

British Columbia Human Rights Tribunal

2018/2019 ANNUAL REPORT

July 2019



Mandate

Our mandate is to further the purposes set out in section 3 of the *Human Rights Code*:

- a) To foster a society in British Columbia in which there are no impediments to full and free participation in the economic, social, political and cultural life of British Columbia;
- b) To promote a climate of understanding and mutual respect where all are equal in dignity and rights;
- c) To prevent discrimination prohibited by this *Code*;
- d) To identify and eliminate persistent patterns of inequality associated with discrimination prohibited by this *Code*;
- e) To provide a means of redress for those persons who are discriminated against contrary to this *Code*.

Our mission is to resolve human rights complaints through fair, effective, timely, and accessible dispute resolution services.

The Tribunal's process is governed by its *Rules of Practice and Procedure*.

Value Statements

Appropriate Resolution

We will provide dispute resolution services that are proportionate and appropriate to the issues in dispute. Our services will accord to the highest standards of adjudicative integrity. Our decisions will be issued within a reasonable time frame.

Public Confidence

We will be accountable and transparent. We will be impartial and independent in our decision-making. We will enhance full and informed participation of parties in our process, whether or not they have legal representation.

Service Excellence

We will exhibit the highest standards of public service integrity and professionalism. At every stage of our process, we will be responsive, flexible, and sensitive to the needs of the public who seek our services. We will continually innovate and improve our public service.

Access to Justice Innovation

We are committed to improving access to justice in British Columbia. We proudly endorse the Access to Justice Triple Aim. We will be leaders in administrative justice that reflects best practices across Canada.

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Message from the Chair

I am pleased to present the Annual Report of the British Columbia Human Rights Tribunal for the fiscal year April 1, 2018 to March 31, 2019, submitted in accordance with s. 59.2 of the *Administrative Tribunals Act* and s. 39.1 of the *Human Rights Code*. I am accountable for the results as reported.

Our Tribunal is committed to improving access to justice for all British Columbians in resolving their human rights complaints. We aim to resolve human rights complaints through fair, effective, timely, and accessible dispute resolution services. Our innovations and improvements are guided by the following values:

- Appropriate Resolution
- Public Confidence
- Service Excellence
- Access to Justice Innovation

We proudly endorse the Access to Justice Triple Aim which guides our innovation efforts. Our focus is to improve the accessibility and experience of those who seek our Tribunal to ensure that our services work for those who need them most.

We are working hard to reduce delay and improve service in the face of unprecedented volume. We welcomed changes to the *Human Rights Code* which increased the time limit for filing a complaint from six months to one year. We have requested other legislative amendments, established a Working Group on Strengthening Tribunal Processes for Representative Complaints, and launched an *Indigenous Justice Initiative*.

Our community is also expanding. We are very pleased to welcome our new Human Rights Commissioner and look forward to supporting the success of a strong and independent Human Rights Commission. We have also embraced our administrative justice community through colocation.

Our Tribunal staff espouses our commitment to public service, and it is a great privilege to work with them. Together, we are proud to service British Columbians.



Diana Juricevic
Chair
July 2019

Tribunal Team

Members are administrative law judges who mediate, case manage, adjudicate, and make decisions on human rights complaints. Our Staff are an integral part of our professional team. They support our adjudicators and serve our public to the highest standards of integrity and professionalism.

STAFF

Registrar

Steven Adamson

Manager of Finance and Operations

Andrea Nash

Legal Counsel

Barbara Korenkiewicz (partial year)

Katherine Hardie

Walter Pylypchuk (partial year)

Registry Staff

Ainsley Kelly (partial year)

Britt Stevens

Carla Kennedy

Cheryl Bigelow

Daniel Varnals

Danyka Wadley (partial year)

Fabian Jankovic (partial year)

Karly Betsworth (partial year)

Katharine Russell (partial year)

Kerry Jervelund

Lea Betsworth (partial year)

Lorne MacDonald

Luke LaRue (partial year)

Mattie Kalicharan

Meagan Stangl

Nikki Mann

Priscilia Bolanos

Sandy Tse

MEMBERS

Chair

[Diana Juricevic](#)

Tribunal Members

Barbara Korenkiewicz (partial year)

[Beverly Froese](#) (partial year)

[Catherine McCreary](#)

[Devyn Cousineau](#)

[Emily Ohler](#)

[Grace Chen](#) (partial year)

[Jacqueline Beltgens](#)

[Kathleen Smith](#) (partial year)

[Norman Trerise](#) (partial year)

[Pamela Murray](#) (partial year)

[Paul Singh](#)

[Steven Adamson](#) (Registrar)

[Walter Rilkoff](#) (partial year)

For further information about the Tribunal team, contact us: [website](#)

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Operations and Accountability

Our most integral resource is our team. We share accountability. The Chair is responsible for the effective management and operation of the Tribunal, including allocating work among its members. Members are independent decision makers who are accountable for their caseloads.

We have high service standards that are achievable. We are meeting all of our targets and service standards with the exception of timeliness. Some gains have been made to meet the unexpected increase in the volume of cases. We are working diligently to streamline processes, stretching resources to maximum capacities, and continuously searching for innovations and cost-saving measures.

It is challenging to find a balance between achieving standards and balancing our budget without exhausting staffing resources. There have been staffing challenges associated with attrition. Over the past two years, we have experienced lengthy medical leaves, retirements, requests for reduction in working hours, medical accommodations, and employees leaving to pursue career growth. We have met these challenges with recruitment and orientation of new staff and members. The learning curve ranges from six months to one year before they can embrace full responsibilities.

Our commitment is to the highest standards of adjudicative integrity and professionalism. We will not compromise quality of service to the public to meet timeliness standards. Moving forward, it is realistic to either lighten our timeliness standards or increase our staffing compliment or a balance of both. The Tribunal has held a compliment of 26 FTEs since inception in 2003 despite a 66% increase in our caseload volume over the past four years.

Public Inquiry

We respond to a multitude of public inquiries about the *Code*, including making referrals to other community and government agencies. Our [website](#) has become the most important tool for the public to find information they need. The number of website visits has increased from 146,000 in 2014-2015 to 700,000 in 2018-2019, a significant increase over a five-year period.

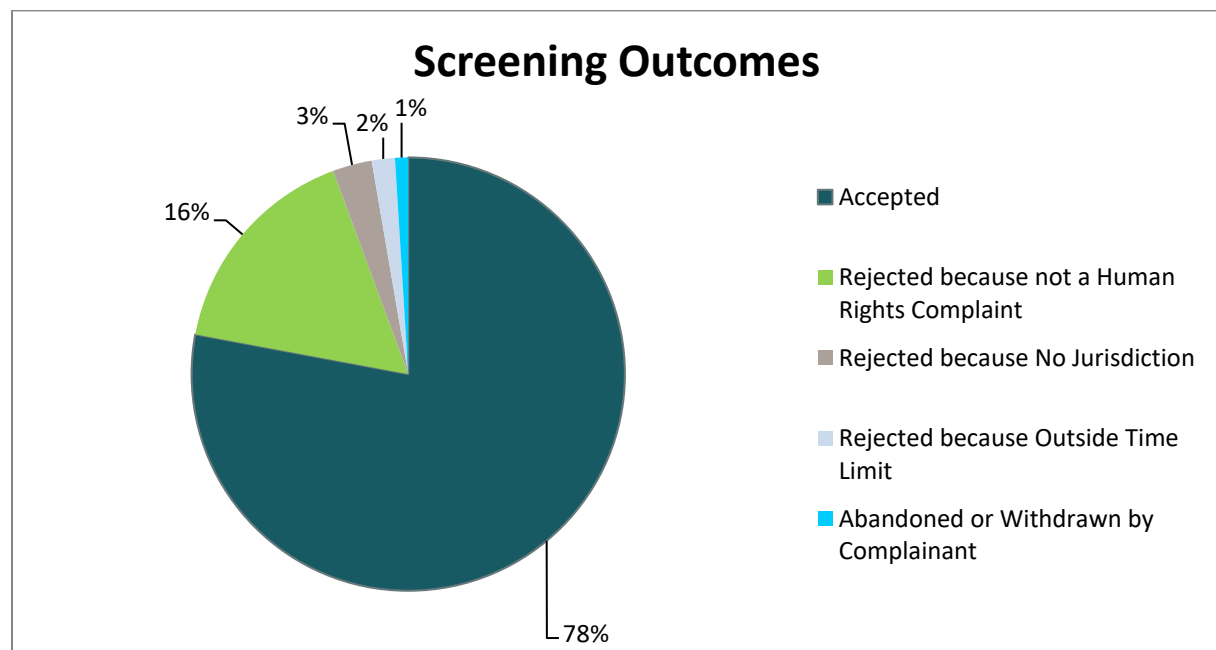
New Complaints

Complaints are filed directly with the Tribunal which is responsible for all steps in the human rights process.

The Tribunal received a total of 1,736 new complaints during the past year. Of those, 1,445 new complaints were accepted for filing, and 291 complaints were in the screening process at year end. Screening ensures complaints are within the Tribunal's jurisdiction, are timely, and set out a contravention of the *Code*.

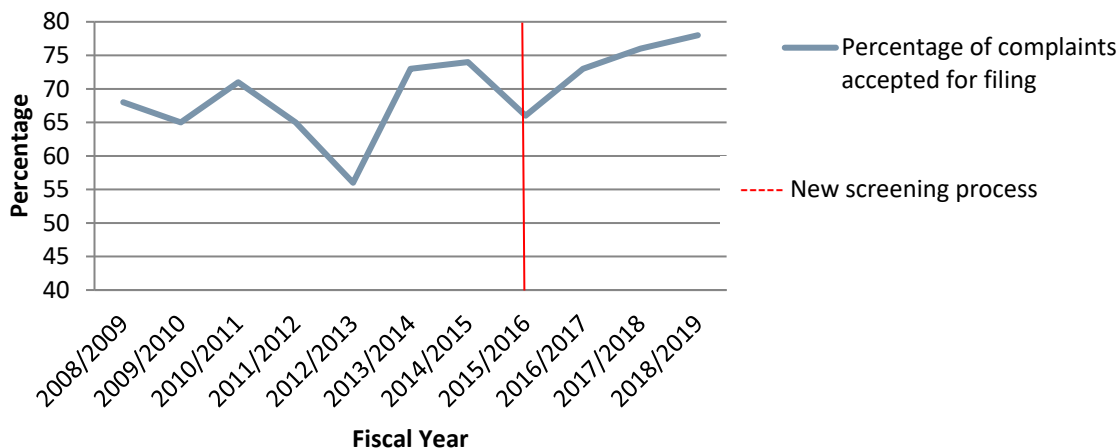
Three years ago, we implemented a new screening process to improve the quality, consistency, and timeliness of screening decisions. Our screening process now involves review by a team consisting of the Registrar, screening manager, Chair, and when necessary, legal counsel. Prior to this, there was no centralized process for screening human rights complaints.

This past year, the Tribunal accepted 78% of complaints for filing.



Since implementing the new screening process, our acceptance of new complaints for filing is higher than the ten-year average of 69%.

Percentage of complaints accepted for filing

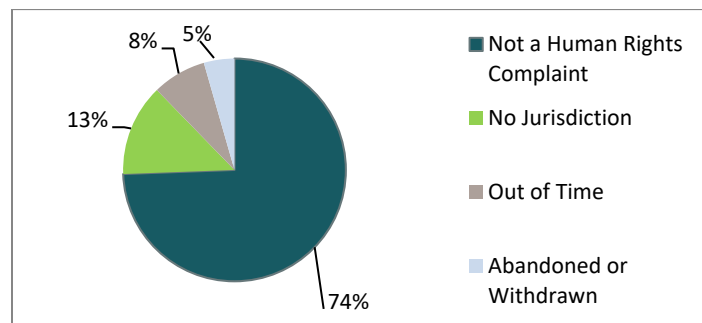


Our service standard for screening is that, 80% of the time, we will complete our screening process and notify parties within 30 days of filing. Where additional information to satisfy screening requirements is necessary, we will complete our screening process and notify parties within 60 days of filing.

We completed the screening process and notified parties within 30 days of filing 45% of the time, not meeting our service target. We completed the screening process and notified parties within 60 days of filing 5% of the time, not meeting our service target.

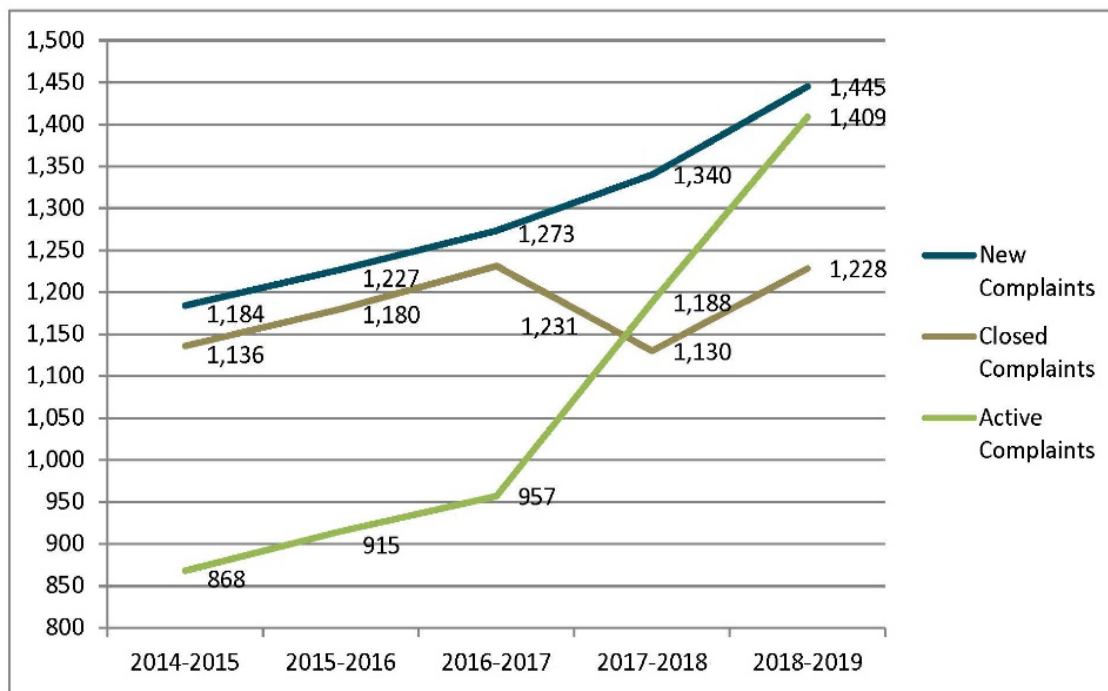
Complaints Not Accepted for Filing

Of the 22% of complaints that were not accepted for filing, the majority were rejected because they were not a human rights complaint (74%). Others were rejected because the Tribunal did not have jurisdiction (13%) (e.g. the complaint was under federal jurisdiction). Others were rejected because the complaint was outside the time limit in the *Code* (8%). The remainder were abandoned or withdrawn by the complainant (5%).



Tribunal Workload

The Tribunal continued to have a significant workload. The caseload volume is at an all-time high. The number of active complaints at the Tribunal is 1,409, which represents a 19% increase over the previous year and a 66% increase since 2014-2015. Active cases do not include cases deferred or stayed at the request of the parties pending the outcome of another proceeding, those settling, or cases where petitions for judicial review have been filed after a final decision.



This year a new trend persists, as there continues to be a wide gap between opened and closed cases. The stabilization of this gap is a key indicator of performance. However, the Tribunal continues to receive more new complaints than it can resolve. This outcome comes as no surprise given the increase in active cases over the past five years. This increase may be attributed to two pressures.

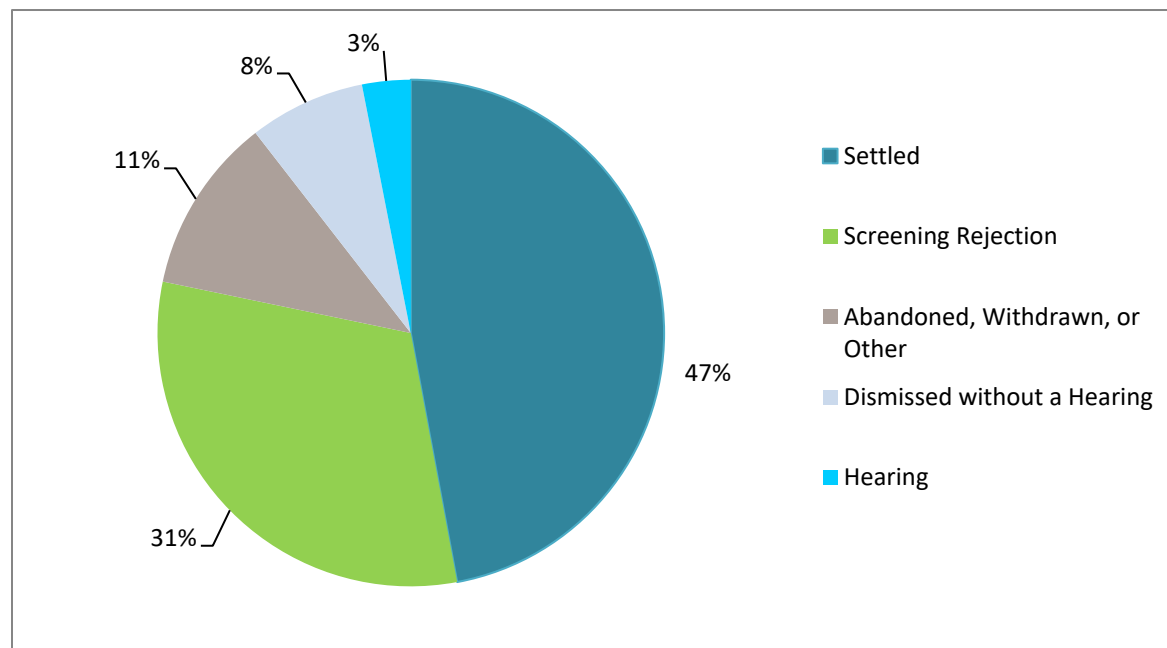
First, the new screening process has resulted in more complaints being accepted for filing. This is a key indicator of our access to justice efforts. Second, the announcement of the Human Rights Commission, and recent legislative changes, have increased the demand for our services. These include the 2016 legislative change adding the ground of “gender identity and expression” and the 2018 legislative change increasing the time limit for filing a human rights complaint from six months to one year.

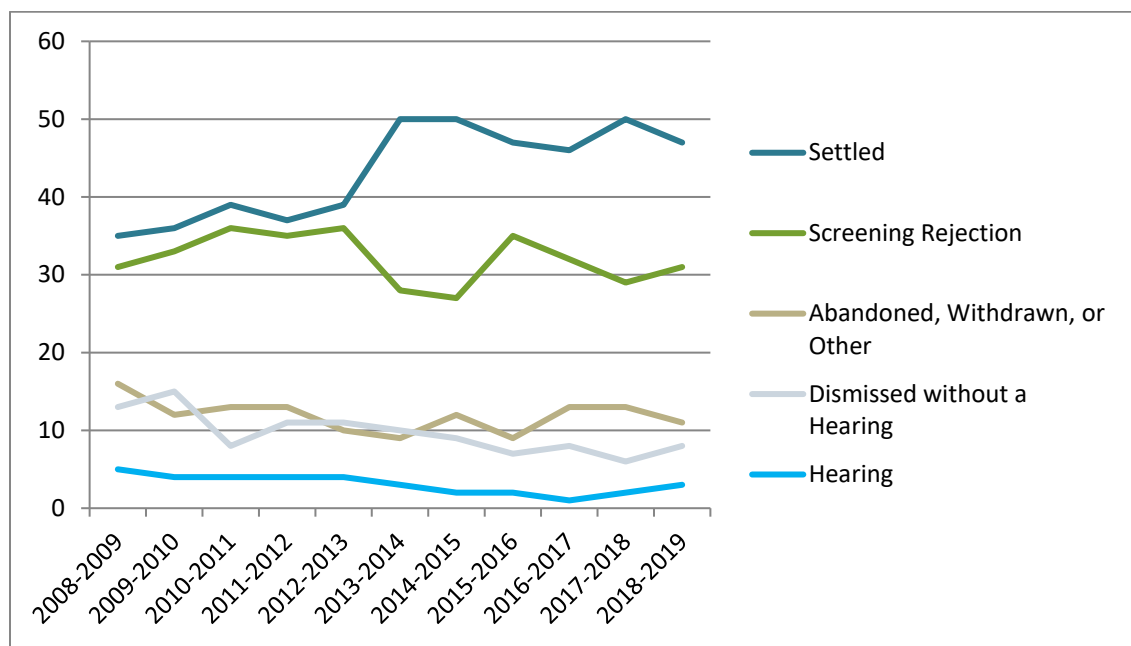
The Tribunal has managed the increasing caseload volume by stretching human resources and implementing operational efficiencies. However, this approach is unsustainable. The Tribunal is seeking to meet the increased demand for our services through more staffing, and every attempt will add budgetary pressures over the coming years.

Complaint Resolution

Human rights complaints may resolve for a number of reasons. First, they may not be accepted for filing. Of the 1,228 closed complaints, 31% of the complaints were closed because they were not accepted for filing.

After being accepted for filing, the vast majority of complaints resolve through mediation or adjudication. Last year, of all cases closed, 47% were closed due to settlement. 8% of complaints closed after a dismissal decision without a hearing, and 3% closed after a hearing on the merits of a complaint. 11% of complaints closed because they were abandoned or withdrawn by the complainant, and for other reasons. This category includes complaints that were previously deferred for other proceedings and settled by the parties on their own.





Complaint resolution through mediation has trended upwards to nearly 50% over the past decade and is by far the most preferred method of resolution by the parties. This is reflected in the number of mediations conducted at the Tribunal, which has nearly doubled since its inception. The number of complaints that are dismissed without a hearing remains low, as more parties opt for mediation services.

Preliminary Decisions

The Tribunal issued a total of 426 preliminary decisions this year, which is up 3% from the last year.

Applications to dismiss a complaint without a hearing represented 44% of all preliminary decisions. The service standard for these applications is to issue decisions 90 days after submissions are complete 80% of the time. The Tribunal did not meet this service standard last year. The timeliness target was met 59% of the time, which is up from 42% last year.

The Tribunal's service standard for issuing preliminary decisions, apart from applications to dismiss, is 30 days after submissions are complete 80% of the time. The Tribunal almost met this service standard last year. The timeliness target was met 79% of the time, which is up from 76% last year.

For deferral applications, the standard was met 95% of the time. For timeliness decisions, the standard was met 63% of the time. This decrease is explained by the holding of 9 decisions for further submissions when the new one-year time limit was introduced. For all other decisions, the standard was met 81% of the time.

Mediations

The Tribunal's settlement meeting services continue to be heavily used. Settlement meetings are confidential, and the Tribunal does not publish the results. In many cases, settlement meetings resolve other aspects of the parties' relationship and have transformative impacts in the justice system. Many cases also result in systemic change that are beyond the scope of remedies available under the *Code* after a hearing.

The Tribunal encourages parties to engage in settlement discussions at every stage of the complaint process. Tribunal-assisted settlement services are most often initiated before the respondent files a response to the complaint (80%) and can occur at any later stage in the progress of a complaint. Many complaints settle as a result of these efforts and may include solutions which could not be ordered after a hearing. The Tribunal encourages parties to participate in telephone mediations when appropriate.

In terms of outcomes, parties were able to resolve their disputes in 74% of all cases in which the Tribunal provided assistance. In addition, some cases settle without the Tribunal's involvement. In terms of process, 80% of settlements occur at an early settlement meeting (before a response to the complaint is filed) and 20% of settlements occur at a settlement meeting (at any point after a response to the complaint is filed and prior to the commencement of a hearing). We seek to be nimble, accessible, and available to parties as demonstrated by 25% of settlements occurring after multiple mediations.

We are committed to scheduling mediations at the earliest possible date that parties are ready and available. The Tribunal has set a service standard of 60 days (2 months) to schedule the mediation from the date the parties indicate their willingness to participate, 80% of the time. Last year, the Tribunal did not meet this timeliness target as mediations were offered an average of 130 days (4.3 months) after the parties indicated their willingness to participate. The Tribunal acknowledges this delay and is working proactively to improve service. This includes increasing its complement of mediators.

Hearings

This year, the Tribunal made 23 decisions after a hearing on the merits of a complaint. Through its new case management strategy, the Tribunal works closely with the parties to ensure that the number of hearing days is proportionate to the issues in dispute. The average hearing duration was five days, with seven hearings lasting more than five days.

We are committed to scheduling hearings at the earliest date the parties are ready and available. Hearing dates are usually set if a respondent does not apply to dismiss a complaint by the deadline for doing so, or if the Tribunal denies an application to dismiss the complaint. From that date, the service standard for offering a date for hearings 2 days or less is 60 days and 3 days or more is 120 days, 80% of the time. With measurements for when hearings dates are offered by the Tribunal currently being put in place, we anticipate having statistics on this service standard in next year's annual report.

For decisions following a hearing, the Tribunal's service standard is that we will issue final decisions on the merits of a complaint within 90 days, or 180 days in cases where the hearing lasts more than 3 days, 80% of the time. This year we issued decisions within the set timeframes 65% of the time, not meeting the standard.

Public Interest

Hearings

The Tribunal issued 23 decisions after a hearing on the merits last year. The complaint was found to be justified in 8 (35%) of those cases.

Grounds and Areas of Discrimination in Final Decisions

Complaints alleged discrimination based on disability in nine of the 22 cases, with four (41%) justified. One of four cases alleging sex discrimination was found to be justified. Two of six cases alleging discrimination based on race, colour, ancestry and place of origin were found to be justified. Both cases alleging discrimination based on gender identity and expression were found to be justified. One of those also alleged sexual orientation discrimination; that ground was dismissed. The Tribunal also dismissed four age complaints. One complaint based on family status and religion was justified.

Employment continues to be the most litigated area of discrimination, with 12 of the 22 cases (50%). Two of the 12 employment cases were found to be justified. Eight decisions were in the area of services, with three found to be justified. Three decisions were in the area of tenancy, with one found to be justified. Both cases dealing with publication were found to be justified. Two of the decisions also dealt with complaints of retaliation contrary to s. 43 of the Code – neither of which was found to be justified.

Representation Before the Tribunal in Final Decisions

In past annual reports, the Tribunal has noted a correlation between legal representation and outcomes, though we have noted that the statistics are less helpful when the number of decisions is small. This year's number of final decisions (23) is higher than the previous three years, but still small for statistical purposes.

In 32% of the hearings this year, complainants had a lawyer, which is consistent with prior years. By contrast, respondents this year had a lawyer in 74% of the hearings, which is lower than last year (93%) but consistent with prior years.

This year, complainants with legal counsel did much better than those who represented themselves. It is less clear whether there is any correlation between legal representation and outcomes for respondents.

In six of eight of the cases that were justified, both parties had counsel. The complainant succeeded without a lawyer in only two cases. The respondent succeeded without a lawyer in six cases, but in none of those did the complainant have legal counsel. For respondents with legal counsel, the complaint was dismissed in nine cases and found to be justified in eight cases.

Discrimination in Publications based on Gender Identity and Expression

This year produced the first decisions following a hearing regarding the ground “gender identity and expression” since it was added to the *Code* in 2016. In each case, the Tribunal found the complaint justified in the area of publication.

***Li v. Mr. B*, 2018 BCHRT 228**

After an acrimonious end to a tenancy relationship, the landlord took a photo of Mr. Li wearing a dress to Mr. Li’s workplace, knowing he was not “out” at work, and said, “I want to warn you about what kind of people you have working here”. This was an attempt to interfere with Mr. Li’s employment. The act indicated an intention to discriminate on the basis of gender identity and expression and violated s. 7(1)(a) of the *Code*. The Tribunal awarded \$5,000 for injury to Mr. Li’s dignity, feelings and self-respect. It found the incident emotionally harmed Mr. Li – he felt anxiety, anger and stress – and he experienced a loss of dignity in his employment.

***Oger v. Whatcott (No. 7)*, 2019 BCHRT 58**

When Ms. Oger ran for public office, Mr. Whatcott sought to stop her from being elected because she is transgender and, to that end, circulated a flyer calling Ms. Oger a “biological male who has renamed himself... after he embraced a transvestite lifestyle”, expressing concern “about the promotion and growth of homosexuality and transvestitism in British Columbia and how it is obscuring the immutable truth about our God given gender”, describing being transgender as an “impossibility”, which exposes people to harm and constitutes a sin, and telling people not to vote for Ms. Oger or her party. The flyer exposed Ms. Oger to hatred and contempt and indicated an intention to discriminate contrary to s. 7 of the *Code*.

The flyer was viewed in the broader context where transgender people are uniquely vulnerable because of the invidious, dehumanizing stereotype that their very existence is – at best – an act of misguided make-believe or – at worst – a deliberate and malevolent deception. Despite some gains, transgender people remain among the most marginalized in our society, facing barriers to full participation, including in political life where they are underrepresented.

In this context, the flyer violated s. 7(1)(a) of the *Code*: Mr. Whatcott deliberately identified Ms. Oger as a transgender woman and, on that basis alone, impugned her moral integrity and fitness to hold public office. The Flyer advocated a specific adverse outcome for Ms. Oger and groups like the NDP which would support transgender people: do not vote for them. It demonstrated an intention to discriminate against Ms. Oger in a critical area of public life.

Further, the flyer violated s. 7(1)(b) of the *Code*. It used five rhetorical techniques which had the effect of exposing Ms. Oger, and transgender people, to hatred and contempt: (1) the flyer denied the reality of transgender people in the context of the pernicious myth that transgender people do not exist; (2) the flyer associated transgender people with social problems and disease, suggesting that transgender people are a source of those problems and, as such, a menace to society more broadly; (3) the flyer delegitimized transgender people by asserting that they, and those who support them, are “liars and sexually immoral”; (4) the flyer used biblical passages to lend credibility to its negative characterisations;

and (5) the flyer advocated overt discrimination against Ms. Oger and transgender people, by calling on people not to vote for Ms. Oger or the NDP. The Tribunal explained:

The Flyer's central thesis is that Ms. Oger is lying about her gender identity and, by doing so, she shows herself to be inherently deceptive and untrustworthy. The first thing the reader sees when they look at the Flyer is a picture of Ms. Oger. The first sentence the reader reads calls Ms. Oger by the wrong name and accuses her of pretending to be someone she is not. To persuade people to vote for her, Ms. Oger necessarily needs them to trust her and to demonstrate to the public that she is a person of integrity. The Flyer, by design, attacks these very qualities and in doing so seeks to "cut off" any path of reply. Before she can enter any public debate, Ms. Oger is required to defeat the two absolutist positions that: (1) she is not who she says she is and (2) she has engaged in fraud or misrepresentation. A prerequisite to her political participation is to show that all transgender people are not, in fact, immoral liars: *Whatcott* at para. 76. In this way, the Flyer forces Ms. Oger to argue for her basic humanity as the price of admission to political life.

While the Tribunal must balance *Charter* values when speech is restricted, the speech in this case was far from the core values of s. 2(b). It did not engage matters of debate about social policy. Similarly, any threat to Mr. Whatcott's religious rights was minor and consistent with the recognition that a person's right to hold religious beliefs may be broader than their right to practice them, to the detriment of their neighbours.

The Tribunal awarded Ms. Oger \$35,000 for injury to her dignity, feelings, and self-respect. The discrimination was severe. It was intentional and designed to interfere with Ms. Oger's participation in the political life of this province. It drew on the most insidious stereotypes and myths about transgender people and called on the electorate to conclude that Ms. Oger was, by sole virtue of her gender identity, unsuitable for public office. Its effect was expose Ms. Oger to hatred and contempt. It affected Ms. Oger's ability to run her political campaign by forcing her to contend with an argument that she was, because of characteristics protected by the *Code*, unfit to stand office. The Flyer and its potential ramifications terrified Ms. Oger and caused her to question her decision to run for political office.

The Tribunal also ordered Mr. Whatcott to pay Ms. Oger \$20,000 for improper conduct. Mr. Whatcott's public commentary about Ms. Oger during the course of the proceeding used discriminatory language and subjected Ms. Oger to public disrespect and humiliation. His public derision for her counsel, expressed through contemptuous reference to her sexual orientation, was improper.

Disability Discrimination in Housing

Biggings obo Walsh v. Pink and others, 2018 BCHRT 174

Ms. Walsh was diagnosed with Amyotrophic Lateral Sclerosis [ALS]. She needed a wheelchair for mobility and could not access the building where she rented an apartment. Her landlords offered to assist Ms. Walsh to move – this was a potential solution to the problem posed by inaccessible housing – but it was not an accommodation. The goal of human rights legislation is transformative. The structures and assumptions underlying society must change so its institutions are inclusive. Access to safe and adequate housing is a core human need. When a rental unit is inaccessible, s. 10 requires a landlord to take all reasonable and practical steps to remove disability-related barriers and make a building as inclusive as possible. It is no answer to say that the person with a disability should simply leave their housing. This

would relegate persons with disabilities to a limited corner of the housing market and would make s. 10 meaningless in relation equal access to rental housing for people with disabilities.

The landlord also offered to buy a stair climbing wheelchair. Ms. Walsh's rejection of this offer was not unreasonable where there were safety concerns about its use and it would only have assisted for a limited time. Finally, the landlord made earnest inquiries into the feasibility of building a ramp or a lift, but then stopped its efforts, even after the complainant provided an expert report and architectural design. The landlord should have taken further steps. While there was no guarantee, there was a realistic chance the City would approve plans to build a ramp.

The Tribunal ordered the respondents to:

- make all reasonable efforts obtain approvals and permits and, if obtained, to make all reasonable efforts to build the ramp as expeditiously as possible
- report to the complainant on its progress at least once per month or at significant steps
- pay \$5,306 for expenses including expert evidence

The Tribunal found it did not have the authority to award a rent reduction.

The Tribunal awarded Ms. Walsh \$35,000 for injury to her dignity, feelings and self-respect. Two years had passed since the request for a ramp. It was not possible to say whether and when a ramp would have been built absent the discrimination. However, in the context of Ms. Walsh's disease and its rapid progression, each month was a significant period. Ms. Walsh is extraordinarily vulnerable. She relies on others for nearly all aspects of daily living. Independent and dignified access to the world outside one's home is a critical component of well-being. Ms. Walsh had to seriously restrict her trips outside her home for activities that could have improved her quality of life. When it was necessary to leave, Ms. Walsh had to endure the indignity and possible danger of relying on others to carry her up and down the stairs.

Bowker v. Strata Plan NWS 2539, 2019 BCHRT 43

Ms. Bowker has pulmonary fibrosis, a type of lung disease. Symptoms are worse with exposure to fumes, including cigarette smoke. Cigarette smoke from her neighbour's strata unit entered Ms. Bowker's unit. Ms. Bowker provided the strata with a doctor's note confirming her need for a smoke-free environment. While the strata acknowledged that it had a duty to accommodate, it did not take all reasonable and practical steps. First, the strata did very little for about a year. It asked the neighbour for assistance with the problem and did some work to seal the unit. While it put a non-smoking bylaw to a vote, it did not appear to understand its human rights obligations and Ms. Bowker was subjected to inappropriate remarks and made to feel ostracized as a result. The strata did not get the required 75% votes. The strata asked the neighbour to stop smoking in their unit and started proceedings in the Civil Resolution Tribunal against the neighbour for breach of the nuisance bylaw. The strata should have pursued a no-smoking bylaw by educating owners about the strata's human rights obligations and addressing owners' concerns about restrictions on what they can do in their own units.

The Tribunal awarded \$7,500 for injury to dignity, feelings and self-respect. The delay in accommodation efforts and lack of respect in early efforts had a significant negative impact on Ms. Bowker. During this time, the strata's conduct prevented her from enjoying a regular existence within her home; it exacerbated her disability; it had a negative impact on her mental state; and it added to her already heavy mental load during a time she was dealing with her husband's deteriorating health.

Services Complaints

In addition to *Bowker*, which involved strata services, the services cases this year covered:

- taxis (*Belusic v. Yellow Cab of Victoria*, 2018 BCHRT 81, discrimination against a man who is blind and travels with a guide dog)
- pre-school (*Mangel and Yasué obo Child A v. Bowen Island Montessori School and others*, 2018 BCHRT 281, requirement that parents sign a letter saying they accepted all parts of a cultural program before their child's registration would be confirmed discriminated against the child on the basis of family status and the parents based on religion, race and ancestry)
- health care (*Hasek v. BC Ministry of Health (No. 2)*, 2018 BCHRT 187, government decision not to fund the Zostavax shingles vaccine did not discriminate based on age)
- retail (*Redmond v. Hollywood Boutique*, 2018 BCHRT 121, store did not discriminate by one instance of playing music containing racial slurs)
- workers' compensation (*McLaren v. Workers' Compensation Board of BC (No. 2)*, 2018 BCHRT 143, board did not discriminate based on age when it denied a training program)

Employment Discrimination

The Tribunal found discrimination in two of twelve employment cases:

***He v. Kirin Mandarin Restaurant*, 2018 BCHRT 112**

Ms. He was injured at work. She made a WorkSafe BC claim and was absent several weeks. When she returned to work, a younger, lower-paid employee was in her position. Within ten days of insisting on returning to her full responsibilities, her employer fired her. Ms. He's disability was a factor in the dismissal, in part, because of the timing of the dismissal. There was not enough evidence to show that Ms. He's age was a factor in the dismissal. The Tribunal awarded Ms. \$6,000 for injury to her dignity, feelings and self-respect. Ms. He gave little evidence about how the dismissal made her feel, but it is significant to lose one's job. The Tribunal did not award lost wages because Ms. He gave no evidence about her efforts to find other work.

***Eva obo others v. Spruce Hill Resort and another*, 2018 BCHRT 238**

A group of employees alleged discrimination against their employer who wanted to replace white employees with Chinese workers after buying the business. He fired some of the employees and others resigned. The Tribunal found that the employer created a poisoned work environment and discriminated on the basis of colour and race against seven of the eight complainants and sexually harassed one of the complainants. The Tribunal ordered compensation for wage loss ranging from \$5,151.33 to \$47,561.28 and compensation for injury to dignity, feelings and self-respect ranging from \$3,000 to \$18,000.

Judicial Reviews and Appeals

The *Human Rights Code* does not provide for appeals of Tribunal decisions. Instead, a party may apply for judicial review in BC Supreme Court, under the *Judicial Review Procedure Act*. There is a 60-day time limit for judicial review of final decisions set out in the *Administrative Tribunals Act* [ATA].

Judicial review is a limited type of review. Generally, the court considers the information that the Tribunal had before it and decides if the Tribunal made a decision within its power. The court applies standards of review in s. 59 of the ATA to determine whether the Tribunal's decision should be set aside. If the Tribunal's decision is set aside, the usual remedy is to send it back to the Tribunal for reconsideration.

A decision on judicial review may be appealed to the BC Court of Appeal. There is a further appeal to the Supreme Court of Canada if that Court agrees to hear it.

This year, the Tribunal received 14 petitions for judicial review filed in the BC Supreme Court. There were three appeals filed with the BC Court of Appeal, and three application for leave to appeal filed with the Supreme Court of Canada.


Also this year, the BC Supreme Court issued seven final judgments on judicial review applications regarding Tribunal decisions, one interim ruling, and one decision on a constitutional challenge that arose out of a Tribunal decision. The BC Court of Appeal issued four judgments.

BC Supreme Court Judgments

In five cases, the Court upheld Tribunal decisions dismissing complaints under s. 27(1) of the *Code* on the basis either that the complaint had no reasonable prospect of success or that it would not further the purpose of the *Code* to proceed with the complaint:

- *Sebastian v. Vancouver Coastal Health Authority*, 2018 BCSC 722 (judgment on appeal reserved May 1, 2019)
- *Riddle v. British Columbia Human Rights Tribunal and Town of Gibsons* (19 June 2018), unreported decision (Van Reg No. S-178683)
- *Kono v. The Owners, Strata Plan LMS 2685 (Millars Ridge)*, 2018 BCC 1045
- *Envirocon Environmental Services, LLC v. Suen*, 2018 BCSC 1367 (appeal allowed as discussed below)
- *The Hospital v. X.P.*, 2018 BCSC 2019

In one case, the Court dismissed the petition as premature: *Mary-Helen Wright Law Corporation v. British Columbia (Human Rights Tribunal)*, 2018 BCSC 912. There was no basis to depart from the usual rule against judicial review of interlocutory decisions, and, with respect to an allegation of bias, the petitioner had not taken the issue up with the Tribunal member at first instance.



In another case, the Court made an interim ruling, remitting the matter for determination of issues the petitioner had not asked the Tribunal to address: *Gichuru v. Vancouver Swing Society*, 2018 BCSC 1209. The Tribunal applied to rescind the remittal, which the court granted in *Gichuru v. Vancouver Swing Society*, 2019 BCSC 402. In that case, the petitioner challenged the Tribunal's jurisdiction to refuse to accept a complaint for filing if the complaint does not set out a possible contravention of the *Code*. The Court rejected the Tribunal's argument that it has such jurisdiction under s. 21 of the *Code*, but found that it has the power to do so under s. 27(1)(b) which provides for dismissal when the acts or omissions alleged in the complaint do not contravene the *Code*.


BC Court of Appeal

In *Parent obo the Child v. The School District*, 2018 BCCA 136, the Court allowed an appeal and set aside the Tribunal's decision which found that a complaint alleged a timely continuing contravention under s. 22(2) of the *Code*. The Court held that a continuing contravention requires an actual discrete instance of discrimination within the time limit, which was six months at the time of judgment but is now one year. It is not enough that a discriminatory policy remain in place or that discriminatory conditions continue to exist – there must also be “an instance, or an example, or particular occurrence of the discrimination” within the time limit which, if proven, could be a separate contravention of the *Code*.

In *Vancouver Area Network of Drug Users v. Downtown Vancouver Business Improvement Association*, 2018 BCCA 132, leave to appeal denied [**VANDU**], the Court allowed an appeal and restored the Tribunal's decision which had dismissed a complaint after a hearing on its merits. The Tribunal found the complainant had not proven a nexus between the grounds of discrimination and adverse treatment of homeless people in the downtown core. The Court addressed the legal test for the required nexus, stating that it “need not satisfy the usual criteria that we associate with causation in other areas of the law.” The Tribunal did not err regarding the test or in finding that the complainant had not met its burden of proving a nexus.

The Court in **VANDU** also addressed the role of statistics in proving systemic discrimination. Statistical evidence is circumstantial evidence that can, alone or with other evidence, prove a nexus between adverse treatment and protected characteristics. However, a correlation between membership in a group and facially neutral characteristics that have legal consequences is not sufficient to prove a discriminatory effect. The nexus may be straightforward to prove in some cases, for example, the disproportionate impact of a height requirement on women. In other cases, it is less so, and may require additional evidence explaining the connection, such as expert reports, direct testimony from group members, or judicial or official notice. This case was more complex. While there were explanations that might establish the necessary link between street homelessness and the protected characteristics, they were not advanced before the Tribunal. It was not for the Court to test the theories advanced on appeal.

In *Stein v. British Columbia (Human Rights Tribunal)*, 2018 BCCA 264, leave to appeal denied, the Court dismissed the appeal and upheld the Tribunal's decision dismissing a complaint after a hearing on its merits. The principal ground of appeal was in relation to the appellant's need for accommodation in the hearing. The Tribunal had agreed to shorter hearing days, but the hearing ran long on most of the hearing days. The



chambers judge found that this did not result in a breach of procedural fairness. On appeal, the Court rejected the argument that it should address whether the Tribunal accommodated the complainant to the point of undue hardship, and affirmed that the issue is whether the Tribunal's hearing was procedurally fair. It found no error in the chambers judge's conclusion.

Finally, in *Envirocon Environmental Services, ULC v. Suen*, 2019 BCCA 26, the Court allowed the appeal and set aside the Tribunal's decision that a complaint could proceed to hearing. Mr. Suen alleged family status discrimination when his employer required him to take an out-of-town assignment for eight to ten weeks despite his raising concerns about leaving his wife and four-month old child. The Court found the Tribunal was patently unreasonable when it determined that this could be discrimination. The Court said the facts alleged were not capable of proving a "serious interference with a substantial parental or other family duty or obligation". Rather, they were only capable of proving Mr. Suen is a parent. It said:

While Mr. Suen's desire to remain close to home to be with his child and to assist his wife in caring for the child outside of his normal weekday working hours and on weekends is understandable and commendable, he is no different than the vast majority of parents. There are many parents who are required to be away from home for extended periods for work-related reasons who continue to meet their obligations to their children. Nothing in Mr. Suen's complaint or affidavit suggests his child would not be well cared for in his absence.

Mr. Suen is seeking leave to appeal to the Supreme Court of Canada to address the inconsistency in the test for family status discrimination across the country.

Supreme Court of Canada

The Supreme Court of Canada did not agree to hear any appeals or issue any decisions arising out of Tribunal decisions this year.

Special Programs

The *Code* allows the Tribunal to approve special programs which aim to improve the conditions for an individual or group that has faced historic barriers to participation in social, cultural, economic, and political life. The Tribunal recognizes that certain groups in our society continue to experience disadvantage. This includes Indigenous people, racialized groups, people with disabilities, women and the LGBTQ community. Special programs that aim to ameliorate those patterns of disadvantage further the purposes of the *Code*. A special program approved by the Tribunal is not discriminatory for the duration of the approval.

The Tribunal's policy and a list of approved special programs are posted on its website. In the last year, the Tribunal approved 12 new special programs and 11 renewals:

- **Atira Women's Resource Society:** Restrict hiring for the position of Student Advocate to self-identified women applicants.
- **BC Nurses' Union:** Preferential hiring to persons of colour or Indigenous persons or members of the LGBTQ community or persons with disabilities for the position of Administrative Support, Human Rights & Equity Committee.
- **Emily Carr University of Art & Design:** Preferential hiring of Indigenous persons for up to five tenured or tenure-track faculty member positions.
- **First Nations Education Society:** Preferential hiring of persons of First Nations ancestry who meet the qualifications and skill requirements for FNEC positions.
- **HaiCo Group:** Preferential hiring of qualified persons of Haida ancestry for all positions in the HaiCo group.
- **Hazelton Community Services:** Restrict hiring for a support person position to a male applicant.
- **Legal Services Society:** Preferential hiring of persons of Aboriginal ancestry for a Family Staff Lawyer position in Terrace.
- **Microsoft Canada Development Centre:** Preferential hiring of persons with autism spectrum disorder for the positions listed under the company's Autism Hiring Program.
- **NEC Native Education College:** Provide programs and services to Aboriginal persons only and preferential hiring of Aboriginal persons for all positions.
- **Rise Women's Legal Centre:** Provide legal services to self-identified women only.
- **School District 23 (Central Okanagan):** Restrict hiring to persons of Aboriginal ancestry for the following positions: Aboriginal Student Advocate, Aboriginal Cultural Facilitator, Aboriginal Cultural Assistant, Okanagan Language Instructor and Aboriginal Cultural Presenter.
- **School District 28 (Quesnel):** Restrict hiring to persons of Indigenous ancestry for the following positions within the Aboriginal Education Department: Aboriginal Teachers, Aboriginal Education Support Workers and Aboriginal youth care workers.

Restrict hiring to a qualified candidate of Indigenous ancestry for one teaching position outside of the Aboriginal Education Department per school year.

- **School District 36 (Surrey):** Restrict hiring to qualified people from specific minority cultures and linguistic backgrounds, for up to a maximum of 18 Multicultural Worker positions.

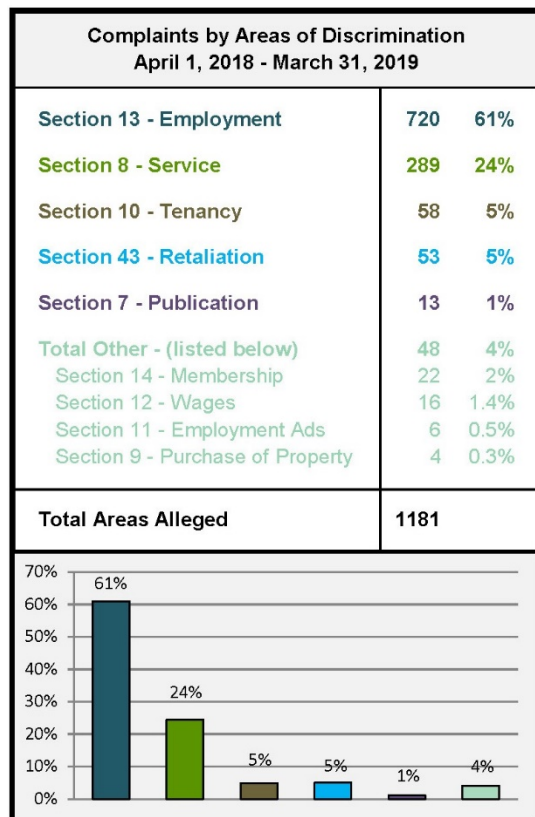
Restrict hiring to qualified people who speak one of a number of languages, for up to a maximum of 25 Settlement Worker in School positions under the Settlement Program.

- **School District 42 (Maple Ridge-Pitt Meadows):** Preferential hiring of persons of Aboriginal ancestry for the following positions: Aboriginal Resource Teacher, Aboriginal Support Worker, Aboriginal Cultural Worker and Aboriginal Child Care Worker.
- **School District 43 (Coquitlam):** Restrict hiring to persons of Aboriginal ancestry for the position of Youth Worker in the Aboriginal Program.
- **School District 57 (Prince George):** Preferential hiring of persons of Aboriginal ancestry for a number of positions in the Aboriginal Education Department.
- **School District 63 (Saanich):** Preferential hiring of persons of First Nations ancestry for the positions of First Nations Support and First Nations Education Assistants.
- **School District 69 (Qualicum):** Preferential hiring of persons of First Nations, Métis and Inuit ancestry for one teaching position and seven Indigenous Home School Liaison Workers positions.
- **School District 82 (Coast Mountains):** Preferential hiring of qualified applicants who have Aboriginal ancestry and knowledge of First Nations language and culture for Aboriginal Education positions.
- **Simon Fraser University:** Preferential hiring of an Indigenous person for a tenure-track position in the Faculty of Health Sciences.
- **WAVAW Rape Crisis Centre:** Provide services to trans and cisgender women, Two Spirit, trans and non-binary people only. Provide Specialized Services only to persons who are trans-identified.

Restrict hiring for positions that provide Specialized Services to trans clients to trans-identified applicants.
- **Vancouver Island University:** Preferential hiring of a person of Aboriginal ancestry for the position of Education Advisor; Services for Aboriginal Students – Nanaimo Campus.
- **Vancouver Island University:** Preferential hiring of Indigenous persons for two positions in the Indigenous/Xwulmuxw Studies Department.

Complaints by Areas and Grounds of Discrimination

The *Code* prohibits discrimination in the areas of employment, service, publication, tenancy, membership in unions and associations, employment advertisements, wages and purchase of property. It also prohibits retaliation against a person who has made a complaint under the *Code*.



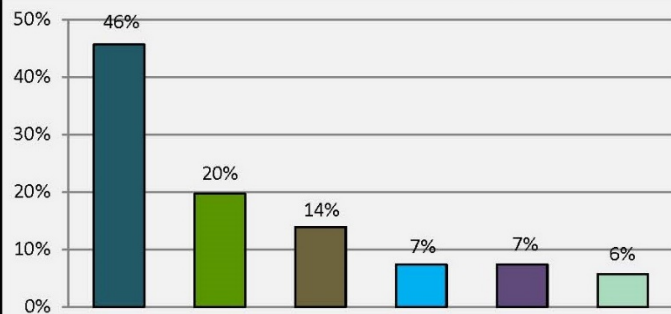
There are 16 prohibited grounds of discrimination: physical disability, mental disability, sex (including sexual harassment and pregnancy), race, place of origin, colour, ancestry, age (19 and over), family status, marital status, religion, sexual orientation, gender identity and expression, political belief, unrelated criminal conviction, and lawful source of income.

Not all grounds apply to all areas. A complaint may also include more than one area or ground of discrimination. For instance, an employment-based complaint may also include the area of wages; a race-based complaint may also include grounds of ancestry, colour and place of origin.

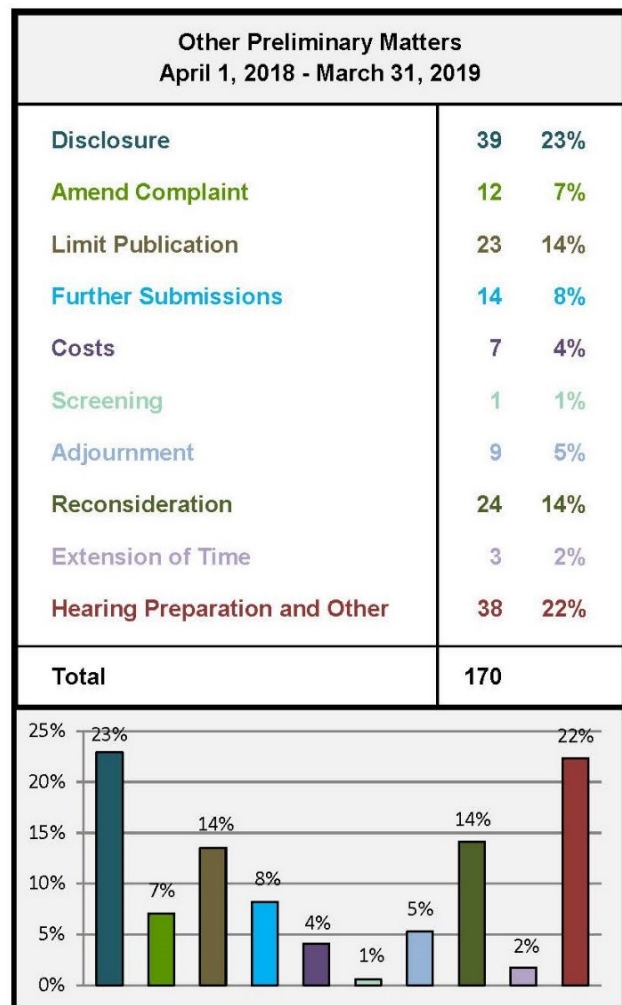
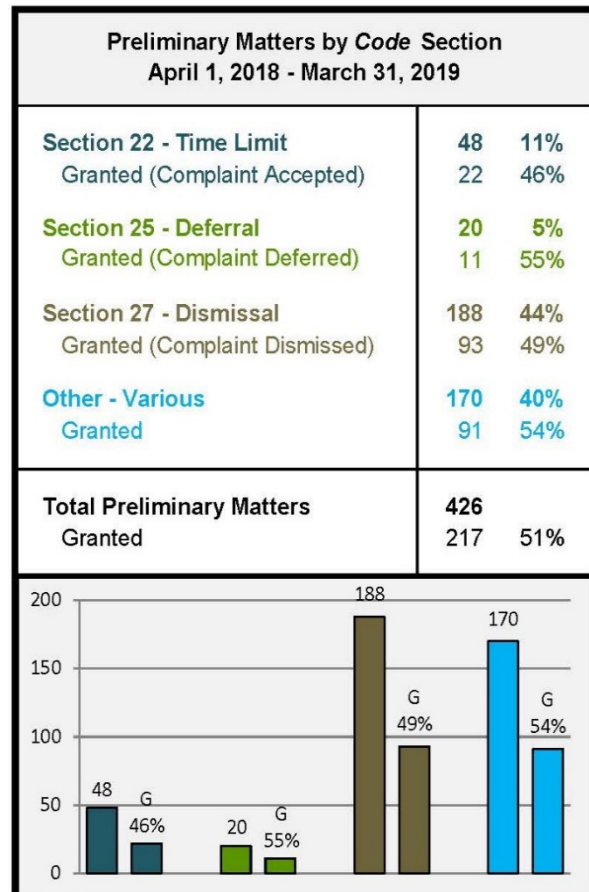
Complaints by Grounds of Discrimination
April 1, 2018 - March 31, 2019

Total - Disability	811	46%
Physical Disability	435	26%
Mental Disability	376	21%
Total - Ethnicity	350	20%
Race	149	8%
Place of Origin	80	5%
Ancestry	66	4%
Colour	55	3%
Total - Sex	248	14%
Sex (including Harassment and Pregnancy)	196	11%
Gender Identity or Expression	52	3%
Total - Family and Marital Status	118	7%
Family Status	83	5%
Marital Status	35	2%
Total Other - (listed below)	132	7%
Religion	46	3%
Sexual Orientation	39	2%
Unrelated Criminal Conviction	18	1%
Political Belief	17	1%
Lawful Source of Income	12	0.7%
Age	102	6%

Total Grounds Alleged **1761**



Decision Outcomes



Financial Disclosure

I am pleased to present a balanced budget for our fiscal year 2018-2019.

Tribunal Operating Costs

DESCRIPTION	EXPENDITURES	DELEGATED BUDGET	VARIANCE
Salaries	2,204,236	2,226,440	22,204
Employee Benefits	544,233	550,560	6,327
Fees for Temporary Members	146,008	80,000	(66,008)
Travel*	14,229	25,000	10,771
Professional Services	142,649	161,000	18,351
Information Services	75	0	(75)
Office and Business Expenses	68,914	68,000	(914)
Statutory Publication	0	1,000	1,000
Other Expenses	0	0	0
TOTAL COST	3,120,344	3,112,000	(8,344)

*Travel

All travel costs are associated with Tribunal Members attending hearings and mediations in the province.

Organization Chart

