



BRITISH COLUMBIA
HUMAN RIGHTS TRIBUNAL

2021/2022 ANNUAL REPORT

Covering the period April 1, 2021 through to March 31, 2022



The Tribunal's office is located on traditional unceded territories of the Coast Salish peoples, including the territories of the x^wməθk^wəyəm (Musqueam), Skxwú7mesh (Squamish), and səliłwəta7+ (Tsleil-Waututh) Nations. The British Columbia Human Rights Tribunal gratefully acknowledges the traditional territories of the many diverse indigenous peoples in the geographic area that we serve.



Message from the Chair

I am pleased to present the Annual Report for the fiscal year April 1, 2021 to March 31, 2022 on behalf of the Human Rights Tribunal Team.

The people of British Columbia faced extraordinary challenges over this period, as reflected in the stark increase in the volume of complaints filed at the British Columbia Human Rights Tribunal during this period.

In the one-year covered by this report, the number of new complaints filed at the Tribunal was nearly triple historic averages, with people filing 3,192 new complaints. Of these, one third related to public health measures arising from the Covid-19 pandemic. This increase suggests that, among other things, the Government's continuing efforts to advance human rights in the province are working to increase awareness of the Tribunal and empower people who experience discrimination to seek redress. Those efforts include passing the *Accessibility Act*; passing the *Declaration on the Rights of Indigenous Peoples* [Declaration Act] and releasing the Draft Action Plan for its implementation; ongoing efforts related to anti-racism; and amending the *Human Rights Code* [Code] to add Indigenous Identity as a new protected ground. These good, important efforts are undermined when the Human Rights Tribunal cannot provide timely recourse, highlighting the importance of ensuring that such efforts include a Human Rights Tribunal that is resourced proportionately to meet its service demands. Without proportionate resourcing, the Tribunal is limited in its ability to service this new complaint volume in a timely way. As a result, at the end of the 2021-22 fiscal year, delays at all stages of the Tribunal's processes are historically high.

The Tribunal entered the fiscal year under the leadership of an Acting Chair and my appointment commenced August 1, 2021. Over the fiscal period, the Tribunal has met the challenges posed by spiking case volume through transparency, strengthening stakeholder relationships, assessing and communicating its resourcing needs to Government, and – critically – working to improve the ways it delivers its services. With the twin aims of improving accessibility and efficiency, the Tribunal undertook a comprehensive internal review and held preliminary consultations. We are grateful to everyone who provided input during that process. The Tribunal then began acting on what it learned, developing and implementing pilot projects to simplify and streamline the way cases move through its process, together with an internal restructuring to support the organization's operations and ensure sustainable, efficient, proportionate use of resources. For the onslaught of complaints related to pandemic public health measures, the Tribunal established a dedicated case stream, and initiated a backlog strategy. The Tribunal has also continued to make progress in implementing the 18 recommendations made by Ardith Walpetko We'dalx Walkem, QC (now Madam Justice Walkem) in her 2019 report, *Expanding our Vision: Cultural Equality and Indigenous Peoples Human Rights*. We are deeply grateful to the members of our Expanding our Vision Committee, who generously give their time to support the Tribunal's efforts.

It is both a challenge and a privilege to have the opportunity to Chair the Human Rights Tribunal as we navigate this unprecedented time. I must recognize the incredible dedication and hard work of the Tribunal's staff, Members, and mediators, who, despite the challenges of spiking caseloads and growing delays, have worked to provide continuous service throughout the pandemic while balancing the challenges of living through these times. I also acknowledge those parties who are having to wait for extended periods for their matters to be resolved. We appreciate how difficult this is and continue to work as hard as we can to be available, responsive, and as efficient as possible in resolving your cases amidst the increased case volume. Finally, I am grateful to our Attorney General during the period, who has been generous with his time to understand the Tribunal's challenges, efforts, and needs. I am hopeful that in the next fiscal year we will see improvements as our Government considers the urgent need to equip the Tribunal with the resources necessary to provide people with meaningful justice under the *Code*.



Emily Ohler, Chair



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I. Introduction to the Human Rights Tribunal: Mandate and Process

For people experiencing discrimination in British Columbia, the Human Rights Tribunal is the main forum for recourse. Its mandate is the just and timely resolution of discrimination complaints under the *British Columbia Human Rights Code*. The *Code* is quasi-constitutional legislation. The protections it affords are fundamental to our society.

Unlike in other provinces where a commission initially investigates and refers complaints to the Tribunal, the British Columbia Tribunal is a direct-access model, where people can file complaints directly with the Tribunal when they believe they have experienced discrimination. People who believe they have experienced discrimination can file a complaint with the Tribunal against the person or organization they believe discriminated against them. The process through which the Tribunal moves a complaint from filing to resolution is governed by the *Code* and by the Tribunal's *Rules of Practice and Procedure [Rules]*.

The first step once a complaint is filed is screening. The Tribunal screens complaints to determine whether it has jurisdiction over the matter, and whether the facts alleged could, if proven, constitute discrimination under the *Code*. Complaints that proceed past screening will then be sent to the Respondent, notifying them of the complaint against them and providing an opportunity to file a response to the complaint. From there, the process focuses on moving the parties toward a resolution of the dispute, either through mediation, or by making a decision after reviewing the evidence of all parties. Where the Tribunal determines that discrimination has occurred, it can order the person or organization that discriminated to pay compensation, adopt policies, undergo training, or take specific steps to remedy the discrimination, for example.

Of all complaints filed annually, approximately 75% proceed past screening. This year, however, that percentage decreased to 60% due to a high number of pandemic-related complaints being dismissed at the screening stage. For cases that proceed past screening, the Tribunal then offers mediation services. Not all parties choose to use those services. This year, the Tribunal held 433 mediations. Of these, the resolution rate was 53%.

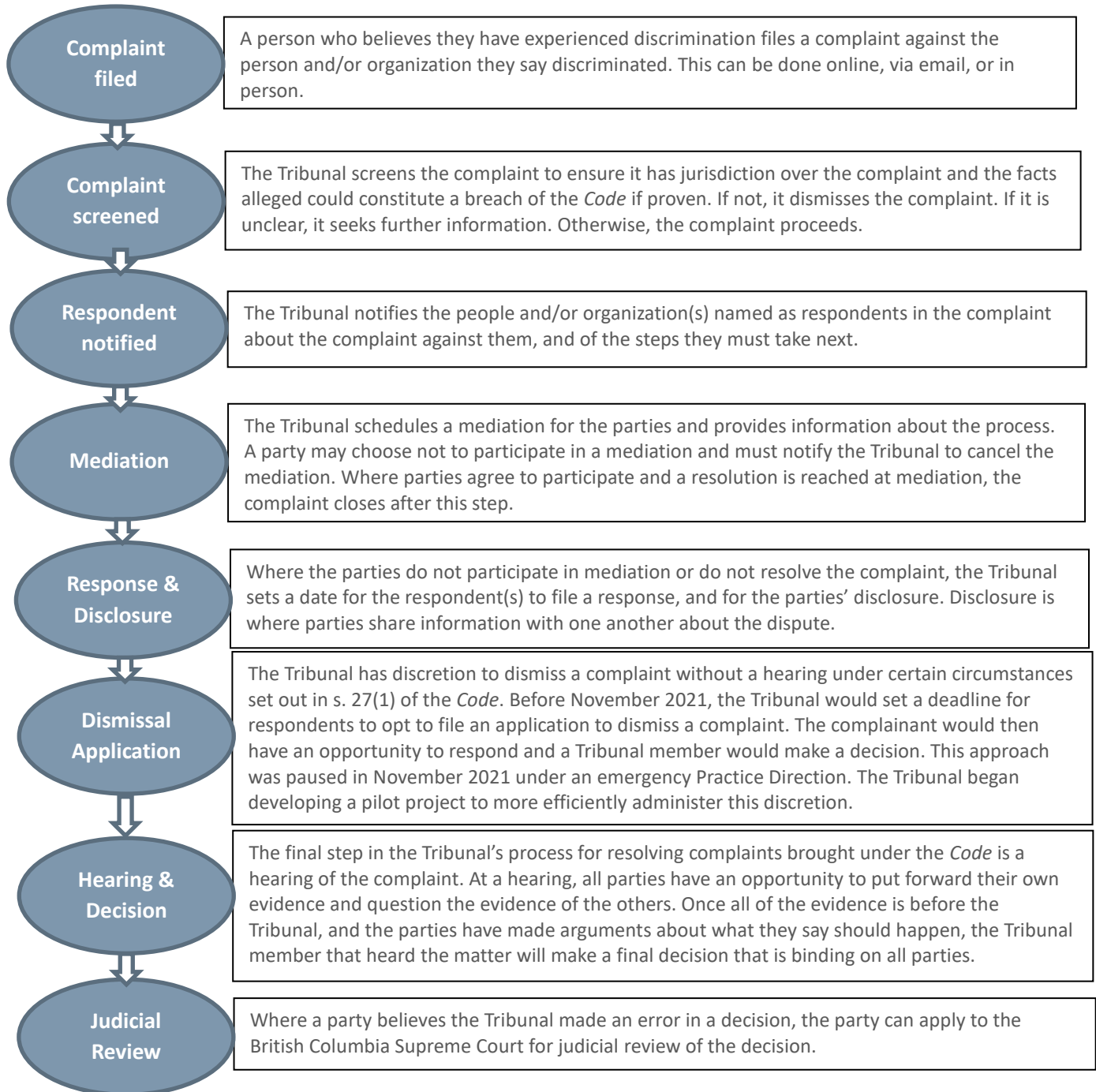
Cases that do not resolve at mediation and continue through the process are assigned to Case Managers to guide through the system and to Tribunal Members to make preliminary decisions, preside over hearings, and make final decisions after a hearing. Complex or high-conflict cases may require ongoing management by Members. This may take the form of regular telephone case conferences and/or issuing more detailed directions to parties as they move through the steps of the process.

A case leaves the Tribunal's system and is closed when parties withdraw it; parties resolve it (independently or through Tribunal mediation services); a Member dismisses it without a hearing on a summary process under s. 27 of the *Code*; or a Member hears it at a hearing and issues a final decision. Tribunal decisions are subject to applications for judicial review at the Supreme Court of British Columbia.



In total, roughly 28% of all cases closed by the Tribunal over the fiscal year closed through settlement, including where parties settled cases on their own. The overall number of cases closed this year increased significantly from last year – from 1,150 to 1,461 – due in part to the pandemic-related complaints referenced above which resulted in a higher percentage dismissed at screening.

TYPICAL PROCESS FOR A COMPLAINT AT THE HUMAN RIGHTS TRIBUNAL IN 2021/22





II. Highlights & Challenges from the fiscal year 2021/22

NEW LOGO

In April 2021, the Tribunal engaged Alice Joe, a graphic designer and educator located on Vancouver Island, to work with us to design a new logo. Alice explained the meaning of the logo as follows:

The central form of the logo is a stylized depiction of the Oceanspray flower (*Holodiscus discolor*). For many First Nations, Oceanspray is valued for its straight hard stems and is called



- qálxay' (digging-stick plant) in the Skwxwú7mesh language
- qáthəłp (fish-spear prong plant) in the Hul'qumi'num' language of the Quw'utsun, Stz'uminus and Snuneymuxw
- pátsʔ-az' (digging-stick plant) in the Stl'atlimx language. Its blooming in early summer was a sign for the:
 - WSÁNEC' (Saanich) people that it was time to start reefnet fishing for sockeye, and, for the
 - Tl'a'amin, it indicated the time to harvest butter clams.

The gathering of blossoms conveys the ideas of community and harmonious relations. The Tribunal's commitment to accessibility, fairness and equality is symbolized by the sturdiness of the stems and its usage.

The Tribunal adopted the logo on its website, forms, and communications in August 2021.

INDIGENOUS IDENTITY AS A NEW GROUND OF DISCRIMINATION

As discussed in Part III of this Report, on November 25, 2021, the Government amended the *Human Rights Code* to add [Indigenous identity](#) as a distinct ground of discrimination. The 2020 Report, *Indigenous Peoples: Expanding our Vision: Cultural Equality and Indigenous Peoples Human Rights* by Ardith Walpetko We'dalx Walkem, QC (now Madam Justice Walkem) had recommended advocating for this amendment and the Tribunal, among others, took on that work. Following the amendment, the Tribunal amended its paper form and online forms to include this new ground of discrimination.

INITIATIVES RELATED TO SPIKING CASE VOLUME & GROWING DELAYS

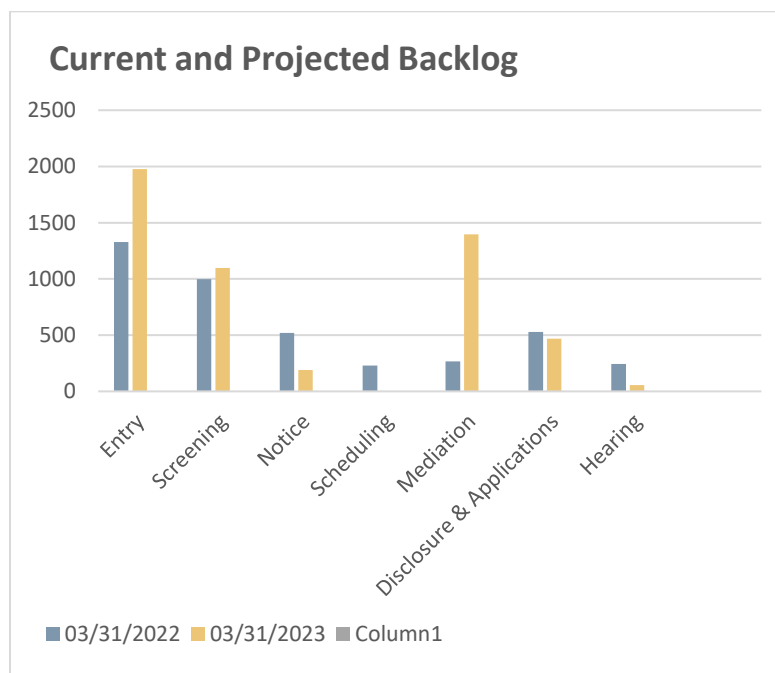
Over the past 10 years, there has been a 210% increase in the number of cases with only a 27% increase in budget, resulting in a 400% increase in active cases. The Tribunal was initially structured and funded to run approximately 1,100 cases per year. The Tribunal began the 2021/22 fiscal year with backlogs attributable to steadily growing case volumes which had increased to 2,656 in 2020/21 with the onset of the Covid-19 pandemic. The 2021/22 fiscal year set a new record with people filing 3,192 new cases with the Tribunal.

It is difficult to point to a singular driver of the rapid increase in complaint volume given the number of factors driving increased awareness of the Tribunal and empowering people to come forward. Those factors include the Government's establishment of the Office of the Human Rights Commissioner; the



pandemic; legislative amendments (the addition of gender identity and Indigenous identity to the *Code*); the Government's adoption of the Declaration Act and release of the Action Plan; the Government's ongoing public initiatives related to identifying and eliminating racism, including the adoption of new legislation; and increased public discussion and awareness of discrimination in popular culture. Regardless, the result of the volume increase relative to Tribunal resources is that delays at all stages of the Tribunal's process have continued to grow.

Backlog results when the number of cases exceeds what the Tribunal has capacity to process. As a result of the Tribunal's substantial backlog, it has not been able to meet any of its service standards. The following chart breaks down the number of cases at each stage of the Tribunal's process as of March 31, 2022, and our projections for March 31, 2023:



The Tribunal's lack of capacity to handle current caseloads has resulted in significant and growing delay. Many parties must wait over 1½ years just to be notified that a case is proceeding; over 2 years to resolve a case at early mediation; over 4 ½ years if the case is dismissed without a hearing; and 4 ½ to 7 ½ years if there is a hearing. While the Tribunal has the discretion to schedule expedited hearings based on special circumstances, this discretion is exercised cautiously because of the impact on other cases, as there are too few members to hear the cases already scheduled. It is important to note that these timelines are averages that do not take into account party-driven delay, which may arise for various reasons including deferrals, extensions, party unavailability for Tribunal-offered dates, or judicial reviews of preliminary decisions, for example.

While caseloads and, resultingly, backlogs and delays have grown at the Tribunal, resources have remained fairly static, changing marginally from 2013, with the exception of a budget lift in the 2021/22 fiscal year.



Paradoxically, as explained in Part VI of this Report, the Tribunal posted an underspend this fiscal year. This resulted from receiving a budget lift halfway through the year, which did not leave the Tribunal time to onboard the associated additional resources made possible by that lift. Notably, even had the Tribunal onboarded the additional resources made available by the lift, it would not have been able to absorb the rapid spike in volume from the last two fiscal years.

In the face of these challenges, the Tribunal initiated a number of steps toward the following goals: managing the backlog; finding and eliminating avoidable delays built into the Tribunal's process; efficiently and proportionately allocating Tribunal resources to manage increased case volume; and seeking proportionate funding to its needs. Those steps included the following:

Backlog management

The Tribunal appointed three temporary Tribunal Members dedicated to working through backlogged preliminary decisions. In the latter half of the year, the Tribunal onboarded additional temporary staff to help manage the volume of incoming communication. The Tribunal also began a procurement process to establish a roster of contract mediators to facilitate dedicating Member time to case management, decision writing, and hearings. The first intake under the Request for Proposals [RFQ] took place just after the close of the fiscal year.

Emergency pause on new applications to dismiss complaints

On November 8, 2021, the Tribunal issued a practice direction that suspended the Rule allowing respondents to file an application to dismiss a complaint under s. 27 of the *Code*. The purpose of this was twofold: to compartmentalize the backlog that had accumulated at this stage in order to be able to address it and avoid exponential growth, and to allow for an orderly transition to a new approach that the Tribunal will pilot in the 2022-23 fiscal year to administering its discretion under s. 27 feasibly and sustainably.

Deadline for filing a response to a complaint

On March 24, 2022, the Tribunal issued a practice direction that set an earlier deadline for filing of the Complaint Response to 8 weeks after the respondent receives notice of the complaint proceeding. Before this, after a respondent was given notice of a complaint, the whole process would stop pending a mediation. As mediations sometimes are not available for months in the context of backlog and delay, this built further delay into the process. The purpose of the earlier filing is to keep the process moving forward and to provide the parties with an earlier opportunity to explore resolution and notify the parties of the issues in the case.

Mediation services where parties have legal representation

On March 24, 2022, the Tribunal issued a practice direction that required legal representatives to make reasonable efforts to resolve the complaint before proceeding with a mediation. The purpose of this practice direction is to require legal representatives to use their skill and expertise to negotiate a resolution rather than relying on the use of the Tribunal's limited resources.

Hearing dates

The Tribunal ended the 2021/22 fiscal year with 152 complaints awaiting to be scheduled for hearing, after having scheduled 65 and run 25 hearings in that fiscal year. Some hearings adjourned because parties



resolved their dispute where others adjourned to be rescheduled. In the face of spiking case volume, growing decision backlogs, and high demand for hearings, the Tribunal established a process for allocating appropriate hearing time that balances the needs of the particular parties with available Tribunal resources.

HIGH VOLUME OF COMPLAINTS RELATED TO THE COVID-19 PANDEMIC

The 2021-22 fiscal period continued to bring an onslaught of new cases to the Tribunal related to public-health mandates focused primarily on mask-wearing in the area of services. As mentioned earlier in this Report, complaints related to public health measures arising from Covid-19 accounted for roughly 30% of the total new complaints filed with the Tribunal in the 2021-22 fiscal year, for a total of 888.

Public enquiries about pandemic-related public-health measures also overwhelmed the Tribunal's telephone lines and inbox.

The Tribunal took various steps to manage these challenges. It updated its telephone tree, onboarded temporary additional front-end resources, and embarked on a public information campaign to inform the public through media engagement and website updates that the *Code* does not protect people who object to mask rules because of their personal beliefs. Rather, the *Code* only protects people who cannot wear a mask because of a protected characteristic, like disability, and where that is the case, such people have a right to "reasonable accommodation". Employers and service providers are allowed to make rules requiring masks.

Of the 888 pandemic-related complaints received this year, 425 related to mask wearing in the area of services. Internal measures were initiated to manage the high-volume of these complaints. From November 1, 2021, to April 30, 2022, the Tribunal deployed an experienced former Tribunal Member on a 6-month term paired with a dedicated Case Manager to address Covid-19 complaints, with a focus on mask-wearing complaints. The Tribunal screened 106 such cases and dismissed 94 of them. At year end, there were 306 mask wearing cases awaiting screening.

On March 24, 2022, the Tribunal issued a practice direction clarifying the information required from a complainant for the Tribunal to proceed with mask-wearing cases and notifying the public that it would not offer further opportunities to provide information not provided in the first instance.



III. Expanding our Vision: Improving Services for Indigenous Parties

In January 2020, the Tribunal released the report of Ardith Walpetko We'dalx Walkem, QC (now Justice Walkem), which found that the Tribunal was not meeting the needs of Indigenous Peoples: [Expanding our Vision: Cultural Equality and Indigenous Peoples Human Rights \[EOV\]](#). The EOV Report made 18 recommendations that the Tribunal has since been working to implement. The Tribunal has continued to work with its existing resources to improve the way it serves Indigenous people throughout the 2021-22 fiscal year.

May 2021 brought news of the discovery of 215 children in a mass grave at the Kamloops residential “school”. This discovery, as a result of the efforts of the Tk'emlúps te Secwépemc, and others across Canada, underscore the serious and unique human rights violations that Indigenous people face in Canada. The Tribunal recognizes that it has a role to play in addressing such human rights violations and is grateful to all of those who are supporting our work toward strengthening our structure and systems to be able to do so.

NUMBERS OF COMPLAINTS FILED BY INDIGENOUS PEOPLE

The Tribunal began collecting data relating to the number of complaints filed by Indigenous people in June 2020. Last year, we reported that roughly 7% of all Tribunal complaints filed between June 2020 and March 2021 were filed by people who self-identified as Indigenous. In the period between March 2021 until March 2022, that number has increased to roughly 11%.

EOV COMMITTEE

The Tribunal has been supported in its work to implement the EOV report by its Expanding our Vision Committee. The Tribunal is grateful to Committee members who have so generously given of their time and acknowledges their work, expertise, and contributions.

The Tribunal's EOV Committee members over fiscal 2021/22 were:

- Patricia M. Barkaskas, Métis from Alberta. Academic Director, Indigenous Community Legal Clinic, Instructor I (Tenure Track), Peter A. Allard School of Law, The University of British Columbia (partial year)
- Jade Baxter, Union of BC Indian Chiefs Youth Representative, Nlaka'pamux Nation (partial year)
- Romona Baxter, Executive Director, Nzen'man'Child and Family Development Centre Society, Nlaka'pamux Nation (partial year)
- Cynthia Callison, Callison & Hanna Indigenous Advocate, Tahltan Nation Member
- Rosalind Campbell, Musqueam Indian Band, Councillor, Musqueam Indian Band (partial year)
- Dylan Cohen, Red River Métis (partial year)
- Devyn Cousineau, Member, Human Rights Tribunal
- Trish Garner, Executive Director, Research and Policy, Office of the Human Rights Commissioner for British Columbia



- Andrea Glickman, Policy Director, Union of BC Indian Chiefs
- Katherine Hardie, Legal counsel, Human Rights Tribunal
- Andrea Hilland, Q.C., Nuxalk lawyer and Policy counsel, Law Society of British Columbia
- Juli Holloway, Haida and Kwakwaka'wakw, Director of Communications and Engagement, First Nations Justice Council (partial year)
- Ali LaFond, Cree First Nations from Muskeg Lake Cree Nation Treaty 6. Indigenous Youth Intern, Ministry of Indigenous Relations and Reconciliation (partial year)
- Jo-Ann Nahanee, Member, Squamish Nation, and advocate for the rights of her community and next generation (partial year)
- Amber Prince, Member, Sucker Creek (Cree) Nation, Member, Human Rights Tribunal
- Lissa Dawn Smith, Vice-President, Metis Nation BC (partial year)
- Tsee'tsee'watul'wit Sharon Thira, Executive Director, Education & Engagement, Office of the Human Rights Commissioner for British Columbia

In January 2022, the Tribunal sought expressions of interest for Committee membership. In March 2022, we welcomed new Committee members:

- Laura Beaudry, Métis and Cree from the Kapawe'no First Nation, Policy Analyst with the Union of BC Indian Chiefs
- Julie Birdstone, Ktunaxa Nation, Council Member for the Aqam Band and the Governance Manager for Ktunaxa Kinbasket Child & Family Services
- Darrin Blain, First Nation lawyer, Provincial Director, Indigenous Justice Centres, First Nations Justice Council
- Jereme Brooks, Sylix Nation, Program Manager for the Child Protection Mediation Program under Mediate BC, and Adjudicator with the BC Law Society Tribunal
- Niki Lindstrom, Saulteau First Nations, Director at the First Nations Housing and Infrastructure Council
- Cassandra McGarvie (nee Campo), Squamish First Nation

EOV IMPLEMENTATION PROGRESS OVER FISCAL 2021/22

With the support of the EOV Committee, the Tribunal continues to make progress in implementing the recommendations in the EOV report. It remains committed to improving its services for Indigenous peoples.

At the same time, the Tribunal continues to face significant challenges in this task for two primary reasons. First, the number of complaints received by the Tribunal has tripled. Without the resources to reflect this volume increase, the Tribunal has been overwhelmed and unable to provide timely services, including to Indigenous parties.



Second, the Tribunal does not have all of the resources it needs to provide many of the specific kinds of services identified in the EOV Report, and by the EOV Committee, as necessary to properly serve Indigenous people.

The Tribunal's 2020/21 Annual Report highlighted that the Tribunal had submitted a specific funding request in respect of its work to implement the recommendations of the EOV Report.¹ The government did not provide a direct response to that submission but did delegate a general budget increase to the Tribunal for 2021/22. As explained later in this Report, that increase was sufficient to absorb the pre-existing operating deficit, leaving available some new additional resources from which the Tribunal will be able to implement Recommendation 9.2 to "create the position of Indigenous ... Navigators to help guide, support, and coach Indigenous Peoples through the BCHRT process, and to help them address administrative barriers". Over this fiscal year, the Tribunal developed the Indigenous Navigator position and situated it within the ongoing changes underway to improve accessibility and efficiency at the Tribunal. The Tribunal expects to onboard new staff in this position in the next fiscal year.

There is much more to be done. The Tribunal is encouraged by Action 3.9 in the government's *Declaration on the Rights of Indigenous Peoples Act Action Plan (2022-2027)*, which calls for "enhanced investments in the BC Human Rights Tribunal and new models for including Indigenous laws in complaints resolutions". The Tribunal looks forward to these much-needed investments, so that we can fully realize our mandate to provide timely, appropriate, and effective services to Indigenous peoples.

In the meantime, the Tribunal has continued the work of improving its services to Indigenous people with its existing resources, and made further progress in areas including the following:

Indigenous identity as a distinct ground of discrimination²

As recommended in the EOV Report, with the support of the Tribunal, BC Human Rights Commissioner, and Indigenous people and groups, the BC government amended the *Human Rights Code* on November 25, 2021 to add [Indigenous identity](#) as a distinct ground of discrimination.

Preliminary development of Indigenous Case Stream³

Recommendation 9 in the EOV Report is that the Tribunal "create an Indigenous specific stream within the BCHRT". The EOV Committee has continued to guide the Tribunal's work in the various areas outlined in recommendation 9, including through ongoing internal training, creating Indigenous navigator positions, modification of forms, screening of Indigenous complaints, and early Indigenous-led dispute resolution options.⁴

The Tribunal has engaged the Committee on its overall process review to ensure that it incorporates an EOV lens. It has also been working with the Committee to identify and address key questions related to

¹ BC Human Rights Tribunal Annual Report 2020/21 at page 11

² EOV Report recommendation 1.2

³ EOV Report recommendations 9

⁴ EOV Report recommendations 9.1, 9.2, 9.3 and 9.4



developing and implementing an Indigenous Case Stream, including how to situate it within broader process changes.

Screening of complaints filed by an Indigenous complainant⁵

In March 2021, following the recommendation of the EOJ Committee, the Tribunal initiated a dedicated screening process for complaints filed by people who self-identify as Indigenous. That process been implemented throughout the 2021/22 fiscal period.

In the Tribunal's regular screening process, the Registrar reviews each complaint to determine if the complaint sets out discrimination under the *Code* or could be about discrimination but needs more information. If the complaint does not set out discrimination under the *Code*, the case is referred to a case manager to draft a letter to the complainant either explaining why the complaint cannot proceed or seeking more information.

The Tribunal takes a different approach to complaints that have been filed by Indigenous people. This different approach is in response to the EOJ Report finding that the screening process presents barriers to Indigenous complaints proceeding and being heard on their merits. These barriers serve to discourage Indigenous people from filing or continuing complaints at the Tribunal.⁶

When a complaint is filed by a self-identified Indigenous person, a case manager specifically trained and dedicated to Indigenous complaints is assigned. First, that case manager reaches out the complainant to: offer information about the process, answer any questions, and provide referrals if needed. If the case manager identifies a concern about whether the complaint contains sufficient information to proceed, the complaint is referred to an Indigenous Tribunal member for guidance.

Sometimes the Tribunal needs more information before a complaint can proceed. If this is the case, the case manager or Tribunal member will write to the complainant, explain the concern, and provide an opportunity to provide more information. Further information often leads to the Tribunal accepting some or all of their complaint.

The Tribunal reviewed this process in July 2021. That review concluded that the process was having a positive impact on improving access to the Tribunal, and that it should continue.

Indigenous contact request

In June 2020, the Tribunal modified its complaint form to allow complainants to self-identify as Indigenous and request contact from a Tribunal staff person to explain the process and talk about including Indigenous protocols or ways of resolving disputes in the process. In this fiscal year, the Tribunal received 323 requests for contact from Indigenous complainants.

⁵ EOJ Report recommendation 1.5

⁶ EOJ Report recommendation 13.1



In February 2022, the Tribunal modified its response form to give Indigenous respondents the same option.

Training to develop cultural competency and safety⁷

The Tribunal continued its ongoing learning to “reduce and eliminate procedural barriers that Indigenous Peoples face in accessing BCHRT services”: Recommendation 9.1. Staff and members completed training through the government’s House of Indigenous Learning, attended a trauma-informed training workshop delivered by Karen Snowshoe and Camille Dumond, and welcomed Jo Ann Nahanee as a speaker. All staff and members also met monthly in small groups to learn about topics including UNDRIP and the Declaration, the legacies of residential schools, Indigenous Veterans’ Day, the National Day for Truth and Reconciliation, Indigenous human rights cases, and progress on the TRC’s calls to action.

Analyzing Indigenous complaints dismissed under s. 27 of the Code⁸

The EOV Report recommended that the Tribunal undertake an analysis of complaints that are “weeded out” of the system: Recommendation 13.1. To implement that recommendation, the Tribunal initiated that process resulting in a June 2021 report by Professor Bethany Hastie of the University of British Columbia, titled “*Examining the BC Human Rights Tribunal’s Gatekeeping Function: An Analysis of s. 27 Decisions of Human Rights Complaints Brought by Indigenous Complainants,*” and presented her findings and recommendations to the Tribunal. The Tribunal is working with the EOV Committee to implement those recommendations, including continuing its internal education initiatives and implementing changes to the Tribunal’s gatekeeping process.

Indigenous parties in mediation⁹

Indigenous parties may request an Indigenous mediator and Indigenous dispute resolution models. The Tribunal continued working to improve its capacity and service delivery in these areas.

Referrals to the BC Human Rights Clinic¹⁰

The Tribunal includes Human Rights Clinic [HRC] advocacy resource information in its Indigenous contact emails and telephone calls. In some cases the Tribunal will reach out to the HRC to make direct referrals where these complainants would benefit from the HRC’s assistance.

⁷ EOV Report recommendation 9.1

⁸ EOV Report recommendation 13.1

⁹ EOV Report recommendation 12.1

¹⁰ EOV Report recommendation 18.1



IV. Hearings and Final Decisions

After a hearing of a complaint on its merits, the Tribunal issues a final decision. In the 2021-22 fiscal year, the Tribunal issued 21 final decisions which is a 24% decrease in final decisions from the 2020-21 fiscal year. The average hearing duration was approximately 5 days, with three hearings lasting more than 10 days and the longest hearing lasting 30 days. Four hearings lasted 1 day.

In the 2021-22 fiscal year, complainants succeeded fully or in part in 10 of the 21 cases or 48% of the cases. This is consistent with the upwards trend of success rates in the last five years. In 2020-21, complainants succeeded fully or in part in 46% of the cases compared with 41% in 2019-20, 35% in 2018-19, and 29% in 2017-18.

GROUNDINGS AND AREAS OF DISCRIMINATION IN FINAL DECISIONS

The final decisions dealt with the following grounds of discrimination:

- Nine of the 21 complaints that went to hearing alleged discrimination based on mental disability making it the most common ground alleged. Two of the 9 complaints succeeded at hearing.
- Six of the 21 complaints alleged discrimination on the basis of physical disability which was the second most common ground alleged. Four of the 6 complaints succeeded at hearing.
- Four of the 21 complaints alleged discrimination on the basis of sex. Two of the four complaints succeeded at hearing.
- One complaint alleged discrimination on the basis of age and it was dismissed at hearing.
- One complaint alleged discrimination on the basis of gender identity and expression and it was successful at hearing.
- One complaint alleged discrimination on the basis of religion and it was dismissed at hearing.
- No cases that went to a hearing were on the grounds of race, place of origin, family status, ancestry, colour, marital status, sexual orientation, political belief, criminal conviction, or source of income.

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

- Employment continues to be the most litigated area of discrimination. These complaints represented more than half of the final decisions at 13 of 21 decisions (62%). Six of the 13 complaints in the area of employment were successful (46%), an increase from 38% in 2020-21.
- Six of the 21 decisions were in the area of services (29%) which continues to be the second most litigated area of discrimination. Two of six complaints in the area of services succeeded (33%).
- One decision was in the area of tenancy which found the complaint to be justified.
- One service and one employment decision also included complaints of retaliation contrary to s. 43 of the *Human Rights Code*. Both of them succeeded fully or in part.
- There were no decisions in the areas of discriminatory publication, purchase of property, employment advertisement, wages, or by unions and associations.



REPRESENTATION BEFORE THE TRIBUNAL IN FINAL DECISIONS

Self-Represented Complainant

The complainant appeared in all 21 hearings. In seven of the 21 hearings, the complainant was self-represented and in two of those seven (29%), the complainant was successful. In those cases, no one appeared for the respondent(s).

Agent for the Complainant

The complainant had an agent in three of the 21 hearings (14%), and of those three hearings, one of them was successful (33%).

Lawyer for the Complainant

A lawyer represented the complainant in 11 of 21 hearings (52%) and the complainant was successful in seven of those 11 cases (64%).

Self-Represented Respondent

The respondent appeared in 16 of the 21 hearings (76%). This is a significant decrease from the previous year where the respondent appeared in 92% of the hearings. Of the 16 cases in this fiscal year, the respondent was self-represented in one case and the respondent was not successful.

Agent for the Respondent

In this fiscal year, there were no agents who appeared for respondents.

Lawyer for the Respondent

In 15 of the 21 hearings (71%), the respondent had a lawyer. Of those 15 cases, the respondent was successful in having 11 of the complaints dismissed (73%). In seven of those 11 cases where the respondent had a lawyer, the complainant was either self-represented or had an agent (64%).

KEY CASES

Discrimination in a Service – Mental Disability

KW v. BC Ministry of Children and Family Development (No. 2), 2021 BCHRT 43

In this case, the Tribunal found no discrimination. KW is a mother who had her son placed in the care of her parents because the Ministry of Children and Family Development (Ministry) identified concerns about the child's safety and well-being. KW suffers from depression and anxiety. She said that during the period of the complaint process she developed post-traumatic stress disorder.

KW found her interactions with the Ministry to be very difficult and traumatic in light of her own childhood experiences. She struggled to work with Ministry social workers to meet their expectations and end their involvement in her life. The Ministry removed KW's son and had custody of him for eight months. Eventually he was returned to KW in June 2016 and the Ministry's file was closed.

KW alleged that she was discriminated against on the basis of her mental disability because the Ministry made negative assumptions about her ability to parent based on its misperception of her condition. She also alleged that the Ministry discriminated against her in respect of her claims for social assistance



benefits by failing to act in a timely way in order for her child to be recognized as a dependent and by requiring her to work on her maximum entitlement to social assistance.

The Tribunal found that the Ministry was responding to legitimate concerns about the safety and wellbeing of KW's child and did not act based on stereotype. The Tribunal found that its conduct was justified in light of the governing legislation and the overriding purpose of protecting the child.

Discrimination in Employment – Physical Disability

Singh v. Dodd's Furniture No. 2, 2021 BCHRT 85

Mr. Singh was employed with Dodd's Furniture as an Assistant Manager. While lifting a sofa, Mr. Singh injured his back and was advised by his health care providers to take time off work then return to work with light duties. When Mr. Singh sought to return, Dodd's told him that his position was no longer available because it had been filled but he could return to an Assembly Worker position at the same hours and pay. Mr. Singh refused to accept the new position and did not return to Dodd's. The Tribunal found that the offered position was a demotion and that Dodd's did not fulfill its duty to accommodate Mr. Singh. Finding Mr. Singh's complaint justified, the Tribunal ordered \$10,000 for injury to dignity. Dodd's applied for costs against Mr. Singh on the basis that he attempted to mislead the Tribunal with his documents and failed to disclose records or provide disclosure in a timely manner. The Tribunal found that the issues with Mr. Singh's conduct did not have a prejudicial impact on Dodd's or significantly impact the integrity of the Tribunal process and declined to make a costs order.

Banfield v. Strata Geodata Services Ltd., 2021 BCHRT 142

Ms. Banfield complained that her employment was terminated for a knee pain condition and that her termination was connected to how Strata Geodata Services Ltd. (Strata) sexualized her conduct when it reported that a sexual harassment complaint had been made against her. Ms. Banfield was a geologist for Strata. While on a work trip in Ontario, Ms. Banfield sought treatment for knee pain and, as a result, the employer told her to take time off to rest her knee after she returned to Vancouver. In the investigation of Ms. Banfield's injury, Strata learned, among other things, that Ms. Banfield had sent suggestive photographs to the pilot, she rushed him to get her into town to buy alcohol, and she went through the personal belongings of the site manager and accessed his computer without his permission. Strata decided to terminate her employment without cause and required her to sign a release in order to receive her two weeks severance pay which she did.

After her termination, Ms. Banfield received a cease and desist letter from Strata for critical social media posts she made about the Ontario site where she was assigned. The letter outlined the various reasons for her termination which included sexual harassment and bullying. Strata also reported Ms. Banfield to the Engineers and Geoscientists of British Columbia who eventually rendered a decision in her favour.

The Tribunal first decided whether the release was a bar to Ms. Banfield's recovery. While the release explicitly covered a human rights complaint and Ms. Banfield was sufficiently educated to understand it, the Tribunal found that the release was not a bar to her claims based on the lack of consideration for release of a human rights complaint, her brief skimming of the documents, and Strata's failure to inform Ms. Banfield of the legal significance of the release and that she could obtain legal advice. The Tribunal did not find that Ms. Banfield's sex was connected to her termination but they reached the opposite



conclusion in its finding that her perceived disability – in relation to her knee pain – was a factor in the decision to terminate her employment. She was awarded wage losses and \$10,000 for injury to dignity.

Discrimination in Employment – Mental Disability

Cyncora v. Axton Inc., 2022 BCHRT 36

Mr. Cyncora is a 34 year old male who has a long history with depression and anxiety. He was hired by Axton Inc., as a shop helper in its fabrication department. Soon after he started, Mr. Cyncora began missing work mostly due to his depression and anxiety. When he was no longer able to work, Mr. Cyncora disclosed to Axton that he was struggling with mental health issues and needed time off to deal with them. Axton did not follow up for more information and at the time Mr. Cyncora was going to let them know that he would be returning to work in a few days, Axton sent him a lay-off letter and then a Record of Employment. The Tribunal found that by the date when Axton took these steps they reasonably ought to have known a medical condition might be impacting Mr. Cyncora's ability to work such that it ought to have made inquiries to determine if that was the case. Axton did not do this before terminating his employment. The Tribunal also found that Axton did not accommodate Mr. Cyncora's mental disability to the point of undue hardship. Having found the complaint justified, the Tribunal ordered reimbursement for expenses, wage loss, costs, and injury to dignity of \$20,000. The Tribunal also ordered Axton to implement an accommodation policy that is distributed and well communicated to staff.

Discrimination in Employment – Sex/Sexual Harassment

Ban v. MacMillan, 2021 BCHRT 74

Christopher Ban worked for a BC based company that installed carpets on cruise ships. Brant MacMillan was Mr. Ban's supervisor of their team that was dispatched to live aboard a cruise ship while carrying out an installation job. Mr. Ban withdrew his complaint against the company and its owner, proceeding only against Mr. MacMillan who had participated on preliminary matters in the complaint but did not attend the hearing. Mr. Ban testified that while sleeping, Mr. MacMillan entered his room, got into bed with him and he was awoken by Mr. MacMillan touching him. Mr. Ban threw Mr. MacMillan out of his room and reported him to security and later to the owner of the company. After filing a WorkSafe BC claim, Mr. Ban was diagnosed with post-traumatic stress disorder and recommended to be temporarily restricted from returning to installations on cruise ships because of the effects on his symptoms from working in such an environment. The Tribunal found that the complaint was justified and awarded four months of wage loss with a 50% reduction to account for uncertainties. The Tribunal found that Mr. MacMillan abused his power as Mr. Ban's supervisor in order to enter Mr. Ban's room. As Ms. Ban's supervisor, Mr. MacMillan also abused his power by effectively making a return to work untenable for Mr. Ban after the incident since contact with him was unavoidable while on that particular job. The Tribunal also found that Mr. Ban's trauma was worsened due to the lack of assistance he received in order to pursue recourse. He was awarded \$25,000 for his injury to his dignity, feelings, and self-respect.

Ms. K v. Deep Creek Store and another, 2021 BCHRT 158

Ms. K was 21 years old when she was hired by her much older boss, Wooyoung Joung. During her employment, Mr. Joung would make sexualized comments to Ms. K and ask her about her relationship with her boyfriend. One day after having lunch together, Mr. Joung offered Ms. K \$2,000 to have sex with him. Ms. K did not respond and suggested dropping the subject and moving on. Ms. K exchanged text



messages with her co-worker about the incident who had been told about it by Mr. Joung. Since the incident, Mr. Joung communicated with Ms. K through the co-worker. He seemed preoccupied with Ms. K. Mr. Joung eventually terminated Ms. K purportedly for her “insincere work behaviour”, because she had another job that was impacting the store, and her lack of communication with him and his family members.

After Ms. K filed her human rights complaint, Ms. K and her sister with noticed that someone was trespassing at her residence. Surveillance video showed that the person was Mr. Joung. Ms. K and her sister filed a police report and Ms. K filed a retaliation complaint. Ms. K also described other retaliatory conduct in the form of harassing calls and texts to her unlisted number including her number being written on a \$20 bill for phone sex.

While the respondents participated in preliminary matters in this complaint, no one appeared for the respondents at hearing. The Tribunal granted Ms. K’s application to limit publication of her name and any other identifying information about her. It found Ms. K’s complaint of discrimination and retaliation related to the trespass justified. The Tribunal found that it did not have sufficient evidence to directly link Mr. Joung to other harassing retaliatory conduct alleged by Ms. K. Ms. K was awarded over 2 years’ wage loss less the income she earned during that period and a global amount of \$45,000 for injury to dignity for all of the respondents’ conduct.

Discrimination in Employment – Gender Identity/Expression

Nelson v. Goodberry Restaurant Group Ltd. dba Buono Osteria and others, 2021 BCHRT 137

Jessie Nelson is a non-binary, gender fluid, transgender person who uses the pronouns they/them. They worked as a server for the restaurant, Buono Osteria. During their employment, one of the individual respondents who worked as the bar manager, referred to Jessie Nelson with gendered nicknames like “sweetheart”, “honey”, and “pinky”. Jessie Nelson asked that the use of the gendered language stop and when they complained to management they were told to wait. Four days after their last complaint to the bar manager, Jessie Nelson was fired. The reason provided to Jessie Nelson for the termination was that they had come on too strong and too fast and were too “militant.” In finding that the complaint was justified, the Tribunal found that the bar manager discriminated against Jessie Nelson in their employment. The employer’s response was not reasonable and appropriate and instead led Jessie Nelson to conclude that they had to address the issue themselves. The Tribunal found that Jessie Nelson was terminated in connection with their efforts to address discrimination in their work environment. There was a clear connection between their gender identity and their termination. The Tribunal held the corporate respondent as the employer liable as well as the individual respondents who were directly responsible for the discrimination such as the bar manager and the individuals who dealt with Jessie Nelson’s complaint and ultimate decision to terminate them. The Tribunal dismissed the complaint against the front of house manager because there were no direct allegations against her. The respondents were ordered to pay \$30,000 for injury to dignity and that the restaurant develop a pronoun policy and implement mandatory training for management and staff about human rights law.



Discrimination in a Tenancy – Physical Disability

AB v. Rankin and another, 2021 BCHRT 73

AB suffers from a bowel-related condition that makes it difficult for him to clean himself after bowel movements and results in soiled clothing and towels when he showers. In addition, AB has undergone several unrelated lung surgeries and, therefore, he has been wearing masks during the pandemic that must be properly sanitized because of his lung condition. AB and his wife rented an apartment owned by the respondents. Rent for the apartment included a washing machine. AB discovered that the washing machine was not designed to heat water and that his laundry had a bad odour. Mr. Rankin refused AB's request for a machine that provided a Hot Water Wash, despite AB advising him of his need for accommodation on the basis of his disability. AB eventually purchased his own machine at his expense and asked the respondents to remove the old machine. The respondents failed to remove the machine and after almost a year of waiting for them to do so, AB removed the machine from his apartment. The Tribunal found the complaint to be justified. Reimbursement of the cost of the washing machine was ordered as well as injury to dignity damages of \$12,000. In awarding the injury to dignity amount, the Tribunal determined that the respondents' conduct had a significant detrimental impact on AB. His ability to properly clean and disinfect his laundry affected AB's confidence and mental health at home and at work and the denial of basic hygiene needs triggered negative childhood memories. In addition, the Tribunal considered AB's evidence that the situation was worsened by the respondents' failure to allow AB to remove the old machine.

Retaliation Complaint

Customer v. The Restaurant and others, 2021 BCHRT 116

The Customer is a man with a mental illness who lives in a small town in BC. He had previously filed a human rights complaint against the Restaurant and one of its managers. After the Tribunal had issued a decision dismissing the complaint, one of the Restaurant owners went into another local business and told them the Customer earned his living scamming local businesses from human rights complaints and solicited support for a lawsuit against him. The Tribunal served the respondents with the complaint but they did not participate in the process and did not attend the hearing. The Tribunal found the complaint of retaliation justified. The Tribunal heard evidence from the Customer that he perceived an increase in hostility towards him and his service dog. Six local businesses put up new signs prohibiting dogs and someone kicked his dog. The Customer felt real fear that he or his dog would be killed. The Tribunal awarded \$10,000 for injury to dignity.



V. 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*. 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 *Administrative Tribunals Act [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. There is a 60-day time limit for judicial review of final decisions set out in the *ATA*.

This year, the Tribunal received 7 petitions for judicial review filed in the BC Supreme Court in respect of Tribunal decisions and 7 notices of appeal filed with the BC Court of Appeal. There were 2 leave applications filed with the Supreme Court of Canada.

The BC Supreme Court issued 14 judgments regarding petitions on Tribunal decisions. The BC Court of Appeal issued three judgments. The Supreme Court of Canada dismissed two applications for leave to appeal.

The BC Supreme Court upheld 10 Tribunal decisions, remitted 2 decisions to the Tribunal for reconsideration, and quashed a decision on a question of statutory interpretation. Other judgments involved interim matters, as set out below.

PREMATURE JUDICIAL REVIEW

The Court dismissed two petitions as premature this year:

- *University of British Columbia (Faculty of Medicine) v. Gregory*, 2022 BCSC 119
- *Golden Eagle Blueberry Farm v. Gatica*, 2022 BCSC 304

The Court confirmed that a petitioner must establish exceptional circumstances to warrant judicial review of a Tribunal decision before the complaint process has finished. Relevant factors include the statutory context in which the respondent can defend its conduct at a hearing, and the strength of the petitioner's case. In these cases, the Tribunal had declined to dismiss a complaint under s.27(1)(d)(ii) in light of a settlement offer, and had decided to proceed with a group or class complaint.

TIME LIMIT: SECTION 27(1)(G) OF THE CODE

The BC Supreme Court dismissed two petitions on decisions about the time limit to file a complaint:

- *Ringham v. British Columbia (Human Rights Tribunal)*, 2021 BCSC 1023
- *Kamloops (City) v. Spina*, 2021 BCSC 723



Highlighted judgment: *Kamloops (City) v. Spina*, 2021 BCSC 723

A complainant alleged a co-worker called him homophobic and other derogatory names and made comments that he only had a job because of family connections. The complaint referred to an incident alleging the co-worker deliberately bumped the complainant. The employer applied to dismiss the complaint. It argued that the bumping incident did not contravene the Code, that all other allegations were late-filed, and that it would not further the purposes of the Code to proceed with the complaint. The complainant responded that the complaint was not about the bumping incident. The Tribunal:

- disagreed with the employer that it should ignore the bumping incident. It said the complainant was self-represented, and alleges that the co-worker's conduct escalated for years and culminated in the incident.
- found that the incident was a possible contravention, when viewed in light of the co-worker's previous alleged comments.
- found that the earlier allegations were all part of a continuing contravention with the bumping incident: The conduct was similar. While there were some lengthy gaps between some alleged conduct, the complainant explained the gaps.
- found that it had a role to potentially provide remedies to the complainant, given the gravity of the conduct and its ongoing nature, in the context of the employer's argument that it had investigated and remedied the allegations so that it would not further the purposes of the Code to proceed with the complaint.

The court dismissed the petition. It summarized the principles of deference:

- (a) the Tribunal is entitled to a contextual review of its decisions on the principle of curial deference, and the reviewing judge ought not to engage in an overly close reading of the Tribunal's decision;
- (b) the legislature has assigned the Tribunal the role of gatekeeper, and the evaluation of the complaint at the gate-keeping stage attracts the highest degree of curial deference;
- (c) the Tribunal must be given significant latitude in determining whether to accept a late-filed complaint;
- (d) the Tribunal has developed a description of the principles that apply in assessing the public interest element, and the exercise is one for which the Tribunal is well-suited by its knowledge and expertise;
- (e) it is not open to the court to re-weigh or re-evaluate the material before the Tribunal. Even if the court would have come to a different conclusion, that does not mean that the Tribunal's decision is patently unreasonable; and
- (f) a patently unreasonable decision is one that is clearly irrational, or evidently not in accordance with reason, or so flawed that no amount of curial deference can justify letting it stand.



The Court's role is not to re-weigh or re-evaluate the evidence before the Tribunal, including in relation to:

- the complainant's statement about the incident,
- the explanation for gaps in time between the co-worker's alleged conduct,
- the factors to consider in determining whether to accept a late-filed complaint.

The Court made the following points:

- An explanation for gaps between incidents is not necessarily required and is, in any event, only one factor in determining if the complaint alleges a continuing contravention.
- It is not an error to consider the public interest in the complaint itself in determining whether to accept a late-filed complaint.
- The potential for a monetary remedy was a reasonable consideration in determining whether it would not further the purposes of the Code to proceed with the complaint.

NO ARGUABLE CONTRAVENTION OF THE CODE: SECTION 27(1)(B) OF THE CODE

The Court reviewed one decision under section 27(1)(b) of the Code in relation to Family Status discrimination.

Highlighted judgment: *Gibraltar Mines Ltd. v. Harvey*, 2022 BCSC 385

The complainant alleged that her employer failed to accommodate her in relation to her childcare obligations as she was returning to work from maternity leave. The Tribunal rejected the employer's argument that the Code's protection against family status discrimination in employment is limited to situations where the employer changes a term or condition of employment. The employer succeeded on judicial review. The Court found that in, *Envirocon Environmental Services, ULC v. Suen*, 2019 BCCA 46, the Court of Appeal intended to provide guidance regarding the test for family status discrimination. In that case, the Court of Appeal said there is a two-part test: (i) there has been a change in a term or condition of employment; and (ii) such a change resulted in "a serious interference with a substantial parental or other family duty or obligation". An appeal has been filed.

NO REASONABLE PROSPECT OF SUCCESS: SECTION 27(1)(C) OF THE CODE

The BC Supreme Court issued seven judgments about decisions under section 27(1)(c) of the Code. The Court dismissed 5 of the petitions:

- *University of British Columbia Okanagan v. Hale*, 2021 BCSC 729
- *Miller v. The Union of British Columbia Performers*, 2021 BCSC 1054 (appeal filed)
- *Wilson v. Covenant House Vancouver*, 2021 BCSC 1876
- *Conklin v. University of British Columbia*, 2021 BCSC 1569 (appeal filed)
- *Breuker v. British Columbia (Human Rights Tribunal)*, 2021 BCSC 2338

Highlights from *University of British Columbia Okanagan v. Hale*, 2021 BCSC 729

- *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65 does not change the statutory standard of review for the Tribunal's decisions and does not change the meaning of "patent unreasonableness": at paras. 94-96.



- The discretionary gatekeeping exercise under section 27(1)(c) inherently requires the Tribunal to consider what may be revealed or established at a hearing through the testing of evidence and arguments. It is not an error to consider what may be revealed through the testing of evidence and argument: at paras. 123-134.
- Disproportionate representation among a group, through judicial notice, or statistical evidence, can be a relevant consideration when assessing the nexus requirement to establish discrimination (or on an application to dismiss): at paras. 169, 173.

The Court allowed 2 of the petitions:

- *Byelkova v. Fraser Health Authority*, 2021 BCSC 1312
- *Lord v. Fraser Health Authority*, 2021 BCSC 2176

Appeals were filed from both orders. In each case, the Court ordered a reconsideration.

In *Byelkova v. Fraser Health Authority and another (No. 2)*, 2021 BCHRT 159, in its reconsideration of the original decision the Tribunal found that the Court's effective conclusion was that the complaint surpasses a realm of speculation or conjecture that was determinative of the issue under s. 27(1)(c). The Tribunal denied the application to dismiss. This decision rendered the appeal moot: *Byelkova v. Fraser Health Authority*, 2022 BCCA 205.

In *Lord v. Fraser Health Authority and another (No. 2)*, 2022 BCHRT 49, the Tribunal conducted the reconsideration on the record before it when it made the decision. The Court did not have the full record before it. The Tribunal concluded that the complaint had no reasonable prospect of success.

DECISIONS ON THE MERITS OF A COMPLAINT

The Court reviewed one decision under section 27(1)(b) of the *Code*.

Highlighted judgment: *Spruce Hill Resort and Spa Ltd. v. Fast*, 2021 BCSC 2504

The Tribunal found that the complainants' colour and race were factors in the reduction of their working hours or the termination of employment. The Tribunal found the employer sexually harassed one complainant on a business trip when he booked one room for them to share.

The Court:

- set out its limited role on judicial review,
- did not consider evidence that was not part of the record of the material before the Tribunal
- said the onus is on the petitioners to ensure all of the materials relevant to their application, including transcripts, is before the court,
- the Tribunal's findings of fact that race and colour were factors in the adverse impacts in employment were reasonable,
- the Tribunal's finding of fact that the employer's conduct amounted to sex discrimination was reasonable,
- the Tribunal's findings of fact regarding the complainant's mitigation of wage loss were reasonable and the Tribunal's discretionary decision regarding mitigation was not patently unreasonable.



JUDGMENTS ON OTHER MATTERS

The courts made decisions on:

- intervenor applications: *Gibraltar Mines Ltd. v. Harvey*, 2021 BCSC 927, granting the Officer of the Human Rights Commissioner leave to intervene
- security for costs: *Njoroge v. British Columbia (Human Rights Tribunal)*, 2021 BCCA 245
- an application to re-open an appeal: *Gichuru v. Vancouver Swing Society*, 2021 BCCA 246
- leave to file a petition in light of a vexatious litigant order: *Gichuru v. Purewal*, 2021 BCCA 375

SUPREME COURT OF CANADA LEAVE APPLICATIONS

The Supreme Court of Canada denied leave from the BC Court of Appeal's decisions in:

- *Gichuru v. Vancouver Swing Society*, 2021 BCCA 103, discussed in last year's annual report regarding the Tribunal's authority to screen complaints upon filing for an arguable contravention of the Code
- *Njoroge v. British Columbia (Human Rights Tribunal)*, 2021 BCCA 245, mentioned above regarding security for costs



VI. Financial Disclosure: Tribunal Operating Costs

While the Government allocated a budget increase to the Tribunal for the 2020/21 fiscal year, the Tribunal's actual expenditures track more closely with previous years' expenditures. As set out below, the Tribunal posted an underspend for the 2020/21 fiscal year. These numbers paint a distorted picture of its actual resourcing needs.

The increase had the effect of absorbing the deficit the Tribunal had run previously to maintain its staffing levels and left sufficient additional funds to add roughly two new staff. Because of the timing of the increase, however, which was communicated halfway through the fiscal year and also came in the midst of its process review and organizational restructuring, the Tribunal was unable to develop, classify, post, and fill the positions it plans to allocate the new additional funds toward.

DESCRIPTION	EXPENDITURES	DELEGATED BUDGET	VARIANCE
Salaries	\$ 2,448,127	\$ 2,700,000	\$ 251,873
Employee Benefits	\$ 621,642	\$ 686,000	\$ 64,358
Fees for Temporary Members	\$ 182,967	\$ 150,000	\$ (32,967)
Travel	\$ (12,739)	\$ 0	\$ 12,739
Professional Services	\$ 183,551	\$ 170,000	\$ (13,551)
Information Services	\$ 94,653	\$ 100,000	\$ 5,347
Office and Business Expenses	\$ 52,239	\$ 50,000	\$ (2,239)
Other Expenses	0	0	0
TOTAL COST	\$3,570,440	\$3,856,000	\$ 285,560



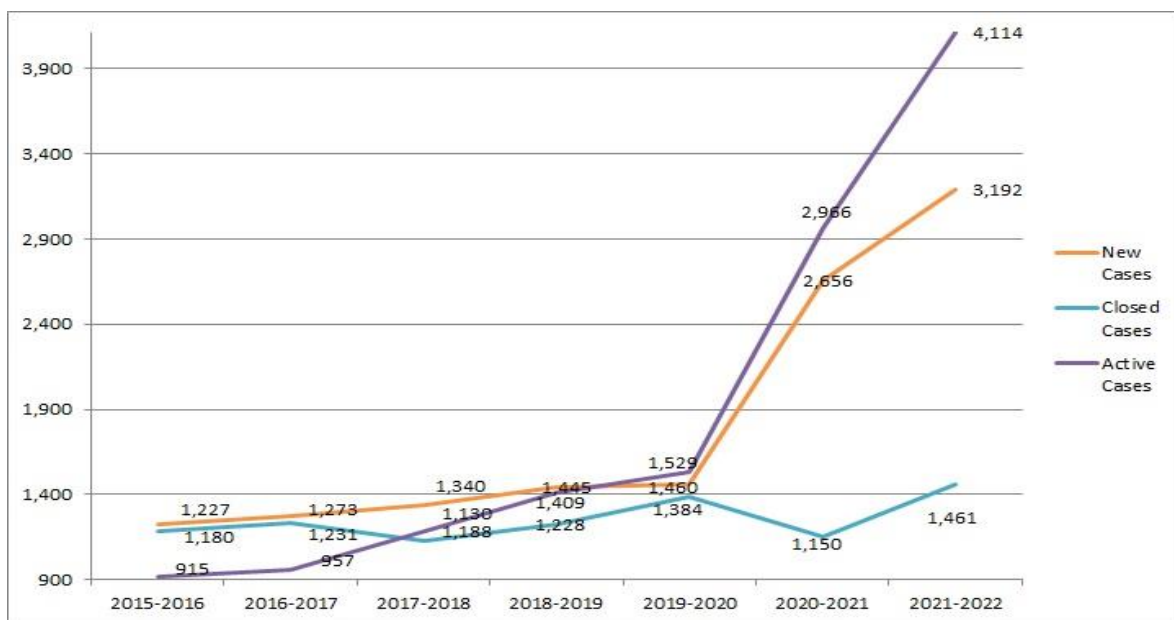
Appendix 1: Case Volume

NEW CASES FILED 2021-2022

As outlined earlier in this report, the Tribunal is a direct-access Tribunal meaning that people who believe they have experienced discrimination can file a complaint directly with the Tribunal against the person or organization they say discriminated. The Tribunal does not investigate, but functions like a court only less formal. It is responsible for setting and administering the steps in the human rights process.

People filed a total of 3,192 new cases with the Tribunal this fiscal year. This is a further substantial increase of new cases from the 2,656 received in 2020-21 and 1,529 received in 2019-20.

The Tribunal screened 1,514 new cases to determine whether they could proceed in the process. Of those, 927 new cases moved forward while 587 were dismissed at the screening stage. As at fiscal year-end, 1,678 new cases remained at the screening stage.



ACTIVE CASES

The fiscal year started with a large inventory of active cases and ended with a new all-time high. Though the Tribunal closed more cases this year than last – a 30% increase at 1,461 – the unprecedented 3,192 new cases filed left the Tribunal with a record-high 4,114 active cases in its system at the close of the 2020/21 fiscal period.

The additional active cases this fiscal year are mainly in the early stages of our process with backlogs particularly acute at the screening stage. If case volumes hold steady in the next fiscal year, it is anticipated

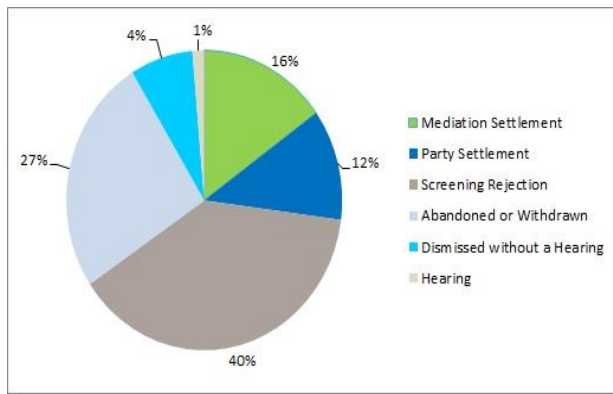


that existing delays will continue to grow. The existing inventory presents an enormous challenge for the coming fiscal year.

CASES CLOSED 2021-2022

Human rights cases close for a number of reasons. They may be dismissed at the screening stage; resolved by the parties independently or through a Tribunal-facilitated mediation; or resolved by a Tribunal decision.

The Tribunal closed 1,461 complaints in the 2021/22 fiscal year. A summary of the cases closed is below.



Dismissed at screening

Screening ensures complaints are within the Tribunal's jurisdiction, are timely, and set out a possible contravention of the *Human Rights Code*. This fiscal year, 61% of complaints proceeded past screening, representing a drop from the ten-year average of 74%. This change is largely attributable to the number of pandemic-related complaints that were dismissed at screening, which primarily involved mask-wearing in services.

Resolved at mediation

Once a complaint proceeds past screening, many cases resolve through mediation, which remains a significant method of resolution by parties. The Tribunal offers free mediation services to parties, and works to make these services available at any stage of the proceeding with an emphasis on early resolution.

Mediations are confidential, and the Tribunal does not publish the results. In many cases, mediations resolve other aspects of the parties' relationship and can have transformative impacts in the justice system. Mediated settlements may also result in systemic change that is beyond the scope of remedies available under the *Human Rights Code* after a hearing.

As noted earlier in this Report, the Tribunal conducted 433 mediations over the fiscal period, of which 230 resolved.

Resolved through settlement

This fiscal year, of all cases closed, 28% were closed due to settlement, including cases where the parties resolved the dispute themselves.



Resolved independently by parties

Parties are encouraged to settle complaints on their own, especially where all are represented by a lawyer. This year, 12% of the cases closed resulted from settlement by the parties without Tribunal assistance.

Dismissed in preliminary decision

Before November 2021, respondents could choose to apply to the Tribunal to dismiss a complaint without a hearing on various grounds under s. 27(1) of the *Code*. Over the course of the fiscal year, the Tribunal issued a total of 113 dismissal application decisions, of which 49 cases were dismissed, representing 4% of the overall number of cases closed.

Resolved after hearing

Cases that do not resolve through mediation, independently by the parties, or through a summary assessment such as an application to dismiss under s. 27(1) go to a hearing. Over the fiscal year 2021/22, the Tribunal issued a total of 20 final decisions. Of those decisions, 11 cases were dismissed, representing 2% of the overall number of cases closed.

Withdrawn by complainant

There are many reasons why complainants withdraw their cases, including finding resolution in other proceedings, strategic or personal decisions related to the time and effort required to pursue a case, or simply due to delays in finding resolution. This year, 26% of complaints closed because the complainant abandoned or withdrew their complaint.

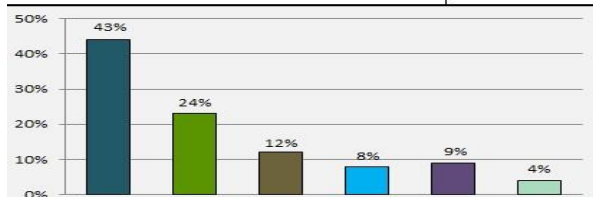


Appendix 2: Complaints by Areas and Grounds of Discrimination

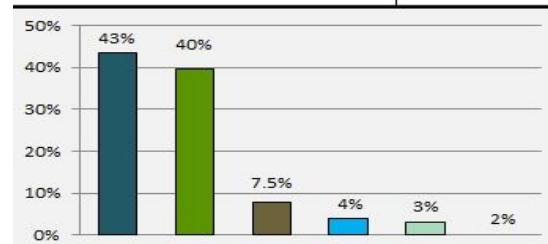
The *Code* protects people from discrimination in eight specific areas of life on the basis of 16 specific protected characteristics, or “grounds”. The protected areas of life are employment, service, publication, tenancy, membership in unions and associations, employment advertisements, wages, and purchase of property. The *Code* also prohibits retaliation against a person who has or may have involvement in a complaint or inquiry by the Commissioner. The protected grounds are 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.

Employment cases have historically made up about 60% of the Tribunal’s overall caseload. This year that percentage was 43%. Service complaints, which have historically been around 23%, increased from 35% in the previous year to 40%. These changes are attributable to the influx of pandemic-related services complaints related to mask wearing and proof of vaccination.

Complaints by Grounds of Discrimination April 1, 2021 - March 31, 2022		
Total - Disability	2564	43%
Physical Disability	1434	24%
Mental Disability	1130	19%
Total - Ethnicity	1458	24%
Race	662	11%
Place of Origin	289	5%
Ancestry	235	4%
Indigenous Identity	15	0%
Colour	257	4%
Total - Sex	699	12%
Sex (including Harassment and Pregnancy)	482	8%
Gender Identity or Expression	217	4%
Total - Family and Marital Status	451	8%
Family Status	307	6%
Marital Status	144	2%
Total Other - (listed below)	864	9%
Religion	442	7%
Sexual Orientation	134	1%
Unrelated Criminal Conviction	62	0%
Political Belief	179	1%
Lawful Source of Income	47	0%
Age	28	4%
Total Grounds Alleged	6024	



Complaints by Areas of Discrimination April 1, 2021 - March 31, 2022		
Section 13 - Employment	1548	43%
Section 8 - Service	1413	40%
Section 10 - Tenancy	276	8%
Section 43 - Retaliation	147	4%
Section 14 - Membership	103	3%
Total Other - (listed below)	21	2%
Section 12 - Wages	4	
Section 9 - Purchase of Property	17	
Total Areas Alleged	3571	



As with previous years, in the 2021/22 fiscal year, disability remained the most common ground of discrimination alleged (43%); followed by ethnicity (which includes race, place of origin, ancestry, Indigenous Identity, and colour) (24%); sex (12%); family and marital status (8%), and religion (7%). The grounds of sexual orientation and political belief composed only 2% of new complaints.

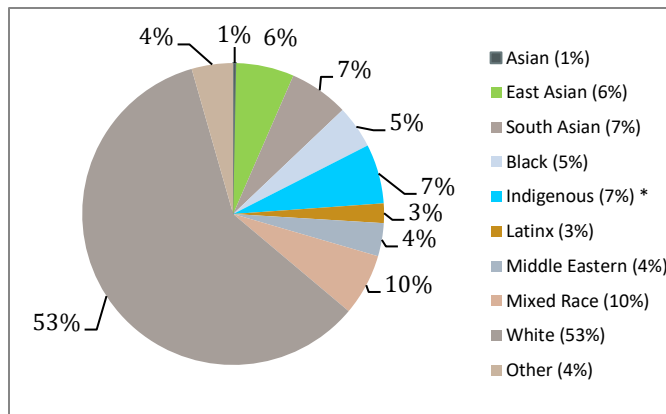


Appendix 3: Who is filing complaints?

COMPLAINANTS' DEMOGRAPHIC INFORMATION

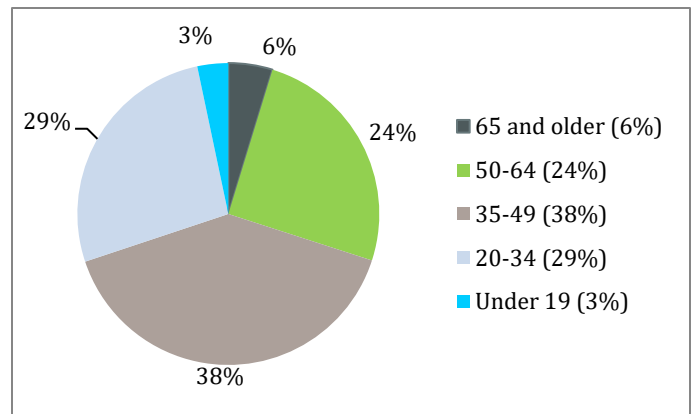
At the end of June 2020, the Tribunal began collecting demographic information from complainants on a strictly volunteer and confidential basis. Approximately 62% of complainants opted to provide some demographic information. Based on this data, the Tribunal can report on who is accessing and using its process between April 2021 and March 2022 as set out below.

Racial Identity

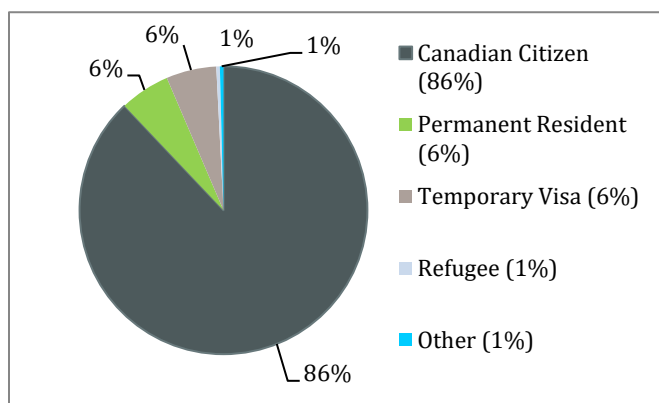


* This figure varies from the overall percentage of complaints filed by Indigenous people as demographic information is provided on a voluntary basis.

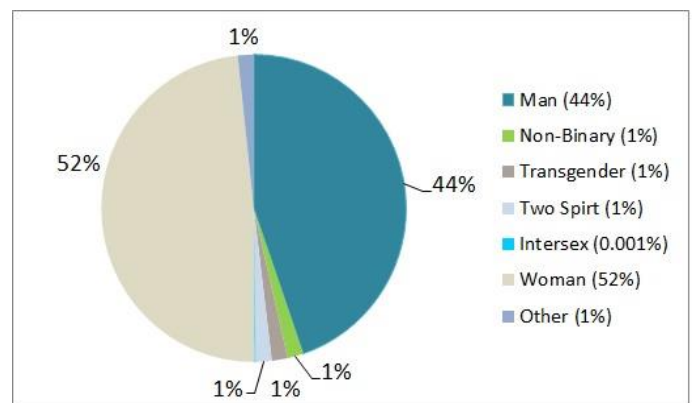
Age



Immigration Status

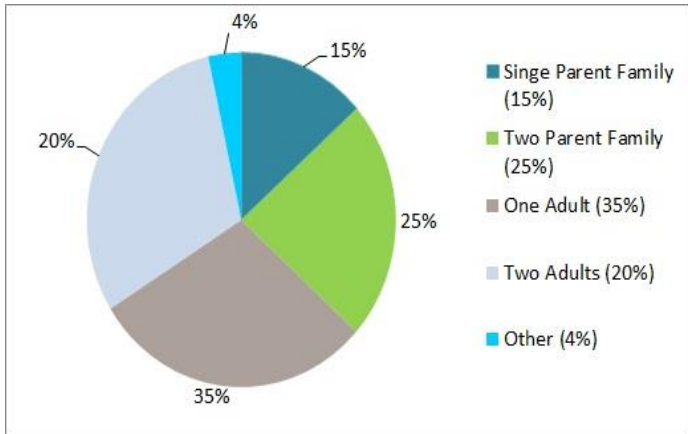


Gender Identity

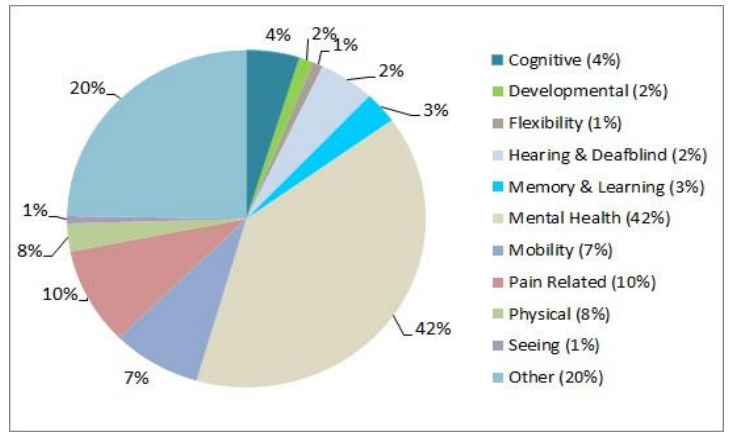




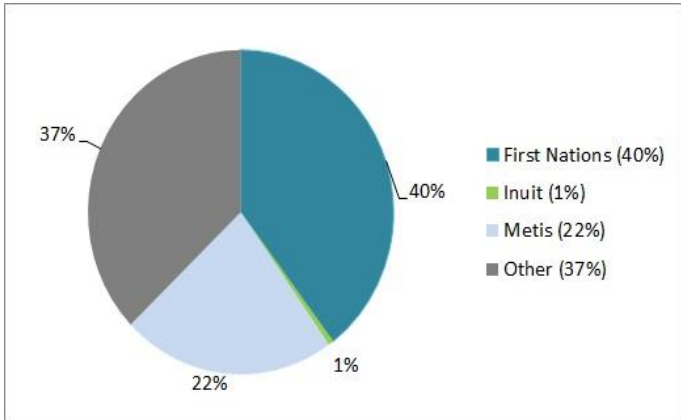
Household Type



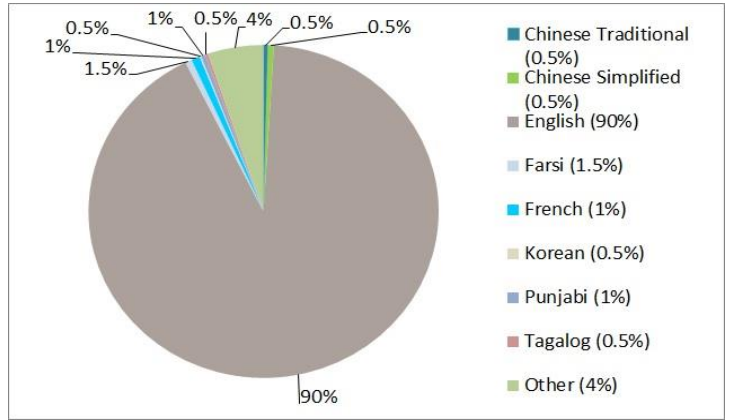
Disability Requiring Accommodation



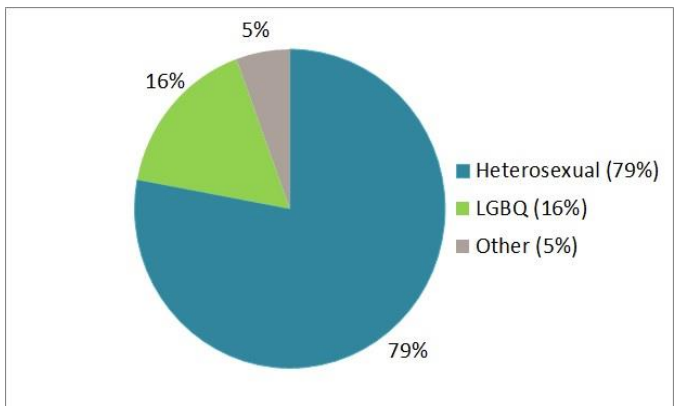
Indigenous Identity



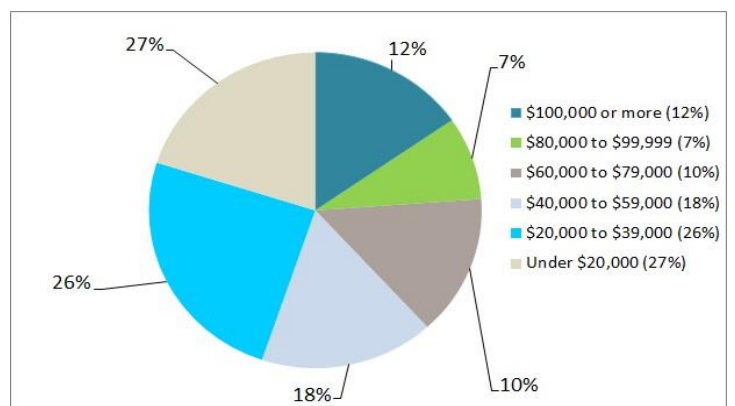
Language



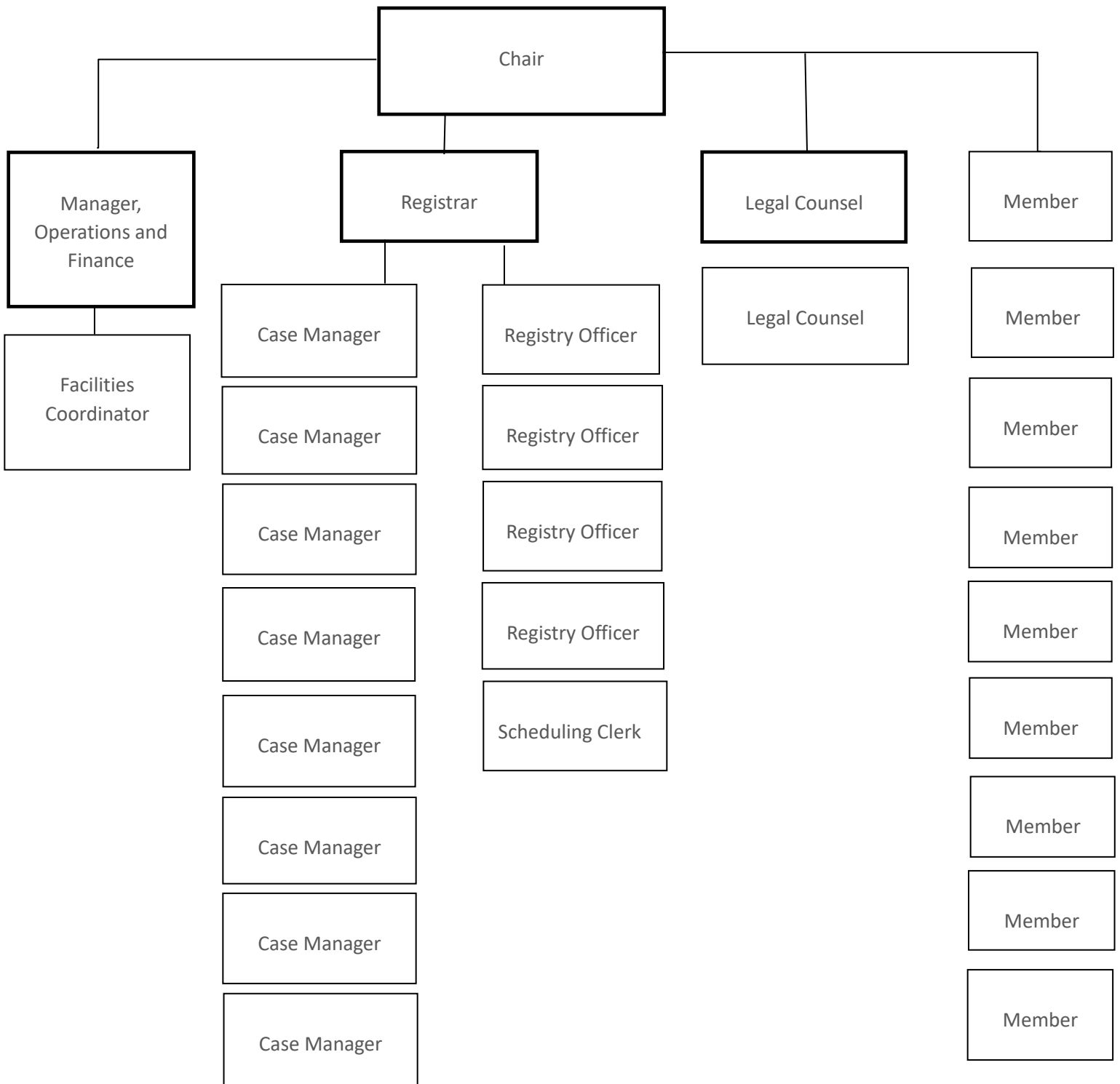
Sexual Orientation



Household Income After Tax



Appendix 4: Tribunal Organization Chart



Appendix 5: Tribunal Team

Tribunal 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 (partial year)

Legal Counsel

Katherine Hardie

Barbara Korenkiewicz (partial year)

Rose Chin (partial year)

Registry Staff

Steven Amoti (partial year)

Cheryl Bigelow

Priscilia Bolanos (partial year)

Kerry Jervelund

Mattie Kalicharan

Ainsley Kelly

Carla Kennedy

Anne-Marie Kloss

Lorne MacDonald

Luana Magno (partial year)

Nikki Mann

Sarah Muench

Kate O'Brien

Meagan Stangl

Britt Stevens

Sandy Tse

Daniel Varnals

MEMBERS

Chair

Paul Singh (partial year)

Emily Ohler (partial year)

Tribunal Members

Steven Adamson (Registrar and Member)

Simmi Chauhan (partial year)

Grace Chen

Devyn Cousineau

Beverly Froese

Emily Ohler

Sonya Pighin

Amber Prince

Kathleen Smith

Karen Snowshoe

Paul Singh (partial year)

Marlene Tyshinski (partial year)

Pamela Murray (partial year)

Jessica Derynck (partial year)