age, ethnicity, etc. and no single aspect of our identity is necessarily more important than all the others. Any one of an individual's attributes, or any combination of them, may, therefore, form the basis of discrimination.⁶⁶

3.3 Why should the MHRC Create and Utilize an Intersectional Policy?

The Manitoba Human Rights Commission receives a large number of complaints in one year. After reviewing the MHRC data system, I determined that in 2019, the Commission registered 282 complaints, and 201 were single ground complaints.⁶⁷ The remaining 81 were complaints that included two or more protected characteristics.⁶⁸ Determining the ground, the adverse treatment and if the ground was a factor in the treatment is an adequate approach for the majority of the complaints that the Commission receives. The approach does not seem to work as well for the remaining 81 complaints, however, because it treats the grounds as if they exist in vacuums, disregarding the relationship between them.

Right now, the MHRC does not have an agreed upon method to address complaints that include two or more protected characteristics. It is up to the staff's discretion on how to work on these files. Though this may not seem like an issue, the approach of someone who does not see the importance of an intersectional lens would bring about different results in their practice, in comparison to someone who does acknowledge intersectionality in a complaint. Are the officers

⁶⁵ Johanna Bond, "Introduction: Centering Intersectionality." In *Global Intersectionality and Contemporary Human Rights*. Oxford: Oxford University Press, 2021. doi: 10.1093/oso/9780198868835.003.0001, 2.

⁶⁶ Paola Uccellari, "Multiple Discrimination: How Law Can Reflect Reality," *Equal Rights Trust Review* 1 (2008): pp. 24-49, <https://www.equalrightstrust.org/sites/default/files/ertdocs//Multiple%20Discrimination.pdf>, 24.

⁶⁷ Manitoba Human Rights Commission, "2019 File Statistics." (Winnipeg, n.d.).

⁶⁸ MHRC, "2019 File Statistics."

meant to adapt the practice and treat the protected characteristics as separate, unrelated factors in the case or should a more nuanced approach be taken? I propose the latter and recommend that the Commission create a policy that institutes this type of approach.

Intersectionality is important because without it, the existing method does not provide sufficient protection to individuals who file their complaints on numerous grounds. It fails to acknowledge the reality of the person's lived experience and identity, causing them to feel as though they are not valued by society.⁶⁹ An intersectional theory draws attention to the elements that often get hidden when applied to the single axis framework and exposes how the single axis framework undermines legal thinking, disciplinary knowledge production, and struggles for justice.⁷⁰

Intersectionality immeasurably advanced understanding of the ways single axis approaches to social identities simultaneously generalize the experiences of some (e.g., White women) while they elide, erase, or otherwise render invisible the experiences of other, often less powerful groups (e.g., Black women.)⁷¹

An intersectional framework would allow the complainant to bring attention to their perspective and calls for exploration of the factors at play. An intersectional policy would promote a wider conversation with the complainant about what they think were factors in their discrimination, how they think the factors interrelated, how it affected the treatment they received, and the impact of it on their life. If the person does not fall perfectly within the single axis framework, the goal of an intersectional framework would be to include them. With more open dialogue and the uncovering of these experiences, the Commission can begin to examine the complaint to its full extent. The MHRC should conduct an examination of the processes, practices, policies, and structures that increase the risk of multiple ground discrimination.

⁶⁹ Paola Uccellari, "Multiple Discrimination: How Law Can Reflect Reality," *Equal Rights Trust Review* 1 (2008): pp. 24-49, <https://www.equalrightstrust.org/sites/default/files/ertdocs/Multiple%20Discrimination.pdf>, 24.

⁷⁰ Sumi Cho, Kimberlé Williams Crenshaw, and Leslie McCall, "Toward a Field of Intersectionality Studies: Theory, Applications, and Praxis," *Signs: Journal of Women in Culture and Society* 38, no. 4 (2013): pp. 785-810, <https://doi.org/10.1086/669608>, 787.

⁷¹ Kim Case and Ronnie Greenwood, "Intersectionality Foundations and Disciplinary Adaptations: Highways and Byways," in *Intersectional Pedagogy: Complicating Identity and Social Justice* (New York, NY: Routledge, 2017), pp. 25-45, 28.

3.4 The Ontario Human Rights Commission's Approach

In Canada, along with the rest of the world, an intersectional approach to the human rights complaints process is still in development. A noteworthy move in the direction towards intersectionality comes from the Ontario Human Rights Commission (OHRC), the first Canadian Commission to integrate an intersectional approach into its practices. The OHRC released a 30-page report outlining its move towards an intersectional approach in 2001. The paper recognizes the work the OHRC has already accomplished to recognize the complexity of experiences of discrimination and builds on it.⁷² The OHRC states, “a contextualized approach places less emphasis on characteristics of the individual and more on society’s response to the person. It also takes into account historical disadvantage experienced by the group the person belongs to.”⁷³ Its intersectional approach considers the historical, social and political context and recognizes the unique experience of the individual based on the intersection of all their characteristics.⁷⁴ This way acknowledges and remedies the individual’s personal experience of discrimination.

The OHRC instituted a change in their practice by adopting what they called a “two-pronged approach” that guides the use of intersectionality in a complaint.⁷⁵ The first prong shifts away from the single ground framework to a multiple ground framework, analyzing that “the assumption that an individual’s experiences are based on multiple identities can be linked to more than one ground of discrimination.”⁷⁶ The second prong focuses on the contextual factors of the case such as “discriminatory stereotypes; the purpose of the legislation, regulation or policy; the nature of and / or situation of the individual at issue, and the social, political and legal history of the person’s treatment in society.”⁷⁷ The OHRC highlights the advantages of an intersectional or contextualized approach, which are that it acknowledges the complexity and uniqueness of the experience of discrimination, accounts for the social and historical context of the group and emphasizes society’s response to the individual because of the confluence of grounds.⁷⁸ Though the document has not been updated since 2001, it is a good start. I believe that

⁷² Ontario Human Rights Commission. “An Intersectional Approach to Discrimination: Addressing Multiple Grounds in Human Rights Claims.” Ontario Human Rights Commission, 2001.

http://www.ohrc.on.ca/sites/default/files/attachments/An_intersectional_approach_to_discrimination%3A_Address ing_multiple_grounds_in_human_rights_claims.pdf, 2.

⁷³ OHRC, “An Intersectional Approach,” 2.

⁷⁴ OHRC, “An Intersectional Approach,” 2.

⁷⁵ OHRC, “An Intersectional Approach,” 28.

⁷⁶ OHRC, “An Intersectional Approach,” 28.

⁷⁷ OHRC, “An Intersectional Approach,” 28.

⁷⁸ OHRC, “An Intersectional Approach,” 5.

the Manitoba Human Rights Commission should follow the OHRC's footsteps and work on institutionalizing a similar policy.

Part 4: Policy Suggestion

4.1 How can the MHRC Operationalize Intersectionality in Practice?

At face value, intersectionality appears to be an infallible concept. Its overarching goal is to realize the diversity of individuals and groups by keeping their protected characteristics together at the core of the issue. It includes them in the narrative by acknowledging that discrimination affects each person differently, and by considering that the discrimination can be a consequence of existing social and power structures. However, like with any theory, there are critiques. One of the critiques is that this framework may be grounded in an idealist view and difficult to initiate. This theory may be too optimistic and result in disappointment when it comes to remedy.

Several of these authors view the application of intersectional methods as offering a false promise to complainants due to the fact that they have not, as yet, resulted in specific reparations that meaningfully address the root causes of inequality and power imbalances.⁷⁹

How does one concretely, operationalize intersectionality into practice that results in equality for all? Many human rights organizations grapple with this question. "When decision-makers, as eminent as the Supreme Court, are struggling to apply a multiple grounds analysis, it is not surprising that human rights commissions are also having difficulty."⁸⁰ The difficulty lies in the lack of tangible answers in this theory. "Intersectionality may be challenging and important, but how can such a 'fuzzy' concept apply itself within the complex and unequal social world we seek to both normatively and politically understand?"⁸¹

Due to the lack of research found about the relationship between intersectionality and human rights, the purpose of this paper is not to define clear-cut steps to adopting an intersectional practice, but to provide guidance and encourage a change of trajectory in this area

⁷⁹ Ivona Truscan and Joanna Bourke-Martignoni, "International Human Rights Law and Intersectional Discrimination," *The Equal Rights Review* 16 (2016): pp. 103-131, <https://www.sistersforchange.org.uk/wp-content/uploads/2020/docs/01-SFC-DB-FILES/119-Truscan-I-and-Bourke-Martignoni-J-2016.pdf>, 107.

⁸⁰ Ontario Human Rights Commission. "An Intersectional Approach to Discrimination: Addressing Multiple Grounds in Human Rights Claims." Ontario Human Rights Commission, 2001. http://www.ohrc.on.ca/sites/default/files/attachments/An_intersectional_approach_to_discrimination%3A_Addressi ng_multiple_grounds_in_human_rights_claims.pdf, 12.

⁸¹ Colin Clark, Dee Matthew, and Vicki Burns, "Power, Privilege and Justice: Intersectionality as Human Rights?" *The International Journal of Human Rights* 22, no. 1 (2017): pp. 108-126, <https://doi.org/10.1080/13642987.2017.1390333>, 10.

of research within the MHRC. With the development of this approach, specific steps may emerge, but even so, “inclusivity does not have to mean a ‘one size fits all’ approach to challenging oppressive practices.”⁸² I am not suggesting the MHRC create a firm step-by-step process to institutionalizing an intersectional approach at this moment, but instead I am pushing for its development. The tool would change over time with practice, and hopefully develop into something substantive. The Commission should create a new tool/lens that employs an intersectional approach to multiple ground complaints, so it is not left to the individual staff member’s interpretation. Overall, the facts of the case would remain a crucial consideration; however, a guiding policy would help direct the Commission staff on the ways to get the work started. It would bring clarity to the MHRC’s stance on how to come to a fair conclusion when considering a multiple ground complaint.

I propose that the MHRC develop a policy that guides the practice of addressing multiple ground complaints that challenges the pre-existing single axis framework. Applying an intersectional framework in practice challenges us to strengthen our tools for addressing discrimination and oppression. I have two suggestions for an intersectionality approach: the first is applicable in the complaints process and the second focuses on human rights education. In both instances, language is a substantial component of operationalizing an intersectional approach in practice. “Understanding the ways in which communications are carried out and their institutional context allows you to identify important aspects of social relationships.”⁸³

Acknowledging the existence of different protected characteristics in an individual/group is the first step but it is not enough to drive change. At the MHRC, this stage should be complemented by having an internal discussion with staff, then a conversation with the complainant(s) about if and how the factors are interdependent and how they interrelate. Block and Corona, co-authors of “Intersectionality in Language and Identity Research,” caution against carrying overgeneralizing assumptions and stereotypes about the different traits.

There has been a paucity of research which addresses intradimensional differences and variations to a sufficient degree, that is, explorations of how labels such as ‘Latino’ may

⁸² Colin Clark, Dee Matthew, and Vicki Burns, “Power, Privilege and Justice: Intersectionality as Human Rights?” *The International Journal of Human Rights* 22, no. 1 (2017): pp. 108-126, <https://doi.org/10.1080/13642987.2017.1390333>, 6.

⁸³ Malcolm Payne, *Modern Social Work Theory*, 4th ed. (New York, NY: Oxford University Press, 2016), 255.

hide as much as they reveal if there is no acknowledgement or exploration of the differences among people classified according to these labels.⁸⁴

It will take time to develop an intersectional approach that does not merely build on the existing single ground approach. Some immediate changes that can be made is for the intake staff to start a conversation with the complainant at the beginning of the process about intersectionality. Afterwards, the complainant will have an opportunity to share what they find important to the complaint. The complainant will lead the conversation, which is something the MHRC already does. The focus should fall less on the specific ground and more on the adverse treatment they had experienced to provide the staff with a holistic view. For example, the complainant's evidence is that he was terminated from his job because he is an Indigenous man, he has a physical disability, and he is transgender. In the report, instead of naming the specific characteristics, the Commission can say that the complainant was discriminated in his employment based on his ancestry, disability and gender identity by being unfairly terminated. This view can prompt the Commission staff to consider that the complainant suffered from discrimination based on the compounding nature of his identity. This way of thinking opens the opportunity to ask a variety of questions that can be tailored to the individual. This would help the MHRC obtain a better understanding of the case and gain a holistic view of the complainant's experience. This opens up a different line of questioning for the respondent, the other party involved. The Commission requires that there is 51% of evidence that suggests discrimination occurred for the case to be recommended for adjudication. If the individual's grounds and experiences of discrimination are compartmentalized, the 51% of evidence is harder to achieve; if the individual's identity is kept at the core of the issue, this may raise the chances of the 51% requirement being met.

4.2 In the Complaints Process

My suggested framework was inspired by John Lederach's approach to conceptualizing peacebuilding. In his book, he clarifies that he does not create a grand theory related to peacebuilding in contemporary conflict, but he does provide a set of ideas and analytical lenses

⁸⁴ Preece Siân, David Block, and Victor Corona, "Intersectionality in Language and Identity Research," in *The Routledge Handbook of Language and Identity* (London, England: Routledge, Taylor et Francis Group, 2016), pp. 507-522, <https://ebookcentral.proquest.com/lib/umanitoba/reader.action?docID=4406288>, 508.

that suggest how conflict transformation can be understood.⁸⁵ I do not create a theory, nor do I have concrete solutions for intersectional discrimination. I, however, do provide suggestions for areas that would benefit from a nuanced approach to compounded complaints and incremental jumping off points for a framework the Commission can employ. Lederach states: “a framework helps situate things within a context and provide lenses through which we can look at them... A framework provides categories in which we can raise questions and think about specific action.”⁸⁶ I have proposed that the MHRC take a united stance when it comes to intersectional discrimination. To do so I propose that it follows Ontario’s lead and adopts a policy similar to their two-pronged approach. The goal for the staff should be to move away from the traditional single ground framework because it narrowly focuses on a single ground without questioning if other factors are at play. There are implications to the improper use of this framework:

where the applicant cannot categorise [themselves] under only one ground, the claim of discrimination may be dropped, or the analysis of the case may be incomplete, leading to ineffective remedies and ultimately failing to provide justice.⁸⁷

The single axis framework does not allow space to consider the existing relationships between the grounds. If an intersectional lens is developed and used, there is opportunity for the full scope and context of a complex complaint to be recognized. This should produce MHRC reports that has a better chance of being appropriately dealt with, resulting in remedies that capture the nature of the rights violation. The first policy suggestion is for the staff to better understand intersectional discrimination by utilizing a person-centered approach. The second suggestion prompts the staff to focus on the contextual factors that impact the complainant’s received discrimination.

Ontario’s first prong of their two-pronged approach is to shift the importance of the single ground framework to a multiple ground. The MHRC staff should also adopt this concept, and this can be achieved by using a person-centered approach. Discrimination will never truly be understood to the extent of the person who experiences it, but the first step towards its recognition begins with their narrative. If power is given to the complainant to share their story,

⁸⁵ John Paul Lederach, *Building Peace: Sustainable Reconciliation in Divided Societies* (Washington, DC: United States Institute of Peace Press, 2002), 20-21.

⁸⁶ John Paul Lederach, *Building Peace*, 20-21.

⁸⁷ Johanna Bond, “Intersectionality and Human Rights within Regional Human Rights Systems,” in *Global Intersectionality and Contemporary Human Rights* (Oxford, Oxford Scholarship Online: Oxford University Press, 2021), pp. 78-129, doi: 10.1093/oso/9780198868835.003.0005, 95.

then we get to uncover what they found to be important parts of the case, they can share the forces at play in their experience. “Social events and relationships, particularly in the view of narrative practice, are always complex, shaded by the social histories of the events and the relationships that are part of it.”⁸⁸ The MHRC is successful during this step as this is the approach that is taken. As long as it remains relevant to the complaint, the staff should continue to allow the complainant to take the lead of the conversation. Understandably, giving the complainant this amount of agency can cause the conversation to go off course. It is important for the staff to keep them on track and reiterate that the Commission focuses on fact and evidence, and not emotion because of its subjectivity. To do so, specifically in the investigation stage, the questions asked during an interview can help with this issue.

The investigators are always prepared with questions before an interview. The questions are crucial to investigation because the complainant’s allegations are put to the respondent for a response. The language that the staff uses while asking the questions should be inclusive to the protected grounds instead of limiting. It would be useful to be curious and consider the concept scholar, Mari Matsuda, calls “asking the other question.” Matsuda uses this method to understand the relationships between forms of subordination.

When I see something that looks racist, I ask, “Where is the patriarchy in this?” When I see something that looks sexist, I ask, “Where is the heterosexism in this?” When I see something that looks homophobic, I ask, “Where are the class interests in this?” Working in coalition forces us to look for both the obvious and non-obvious relationships of domination, helping us to realize that no form of subordination ever stands alone.⁸⁹

This approach challenges our way of thinking and our way of analyzing a complaint. Though not all discrimination is apparent, this approach may cause the intake officer, mediator, investigator, lawyer, commissioners, and directors to consider that the intrinsic factors, like historical policies or structural issues, may also play a part in forming a discriminatory experience for the complainant.

⁸⁸ Malcolm Payne, *Modern Social Work Theory*, 4th ed. (New York, NY: Oxford University Press, 2016), 260.

⁸⁹ Mari J. Matsuda, “Beside My Sister, Facing the Enemy: Legal Theory out of Coalition,” *Stanford Law Review* 43, no. 6 (1991): pp. 1183-1192, <https://doi.org/10.2307/1229035>, 1189.

4.3 Human Rights Education

This section will describe human rights education in the context of the Manitoba Human Rights Commission's employees and in the context of public education. *The Code* establishes the Commission's responsibility to provide human rights education to the public. The MHRC has not been providing these services as often as preferred due to the emphasis placed on the complaints process. All Canadian commissions, not just the MHRC, prioritize the complaints process over education; however, the need for education programs is growing.⁹⁰ The Canadian Human Rights Act Review Panel highlighted this point by stating that to promote equality there is a "need to educate those who must provide equality and those who need equality about the meaning and intent of the Act with respect to how equality should be achieved."⁹¹ This part of my policy suggestion stresses that the MHRC should work more on the education front and possibly create a role devoted to the education side of its operations.

When an employee is hired at the Commission, they undergo training sessions on *the Code*, the Commission's work, the different areas within the organization, they are provided with an employee manual that details their role and are allowed to participate in any education sessions that is offered to the public. There is no formal requirement for education in that an employee must produce a specific amount of training hours over a given year. In the organization, however, an employee is constantly learning through the educational sessions about *the Code*, about different legal areas, how to handles files, etc. When new issues and areas of interest arise, it is researched, and worked on before the information is provided during staff meetings. It would be at these meetings that I propose the topic of intersectionality and human rights should be covered. The staff should be educated first before the information is provided to the public to create an understanding of the work that will be done, and to be more equipped to answer any questions that may arise.

During the internal session regarding intersectionality, the staff member should participate in a self-assessment, where they acknowledge any gaps in their knowledge or personal prejudices that may exist. For the Commission to take a cohesive position on how to utilize this approach, the staff need to be aware of the issues with applying a single ground

⁹⁰ Dominique Clément, "Renewing Human Rights Law in Canada," *Osgoode Hall Law Journal* 54, no. 4 (2017): pp. 1311-1340, <https://doi.org/10.2139/ssrn.2905135>, 1332.

⁹¹ Dominique Clément, "Renewing Human Rights Law," 1332.

framework to multiple ground complaints. The staff would be reminded of the power dynamics and how it may affect the complainant's perception of or willingness to becoming involved with the Commission. The staff should ensure that they realize they are working from a position of power and acknowledge the importance of a person centered focus when it comes to the complainant's identity. "Intersectionality theory challenges us to develop and address societal level drivers of oppression and privilege."⁹² The staff must challenge the traditional ways of thinking and adapt their practice to the issues at hand. They must have a solid understanding of the area before sharing the knowledge with the public. This group effort can form the basis of creating a policy.

Interventions of intersectionality requires educators to understand and acknowledge that race, ethnicity, gender, social class, sexual identity, and power occupy the core of inequality among people of color.⁹³

The next step after staff education is take the knowledge to the public and provide training sessions to employers, service providers, schools, and other institutions. Currently, the executive director leads the education seminars provided by the MHRC, but they will be taking up more responsibilities with the *Code* amendments. Therefore, the Commission would benefit from the creation of an educator role who can devote their time to providing this information to the public. The MHRC should develop a program to provide participants with an understanding of the complexities of the identity, how discrimination occurs due to a conflation of protected characteristics, and how to use an intersectional approach in everyday life to prevent the furthering of discrimination. The sessions will provide an opportunity for people to learn that intersectionality recognizes that discrimination does not look the same for everyone. Bringing this information to the forefront of our population will not extinguish intersectional discrimination completely; however, bringing light to the area may garner a better understanding of how to combat complex inequalities.

⁹² Emma Heard, "Intersectionality in Practice," *Health Promotion International* 36, no. 1 (2020): pp. 1-2, <https://doi.org/10.1093/heapro/daaa069>, 1.

⁹³ Kim Case and Naomi Hall, "Quotes, Blogs, Diagrams, and Counter-Storytelling: Teaching Intersectionality at a Minority-Serving Institution," in *Intersectional Pedagogy: Complicating Identity and Social Justice* (New York, NY: Routledge, 2017), pp. 150-170, 154.

Part 5: Case Example

5.1 A Recent Adjudication Decision

A Manitoba adjudication hearing decision for the case *Richardson v. Wilma Galbraith and Kirkwall Properties Ltd* was released in January 2021, and the adjudicator took an intersectional look at the complaint. This precedent setting decision was the first of its kind in Manitoba to ensure that rental premises are harassment and discrimination-free. The complainant, Richardson, was a tenant at Kirkwall Properties Ltd, experienced harassment by the property owner and landlord, Wilma Galbraith. During the complainant's time living on the property, she alleged that Galbraith harassed her on the basis of numerous grounds: age, sex, pregnancy, source of income, family status and the association with her then partner, who is Black. The adjudicator found that there were fourteen separate occurrences of harassment.⁹⁴ Galbraith made inappropriate comments about her receiving Employment Income Assistance, derogatory comments about her partner and their child, and physically assaulted her. The adjudicator found that:

In this case, the complainant was not just a woman who happened to be pregnant with a baby whose father happened to be Black, and who happened to be on EIA. Rather the complainant was a vulnerable, pregnant woman in a relationship with a Black man whose source of income was EIA. As in *Baylis*, the multiple and serious forms of discrimination that the complainant endured were intersectional in nature and caused damage to her physical and emotional well-being.⁹⁵

This case is a step towards the recognition of intersectionality because it acknowledges that the complainant's adverse treatment was the result of her numerous characteristics. This acknowledgement resulted in a remedy proportional to the violation that occurred. The remedy required the respondent to implement non-discrimination and anti-harassment policies, to provide training on the policies, to send the harasser to sensitivity training, to compensate the complainant for losses and to pay her damages.⁹⁶ It is a step in the right direction, but more work needs to be done. This complaint, like many others that come into the Commission, had many factors at play. While this case had clear indications of intersectional discrimination, not all cases can explicitly prove discrimination on multiple grounds. With the development of this

⁹⁴ *Richardson v. Galbraith and Kirkwall Properties Ltd*, Manitoba Human Rights 1–15 (Human Rights Adjudication Panel 2021), 8.

⁹⁵ *Richardson v. Galbraith*, 12.

⁹⁶ *Richardson v. Galbraith*, 14.

framework, the Manitoba Human Rights Commission will be able to better support those who do find themselves in similar experiences.

Part 6: Conclusion

I am happy to have completed my practicum at the Manitoba Human Rights Commission. I was provided with numerous opportunities and experiences that I believe helped drive tangible change in the protection and enforcement of human rights. I have been a witness to the great work that the Commission completes but I also saw areas of growth and development. The main area was the lack of an intersectional approach to the complaints process. The goal of this paper was not to provide a solid framework that will be instituted immediately, nor was it to answer any questions I had prompted. It was simply to shed light in this area and to push for action. The theory of intersectionality is fluid and has adapted many times over the course of 30 years, when Kimberlé Crenshaw coined the term.

A work-in-progress understanding of intersectionality invites us to do just that – that is, to see the theory in places in which it is already doing work and to imagine other kinds of work that agents might employ intersectionality to perform.⁹⁷

My suggestions of the consideration of the language used when speaking with parties, by continuing to utilize a person centered approach, and by educating both its staff and the public of the importance of intersectionality is to be used to start the process and in no way does this cover the extent of the work that needs to be done. I propose that the MHRC begin the work in forming an intersectionality policy, not to provide a step-by-step application of the theory but to ensure that it remains a key consideration for complex files, to prevent anyone from ‘slipping through the cracks.’

⁹⁷ Devon Carbado et al., “Intersectionality: Mapping the Movements of a Theory,” *Du Bois Review: Social Science Research on Race* 10, no. 2 (2013): pp. 303-312, <https://doi.org/10.1017/S1742058X13000349>, 306.

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