



## British Columbia Human Rights Tribunal

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### Policy on a Complainant's Duty to Communicate with the Tribunal December 3, 2004 (amended July 15, 2014)

Complainants are required to diligently pursue their complaints under the BC *Human Rights Code*. This includes:

- responding to communications from the Tribunal, and maintaining communications with it,
- complying with the *Rules of Practice and Procedure*, and with orders and directions of the Tribunal, and
- attending to matters relating to the complaint in a complete and timely way.

If a complainant fails to diligently pursue their complaint, it may be dismissed under s. 27.5 of the *Code*, which provides:

- 27.5 If, under the rules, a party has been given notice requiring the party to diligently pursue a complaint and the party fails to act on the notice within the time allowed, then on the request of another party or on its own initiative, a member or panel may dismiss the complaint.

Rules 4(5) provides that the Tribunal will give a complainant a time-limited notice that their complaint may be dismissed unless they diligently pursue their complaint.

This policy describes the process that the Tribunal will use to dismiss complaints, on its own motion, where the complainant is not responding to communications from the Tribunal or maintaining communications with it. This policy does not cover situations where an application to dismiss a complaint is made by another party, where the complainant's failure to diligently pursue their complaint is repetitive, or where there are additional or different defaults in the obligation to diligently pursue.

Complainants are sent an information sheet about this policy when receipt of their complaint is acknowledged by the Tribunal in writing.

### **Address for Delivery**

Rules 8(1) to 8(6) set out a participant's responsibility to ensure that the Tribunal has, at all times, a current address for delivery.

Under rule 8(6), a participant is deemed to have notice of a communication if it is delivered to their address for delivery, whether or not they actually received the communication or have knowledge of its contents.

### **Determination that Complainant Not Responding To Communications**

The Tribunal will determine whether it appears that a complainant is not diligently pursuing their complaint by failing to respond to communications from the Tribunal.

### **Determination that Complainant Not Maintaining Communications**

The Tribunal will determine whether it appears that the complainant is not diligently pursuing their complaint by failing to maintain communications with the Tribunal. The Tribunal will consider:

- the number of unsuccessful attempts to communicate with the complainant,
- the time elapsed since there last was contact with the complainant,
- the nature of the defaults in communication,
- the results of a limited search of selected public phone and address registries for British Columbia and Canada, and
- any other apparently reliable information which the Tribunal may have as to the complainant's whereabouts.

### **Notice to the Complainant**

Once the Tribunal has determined that it appears that a complainant is not diligently pursuing their complaint, it will give notice pursuant to s. 27.5 of the *Code* and Rule 4(5) by sending a letter to the complainant at their address for delivery and copied to every other party. The complainant will be given a maximum of 30 days to respond to the notice, confirming that they intend to pursue their complaint and, if required, providing current contact information, including a valid address for delivery in British Columbia.

## **Dismissal of Complaint**

If there is no response from the complainant in the time period set out in the notice, the Tribunal will dismiss the complaint. The Tribunal will send a Dismissal Notice to the complainant's address for delivery and a copy to every other party to the complaint.

The effect of a dismissal order is to put an end to the complaint.

## **Application to Set Aside a Dismissal Order**

A complainant may make an application to the Tribunal pursuant to rule 28 to set aside a dismissal order under s. 27.5 of the *Code*.

When deciding whether to set aside the dismissal order, the Tribunal will consider the following factors:

1. the complainant's explanation for failing to respond to the notice to diligently pursue, including whether the complainant received the notice required under s. 27.5 of the *Code* or received it in time to act upon it,
2. how long the complainant has been out of contact with the Tribunal or not responding to its communications,
3. the reason for the loss of communication with the Tribunal and whether that explanation is reasonable,
4. the complainant's history of compliance since filing the complaint including timelines, and maintaining and responding to communications,
5. how quickly the complainant contacted the Tribunal after learning of the dismissal of their complaint,
6. whether there has been any prejudice to the respondent as a result of the complainant's default, and
7. any other relevant factors arising in the circumstances of the particular case.

The Tribunal may make an order setting aside the dismissal order, with or without conditions. The Tribunal will send a copy of its order to the complainant's address for delivery and to every other party to the complaint.