Annual Report

2007-2008

BRITISH COLUMBIA

British Columbia Human Rights Tribunal

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July 18, 2008

Honourable Wally Oppal
Attorney General
Province of British Columbia
Room 232
Parliament Buildings
Victoria, BC V8V 1X4

Dear Attorney General:

It is my pleasure to present the fifth Annual Report from the BC Human Rights Tribunal, covering the period April 1, 2007, to March 31, 2008.

This report has been prepared in accordance with section 39.1 of the *Human Rights Code*.

Yours truly,

Hmacnaughton

Heather M. MacNaughton
Chair

HM/ll

Enclosure

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Message from the Chair

This annual report marks the fifth anniversary since the implementation of the direct access model for human rights protection in British Columbia.

Tribunal Mandate and Purposes

The Tribunal is an independent quasi-judicial body created to fulfil the purposes set out in section 3 of the *Human Rights Code*:

a) to foster a society in British Columbia in which there are no impediments to full and free participation in the economic, social, political and cultural life of British Columbia;

b) to promote a climate of understanding and mutual respect where all are equal in dignity and rights;

c) to prevent discrimination prohibited by this *Code*;

d) to identify and eliminate persistent patterns of inequality associated with discrimination prohibited by this *Code*;

e) to provide a means of redress for those persons who are discriminated against contrary to this *Code*.

The Tribunal was established in 1997. It was continued as a standing adjudicative body pursuant to March 31, 2003 amendments to the *Code*, which instituted a direct access model for human rights complaints. Its authority and powers are set out in the *Code*.

The direct access model is complainant driven. The Tribunal does not have investigatory powers. Complaints are filed directly with the Tribunal. It is responsible for all steps in the human rights process. The complaint is reviewed to see that the information is complete, the Tribunal appears to have jurisdiction over the matters set out in it, and the complaint is filed within the six-month limitation period. If so, the Tribunal notifies the respondents of the complaint and they file a response to the complainant's allegations of discrimination. Unless the parties settle the issues, or a respondent successfully applies to have the complaint dismissed, a hearing is held.

The Tribunal's office and hearing rooms are located in Vancouver, but the Tribunal conducts hearings and settlement meetings throughout the Province. The Tribunal manages its staff, budget and physical facilities, and engages its own consultants and specialists. Pursuant to the *Code*, the Tribunal has developed rules to govern its practice and procedure. Its registry is managed by a Registrar who is a lawyer.

Some complainants and respondents may access government-funded legal assistance to participate in the human rights process. The provincial government allocates funding to other organizations to provide these services.

Amendments to Legislation and Rules

In October 2007, amendments to the *Code* and the *Administrative Tribunals Act* came into effect. They clarify which Tribunals can apply the *Code* within their own statutory context. They also require notice to the Attorney General where a statute is challenged as breaching the *Code*.

In further amendments to the *Code*, proclaimed in force on January 1, 2008, the definition of age was amended to remove the upper age limit of 64 thereby ending mandatory retirement in British Columbia. Age was also added as a prohibited ground of discrimination in the area of services.

Before the statutory changes, and as a part of our ongoing commitment to being responsive to public needs, the Tribunal consulted with users on changes to its *Rules of Practice and Procedure*. The changes to the *Code,* and the consultation, led to significant changes to our *Rules*, forms, guides and information sheets. In particular, the Complaint Form was significantly revised.

Message from the Chair

We are very grateful to members of the bar and the public who responded and commented on our rules and were gratified to learn of the general satisfaction with the Tribunal's work.

Tribunal Workload

The Tribunal continued to have a significant workload. As a result, and pursuant to my authority to do so in the *Administrative Tribunals Act*, I appointed a member for a six-month term to relieve some of the burden on other Tribunal members.

Three members whose appointments expired during the year were renewed for further five-year terms.

Partly in an effort to control members' workload and partly because the Tribunal has developed a body of caselaw over the past five years which gives clear direction on some *Code* issues, the Tribunal moved to conference call submissions for many preliminary applications. Where the resulting decision was of interest only to the parties, and did not create a precedent for other complaints, conference call decisions were confirmed in a memorandum or letter rather than a formal decision. In some cases, the parties did not require written confirmation of directions given. This enabled us to reduce significantly the number of formal written preliminary decisions released.

There was also a reduction in the number of final decisions released. This is explained, in part, by the significant workload that saw many members in successive hearings and mediations without time to write final decisions and, in part, by the unusual number of lengthy hearings which will result in final decisions in 2008-09.

The Tribunal continues to see many parties participating without the benefit of legal counsel. This trend results in the need for additional resources at all levels of processing of a complaint and longer hearings.

At the start of the year, the Tribunal had 691 active cases in its inventory. By the end of the year that number had increased to 765. These do not include cases deferred or stayed at the request of the parties pending the outcome of another proceeding, those settling, or cases where petitions for judicial review have been filed after a final decision. The Tribunal has changed the way that it records complaints which are the subject of judicial review applications. This may marginally affect some of the statistics reported in this year as compared to others.

There were 1,053 new complaints filed, slightly more than in the previous year. In five years of operation, the number of complaints filed has stabilized at between 1000-1100 a year. In the same period, telephone calls to our inquiry lines have steadily declined, being replaced by more use of information provided on our website.

Mediation

The Tribunal's settlement meeting services are heavily used. We encourage participation and provide the option of a tribunal-assisted settlement meeting before the respondent files a response to the complaint, and at any later stage in the process. Each member schedules an average of six settlement meetings a month, and the Tribunal continues to use contract mediators as needed. Many complaints settle as a result of these efforts and creative solutions are achieved which could not be ordered after a hearing.

Because settlement meetings are usually a confidential process, the Tribunal does not publish the results. In many cases, the settlement meeting resolves other aspects of the parties' relationship and has transformative impacts without the adversarial process of a hearing. Some cases resolve on the basis of an acknowledgement that there has been a breach of the *Code* and an apology. In others, the mediated solution results in systemic change and awards greater than those that might be obtained after a hearing. Some examples of systemic solutions achieved in

settlements this year include:

- In a government service-provider setting, and in a rural location, the creation of a unique structure to ensure that a disabled adult continued to receive assistance from a parent funded by a Ministry;
- In an employment setting, agreement to an experimental work share arrangement which allowed flexibility to a primary care giver of an elderly parent, allowing her to both meet family needs and remain employed;
- In a government service-provider setting, agreement to a number of process steps to ensure that members of a marginalized community received information about available government programs and agreement to train a community-based crisis counsellor to provide a point of contact within the marginalized community;
- In an employment setting, revisions to on line application forms to ensure that questions seeking personal information from applicants were appropriately explained and that the privacy of the information obtained in response was appropriately protected;
- In an educational setting, restrictions to entitlement of employee benefits clearly explained and consistently applied;
- In an employment setting, agreement to ongoing support for the integration of mentally disabled employees, including updates for all staff from disability counsellors and an opportunity for the employees to explain their abilities;
- In a public transit service-provider setting, agreement to the involvement of the complainant in a review of policies and employee training to provide service free of discrimination;
- In an employment setting, improved and facilitated communication for a disabled part-time employee and agreement that an expert would be retained to review the worksite for modifications that might assist the employee with tasks with a view to increasing the number of hours the employee could work; and
- In a tenancy setting, agreement of a landlord to participate in a joint meeting with all tenants to explain role of an assistance animal.

In conjunction with the Administrative Justice and Dispute Resolution offices of the Ministry of the Attorney General, the Tribunal is engaged in a review of its early settlement meetings process to determine its effectiveness as compared to the resources allocated.

The Coming Year

Appointments to the Tribunal are for fixed five-year terms. In the coming year, three of the members who joined the Tribunal after the establishment of the direct access system will be leaving. Recruitment for replacement members commenced in January of 2008. One replacement member has been appointed to a five-year term and we expect that two other members will join us in August 2008. As in the past, training will be provided in hearing management, decision writing and mediation skills.

We will continue to work on our case management system and our website to integrate available technology and improve our processes.

My Thanks

The achievements of the Tribunal, about which you will read in this report, are the result of the Tribunal's hard-working and dedicated staff. It is my continuing pleasure to work with them.

Heather M. MacNaughton
Chair

Cost of Operation

BC Human Rights Tribunal Operating Cost
Fiscal Years 2007-08 and 2006-07

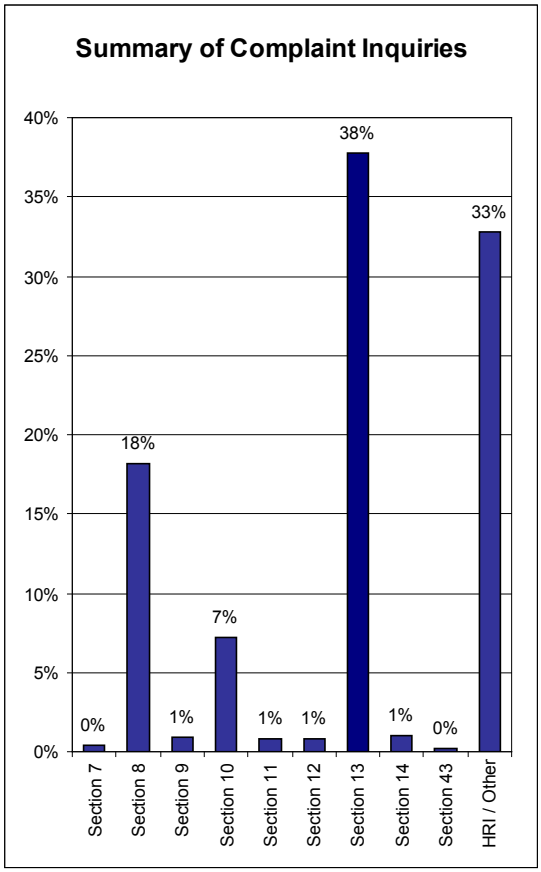
Category	2007-2008 Expenditure	2006-2007 Expenditure
Salaries (Chair, Members, Registry and Administration)	$ 1,990,739	$ 1,793,079
Employee Benefits	$ 473,675	$ 443,882
Retired Members – Fees for Completing Outstanding Decisions	$ 1,863	$ 9,600
Travel	$ 116,210	$ 98,845
Centralized Management Support Services	$ 0	$ 1,833
Professional Services	$ 63,691	$ 29,816
Information Services, Data and Communication Services	$ 12,013	$ 20,750
Office and Business Expenses	$ 99,028	$ 82,570
Statutory Advertising and Publications	$ 4,430	$ 6,988
Amortization Expenses	$ 45,244	$ 45,245
Building Occupancy and Workplace Technology Services	$ 521,169	$ 485,000
Total Cost	**$ 3,328,062**	**$ 3,017,608**

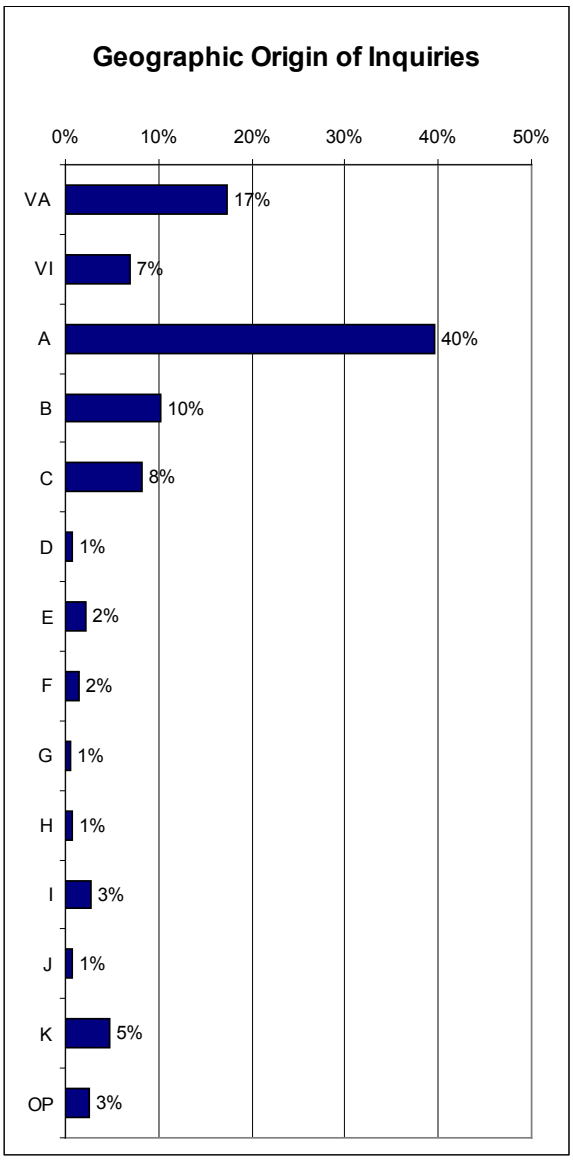
Inquiry Statistics

General inquiries about the Tribunal process are answered by two Inquiry Officers. The Inquiry Officers also provide basic information about the *Code* protections and refer callers to appropriate resources. They answered 10,969 inquiries this year, averaging 44 calls daily.

The highest percentage of complaint inquiries, 38%, related to employment (sections 13 and 14 of the *Code*). Inquiries relating to services (section 8), represented 18% of the inquiries, and those relating to tenancy (section 10) represented 7% of the total.

A toll-free number enables callers throughout the province to access the Inquiry Officers. The geographic origin of inquiries indicates that 17% originated from Vancouver, 40% from the Lower Mainland (excluding Vancouver), 7% from Victoria, and 22% from elsewhere in the province.





Legend

VA ..... Vancouver
VI ..... Victoria
A ..... Lower Mainland (Excluding Vancouver)
B ..... Vancouver Island & Gulf Islands (Excluding Victoria)
C ..... Okanagan
D ..... Rocky Mountains
E ..... Squamish / Kamloops
F ..... Kootenays
G ..... Sunshine Coast
H ..... Cariboo
I ..... Prince George Area
J ..... Skeena
K ..... Northern BC
OP ..... Out of Province

Complaint Statistics

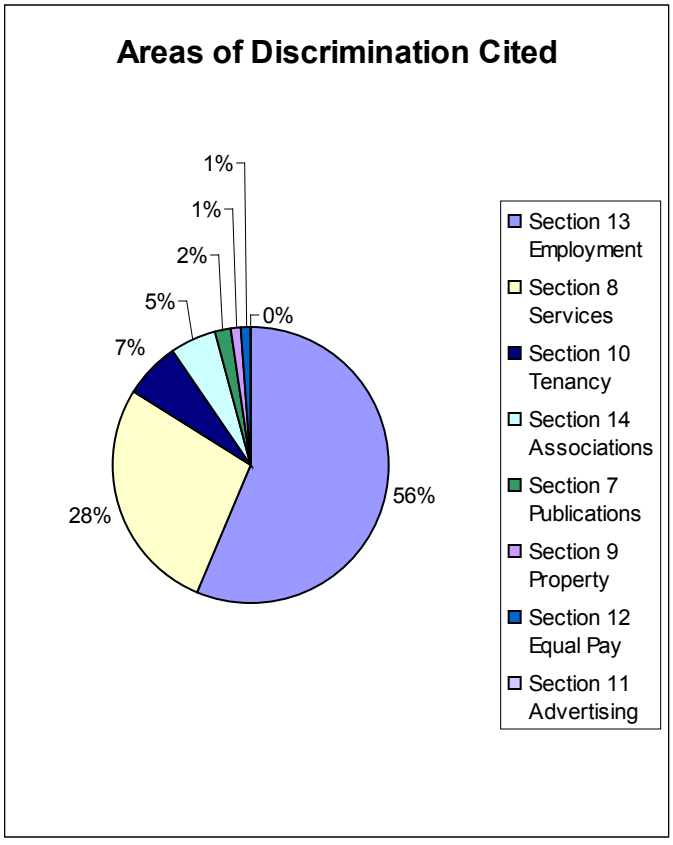
New Complaints

There were 1,053 new complaints filed at the Tribunal, of which 276 were screened out at the initial screening stage.

Areas of Discrimination

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

The area of employment was cited most frequently (65%), followed by services (28%), tenancy (7%), and membership in unions and associations (5%).

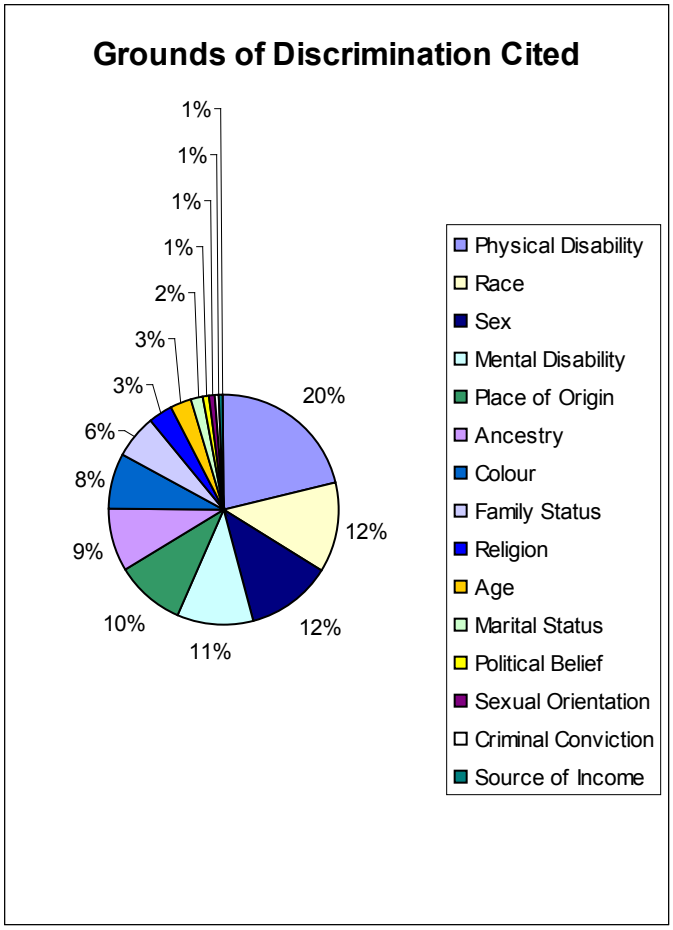


Grounds of Discrimination

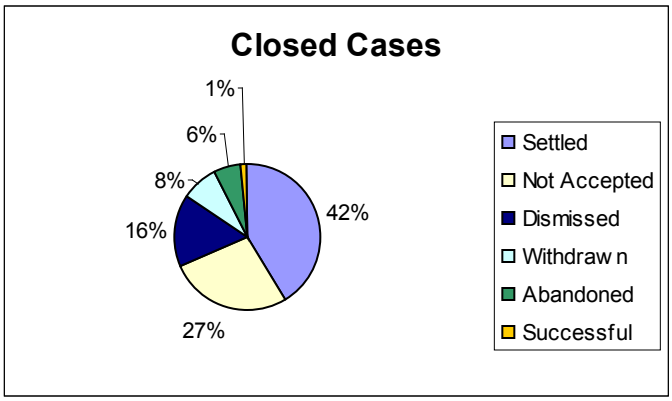
There are 15 prohibited grounds of discrimination: age (19 and over), ancestry, colour, family status, lawful source of income, marital status, place of origin, physical and mental disability, political belief, race, religion, sex (including harassment and pregnancy), sexual orientation and unrelated criminal conviction. Not all grounds apply to all areas.

Some complaints cite more than one area and ground of discrimination. For instance, a complainant with a race-based complaint may also select grounds of ancestry, colour and place of origin.

As can be seen from the chart on the next page, the most common ground cited was physical disability (20%), followed by race (12%), sex (including harassment and pregnancy) (12%), mental disability (11%), and place of origin (10%). Ancestry was at 9%, followed by colour (8%), family status (6%), religion and age (3%) and marital status (2%). Political belief, sexual orientation, criminal conviction and source of income were at 1%. Retaliation was cited in 9% of complaints. As a result of a BC Supreme Court decision in *Cariboo Chevrolet Pontiac Buick GMC Ltd. v. Becker*, 2006 BCSC 43, the ground of retaliation only applies after a human rights complaint has been filed.



applications. This may marginally affect some of the statistics reported in this year as compared to others.



CLOSED CASES

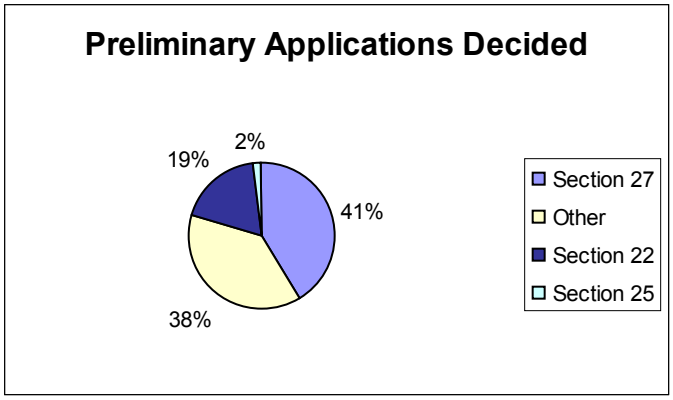
The Tribunal closed 1,030 cases this year. Cases are closed when they are not accepted at the initial screening stage, withdrawn because they have settled or otherwise, abandoned, dismissed, or a decision is rendered after a hearing. This year, 276 complaints were not accepted at the initial screening stage, 94 were dismissed under section 27, 40 were dismissed under section 22, and 45 decisions were rendered after a hearing, of which 15 were successful and 30 were dismissed. The balance (575) were settled, withdrawn or abandoned.

The Tribunal has changed the way that it records complaints which are the subject of judicial review

Preliminary Decisions

Preliminary Decisions

Of the 424 decisions rendered this year, 378 (89%) involved preliminary applications. Although called preliminary, many of these decisions finally decide human rights issues. These included applications respecting the six-month time limit for filing complaints (section 22 and 27(1)(g)), applications to defer a complaint (section 25), to dismiss a complaint without a hearing (section 27), and for other orders such as disclosure, adjournment, and limits on publication.



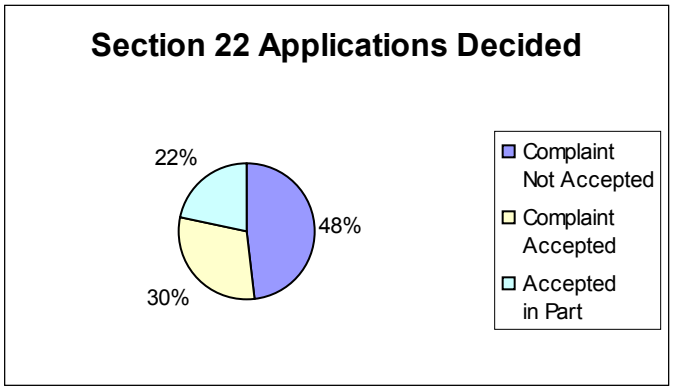
Time Limit Applications

Section 22 of the *Code* provides that a complaint must be filed within six months of the alleged discrimination, or the last instance of an alleged "continuing contravention" of the *Code*. The Tribunal may accept late-filed complaints if it determines that it is in the public interest to do so and no substantial prejudice will result to any person.

At the beginning of the complaint process, the complaint form asks if the complaint is filed after the time limit. The complaint form was amended this year to clarify the information the Tribunal needs in order to screen complaints for timeliness. If the complaint appears to be out of time, the complainant must apply to have it accepted. A Tribunal member decides whether a complaint is filed in time and, if not, whether to accept it, although late.

In some cases, a time limit issue may not be clear on the face of a complaint and may first be identified after a complaint is accepted. The Tribunal may dismiss a complaint pursuant to section 27(1)(g) if it was filed out of time. The issues the Tribunal considers under section 27(1)(g) are the same as those under section 22: was the complaint filed in time and, if not, should it be accepted? The factors the Tribunal considers in deciding whether to dismiss a late-filed complaint are also the same.

The Tribunal decided 114 time limit applications this year. In 21, the complaint was found to have been filed in time, including 18 which were found to be continuing contraventions. Of the late-filed complaints, 22 were accepted in whole or in part. There were 40 late-filed complaints not accepted and 18 complaints (of 31 applications to dismiss on this ground) were dismissed under section 27(1)(g).



Continuing Contravention

Many time limit decisions consider whether the complaint involves a "continuing contravention" pursuant to section 22(2) of the *Code*. Continuing contraventions do not include cases where there are continuing effects or consequences of a discriminatory act or acts. Continuing contraventions may include:

- allegations of repeated acts of harassment or discrimination (*Lavoie v. Crown Packaging and McQueen*, 2007 BCHRT 213; *Underdahl v.*

Oakridge Electric and others, 2008 BCHRT 68 and *Mahovlich v. Media Maintenance and others*, 2008 BCHRT 101);

- an ongoing failure to accommodate (*Dunlop v. Overwaitea*, 2007 BCHRT 254 and *Hallam v. B.C. (Ministry of the Attorney General)*, 2007 BCHRT 460);
- a continuing state of affairs, such as a building that impedes access to wheelchair users (*Basic v. Strata Plan #BCS 1461 and Bosa Properties*, 2007 BCHRT 165) or an ongoing deprivation of the opportunity to play hockey (*Paisley and Paisley obo Paisley v. Kerry Park Minor Hockey Association and others*, 2007 BCHRT 218).

A continuing contravention may also include the ongoing application of a discriminatory practice or policy. In two cases, the Tribunal found that the ongoing inability to be considered for a job because of marital and family status constituted a continuing contravention. (*Cantin v. B.C. (Ministry of Attorney General) and others*, 2007 BCHRT 198 and *Martens v. Northern Health Authority and others*, 2007 BCHRT 440) The continued existence and application of a government policy regarding qualification to be a foster parent was also found to constitute a continuing contravention. (*Verkerk v. B.C. (Ministry of Employment and Income Assistance and Ministry of Children and Family Development*), 2007 BCHRT 472. An application for judicial review has been filed. (See also *Churchill v. Coast Mountain Bus Company*, 2008 BCHRT 44 and *Nasute Fauerbach v. College of Physicians and Surgeons and University of British Columbia*, 2008 BCHRT 105)

However, the continued existence of a policy, in and of itself, may not mean that a complaint based on that policy will constitute a continuing contravention. A continuing contravention may not be found where a policy is applied at discrete periods in time and/or there is no ongoing relationship between the parties. (*Taylor v. City of Penticton and others*, 2007 BCHRT 393; *Whitehead v. B.C. (Min. of Health Services)*, 2007 BCHRT 167; *Yarrow v. B.C. (Ministry of Public Safety and Solicitor General*), 2007 BCHRT 301; *Jin v. B. C. (Ministry of Advanced Education) and others*, 2007 BCHRT 302)

PUBLIC INTEREST

Whether it is in the public interest to accept a late-filed complaint pursuant to section 22(3) is fact-specific and depends on all of the circumstances of the case. Some relevant factors include the length of the delay, the reason for the delay, the significance of the issues raised in the complaint, and fairness in all of the circumstances.

In a number of cases, the Tribunal considered the public interest in ensuring that vulnerable persons have access to the Tribunal. (*Vasil v. Mongovius and another*, 2007 BCHRT 222; *Yen v. Vancouver General Hospital and others*, 2007 BCHRT 328; *July v. P.G. Sort Yard and others*, 2007 BCHRT 413; *V v. H and A*, 2007 BCHRT 465)

Where a complainant did not know the material facts on which to base their complaint, and could not have discovered those facts with reasonable diligence, the time limit is not extended, but the lack of knowledge is relevant to whether it is in the public interest to accept a late-filed complaint. (*Yen v. Vancouver General Hospital and others*, 2007 BCHRT 328)

SUBSTANTIAL PREJUDICE

If it is in the public interest to accept a late-filed complaint under section 22(3), the Tribunal must decide whether substantial prejudice will result to any person because of the delay. Where the delay is very significant, prejudice may be presumed. (*Bennett v. Koch B&Y Insurance Services and Holland*, 2007 BCHRT 175)

Preliminary Decisions

The Tribunal found that an employer and a union would be substantially prejudiced where there had been a two year delay in filing the complaint, the primary person involved in the events had not worked for the employer for several years and his whereabouts were unknown, and there was no allegation that the union had breached the *Code*. (*Jin v. B. C. (Ministry of Advanced Education) and others*, 2007 BCHRT 302)

Applications to Defer or Stay a Complaint

The Tribunal may defer a complaint under section 25 of the *Code* if there is another proceeding capable of appropriately dealing with the substance of the complaint, or may stay a complaint in certain circumstances. Of nine applications to defer, six were granted. Of four applications to stay, three were granted.

On applications to defer, the Tribunal considers a number of factors, including the nature and subject matter of the other proceeding, the adequacy of the remedies available in the other proceeding, and whether it would be fair to the parties to defer the complaint. The Tribunal may also consider duplicative proceedings, potential waste of resources and the timely resolution of complaints. (*Olowa v. Loxterkamp and others (No. 3)*, 2007 BCHRT 216)

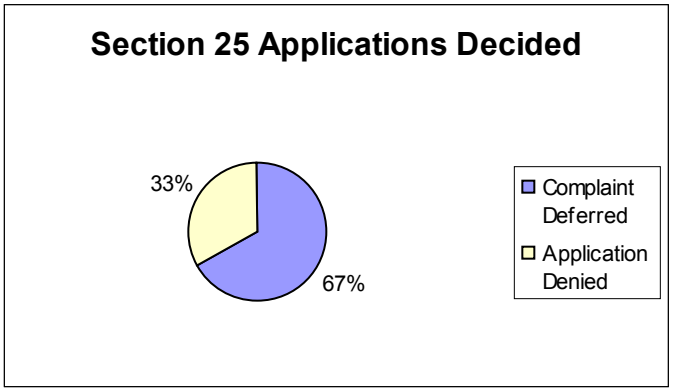
The Tribunal granted deferrals for a limited time where it decided that grievance arbitrations were capable of resolving human rights issues. (*Balogh v. Western Concord Manufacturing) (New West) and others (No. 2)*, 2007 BCHRT 376, *Boehler v. Canfor Pulp*, 2007 BCHRT 411; *Bennett v. Accenture Business Services for Utilities*, 2008 BCHRT 23 and *Banister obo Bartley v. Simon Fraser University and others*, 2008 BCHRT 29)

The Tribunal also considered whether court actions for wrongful dismissal were capable of appropriately dealing with the substance of a human rights complaint. (*Woodland v. Barnes Wheaton Chevrolet Cadillac and others*, 2007 BCHRT 470; *Campbell v. Medallion Wine Marketing and others*, 2007 BCHRT 468; *Tedesco v. Klohn Crippen Berger*, 2008 BCHRT 92)

A section 12 (duty of fair representation) complaint to the Labour Relations Board against a union could not appropriately deal with the substance of a human rights complaint against an employer. At most, the Labour Relations Board might order the Union to proceed with a grievance arbitration that could deal with the subject matter of the human rights complaint. The subject matter of the two proceedings and the remedies available were significantly different, and the timely resolution of the human right complaint required that it proceed (*Tolentino v. Grand and Toy (No. 2)*, 2007 BCHRT 194)

The Tribunal stayed a complaint for six months where the complainant had also filed a complaint with the Canadian Human Rights Commission (CHRC). The Tribunal noted that remedies were available from the CHRC, and that if both complaints proceeded they might result in conflicting findings and an inefficient use of resources. (*Olowa v. Loxterkamp and others (No. 3)*, 2007 BCHRT 216) The stay was subsequently lifted when the CHRC dismissed the complaint. (*Olowa v. Loxterkamp and others (No. 4)*, 2008 BCHRT 27)

A judicial review does not automatically adjourn or stay the Tribunal's proceedings, but it may be a factor in determining whether to grant an adjournment or a stay. (*C.S.W.U. Local 1611 v. SELI Canada and others (No. 4)*, 2007 BCHRT 442 and *Maydak v. B.C. (Ministry of Public Safety and Solicitor General and Ministry of Attorney General) (No. 5)*, 2008 BCHRT 49)



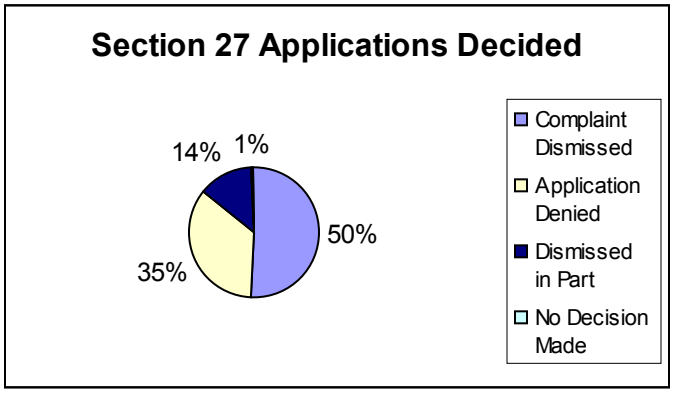
APPLICATIONS TO DISMISS A COMPLAINT

A complaint may be dismissed under section 27(1) with or without a hearing, but generally applications under this provision are decided based on written submissions. Section 27(1) allows complaints to be dismissed that do not warrant the time or expense of a hearing on the merits. For reasons of efficiency and fairness, the Tribunal's Rules expect that applications to dismiss be brought early in the process.

Section 27(1) provides seven grounds for dismissing a complaint:

- no jurisdiction;
- no contravention of the *Code*;
- no reasonable prospect of success;
- proceeding would not benefit those allegedly discriminated against or further the purposes of the *Code*;
- complaint filed for improper motives or in bad faith;
- complaint appropriately dealt with in another proceeding; and
- complaint filed out of time.

Applications to dismiss under section 27(1) accounted for 49% of the preliminary decisions this year. Of the 186 decisions under section 27(1), 94 (51%) complaints were wholly dismissed and 26 (14%) were partly dismissed. 66 (35%) applications to dismiss were denied and one was not decided, resulting in the complaint continuing in the Tribunal's process.



SECTION 27(1)(A) - JURISDICTION

The Tribunal dismissed a complaint relating to the complainant's employment with Seaspan, a federally regulated marine transportation company (*Yates v. Seaspan and others*, 2007 BCHRT 284), and another against a federally regulated company in the business of international shipping. (*Hwang v. Hyundai America and Lee*, 2007 BCHRT 330)

The nature of a daycare operated on reserve lands, its governance, funding arrangements, and the intent of its programs all indicated that it was primarily meant to foster and develop a sense of "Indianness" among First Nation children. The daycare was a federally governed enterprise and therefore the Tribunal lacked jurisdiction to deal with a complaint by a daycare worker/assistant against her First Nation employer. (*Konkin v. Ts'kw'aylaxw First Nation (No. 2)*, 2007 BCHRT 295)

The Tribunal did not have jurisdiction over an employment complaint by a Judicial Justice of the Peace, where an inquiry into decisions made about her requests for accommodation would result in the Tribunal infringing on the judicial independence of the Chief Judge of the Provincial Court. Such an

inquiry would require review of the factors the Chief Judge took into account in deciding to deny the complainant's requests. These factors were essential to the administrative independence of the Court and might include performance issues, workload issues, the availability and skill sets of other Judicial Justices of the Peace, the demands of the public on the Court's resources, and the effect of granting the requests on the morale of others. (*Joseph-Tiwary v. B.C. (Ministry of Attorney General) and another*, 2007 BCHRT 331)

A custodial grandparent complained she was denied funding as a restricted foster parent that would have been available had she not obtained custody of her disabled grandchild. The Tribunal found that the services provided by the Ministry of Children and Families were services to vulnerable children and youth in BC, and their families with the purpose of maintaining and improving their safety and well-being. The grandchild in this case was a vulnerable child and the legal relationship between the child and the complainant was the "family status" giving rise to the complaint. The Tribunal decided that it had jurisdiction to determine if the relationship and the difference in services provided constitute discrimination. (*Verkerk v. B.C. (Ministry of Employment and Income Assistance and Ministry of Children and Family Development)*, 2007 BCHRT 472) An application for judicial review has been filed.

Section 27(1)(b) - No Contravention of the *Code*

A complainant may prove discrimination on the basis of family status by showing that a service-provider's actions had an adverse impact upon her because of her relationship with her child. The denial of services because a person has a child is captured within the meaning of family status despite the fact that section 8 did not then prohibit discrimination based on age. Moreover, there is no requirement to allege a serious interference with a substantial parental duty, which is relevant only where there is a conflict between an employee's work and family obligations. (*Stephenson v. Sooke Lake Modular Home Co-operative Association*, 2007 BCHRT 341)

Where a landlord allegedly discriminated against a person in relation to tenancy, the complaint is properly brought pursuant to section 10 of the *Code* (tenancy premises), not section 8 (services). (*Tenant A v. Landlord and Manager (No. 2)*, 2007 BCHRT 321)

It is doubtful whether an allegation of discrimination by a co-tenant can, without more, provide the basis for a complaint under section 10 of the *Code* which requires some tenancy or tenancy-like situation between the parties. Where a complaint alleges discrimination by one tenant against another, there must be a linking of the discrimination to the tenancy relationship. There may be a link where the co-tenant is able to negatively affect a term or condition of the tenancy or where the landlord knows of the co-tenant's discrimination and fails to take appropriate action to rectify the situation. In this case, Tenant A alleged that the landlord discriminated against her by failing to intervene to protect her from Tenant B's harassment. The complaint was not based on Tenant B's conduct but rather on the failure of the landlord and manager to take steps to protect her when she asked for help. The Tribunal held that these allegations could, if proven, constitute a contravention of section 10. (*Tenant A v. Landlord and Manager (No. 2)*, 2007 BCHRT 321)

The Tribunal dismissed a complaint on the ground of religion, deciding that this ground does not include membership in a local congregation. (*Ward v. Ellesmere United Church and others*, 2007 BCHRT 371)

The Tribunal found that there could be no retaliation under the *Code* when the alleged retaliatory act took place before the respondent knew that a complaint had been filed against it. (*Ford v. Lavender Co-operative Housing Association*, 2008 BCHRT 98)

A co-operative provided housing only to its members and had a rule that there could be only one member per unit. The complainant's husband was a member and when he died, she applied for membership which was denied. The Tribunal decided that the complaint should not be dismissed under section 27(1)(b) or (c). Compared to occupants who lived alone, there was a question whether those who lived with a member, spouse or family relative were adversely affected on the grounds of marital or family status by a rule which required them to apply for membership when they became the remaining occupant. (*Ford v. Lavender Co-operative Housing Association*, 2008 BCHRT 98)

A complaint in the area of services on the ground of family status was made on behalf of a parent who was home-schooling her son, due to the alleged failure of the School District and the Ministry of Education to accommodate his severe disabilities. The complaint was not about services offered to parents by the School District or the Ministry, but about the consequential effect on the parent of alleged discrimination against her son. The Tribunal dismissed the complaint because the complainant was not part of any "public" to whom either respondent provided a service, and any resulting harm that may have been suffered by her was too remote to form the basis of a complaint under section 8 of the *Code*. (*Habetler obo Habetler v. Sooke School District No. 63 and B.C. (Ministry of Education)*, 2008 BCHRT 85)

The Tribunal refused to dismiss a complaint under section 27(1)(b) or (c) where a complaint of discrimination on the grounds of religion did not disclose the complainant's religion, but she complained that she was poorly treated because she lived in a condominium that was a "Mennonite building". The Tribunal said that a person may be found liable for discrimination on the basis of religion due to an absence of religious beliefs, as the *Code* equally protects both those who have religious beliefs and those who do not. (*Morris v. The Owners, Strata Plan N.W. 3338*, 2008 BCHRT 33)

Section 27(1)(c) - No Reasonable Prospect of Success

An employer decided to cease operations in Thailand and told the complainant to return to Vancouver. He requested a one-year leave of absence to avoid a prolonged separation from his family and to expedite the paperwork for their immigration. The employer denied the request. There was no reasonable prospect that a complaint based on family status would succeed. The situation did not come near to meeting the required standard, that the imposed change in a term or condition of employment result in a serious interference with a substantial parental or other family duty or obligation of the employee. (*Watson and others v. Golder Associates*, 2007 BCHRT 229.) An application for judicial review has been filed.

A 64 year old retired teacher worked as a substitute teacher on call. The School District signed a Letter of Understanding with the local Teachers' Association resulting in retired or severed teachers being called in only after other teachers were unavailable. The complainant alleged discrimination on the basis of age. The respondents applied to dismiss the complaint because there was no reasonable prospect of success because teachers could retire or be severed at any age, so there was no relationship between the reduction or loss of work and age. The Tribunal denied the application. It held that retired teachers are a group primarily composed of individuals between 55 and 65, who were disproportionately impacted by the Letter of Understanding. This was sufficient to

create a nexus between retirement and age. (*Hooge v. School District No. 57 and another*, 2007 BCHRT 367)

The Tribunal dismissed an employment complaint where there was no reasonable prospect that a disabled complainant could establish that she suffered any adverse impact. She received sick leave and long term disability benefits. Her employer still considered that she was employed and she was eligible to return to work when medically fit to do so. (*Hackett v. Selkirk College*, 2007 BCHRT 464)

The complainant, a wheelchair user, alleged a taxi company charged him extra for the time it took to tie down his wheelchair. The taxi company applied to dismiss the complaint under section 27(1)(c) and (d)(ii) of the *Code*. It said that it did not charge a loading or unloading fee, but its universal policy was to start the meter running when the cab arrived. On the basis that a policy which applies equally to all passengers may result in adverse effect discrimination, the Tribunal rejected the taxi company's argument that there was no reasonable prospect that the complainant could succeed. The Tribunal also rejected the argument that the purposes of the *Code* would not be served by the complainant seeking "preferential" treatment. (*Basic v. Yellow Cab Company*, 2007 BCHRT 408)

Section 27(1)(d) - Proceeding Would Not Benefit Those Allegedly Discriminated Against or Further the Code's Purposes

The Tribunal refused to dismiss a complaint for failing to accept a reasonable settlement offer. The respondent's offer was time-limited and there was an application for costs against the respondent for failure to fully disclose documents that had been deferred to the hearing of the complaint. (*Harrison v. Nixon Safety Consulting and others (No. 2)*, 2007 BCHRT 394)

The Tribunal found that it would not further the purposes of the *Code* to proceed with a complaint against an individual government worker in the Ministry of Employment and Income Assistance. The Ministry acknowledged that the worker acted on its behalf and it had the capacity to fulfill any remedial order that the Tribunal might make. The worker's interactions with the complainant all arose in the context of the worker's employment and the worker was not the directing mind of the allegedly discriminatory actions. (*Krause v. B.C. (Ministry of Employment and Income Assistance) and Muir*, 2007 BCHRT 378)

In a sexual harassment complaint made by a female firefighter, the Tribunal found that the City, as an employer, had taken several steps in good faith to end systemic discrimination against female firefighters, to create a new non-discriminatory workplace culture and to address the recruitment of female firefighters. If the complaint were found to be justified at a hearing, the Tribunal would not likely order the City to do more than it had already done to achieve the purposes of the *Code*. A hearing would raise issues long past and already ameliorated as the substance of the individual complaint was grounded in circumstances already addressed by the City in a comprehensive manner. (*Rush v. City of Richmond*, 2008 BCHRT 62)

The Tribunal decided that it would not further the purposes of the *Code* to allow a complaint to proceed where the complainant refused to comply with the Tribunal's rules and directions. It also ordered costs. (*Rusiecki v. B.C. Rubber Supply Ltd. and others (No. 2)*, 2007 BCHRT 429)

SECTION 27(1)(E) - COMPLAINT FILED FOR IMPROPER MOTIVES OR IN BAD FAITH

A complainant does not act in bad faith or for an improper purpose when they advise a respondent that they are going to file a human rights complaint. However, in this case the Tribunal dismissed the complaint because there was unchallenged evidence that the complainant said that he would file a complaint to obtain "an easy five grand". (*Paradis v. Levy Show Services and others*, 2007 BCHRT 373)

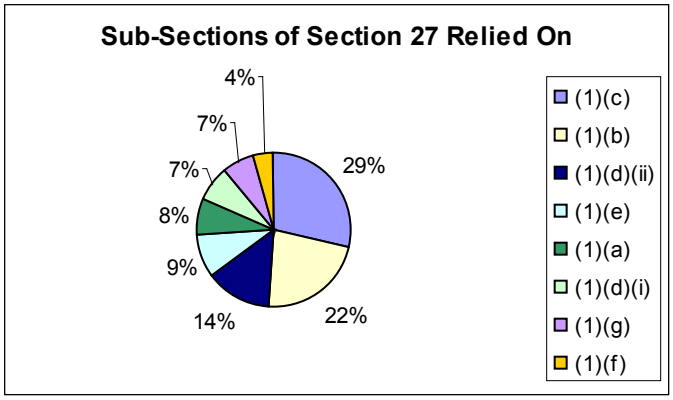
SECTION 27(1)(F) - COMPLAINT APPROPRIATELY DEALT WITH IN ANOTHER PROCEEDING

In the context before it, the Tribunal was unable to conclude that an internal human rights policy could be characterized as a "proceeding" within the meaning of section 25(1) of the *Code*. (*Contant v. Highland Valley Copper and others*, 2008 BCHRT 38)

The Tribunal held that a complainant was estopped from pursuing part of a complaint where the Labour Relations Board had decided the same issue. (*C.S.W.U. Local 161 v. SELI Canada and others*, 2007 BCHRT 404)

SECTION 27(1)(G) - ALLEGED CONTRAVENTION OUTSIDE THE TIME LIMIT

Decisions on applications to dismiss a complaint under section 27(1)(g) are reviewed under time limit decisions (section 22), discussed above. There were 35 applications under this provision which resulted in 11 complaints being dismissed in whole or in part.



OTHER PRELIMINARY DECISIONS

During the processing of a complaint, the Tribunal may be asked to render decisions about ongoing procedural disputes. Where possible, preliminary procedural applications of a simple nature are dealt with by way of oral submissions and may not result in formal reasons. These may involve applications for adjournments and extensions of time. Other preliminary decisions deal with more complex procedural issues such as disclosure of documents and adding or substituting parties. A schedule for written submissions is set and a written decision is issued.

Some examples of the Tribunal's procedural decisions this year follow.

REPRESENTATIVE COMPLAINTS

The Tribunal dismissed a challenge to a union's ability to represent a group of employees. The group members' wishes, if they can be ascertained, may be relevant to whether the complaint is in the group's interests. The *Code* does not require authorization from group members, though the Tribunal may require it. The nature and scope of the representative's obligation to inform group members of the complaint will vary. In this case, the union was not required to inform the group of a right to opt out, given the circumstances, including intimidation by

the employer contrary to section 43 of the *Code*. There was no conflict of interest between the union and the complainant group. (*C.S.W.U. Local 1611 v. SELI Canada and others (No. 3)*, 2007 BCHRT 423) An application for judicial review has been filed.

Priority Hearing

Rule 17(7) allows a participant to apply for an early hearing date where there are compelling reasons to give scheduling priority. The Tribunal considers the reasons for the request, the length of time before any existing scheduled hearing dates, and the reasons why the other party is unable to be available earlier. The Tribunal balances the goals of providing complainants with efficient and timely redress and resolution with concerns about fairness to all the parties. (*Basic v. Strata Plan #BCS 1461 and Bosa Properties*, 2007 BCHRT 165)

Third Party Disclosure and Witnesses

The Tribunal considered a number of applications for third party disclosure. Section 34 of the *Administrative Tribunals Act* authorizes the Tribunal to order a third party to produce documents. The Tribunal considers whether the documents are arguably relevant to issues raised in the complaint and response to the complaint. (*McDougall v. Superior Building Maintenance (No. 3)*, 2007 BCHRT 178; *Syed and Singh v. Starbucks*, 2007 BCHRT 337; *McLardy v. Burt (No. 2)*, 2007 BCHRT 317; *Farrell and Farrell obo others v. Hanahreum Mart and others (No. 3)*, 2007 BCHRT 436)

Section 34 also authorizes the Tribunal to order a third party to attend an oral or electronic hearing to give evidence. The Tribunal determined that this may include ordering a third party to attend to give evidence before a scheduled hearing, including where the third party is unavailable to give evidence on the hearing dates. The Tribunal may also order a third party to attend to give evidence in relation to a preliminary application, although it should be cautious in making such an order. However, section 34 does not extend to ordering a third party to submit to a pre-hearing examination for discovery. (*Farrell and Farrell obo others v. Hanahreum Mart and others (No. 3)*, 2007 BCHRT 436)

Medical Records and Independent Medical Examinations

The Tribunal summarized the legal principles it considers in ordering disclosure of medical records. (*Basic v. Strata Plan #BCS 1461 and Bosa Properties (No. 2)*, 2007 BCHRT 277; and *Gates v. Mee Hoi Bros. and Muske (No. 2)*, 2008 BCHRT 32)

On applications for an order that the complainant attend an independent medical examination (IME), the Tribunal determined that it may do so where it is necessary to ensure a fair hearing, but that its jurisdiction to do so must be exercised cautiously. Consideration may be given to whether: the issues can be determined without an IME; the currently available medical evidence is unclear, ambiguous or unreliable; an order for disclosure of other medical records would be sufficient; the experts, their specialities and the focus of the assessment have been identified; and the patient is vulnerable and there are related privacy issues. (*Basic v. Strata Plan #BCS 1461 and Bosa Properties (No. 2)*, 2007 BCHRT 277; and *Kalyn v. Vancouver Island Health Authority (No. 2)*, 2007 BCHRT 441)

Limits on Publication

A party applying for an order limiting public disclosure of personal information pursuant to Rule 6(5) must demonstrate that their privacy interests outweigh the public interest in access to the Tribunal's proceedings. The Tribunal summarized the principles it considers in determining whether to limit

public disclosure. (*Harvey v. FIC Investment and others*, 2008 BCHRT 9)

The Tribunal ordered that the names of the parties and witnesses be anonymized and that the complaint file be sealed in a case involving allegations of serious interpersonal conflict between two tenants and possible mental disability. The landlord and manager were alleged to have failed to address the problems appropriately. While the order sought was broad, the Tribunal was satisfied that it was appropriate in the unique circumstances and noted that members of the public would have still access to the substance of the Tribunal's decisions respecting the complaint. (*Tenant A v. Landlord and Manager*, 2007 BCHRT 260)

The respondents sought a publication ban restraining the media and the parties from reporting, publishing or discussing the evidence of certain witnesses until the Tribunal's final decision after the hearing. The salutary effect of a publication ban did not outweigh the deleterious effect on the rights and interests of the parties, the public's interest in the Tribunal's proceedings, and the right of free expression. The respondents did not establish that there was a serious risk to the administration of justice to justify a publication ban. However, the Tribunal ordered that certain personal information about the witnesses not be published. (*Brar and Others v. B.C. Veterinary Medical Association and Osborne (No. 5)*, 2007 BCHRT 447)

Application to Reopen a Decision on an Application to dismiss

The Tribunal dismissed a complaint under section 27(1)(e) of the *Code*. The complainant applied to reopen it and vary the dismissal decision, stating that information in the decision was incorrect. The Tribunal has an equitable jurisdiction to reopen complaints and reconsider them where the interests of justice and fairness require it. Factors to consider may include the reasonableness of the complainant's explanation, the promptness of the request to reopen, and any prejudice to the respondent as a result of the complainant's actions. In the circumstances of this case, the complainant failed to establish that the complaint should be reopened. (*Mokhtari v. Hain Celestial Canada and others (No. 2)*, 2007 BCHRT 467)

Application by a Respondent to Add a Respondent

The respondent school district unsuccessfully applied to add the teachers' association as a respondent. The association opposed the application, and the complainant took no position. The Tribunal concluded that the person alleging discrimination is the appropriate party to frame the complaint and choose the respondents. The complainant did not seek to amend the complaint when it became aware of the respondent's allegations against the association, and it was not appropriate to consider the allegations where they do not appear in the complaint. (*Guy v. School District No. 44*, 2008 BCHRT 17)

Costs

Where the Tribunal dismissed a complaint pursuant to section 27(1)(c), costs in the amount of $300 were awarded to the respondents because the complainant made accusations against them not related to the complaint, and made speculative accusations against other employees who were not parties. The Tribunal concluded the complainant filed her complaint as a shield against a workplace investigation, and demonstrated a lack of concern regarding the accuracy of certain facts. (*Moodie v. Maple Ridge Pitt Meadows Arts Council and Taylor*, 2008 BCHRT 18)

The complainant engaged in improper conduct which had a significant impact on the integrity and

efficiency of the Tribunal's processes, led to substantial costs being incurred by both the Tribunal and the respondent, and, as a whole, indicated disdain and disregard of both the Tribunal's processes and the rights of all parties before the Tribunal. The Tribunal ordered that costs of $1,500 be paid to the respondent before the complaint could be processed (with a narrow exception) or any new complaints against the respondent or its employees could be filed. (*Kelly v. Insurance Corporation of British Columbia*, 2007 BCHRT 382)

Final Decisions

This year there were 45 final decisions made after a hearing on the merits. This is a change in the trend since the beginning of the direct access system in 2003, where the number of final decisions increased each year, from 23 to 76 last year.

There continues to be a decreasing number of complaints found to be justified after hearing. This year the Tribunal found that 33%, or 15 of the 45 complaints that went to hearing, were justified.

Representation Before the Tribunal

In nine of the 45 hearings, the complainant did not attend. As a result, 20% of the complaints were dismissed due to non-attendance of the complainant. Additionally, the complaint was dismissed in a case where the complainant left the hearing, and in another where the complainant did not appear at a continuation.

Respondents failed to attend in four of the 45 hearings. The complaint was proven in the three cases where only the complainant appeared and dismissed in one case where neither party attended.

Again, complainants were unrepresented in more hearings than respondents. They had legal counsel in 12 cases; in one case, the complainant had counsel only for part of the case; in another, the complainant was a lawyer and acted on his own behalf. Complainants had no legal representation in 68% or 23 of the 34 cases where the complainant participated throughout the hearing. On the other hand, respondents had no legal representation in only 20% or 8 of the 41 hearings in which they appeared.

There is a correlation between success and legal representation: represented complainants succeeded in 55% of the hearings but unrepresented ones succeeded in only 39%. For represented respondents, the complaint was proven in 24% of the cases, but without counsel, the complaint was proven in 50% of the cases.

Of the ten cases where both parties had counsel, the complaint was justified in five. The complaint was proven in the one case where only the complainant had counsel. In six cases neither party had counsel, and the complaint was justified in three. In the 14 cases where only the respondent had counsel, the complaint was justified in only three cases (21%), although in one of these the respondent appeared only through counsel. Counsel from the Human Rights Clinic represented complainants in four of the cases which went to hearing this year.

Case Highlights

A complaint may involve allegations of discrimination with more than one area and ground. This year, the final decisions involved complaints in the areas of employment (s. 13), services (s. 8), and retaliation (s. 43). No decisions were about publication (s. 7), employment advertisements (s. 11), lower rate of pay based on sex (s. 12), or membership in a union, employer's organization, or occupational association (s. 14). Three decisions dealt with complaints based on tenancy (s. 10) and/or purchase of property (s. 9), but all were dismissed because the complainant did not appear at, or left, the hearing.

Case highlights from the year follow under each area considered, and with sections on remedies granted and costs applications.

Employment - Section 13

This year, 29 hearings (64%) involved the area of employment (s. 13), and 13 (45%) were found to be justified.

Eighteen (62%) of the employment decisions involved complaints of disability discrimination, with six (33%) found to be justified. Fifteen involved the ground of physical disability, with four (27%) justified; two involved the ground of mental disability, with one justified. One involved both grounds and was found to be justified.

Six decisions (21%) cited the ground of sex, with four (67%) found to be justified. One of the two sexual harassment complaints succeeded, as did three of the four pregnancy discrimination complaints, although one of these was set aside for procedural reasons on judicial review. It is to be reheard.

Of four decisions (14%) involving the grounds of race, colour, and/or place of origin, two were found to be justified. Race was cited as a ground in each of the four complaints, colour in two, and place of origin was a ground in one. One of the successful complaints was also based on the grounds of religion and political belief.

One complaint on criminal conviction and one on age were heard, both were unsuccessful. The grounds of ancestry, family status, marital status, and sexual orientation were not raised in any of the cases that went to hearing.

The employment-related cases raised allegations of discrimination in hiring, terms and conditions of employment, including benefits, accommodation, and work-place harassment, as well as dismissal from employment.

Employment: What is a Disability?

The Tribunal dismissed a complaint because the complainant's thumb injury was not a disability within the meaning of the *Code*, based largely on his evidence that he did not have a disability and did not miss work due to the injury. (*Chance v. Exotic Stone and others (No. 2)*, 2008 BCHRT 4)

Hiring: Requirement to Consider Accommodation

The employer discriminated when it first refused to hire a pharmacist with a narcotics addiction, without considering whether it could accommodate his disability. However, the employer reconsidered the employment application and tried to consider whether it could accommodate the complainant. It made reasonable requests for information about the complainant's addiction, but he refused to cooperate. The employer established a defence to its ultimate decision not to hire the complainant. (*Brady v. Interior Health Authority and Inaba (No. 4)*, 2007 BCHRT 233)

Final Decisions

Requiring Employee to Take a Leave of Absence

The employer was justified in requiring the complainant take a leave of absence until it received the results of medical testing, after the complainant's allergies and asthma worsened and she had severe anaphylactic reactions in the workplace. (*Johnston v. B.C. (Ministry of Human Resources)*, 2007 BCHRT 257)

Denial of Benefits: When is it Discrimination?

The Tribunal dismissed a complaint where the complainant did not receive a bonus for the part of the year she was absent due to a disability. The employer did not discriminate by not including the time the employee was on workers' compensation leave in calculating her hours to determine her entitlement to the bonus. The benefit was to provide an incentive for employees to contribute to the store's success; it was a form of financial compensation for work. (*Fernandes v. IKEA Canada (No. 2)*, 2007 BCHRT 259)

Failure to Accommodate: Disability

A restaurant did not accommodate a fast food worker who had a skin condition that prevented her from frequent hand-washing. The disability benefits provider was not the employer's agent for the purpose of accommodating the complainant. The employer fired the complainant because she could not comply with its hand washing policies, without making a real attempt to see if there was any work available for her which would not require frequent handwashing. It did not consider whether she could perform a different job, a modified job, a combination of duties, part-time work, shorter shifts, or assess what else could be done to her to return to the workplace. (*Datt v. McDonald's Restaurants (No. 3)*, 2007 BCHRT 324)

The respondent discriminated when it changed the complainant's shift that had accommodated the fatigue associated with his multiple sclerosis. (*Chong v. Violetta Industries and Sommerville (No. 2)*, 2007 BCHRT 163)

Attendance Management Plan

The practices and policies of the employer regarding its attendance management plan resulted in systemic discrimination against employees with recurring or chronic disabilities. Lack of communication between departments meant accommodation was not considered at the earlier stages and little consideration was given to whether attendance standards should be waived or relaxed to accommodate employees returning to work. The accommodation search at a later stage in the plan focused on other positions and the attendance standards at the final stage reflected average absenteeism, rather than taking into account individual circumstances. Finally, the plan considered a partial day absence as a full day absence on a graduated return to work. The employer did not establish that it could not accommodate disabled employees further under the plan. (National Automobile, Aerospace, Transportation a*nd General Workers of Canada (CAW - Canada) Local 111 v. Coast Mountain Bus Company (No. 9)*, 2008 BCHRT 52) An application for judicial review has been filed.

Termination: Was Disability a Factor?

The respondent discriminated when it refused to give an employee with Crohn's disease regular employment status and terminated his employment because of his absence due to his disability. (*Lowe v. William L. Rutherford (B.C.) and another (No. 3)*, 2007 BCHRT 336)

The complainant's eye-related illness, which prevented him from working for the better part of 7 weeks, was a physical disability. He was fired while he was absent due to eye surgery. The employer had accommodated the employee's disability, however, and would have given him a leave if he requested it. The complainant was absent without approval; his employment was terminated because of his attitude. His disability was not a factor in the decision to terminate. (*Naser v. Zellers and McNally (No. 3)*, 2007 BCHRT 245)

The complainant's lower back injury, which meant he could not work for over 6 months, was a physical disability. It was reasonable to infer that his disability played a role in the termination of his employment, given that it occurred after he was unable to work due to his injury for 5 weeks. (*Millar v. Sterling Fence*, 2007 BCHRT 249)

SEXUAL HARASSMENT

A sexual harassment complaint was justified where the respondent hugged and kissed the complainant while she was applying for a job and on her first day of work. She told him she wanted a professional relationship but he did not stop. (*Kwan v. Marzara and another*, 2007 BCHRT 387) An application for judicial review has been filed.

SEX: PREGNANCY DISCRIMINATION

A garbage truck driver told her employer that her doctor advised her to limit work to ten hours a day because of her pregnancy. She was fired the following day for leaving work early. Her pregnancy played a role in the termination. (*Stackhouse v. Stack Trucking and Craft (No. 2)*, 2007 BCHRT 161)

The Tribunal found discrimination where the employer disapproved of the unmarried employee's pregnancy and this played a role in the decision not to continue her employment. (*Johnston v. Poloskey and Poloskey*, 2008 BCHRT 55)

POISONED WORK ENVIRONMENT: RACE, COLOUR, PLACE OF ORIGIN, RELIGION AND POLITICAL BELIEF

The complainant, who was a Muslim born in Iran, was called names like Bin Laden, and subjected to a poster characterizing him as a terrorist. The treatment created a poisoned work environment contrary to the *Code*. The complainant's angry reaction to the discrimination was a factor in the decision to terminate his employment. The remedial issues arising from the Tribunal's decision were settled at a member-assisted settlement meeting. (*Dastghib v. Richmond Auto Body and others*, 2007 BCHRT 197)

SERVICES - SECTION 8

Eleven (24%) of the final decisions involved the area of services (s. 8). They include health care, transit, restaurant, co-op, and strata council services. The grounds of race, colour, ancestry and/or place of origin were raised in five of the decisions; the grounds of sex and religion were each raised in three decisions; and the grounds of family status and physical disability were each raised in two. All eleven complaints were dismissed. The complainant did not appear in four, and did not appear for a continuation of the hearing in one.

The Tribunal dismissed a complaint of discrimination based on family status against three members of a strata council. The complainant, with his wife and child, moved into a one-bedroom suite in a condominium which had a bylaw prohibiting more than two people in such a unit. The strata council did not allow the complainant to convert his unit to a two-bedroom unit and fined him. He did not challenge the validity of the bylaw. He challenged the conduct of three strata councilors who opposed the conver-

sion and enforced the bylaw. The ground "family status" applied to the nature of the complainant's relationship with his wife and child and he suffered some adverse treatment in the services he received. However, the complainant's family status was not a factor in the respondents' conduct. A comment made by a respondent about the complainant's child, viewed in context, was not discriminatory. (*Vamburkar-Dixit v. Brown and others (No. 4)*, 2007 BCHRT 437)

The complainant did not establish he was adversely affected on the basis of his disability by a co-op's decision about where he could park. (*Ferland and Burochain v. City Edge Housing Co-operative and others (No. 2)*, 2007 BCHRT 388)

The Tribunal dismissed a complaint alleging discrimination on the ground of sex because the government funds certain cancer screening tests for women, but does not fund a prostate cancer screening test for men. Sex was not a factor in the government's decision not to fund the tests which, unlike those for women, have not been considered medically necessary. It had not been established that the test and its consequences would do more good than harm to the men taking the test. There was an insufficient basis to conclude that as a population-based screening test, it would be beneficial in regard to decreasing the incidence, morbidity, or mortality rates for prostate cancer. (*Armstrong v. B.C. (Ministry of Health) (No. 5)*, 2008 BCHRT 19) An application for judicial review has been filed.

One racial slur did not amount to discrimination, considering all of the circumstances, including the extremely negative impact on the complainant, when it was made by one bus driver against another in the context of an isolated workplace incident that escalated due to the actions of both parties. (*Banwait v. Forsyth (No. 2)*, 2008 BCHRT 81)

Retaliation - Section 43

Six decisions (13%) involved complaints of retaliation. Two were found to be justified.

The Tribunal found retaliation proven where the respondent telephoned the complainant to intimidate her. (*McGuire v. Peacock (No. 2)*, 2007 BCHRT 264)

The Tribunal found that an employer breached section 43 when it asked members of a complainant group to sign a petition to indicate they no longer wished a union to represent them before the tribunal. The tribunal found the petition was meant to intimidate and coerce members of the group to withdraw their support for the union representing them in the complaint and to create evidence to attack the union's representative status. The tribunal considered the circumstances in which the employees were asked to sign the petition and their vulnerability, as they were in Canada on temporary work visas and dependent on their employer for work on future projects. (*C.S.W.U. Local 1611 v. SELI Canada and others (No. 3)*, 2007 BCHRT 423) An application for judicial review has been filed.

Remedies - Section 37

Of the 15 complaints found to be justified, 13 were in the area of employment and the most common remedies were compensation for wage loss and for injury to dignity, feelings, and self-respect. The other two cases involved complaints of retaliation.

Wage and Benefit Loss

The Tribunal ordered compensation for wage and benefit loss in several cases. In one, the tribunal ordered payment of CPP contributions, and awarded compensation for lost parental benefits. (*Stackhouse v. Stack Trucking and Craft (No. 2)*, 2007 BCHRT 161).

Wage loss was not awarded where the respondent would have terminated the complainant's employment in any event (*Wilson v. Transparent Glazing Systems (No. 4)*, 2008 BCHRT 50) or where the complainant was receiving WCB benefits and no wage loss resulted from the discrimination. (*Millar v. Sterling Fence*, 2007 BCHRT 249)

TAX GROSS UP

The Tribunal awarded the difference between the taxes the complainant would have paid had her employment continued and the amount to be paid on the lump sum (*Datt v. McDonald's Restaurants (No. 3)*, 2007 BCHRT 324), but declined to award an amount for a tax gross up where it was not necessary. (*Stackhouse v. Stack Trucking and Craft (No. 2*), 2007 BCHRT 161)

INJURY TO DIGNITY, FEELINGS AND SELF-RESPECT

The Tribunal ordered compensation for injury to dignity, feelings and self-respect in 11 cases. The awards ranged from $500 to $25,000, the highest award to date. Also at the high end of the range, the Tribunal made an award of $20,000. At the lower end of the range were awards of $2,000 and $2,500. All other awards ranged from $5,000 to $7,500.

A 23-year employee who loved her job and had a very good performance record returned after a leave, and was prepared to perform any duties that would accommodate her disability. She was terminated by someone she barely knew, had never worked with, and who did not investigate any available job opportunities. She became very depressed and had difficulty recovering from the termination which created stress at home causing a significant financial and emotional effect on her family. (*Datt v. McDonald's Restaurants (No. 3)*, 2007 BCHRT 324)

The Tribunal awarded $20,000 to an employee denied regular status because he had Crohn's disease and dismissed because of his absence due to his disability. He suffered shock, financial difficulties, and felt degraded, anger and dread. The dismissal exacerbated his Crohn's disease. (*Lowe v. William L. Rutherford (B.C.) and another (No. 3)*, 2007 BCHRT 336)

In a case where the complainant left his employment as a result of a failure to accommodate his disability, the Tribunal ordered $7,500. (*Chong v. Violetta Industries and Sommerville (No. 2)*, 2007 BCHRT 163)

The Tribunal awarded $5,000 to a 25 year old complainant who was in a vulnerable position when she was sexually harassed by her employer who hugged and kissed her while she was applying for a job and on her first day of work. The complainant saw the respondent as a father figure and his behaviour was an emotional shock. (*Kwan v. Marzara and another*, 2007 BCHRT 387) An application for judicial review had been filed.

The Tribunal ordered $5,000 to a complainant who became very emotional and depressed following her termination. The impact of being dismissed due to pregnancy was magnified because it came at a particularly vulnerable time in her life and she was deeply distressed. (*Stackhouse v. Stack Trucking and Craft (No. 2)*, 2007 BCHRT 161)

The Tribunal awarded $5,000 to compensate for the complainant's loss of sense of worth and confidence after her employer used racial slurs and dismissed her from her employment at a hair salon. (*Small Legs v. Dhillon*, 2008 BCHRT 104)

The Tribunal ordered $2,500 to a casual employee in a seasonal job who found losing her job due to her pregnancy stressful and upsetting. (*Johnston v. Poloskey and Poloskey*, 2008 BCHRT 55)

The Tribunal ordered $2,000 to a complainant who was dismissed while away due to a work injury, and who gave little evidence about the emotional impact of the termination. (*Millar v. Sterling Fence*, 2007 BCHRT 249)

The Tribunal awarded $500 to a complainant who alleged, but did not prove, that his reputation was damaged by the termination of his employment, based in part on the perception that his medication might have affected his performance. (*Wilson v. Transparent Glazing Systems (No. 4)*, 2008 BCHRT 50)

Systemic Remedies

To remedy systemic discrimination resulting from the employer's application of its attendance management program (AMP) to operators with chronic or recurring disabilities, the Tribunal made a cease and desist order, retained jurisdiction over remedy, and ordered the parties to engage in tribunal-assisted mediation to discuss revisions to the AMP, or its application. The Tribunal also ordered $5,000 to $6,000 for injury to dignity, feelings and self-respect to those individuals who testified about the impact of the AMP on them. (*National Automobile, Aerospace, Transportation and General Workers of Canada (CAW Canada) Local 111 v. Coast Mountain Bus Company (No. 9)*, 2008 BCHRT 52) An application for judicial review has been filed.

Remedies for Retaliation

In a case of retaliation where the complainant did not seek compensation for injury to dignity, the Tribunal made the mandatory order requiring the respondent to cease the conduct and to refrain from committing the same or similar conduct in future. (*McGuire v. Peacock (No. 2)*, 2007 BCHRT 264)

The Tribunal ordered a declaration, a cease and desist order, and costs where it concluded that the employer should not have further contact with employees in the complainant group except as is necessary in the ordinary course of their work and to prepare for the hearing on the merits of the case. (*C.S.W.U. Local 1611 v. SELI Canada and others (No. 3)*, 2007 BCHRT 423) An application for judicial review has been filed.

Expenses

The Tribunal ordered the respondent to pay the cost of reproducing medical records and the complainant's legal expenses incurred before the complaint was filed. (*Lowe v. William L. Rutherford (B.C.) and another (No. 3)*, 2007 BCHRT 336)

Costs - Section 37(4)

The Tribunal may order costs against a party to a complaint who has engaged in improper conduct during its course, including a party who contravenes a Tribunal *Rule* or an order.

The complainant sought costs, arguing that the respondents improperly prolonged the hearing by pursuing a defence that was ultimately found not to have been made out. The Tribunal was not prepared to find improper conduct or order costs against respondents who mounted an unsuccessful, but arguable, defence. (*Lowe v. William L. Rutherford (B.C.) Ltd. and Interactive Freight and Warehousing Ltd. (No. 3)*, 2007 BCHRT 336)

The Tribunal awarded costs against complainants in several cases.

The Tribunal awarded the complainant half of its actual costs incurred to a point in the hearing because the respondents engaged in intimidating, coercive and retaliatory conduct. (*C.S.W.U. Local 1611 v.*

SELI Canada and others (No. 3), 2007 BCHRT 423) An application for judicial review has been filed.

The Tribunal awarded the respondent $1,500 in costs where the complainant failed to disclose documents, delivered her list of witnesses late, failed to respond to the respondents' request to have an expert witnesses testify, made an unconfirmed assertion that a witness was unavailable, accused the Tribunal of being racist, and was not truthful with respect to an issue during the hearing. (*Tima v. Red Robin Restaurant (Metrotown) Ltd. (No. 2)*, 2008 BCHRT 76)

The Tribunal awarded respondents $3,000 in costs where the complainant made untruthful allegations of racism against the respondents. (*Mensah v. Killen*, 2007 BCHRT 359)

It was improper conduct for the complainant to fail to comply with the Tribunal's *Rules*, directions and orders, engage in improper and disruptive behaviour during the hearing, destroy an exhibit, repeatedly offer untruthful accounts of events essential to his complaint, in an attempt to mislead the Tribunal, and attempt to disrupt the hearing by alleging, without foundation, that a lawyer in attendance had a conflict of interest. The Tribunal awarded $5,500 in costs. (*Stone v. B.C. (Ministry of Health) (No. 8)*, 2008 BHCRT 96)

The Tribunal awarded respondents $3,500 in costs where the complainant failed to follow the Tribunal's directions and orders with respect to witnesses, resulting in a waste of both the respondents' and the Tribunal's resources, and presented no evidence at the hearing to support malicious, inflammatory allegations about the respondents. (*Azagrar v. Nicholas Shaw Ltd. and Shaw (No. 7)*, 2007 BCHRT 269)

Judicial Reviews and Appeals

Judicial Reviews and Appeals

The *Code* does not provide for the appeal of Tribunal decisions. However, a party who believes that the Tribunal has erred may seek judicial review in the B.C. Supreme Court pursuant to the *Judicial Review Procedure Act*, within the 60 day time limit set out in section 57 of the *Administrative Tribunals Act*. On judicial reviews, the Court applies the standards of review set out in section 59 of the *Administrative Tribunals Act*.

A Supreme Court decision may be appealed to the B.C. Court of Appeal. A further appeal may be made to the Supreme Court of Canada, if that Court grants leave.

Judicial Reviews in B.C. Supreme Court

This year, there were 17 petitions for judicial review, seven less than the previous year. Three petitions related to final decisions and the rest to preliminary decisions.

The B.C. Supreme Court released eight decisions this year and dismissed half of the petitions, either on the basis of prematurity or because the Court found no error on application of the applicable standard of review.

Unsuccessful Judicial Reviews

The Supreme Court refused to interfere with the Tribunal's discretionary decision to reject a complaint for filing because it did not allege facts that, if proven, could amount to discrimination under the *Code*. (*Andrews v. British Columbia Human Rights Tribunal*, 2007 BCSC 1079)

In an oral decision made without hearing submissions from the respondents, the Supreme Court found that it was premature to judicially review a Tribunal decision dismissing an application to dismiss under section 27(1)(b), (c) and (f) of the *Code*. (*Nisika Community Services Ltd. et. al. v. Woo and British Columbia Human Rights Tribunal* (December 18, 2007) Victoria Reg. No. 07-2113)

The Tribunal was asked to reopen a complaint that had been dismissed by a predecessor body, the BC Council of Human Rights, under prior human rights legislation. The Supreme Court held that the Tribunal was correct when it decided that it did not have jurisdiction to do this. (*Solowan v. British Columbia (Attorney General)*, 2007 BCSC 752) A Notice of Appeal has been filed.

A decision by the Tribunal under section 27(1)(c) of the *Code*, which held that a complaint did not have a reasonable prospect of success, was found not be a patently unreasonable. In an oral decision, the Court rejected a submission that some possibly irrelevant factors may have been considered by the Tribunal, as this did not meet the test in section 59(4)(c) of the *Administrative Tribunals Act* which required, at a minimum, that a decision by the Tribunal be based predominantly on irrelevant factors. The Court also held that the Tribunal's analysis was sound, appropriate and not arbitrary. (*Schnurr v. Douglas College and Greathouse* (Feb. 1, 2008, BCSC Vancouver Reg. No. 072033))

Successful Judicial Reviews

The Court upheld a final decision of the Tribunal but found that it erred when it awarded damages for injury to dignity that the complainant did not seek. (*Foglia v. Edwards*, 2007 BCSC 861)

The Court found that the Tribunal ordered disclosure of medical information that was not arguably relevant and remitted the matter back to the Tribunal for reconsideration. A Notice of Appeal was filed and abandoned. (*Gichuru v. The Law Society of British Columbia*, 2007 BCSC 1767)

In an oral decision, the Court ordered the Tribunal to reconsider its refusal to reopen a hearing after the respondents mistakenly showed up for it on the wrong day. (*Willoughby v. Ballendine* (Dec. 19, 2007, BCSC Victoria Reg. No. 072265))

A Tribunal decision upholding a complex disability complaint made on behalf of a severely dyslexic student under section 8 of the *Code* was quashed by the Court. The Tribunal found that the School District and the Ministry of Education had individually discriminated by failing to ensure that the student's needs were appropriately accommodated. The Tribunal found that the District individually discriminated by failing to ensure that the student received early intensive intervention, not providing him with an individual needs-based assessment, not providing Orton-Gillingham tutoring or another alternative program, not following its own recommendation that he attend the District's Diagnostic Centre (DC1), and not ensuring that following the closure of DC1 (due to a financial crisis), that other sufficiently intense and effective interventions were in place to replace it.

The Tribunal also held that the District systemically discriminated against severely learning disabled (SLD) students by disproportionately cutting services to them, not analyzing the impact of the cuts on them, and not ensuring that sufficient alternative services were in place following the closure of DC1. The Ministry was found to have systemically discriminated by establishing and maintaining a cap on funding so as to underfund the actual incidence of special needs (including SLD) students subject to it, underfunding the District, and by focusing its monitoring only on financial concerns, and failing to ensure that early intervention and a ranges of services for SLD students was mandatory.

The Court held that the Tribunal was not correct in identifying the service customarily available to the public as being general education services, and that this error permeated its analysis so that its selection of non-disabled students as the appropriate comparator group was also wrong. The Court determined that the service in issue was special education services provided to special needs students and the appropriate comparator group was special needs students other than SLD students. There was no discrimination because the student in this case received the education services offered to the general student population, and there was no evidence that students in the general population received the special benefits that that the student claimed, while he did not. There was insufficient evidence of special needs students other than SLD students upon which to base a discrimination analysis. (*British Columbia (Ministry of Education) v. Moore*, 2008 BCSC 264) A Notice of Appeal has been filed.

Court of Appeal

There were two Notices of Appeal filed in the B.C. Court of Appeal, one of which was abandoned. The Court reserved judgment on two appeals that it heard, but no decisions were released in this year.

Supreme Court of Canada

The Supreme Court of Canada decided two applications for leave to appeal this year.

The SCC denied leave to appeal from the BC Court of Appeal decision in *Marine Drive Golf Club v. Buntain et al and BC Human Rights Tribunal*, 2007 BCCA 17. In that case, female members of a private golf club complained about being excluded from a men's lounge at the club. The Court of Appeal held that the Tribunal had no jurisdiction over the complaint because the "public" services protected by section 8 of the *Code* did not apply to a private social club or to services offered within it.

Special Programs

The SCC also denied leave to appeal from the BC Court of Appeal decision in *British Columbia v. Bolster*, 2007 BCCA 65. The Court of Appeal upheld the Tribunal's decision that the principle of Crown immunity did not apply so as to exempt the government from compensating persons that it was found to have discriminated against.

Special Programs and Policy

Section 42(3) of the *Code* recognizes that treating everyone equally does not always promote true equality and the elimination of discrimination. It provides for the establishment of special programs which treat disadvantaged individuals or groups differently to recognize their diverse characteristics and unique needs.

The Tribunal's special programs policy, published on its website, explains the approval requirements and process. A special program is any program or activity that has as its objective the amelioration of conditions of disadvantaged individuals or groups. All approvals are time-limited and are generally between six months to five years in duration. Employment equity programs are usually approved for several years. Periodic reporting may be a condition of approval. Approvals may be renewed.

When a special program is approved by the Chair of the Tribunal, its activities are deemed not to be discrimination under the *Code*. Special programs do not require Tribunal approval, but are not protected from a human rights complaint if approval is not granted.

New Programs

The Chair approved four new special programs this year.

The City of Richmond received approval for a preferential hiring program. Despite having the highest proportion of visible minorities in Canada, the City's previous firefighter recruitment practices produced a predominantly white, male workforce, with little success in increasing diversity. The City's goal was to provide the community with a competent firefighter workforce that reflected and welcomed the participation of its diverse populace. The special program approval allowed the City to preferentially recruit and hire women and visible minority firefighters candidates for up to 75% of vacancies per year, and to reserve two vacant firefighting positions for one female and one visible minority candidate who met the qualifications and standards for a firefighter position except for completion of the Justice Institute Fire Academy training course. The City would pay the two candidates' tuition and a minimum wage while attending the course. Both special programs are approved from 2007 to 2010, with an annual reporting requirement.

The Legal Services Society ("LSS") received five-year approval to restrict hiring for the position of Aboriginal Services Program Manager to an Aboriginal person and to restrict two articling positions to Aboriginal law students. LSS is an independent, non-profit organization created by statute with the mandate to develop and maintain an effective and efficient system of legal aid for residents of British Columbia, particularly those living in poverty. To demonstrate its commitment to the Aboriginal community, and following recommendations in a report it obtained on how improving LSS' services to its Aboriginal clientele, LSS wanted to increase Aboriginal representation among its staff and to provide culturally sensitive and appropriate services. LSS

was required to report annually on its Aboriginal service programs and results.

School District No. 82 (Coast Mountains) received five-year approval to give hiring preference to candidates of Aboriginal ancestry, knowledgeable in local First Nations language and culture, for a number of Aboriginal education positions. The District has a significant number of Aboriginal students, but an unequal representation of Aboriginal educators. The special program would assist in providing positive role models for Aboriginal students to improve school success; increase the Aboriginal voice in the District's schools; increase awareness and respect of Aboriginal language, culture and history; increase Aboriginal communities' involvement and satisfaction with the public school system; and create a sense of identity and belonging for Aboriginal students, families and communities.

The Battered Women's Support Services, servicing women who have experienced abuse and educating the community about violence against women, received approval to hire a female law student for the position of Public Interest Law Student Legal Research. The student would research legal, public policy and practice issues that impact women who have experienced violence. The approval was for a four month period.

Tribunal Members

Tribunal Members

The Tribunal has nine full-time Members including the Chair, who mediate and decide human rights complaints under the *Code*. The current Chair was appointed in 2000 and has acted as the head of human rights and equity tribunals in Canada for well over a decade. Eight Members are qualified lawyers and the ninth has experience as a labour adjudicator. The Chair is also responsible for approving special programs under section 42 of the *Code*.

Appointments

Members are appointed by the Lieutenant Governor in Council for renewable five-year terms, following a merit-based, multi-step qualification process. Candidates must demonstrate their ability for adjudicative work through decision-writing, situational interviews and peer reviews.

Code of Conduct

The Chair supervises the Members, designates preliminary applications and hearings to be decided by them, and monitors adherence to performance standards and timeliness. Members are subject to a Code of Conduct in the performance of their role, and complaints about the conduct of Members may be made to the Chair. Section 30 of the *Administrative Tribunals Act* requires Members to faithfully, honestly and impartially perform their duties and to maintain confidentiality.

Decisions

In making their decisions, Members are required by law to be independent and impartial. Although the Ministry of the Attorney General provides budget funding, the government may not direct or influence Members in their decision-making or otherwise interfere with their independence through administrative and budgetary matters that touch on decision-making.

The Tribunal does not make decisions on human rights complaints on a consensus basis. Each Member decides the matter before them independently and in good faith, according to the law and their own best judgment. To ensure flexibility in the application of the *Code*, Members are not bound by each others' decisions but are bound to follow decisions of the BC courts and the Supreme Court of Canada and may find guidance in decisions of courts and tribunals in other jurisdictions. To ensure consistency, Members departing from earlier Tribunal jurisprudence render decisions explaining why. Members' draft decisions are subject to a voluntary internal review process. To further promote the development of a principled and coherent body of jurisprudence, Members meet regularly to discuss, at a general level, their evolving articulation of the rights protected by the *Code*, and the practices and procedures that support it. Members and legal counsel also meet to discuss existing and emerging legal issues and to review appeals and judicial reviews of their decisions.

Human Rights Education

Pursuant to sections 5 and 6 of the *Code*, the Attorney General is responsible for educating the public about human rights, and researching and consulting on matters relevant to the *Code*. The Tribunal has no mandate to monitor the state of human rights in the province; however, through open hearings, publication of its decisions, public speaking and media reporting, the Tribunal is a source of information to the public about their rights and responsibilities under the *Code*. Complaints which are upheld or dismissed perform an educative function.

Provincial Contributions

The Tribunal regularly receives requests for presentations on human rights. In the last year, the Chair

presented to the human rights and administrative law subsections of the BC Branch of the Canadian Bar Association, the BC Federation of Labour and a conference of municipal employers. Legal counsel spoke at a continuing legal education seminar on human rights and to the BC Human Resources Management Association. The Chair also participated in planning meetings for an administrative law manual.

The Chair is the Chair of the BC Council of Administrative Tribunals' (BCCAT) Education Committee and is actively involved in providing training to members of other administrative tribunals in the province and elsewhere on hearing skills, decision writing and mediation skills. Two Tribunal members are on BCCAT's board of directors, and another Tribunal member is an adjunct professor at the University of British Columbia teaching administrative law.

Extra-Provincial Contributions

The Chair also made a number of extra-provincial contributions. The Chair spoke in Montréal at a conference on equality rights tribunals, and presented to the Canadian Human Rights Tribunal and the Canadian Association of Statutory Human Rights Agencies. The Chair sits as a BC representative on the Canadian Council of Administrative Tribunals' Board of Directors and is a member of its Professional Development and Literacy Committees. The Chair also sits on the Board of the Canadian Institute for the Administration of Justice and chairs its Administrative Agencies Committee.

International Contributions

The Tribunal continued to be active at an international level in the last year. The Chair co-chaired the Canadian Council of Administrative Tribunals' International Conference in Vancouver, and participated in a Canada-Indonesia dialogue on human rights hosted by the Canadian government. The Tribunal also hosted a delegation of Chinese judges, as well as visiting scholars from Australia and Ireland.

Heather M. MacNaughton, Chair

Ms. MacNaughton was first appointed as Chair of the Tribunal on August 1, 2000, and was reappointed for a further five-year term beginning July 31, 2005.

She holds both a Bachelor of Laws (1982) and Master of Laws (1998) from Osgoode Hall Law School and a Bachelor of Arts (with distinction) from Brock University (1979). Her Master's work focused on the Litigation Process and Alternative Dispute Resolution.

Prior to her appointment to the Tribunal, Ms. MacNaughton chaired both the Ontario Human Rights Board of Inquiry and the Ontario Pay Equity Hearings Tribunal.

Ms. MacNaughton left private practice in 1995 to become a Vice Chair of the Ontario Human Rights Board of Inquiry, the Pay Equity Hearings Tribunal, and the Employment Equity Tribunal. Prior to that, she had been a partner with a national law firm practising in the areas of Labour, Employment, Human Rights, Administrative Law and Civil Litigation.

J.A. (Tonie) Beharrell, Member

Ms. Beharrell was appointed as a full-time Member of the Tribunal on December 2, 2002 for a five-year term. She was most recently reappointed for a five-year term expiring in December 2012.
She holds a law degree from the University of British Columbia (1997) and a Bachelor of Arts from Simon Fraser University (1994).

Prior to joining the Tribunal, Ms. Beharrell was an Associate at a national law firm practising in the areas of Labour, Employment, Human Rights, and Administrative Law.

Tribunal Members

Barbara Humphreys, Member

Ms. Humphreys was appointed as a full-time Member of the Tribunal in 1997. She was most recently reappointed for a five-year term expiring in December 2009.

She holds a law degree from the University of Victoria (1984) and a Bachelor of Arts from Sir George Williams University (1969).

Ms. Humphreys joined the B.C. Council of Human Rights in 1990. She was actively involved in the transition from the former B.C. Council of Human Rights to the Human Rights Tribunal.

Prior to joining the B.C. Council of Human Rights, Ms. Humphreys was an Ombudsman Officer for the Office of the Ombudsman.

Barbara J. Junker, Member

Ms. Junker was appointed as a full-time Member of the Tribunal on July 28, 2003 for a five-year term.

She holds a Bachelor of Commerce degree (1977) from the University of British Columbia.

Prior to joining the Tribunal, Ms. Junker spent nine years as a Vice-Chair at the Labour Relations Board. Prior to that, Ms. Junker worked in the healthcare industry as an employer representative in Labour and Employee Relations.

Lindsay Lyster, Member

Ms. Lyster was appointed as a full-time Member of the Tribunal on September 30, 2002 for a five-year term. She was most recently reappointed for a five-year term expiring in September 2011.

She holds a law degree from the University of British Columbia (1991) and a Bachelor of Arts (with distinction) from the University of Victoria (1987).

Ms. Lyster was an Associate at a national law firm practising in the areas of Labour, Human Rights, Constitutional Law, Administrative Law, and Employment Law. Prior to joining the Tribunal, Ms. Lyster was Policy Director of the B.C. Civil Liberties Association.

She left private practice to become an Adjunct Professor, Faculty of Law, University of British Columbia, teaching in the area of Canadian Constitutional Law.

Diane MacLean, Member

Ms. MacLean was appointed as a full-time Member of the Tribunal on July 28, 2003 for a five-year term.

She holds a law degree from the University of British Columbia (1985), a Bachelor of Arts (1972) and a Master of Arts (1980) in Economics from Simon Fraser University.

For several years, Ms. MacLean practised law, taught university courses, and worked as an economic and legal researcher and writer.

Ms. MacLean began working for the Ministry of Labour in 1993, first as a Policy Specialist at the Pension Standards Branch and later as an Officer at the Employment Standards Branch.

Prior to her appointment to the Tribunal, Ms. MacLean was a Vice-Chair at the Workers' Compensation Appeal Tribunal.

Kurt Neuenfeldt, Member

Mr. Neuenfeldt was appointed as a full-time Member of the Tribunal on January 6, 2003 for a five-year term. He was most recently reappointed for a five-year term expiring in January 2012.

He holds a law degree from the University of British Columbia (1978) and a Bachelor or Arts degree from the University of Wisconsin (1972).

For several years, Mr. Neuenfeldt worked with the Legal Services Society of BC. While there, he held a range of positions including Staff Lawyer, General Counsel and Director of Client Services. He then practised privately in Vancouver.

Prior to joining the Tribunal, Mr. Neuenfeldt had been a member of the Immigration and Refugee Board of Canada for over nine years.

Abraham Okazaki, Member

Mr. Okazaki was appointed as a full-time Member of the Tribunal on July 28, 2003 for a five-year term.

He holds a law degree from the University of British Columbia (1971) and a Bachelor of Arts degree from the University of Alberta (1964).

Mr. Okazaki practiced law, primarily Corporate and Commercial, but also Civil and Criminal Litigation. Mr. Okazaki has experience as an executive and educator in both the private and public sectors. He has held executive, administrative and teaching positions, and directorships in both Canadian and international businesses, universities and not-for-profit organisations.

Prior to joining the Tribunal, Mr. Okazaki was a Vice-Chair of the Workers' Compensation Appeal Tribunal.

Judith Parrack, Member

Ms. Parrack was appointed as a full-time Member of the Tribunal on August 1, 2005 for a five-year term. Ms. Parrack holds a law degree from Osgoode Hall Law School (1987).

Ms. Parrack was an Associate with a national law firm from 1989 to 1994 and a staff lawyer at the B.C. Public Interest Advocacy Centre from 1995 to 1999. She was a full-time Member of the B.C. Human Rights Tribunal from 1999 to 2002.

Prior to re-joining the Tribunal in 2004, Ms. Parrack was in private practice in the areas of Labour, Human Rights and Administrative Law.

Marlene Tyshynski, Member

Ms. Tyshynski was appointed, by the Chair, as a full-time Member of the Tribunal on December 1, 2005 for a temporary 6-month term.

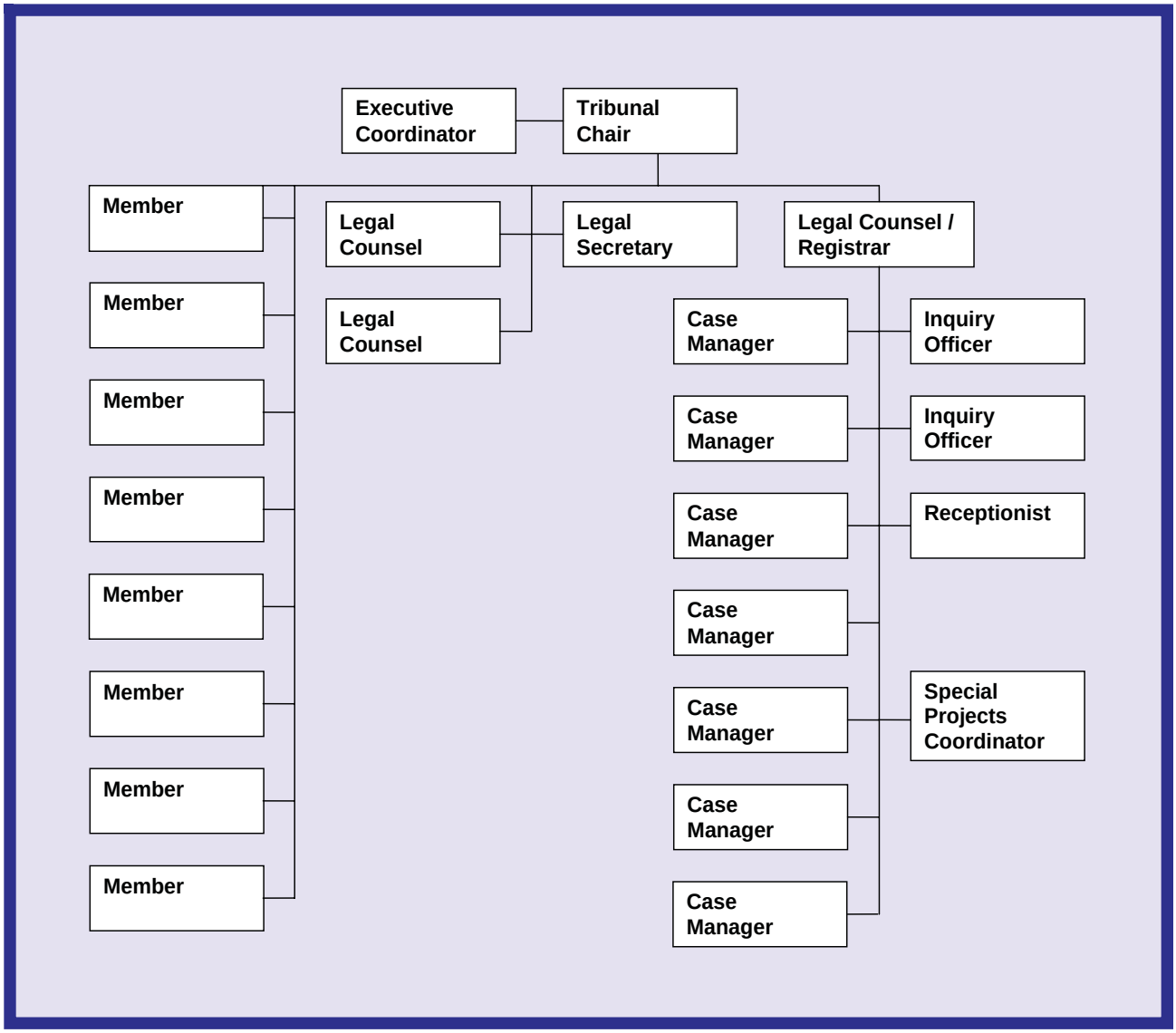
Upon expiry of her term, Ms. Tyshynski returned to her position as legal counsel to the Tribunal. In October 2007, following amendments to the *Administrative Tribunals Act*, the Chair appointed her to a second six-month term. She was most recently reappointed to a five-year term expiring in April 2013.

She holds a law degree from the University of Victoria (1988), a Master of Social Work degree from Wilfred Laurier University (1978) and an Honours Bachelor of Applied Science degree from the University of Guelph (1976).

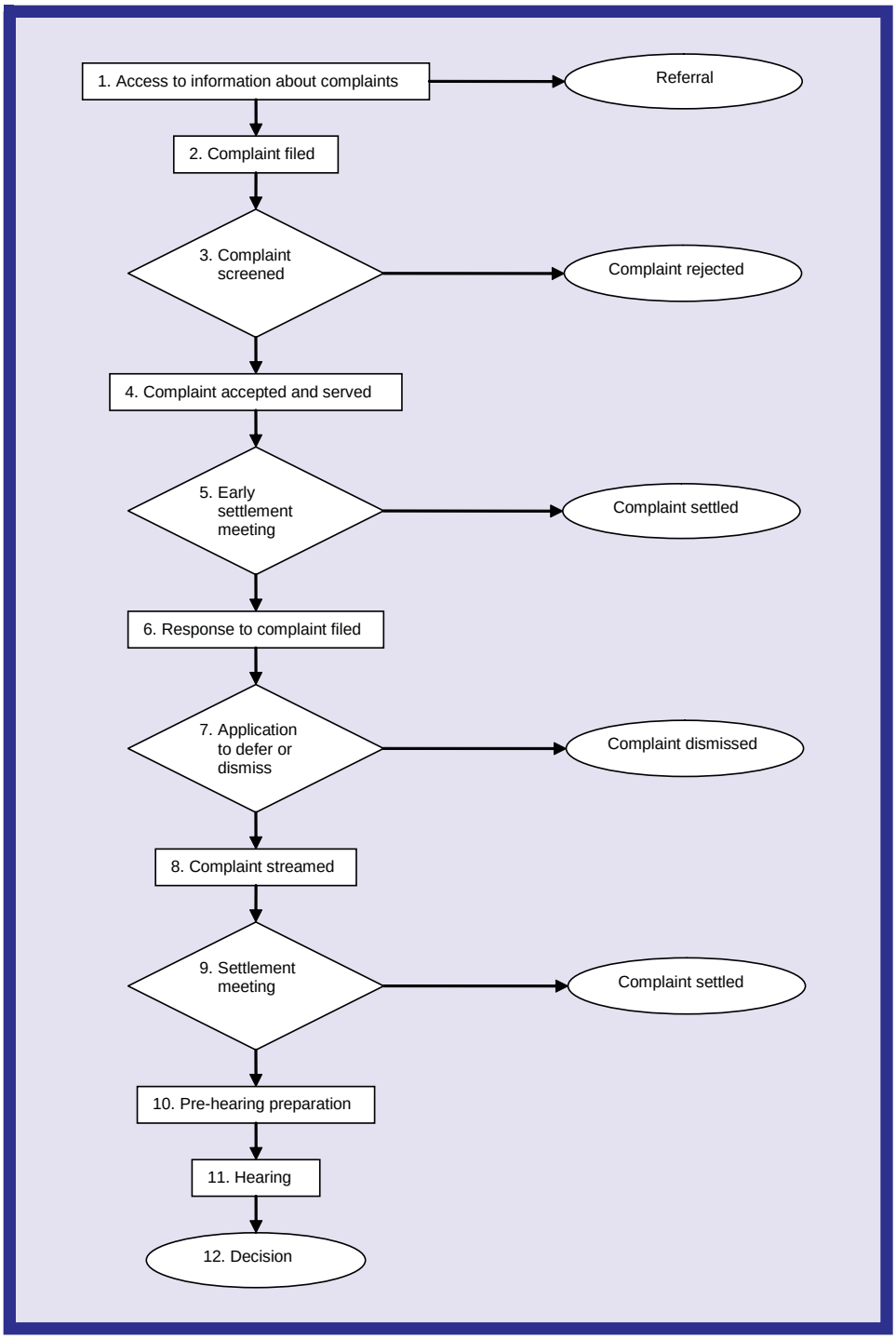
At the outset of her career, Ms. Tyshynski was an associate with two law firms in Victoria. She was in private practice for several years specializing in, among other areas, Administrative Law, then she worked as a staff lawyer for the Legal Services Society.

Prior to her appointment as Member, Ms. Tyshynski served as legal counsel to the Tribunal for three years.

Organization Chart



Complaint Flow Chart



Steps in the Complaint Procedure

1. Access to Information about Complaints

Two Tribunal inquiry officers give callers basic information about human rights protection under the *Code*, the complaint process and other organisations providing assistance in human rights matters. If the call is not about a human rights matter, the inquiry officers may refer the caller to another agency. Complaint forms, guides and information sheets are available from the Tribunal, on its website, at government agents' offices, the Human Rights Clinic and other organisations.

2. Complaint Filed

The first step in the complaint process is filing a complaint form.

3. Complaint Screened

The complaint is assigned to a case manager who reviews it to see it is complete, appears to be within the jurisdiction of the Tribunal, and is within the six-month time limit.

If the complaint form is not complete, the case manager explains why and gives the complainant a limited time to complete it.

If it is clear that the complaint does not involve a provincial matter or a human rights matter covered by the *Code*, the case manager will recommend to the Chair that the complaint be rejected.

If it appears that the complaint was filed after the six-month time limit, the case manager asks the parties whether it is in the public interest to accept the complaint and whether anyone would be substantially prejudiced by the delay in filing. A Tribunal member decides whether to accept the complaint.

4. Complaint Accepted and Served

After the complaint is screened, the Tribunal notifies the parties that it has been accepted.

5. Early Settlement Meeting

The parties may meet with a Tribunal mediator who will help them resolve the complaint before any further steps are taken. Many complaints are settled at this stage.

6. Response to Complaint Filed

If the parties do not settle or do not want an early settlement meeting, the respondent files a response to the complaint form and may also file an application to defer or dismiss the complaint.

7. Application to Defer or Dismiss

If a respondent applies to have the complaint deferred or dismissed, the Tribunal gets submissions from the parties and a Tribunal member makes a decision. Complaints may be deferred if there is another proceeding capable of appropriately dealing with the substance of the complaint. Complaints may be dismissed for the reasons provided in section 27(1) of the *Code*.

8. Complaint Streamed

Once a response to the complaint is filed and screened, the Tribunal decides whether it will follow the standard stream or be case-managed by a Tribunal member because of its complexity or other special characteristics.

9. Settlement Meeting

After the complaint is streamed, the parties have another opportunity to take part in a settlement meeting.

10. Pre-Hearing Preparation

If the complaint does not settle, the parties must prepare for the hearing and exchange relevant documents, witness lists, and positions on remedy. The case manager will telephone them several weeks before the hearing to check that they are ready.

11. Hearing

Hearings are held before a Tribunal member or a panel of three members in exceptional cases. The parties attend in person and the hearing is open to the public. Evidence is given through witnesses, documents and other items. Each party has an opportunity to challenge the other party's evidence and to make arguments supporting their position.

12. Decision

Based on the evidence, the arguments and the relevant law, the Tribunal member or panel decides whether the complainant has proven that discrimination occurred and, if so, whether the respondent has a defence to the discrimination. If the complaint is not justified, it is dismissed. If the complaint is justified, orders are made to remedy the discrimination.

Publications and Staff

The following Guides, Information Sheets and Policies are available on our website or by contacting the Tribunal. Please refer to the back cover of this report for contact information.

Guides

1– The BC Human Rights Code and Tribunal
2– Making a Complaint and guide to completing a Complaint Form
3– Responding to a Complaint and guide to completing a Response to Complaint Form
4– The Settlement Meeting
5– Getting Ready for a Hearing

Information Sheets

1– Tribunal's Rules of Practice and Procedure
2– How to Name a Respondent
3– What is a Representative Complaint?
4– Time Limit for Filing a Complaint - Complainants
5– Time Limit for Filing a Complaint - Respondents
6– Tribunal Complaint Streams
7– Standard Stream Process - Complainants
8– Standard Stream Process - Respondents
9– How to Ask for an Expedited Hearing
10– How to Deliver Communications to Other Participants
11– What is Disclosure?
12– How to Make an Application
13– How to Add a Respondent
14– How to Add a Complainant
15– How to Make an Intervenor Application
16– Applying to Dismiss a Complaint Under Section 27
17– How to Request an Extension of Time
18– How to Apply for an Adjournment
19– How to Require a Witness to Attend a Hearing
20– Complainant's Duty to Communicate with the Tribunal
21– How to Find Human Rights Decisions
22– Remedies at the Human Rights Tribunal
23– How to Seek Judicial Review
23A– Judicial Review: The Tribunal's Role
24– How to Obtain Documents From a Person or Organization Who is Not a Party to the Complaint
25– How to Enforce Your Order

Policies

- Complainant's Duty to Communicate with the Tribunal
- Public Access and Media Policy
- Settlement Meeting
- Special Programs

Tribunal Staff

Registrar / Legal Counsel
Vikki Bell, Q.C.

Executive Coordinator
Andrea Nash

Legal Counsel
Katherine Hardie (part-time)
Denise Paluck (part-time)
Marlene Tyshynski (part-time) (partial year)
Jessica Connell (partial year)

Legal Secretary
Mattie Kalicharan

Case Managers
Noreen Barker (partial year)
Kevin D'Souza (partial year temporary assignment)
Pam Danchilla
Peter Dowsett (partial year)
Janice Fletcher (part-time)
Lorne MacDonald
Lindene Jervis
Maureen Shields
Stacey Wills
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