British Columbia Human Rights Tribunal

ANNUAL REPORT

2019/2020

Contents

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, 2019 to March 31, 2020 submitted under s. 59.2 of the *Administrative Tribunals Act* and s. 39.1 of the *Human Rights Code*.

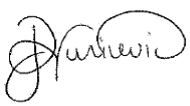
Our Tribunal was created to resolve human rights complaints through fair, effective, timely, and accessible services. Since my appointment as Chair, access to justice has been our top priority. Our focus is to improve the accessibility and quality of our services so they work for those who need them most. This is the only way we can fulfil our mandate under s. 3 of the 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.

We are working hard to offer a simpler, safer, and more accessible process that embraces the spirit of the Access to Justice Triple Aim. Our Tribunal is grounded in these foundational values:

- Fairness and Accessibility
- Service Excellence
- Public Accountability
- Access to Justice Innovation

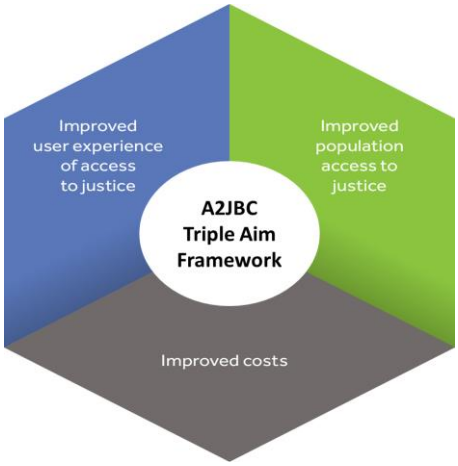
Real change is not easy, but the work has already begun. I express my heartfelt thanks to our Tribunal team. You are resolving higher case volumes with fewer resources, and even stretching those resources to support our administrative justice and human rights communities. You are sharing office space, adapting to a mobile workplace, and onboarding a new case management system in the middle of a pandemic. Throughout, you continue to serve our public with integrity and compassion. This is reflected in the daily gestures that show you care. It is with immense gratitude that I stand here, together with you, to steward our Tribunal forward.



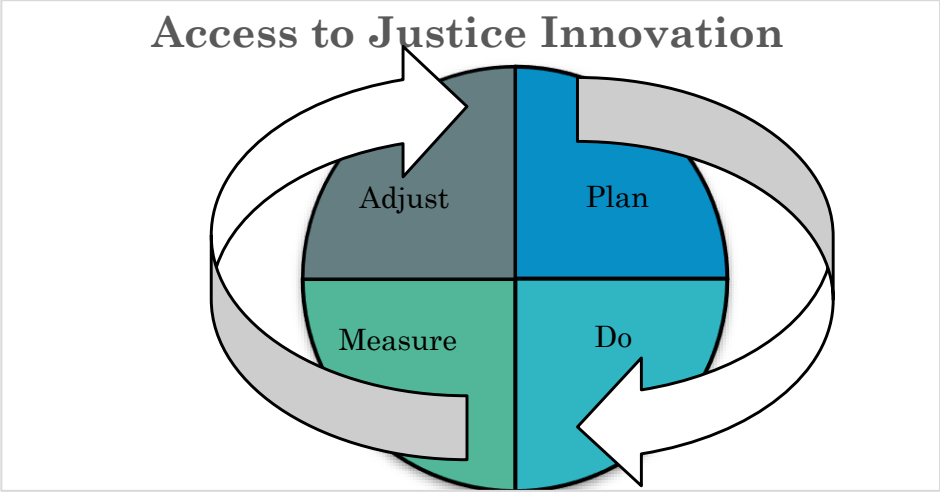
Diana Juricevic
Chair
September 14, 2020

Improving Access to Justice

We are taking steps to implement the Access to Justice Triple Aim. This means improving population access to our Tribunal, improving the experience of those who use our services, and improving how we spend the money we have been entrusted to spend by the public.



This report shows what we are doing and what we can do better. To begin with, we need to do a better job of collecting and publishing metrics. A concept like Access to Justice is hard to measure in practice. We need to use practical indicators. This is why we are following the Access to Justice Triple Aim framework that is being supported and followed in British Columbia. All of our efforts are moving through a continuous improvement cycle:



We held four user-experience feedback sessions with self-represented parties who had completed different human rights complaints processes to give each of them an opportunity to share their experiences at our Tribunal. We are in the middle of onboarding a new case management system that will help us next year measure more of what we are doing and what can be done better.

OFFICE OF HUMAN RIGHTS COMMISSIONER

Kasari Govender took office as British Columbia's first independent Human Rights Commissioner on Sept. 3, 2019. Her role is to lead the promotion and protection of human rights in the province through BC's Office of the Human Rights Commissioner ("BCOHRC"), which has a broad mandate and is independent from government.

Together, our organizations have established a strong, principled, sustainable partnership grounded in our shared commitment to improve access to justice within the human rights system. We support efforts to promote transparency, accountability and the independence of both bodies. We are providing BCOHRC with access to information about our human rights dispute resolution process to ensure we are held accountable to the highest standards. Over the past year, we have collaborated and transitioned with BCOHRC by:

- Preparing transfer of special programs from the Tribunal to the BCOHRC under s. 42 of the Code through meetings with the Deputy Commissioner and Executive Director of Research and Policy regarding the scope, procedure and process for adjudication and administration of special program applications. Providing sample templates and a summary of procedures for adjudicating applications and providing ongoing support.
- Supporting the BCOHRC with hiring by adjudicating two applications for special programs on very short notice prior to the transfer.
- Providing the BCOHRC with a Tribunal Inquiry Officer under a temporary assignment.
- Working together to create temporary and permanent information sharing agreements to enable BCOHRC's access to Tribunal records under s. 47.13 of the Code.
- Working together to ensure BCOHRC has practical access to the Tribunal's new document management system under 47.13 of the Code so they can build their own reports. This involved forming a committee with the BCOHRC to shape requirements for the Tribunal's new case management system, participant portal and online intake forms.
- Working together with other human rights institutions in British Columbia to establish a "no wrong door" unified response to citizen inquiries on human rights issues.
- Including BCOHRC in the Expanding our Vision Committee that is tasked to create a plan to implement the recommendations set out in the report authored by Ardith Walpetko We'dalx Walkem, QC, entitled *Expanding Our Vision: Cultural Equality & Indigenous Peoples' Human Rights*, to remedy the underrepresentation of Indigenous complainants accessing the Tribunal.
- Collaborating to advance legislative amendments to the Code.
- Establishing bi-monthly meetings between the Commissioner and Tribunal Chair to support strong institutional and independent ties.

EXPANDING OUR VISION

A responsive tribunal is one that listens to the people who use its services. We cannot design a user-centered justice system unless we know how our public experiences our process. Feedback from our public tells us what we are doing right and where we need to improve. It is important to publish the feedback we get because we believe in being transparent about how our Tribunal works.

On January 15, 2020, our Tribunal released a report addressing serious access to justice concerns for Indigenous Peoples bringing human rights complaints in British Columbia. The report, entitled *Expanding Our Vision: Cultural Equality & Indigenous Peoples' Human Rights*, makes far-reaching recommendations that could transform human rights in this province.

Report author Ardith Walpetko We'dalx Walkem QC surveyed over 100 Indigenous Peoples about their experiences with discrimination and the Tribunal. Overwhelmingly those surveyed reported pervasive levels of discrimination. Many had no idea that the Tribunal existed, or how to access it. Many said that their experiences of racism as Indigenous Peoples were so widespread that they did not believe it would make any difference to file a complaint with the Tribunal.

Survey participants identified "institutional racism" within the Tribunal which is preventing their complaints to pass through screening. Of the 25 surveyed that had tried to file a complaint, 36% did not continue because the process was too confusing, 28% said their claims did not go through due to lack of evidence, 20% did not go ahead because the Tribunal determined there was no discrimination, 20% said their claim failed on other grounds such as time limits. This sentiment was expressed by many: "[The Tribunal is a] waste of time and in my experience goes nowhere".

Survey participants described the Tribunal's gatekeeping function as operating to exclude Indigenous complainants. They described discrimination based on race as insidious and rarely clearly stated. Finding language to identify and "prove it" to the degree required for a complaint to proceed may become an impossible task. Survey participants reported that many Indigenous complainants are rejected at the preliminary screening stage, reflecting a difficulty framing their complaint rather than because they did not experience discrimination. One survey participant reported: "The system and questions all seem to be geared towards providing evidence, when most of these situations I experience are more subtle. How can you provide that? Even though it happens all the time and there's a pattern, it's on a societal level involving individual experiences".

Survey participants cited the time limit for bringing complaints as an issue. In some cases, they reported experiencing intergenerational trauma which prevented them from filing on time. The language and process required to tie acts of discrimination to a prohibited ground requires expertise. It is not enough to allege what happened was discrimination. Survey participants with legitimate complaints often say "forget it" because they experience a system that is structured to weed out complaints, not hear them. Strict adherence to the technicality of the Tribunal process may defeat the spirit of the Code. The Tribunal's screening process can become another procedural barrier to access to justice. The determination of what is a valid complaint, or what information is enough to ground a complaint, can reflect unacknowledged biases.

Survey participants raise a concern that Indigenous complainants need legal representation to file and forward their human rights complaints. Lack of legal representation, especially Indigenous lawyers, was identified as a significant access to justice issue in the report. Culturally knowledgeable and appropriate legal help is required for Indigenous complainants. Lack of adequate legal representation is a barrier to access.

Even with legal representation, survey participants described the application process as too technical and difficult. One lawyer described a process where they had filed a complaint on behalf of a client, which was initially rejected, and amending the complaint took eight hours of pro bono time from a trained lawyer. Another lawyer described spending a significant amount of time filing a complaint, only to have it rejected at the screening stage. That lawyer was unable to donate more time to pursue the complaint.

Another concern raised was the Tribunal operating on a settlement model. The report raises the concern that Indigenous complainants may be at increased disadvantage in settlement discussions, especially those that occur outside of Indigenous traditions. The report highlights research that suggests that parties who identify as racialized minorities both pay more and settle for less in alternative dispute resolution processes.

What this means is that high settlement rates do not necessarily further the purposes of s. 3 of the Code. The report recommends including Indigenous dispute resolution models, mediators, and peacemakers in Tribunal mediation or settlement discussions. The report also recommends that the Tribunal track and report upon instances where Indigenous Peoples settle complaints and interview them after several months about their reasons for settling and their satisfaction with the resolution.

The report also recommends holding hearings in spaces that are culturally safe for Indigenous complainants, asking participants what culturally appropriate practices they would like to include in hearings, asking if there are cultural supports that are needed during the hearing process, and asking participants if there are any Indigenous protocols for how information or evidence may be offered or shared that they would like to incorporate into the hearing process.

The *Expanding our Vision* report makes 18 recommendations which are summarized below:

1.0 Guiding Recommendations

1.1. Broaden the concept of human rights to incorporate international human rights principles as reflected in the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) and Indigenous legal traditions, in the Code and Tribunal operations and practice.
1.2. Advocate to add Indigenous identity as a protected ground to the Code.
1.3. Increase the number of Indigenous Peoples at all levels of the Tribunal
1.4. Create education materials and training:
    a) For Indigenous Peoples, about the Code and Tribunal processes
    b) Within the Tribunal, to develop cultural competency and safety
    c) For the general public, through a proactive campaign to highlight specific areas of discrimination faced by Indigenous Peoples.

1.5. Identify and remove procedural barriers within the Tribunal

1.6. Increase the training for and number of lawyers available to support Indigenous Peoples in bringing human rights complaints, with an emphasis on Indigenous lawyers

2.0 Immediate Procedural Steps

2.1 Consider these recommendations remedial measures. Implement active and concerted efforts to address the underrepresentation of Indigenous complainants accessing the Tribunal. Create an affirmative access program for Indigenous Peoples.

2.2 Create a Tribunal committee to implement the recommendations in *Expanding Our Vision*. Indigenous lawyers and cultural leaders or academics with knowledge of human rights should be recruited to join these efforts. The committee should recommend immediate steps within the first six months.

2.3 The Tribunal should report on what steps have been taken to implement the recommendations in their annual report

3.0 Incorporate Indigenous Laws

3.1 The Tribunal should actively engage with Indigenous Peoples, working with the Office of the Human Rights Commissioner, Indigenous lawyers, and law schools, to incorporate Indigenous laws into a renewed human rights process which reflects Indigenous approaches for protecting human rights.

3.2 The Tribunal, working in concert with the Canadian Human Rights Tribunal, could approach other human rights agencies to institute an Indigenous Ombuds office across jurisdictions

4.0 Increase Indigenous Involvement within Tribunal

4.1 Priority should be given to hiring or appointing Indigenous staff and tribunal members

4.2 Audit the current Tribunal processes to identify why Indigenous Peoples are not being recruited or hired. Provide specific training to staff on how to actively recruit and fairly assess Indigenous applicants. Seek specific mentoring advice from other organizations with higher Indigenous staff ratios about how to address this underrepresentation. The Tribunal should set yearly targets for the first five years, and report on success in meeting those targets in annual reports.

4.3 Audit the Tribunal appointment process to identify why Indigenous Peoples are not applying or being appointed as tribunal members. Set specific recruitment and appointment goals for Indigenous tribunal members.

4.4 Implement options for part-time appointments to qualified Indigenous tribunal members. This could be a way to reflect Indigenous adjudicative and dispute resolution traditions within the tribunal's expertise

4.5 Offer human rights clinics in remote regions (going back regularly) to both teach about human rights and to assist with filing claims. Approach law schools for options to work jointly in providing these clinics regionally and to create regional expertise.

5.0 Public Outreach to Indigenous Communities

5.1 Create a public education campaign for Indigenous Peoples which addresses human rights from an Indigenous perspective:

a) Make materials easily accessible at Band offices, Metis organizations, Friendship Centers, Indigenous political organizations, and universities

b) Emphasize cases where Indigenous individuals have successfully brought human rights claims

5.2 Create a step-by-step process for Indigenous applicants, which includes: what you can ask for; outline what help or resources are available; and what adverse impacts may look like for Indigenous Peoples

5.3 Create videos or fact sheets to talk about cases that have been successful to assist Indigenous Peoples in situating their experiences as discrimination within the Tribunal framework

6.0 Micro-Discriminations

6.1 The Tribunal partnering with the Office of the Human Rights Commissioner should create public education and awareness about micro-discriminations against Indigenous Peoples. The focus of the education would be to bring unconscious and pervasive bias to light so that it can be addressed.

7.0 Coordinating Human Rights Responses Across Jurisdictions

7.1 The Tribunal should discuss with the Canadian Human Rights Commission a coordinated process for sorting jurisdictions between the federal and provincial bodies when Indigenous Peoples bring a human rights complaint. An agreement to triage claims between the Canadian Human Rights Commission and Tribunal would assist Indigenous claimants.

8.0 Addressing Systemic Racism

8.1 Develop a baseline of information and understanding of the racism that Indigenous Peoples experience so that individual complainants are not put to a process of proof again and again. Advance research or statements about common areas of discrimination experienced by Indigenous Peoples. This would operate similar to judicial notice of facts that are beyond dispute as encouraged by the Supreme Court of Canada in cases such as *R v. Williams* [1998] 1 SCR 1128, *R v. Gladue* [1999] 1 SCR 688, and *R v. Ipeelee*, 2012 SCC 13.

8.2 Develop guidelines and education about the intersectional discrimination Indigenous Peoples may face. Intersectional discrimination may be even more difficult to make out, and guidelines and education for how to do this should be provided.

8.3 Empower the ability for Indigenous organizations to file collectively, to advance claims on behalf of individuals, similar in context to a "human rights class action".

9.0 Create an Indigenous Specific Stream within the Tribunal

9.1 Offer specialized training to Tribunal staff and members, starting with recommendations of the TRC, to reduce and eliminate procedural barriers that Indigenous Peoples face in accessing Tribunal services. The goal should be to develop cultural competency and safety.

9.2 Create the position of Indigenous Advocates or Navigators to help guide, support and coach Indigenous Peoples through the Tribunal process, and to help them address administrative barriers.

9.3 Create an Indigenous stream for following through with Indigenous Peoples' complaints from intake through to hearing.

9.4 Amend Tribunal forms to contemplate Indigenous Peoples, including Indigenous names, where a delay may be reflective of historic trauma, or to allow for exploration of options to resolve an issue, as required by Indigenous protocols.

10.0 Trauma-Informed Approach

10.1 Adopt a trauma-informed practice overall, including for assessing and accommodating delays or requests for extensions. The Tribunal staff and members should be provided with training on how trauma may impact Indigenous Peoples' actions or interactions within the Tribunal system.

11.0 Clarify Special Exemption under s. 42 of the Code

11.1 Educate employers about s. 42 of the Code. Education should highlight where a fair consideration of Indigenous applicants (for example, strongly weighing Indigenous knowledge and experience) does not require an exemption

12.0 Settlement

12.1 Include Indigenous dispute resolution models, mediators, and peacemakers in Tribunal mediation or settlement discussions. Consider use of co-mediation or joint processes involving Indigenous Peoples

12.2 Track and report upon instances where Indigenous Peoples settle complaints and interview them after several months about their reasons for settling and their satisfaction with the resolution.

13.0 Gatekeeping Function

13.1 Track and report on claims made by Indigenous Peoples that are rejected at the screening stage or under s. 27 of the Code or sent back for further detail and not pursued. An analysis of the claims that are procedurally weeded out may reveal where further action and training is necessary.

13.2 Institute an internal process for screening at first filing, and in s. 27 applications, by staff specifically trained in the issues Indigenous Peoples face as an immediate remedial measure, as so few Indigenous complaints are filed or advanced.

14.0 Plain Language

14.1 Use plain language, easily understood by the average person with a grade five education when communicating with complainants. Review communications, including forms and template letters, to ensure that they use plain language.

15.0 Time Limits

15.1 Provide public education for Indigenous Peoples that complaints should be filed at the same time that a complainant is pursuing internal or informal processes because the Tribunal time limits are strict.

15.2 Assess time extension requests with a trauma-informed lens and consider any circumstances Indigenous applicants raise tied to Indigenous traditions or ways of approaching conflict (such as attempts at relationship repair or restoration).

16.0 Hearings

16.1 Hold hearings in spaces that are culturally safe for Indigenous complainants. Though appropriate spaces will vary by Indigenous cultures, examples could include Band offices, friendship centers, cultural spaces at universities, or land-based venues.

16.2 Ask participants what culturally appropriate practices they would like to include in hearings, such as smudging the room, swearing on an eagle feather, or sitting in a circle.

16.3 Ask if there are cultural supports that are needed during the hearing process. This could include elders, witnesses, or other culturally relevant people which may vary according to the culture of the applicant.

16.4 Incorporate Indigenous Peoples (as tribunal members or as co-appointed decision-makers)

16.5 Ask participants if there are any Indigenous protocols for how information or evidence may be offered or shared that they would like to incorporate.

17.0 Website

17.1 Develop a website using plain and easily accessible language to provide Indigenous Peoples with information and to guide them through stages of the application process. The website should feature case-based examples, specific to Indigenous Peoples; short videos to illustrate the Tribunal process; and a guide to help people through the Tribunal process.

18.0 Need for Legal Representation

18.1 Advocate, perhaps with the Office of the Human Rights Commissioner, Indigenous political organizations and legal advocacy organizations, for legal representation at the filing stage through to resolution for Indigenous claimants.

18.2 Explore options to support greater access to justice for Indigenous Peoples in this area, including Indigenous human rights legal aid funding, administered by the Legal Services Society or a similar organization, to support Indigenous Peoples in making and advancing claims.

18.3 Partner with other organizations (such as the Office of the Human Rights Commissioner, CLEBC, law schools, Indigenous and legal organizations) to provide bootcamps and other training opportunities for lawyers or law students about Indigenous Peoples' human rights. This case-based education should address the different elements in bringing a case: what is discrimination on prohibited grounds? Where are examples of evidence? Does the fact that no one witnessed an event mean that no case for discrimination can be brought? Training should include systemic features and intersectionality of the discrimination that Indigenous Peoples experience based on race and gender, geographic and socio-economic status, etc.

18.4 Provide student opportunities, such as articling or summer jobs for Indigenous law students to increase practitioners in this area

18.5 Encourage the creation of regional, or circuit human rights clinics to both educate and assist Indigenous Peoples in filing and carrying through human rights claims. Explore options for clinics or workshops that operate regionally over time so lawyers can stick with a case, including potentially working with the three BC law schools. Clinics should

be led by leading Indigenous counsel and provide representation to Indigenous Peoples, individually and collectively.

Some of these recommendations require the Tribunal to act immediately. The appendix of this annual report lists the progress the Tribunal has made over the first six months in implementing the recommendations ("*Expanding our Vision* Implementation Update"). Although released on June 15, 2020, it includes those recommendations that were implemented this past fiscal year.

Other recommendations require the Tribunal to collaborate for transformative change. Removing barriers to access to the Tribunal is not enough. Structural change is needed to incorporate Indigenous definitions of human rights according to Indigenous laws. The main recommendations broaden the concept of human rights in that Indigenous Peoples have the right to exist and to be protected in that existence.

Our Tribunal is undertaking this process of renewal amidst widespread calls for change in the relationship between Indigenous Peoples and Canadian society. Change has been driven by the *United Nations Declaration on the Rights of Indigenous Peoples* which the BC government will implement through the *Declaration on the Rights of Indigenous Peoples Act*, the Truth and Reconciliation Commission Calls to Action, and the MMIWG2S Inquiry.

Our Tribunal wants to ensure that its processes are safe and accessible for Indigenous Peoples. Your voices and wisdom are central to our efforts. Please join us on this journey as we develop an Indigenous Justice Initiative that is open and responsive to the experiences of Indigenous Peoples. It is a challenge to begin a journey, together with Indigenous Peoples and communities, to transform the way we provide justice. The provincial government's legislation to implement the *United Nations Declaration on the Rights of Indigenous Peoples* has made embarking on this journey an immediate obligation. The *Expanding our Vision* report presents not just a challenge, but also an opportunity. I am hopeful that it will open up a dialogue and lead to action beyond the Human Rights Tribunal. As a justice system, we are collectively failing Indigenous Peoples, and we can collectively make a difference. We must engage, we can engage, and we must act together.

Operations and Accountability

Our Tribunal receives and reviews complaints about human rights violations in British Columbia under the *Human Rights Code*. The purpose of this section is to show what we are doing and what we should be doing better.

PUBLIC INQUIRY

Our Tribunal has Inquiry Officers who receive and respond to thousands of public inquiries every year about the Code, including making referrals to other community and government agencies.

We are currently working with the Office of the Human Rights Commissioner and BC Human Rights Clinic on a "No Wrong Door" project to improve the accessibility and effectiveness of our human rights system, with a real focus on improving access for marginalized populations and Indigenous Peoples. We want an integrated and coordinated approach that makes any entry point to the BC human rights system the "right door" for individuals seeking assistance in identifying their needs, obtaining referrals, and receiving appropriate support. We have three main objectives with this initiative:

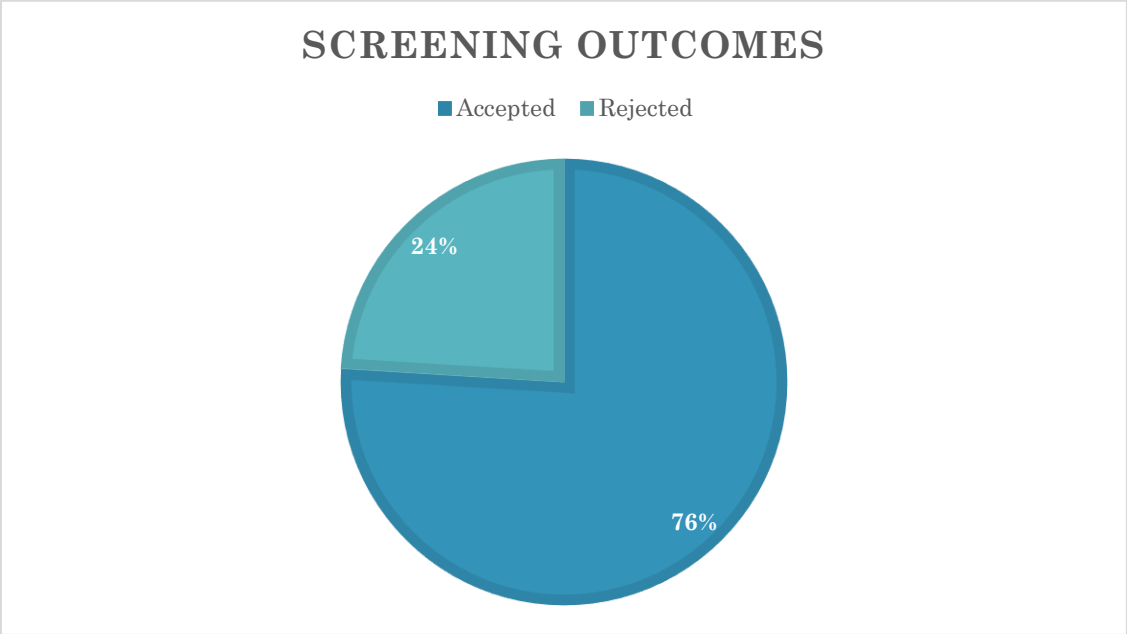
1. To increase understanding of our human rights system with better communication to the public we exist to serve
2. To increase access to human rights information and referrals by coordinating our responses to public requests for information in a meaningful way
3. To enhance our respective services through information sharing

Our website is another important way for the public to find information they need. The number of website visits to the Tribunal has increased from 146,000 in 2014-2015 to 769,530 in 2019-2020, which is an unprecedented 427% increase over a five-year period.

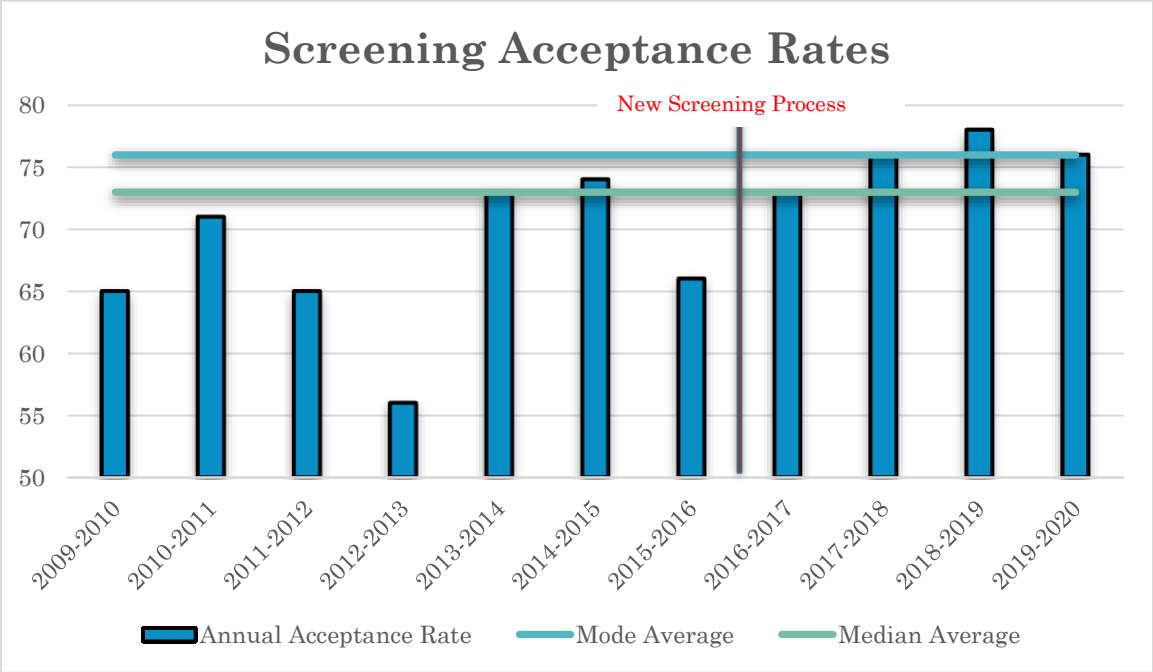
We have more work to do to improve access to information. A significant number of those surveyed in the *Expanding our Vision* report were unaware of the Tribunal website. Most had never used or accessed the website. Those who had accessed or tried to use the Tribunal process said that it was cumbersome, wordy, and difficult to use. The website was described by one person as a "wall of words". Several survey participants pointed out that the language could be a barrier to Indigenous Peoples and called for "easy access and easy to read for people who can't read or have limited reading abilities". Remote communities with limited internet access or few electronic devices would be unable to access the website at all. One survey participant reported that "many of our elderly … do not have computers. Is there a way that we could reach out to that demographic"?

SCREENING NEW COMPLAINTS

Human Rights complaints are filed directly with the Tribunal which is responsible for all steps in the human rights process. The first step is to screen the complaint to determine whether it is timely and sets out an arguable contravention of the Code. The time limit for filing complaints is one year.

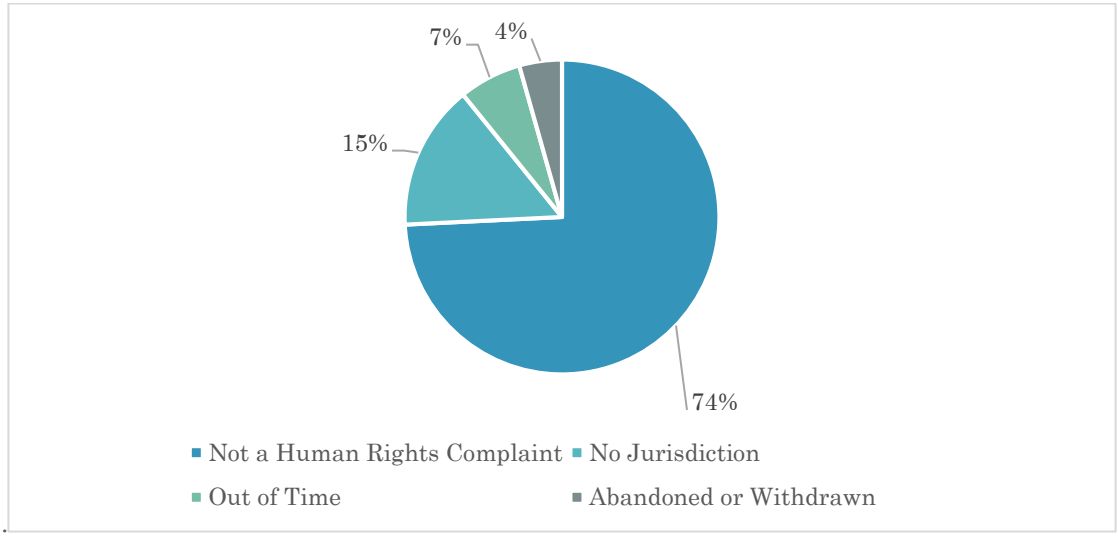


Of the 1,614 complaints screened by the Tribunal, 1,226 new complaints were accepted for filing. This shows a screening acceptance rate of 76%. The screening acceptance rate is consistent with average over the past decade.



This chart shows the screening acceptance rates over the past eleven years. To account for outliers, we have calculated the average over this time period three ways. The "mode" average was 76%, the "median" average was 73%, and the "mean" average was 72%. The variability in these averages reflects the variability in annual acceptance rates. Since the legal threshold has not changed, greater variability over the years may reflect poor quality in adjudication. To improve quality and consistency, the Tribunal implemented a new screening process four years ago which has resulted in greater consistency. This is demonstrated by a stabilization of acceptance rates at the high end of the range. The four-year "mean", "median", and "mode" averages are each 76%.

Complaints Not Accepted for Filing

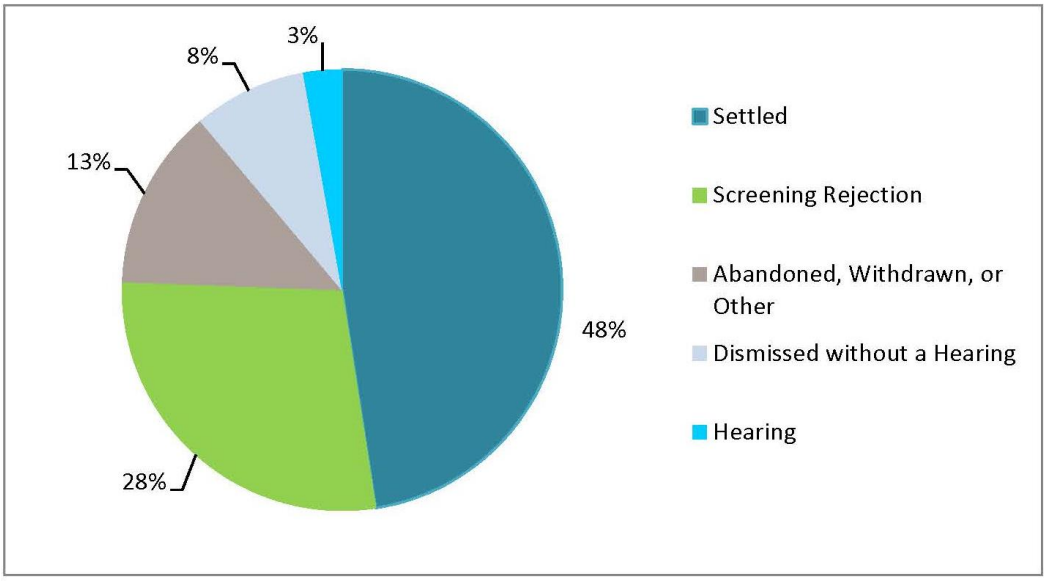


Of those complaints that were not accepted for filing, the majority were rejected because they were not a human rights complaint (74%). Others were rejected because the Tribunal did not have jurisdiction (15%). Others were rejected because the complaint was outside the time limit in the Code (7%). The remainder were abandoned or withdrawn by the complainant (4%).

The Tribunal needs to examine whether there are any structural or systemic barriers that are weeding out human rights complaints that are difficult to prove – such as those alleging micro-discriminations – at this stage in the process. An analysis of the human rights complaints that are not accepted for filing may reveal where further action or training is necessary.

Our service standard is 80% of the time to complete the screening process and notify parties within 30 days of filing, or within 60 days of filing when more information is requested. We are not meeting these service targets. We completed the screening process and notified parties within 30 days of filing only 16% of the time (down from 45% last year). We completed the screening process and notified parties within 60 days of filing only 6% of the time (up from 5% last year).

COMPLAINT RESOLUTION

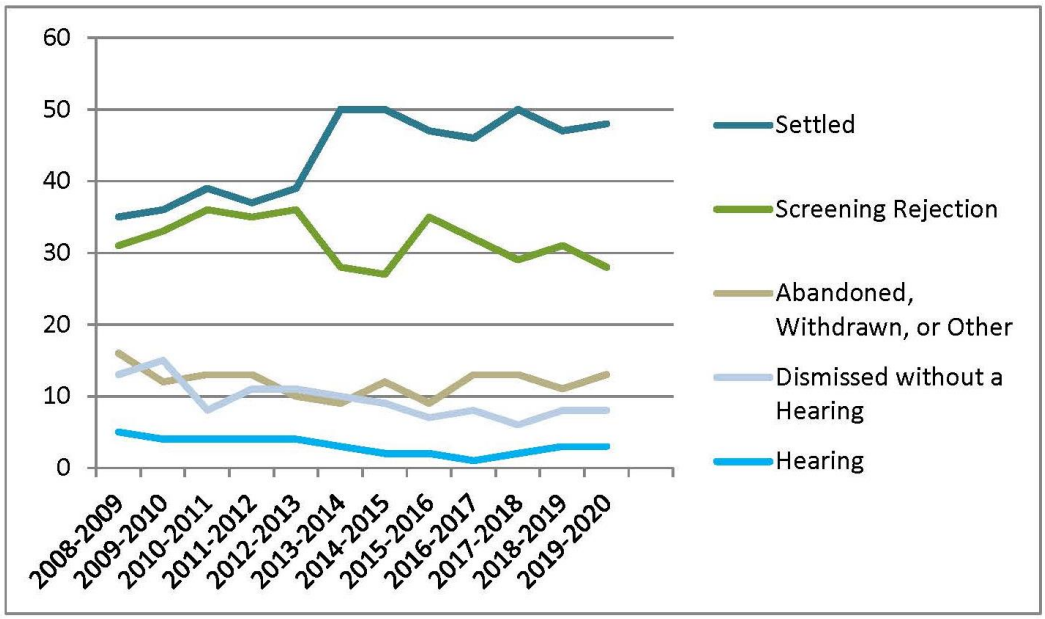


Human rights complaints resolve in different ways. First, they may not be accepted for filing. Of the 1,384 closed complaints, 28% of the complaints were closed because they were not accepted for filing. After being accepted for filing, the majority of human rights complaints resolve through mediation or adjudication. Last year, of all cases closed, 48% were closed due to settlement, 8% closed after a dismissal decision without a hearing, and 3% closed after a hearing on the merits.

13% of complaints closed because they were abandoned, or withdrawn by the complainant, or resolved through other means. This category includes complaints that were previously deferred for other proceedings and settled by the parties on their own. This category also includes those who stopped pursuing the human rights complaints that they initiated. Any percentage of human rights complaints that are abandoned or withdrawn by a complainant may raise access to justice concerns.

MEDIATIONS

The Tribunal's settlement meeting services continue to be heavily used. Over the past twelve years, the majority of human rights complaints are being resolved through mediation (around 50%).



Tribunal-assisted settlement services are most often initiated before the respondent files a response to the complaint (78%) but can occur at any later stage in the process. The other 22% of settlements occur after a response to the complaint is filed and before the start of a hearing.

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. However, settlement meetings may also conceal systemic barriers to access to justice.

The Tribunal has adopted new social justice mediation techniques to interest-based mediation processes. This may improve the experience of the parties to the process but will not necessarily improve outcomes. In terms of outcomes, the Tribunal's settlement rate is decreasing. Parties were able to resolve their disputes in 57% of all human rights complaint in which the Tribunal provided assistance through a mediator.

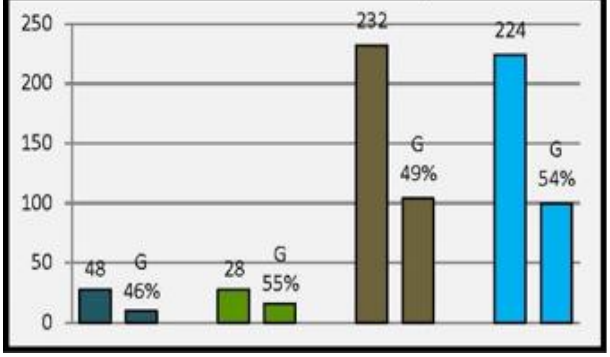
We are committed to scheduling mediations at the earliest possible date that parties are ready and available. The Tribunal has set a service standard of 60 days (2 months) to schedule the mediation from the date the parties indicate their willingness to participate, 80% of the time. Last year, the Tribunal met this timeliness target as mediations were offered an average of 60 days (two months) after the parties indicated their willingness to participate.

PRELIMINARY DECISIONS

The Tribunal issued a total of 512 preliminary decisions this year, which is up 17% from the last year. Applications to dismiss a complaint without a hearing represented 45% of all preliminary decisions.

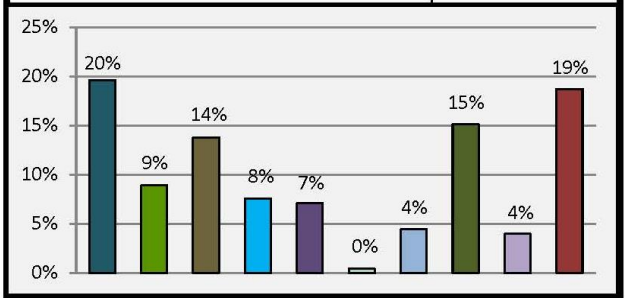
Preliminary Matters by *Code* Section
April 1, 2019 - March 31, 2020

Section 22 - Time Limit	28	5%
Granted (Complaint Accepted)	10	36%
Section 25 - Deferral	28	5%
Granted (Complaint Deferred)	16	57%
Section 27 - Dismissal	232	45%
Granted (Complaint Dismissed)	104	45%
Other - Various	224	44%
Granted	100	45%
Total Preliminary Matters	**512**	
Granted	230	45%



Other Preliminary Matters
April 1, 2019 - March 31, 2020

Disclosure	44	20%
Amend Complaint	20	9%
Limit Publication	31	14%
Further Submissions	17	8%
Costs	16	7%
Screening	1	0%
Adjournment	10	4%
Reconsideration	34	15%
Extension of Time	9	4%
Hearing Preparation and Other	42	19%
Total	**224**	



The service standard for dismissal 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 45% of the time, which is down from 59% last year and slightly up from 42% the year before that.

The Tribunal tried to address the backlog in issuing decisions on dismissal applications by requiring parties to reduce the length of submissions. This was accomplished through a new practice direction. The Tribunal surveyed adjudicators over a six-month period to see what impact the page limits had on the timeliness of their decisions. 63% of the adjudicators found “no change” and 37% found that it was “easier to write” the decision.

The service standard for other preliminary applications is to issue decisions 30 days after submissions are complete 80% of the time. For other preliminary applications, the timeliness target was met 75% of the time, which is down from 79% last year. For deferral applications, the standard was met 78% of the time, which is down from 95% last year. For timeliness decisions, the standard was met 39% of the time which is down from 63% last year.

HEARINGS

Relatively few cases make their way to a hearing at the Tribunal. The Tribunal issued 29 decisions after a hearing on the merits last year which is an increase from 23 in 2018-2019, 14 in 2017-2018, and 11 in 2016-2017. Although the numbers are small, this represents a 163% increase in the number of hearings over a four-year period which reflects the Tribunal's efforts to promote access to justice by ensuring that the resolution services offered by the Tribunal are responsive to the parties' needs and proportionate to the issues in dispute. For some cases, the appropriate resolution service is through a hearing on the merits of a human rights complaint.

In terms of outcomes, human rights complaints succeeded in 12 of the 29 cases (41%). Again, for comparison, the success rate was 35% in 2018-2019, 29% in 2017-2018, and 45% in 2016-2017.

In terms of process, the Tribunal wants to ensure that its hearings are safe and accessible to all participants. This may involve incorporating a trauma-informed approach to adjudication and flexibility in terms of how evidence is received during a hearing. The Tribunal asks participants what supports are needed during their hearing. The Tribunal incorporated an Indigenous smudging ceremony in one hearing and held another hearing in a culturally appropriate venue. The Tribunal commences most hearings with land acknowledgements.

For decisions following a hearing, the Tribunal's service standard is to 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 the Tribunal issued final decisions within these time frames only 53% of the time which is down from 63% last year.

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. The Tribunal is not meeting this service standard for most hearings. The Tribunal is not able to schedule hearings at the earliest date the parties are ready and available. Rather, hearing dates are being scheduled at the earliest date the member is available. Due to high case volumes, hearings are being scheduled, on average, one year in advance.

Grounds and Areas of Discrimination in Final Decisions

The final decisions dealt with the following grounds of discrimination:

- Complaints alleged discrimination based on physical disability in 11 of the 29 cases, with three (27%) justified.
- Seven complaints alleged discrimination based on mental disability, with two cases (29%) justified.
- Three of seven (43%) cases alleging sex discrimination were found to be justified. One of those cases also alleged family status discrimination, which was justified; the Tribunal dismissed the other family status complaint.
- The three cases based on race, colour, ancestry, and/or place of origin were found to be justified. One of those also alleged discrimination based on religion, which was justified.
- The Tribunal found discrimination in the one case based on political belief.
- The Tribunal dismissed two cases based on age, and one case based on sexual orientation.
- No cases addressed marital status, criminal conviction, or source of income.

The final decisions dealt with the following areas of daily life:

- Employment continues to be the most litigated area of discrimination, with 20 of the 29 cases (69%).
- Seven of the 20 (35%) employment cases were found to be justified.
- Four decisions were in the area of services, with two found to be justified.
- Four decisions were in the area of tenancy, with three found to be justified.
- Three decisions dealt with complaints of retaliation contrary to s. 43 of the Code, with one found to be justified.
- One of the employment cases also dealt with retaliation, which was found to be justified.
- No decisions addressed publications, purchase of property, employment advertisements, wage discrimination based on sex, or unions and occupational associations.

Representation Before the Tribunal in Final Decisions

The complainant appeared in 28 of the 29 hearings. In those 28 hearings, the complainant had a lawyer in 15, or slightly over half (54%). This is higher than previous years. Last year, the complainant had a lawyer in 32% of the hearings. In 2017-2018, the complainant had a lawyer in 29% of the hearings.

The respondent appeared in 26 of the 29 hearings. In those 26 hearings, the respondent had a lawyer in 20 (77%). This is higher than last year (74%), but lower than 2017-2018 which was 93%.

In past annual reports, the Tribunal has noted a correlation between legal representation and outcomes, though we have cautioned on the small sample size. Statistics are less helpful when they flow from a small number of decisions. This year's number of final decisions (29) is higher than the previous three years, but still small for statistical purposes. With this caveat, we make the following observations.

This year, the results were about the same whether or not the complainant had a lawyer.

In the 14 cases where the complainant had a lawyer, the complaint succeeded in six (43%). In 10 of those cases, the respondent also had a lawyer. The complaint succeeded in three of those 10 cases (30%). The complaint succeeded in two of the three cases where only the complainant had a lawyer. In one of those the respondent did not appear.

In the 14 cases where the complainant did not have a lawyer, the complaint succeeded in six (43%). In those six cases, the respondent did not appear in one, and the respondent did not have a lawyer in two. In the eight cases where a self-represented complainant lost their case, the respondent had a lawyer in six, did not appear in one, and did not have a lawyer in one.

For respondents, they did better with a lawyer. In the 19 hearings where the respondent had a lawyer, the complaint was dismissed in 13 cases (68%). In the 7 hearings where the respondent did not have a lawyer, the complaint was dismissed in three cases (43%). In one of those, the complaint was dismissed because the complainant did not appear.

Summary of Decisions

Discrimination based on Indigenous Identity

In two decisions this year, the Tribunal found discrimination against an Indigenous person.

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

Ms. Campbell is an Indigenous mother who witnessed the police arrest her son. The police roughly and physically separated her from her son and blocked her from witnessing his arrest. The context for these events is a long history of colonialism and cultural genocide, which have contributed to a deep distrust of the police and of any state attempt to interfere with parenting. Ms. Campbell had a heightened need to witness her son's arrest and ensure his safety. The police conduct that prevented this discriminated against her based on her Indigenous identity, captured in this case by the grounds of race, ancestry, and colour. Aspects of the police response were based on stereotype and prejudice. The Tribunal ordered $20,000 for injury to Ms. Campbell's dignity, feelings, and self-respect, and training to ensure police interacting with Indigenous people do so without discrimination.

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

Ms. Smith is an Indigenous woman. Smudging is part of her connection to and expression of her Indigenous identity and, for her, a regular spiritual practice. Her landlord discriminated against Ms. Smith based on her Indigenous identity – protected under the grounds related to cultural identity and background – as well as her religion. Her landlord made comments and asked invasive questions based in part on Ms. Smith's Indigeneity and, in some cases, based on stereotypes. This included asking her if she drinks or does drugs, asking why she has a "typical white name", talking about previous Indigenous tenants drinking and doing drugs, asking if he could trust her brother,

and saying he liked a comment she made because it matched the "whiteness" of her name. This was discrimination in tenancy. The landlord also discriminated when he did not let Ms. Smith smudge in her apartment and tried to evict her as a result. The Tribunal ordered $20,000 for injury to Ms. Smith's dignity, feelings, and self-respect, lost wages flowing from having to move out, and expenses for an expert report.

Sexual Harassment

Araniva v. RSY Contracting and another (No. 3), 2019 BCHRT 97

Ms. Araniva worked for the respondent out of his home. The respondent's conduct was sexual harassment. On two occasions, he said she was "beautiful" and "hot"; asked her to have sex with him; asked for a hug; made her watch a music video that depicted a sexual relationship; asked her on a date; and followed her to the washroom. Both times, Ms. Araniva left work as soon as she could and ultimately did not return. The respondent also reduced Ms. Araniva's hours after she rejected him and declined to go out with him. The Tribunal awarded compensation for lost wages and expenses for counselling, parking during the hearing, an expert report, and the cost of the expert testifying. The Tribunal ordered $40,000 for injury to Ms. Araniva's dignity, feelings, and self-respect, taking into account the nature of the harassment, Ms. Araniva's vulnerability, and the extreme impact on her because of a history of trauma.

The Employee v. The University and another (No. 2), 2020 BCHRT 12

An employee had a good working relationship with a faculty member at a university. After a successful workday and dinner, the faculty member told the employee he was crazy about her. The faculty member apologized. The employee experienced a tremendous negative impact – she felt confused, anguished, anxious, depressed, and angry. She stayed in her position in significant distress until she completed her probation, when she began a medical leave. The Tribunal found that the employee's subjective negative feelings did not establish an adverse impact in employment. The Tribunal considered that the comment was not virulent or egregious, that it was made in the context of a successful day of work, and that an apology was offered. Despite the subjective impact, power imbalance, and vulnerability of the employee as a woman in the workplace, the conduct did not rise to the level of harm protected under the Code. A petition for judicial review has been filed.

Discrimination in Housing

In addition to *Smith v. Mohan*, above, the Tribunal found tenancy discrimination in two cases.

NT by HST v. Daljit Sekhon and others, 2019 BCHRT 201

NT is a child with a disability. He needs significant parental care. His parents transport him by wheelchair. He lived with his family in a suite in a house. The new landlord continued to raise the rent, threw garbage outside the family's kitchen window, left a stove and toilet outside their access door, said they could no longer park in the driveway, and ultimately evicted the family. NT was

adversely affected by these actions and his disabilities were a factor in the landlord's actions. The Tribunal ordered $10,000 as compensation for injury to NT's dignity, feelings and self-respect.

Valdez v. Bahcheli and another, 2020 BCHRT 41

Mrs. Valdez gave birth three months after moving into an apartment. The landlord said the apartment was too small for a family of four. Because of the landlord's persistent harassment and pressure to leave, Mrs. Valdez and her family left the apartment only 12 days after her child was born. This was discrimination based on sex and family status. The Tribunal ordered compensation for expenses and $9,000 for injury to Mrs. Valdez' dignity, feelings, and self-respect.

Employment – Duty to Accommodate Satisfied

Sahota v. WorkSafe BC (No. 2), 2019 BCHRT 104

The employer took reasonable steps to accommodate Ms. Sahota's return to work, including bundling duties, tailored work assignments, lowering productivity standards, and tolerating chronically high absenteeism. Eventually the work she could do was exhausted and the employer put her return-to-work on hold and she continued to receive long-term disability benefits. The employer was not required to keep her at work where it could not derive value from her work.

Lawlor v. PHSA and another, 2019 BCHRT 186

The employer took reasonable steps to accommodate Mr. Lawlor's disability. While Mr. Lawlor did not want to accept any position that he did not consider meaningful or that did not restore his pre-injury pay, the employer offered him reasonable accommodation, which fulfilled its duty to accommodate. A petition for judicial review has been filed.

Employment Discrimination – Termination

Chen v. La Brass Foods, 2019 BCHRT 111

Ms. Chen's employer fired her based at least in part on her disability. The Tribunal awarded compensation for lost wages and $10,000 for injury to Ms. Chen's dignity, feelings, and self-respect.

Pacheco v. Local Pest Control, 2019 BCHRT 191

Mr. Pacheco's employer fired him the day after he was injured at work and provided a doctor's note saying he needed two weeks of medical leave. The Tribunal ordered $7,500 for injury to Mr. Pacheco's dignity, feelings, and self-respect.

Weihs v. Great Clips and others (No. 2), 2019 BCHRT 125

Ms. Weihs' employer fired her based at least in part on her pregnancy. The Tribunal awarded compensation for lost wages and expenses related to the complaint and $9,000 for damages to Ms. Weihs' dignity, feelings, and self-respect.

Benton v. Richmond Plastics, 2020 BCHRT 82

The employer fired Ms. Benton on her first day of work after she disclosed a number of mental health conditions. The Tribunal ordered $30,000 for injury to Ms. Benton's dignity, feelings, and self-respect and $35,000 compensation for lost wages.

Employment Discrimination – Poisoned Work Environment

Francis v. BC Ministry of Justice (No. 3), 2019 BCHRT 136

Mr. Francis is Black. In his work as a correctional officer, he experienced racialized stereotyping, and "everyday behaviour" in the form of racialized comments and slurs. His employer singled him out for criticism and heightened scrutiny, required him to attend muster when this wasn't common practice, ordered him to breach protocols and reprimanded him for doing so. Mr. Francis frequently raised issues of racism with management. He was perceived as too sensitive, overreacting, having a chip on his shoulder, playing the "race card", and a troublemaker for advocating for human rights in the workplace. The cumulative effect on Mr. Francis was profound. The Tribunal also found the employer retaliated against Mr. Francis for filing his human rights complaint. Mr. Francis was subject to a poisoned work environment when he left the workplace and did not return. The Tribunal retained jurisdiction to order a remedy.

Employment Discrimination – Political Belief

Fraser v. BC Ministry of Forests (No. 4), 2019 BCHRT 140

Mr. Fraser is a professional forester. He successfully applied for a job, but the government employer revoked the offer. The Tribunal found this was connected to Mr. Fraser's political belief, which included his duties as a professional forester and his adherence to a regime under the *Forest and Range Practices Act*, which gave professional foresters working for licensees more responsibility. This is a political issue and was the topic of discussion and lobbying for many years. In deciding to revoke the offer, the employer considered Mr. Fraser's comments and activities that fit within his political beliefs. The employer did not justify this decision. Among other things, Mr. Fraser's political belief would not constrain his duty of loyalty. The Tribunal declined to order reinstatement. It awarded $25,000 for injury to Mr. Fraser's dignity, feelings and self-respect.

Retaliation Complaint Dismissed & Conditions placed on Future Retaliation Complaints

Gichuru v. Vancouver Swing Society (No. 3), 2020 BCHRT 1

Mr. Gichuru attended dances put on by a non-profit society. He took issue with a Facebook post someone made about his conduct toward another person, AB. He asked the society to address his complaint under its code of conduct because all involved were part of the dance community. The society spoke to AB about what happened and temporarily banned Mr. Gichuru from dances. The society decided any further ban would depend on AB's views and Mr. Gichuru's receptiveness to the issue raised about his conduct. After a society representative met with Mr. Gichuru, he said he

would file a complaint against the society. The society then made the ban permanent. While timing could suggest retaliation, there wasn't a sufficient connection in this case – the society made the ban because it believed Mr. Gichuru had not taken their concerns seriously and lacked insight, not because he might file a complaint.

The Tribunal also found that Mr. Gichuru deliberately set up the facts in this case so that he could make a retaliation complaint. The Tribunal concluded that using the Code as a sword in this manner was improper conduct. When coupled with Mr. Gichuru's history of making retaliation complaints, this warranted the extraordinary step of putting a condition on his filing of further complaints under s. 43. In particular, he must seek leave of the Tribunal and explain why it would further the purposes of the Code to proceed with the complaint. The Tribunal found this was necessary to protect the integrity of the complaint system. The Tribunal also ordered Mr. Gichuru to pay $10,000 in costs for improper conduct.

Complaints Dismissed – Services not Customarily Available & Improper Purposes

Yaniv v. Various Waxing Salons (No. 2), 2019 BCHRT 222

Ms. Yaniv, a transgender woman, sought waxing services at several salons. In the complaints where Ms. Yaniv sought waxing of her scrotum, the salons did not customarily provide scrotum waxing as a service to the public and did not discriminate in refusing the service. In the complaints where Ms. Yaniv sought arm or leg waxing, the Tribunal found that Ms. Yaniv filed her complaint for improper purposes and dismissed them under s. 27(1)(e) of the Code. Ms. Yaniv filed 13 very similar complaints in four months; used deception to manufacture the circumstances for the complaints; and sought a financial remedy in each. Her predominant motive was not to prevent or remedy discrimination but to target small businesses for person financial gain, and often to punish racialized and immigrant women. The Tribunal ordered Ms. Yaniv to pay $2,000 in costs for improper conduct to each of three respondents.

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 set out 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 22 petitions for judicial review filed in the BC Supreme Court. This was higher than in past years; last year we received 14 petitions and the year before that we received 10. There were five appeals filed with the BC Court of Appeal. This is also higher than past years; we received 3 notices of appeal in each of the last two years. This year there were no leave applications filed with the Supreme Court of Canada.

Also this year, the BC Supreme Court issued eight final judgments on judicial review applications regarding Tribunal decisions. The BC Court of Appeal issued one judgment, and the Supreme Court of Canada denied leave to appeal in one case.

BC Supreme Court Judgments

Gichuru v. Purewal, 2019 BCSC 484

The Tribunal found that Mr. Gichuru's landlord discriminated by making derogatory references to having a mental illness. However, the Tribunal found that the subsequent eviction was not discriminatory and declined to award compensation for expenses, wage loss, and injury to dignity, finding the negative impact flowed from other threatening and harassing conduct and because Mr. Gichuru had provoked discrimination. The court allowed the petition in part, finding that the Tribunal committed three errors: when it found that the eviction for non-payment of rent was not discriminatory absent consideration of why rent was not paid; in isolating the effects of the respondent's discriminatory conduct from the effects of some of his other threatening and harassing conduct that occurred at the same time and place; and in finding the complainant provoked the initial discriminatory outburst. The court remitted the matter for reconsideration.

In two subsequent judgments, the court addressed costs of the petition: *Gichuru v. Purewal*, 2019 BCSC 951 and *Gichuru v. Purewal,* 2019 BCSC 1803. The court awarded Mr. Gichuru 50% of his costs at scale B.

McCulloch v. British Columbia (Human Rights Tribunal), 2019 BCSC 624 at paras. 123, 130

Ms. McCulloch had a legal right to reside in a dwelling on her brother's property. She did not pay rent. She alleged that her brother discriminated against her based on her disability when, among other things, he cut off her electricity. The Tribunal found no tenancy relationship without the payment of rent or other form of discrimination. The court disagreed. The court held that the Tribunal must conduct a contextual analysis to determine if the alleged discriminatory conduct has a sufficient nexus with the tenancy context, which is a "context of vulnerability". Relevant factors may include whether the respondent had control over the complainant's living space; whether the impugned conduct occurred in the complainant's living space; and whether the complainant's tenancy or living space was negatively affected. The payment of rent or other consideration is not necessary. The court said that Ms. McCulloch's brother, as the property owner, had the power to negatively affect Ms. McCulloch's living conditions, that Ms. McCulloch was in a vulnerable position, and that this seemed to be the type of vulnerability that s. 10(b) of the Code was intended to protect.

The Parent obo The Child v. The School District, 2019 BCSC 659

The Tribunal originally found a complaint regarding educational services for a child was filed on time as a continuing contravention under s. 22(2) of the Code. The BC Supreme Court upheld the decision, but the Court of Appeal set it aside. On reconsideration, the Tribunal found the complaint was filed late, and did not accept it for filing under s. 22(3). The BC Supreme Court set aside the decision, finding the Tribunal erred in relation to an "extricable question of law". In particular, the Tribunal said that, for the Parent to rely on erroneous legal advice as a reason for late filing, he needed to identify the lawyer, confirmation of the error, and an explanation about how the error occurred. This set of pre-requisites was too rigid and in error. The error rendered the decision patently unreasonable. An appeal has been filed.

Roos v. BC Ministry of Advanced Education and others, (May 3, 2019) Van. Reg. No. S1811200 (Oral Reasons)

The Tribunal denied the Province's application to dismiss Mr. Roos' complaint regarding the provision of hearing aids. In part, the Tribunal found that more evidence was needed about a provincial program, which was referred to in the materials but not addressed by the Province. The court upheld this decision and rejected the argument that the Tribunal acted unfairly by not giving the Province an opportunity to make submissions about its program. Rather, the court found that the Province had an opportunity to provide information about the program but did not do so.

Gardezi v. The Positive Living Society of British Columbia, 2019 BCSC 666

The court upheld the Tribunal's decision to dismiss Ms. Gardezi's retaliation complaint under s. 27(1)(c) of the Code, but found it was unfair to dismiss Ms. Gardezi's discrimination complaint when the respondent had not applied to dismiss that part of the complaint. An appeal has been filed regarding the retaliation complaint.

Stein v. Keeblers, 2019 BCSC 1194

The Tribunal dismissed Ms. Stein's complaint without a hearing for non-compliance with orders under s. 27(1)(d)(ii) of the Code and rule 4 of its *Rules*. The court upheld the decision, finding the Tribunal has jurisdiction to dismiss a complaint under rule 4(2) or rule 22 and that the decision to dismiss was not patently unreasonable. There was no breach of procedural fairness. An appeal has been filed.

College of Physicians and Surgeons of BC v. The Complainant, 2019 BCSC 1898

The Tribunal denied an application to dismiss the complaint without a hearing. The court dismissed the petition as premature. Review of the decision would require the court to review the evidence to determine if the Tribunal's findings regarding the inferences that could be drawn were reasonable; this is an area of specialty for the Tribunal; it has not made a final determination; and there is no alleged error of law. It is not the court's role to determine whether the credibility issues and conflicts in the evidence were "key". The arguments made would require the court to delve into evidentiary issues and reweigh evidence which would be inappropriate.

Stein v. British Columbia (Human Rights Tribunal), 2020 BCSC 70

The court upheld the Tribunal's decisions declining to retroactively anonymize decisions. These discretionary decisions were not patently unreasonable. There was no denial of procedural fairness.

BC Court of Appeal

Sebastian v. Vancouver Coastal Health Authority, 2019 BCCA 241

The Tribunal dismissed Mr. Sebastian's complaint under s. 27(1)(d)(ii) of the Code on the basis that a consent award and settlement offer would adequately remedy the alleged human rights violation. The Tribunal rejected Mr. Sebastian's concern that he wasn't a party to the consent award. The Court of Appeal upheld the decision. It rejected the argument that the consent award was a nullity. The decision was not patently unreasonable

Supreme Court of Canada

The Supreme Court of Canada dismissed the application for leave to appeal from *Envirocon Environmental Services, ULC v. Suen*, 2019 BCCA 46 (2019 CanLII 73206).

SPECIAL PROGRAMS

Until March 31, 2020, the Tribunal had the power to approve special programs under s. 42 of the Code. Effective April 1, 2020, responsibility for special programs transferred to British Columbia's Office of the Human Rights Commissioner: *Code*, s. 47.12. Any existing special program approved by the Tribunal Chair under s. 42 of the Code remains valid as if it had been approved by the Human Rights Commissioner: *Human Rights Amendment Act Regulation*, BC Reg 71/2020, s. 15. More information about special programs can be found here.

Special programs aim to improve the conditions for an individual or group that has faced historic barriers to participation in social, cultural, economic, and political life. 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.

In the last year, the Tribunal approved 22 new special programs and 8 renewals:

- **Amazon Canada Fulfillment Services ULC**: Preferential target and hiring of persons with disabilities to work as Associates in Amazon Fulfillment Centres.
- **Belle Construction**: Restrict hiring to female tradespersons.
- **Camosun College**: 16 seats (10%) in the Bachelor of Science Nursing Program reserved for qualified student applicants of Indigenous ancestry.
- **College of New Caledonia**: Limit access to the College's Aboriginal Centres and the services offered through those Centres to Indigenous persons only.

  Restrict hiring to Aboriginal (First Nations, Inuit, Métis) applicants for 79 positions across the following categories:

  a) employees providing direct operational, instructional or administrative services to primarily Aboriginal students;

  b) employees instructing courses whose content is primarily Aboriginal;

  c) employees offering services and/or programs funded through Aboriginal-specific funding initiatives; and

  d) administrators working on campus with significant numbers of Aboriginal learners, or with a significant population of Aboriginal peoples in their campus area.
- **Covenant House**: Restrict advertising of employment and hiring to female-identified applicants for 78 positions in the organization's residential programs for young women.
- **Directors Guild of Canada, BC District Council**: Approval to operate a searchable database that will include voluntarily provided information about individual directors' protected characteristics for the purpose of facilitating hiring of diverse directors in BC's film and television industry

- **Emily Carr University of Art & Design**: Restrict hiring to persons who self-identify as Indigenous for the position of Tier 1 Canada Research Chair, Indigenous Research.

  Preferential hiring of persons who self-identify as Indigenous for up to five (5) tenured or tenure-track faculty member positions.

  Restrict hiring to either an Indigenous or racialized candidate that possesses the qualifications for the position of Vice Provost, Students.

- **Fraser Health Authority**: Preferential hiring of qualified persons who self-identify as Indigenous for specific positions in the Aboriginal Health Program and Indigenous Primary Health and Wellness Program.

- **Métis Provincial Council of British Columbia**: preferential hiring of qualified individuals who self-identify as Aboriginal for all open positions in the organization.

- **Nlha'7kapmx Child and Family Services Society**: Preferential hiring of qualified persons who self-identify as Indigenous for all positions that directly interface with the children and families of the Nlha'7kapmx communities that the Society serves.

- **North Island College**: Restrict hiring to persons of Aboriginal ancestry for the positions of: Director, Aboriginal Education; Aboriginal Education Advisors; Faculty, Aboriginal Programming and Elders.

- **Office of the Human Rights Commissioner**: Restrict hiring to qualified persons who self-identify as Indigenous for the position of Indigenous Advisor.

  Restrict hiring to qualified persons who self-identify as Indigenous for the position of Manager, Engagement.

- **Office of the Ombudsperson**: Restrict hiring to Indigenous persons for the position of Indigenous Liaison Officer.

- **PLEA Community Services**: Restrict hiring to women for all positions that work directly with participants in the Daughters & Sisters Program.

  Restrict hiring to men for four Youth Support Worker positions in the Waypoint Program.

- **School District No. 34 (Abbotsford)**: Restrict hiring to persons with disabilities for six (6) Special Assistant positions that may be assigned to work in any of the following areas: Custodial, Mailroom, Clerical, Food Services, Grounds Maintenance and Library Assistant.

- **School District No. 35 (Langley)**: Restrict hiring to people of Aboriginal ancestry for the positions of Aboriginal Support Worker, District Teacher (Aboriginal Program) and Aboriginal Learning Support Teacher.

- **School District No. 36 (Surrey)**: Restrict hiring to people of Aboriginal ancestry for 1 Director of instruction, 1 District Vice Principal, 10 Teachers and 45 Support Workers in the Aboriginal Education Program.

- **School District No. 39 (Vancouver)**: preferential hiring of persons of Aboriginal ancestry for positions in the Indigenous Education Department in order to reach or exceed parity in the respective representation rates of Aboriginal educators and Aboriginal students in the District.

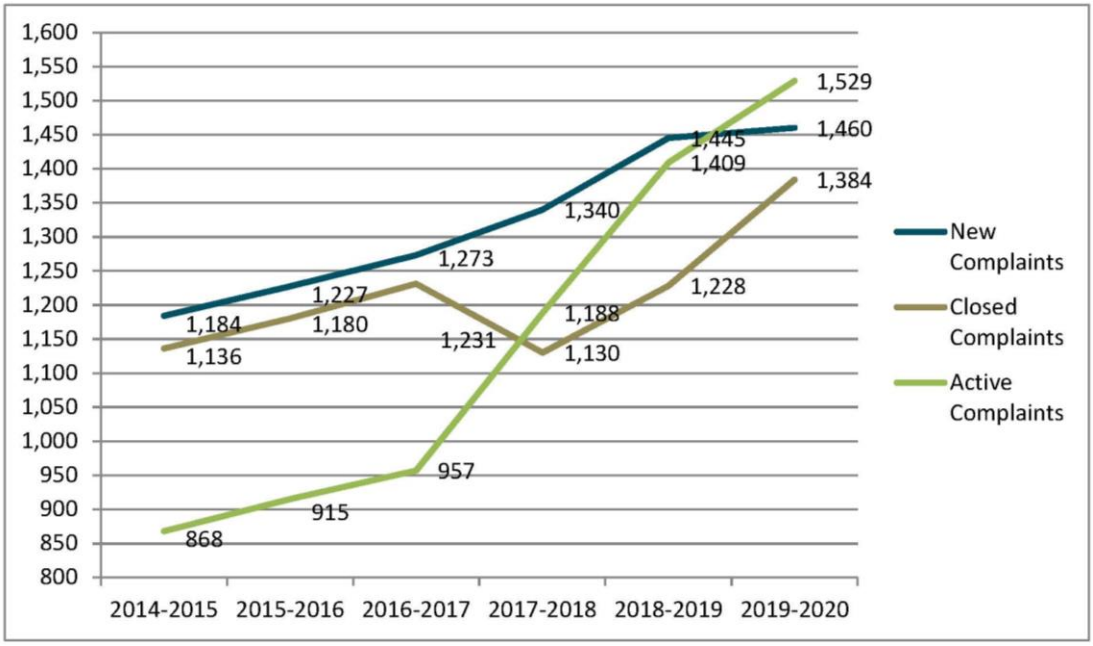
  Restrict hiring to a person of Aboriginal ancestry for the position of Indigenous Education Worker.
- **School District No. 48 (Sea to Sky)**: Preferential hiring of Aboriginal persons for 43 teaching positions.
- **School District No. 54 (Bulkley Valley)**: Preferential hiring of persons who self-identify as Aboriginal for an Aboriginal Education Worker position.
- **TRIUMF**: Preferential hiring of women for the following positions: 7 Board Appointed Research Scientists, 5 Staff Scientists, 16 Engineers, 4 Info Systems & Technologists, 32 Technicians/Technologists, 1 Postdoc, 3 Graduate Students, and 3 Faculty Joint Appointments.
- **University of British Columbia**: Restrict hiring for Tier 1 and Tier 2 Canada Research Chair Program positions until the following levels of representation are met within each tier: persons who self-identify as Indigenous (Aboriginal, Metis, Inuit) 4.9%; persons with disabilities 7.5%; racialized persons 22%; and women 50.9%.
- **Vancouver Coastal Health**: Restrict hiring to gay men for one counsellor position in the Vancouver Addictions Matrix Program.
- **Visceral Visions Society**: Restrict provision of services under the CulturalBrew.Art program to self-identified Indigenous or racialized persons only.

The *Expanding our Vision* report raises concerns that special programs approval in the hiring of Indigenous Peoples has had unintended consequences. Survey participants reported that the exemption suggests that to give due weight to Indigenous experience or cultural knowledge in hiring is an example of "special" treatment and risks a discrimination claim by non-Indigenous applicants. Survey participants reported that s. 42 of the Code has had a "dampening" impact on Indigenous hires. The *Expanding our Vision* report recommends education to employers about s. 42 of the Code which should highlight where a fair consideration of Indigenous applicants – for example, strongly weighing Indigenous knowledge and experience – does not require an exemption.

Tribunal Workload

We have reported on what we are doing, and what we need to do better, in order to fulfill our mandate under s. 3 of the Code. As we implement the Access to Justice Triple Aim, we are balancing the three goals of improving population access to justice, improving user experience, and improving costs. Adding to the challenges are the delays in our current process. Not only are there challenges in filing a human rights complaint, but there are also challenges in reaching a timely resolution of a human rights complaint after it has been accepted for filing.

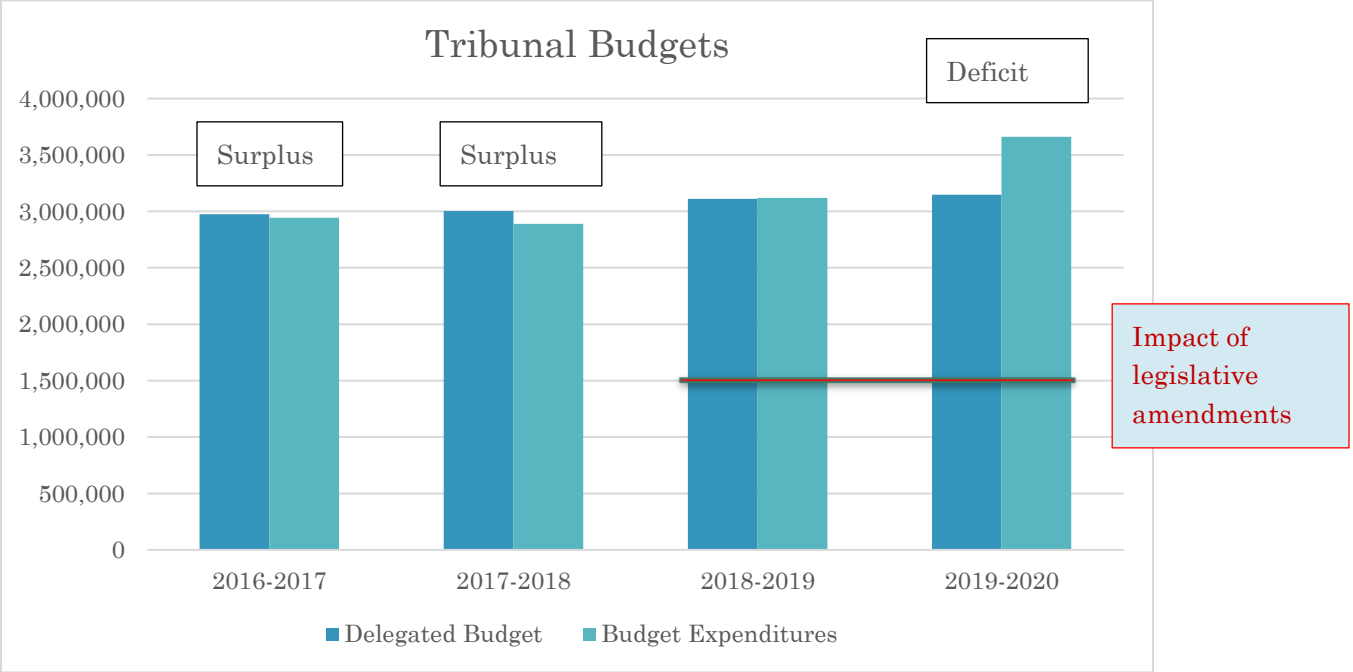
The Tribunal continues to have a significant workload. The caseload volume is at an all-time high and continues to grow which is not surprising given our expanded mandate. The number of active complaints at the Tribunal is 1,529 which represents an 9% increase over the previous year and a 60% increase over the past four years. Active cases mean those that require active engagement by Tribunal case managers and adjudicators.



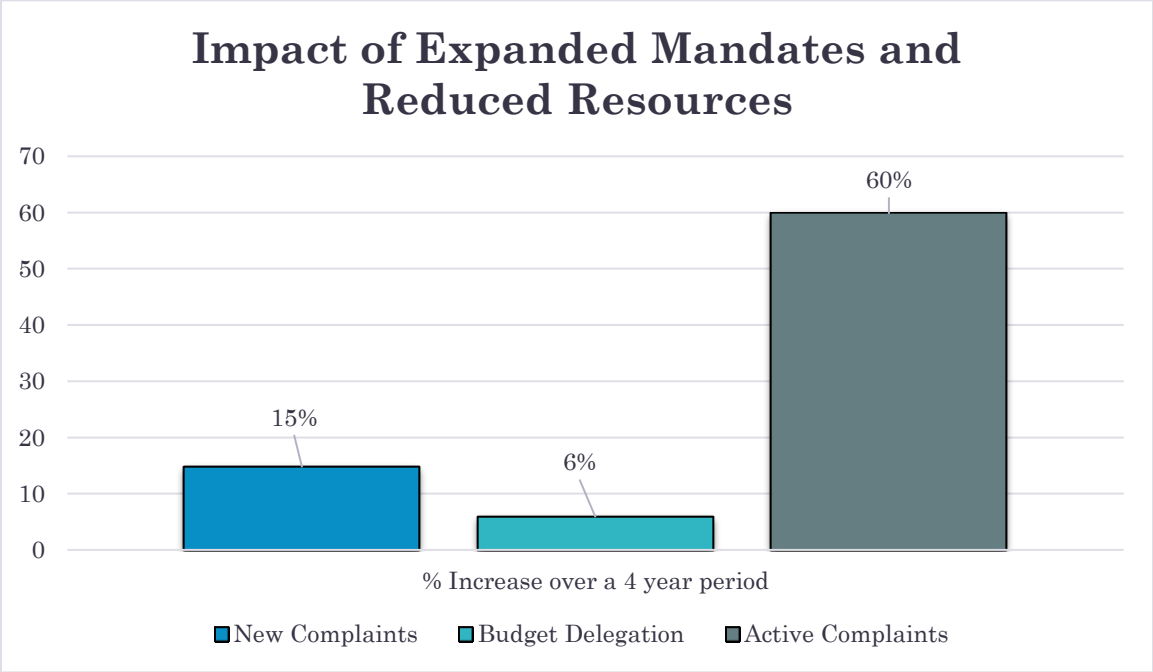
Although the gap between opened and closed cases is narrowing, the Tribunal continues to receive more new complaints than it can resolve. This is reflected in a reduction in the service standards on timeliness. Every stage of the human rights complaint process is being affected by delays. The backlog is growing. The Tribunal has managed the caseload volume by stretching human resources and implementing operational efficiencies. However, this approach is unsustainable. The staffing complement has not changed since the inception of the Tribunal in 2003, at 26 full-time equivalent positions. The Tribunal is seeking to meet the increased demand for services through responsible human resource management, and this will add budgetary pressures over the coming years.

The Tribunal is finding effective ways to achieve the conflicting goals of fiscal restraint and our continued pursuit of operational excellence and access to justice innovation. Improving access to justice and operationalizing the Access to Justice Triple Aim is necessary for the Tribunal to fulfil its mandate under s. 3 of the Code.

The Tribunal is confident that investing adequate resources in the administrative justice sector will save the province money through overall savings in the health care costs and economic costs associated with those who have experienced human rights violations that are not acknowledged, addressed, or remedied. This is demonstrated in a recent collection of empirical research, Justice Crisis: the Cost and Value of Accessing Law, which measures what is and is not working in the justice system. This research shows that Canadians are spending on average about $6,000 each year resolving legal disputes in what for most was an unsatisfying process. This amount of money represents approximately 75% of what households spend on food each year, 50% of what they pay for transportation, and one third of what they spend on housing. Researchers have also begun to quantify the impact of an individual's lack of access to justice on society. The research also shows that the societal and governmental costs are up to a combined total of $800 million a year which is broken down into $450 million in more EI payments, $101 million in more health care expenses, and $248 million in more social assistance.



The Tribunal has balanced a budget in three of the past four fiscal years. For two of those balanced years, the Tribunal carried a budget surplus which means that it spent less money than it was given. The recent budgetary pressures on the Tribunal are due to expanding legislative and human rights mandates in the province. This includes the 2016 legislative change adding the ground of "gender identity and expression" to the Code, the 2018 legislative change that increased the time limit for filing a human rights complaint from six months to one year, the 2018 legislative change that established the Office of the Human Rights Commissioner, and the appointment of BC's Human Rights Commissioner in 2019. The first decisions following a hearing regarding the ground "gender identity and expression" were held in the 2018-2019 fiscal year.



The demand for human rights services at the Tribunal can be measured through the number of new human rights complaints that are filed in any given year. The supply for human rights services at the Tribunal can be measured through annual budget delegations.

Over the past four years, the demand for human rights services (15%) has increased at a higher rate than the supply of human rights services (6%).

One way of measuring the impact of this resource deficit is through the number of active human rights complaints. Over the past four years, the number of active human rights complaints has increased at a rate of 60%. This means that human rights complaints are taking longer to resolve and the delay is growing.

Financial Disclosure

TRIBUNAL OPERATING COSTS

DESCRIPTION	EXPENDITURES	DELEGATED BUDGET	VARIANCE
Salaries	2,675,058	2,324,000	(351,058)
Employee Benefits	678,350	589,280	(89,070)
Fees for Temporary Members	28,808	15,000	(13,808)
Travel*	13,485	10,000	(3,485)
Professional Services	138,857	149,720	10,863
Information Services	35,572	0	(35,572)
Office and Business Expenses	52,232	60,000	7,768
Other Expenses	0	0	0
TOTAL COST	**3,622,362**	**3,148,000**	**(474,362)**

***Travel**

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

Our Tribunal Team

Members are administrative law judges who adjudicate, mediate, and case manage human rights complaints. Our Staff are an integral part of our professional team. We work together to serve our public to the highest standards of integrity and professionalism.

STAFF

Registrar
Steven Adamson

Manager of Finance and Operations
Andrea Nash

Legal Counsel
Katherine Hardie
Barbara Korenkiewicz

Registry Staff
Cheryl Bigelow
Priscilia Bolanos
Kerry Jervelund
Mattie Kalicharan
Ainsley Kelly
Carla Kennedy
Anne-Marie Kloss
Lorne MacDonald
Nikki Mann
Sarah Muench (partial year)
Kate O'Brien (shared with other tribunals)
Britt Stevens (partial year)
Daniel Varnals
Meagan Stangl
Sandy Tse
Danyka Wadley

MEMBERS

Chair
Diana Juricevic

Tribunal Members
Steven Adamson (Registrar and Member)
Jacqueline Beltgens
Grace Chen
Devyn Cousineau (part-time)
Beverly Froese
Laura Matthews (partial year)
Catherine McCreary (partial year/retired)
Pamela Murray (partial year/part-time)
Emily Ohler
Walter Rilkoff (partial year/retired)
Paul Singh
Kathleen Smith
Karen Snowshoe (partial year)
Norman Trerise (part-time)

Please contact us or visit our website if you require additional information:

Appendix

EXPANDING OUR VISION IMPLEMENTATION UPDATE

This is the Tribunal's first progress report under its *Expanding Our Vision* Indigenous Justice Initiative. This report covers the first six-month period after the release of *Expanding Our Vision,* from January until June 2020.

Committee

> ***Recommendation 2.2*** *Create a staff/tribunal committee tasked with developing the Expanding our Vision Implementation Plan. Indigenous lawyers and cultural leaders or academics with knowledge of human rights should be recruited to join these efforts. The Expanding Our Vision Implementation Plan should include immediate steps to be taken in the first 6 months, and then be renewed on a yearly basis.*

In January 2020, the Tribunal sought members for its *Expanding Our Vision* Implementation Committee [***Committee***]. The composition of the Committee expanded over the following weeks. The membership of the Committee is now comprised of a diverse group of Indigenous lawyers, community leaders, youth, and academics from across the province, as well as a representative from BC's Office of the Human Rights Commissioner. A full list of Committee members is listed at the end of this report. The Committee first met on March 2, 2020.

The Committee meets monthly to oversee and guide the Tribunal's efforts in implementing *Expanding Our Vision.* In this first period, it identified immediate priorities for the Tribunal in respect of hiring and training. It continues to identify priorities and direct the Tribunal's initiatives.

Hiring

Recommendation 1.3 *Increase the number of Indigenous Peoples at all levels of the BCHRT, including staff, tribunal members and contractors.*

Recommendation 4.1 *Priority should be given to hiring or appointing Indigenous staff and tribunal members.*

Recommendation 4.2 *Audit the current HR process to identify why Indigenous Peoples are not being recruited or hired. Provide specific training to HR staff on how to actively recruit and fairly assess Indigenous applicants. Seek specific mentoring advice from other organizations with higher Indigenous staff ratios about how to address this underrepresentation. The BCHRT should set yearly hiring targets for the first five years, and report on success in meeting those targets in annual reports.*

Recommendation 4.3 *Audit the tribunal appointment process to identify why Indigenous Peoples are not applying or being appointed as tribunal members. Set specific recruitment and appointment goals for BCHRT Indigenous tribunal members.*

Recommendation 4.4 *Implement options for part-time appointments to qualified Indigenous tribunal members, who may not be available full-time. This could provide a way to reflect Indigenous adjudicative and dispute resolution traditions within the Tribunal's expertise.*

The Committee identified increasing Indigenous representation within the Tribunal as the first priority. The Tribunal has taken a number of steps towards this goal.

In February 2020, the Tribunal appointed two Indigenous members under s. 6 of the *Administrative Tribunals Act.* These appointments are for six months.

On January 22, 2020, the Tribunal advertised a Notice of Position seeking applicants for the position of Tribunal Member. The Tribunal advised it may prefer Indigenous applicants for the position, and that part-time options are available. To attract Indigenous candidates, the Tribunal held an Information Session for Indigenous Lawyers, to share information about becoming a member. That hiring process is now under way. The position posting has attracted many qualified Indigenous candidates.

The Tribunal has also concluded an internal audit of its hiring process to identify barriers to the recruitment and hiring of Indigenous Peoples. That audit identified a number of factors that may create such barriers:

1. Failure to give weight to the need for the Tribunal to reflect Indigenous Peoples or otherwise reflect the diversity of people coming to the Tribunal, social context understanding, lived experience, cultural competency, or trauma-informed practice;
2. Limited advertisement of the position and failure to actively reach out to diverse communities;

3. Reliance on personal connections or word of mouth;
4. Political influence from government;
5. Bureaucratic process can take a long time;
6. Lack of Indigenous members and staff at all levels, including leadership positions;
7. Highly structured application process; and /or
8. Job application process that is exclusively online.

In response to this audit, the Tribunal has prepared a draft *Framework for Recruitment, Hiring and Retention of Indigenous Peoples*. That framework identifies practices to guide the Tribunal's recruitment, hiring and retention initiatives going forward. A subcommittee comprised of Tribunal legal counsel, one Tribunal member, and a number of Committee members, will oversee and assist with the continued development and implementation of this framework.

Training

> ***Recommendation 8.1*** *Develop a baseline of information and understanding of the racism that Indigenous Peoples experience so that individual complainants are not put to a process of proof again and again…*
>
> ***Recommendation 10.1*** *Adopt a trauma-informed practice overall, including for assessing and accommodating delays or requests for extensions. The BCHRT staff and tribunal members should be provided with training on how trauma may impact Indigenous Peoples' actions or interactions within the BCHRT system.*

In tandem with increasing Indigenous staff and members at the Tribunal, the Committee directed the Tribunal to prioritize developing cultural competency, humility, and safety among its staff and members. To that end, the Committee is overseeing the development of a *BC Human Rights Tribunal Indigenous Cultural Competency and Humility Framework* [***Cultural Training Framework***]. A subcommittee of Tribunal members and Committee members will work on its further development and implementation.

Under the *Cultural Training Framework,* the Tribunal seeks to be a safe and welcoming place for Indigenous Peoples, as staff, Tribunal Members, mediators, parties, and communities which we serve. Specific learning initiatives for staff, members and mediators include: monthly meetings for Tribunal members which incorporate Indigenous cultural learning; and monthly small group work for all staff and members. When the restrictions of the current pandemic are lifted, the Tribunal will also be organizing site visits to Indigenous organizations or communities and be participating in a blanket exercise.

Amendments to the *Human Rights Code*

Recommendation 1.2 *Advocate to add Indigenous identity as a protected ground to the Code. Current grounds of discrimination under the Code (including based on race, colour, ancestry or religion) do not adequately address the discrimination Indigenous Peoples report experiencing. This would send a message of inclusion and reflect the individual and collective nature of Indigenous human rights.*

On May 7, 2020, the Tribunal wrote to the Ministry of the Attorney General to request, on an urgent basis, for an amendment to ss. 7-14 of the *Human Rights Code* to add Indigenous identity as a ground of discrimination. That letter was updated with an expanded list of supporting organizations on May 19, 2020. A copy of this letter is posted on the Tribunal's website. The request was supported by Indigenous and human rights organizations, including:

- Union of BC Indian Chiefs
- BC Assembly of First Nations
- Métis Nation British Columbia
- Office of the Human Rights Commissioner
- Aboriginal Front Door
- Aboriginal Women's Action Network
- ATIRA Group of Women Serving Agencies
- BC Civil Liberties Association
- Community Legal Assistance Society (CLAS)
- Downtown Eastside Women's Center
- Ending Violence Association of BC
- First United Church Community Ministry Society
- Human Rights Clinic
- Indigenous Community Legal Clinic, UBC
- Native Education College
- Pacific Association of First Nations Women
- The Provincial Council of Women of British Columbia
- Residential School History and Dialogue Centre, UBC
- Rise Women's Legal Centre
- Vancouver Aboriginal Community Policing Centre
- WAVAW Rape Crisis Centre
- West Coast LEAF
- Bradford W. Morse, Professor of Law, Thompson Rivers University

This work is done in partnership with the Office of the Human Rights Commissioner.

Recommendation 14.1 *Use plain language, easily understood by the average person with a grade five education, when communicating with complainants. Review communications, including forms and template letters, to ensure that they use plain language.*

Recommendation 9.4 *Amend BCHRT forms to contemplate Indigenous Peoples, including Indigenous names, where a delay may be reflective of historic trauma, or to allow for exploration of options to resolve issues as required by Indigenous protocols.*

Communications and Forms

The Tribunal is revising its forms. The new forms will use plain language and will identify a place for people to identify traditional or other names. The forms will acknowledge that trauma may be a cause of delay in filing complaints. The new forms will also collect demographic information on a voluntary basis, including Indigenous identity. The Tribunal will introduce the new forms in June 2020 and will revise them with user feedback.

Next steps

The Tribunal continues to work with the Committee to implement the *Expanding Our Vision* recommendations. The Committee is currently mapping the recommendations to identify which ones fall within or outside the Tribunal's mandate, which ones will require additional funding, and which ones the Tribunal can take immediate steps on. The Committee will then set further priorities and timelines. The Tribunal will continue to report on its progress.

Committee Members

Patricia M. Barkaskas
Jade Baxter
Romona Baxter
Cynthia Callison
Rosalind Campbell
Dylan Cohen
Devyn Cousineau
Trish Garner
Andrea Glickman
Katherine Hardie
Andrea Hilland
Jo Ann Nahanee
Amber Prince
Lissa Dawn Smith