

BC Human Rights Tribunal

Annual Report 2014-2015





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June 26, 2015

Honourable Suzanne Anton
Minister of Justice
Room 232
Parliament Buildings
Victoria, BC V8V X4

Minister!

I am pleased to submit the **Annual Report** of the BC Human Rights Tribunal for the fiscal year **April 1, 2014 to March 31, 2015**, pursuant to s. 39.1 of the *Human Rights Code*.

The past year has seen the **largest influx of new complaints in the Tribunal's history**. That has made for an extremely busy workplace. Once again, in order to provide context, I offer the following **summary of relevant workload indicators** and measures for the reporting period in comparison with the preceding year.

ACTIVITY INDICATORS	FY 2014-15	FY 2013-14	Variance %
Active Complaints April 2014	820	880	↓7%
New Complaints Filed	1,184	1,102	↑7%
• Accepted for Processing	881	801	↑10%
• Rejected at Screening	303	301	↑0.1%
(Includes Timeliness)			
Complaints Settled	564	555	↑2%
Preliminary Decisions	449	416	↑8%
Final Decisions After Hearing	28	36	↓22%
Hearings Held	36	50	↓28%
Complaints Closed	1,136	1,108	↑3%
Total Complaints Handled	2,004	1,982	↑1%
Active Complaints March 2015	868	820	↑6%

More fulsome statistical profiles may be found on pages two through ten of the Annual Report.

FY 2014-15: OPERATIONAL AND PROCEDURAL INITIATIVES

The Tribunal remains focused on its **goal of continuous improvement** in the delivery of its services to British Columbians. Our approach to procedural change is to maximize organizational agility. We respond to issues and **implement changes continuously**, as and when needed.

SEAMLESS, TIMELY INTAKE AND SCREENING

We continue to maintain a dedicated screening function to maximize fairness, consistency and efficiency. When complaints provide sufficient information to satisfy screening requirements, we strive to screen, accept, serve or reject complaints within thirty days of filing. Where additional information to satisfy screening requirements is necessary, we strive to accept, serve or reject all or parts of a complaint within sixty days of filing.

CLEAR, USER-FRIENDLY FORMS

The Tribunal implemented entirely **redesigned forms in February and July 2014**. The new forms, coupled with vastly **enhanced web-based information**, has resulted in significant improvement in the quality of complaints filed, with less need to obtain further follow-up information which delays screening decisions.

Consistent with our value of continuous improvement, we are currently **inviting feedback from users** on the forms and supporting website content.

STREAMLINED, FOCUSED RULES OF PRACTICE AND PROCEDURE

On **July 15, 2014**, the Tribunal implemented **new *Rules of Practice and Procedure***, including some substantive changes particularly in the area of preliminary applications and processes. The new *Rules* are about half the volume of their antecedents. Usability is enhanced by supportive web-based resources. Again, in order to monitor their utility and effectiveness, we have **invited feedback from users** based on their experience with the new *Rules*.

TIMELY RESOLUTION AND SETTLEMENT

In FY 2013-14, I reported a significant increase in settlement activity, resulting in a historic 80% settlement rate. In **FY 2014-15**, I can report a further increase to **511 settlement meetings** with an **81% settlement rate**. Settlement remains the dominant strategy for resolution of human rights complaints and represents a significant portion of the Tribunal's resources and activities.

In addition to the provision of training for front-line staff to enable them to promote the benefits of mediation in an informed manner, we continue to seek opportunities to involve them even more actively. This year, the Tribunal provided additional mediation training for staff.

In the coming months, interested case managers will shadow mentor mediators, on a pilot basis, with a view to eventually having case managers actually mediate less complex complaints, even earlier in the process. Aside from the obvious benefits in terms of resource deployment, we believe this initiative offers staff an exciting and **enriching developmental opportunity**.

As well, a **new video-conferencing platform** will facilitate cost effective, tripartite participation in mediations.

FINAL DECISIONS

In FY 2013-14, the Tribunal issued thirty-six final decisions, or 3% of total complaints filed. No doubt reflective of the efficiency of our settlement services, in **FY 2014-15** the Tribunal issued **twenty-eight decisions or 2% of total complaints filed**. Seven complaints or 25% were successful or found to be justified on the merits. Twenty-one complaints (75%) were dismissed.

LENGTH/DURATION OF HEARINGS

In FY 2014-15, the average duration of a hearing was three days (consistent with past experience). Four hearings lasted over five days.

PETITIONS FOR JUDICIAL REVIEW AND APPEALS

The number of petitions for judicial review (14) and appeals (3) filed continues to decrease. The Tribunal is now accorded significant deference in relation to its discretionary decisions.

In FY 2014-15, the BC Courts issued nine judgements on the merits of judicial review applications. The Tribunal's decision was upheld in every case. The only Tribunal decision set aside was on the correctness standard, in *McCormick v. Fasken Martineau DuMoulin LLP*, 2014 SCC 39, where the Supreme Court of Canada articulated the meaning of an employment relationship.

ORGANIZATIONAL DEVELOPMENT

In the coming fiscal year, the Tribunal will offer an array of exciting **skills-based developmental opportunities** for members, including Hearing Management, Controlling Cross-Examination, Active Adjudication, Credibility Assessment, Oral Decision Making, Mediation Roundtables – Best Practices, Suicide Alertness and Writing Skills.

For front-line staff, the Tribunal will be offering Encouraging Resolution [Part 2].

The Tribunal is reworking its internal **performance management measures** to establish a new report providing expected activity timeframe targets, measuring the percentage of cases meeting timeframe targets, and which differentiates between participant vs. Tribunal-occasioned delay.

TRIBUNAL TRANSFORMATION

On May 14, 2015, Bill 18, the *Administrative Tribunals Statutes Amendment Act* received Royal assent. The *Act* provides for Tribunal clustering and organization, changes to the appointment process, and imposes annual performance data measures, as well as user experience expectations.

The Tribunal is establishing a “**Voice of the Client**” **user experience survey** program which will measure strengths, weaknesses and opportunities for improving performance.

With the **goal of maximizing user access to justice**, the Tribunal is exploring **usability testing and plain language enhancements** of its existing website information. Observing users with various challenges in navigating our website will help the Tribunal revise existing information and in planning for an expert system in the future.

The Tribunal has a strong interest in having a voice in the development of the criteria which will be applied to determine candidates for clustering to ensure that tribunal clusters are designated on the basis of optimal affinity and compatibility so as to maximize goals. Such criteria could include or be based upon subject matter affinity; common stakeholder interests or characteristics; appropriateness of cross-appointments or similarities in procedural or case management approaches. The notion of a single chair of a number of clustered tribunals also bears discussion from an efficiency and effectiveness perspective.

Appropriate cluster selection will also advance the development of a common IT platform to best meet the specific needs of Tribunal parties and maximize cross-appointment and training opportunities.

FINANCIAL PRESSURES AND CHALLENGES

The Tribunal’s initial budget delegation for FY 2014-15 was \$3,000,000. During the year, we were asked to reduce expenditures by \$150,000.

Due to a variety of pressures, including parental leave, fees payable under a s.7 ATA appointment and others, the Tribunal posted a year-end expenditure deficit. Due to self-imposed reduction strategies in travel costs, office expenses and in other S.T.O.B.s, the deficit was contained at \$99,000.

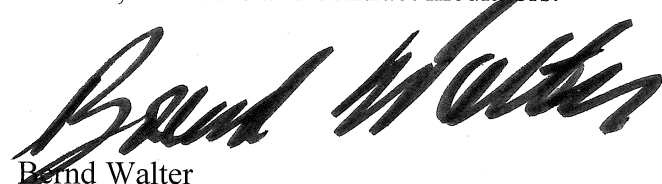
CHALLENGES

As reflected in previous annual reports, we continue to confront challenges to becoming the pre-eminent and highest functioning Tribunal in Canada.

Despite the Tribunal Transformation project's focus on the clustering concept and despite having developed actual space planning, we have experienced no further interest in a conversation about **co-location with the Review Board** in the past year.

Further, and despite a static situation now exceeding eight years, it is discouraging that once again **member compensation** has gone unaddressed.

Finally, I wish to acknowledge, with respect, the work and diligence of Tribunal staff, legal counsel, members and contract mediators.



Bernd Walter
Chair

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TRIBUNAL MANDATE AND PURPOSE

The British Columbia Human Rights Tribunal is an independent, judicial body, established under the *Human Rights Code*, to resolve and adjudicate human rights complaints in a manner that is consistent with the purposes set out in section 3:

- 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*.

On March 31, 2003, British Columbia instituted a direct access model for human rights complaints.

The direct access Tribunal is complainant driven. The Tribunal does not have investigative powers. Complaints are filed directly with the Tribunal which is responsible for all steps in the resolution and adjudication of human rights complaints.

New complaints are assessed to see that the information provided is adequate, that the Tribunal has jurisdiction over the matters set out, and that they are filed within the six-month time period set out in the *Code*. If a complaint is accepted for filing, the Tribunal notifies the respondents who then file a response to the allegations of discrimination.

Unless the parties settle the issues, or a respondent successfully applies to have the complaint dismissed, a hearing is held and a decision about whether the complaint is justified, and how it should be remedied, is rendered.

The Tribunal conducts hearings and settlement meetings throughout the Province. The Tribunal's practices and procedures are governed by its Rules.

INQUIRY AND COMPLAINT STATISTICS

INQUIRY STATISTICS

Inquiries about the Tribunal's complaint process are answered by Inquiry Officers. They provide information about the *Code* and also make referrals to other relevant community and government resources. The Tribunal is accessible from anywhere in the province by toll-free number or email.

In 2014/15, the Tribunal responded to 5,965 telephone and 2,795 email inquiries (increase of 31%). Our website was visited 146,548 times (an average of 400 visits per day; an increase of 11%).

New Cases Screened April 1, 2014 - March 31, 2015		
		Variance (2013-2014)
New Cases Screened	1184	↑7%
Cases Rejected	303 26%	↑1%
Cases Accepted for Filing	881 74%	↑10%

Cases Handled April 1, 2014 - March 31, 2015		
		Variance (2013-2014)
Active Cases - Start of Year	820	↓7%
New Cases	1184	↑7%
Total Cases Handled	2004	↑1%
Cases Closed	1136	↑3%
Active Cases - End of Year	868	↑6%

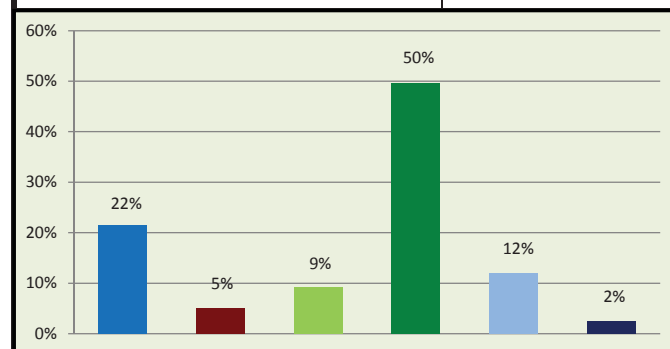
Cases Closed by Reason April 1, 2014 - March 31, 2015		
		Variance (2013-2014)
Cases Rejected During Screening	245	↓2%
Late Filed Complaints Rejected	58	↑16%
Applications to Dismiss Granted	104	↓9%
Cases Settled	564	↑2%
Cases Withdrawn or Abandoned	137	↑34%
Decisions Rendered After Hearing	28	↓22%
Total Cases Closed	1136	

NEW CASES SCREENED

The Tribunal screens all complaints to ensure that they are within its jurisdiction, and to determine whether they set out a contravention of the *Code*.

CLOSED CASES

Cases are closed when they are not accepted for filing at the initial screening stage, withdrawn because they have settled or are abandoned, dismissed on application or when a decision is rendered after a hearing.



COMPLAINTS BY AREAS AND GROUNDS

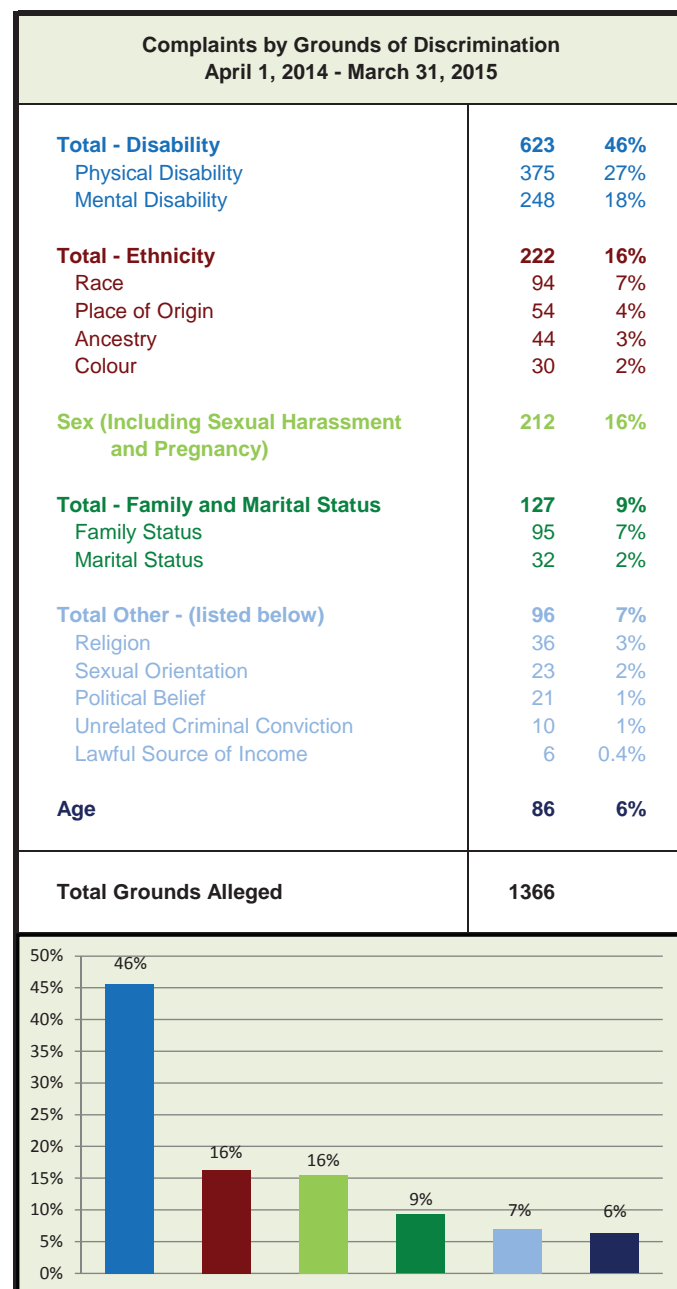
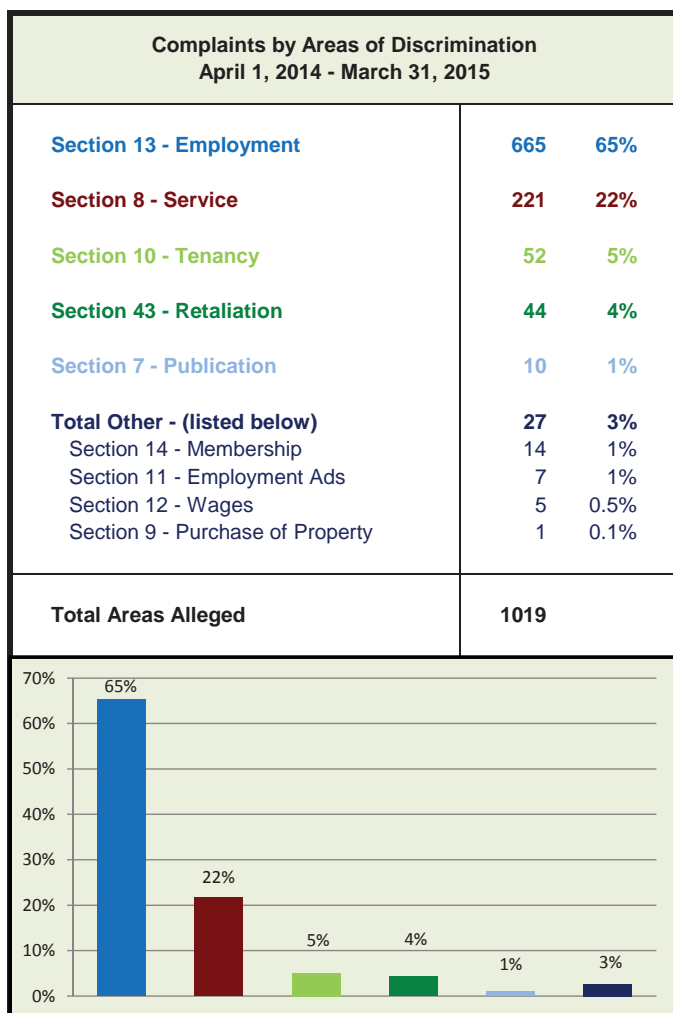
AREAS AND GROUNDS OF DISCRIMINATION

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

There are 15 prohibited **grounds** of discrimination: physical disability, mental disability, sex (including sexual harassment and pregnancy), race, place of origin, colour, ancestry, age (19 and over), family status, marital status, religion, sexual orientation, political belief, unrelated criminal conviction and lawful source of income.

Not all grounds apply to all areas.

A complaint may include more than one **area** or **ground** of discrimination. For instance, an employment-based complaint may also include the **area** of wages; a race-based complaint may also include **grounds** of ancestry, colour and place of origin.



SETTLEMENT SERVICES

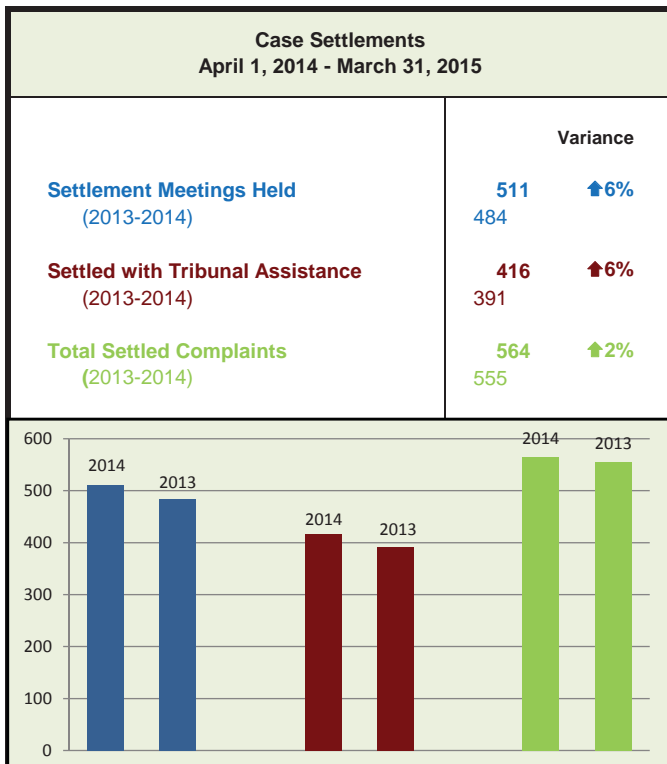
The Tribunal encourages parties, throughout the complaint process, to engage in settlement discussions. Settlement meetings are confidential. The Tribunal does not publish the results.

Tribunal-assisted settlement services may be initiated even before the respondent files a response to the complaint, and at any later stage in the progress of a complaint. Many complaints settle as a result of these efforts, and may include solutions which could not be ordered after a hearing.

In 2014-15, the Tribunal conducted 511 settlement meetings, including 386 early settlement meetings, before a response to a complaint was filed.

The parties were able to resolve their disputes in 416 (81%) cases in which the Tribunal provided assistance.

Some cases settle without the Tribunal's involvement. In 2014-15, a total of 564 cases settled.



PRELIMINARY DECISIONS

The Tribunal published 263 preliminary decisions this year. It also issued 186 decisions in letter form. Letter decisions are used when the matter is not legally complex and considered to be of interest mainly to the parties to the complaint.

PRELIMINARY DECISIONS

Preliminary decisions deal with matters such as the time limit for filing a complaint, deferral, dismissal of a complaint without a hearing, and other matters such as disclosure.

Some decisions deal with more than one matter. The total number of preliminary matters decided this year is 507.

TIME LIMIT APPLICATIONS

Section 22 of the *Code* provides a six-month time limit for filing complaints.

A complaint about events which occurred more than six months before the complaint was filed may be accepted if it alleges a “continuing contravention”, where at least one incident occurred within six months of filing.

The Tribunal may accept a complaint or part of a complaint filed after the six-month time limit if it is in the public interest to do so and no substantial prejudice would result to anyone because of the delay.

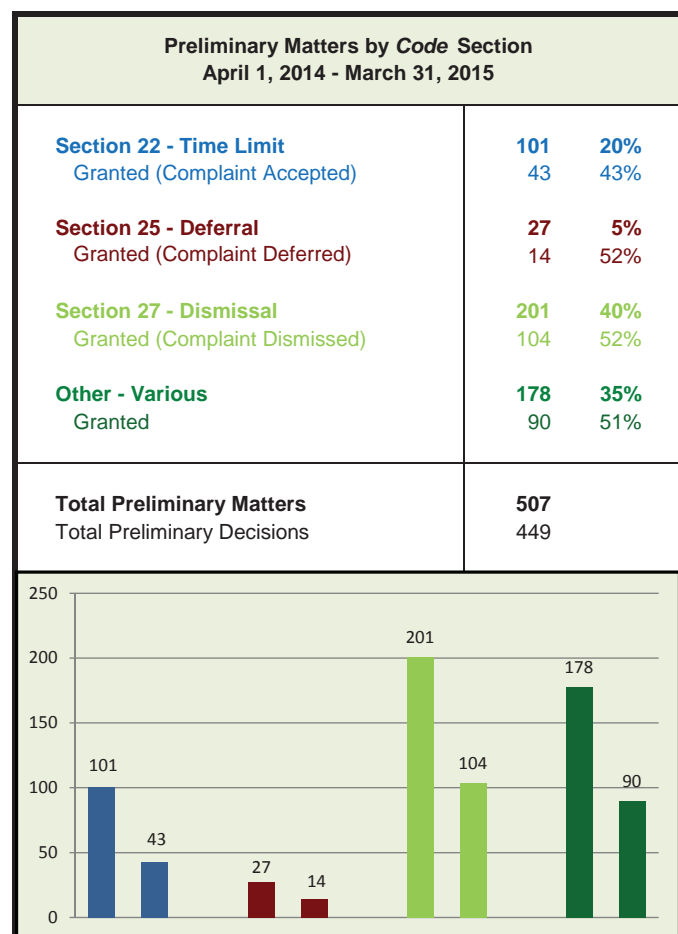
This year, the Tribunal considered 117 timeliness applications, representing 23% of preliminary matters. This number includes 101 applications under s. 22 of the *Code* and 16 applications to dismiss a complaint made under s. 27(1)(g) of the *Code*, which also involves consideration of the complaint’s timeliness.

The Tribunal found that 47 complaints were filed in time or accepted as late-filed, at least in part (including 4 under s. 27(1)(g)); 70 complaints were not accepted or were dismissed as untimely (including 12 under s. 27(1)(g)).

DEFERRAL OF COMPLAINTS

This year, the Tribunal considered 27 applications under s. 25 of the *Code*, to defer a complaint on the basis that the substance of the complaint could be appropriately dealt with in another proceeding. The Tribunal deferred the complaint in 14 cases. Deferral avoids duplication of proceedings.

The Tribunal may refuse to defer a complaint if the other proceeding cannot appropriately deal with the substance of the complaint, or if the Tribunal process will be faster.



PRELIMINARY DECISIONS

DISMISSAL APPLICATIONS

Section 27(1) allows complaints that do not warrant the time or expense of a hearing, to be dismissed without a hearing on the merits.

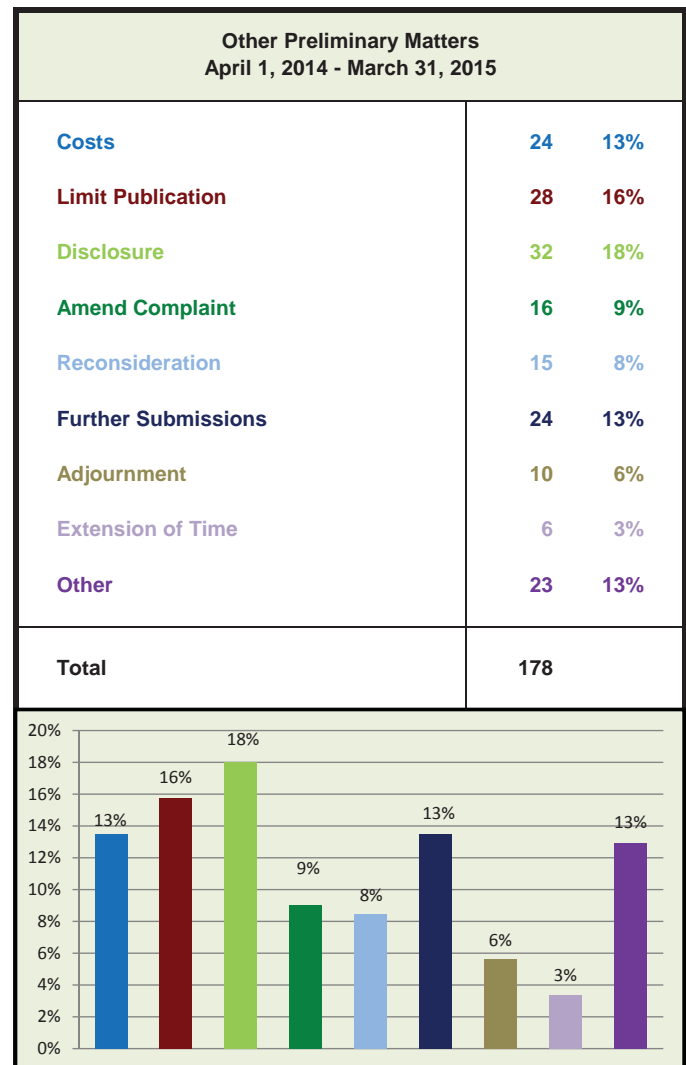
Applications to dismiss accounted for 40% of preliminary matters this year. Of 201 such decisions, 104 (52%) complaints were dismissed and 21 (10%) were partially dismissed.

The Tribunal denied 76 (38%) applications to dismiss and allowed the complaint to proceed.

OTHER DECISIONS

The Tribunal makes oral and written decisions on other matters, such as awarding costs, limiting publication, ordering disclosure, amending complaints, reconsideration, filing further submissions, adjournment, and extensions of time.

The Tribunal issued 178 decisions on such other matters, representing 35% of preliminary matters this year.



FINAL DECISIONS

This year, the Tribunal made 28 final decisions after a hearing, compared to 36 and 51 in the last two years.

25% of the complaints (7 out of 28) were found justified in whole or in part, compared to 42% and 49% in the last two years.

REPRESENTATION BEFORE THE TRIBUNAL

The complaint was dismissed in one case because the complainant did not appear.

No respondent appeared in one case; the complaint was found to be justified.

Consistent with prior years, more complainants were self-represented in final hearings on the merits than respondents.

Complainants had a lawyer throughout the hearing process in 11 cases (41%, compared to 36% and 32% in the last two years). In another two cases, the complainant had legal representation for a portion of the hearing.

Respondents had a lawyer in 21 cases (78%, compared to 73% and 57% in the last two years).

Both parties had a lawyer throughout the hearing in 9 cases.

There has historically been a correlation between legal representation and success for complainants, though last year was an exception.

This year, in the 11 cases where the complainant had a lawyer throughout the hearing, they succeeded in 4 cases (36% - higher than the 25% success rate).

In the 18 cases where the complainant appeared without a lawyer for all or part of the hearing, they succeeded in 3 (19% - lower than the 25% success rate).

This year, the complaint was dismissed in 21 of the 24 cases (88%) in which respondents had legal counsel, and in 3 of the 6 cases (50%) in which respondents did not have legal counsel. (The overall dismissal rate was 75%.)

FINAL DECISIONS - AREAS AND GROUNDS

AREAS:

- the majority of decisions (19 out of 28) involved the area of employment; 4 were found to be justified;
- 5 decisions involved services; 2 were found to be justified;
- 3 decisions involved tenancy; none were found to be justified;
- 2 decisions involved retaliation; 1 was found to be justified;
- 1 decision involved membership in a union, employer's association or occupational association; it was dismissed;
- no decision involved the areas of publication; purchase of property; employment advertisement; or lower rate of pay based on sex.

GROUND:

- 15 decisions dealt with physical and/or mental disability; 2 were found to be justified;
- of those 15 disability-related decisions, 13 dealt with physical disability (2 justified); 7 dealt with mental disability (all dismissed);
- 7 decisions alleged discrimination on the basis of race, colour, ancestry and/or place of origin; 3 were found to be justified;

FINAL DECISIONS

- 6 decisions alleged sex discrimination; 3 were found to be justified;
- of those 6 sex discrimination decisions, 2 were about pregnancy (1 justified); 1 alleged sexual harassment (justified);
- 2 decisions dealt with family status; both were dismissed;
- 2 decisions dealt with age; both were dismissed;
- 1 decision involved political belief; it was dismissed;
- 1 decision dealt with religion; it was dismissed;
- 1 decision dealt with criminal conviction; it was dismissed;
- No decision dealt with sexual orientation, marital status, or lawful source of income.

FINAL DECISIONS OF INTEREST

SECTION 8: SERVICES

In *M obo C v. PS and A*, 2014 BCHRT 217, the Tribunal found that a child with Type 1 diabetes had been discriminated against by the respondent pre-school, which had a nut-free policy, when it refused to allow him to register because he carried peanut butter in an emergency kit for his diabetes. The child's mother offered to remove the peanut butter from the emergency kit, but the respondents told her that the class was full thereby foreclosing any discussion about what could be done to make it acceptable for the child to attend school. The respondent pre-school had a duty to examine whether the child's disability could be accommodated to the point of undue hardship. It should have looked in more depth at alternative approaches to ensure that their *prima facie* discriminatory conduct of denying enrolment to

the child was reasonably necessary to accomplish the broader goal of protecting other students from exposure to peanuts. The Tribunal noted that it may order the person that contravened the *Code* to take steps to ameliorate the effects of the discriminatory practice, and on that basis ordered that the preschool admit the child to the program, provided the child fulfilled the registration policy and complied with the no nut policy in effect. With respect to damages for injury to dignity, feelings and self-respect, the Tribunal found that the discrimination adversely affected the child in relation to his desire to go to preschool and the development opportunity that was lost, and awarded \$2,500.

In *Dawson v. Vancouver Police Board (No. 2)*, 2015 BCHRT 54, the Tribunal found that Ms. Dawson, a transgender woman, had been discriminated against by the Vancouver Police Board on the basis of her sex. Ms. Dawson had gender-reassignment surgery. She was instructed about post-operative care procedures that she would be required to perform in order to minimize the risk of infection and to ensure the success of her surgery. She was arrested and spent overnight in jail shortly after her surgery. While in custody, she was refused access to the medically-necessary equipment and refused release, either on her own or escorted to a hospital so she could perform the procedure. The Tribunal found that the way that Ms. Dawson received medical treatment in the jail amounted to discrimination. No real effort was made to accommodate her needs and no evaluation was done by anyone at the jail as to whether such accommodation would amount to undue hardship. The Tribunal found that when Ms. Dawson was again arrested on a later date, the Board again discriminated against her by not ensuring that she could undertake her post-surgical procedure. The Tribunal also found that Ms. Dawson had been discriminated against when police officers referred to her as "Jeffery" and used male gender pronouns, which made her feel embarrassed and humiliated. The Tribunal awarded Ms. Dawson \$15,000 as damages for injury to dig-

FINAL DECISIONS

nity, feelings and self-respect.

With respect to systemic discrimination, the Tribunal concluded that the Board had virtually no policies or training of officers on how to appropriately deal with trans people without discrimination. The Tribunal ordered the Board to adopt policies that recognize and prevent discrimination of identification of trans people with whom it deals, such that accommodations be made up to the point of undue hardship, and that officers be trained in how to implement such policies.

SECTION 13: EMPLOYMENT

In *Balikama obo others v. Khaira Enterprises and others*, 2014 BCHRT 107, the Tribunal found that a group of tree planter/tree brushers had been systematically discriminated against in their employment on the basis of race, colour, ancestry and place of origin. The workers (except one) were Central African, dark-skinned black men. The Tribunal found that general working conditions and camp conditions, while wholly departing from the legislated and industry requirements imposed, did not do so to such an extent that the end result, even taking into account the historical persecution of black African workers could be reasonably seen as connected in any way to their race, colour or place of origin. However, the Tribunal found that toilet conditions in one work camp, which were comparable to conditions on slave ships and that a witness testified were worse than in a refugee camp, had a discriminatory impact on the African workers on the basis of their race, colour and place of origin. The individual respondents also engaged in racial taunting which emphasized their contempt for black Africans.

Also, the black African workers were owed substantial amounts of wages, while South Asian and Caucasian (except one) workers were paid in full. The Tribunal found that the company was discriminatory with respect to its decisions about which

workers would be paid and when. It was more probable than not that the company chose to pay its South Asian and Caucasian workers out in full rather than to equally distribute available funds amongst all of the workers in order to preserve its relationship with South Asian and Caucasian workers because it valued those relationships more than its relationships with the African workers. This was discriminatory on the basis of race, colour and place of origin.

In addition, one female employee was subjected to comments and actions by both individual respondents which the Tribunal found constituted sexually-harassing behaviour. Further, the ire expressed by one of the respondent's towards the employee was rooted in displeasure that she was in a sexual relationship with one of the African workers. The Tribunal found that the respondent's treatment of the employee was tied to the stereotypes of black men and the related stereotypes of appropriate romantic or sexual partners for a white woman. The grounds of race, colour, place of origin and sex intersected.

The Tribunal retained jurisdiction to consider certain complainants' wage loss if the Director of Employment Standards declined to make a determination. The Tribunal ordered that the respondents pay each employee \$10,000 as damages for injury to dignity, feelings and self-respect. Also, the Tribunal ordered that certain individual complainants receive an additional \$1,000 for every 30 days or part thereof that they worked over a period of three months.

In *Lipp v. Maverick's Sports Lounge*, 2014 BCHRT 199, the Tribunal found that the complainant, who was a restaurant server, had been discriminated against in employment on the basis of pregnancy when her hours were reduced because she was pregnant. The Tribunal found that the the reduction was in accordance with a plan or design to induce the complainant to quit because a pregnant server did not reflect the image that the owner had in mind for his pub. The complainant, who found herself in an

FINAL DECISIONS

inhospitable discriminatory work environment such that she had no reasonable option but to depart, was constructively dismissed. The Tribunal awarded \$2,000 lost wages and \$7,500 as damages for injury to dignity, feelings and self-respect.

SECTION 43: RETALIATION

In *Steele v. Aishwarya Investments and another*, 2014 BCHRT 192, the complainant alleged that the corporate landlord and individual property manager failed to accommodate his requirement to use medical marijuana for pain management and eventually evicted him for use of marijuana. After the complainant filed his human rights complaint, the respondents filed a claim for damages in Provincial Court. The Tribunal found that the complainant was unable to establish a *prima facie* case of discrimination on the basis of a physical disability in the area of tenancy because he failed to establish any medical requirement to consume marijuana. However, the Tribunal found the retaliation complaint to be justified. The timing of the Provincial Court action relative to being served with the human rights complaint and the dubious nature of the claims raised, among other things, made it more probable than not that a reasonable tenant in the complainant's position would reasonably perceive the filing of the claim in Provincial Court as retaliation for his human rights complaint. The Tribunal ordered the landlord to pay the complainant \$2,500 and the property manager to pay the complainant \$1,000 as damages in respect of their retaliatory conduct.

JUDICIAL REVIEWS AND APPEALS

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

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

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

This year, 14 petitions for judicial review were filed in the Supreme Court, as compared to 13 last year, and 26 the year before that. Three appeals were filed with the BC Court of Appeal, as compared to 7 in the last two fiscal years. There were two applications for leave to appeal to the Supreme Court of Canada. Both were denied.

BC SUPREME COURT JUDGMENTS

This year, the BC Supreme Court issued four judgments on judicial review applications: all were dismissed. In another case, the Court declined to extend the time for filing a judicial review application.

REVIEW OF SECTION 22 DECISIONS

All of the decisions reviewed this year were made under s. 27 of the *Code*, which gives the Tribunal the discretion to dismiss a complaint without a hearing. The Court gives the Tribunal a high level of deference in reviewing discretionary decisions. As noted,

all applications were dismissed.

In three cases the Court decided that the decision was not patently unreasonable:

- ***Teck Coal Limited v. British Columbia (Human Rights Tribunal)***, 2014 BCSC 642
- ***Baharloo v. University of British Columbia***, 2014 BCSC 762
- ***Chiang v. British Columbia (Human Rights Tribunal)***, 2014 BCSC 1859

In ***Singh v. Kane Shannon & Weiler Management Corp.***, 2014 BCSC 1043, the Court rejected the argument that the Tribunal did not act fairly when it dismissed a complaint under s. 27(1)(c).

TIME LIMIT FOR FILING A JUDICIAL REVIEW

In ***Ntibarimungu v. Whistler Blackcomb/Intrawest***, 2014 BCSC 1489, the Court declined to extend the 60 days for filing on the basis that there was no reasonable explanation for the delay, the respondents would suffer substantial prejudice as a result of the delay, and there were no serious grounds for relief.

BC COURT OF APPEAL

The BC Court of Appeal issued five judgments on appeals respecting Tribunal decisions, each resulting in the Tribunal decision standing.

TIME LIMIT DECISIONS

Three judgments addressed Tribunal time limit decisions under s. 22 of the *Code*:

- ***British Columbia (Ministry of Public Safety and Solicitor General) v. Mzite***, 2014 BCCA 220
- ***B.C. (Ministry of the Attorney General et al.) v.***

JUDICIAL REVIEWS AND APPEALS

Sanghera, 2014 BCCA 221

- *Chen v. Surrey (City)*, 2015 BCCA 57

In *Mzite*, the Court confirmed the following principles set out in the Tribunal’s case law regarding whether it is in the public interest to accept a late-filed complaint under s. 22(3) of the *Code*:

- The reason for the delay is simply one factor to be considered
- The Tribunal may consider whether there is anything particularly unique, novel, or unusual about the complaint that has not been addressed in other complaints
- The weight assigned to the factors is within the discretion of the Tribunal in the circumstances of each case

In *Chen*, the Court confirmed the following principles set out in the Tribunal’s case law regarding whether a complaint alleges a continuing contravention under s. 22(2) of the *Code*:

- A complaint must allege facts that, if proven, would amount to a continuing contravention
- A continuing contravention is a succession or repetition of separate acts of discrimination of the same character, not merely one act of discrimination which may have continuing effects or consequences

SECTION 27 DECISIONS

One appeal judgment addressed a Tribunal decision under s. 27(1)(c) of the *Code*. In *Edgewater Casino v. Chubb-Kennedy*, 2015 BCCA 9, the Court confirmed that s. 27(1)(c) is a gatekeeping provision that involves an assessment of the material filed to determine if the complaint has been taken “out of the

realm of conjecture”.

REMEDY

In *Gichuru v. The Law Society of British Columbia*, 2014 BCCA 396, the Court found no error in the Tribunal’s assessment of what wage loss was caused by the discrimination found, or in its determination of an award for injury to dignity, feelings and self-respect.

SUPREME COURT OF CANADA

The Court ruled on the meaning of “employment” in *McCormick v. Fasken Martineau DuMoulin LLP*, 2014 SCC 39. Mr. McCormick, an equity partner in a law firm, alleged age discrimination based on a mandatory retirement provision in the firm’s partnership agreement. The Tribunal held that this relationship was governed by the *Code*’s prohibition against discrimination in employment. The Supreme Court of Canada said that deciding if an employment relationship is covered by the *Code* depends on two factors: (1) the control the employer exercises over working conditions and pay, and (2) the dependency of the worker on the employer. In Mr. McCormick’s situation, he was more in control of, rather than subject to, workplace conditions, based on his ownership, sharing of profits and losses, and the right to participate in management. Mr. McCormick was not dependant on the law firm in a meaningful sense.

The Supreme Court of Canada declined two applications for leave to appeal:

- *I.J. v. J.A.M.*, [2014] S.C.C.A. No. 69
- *British Columbia (Minister of Public Safety) v. Mzite*, [2014] S.C.C.A. No. 358

SPECIAL PROGRAMS AND POLICY

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

The Tribunal has issued a Special Programs Policy which outlines the requirements for obtaining approval for a special program. All special program approvals are time-limited, generally between six months to five years in duration, with employment equity programs usually being several years long. Periodic reporting may be a condition of approval. On expiry of an approval, a program provider may apply for renewal of the approval.

A special program approved by the Chair of the Tribunal is deemed not to be discriminatory under the *Code* for the duration of the approval. The Policy and a list of approved special programs are posted on the Tribunal's website.

In the last year, the Chair approved six new special programs and seven renewals:

- **BC Women's Hospital and Health Centre, Aboriginal Health Program:** Hiring restricted to persons of Aboriginal ancestry for the positions of Aboriginal Patient Liaison and Aboriginal Program Coordinator/Lead.
- **Camosun College:** Five percent of seats reserved for student applicants of Aboriginal ancestry in Nursing, Early Childhood Care and Education, and Practical Nursing in the School of Health and Human Services.
- **College of New Caledonia:** Hiring restricted to Aboriginal applicants for positions in the following categories:
 - a. Employees providing direct operational, instructional or administrative service to primarily Aboriginal students (i.e. Aboriginal Academic Advisor, Aboriginal Liaison, Senior Policy Advisor/Manager of Aboriginal Services).
 - b. Employees instructing courses whose content is primarily Aboriginal (i.e. Aboriginal Studies courses, Aboriginal Early Childhood Education, College & Career Preparation – Lheidli Project).
 - c. Employees offering services and/or programs funded through Aboriginal-specific funding initiatives.
 - d. Administrators working on campus with significant numbers of Aboriginal learners, or with a significant population of Aboriginal peoples in their campus area.
- **Covenant House:** Advertising for and hiring of a total of 42 positions restricted to women for the positions of Youth Workers, Team Leaders and Shift Supervisors.
- **Ending Violence Association of British Columbia:** Preferential recruitment and hiring of Aboriginal candidates for service provider positions associated with a two-year project.
- **Métis Family Service Society:** Provision of services restricted to those who are Aboriginal. Hiring preference for persons of Aboriginal ancestry for all positions.

SPECIAL PROGRAMS AND POLICY

- **North Island College:** Priority admission to the following number of self-declared Aboriginal applicants:
 - Three in the Bachelor of Science Nursing Program;
 - Four in the Early Childhood Care and Education program;
 - Four in Human Service Worker Program;
 - Four in the Health Care Assistant Program; and
 - Two in the practical Nursing Program.
- **Seyem' Qwantlen Business Group:** Preferential hiring to persons of Aboriginal ancestry in all jobs, including on-call and casual positions for a period of three years.
- **Thompson Rivers University:** Hiring restricted to a person of Aboriginal descent for the position of Aboriginal Transition Planner.
- **School District 35 (Langley):** Advertising and hiring restricted to persons of Aboriginal ancestry for the positions of Aboriginal Support Worker, District Teacher (Aboriginal Program) and Aboriginal Learning Support Teacher.
- **School District 47 (Powell River):** Hiring of one Educational Assistant restricted to a man, with specific qualifications, to provide assistance for an identified student until such time as the student graduates but no longer than June 30, 2018.
- **School District 48 (Sea to Sky):** Hiring preference to teachers of Aboriginal ancestry, to a maximum of 43 positions.
- **School District 74 (Gold Trail):** Preferential hiring to persons of Indigenous ancestry for all positions until such time as the percentage of staff of Indigenous ancestry in the School District is equal to the percentage of students of Indigenous ancestry in the School District.

TRIBUNAL MEMBERS

Tribunal members are administrative law judges who conduct mediations, decide applications to dismiss a complaint without a hearing, preside on pre-hearing conferences, conduct hearings and render final decisions on the merits of a complaint.

JACQUELINE BELTGENS, MEMBER

Jacqueline Beltgens was appointed as a full-time Member of the Tribunal on August 15, 2014. She attended the University of British Columbia for undergraduate studies in international relations, and obtained a Juris Doctor in 1990. She also has a Diploma of Building Technology (Engineering) from the BC Institute of Technology.

Prior to joining the Tribunal, Ms. Beltgens was a Law Professor at the Beijing Foreign Students University, and has been in-house counsel and in private practice in Vancouver and Victoria with a broad background in civil and administrative law.

ROBERT B. BLASINA, MEMBER

Robert Blasina was appointed a full-time Member of the Tribunal on August 2, 2011. Mr. Blasina graduated from the University of Toronto in 1971, with a Bachelor of Arts in Economics and from Queen's University in 1974, with a Bachelor of Laws. He was called to the Bar of British Columbia in 1977, and he obtained a Chartered Arbitrator designation in 1999 through the British Columbia Arbitration and Mediation Institute.

Mr. Blasina first practiced labour law, representing a number of trade-unions, and then as an arbitrator and mediator with respect to collective agreement and employment issues. Prior to coming to the Tribunal, Mr. Blasina had twenty-four years of experience as a consensual arbitrator and mediator, and has served on the Boards of the Arbitrators' Association of British Columbia and the British Columbia Arbitration and Mediation Institute.

DIANA JURICEVIC, MEMBER

Diana Juricevic was appointed a full-time Member of the Tribunal on February 16, 2012 for a five-year term. She holds a Juris Doctor and Master of Economics degree from the University of Toronto (2004). She also holds an Honours Bachelor of Arts degree from the University of Toronto (2001).

Prior to joining the Tribunal, Ms. Juricevic practised international criminal law before tribunals in The Hague and Cambodia. She was also the Acting Director of the International Human Rights program at the University of Toronto Faculty of Law where she taught courses on international criminal law and human rights advocacy.

Early in her career, Ms. Juricevic was an associate at a national law firm practising civil litigation, administrative, and human rights law.

CATHERINE MCCREARY, MEMBER

Catherine McCreary was appointed a full-time Member of the Tribunal on April 2, 2012 for a temporary one-year term. In May 2012, she was appointed on a five-year term expiring in May 2017. A graduate of the University of Calgary Faculty of Law, she worked in British Columbia and Alberta as an arbitrator, mediator and investigator. She was a Vice-Chair of the BC Labour Relations Board from 2000 to 2006. Ms. McCreary worked as in-house counsel to Teamsters Local 213 after moving to BC from Alberta in 1997. In Alberta, she worked with the law firm McGown Johnson and acted as counsel, usually to unions and employees.

Ms. McCreary served on the boards of directors of Vancity and Central 1 Credit Union and recently was appointed by FICOM to serve on the Task Force on Credit Union Governance. She sometimes works as a Governance Coach to member-based organizations.

TRIBUNAL MEMBERS

WALTER RILKOFF, MEMBER

Walter Rilkoff was appointed a full-time Member of the Tribunal on February 28, 2014 for a five-year term. He graduated from the University of British Columbia in 1970 with a B.A. (Hons.) in Political Science; from York University with an MA in 1972 and a Law Degree from Osgoode Hall Law School in 1975.

Mr. Rilkoff commenced his legal career as a Legal Assistant to the then Chair of the B.C. Labour Relations Board. Prior to joining the Tribunal, Mr. Rilkoff was engaged in private practice for over 37 years representing individuals, employers and trade unions in all aspects of employment-related law including labour relations, employment, human rights and privacy.

PARNESH SHARMA, MEMBER

Parnesh Sharma was appointed a full-time Member of the Tribunal for a six-month period, from January to July 2015, under s. 6 of the *Administrative Tribunals Act*.

Mr. Sharma holds a PhD in Law from the University of Oxford. He has published in the area of human rights and has over ten years of experience in negotiations and adjudication.

NORMAN TRERISE, MEMBER

Norman Trerise was appointed a full-time Member of the Tribunal on December 2, 2010 for a five-year term.

Mr. Trerise holds a law degree from the University of British Columbia (1973) and a Bachelor of Arts degree from the University of Oregon (1969).

Prior to his appointment, Mr. Trerise practised labour, employment, human rights and administrative law as a partner with a national law firm.

MARLENE TYSHYNSKI, MEMBER

Marlene Tyshynski became a full-time Member of the Tribunal on December 1, 2005 for a temporary six-month term and for a second xxx in October 2009.

In April 2008 and February 2014, Ms. Tyshynski was appointed to five-year terms, the latter expiring in 2019.

Ms. Tyshynski 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.

TRIBUNAL MEMBERS

BERND WALTER, CHAIR

Bernd Walter was appointed Chair of the Tribunal on August 1, 2011 for a five-year term. He also chairs the British Columbia Review Board.

Mr. Walter has chaired a number of BC Tribunals. He has also served as an ADM in the BC Public Service, as well as in Alberta and Ontario. He served as Alberta's First Children's Advocate.

Mr. Walter's background includes program, policy development and law reform, in particular in child protection, adoption, Aboriginal child and family services, child, youth and adult mental health and children's rights. He has also participated in Indian Residential Schools reconciliation and healing work.

EXPIRED APPOINTMENTS

MURRAY GEIGER-ADAMS

Murray Geiger-Adams was appointed a full-time Member of the Tribunal on March 9, 2009 for a six-month term under a Chair's appointment. In 2010, Mr. Geiger-Adams was reappointed for a five-year term which expired in January 2015.

ENID MARION

Enid Marion was appointed a full-time Member of the Tribunal, effective July 27, 2008 for a five-year term. In July 2013 and January 2014, Ms. Marion was appointed on two six-month terms pursuant to section 6 of the *Administrative Tribunals Act*, which expired on July 27, 2014.

JUDITH PARRACK

Judith Parrack's appointment as a full-time Member of the Tribunal expired on July 31, 2010. She is currently authorized, pursuant to section 7 of the *Administrative Tribunals Act*, to continue to exercise powers over one matter.

COST OF OPERATION

BC Human Rights Tribunal Operating Cost Fiscal Year 2014-2015

Category	Expenditure	Delegated Budget	Variance
Salaries (Chair, Members, Registry and Administration)	\$ 2,164,546	\$ 2,172,000	\$ 7,454
Employee Benefits	\$ 520,235	\$ 542,000	\$ 21,765
Expired-Term Members – Fees for Completing Outstanding Decisions	\$ 50,400	\$ 20,000	\$ (30,400)
Travel	\$ 51,308	\$ 45,000	\$ (6,308)
Centralized Management Support Services	\$ 0	\$ 0	\$ 0
Professional Services	\$ 235,559	\$ 150,000	\$ (85,559)
Information Services, Data and Communication Services	\$ 1,819	\$ 4,000	\$ 2,181
Office and Business Expenses	\$ 74,060	\$ 65,000	\$ (9,060)
Statutory Advertising and Publications	\$ 1,257	\$ 2,000	\$ 743
Total Cost	\$ 3,099,184	\$ 3,000,000	\$ (99,184)



ADMINISTRATIVE STAFF

Registrar / Legal Counsel

Steven Adamson

Executive Coordinator

Andrea Nash

Legal Counsel

Jessica Connell (on leave)

Katherine Hardie

Walter Pylypchuk (partial year) (part-time)

Legal Secretary

Nikki Mann

Case Managers

Rose Andries (partial year)

Carla Kennedy

Anne-Marie Kloss (partial year)

Lorne MacDonald

Cristin N. Popa (partial year)

Rozina Rahim (partial year)

Paul Rondeau (partial year)

Cheryl Seguin

Sandy Tse

Daniel Varnals

Special Projects Coordinator

Luke LaRue

Inquiry Officers

Rose Andries (partial year)

Matthew Damario (partial year)

Mattie Kalicharan

Diana P. Popa (partial year)

Paul Rondeau (partial year)

The core mission of the
British Columbia Human Rights Tribunal
is the timely and fair resolution of disputes
involving the human rights of all
British Columbians



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