



**British Columbia Human Rights Tribunal**

# **ANNUAL REPORT**

## **2017-2018**

July 2018

# BCHRT ANNUAL REPORT 2017/2018

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## Message from the Chair

I am pleased to present, to The Honourable David Eby, Attorney General of British Columbia, the annual report of the BC Human Rights Tribunal for the fiscal year April 1, 2017 to March 31, 2018, submitted in accordance with s. 59.2 of the *Administrative Tribunals Act* and s. 39.1 of the *Human Rights Code*. I am accountable for the results as reported.

We are committed to our core mission, which is the fair and timely resolution of human rights disputes. Tribunal values drive all aspects of our service delivery. Our focus this past year has been on the continuous improvement to the quality and timeliness of dispute resolution services, with emphasis in five areas:

1. Streamlining of the screening process to ensure quality, consistency, and timeliness.
2. Enhancement of the case management process by early assignment of members with focus on appropriate resolution to the individual cases.
3. Improvements to the quality and timeliness of adjudication and mediation services through regular team meetings, training, and mentoring.
4. Creation and implementation of [service standards](#) and performance measures for our team, including a new [Code of Conduct](#) for Tribunal members and mediators.
5. Restructuring of our [website](#) to be accessible for self-represented parties. The addition of [leading cases](#) was added.

These initiatives demonstrate the Tribunal's endorsement of the [Access to Justice Triple Aim](#).

The Tribunal has a number of new projects and initiatives underway, including enhancement to our existing case management system to allow the electronic filing of documents. Embracing new technology will provide the important tools necessary for the Tribunal and its staff to work more efficiently as we move towards a paperless environment, where appropriate, in the near future. I would like to thank the Ministry of Attorney General for their support and guidance through this project and for their assistance with the onboarding of voice over internet telephone services.

This year of change also provided the opportunity to innovate and reduce costs in a number of areas. The increase in telephone and video proceedings continues to decrease travel expenditures and reduce travel challenges to remote regions of our province. While our Tribunal is not immune to the fiscal challenges facing all agencies of government we are pleased to report a balanced budget. A large portion of the Tribunal's budget is attributed to the salaries of staff which is integral to providing quality services to the public. I am proud of our team. We are maintaining service quality in the face of the highest volume of cases in our history.

We are very pleased to welcome the Human Rights Commission to our province and look forward to working collaboratively with the Commission in the upcoming year. In October 2017, we made a [submission](#) to the Parliamentary Secretary regarding the re-establishment of a Human Rights Commission. We also made a submission to update the *Human Rights Code*. With this expansion and the establishment of the Commission, there will be new challenges on the horizon which we embrace to enhance the human rights system in British Columbia.

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I would like to thank Tribunal staff and adjudicators for their dedication, hard work and professionalism over this past year. I am honoured to work with a team of pragmatic, inclusive and solution-oriented professionals. Our team has embraced our Tribunal's values and they have worked diligently to fulfil our mandate. We look to the years ahead with optimism as we continue to deliver quality administrative justice services in our province.

A handwritten signature in black ink, appearing to read 'Juricevic', with a stylized, cursive script.

Diana Juricevic, Chair  
July 20, 2018

## Tribunal Values

### Mandate

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

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

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

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

### Value Statements

#### Appropriate Resolution

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

#### Public Confidence

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

#### Service Excellence

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

#### Innovation and Improvement

We will be leaders in administrative justice that reflects best practices across Canada. We will continually innovate and improve how we deliver our services to the public.

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## Tribunal Team

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

### STAFF

#### Registrar

Steven Adamson

#### Manager of Finance and Operations

Andrea Nash

#### Legal Counsel

Devyn Cousineau (partial year)

Katherine Hardie

Walter Pylypchuk (partial year)

#### Registry Staff

Anne-Marie Kloss (partial year)

Britt Stevens

Carla Kennedy

Cheryl Bigelow

Daniel Varnals

Fabian Jankovic (partial year)

Karly Betsworth (partial year)

Kerry Jervelund (partial year)

Lorne MacDonald

Luke LaRue

Mattie Kalicharan

Meagan Stangl (partial year)

Nikki Mann

Priscilia Bolanos (partial year)

Sandy Tse

### MEMBERS

#### Chair

[Diana Juricevic](#)

#### Tribunal Members

[Barbara Korenkiewicz](#)

[Catherine McCreary](#)

[Devyn Cousineau](#) (partial year)

[Emily Ohler](#)

[Jacqueline Beltgens](#)

Marlene Tyshynski (retired)

[Norman Trerise](#)

[Pamela Murray](#) (partial year)

[Steven Adamson](#) (Registrar)

[Walter Rilkoff](#)

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

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TTY: 604-775-2021

## Operations and Accountability

### Public Inquiry

We respond to a multitude of public inquiries about the *Code*, including making referrals to other community and government agencies. Our [website](#) has become the most important tool for the public to find information they need. The number of website visits has increased from 146,000 in 2014-2015 to 537,000 in 2017-2018, a significant increase over a four-year period.

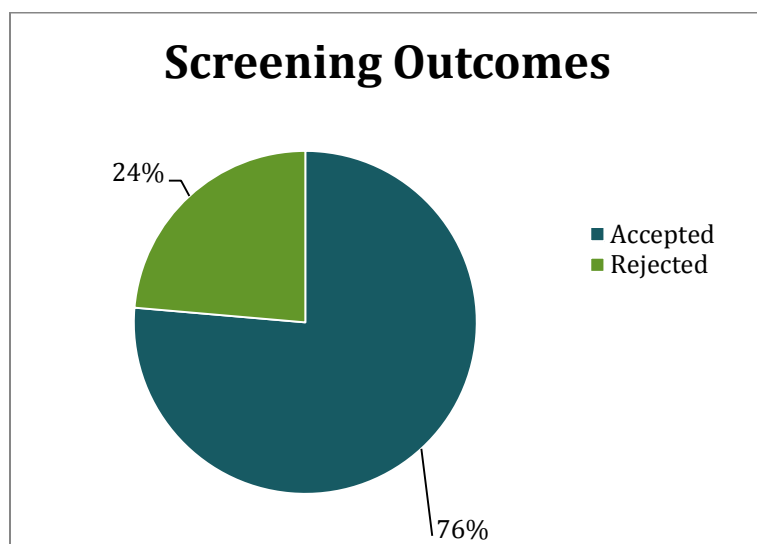
### New Complaints

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

The Tribunal received a total of 1,443 new complaints during the past year. Of those, 1,340 new complaints were accepted for filing, and 103 complaints were in the screening process at year end. Screening ensures complaints are within the Tribunal's jurisdiction, are timely, and set out a contravention of the *Code*.

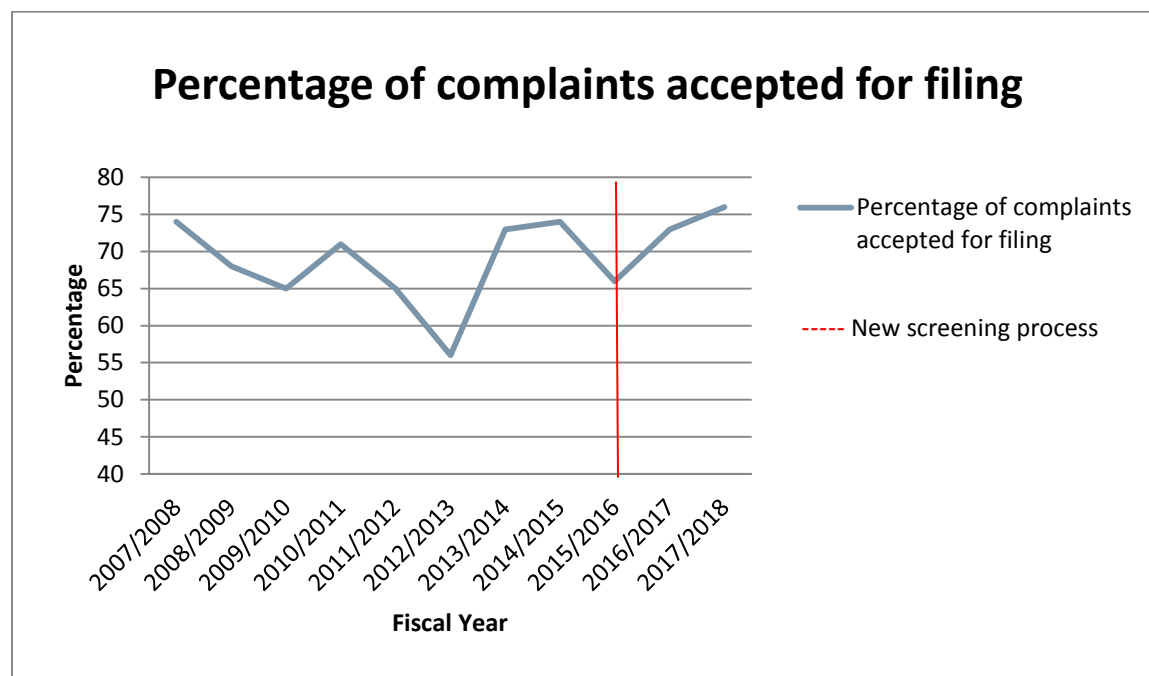
Two years ago, we implemented a new screening process to improve the quality, consistency, and timeliness of screening decisions. Our screening process now involves review by a team consisting of the Registrar, screening manager, Chair, and when necessary, legal counsel. Prior to this, there was no centralized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

This past year, the Tribunal accepted 76% of complaints for filing.



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



Our service standard for screening is that, 80% of the time:

- When complaints provide sufficient information to satisfy screening requirements, we will complete our screening process and notify parties within 30 days of filing.
- Where additional information to satisfy screening requirements is necessary, we will complete our screening process and notify parties within 60 days of filing.

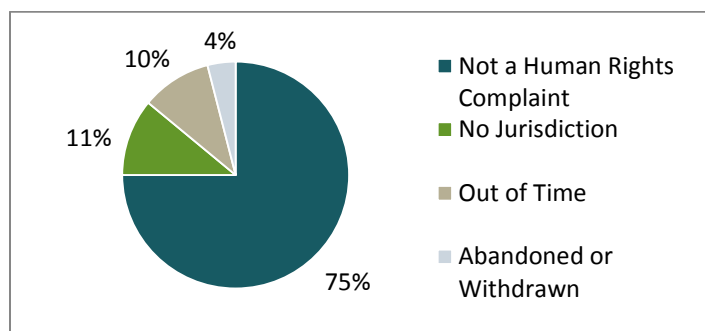
We completed the screening process and notified parties within 30 days of filing 93% of the time, exceeding our service target. We completed the screening process and notified parties within 60 days of filing 69% of the time, not meeting our service target.

## Complaints not Accepted for Filing

Of the 24% of complaints that were not accepted for filing, the vast majority were rejected because they were not a human rights complaint (75%). Others were rejected because the Tribunal did not have jurisdiction (11%) (e.g. the complaint was under federal jurisdiction). Others were rejected because the complaint was outside the time limit in the *Code* (10%). The remainder were abandoned or withdrawn by the complainant (4%).

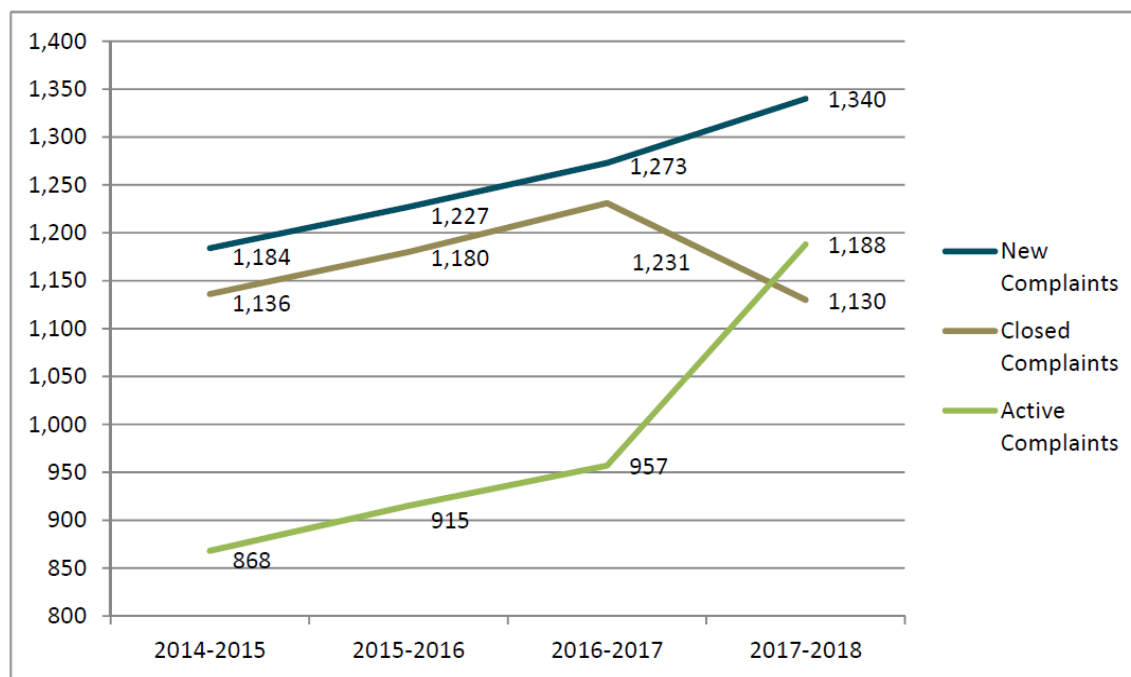


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## Tribunal Workload

The Tribunal continued to have a significant workload. The caseload volume is at an all-time high. The number of active complaints at the Tribunal is 1,188, which represents a 20% increase over the previous year. Active cases do not include cases deferred or stayed at the request of the parties pending the outcome of another proceeding, those settling, or cases where petitions for judicial review have been filed after a final decision.



This year marks a new trend, as the gap between opened and closed cases widens. The Tribunal is no longer resolving complaints at the same rate as opening new complaints. This outcome comes as no surprise given the increase in active cases over the past four years. This increase may be attributed to three pressures. First, there has been an increase in document disclosure applications since the Tribunal updated the *Rules of Practice and Procedure* several years ago, which changed the parties' disclosure obligations. Parties are now

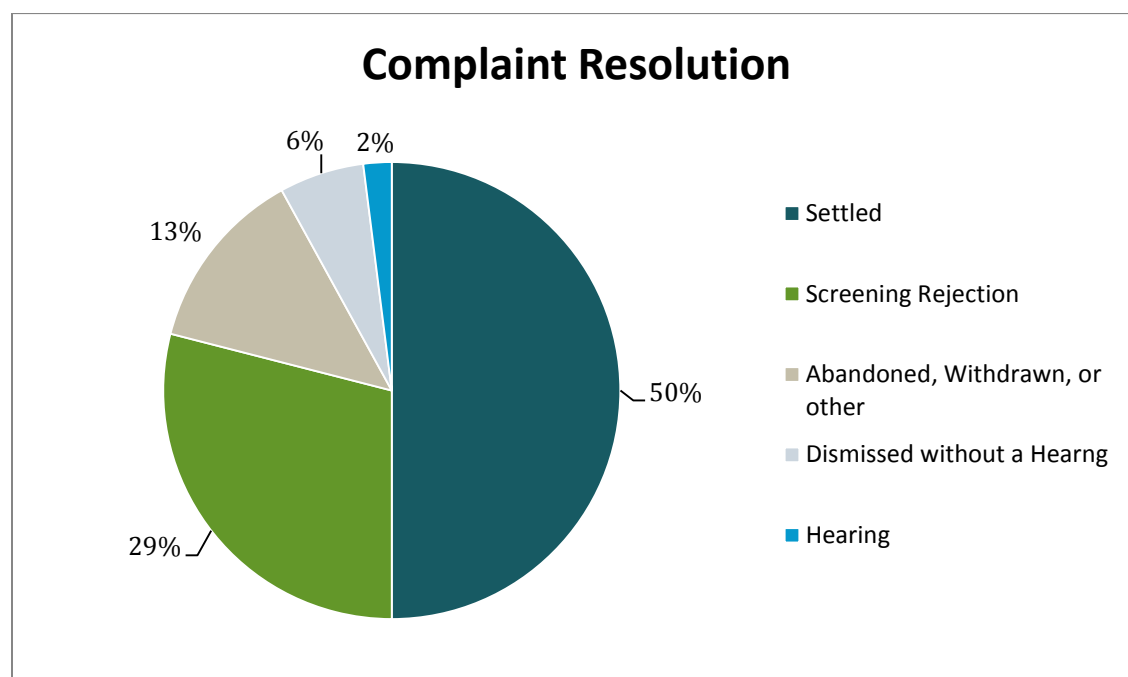
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required to disclose documents prior to an application to dismiss, and disputes over document disclosure have resulted in delays in the filing and rendering of dismissal applications. Second, the new screening process has resulted in more complaints being accepted for filing. Third, the Tribunal has been under a full complement of members for several years. To date, the caseload volume has been absorbed and managed by stretching human resources and implementing operational efficiencies. However, this approach is now unsustainable. The Tribunal is now meeting this increased demand by adding new members to its team and planning for a new case management system.

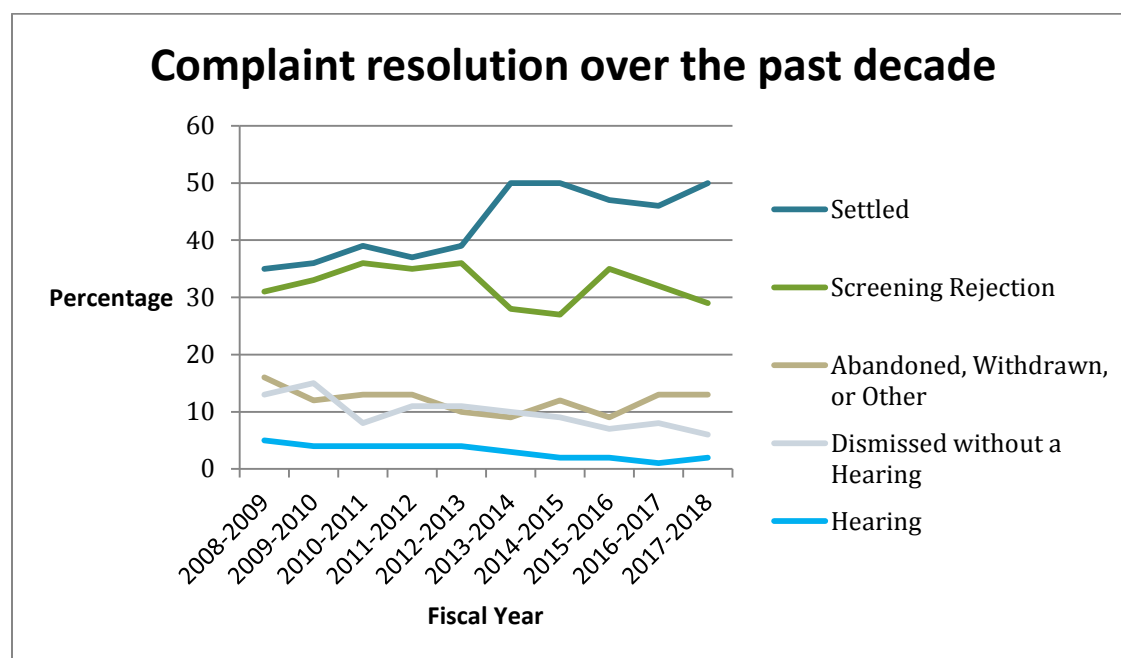
## Complaint Resolution

Human rights complaints may resolve for a number of reasons. First, they may not be accepted for filing. Of the 1,130 closed complaints, 29% of the complaints were closed because they were not accepted for filing.

After being accepted for filing, the vast majority of complaints resolve through mediation or adjudication. Last year, of all cases closed, 50% were closed due to settlement. 6% of complaints closed after a dismissal decision without a hearing, and 2% closed after a hearing on the merits of a complaint. 13% of complaints closed because they were abandoned or withdrawn by the complainant, and for other reasons.



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Complaint resolution through mediation has consistently increased over the past decade and is by far the most preferred method of resolution by the parties. This is reflected in the number of mediations conducted at the Tribunal, which has nearly doubled since its inception. We are also noticing a continuous decrease in the number of complaints that are dismissed without a hearing as more parties opt for mediation services.

## Preliminary Decisions

The Tribunal issued a total of 413 preliminary decisions this year, which is down 5% from the last year.

One third of all preliminary decisions are on applications to dismiss a complaint without a hearing. The service standard for these applications is to issue decisions 90 days after submissions are complete 80% of the time. The Tribunal did not meet this service standard last year. The timeliness target was met only 42% of the time.

The Tribunal's service standard for issuing preliminary decisions, apart from applications to dismiss, is 30 days after submissions are complete 80% of the time. The Tribunal did not meet this service standard last year. The timeliness target was met 76% of the time.

For deferral applications, the standard was met 71% of the time. For timeliness decisions, the standard was met 79% of the time. For all other decisions, the standard was met 77% of the time. We are working vigorously to improve the timeliness of our decisions.

## Mediations

The Tribunal's settlement meeting services continue to be heavily used.

The Tribunal encourages parties to engage in settlement discussions at every stage of the complaint process. Tribunal-assisted settlement services are most often initiated before the respondent files a response to the complaint (81%), and can occur at any later stage in the progress of a complaint. Many complaints settle as a result of these efforts, and may include solutions which could not be ordered after a hearing. The Tribunal encourages parties to participate in telephone mediations when appropriate.

80% of settlements occur at an early settlement meeting (before a response to the complaint is filed) and 20% of settlements occur at a settlement meeting (at any point after a response to the complaint is filed and prior to the commencement of a hearing). 25% of settlements occur after multiple mediations. In terms of outcomes, parties were able to resolve their disputes in 82% of all cases in which the Tribunal provided assistance. In addition, some cases settle without the Tribunal's involvement.

Settlement meetings are confidential, and the Tribunal does not publish the results. In many cases, settlement meetings resolve other aspects of the parties' relationship and can have transformative impacts that are not available in the adversarial process of a hearing. Many cases result in systemic change and awards greater than those that might be obtained after a hearing.

We are committed to scheduling mediations at the earliest possible date that parties are ready and available. The Tribunal has set a service standard of 60 days (2 months) to schedule the mediation from the date the parties indicate their willingness to participate, 80% of the time. Last year, the Tribunal did not meet this timeliness target as mediations were offered an average of 105 days (3.5 months) after the parties indicated their willingness to participate. The Tribunal acknowledges this delay, and to achieve our service standard, will be increasing its complement of mediators.

Our performance expectation is that our mediators will be fair and impartial, treating all parties with respect, courtesy, and dignity. We are committed to finding appropriate ways of assessing our mediators' performance and improving our services, and doing this in a way that respects the confidentiality of our settlement services.

## Hearings

This year, the Tribunal made 14 decisions after a hearing on the merits of a complaint. Through its new case management strategy, the Tribunal works closely with the parties to ensure that the number of hearing days is proportionate to the issues in dispute. The average hearing duration was four days, with only two hearings lasting more than five days.

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

For decisions following a hearing, the Tribunal's service standard is that we will issue final decisions on the merits of a complaint within 90 days, or 180 days in cases where the hearing lasts more than 3 days, 80% of the time. Last year we exceeded the standard by issuing decisions within the set timeframes 93% of the time (only one decision was issued beyond the timeframe).

## Public Interest

### Grounds of Discrimination in Final Decisions

Complaints alleged discrimination based on disability in nine of the twelve cases that involved protected personal characteristics (75%). The Tribunal found that four of those nine cases were justified. The Tribunal dismissed the complaints in the remaining three decisions, which together addressed allegations based on race, colour, ancestry, place of origin, sex, age, and criminal conviction.

Employment continues to be the most litigated area of discrimination (57%). Three of the eight employment cases were found to be justified. Two decisions were in the area of tenancy, with neither found to be justified. Two decisions were in the area of services, with one found to be justified. Three of the decisions also dealt with complaints of retaliation contrary to s. 43 of the *Code* – none of which were found to be justified.

### Failure to Accommodate a Person's Disability

In each of the four complaints that were justified, the Tribunal found a failure to accommodate the complainant's disability.

#### ***Rankin v. B.C. (Ministry of Justice) (No. 2), 2017 BCHRT 100***

Ms. Rankin was born missing most of her left arm below the elbow. RoadSafetyBC imposed certain restrictions on her driver's licenses, and did not tell her about two of the restrictions or what she needed to do to challenge them. At the time of the hearing, only one restriction remained – that she drive with an automatic transmission. It was unreasonable for the driving examiner to recommend restrictions without telling Ms. Rankin he was doing so and what options she had to remove the restrictions. This resulted in a failure to accommodate to the point of undue hardship. The Tribunal ordered RoadSafetyBC to implement a training program for its employees and driving examiners, including that they must assess medical fitness to drive for candidates with disabilities on an individualized assessment of ability, and must tell the candidate if restrictions are recommended or imposed and how to have the restrictions removed. The Tribunal also made an order for wage loss and expenses, and ordered \$10,000 for injury to dignity, feelings, and self-respect.

#### ***Gebresadik v. Black Top Cabs, 2017 BCHRT 278***

Mr. Gebresadik was a taxi driver. He suffered injuries that meant he was not to lift, push or pull anything over ten pounds and, as a result, could not help passengers with wheelchairs. The taxi company said that, as a van driver, he had to pick-up customers using wheelchairs. It did not try to accommodate Mr. Gebresadik so as to avoid the adverse impact on him. The Tribunal ordered the taxi company to institute and distribute a human rights policy and process, including respecting the duty to reasonably accommodate drivers with disabilities. The Tribunal also made an order for wage loss and expenses, and ordered \$15,000 for injury to dignity, feelings, and self-respect.

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## ***Haftbaradaran v. Saturna Beach Estates, 2017 BCHRT 184; 2017 BCHRT 271***

Mr. Haftbaradaran was injured while working and, as a result, could not carry out daily activities without significant pain. He could not carry out his work duties or even meet with his employer. His employer terminated his employment as a result. The employer did not provide any accommodation to Mr. Haftbaradaran and did not prove that it would have experienced undue hardship had it accommodated his disability. The Tribunal did not award wage loss as Mr. Haftbaradaran was not able to work after the injury. It awarded \$15,000 for injury to dignity, feelings, and self-respect.

## ***Wells v. Langley Senior Resources Society, 2018 BCHRT 59***

Ms. Wells was a target of bullying and harassment at work, which led to a lengthy medical leave. Immediately after she returned to work, her employer terminated her employment, in part because of concerns about Ms. Wells' known or perceived fragile mental state. Because Ms. Wells' mental disability was a factor in the termination, and the employer did not seek to justify that fact, the termination was discriminatory. The Tribunal awarded \$30,000 for injury to dignity, feelings and self-respect. Wage loss is yet to be determined.

## **Retaliation**

The Tribunal dismissed the three complaints alleging a contravention of s. 43 of the *Code*.

## ***Birchall v. BCS 61 Strata Corporation and another, 2018 BCHRT 29***

Ms. Birchall alleged that, a few days after she filed a complaint against her strata corporation, another strata owner berated her, accused her of faking a disability, and reported her to the police. Ms. Birchall alleged that the conduct was intimidation.

Section 43 is meant to protect people in connection with human rights allegations, and is vital to making the *Code's* protections meaningful. Section 43 prohibits specific forms of adverse treatment, in particular, prejudicial conduct with serious effects. Intimidation captures conduct with the potential to create consequences that are at least somewhat analogous to the consequences that flow from being evicted, discharged, disciplined, or otherwise treated in the manner identified in s. 43. In particular:

... intimidation in s. 43 captures conduct which generates a fear or sense of powerlessness, and carries the potential to deter the complainant or those who assist them from pursuing allegations of discrimination.

What amounts to retaliation will depend on the circumstances of each case and is assessed from the perspective of a reasonable complainant. Further:

That perspective must take into account the full context of the interaction, including, for example, the power dynamic between the parties, whether the parties are in an ongoing relationship, the nature and history of that relationship, any particular vulnerabilities faced by the complainant, the

relationship of the threat to those vulnerabilities, and the time period over which the conduct occurred.

Ms. Birchall's subjective experience of intimidation was not, alone, enough to establish retaliation. There was no power differential between the parties. The confrontation occurred when Ms. Birchall went door-to-door, distributing a notice, which the Strata Council had told owners not to do. Both parties were active participants in the confrontation. The other owner's comments about Ms. Birchall's disability were rude, and generally inconsistent with a society of mutual respect, but they were not egregious. The confrontation also occurred in the context of a poor relationship between Ms. Birchall and some of the other owners. Filing the human rights complaint may have aggravated the poor relationship, but increased hostility is not alone enough to violate s. 43. This was an isolated incident, which left both parties shaken, but ended quickly. In all of the circumstances, a reasonable complainant would not perceive the conduct as intimidation.

## ***Wells v. Langley Senior Resources Society, 2018 BCHRT 59***

The respondent society did not retaliate against Ms. Wells when it announced at an annual general meeting that her employment had been terminated and that she had filed a WorkSafeBC claim. The statement, which was factual, could not reasonably be perceived to constitute the kind of adverse treatment listed in s. 43; further, there was not a sufficient connection between the conduct and Ms. Wells' involvement in the complaint.

The society also did not retaliate by its conduct in defending against Ms. Wells' complaint, including stating that it would make sure she would receive nothing as she was ungrateful in launching her complaint. A respondent has a right to defend its interests in the context of a human rights complaint. While there may be a threshold at which a rigorous defence could amount to retaliation, that threshold was not crossed in this case. The conduct did not rise to the level of intimidation as discussed in *Birchall*.

## ***Gellatly v. B.C. (Ministry of Justice), 2017 BCHRT 129***

Mr. Gellatly alleged that the Ministry retaliated against him because of a prior complaint when it improperly handled his privileged correspondence, denied him access to policy documents and the library, and denied him telephone access to his lawyer and to the Tribunal while he was incarcerated at a pre-trial centre. Mr. Gellatly was denied rights and benefits available to inmates under the applicable policies. It was understandable that he thought that the centre was targeting mail about his human rights complaints. However, the centre was in a state of flux and confusion about whether correspondence from the Tribunal and Legal Services Branch was privileged and it was this confusion that resulted in the inconsistent treatment of Mr. Gellatly's mail. Similarly, the denial of access to a redacted policy resulted from a correctional supervisor's misunderstanding and lack of knowledge. The denial of access to the library resulted from a Deputy Warden's carelessness. Finally, while there was no reasonable explanation for the denial of phone access, Mr. Gellatly had not proved that the correctional supervisor who denied access retaliated.



## Operation of an Academic Promotion and Tenure Process

### *McCue v. The University of British Columbia (No. 4), 2018 BCHRT 45*

Ms. McCue, a hereditary chief of the Ned'u'ten, alleged that UBC discriminated against her based on her race, ancestry, and sex when it denied her promotion and tenure and certain benefits. Ms. McCue did not challenge UBC's standards for promotion and tenure, which require, within a set time, a record of material to enable an assessment of teaching, scholarly activity, and service. Rather Ms. McCue challenged UBC's application of the standards in her circumstances. There was a clear connection between Ms. McCue's race, colour, ancestry, and place of origin and her work at UBC. Her choice to disseminate her knowledge through oral presentation was driven by her Indigeneity. However, Ms. McCue's Indigeneity and sex were not factors in UBC's decisions, which were based on the insufficient record about Ms. McCue's oral publications that prevented them from being evaluated for quality and significance. The lack of record did not derive from Ms. McCue's choice to publish orally. While racism can operate systemically, there was no evidence of systemic discrimination operating in UBC's assessment of applications for promotion and tenure in the Law Faculty.

## Judicial Reviews and Appeals

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

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

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

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

Also this year, the BC Supreme Court issued six judgments on judicial review applications regarding Tribunal decisions; the BC Court of Appeal issued three judgments; and the Supreme Court of Canada issued one judgment. In all but one judgment from the BC Supreme Court, the court upheld the Tribunal's decision.

## BC Supreme Court Judgments

Two of the BC Supreme Court judgments this year reviewed decisions made after a hearing on the merits of a complaint. In both, the Tribunal had dismissed the complaint, and the court upheld those results.

In *C.S. v. British Columbia (Human Rights Tribunal)*, 2017 BCSC 1268, the court reviewed a decision in which the Tribunal found that the complainant did not establish that her age was a factor in a decision not to hire her. The court made the following findings:

- Evidence that was not admitted before the Tribunal may only be admitted in exceptional circumstances. The court declined to admit new evidence.
- A high degree of procedural fairness is warranted in the Tribunal's hearings. In this case, the Tribunal agreed to end hearing days at 1:30 pm to accommodate the complainant's disability, but the hearing ran longer on several days. While not ideal, this did not amount to a breach of procedural fairness, because the Tribunal did not deny the complainant a fair hearing.
- There was no reasonable apprehension of bias on the part of the Tribunal Member.
- The Tribunal's decision made in a disclosure application that certain documents were not arguably relevant was correct.
- The Tribunal's rulings regarding the admissibility of evidence were not patently unreasonable.
- The Tribunal's decision that the complainant's age was not a factor in the respondent's decision not to hire her was supported by the evidence and, therefore, not unreasonable.
- The Tribunal's orders of costs against the complainant were not patently unreasonable.

An appeal is scheduled to be heard.

In *Gichuru v. Pallai*, 2017 BCSC 1083, the court upheld a Tribunal decision that the complainant did not establish that the respondent retaliated against him for filing a complaint when it evicted him from his tenancy. An appeal was dismissed, as discussed below under BC Court of Appeal judgments.

The other BC Supreme Court judgments involved review of preliminary discretionary decisions:

- In *Hanlon v. North Vancouver (City)*, 2017 BCSC 1607, the court upheld a decision dismissing a complaint because it did not allege a timely arguable contravention of the *Human Rights Code*.
- In *Gardezi v. Positive Living Society of British Columbia*, 2017 BCSC 1883, the court upheld a decision refusing to accept a complaint for filing after the six-month time limit.
- In *Murphy v. Vancouver Island Health Authority*, 2017 BCSC 2255, the court upheld a decision dismissing a complaint because it had no reasonable prospect of success.
- In *Duncan v. Retail Wholesale Union Pension Plan*, 2017 BCSC 2375, the court remitted for reconsideration a decision that a pension plan was bona fide and therefore exempted under s. 13(3)(b) of the *Code*. The Tribunal applied the correct test for determining if a pension plan is bona

fide, but the court found that the Tribunal erred in not considering Charter values, in particular in relation to the right to be free of marital status discrimination, when it applied that test.

## BC Court of Appeal

In *Francescutti v. Vancouver (City)*, 2017 BCCA 242, the court restored the Tribunal's decision dismissing a complaint. The Tribunal found that there was no reasonable prospect that the complainant would prove a nexus between his mental disability and the termination of his employment, as the medical evidence filed did not link his mental disability to the conduct for which his employment was terminated. The court confirmed that, on applications under s. 27(1)(c) of the *Code*, the Tribunal assesses the evidence presented by both parties, and is entitled to weigh credibility. The court said that the matter must go to a hearing where there are foundational or key issues of credibility – whether there are such issues is a matter for the Tribunal to determine on its assessment of the evidence. The court is not entitled to reweigh the evidence. The issue for the court is whether the decision is patently unreasonable.

In *McCreath v. Victoria Taxi (1987) Ltd.*, 2017 BCCA 342, the court upheld the Tribunal's finding that there was no discrimination when a taxi driver refused to take Mr. McCreath's group because the driver had allergies and Mr. McCreath was travelling with a guide dog. The court said that the guarantees in the *Guide Animal Act* did not determine whether there was discrimination under the *Code*. The court agreed that the Tribunal was required to consider the taxi company's obligations to its drivers with disabilities. The taxi company reasonably accommodated drivers with allergies by exempting them from accepting trips with animals, and reasonably accommodated passengers travelling with a guide animal by sending a driver without allergies when told that an animal was accompanying a passenger.

In *Gichuru v. Pallai*, 2018 BCCA 78, the court upheld the Tribunal's finding that the respondent did not retaliate against the complainant when he evicted him from his tenancy. The court clarified the test for retaliation under s. 43 of the *Code*. In light of the Court of Appeal's decision and 2015 amendment to s. 43, a complainant must prove the following on a balance of probabilities:

1. The respondent was aware that the complainant made or might make a complaint; was named or might be named in a complaint; gave evidence or might give evidence in a complaint; or otherwise assisted or might otherwise assist in a complaint;
2. The respondent evicted, discharged, suspended, expelled, intimidated, coerced, imposed a penalty on, denied a right or benefit to, or otherwise adversely treated the complainant.
3. There is a sufficient connection between the impugned conduct and the complainant's involvement in a complaint or possible complaint. This connection may be established by proving that the respondent intended to retaliate, or may be inferred where the respondent can reasonably have been perceived to have engaged in that conduct in retaliation, with the element of reasonable perception being assessed from the point of view of a reasonable complainant, apprised of the facts, at the time of the impugned conduct.

## Supreme Court of Canada

The Supreme Court of Canada allowed the Tribunal's appeal, restoring its decision in *Sheikhzadeh-Mashgoul v. Clemas Contracting and another*, 2015 BCHRT 17.

In *British Columbia Human Rights Tribunal v. Schrenk*, 2017 SCC 62, the court held that discriminatory harassment by a co-worker may fall within the scope of the prohibition against discrimination "regarding employment" under s. 13(1)(b) of the *Code*. Section 13(1)(b) prohibits discriminatory conduct that targets employees so long as that conduct has a sufficient nexus between the discrimination and the employment context. If there is such a nexus, then the complainant can seek a remedy against the individual as well as the employer. The majority said:

In determining whether discriminatory conduct has such a sufficient nexus, the Tribunal must conduct a contextual analysis that considers all relevant circumstances. Factors which may inform this analysis include: (1) whether the respondent was integral to the complainant's workplace; (2) whether the impugned conduct occurred in the complainant's workplace; and (3) whether the complainant's work performance or work environment was negatively affected. These factors are not exhaustive and their relative importance will depend on the circumstances. ...

The majority of the court rejected the view that the only power imbalance in the workplace is that between an employer and an employee:

... economics is only one axis along which power is exercised between individuals. Men can exercise gendered power over women, and white people can exercise racialized power over people of colour. The exploitation of identity hierarchies to perpetrate discrimination against marginalized groups can be just as harmful to an employee as economic subordination. Indeed, the statutory purposes listed in the *Code* expressly extend beyond removing barriers to "economic" participation in society and include removing "social, political and cultural" barriers as well (s. 3(a)).

The court identified the "unique vulnerability" of the employment context:

Whether a server is harassed by the restaurant owner or the bar manager, by a co-worker, or by a regular and valued patron, the server is nonetheless being harassed in a situation from which there is no escape by simply walking further along the street.

The court concluded that the complaint in this case came within the ambit of s. 13(1)(b). The individual respondent was an integral and unavoidable part of the complainant's work environment. The complaint alleged that he denigrated the complainant based on religion, place of origin, and sexual orientation, and that his discriminatory behaviour had a detrimental impact on the workplace because it forced the complainant to contend with repeated affronts to his dignity.

## Special Programs

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

The Tribunal's policy and a list of approved special programs are posted on its website. In the last year, the Tribunal approved 12 new special programs and 2 renewals:

- **BC Centre for Disease and Control:** Hiring restricted to persons of Aboriginal ancestry in the Chee Mamuk Aboriginal Program.
- **Legal Services Society:** Preferential hiring to persons of Aboriginal background for all Aboriginal Community Legal Workers throughout BC.
- **Legal Services Society:** Preferential hiring to persons of Indigenous background for the Coordinator, Indigenous Services.
- **Legal Services Society:** Hiring restricted to candidates of Indigenous ancestry for the position of Vice President, Indigenous Services.
- **North Island College:** Priority admission to 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.
- **Office of the Representative for Children and Youth:** Hiring restricted within the Indigenous Strategies and Partnership Team to Indigenous applicants.
- **Office of the Representative for Children and Youth:** Hiring restricted to Indigenous applicants for most positions until 20% of staff are Indigenous.
- **RainCity Housing and Support Society:** Hiring and tenancy limited at Budzey and Vivian Transitional Housing to women, transgender and gender diverse people.
- **School District 91 (Nechako Lakes):** Hiring restricted for 25 positions in all staffing areas to candidates of First Nations ancestry.
- **Thompson Rivers University:** Hiring restricted to female applicants in the next tenure track professor position in Computing Sciences.
- **Seyem' Qwantlen Business Group:** Preferential hiring to persons of Aboriginal ancestry in all jobs.
- **Vancouver Island University:** Preferential hiring to persons of Aboriginal ancestry for the positions of Education Navigators.

# BCHRT ANNUAL REPORT 2017/2018

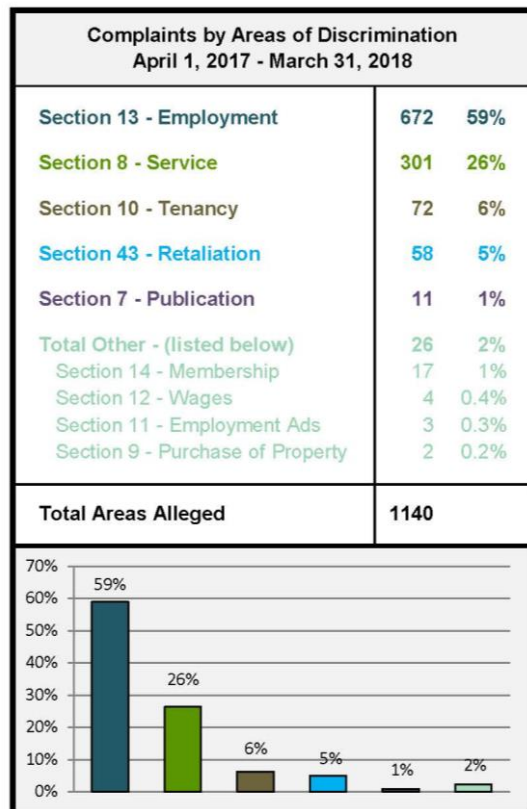
## Representation Before the Tribunal in Final Decisions

The Tribunal issued 14 final decisions. In 29% of those decisions, a complainant had a lawyer which is consistent with prior years (median average of 30% over the past three years). By contrast, respondents this year had a lawyer in 93% of the decisions. This is higher than previous years (median average of 73% over the past three years).

In past annual reports, the Tribunal has noted a correlation between legal representation and outcomes. Given the small number of decisions, the statistics are becoming less helpful. The Tribunal dismissed the complaint in three of the four cases where both parties were represented by counsel. This year, self-represented complainants obtained more favorable outcomes than those with legal representation. Complainants succeeded in 25% of the cases with legal representation compared to 29% of the cases without legal representation.

## Complaints by Areas and Grounds of Discrimination

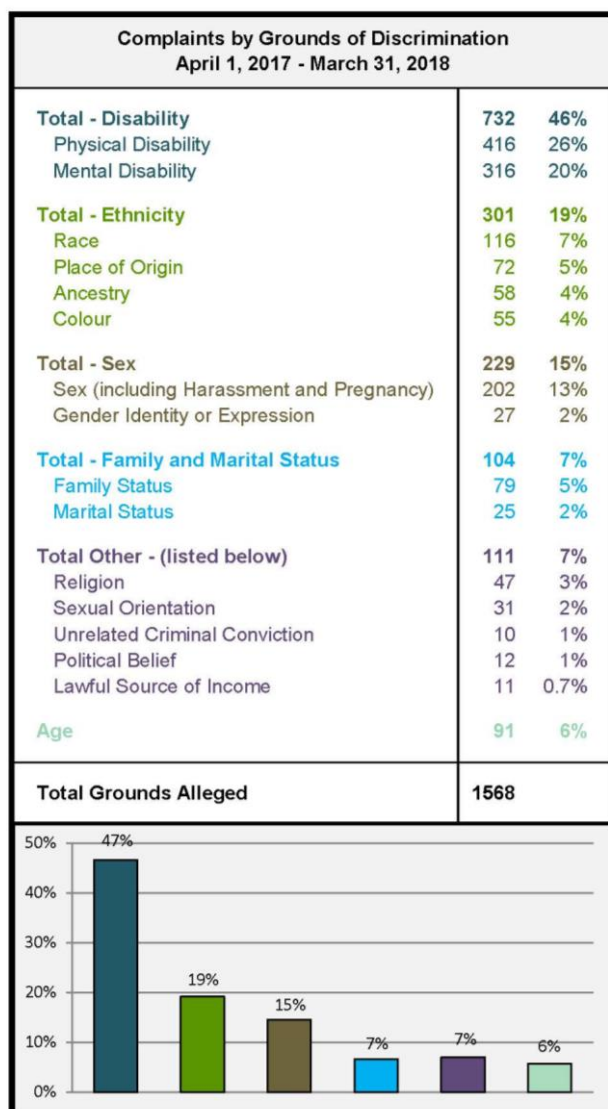
The *Code* prohibits discrimination in the areas of employment, service, publication, tenancy, membership in unions and associations, employment advertisements, wages and purchase of property. It also prohibits retaliation against a person who has made a complaint under the *Code*.



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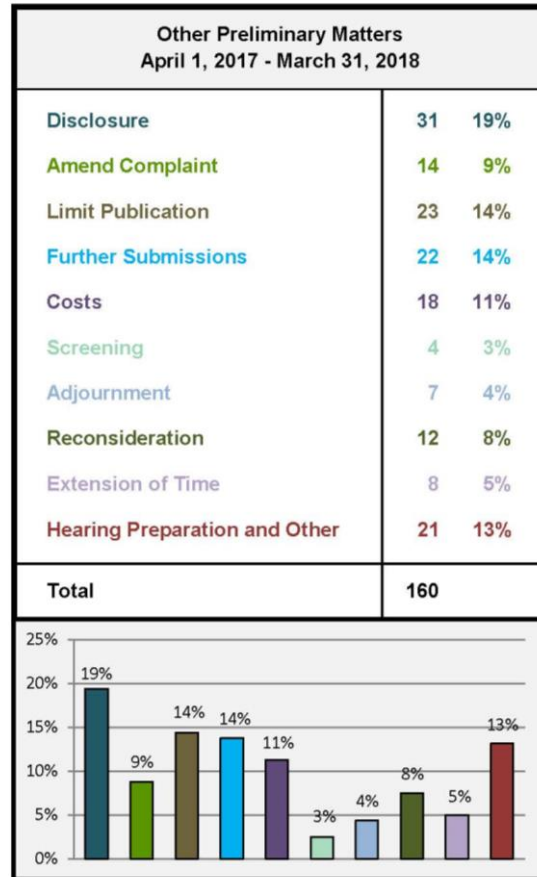
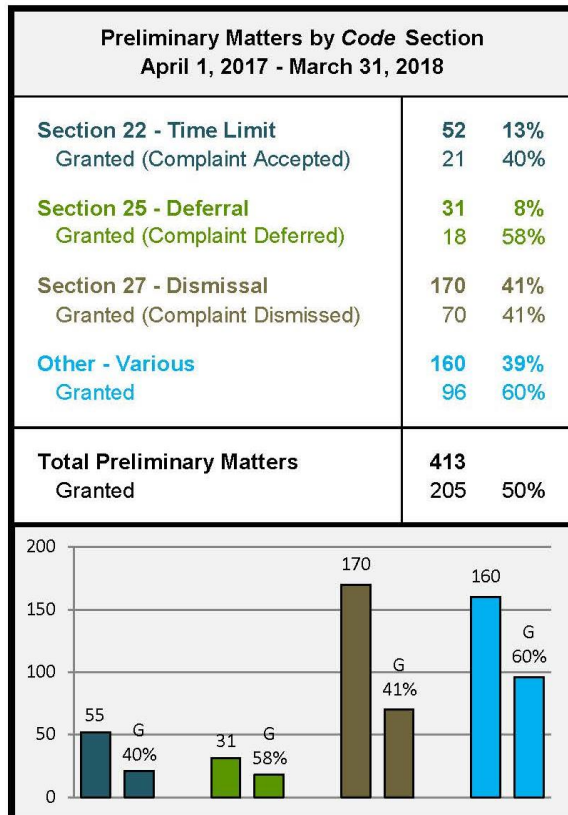
There are 16 prohibited grounds of discrimination: physical disability, mental disability, sex (including sexual harassment and pregnancy), race, place of origin, colour, ancestry, age (19 and over), family status, marital status, religion, sexual orientation, gender identity and expression, political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

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



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## Decision Outcomes





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## Financial Disclosure

I am pleased to present a balanced budget for our fiscal year 2017-2018.

### Tribunal Operating Costs

DESCRIPTION	EXPENDITURES	DELEGATED BUDGET	VARIANCE
Salaries	2,217,299	2,193,000	(24,299)
Employee Benefits	525,674	521,000	(4,674)
Fees for Temporary Members	33,551	16,000	(17,551)
Travel*	21,891	35,000	13,109
Professional Services	127,789	160,000	32,211
Information Services	1,689	0	(1,689)
Office and Business Expenses	59,692	71,000	11,308
Statutory Publication	0	1,000	1,000
Other Expenses	9,576	7,000	(2,576)
<b>TOTAL COST</b>	<b>2,997,161</b>	<b>3,004,000</b>	<b>6,839</b>
(Recoveries)**	(105,900)		(105,900)
<b>TOTAL ADJUSTED COST</b>	<b>2,891,261</b>	<b>3,004,000</b>	<b>112,739</b>

#### \*Travel

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

#### \*\*Recoveries

Every June, the Tribunal receives a budget allocation which tells the Tribunal how much money it has to spend on operations for the fiscal year, which runs from April 1<sup>st</sup> to March 31<sup>st</sup>. The Tribunal ran a balanced budget based on this budget delegation.

At the fiscal year end, \$105,900 of “recoveries within government” was transferred to the Tribunal’s budget in the areas of “salary and employee benefits”. This transfer was in relation to the Judicial Compensation Commission, Crown Council Association, and Economic Stability Dividend. This surplus (variance) cannot be used nor carried forward into another fiscal year.

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## Organization Chart

