



**BRITISH COLUMBIA  
HUMAN RIGHTS TRIBUNAL**

**2022/2023 ANNUAL REPORT**

*Covering the period April 1, 2022 through to March 31, 2023*



The Tribunal's office is located on traditional unceded territories of the Coast Salish peoples, including the territories of the xʷməθkʷəy̓əm (Musqueam), Skwxú7mesh (Squamish), and səliłwətaɫ (Tseil-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

On behalf of the Human Rights Tribunal Team, I present the Annual Report for the fiscal year April 1, 2022 to March 31, 2023.

As in 2021-22, the 2022-23 fiscal year again saw record numbers of new cases filed at the Tribunal, with service demand continuing to outstrip capacity. When the number of cases in the system exceeds what the Tribunal has capacity to process within service standards, backlog results. With case volume exceeding Tribunal capacity for the third consecutive year, there is a backlog at every stage of the process, and the Tribunal has not been able to consistently meet any of its service standards.

In the one-year covered by this report, people filed 2,624 new complaints. As expected, the proportion of new complaints related to public health measures arising from the Covid-19 pandemic dropped significantly in the 2022-23 fiscal year, from roughly 30% to 10% of total new cases filed. Meanwhile, the proportion of new complaints filed by people who self-identified as Indigenous increased from 11% to 14%. It is expected that the Tribunal's new baseline case volume will hold steady at roughly 2,500 per year. This number continues to represent more than double historic averages, as well as double the number of cases contemplated for original funding levels provided to the Tribunal, highlighting the need for right-sized funding.

The Tribunal instituted a number of new initiatives over the course of the year to manage the overwhelming case volumes including developing a mediation program; piloting new processes; and moving forward with restructuring.

On May 10, 2022, I had an opportunity to brief the Provincial Government Caucus on the mounting challenges confronting the Tribunal. Subsequently, the Government made temporary emergency funding available for the fiscal year. The emergency funding did not allow the Tribunal to reduce delays, but it did allow the Tribunal to prevent uncontrolled exponential growth in both delays and active case numbers. With the application of the emergency funds, the Tribunal closed the 2022-23 fiscal year with over 5,000 active cases in its system, representing an increase of over 1,000 from the close of 2021-22. While this level of growth in overall active cases represented a substantial increase in the Tribunal's active caseload, it was in line with the Tribunal's projections.

The Tribunal's calendar year began with the Government's announcement in January 2023 of a substantial increase in funding for the next 3 years. This funding is welcome and will bring the Tribunal closer to a right-sized state relative to its new baseline case volume. However, it is likely not enough to efficiently address the backlog that has accumulated as a result of under-resourcing during the initial volume spikes. Until the backlog is cleared with cases running smoothly through the Tribunal's system, delays will likely continue for some time.

As with last year, I acknowledge those parties who are having to wait for extended periods for their matters to be resolved. The Tribunal is working hard to take a purposeful, holistic approach to addressing the delays to ensure a sustainable organization that can continue to serve British Columbians well into the future.

I am grateful to all those who are working to strengthen the Tribunal and support it through the current challenges, and to those participants who have continued to show patience and understanding as we work to resolve their disputes. I am confident that we will make progress in working through the backlog and providing a more streamlined, accessible process for participants in the coming years as our resources begin to more closely align with demand.

Emily Ohler, Chair  
BC Human Rights Tribunal



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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. The British Columbia Human Rights Tribunal is a direct-access model, where people can file complaints directly with the Tribunal when they believe they have experienced discrimination.

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. Historically, of all complaints filed annually, approximately 75% proceed past screening. This held steady over 2023-23, at roughly 76%. Notably, the Tribunal is experiencing significant delays at the screening stage due to the massive increase in case volume over the years since 2020.

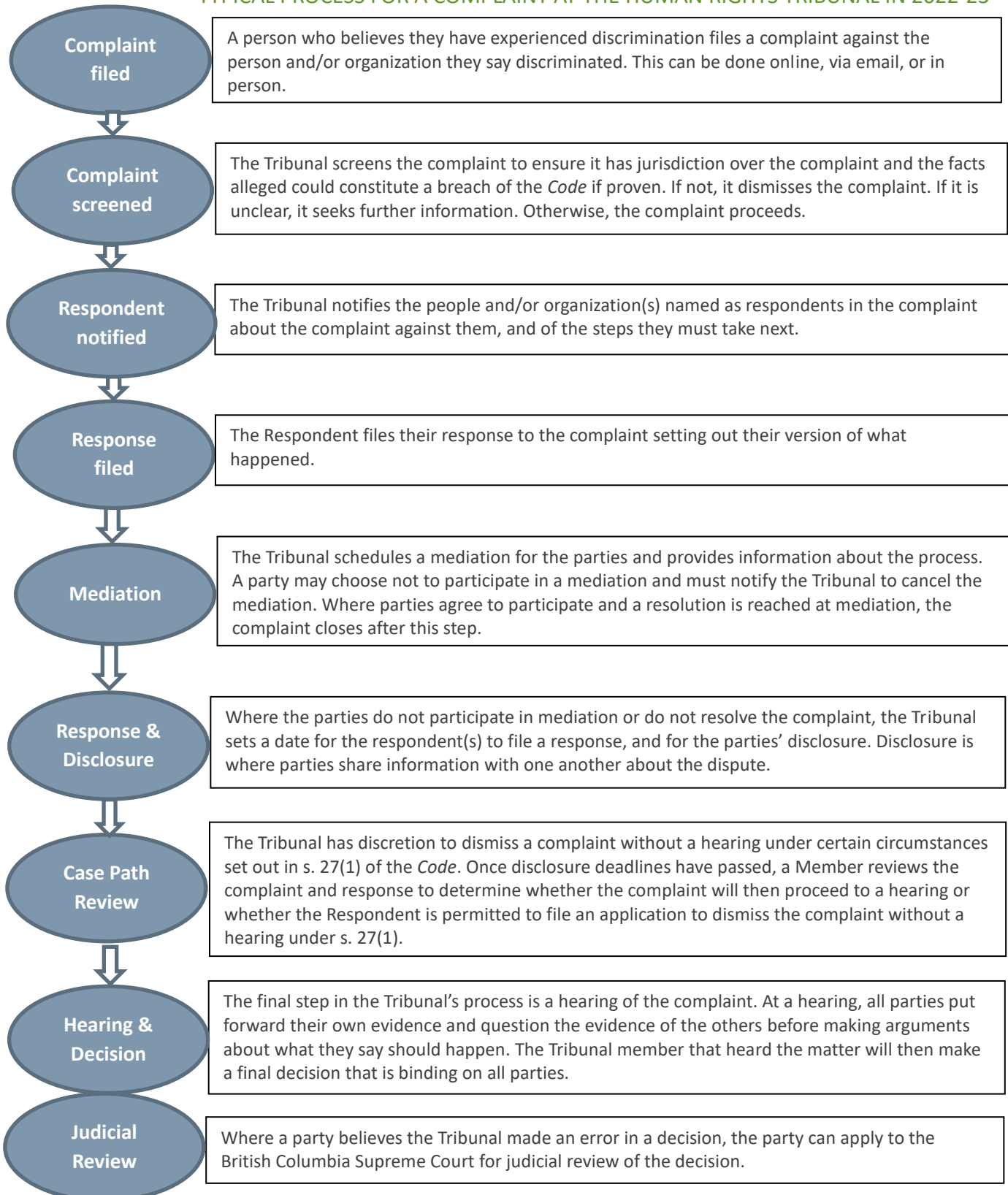
For cases that proceed past screening, the Tribunal then offers mediation services. Not all parties choose to use those services. The Tribunal made significant progress in establishing a Mediation Program within its Registry and expanding the program's capacity to provide services to parties in a timely way. This year, the Tribunal held 452 mediations. Of these, the resolution rate was 58%, up from last year's 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. This fiscal year, the Tribunal closed 1,357 cases.



## TYPICAL PROCESS FOR A COMPLAINT AT THE HUMAN RIGHTS TRIBUNAL IN 2022-23





## II. Highlights & Challenges from the fiscal year 2022-23

### GOVERNMENT SUPPORT AND INCREASED RESOURCES

On May 10, 2022, then Attorney General David Eby invited the Tribunal Chair to brief the Government Caucus on the growing delays resulting from years of insufficient funding in the face of rapid increases in case volume. Following the briefing, the Government authorized access to temporary emergency funding for the remainder of the fiscal year. This allowed the Tribunal to onboard various temporary resources in an effort to keep the growing delays as stable as possible. While this resulted in an increase in active cases of over 1,000 by the end of the fiscal year, absent the emergency funds Tribunal projections showed an exponential increase that would have been created otherwise.

The Government's announcement of additional funding for the next, 2023/24 fiscal year is significant and welcome. While the additional funding will bring the Tribunal closer to a right-sized state relative to its new baseline case volume, it is not enough to efficiently address the backlog that has accumulated as a result of under-resourcing during the initial volume spikes. Until the backlog is cleared with cases running smoothly through the Tribunal's system, delays will likely continue for some time.

### IMPROVING SERVICES FOR INDIGENOUS PEOPLE - EXPANDING OUR VISION

#### Indigenous Mediators

As part of improving service delivery for Indigenous parties before the Tribunal, Indigenous parties may request a mediation by an Indigenous Mediator. In the 2022-23 period, the Tribunal expanded its complement of Indigenous Mediators resulting in increased capacity to meet these requests.

#### Indigenous Navigators

The Tribunal implemented the recommendation from 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) to onboard Indigenous Navigators to provide specialized support to Indigenous parties engaged in the Tribunal's process.

### INITIATIVES RELATED TO SPIKING CASE VOLUME & GROWING DELAYS

#### Covid-related complaints

On April 20, 2022, the Tribunal issued an emergency measure for mask-wearing complaints in order to prioritize the remainder of its backlog. It announced that it would not process these complaints until 2023-2024, at which time those cases would be resolved under a special project.

#### Case-Path Pilot

On May 6, 2022, the Tribunal issued a practice direction implementing a one-year pilot project regarding its process for allowing applications to dismiss complaints without a hearing. Under the pilot, the Tribunal more actively exercises its discretion in referring cases directly to a hearing or inviting applications to dismiss in certain circumstances. The purpose of this pilot is to manage the volume of dismissal



applications the Tribunal receives, which has had a serious impact on resources. This pilot applies to all of the cases that were captured by the Emergency Pause of November 8, 2021.

### **Mediation Program**

In May 2022, the Tribunal launched its internal Mediation Program, significantly increasing its mediation capacity through the expansion of its mediation team from 5 to 17 contract mediators and implementing a revised scheduling and assignment system. Rates of settlement have begun to increase this fiscal year, from 53% in the last fiscal to 58% in 2022-23.

### **Web Portal**

Currently, parties communicate with their Case Managers via email. Parties contact Case Managers frequently seeking status updates, copies of documents, and other case-related information. This results in Case Managers having less time to attend to the substantive work of moving cases through the process. In other words, as delays continue, the Tribunal expends resources servicing the delays at the expense of reducing them. Given the volume of cases currently before the Tribunal, this is untenable.

In the 2022-23 fiscal year, the Tribunal completed a preliminary technical scoping project to map the feasibility and prospective costs of a web-based portal through which parties would have access to documents and information related to their case. The Tribunal anticipates that this project will be undertaken in the 2023-24 fiscal year.

### **External consultations and process review**

The Tribunal continued its comprehensive internal systems and processes review. In February and March 2023, it opened a public consultation seeking feedback on possible changes to improve its processes.

### **Restructuring**

The Tribunal commenced an organizational restructuring, focused on building stable operational infrastructure. This will allow the Registry to focus on its core work of managing cases through the Tribunal's process and will support the efficient allocation and reallocation of resources across different stages of our process depending on volume and needs.





### III. Expanding our Vision: Improving Services for Indigenous People

The Tribunal continues its work in implementing the 18 recommendations from the January 2020 report of Ardith Walpetko We'dalx Walkem, QC (now Justice Walkem), *Expanding our Vision: Cultural Equality and Indigenous Peoples Human Rights* [EOV].

#### 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 11% of all Tribunal complaints filed between March 2021 until March 2022 were filed by people who self-identified as Indigenous. This figure increased in the 2022-23 period to 14%.

#### 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 2022-23 were:

- 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
- Cynthia Callison, Callison & Hanna Indigenous Advocate, Tahltan Nation Member
- Devyn Cousineau, Member, Human Rights Tribunal
- Debra Febril, member of the Nisga'a Nation, lawyer at CLAS's Human Rights Clinic.
- 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, KC., Nuxalk lawyer and Policy counsel, Law Society of British Columbia
- Clint Kuzio, Member, Fish River Cree First Nation, Director of Indigenous Relations, and Program Development at the Cool Aid Society
- Niki Lindstrom, Saulteau First Nations, Director at the First Nations Housing and Infrastructure Council
- Cassandra McGarvie (nee Campo), Squamish First Nation



- Shawnee Monchalin, citizen of the Métis Nation of Ontario, from the historic Métis community of Sault Ste Marie and legal counsel with the BC Human Rights Tribunal
- Amber Prince, Member, Sucker Creek (Cree) Nation, Member, Human Rights Tribunal
- Tsee'tsee'watul'wit Sharon Thira, Executive Director, Education & Engagement, Office of the Human Rights Commissioner for British Columbia

### EOV IMPLEMENTATION PROGRESS OVER FISCAL 2022-23

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. The Tribunal is encouraged by the increasing proportion of new complaints filed by people self-identifying as Indigenous.

#### Indigenous Navigators

Recommendation 9.2 in the EOV Report is that the Tribunal “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 implemented this recommendation, onboarding four Indigenous Navigators in March 2023.

In the next fiscal year, the Indigenous Navigators will become fully integrated into the Tribunal’s process, providing have a key role to help the Tribunal meet the specific needs of Indigenous Peoples navigating the Tribunal’s process. See: <http://www.bchrt.bc.ca/indigenous/index.htm>.

#### Development of Indigenous Case Stream<sup>[2]</sup>

Recommendation 9 in the EOV Report is that the Tribunal “create an Indigenous specific stream within the BCHRT”. The EOV Committee has continued to inform the Tribunal’s work on recommendation 9, including identifying general guiding principles and providing more specific advice on ongoing internal training, the Indigenous Navigator positions, modification of forms, public information, and the creation of an Indigenous stream from intake to the resolution of a complaint. The Tribunal expects to begin making substantive progress on this recommendation in the 2023/24 fiscal year.

#### Screening of complaints filed by an Indigenous complainant<sup>[4]</sup>

In March 2021, following the recommendation of the EOV Committee, the Tribunal initiated a dedicated screening process for complaints filed by people who self-identify as Indigenous. That process has been implemented throughout the 2022/23 fiscal year.

In the Tribunal’s regular screening process, the Registrar reviews each complaint to determine if the complaint sets out discrimination under the *Code* or if the complaint 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.

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<sup>[2]</sup> EOV Report recommendations 9

<sup>[4]</sup> EOV Report recommendation 1.5



The Tribunal takes a different approach to complaints that have been filed by Indigenous people. This approach is in response to the EOV 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. <sup>[5]</sup>

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 to 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 consultation with the EOV Committee, in December 2022. That review concluded that the process was having a positive impact on improving access to the Tribunal, and that it should continue.

In the new fiscal year, the Indigenous Navigators will be integrated into the Tribunal’s process for screening Indigenous complaints, per EOV Report recommendation 9.2.

#### **Training to develop cultural competency and safety<sup>[6]</sup>**

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 reflected on their training through the province’s House of Indigenous Learning, and then enrolled in and completed the “4 Seasons of Reconciliation” course through the First Nations University of Canada. Staff and members were able to attend a trauma-informed training workshop delivered by Karen Snowshoe, KC., Gwizhii Institute of Learning. All staff and members met monthly in small groups to learn about topics including UNDRIP and the Declaration, MMIWG and 2SLGBTQQIA people, Indigenous Peoples Day, the National Day for Truth and Reconciliation, Indigenous identity, and Indigenous human rights cases. In March 2023, members and legal counsel began a 3-part webinar, “Indigenous Legal Systems and Administrative Tribunals” through the Canadian Council of Administrative Tribunals.

#### **Analyzing Indigenous complaints dismissed under s. 27 of the Code<sup>[7]</sup>**

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

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<sup>[5]</sup> EOV Report recommendation 13.1

<sup>[6]</sup> EOV Report recommendation 9.1

<sup>[7]</sup> EOV Report recommendation 13.1



Decisions of Human Rights Complaints Brought by Indigenous Complainants,” which presented her findings and recommendations to the Tribunal. The Tribunal shared and discussed these findings with the EOJ Committee at the start of the new fiscal year. The Tribunal continues to consult with the EOJ Committee on the application to dismiss process.

#### **Indigenous parties in mediation<sup>[8]</sup>**

Indigenous parties may request an Indigenous mediator, Indigenous protocols, and Indigenous dispute resolution models. The Tribunal continued working to improve its capacity and service delivery in these areas, in consultation with the EOJ Committee, and Indigenous mediators.

#### **Referrals to the BC Human Rights Clinic, and other resources<sup>[9]</sup>**

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 complainants would benefit from the HRC’s assistance. The Tribunal also provides other specialized referrals, based on its updated list of other available resources across the province: <http://www.bchrt.bc.ca/whocanhelp/index.htm>, and consultation with the EOJ Committee.

#### **Indigenous identity as a distinct ground of discrimination<sup>1</sup>**

The BC Government amended the *Human Rights Code* on November 25, 2021 to add Indigenous identity as a distinct ground of discrimination. The Tribunal has not yet released a decision considering this ground, though a number of complaints have now been amended to include it or have been filed on that basis.

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

In this fiscal year, the Tribunal received 360 requests for contact from Indigenous complainants, up from last year’s 323.

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<sup>[8]</sup> EOJ Report recommendation 12.1

<sup>[9]</sup> EOJ Report recommendation 18.1

<sup>1</sup> EOJ Report recommendation 1.2



## IV. Hearings and Final Decisions

After a hearing of a complaint on its merits, the Tribunal issues a final decision. In the 2022-23 fiscal year, the Tribunal issued 23 final decisions. This number is similar to previous years:

- 2021-22 – 21
- 2020-21 – 26
- 2019-20 – 29
- 2018-19 – 23
- 2017-18 – 14

The average hearing was 5 days, with two hearings lasting 10 or more days and the longest hearing lasting 21 days. Five hearings lasted 1 day.

In the 2022-23 fiscal year, complainants succeeded fully or in part in 17 of the 23 cases or 74% of the cases. This is higher than previous years:

- 2021-22 – 48%
- 2020-21 – 46%
- 2019-20 – 41%
- 2018-19 – 35%
- 2017-18 – 29%

### FOUNDATIONS AND AREAS OF DISCRIMINATION IN FINAL DECISIONS

The final decisions dealt with the following grounds of discrimination:

Ground	Number of hearings	Number of complaints justified
Age	2	1
Ancestry	4	4
Colour	3	3
Criminal Conviction	0	0
Family Status	2	1
Gender Expression or Identity	0	0



Indigenous Identity*	0	0
Marital Status	3	2
Mental Disability	5	4
Physical Disability	8	6
Place of Origin	2	2
Political Belief	0	0
Race	4	3
Religion	2	2
Sex	3	3
Sexual Orientation	1	1
Source of Income	0	0

\* Indigenous identity was added to the *Code* in 2021. One of the cases based on ancestry and colour was brought by an Afro-Indigenous woman.

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

<b>Area</b>	<b>Number of hearings</b>	<b>Number of complaints justified</b>
Employment	13	11
Employment Advertisement	0	0
Wages based on sex	0	0
Membership in a Union, Employers' Organization, or	0	0



Occupational Association		
Services, Facilities, and Accommodations	9	5
Tenancy	2	2
Purchase of Property	0	0
Publication	0	0
Retaliation	2	0

### REPRESENTATION BEFORE THE TRIBUNAL IN FINAL DECISIONS

The complainant appeared in all 23 hearings. The complainant had a lawyer in 9 of 23 hearings (39%). Compare to previous years:

- 2021-2022 – 67%
- 2020-2021 – 42%
- 2019-2020 – 54%
- 2018-2019 – 32%
- 2017-2018 – 29%

The respondent appeared in 22 of 23 hearings. The respondent had a lawyer in 16 of 22 hearings (77%). Compare to previous years:

- 2021-2022 – 94%
- 2020-2021 – 75%
- 2019-2020 – 77%
- 2018-2019 – 74%
- 2017-2018 – 93%

In past annual reports, the Tribunal has noted a correlation between legal representation and outcomes, though we have noted that the statistics are less helpful when the number of decisions is small. This year's number of final decisions (23) is small for statistical purposes.

This year, complainants did significantly better when represented by a lawyer. The complaint succeeded in full or in part in each of the nine hearings where the complainant had a lawyer. The complaint succeeded



in eight of the 14 cases (57%) where the complainant did not have a lawyer. In one of those cases, the respondent did not appear at the hearing and in four the respondent did not have a lawyer either.

Respondents also did better where they had a lawyer at the hearing. The complaint was dismissed in one of the six hearings (17%) where the respondent did not have a lawyer, compared to five of the 17 hearings (295) where the respondent had a lawyer.

## CASE HIGHLIGHTS

### **Discrimination in Child Welfare Services**

*RR v. Vancouver Aboriginal Child and Family Services Society (No. 6), 2022 BCHRT 116*

RR is an Afro-Indigenous woman and single mother to five children, one who passed away and three who have complex needs. Vancouver Aboriginal Child and Family Service Society [**VACFSS**] is a delegated Indigenous agency that assumes child protection responsibilities. In 2016, VACFSS apprehended RR's four children. For nearly three years, VACFSS retained custody over the children and regulated RR's access to them.

VACFSS discriminated against RR when it made decisions to retain custody and restrict RR's access to her children because the decisions were informed by stereotypes about her as an Indigenous mother with mental health issues, including trauma, and her conflict with the child welfare system. RR had a heightened need to be accommodated by being empowered and included in decisions respecting her children because of her Indigeneity and trauma. Instead, VACFSS responded to RR with escalating assertions of power and control, reducing and suspending her access to the children, limiting her communication with their caregivers, an ultimately prolonging their time in care. VACFSS' actions were not reasonably necessary to achieve its purpose. The Tribunal situated the decision in the historical and current social context of the child welfare system and its relationship with Indigenous peoples.

The Tribunal awarded RR \$150,000 for ©njury to RR's dignity, feelings, and self-respect, and \$5,000 as costs for improper conduct. VACFSS has filed an application for judicial review.

### **Failure to accommodate a drug use disorder**

*K v RMC Ready Mix Ltd. and another (No. 4), 2022 BCHRT 108*

K worked for the respondents as a salesperson. After disclosing he had a substance use disorder and bipolar disorder, K voluntarily entered their employee assistance program. The employer covered the cost of K's residential treatment program. After he completed the program, K relapsed more than once. Before the employer would allow K to return to work, it required K to take a drug test and sign a return-to-work agreement setting out certain conditions, including that he undergo monthly random testing for two years. K did not agree to these requirements, and the employer terminated his employment.

Before the Tribunal the employer argued that the requirements for returning to work were based on recommendations and intended to accommodate K's substance use disorder so he could safely return to





work. The Tribunal disagreed and was not satisfied that the employer had offered a reasonable accommodation. The Tribunal was not satisfied that the employer could have done nothing else reasonable or practical to ensure K could return to work safely. The Tribunal noted, among other things, that: it was unreasonable for the employer to require K to sign a return to work agreement before it would even discuss his return to work with him; the agreement did not reflect what the Substance Use Professional had recommended (and there were unanswered questions as to how and why specific terms were included); it appeared that the agreement was intended to be customized to meet the needs of individual employees, but it was not clear that this was done for K; there was little evidence before the Tribunal about the reasonableness of the employer's approach because the Substance Use Professional did not testify, and the evidence did not establish that the employer had investigated alternative approaches. The Tribunal awarded K \$20,000 for damages for injury to dignity and almost \$140,000 in compensation for lost wages.

### **Employer adequately investigated concerns about racial slurs**

*Martinez Johnson v. Whitewater Concrete Ltd. And others (No. 2), 2022 BCHRT 129*

Mr. Martinez Johnson identifies as Mayan and Black. The Tribunal found that he was subjected to racial slurs by a co-worker on two occasions. The Tribunal accepted that when a co-worker called him an “ape” or “monkey” this was an egregious and virulent racial slur. The Tribunal awarded \$2500 for damages for injury to dignity. The Tribunal, however, was satisfied that the employer had adequately investigated Mr. Martinez Johnson's allegations of harassment and dismissed this part of his complaint. The employer treated Mr. Martinez Johnson's allegations seriously and sensitively. In one instance, among other things, the employer had checked in with Mr. Martinez Johnson after observing that he was upset; acted promptly on the allegations by calling a meeting; asked the alleged harasser to respond to the allegations; facilitated a discussion where the parties could share their grievances and confirm that teamwork was important; and ended the meeting with an understanding that the conflict had been resolved. In another instance involving an alleged assault, the employer responded immediately and separated the employees involved, promptly investigated what happened, and then arranged a follow up meeting to review the employer's bullying and harassment policy.

### **Age discrimination in employment**

*Harder v. Tupas-Singh and another, 2022 BCHRT 50*

Ms. Harder was employed by Signature Dental. Ms. Harder made two allegations of discrimination against Signature Dental and Mr. Tupas-Singh, the owner of Signature Dental. The Tribunal found that the Respondents discriminated against Ms. Harder when they terminated her employment. The Tribunal accepted that there were non-discriminatory factors that contributed to Ms. Harder's termination. However, the Tribunal was persuaded that age was one actor that contributed to her termination. Less than a week before the termination, Mr. Tupas-Singh told Ms. Harder the Respondents were looking for someone to continue working 10 to 12 years and said she probably would not be there in the next five years. The Tribunal awarded Ms. Harder \$5,102 for lost wages and \$4,000 for injury to her 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 if 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 13 petitions for judicial review filed in the BC Supreme Court and one notice of appeal filed with the BC Court of Appeal. The Tribunal filed its own appeal on a question of statutory interpretation from the order allowing a petition in *Gibraltar Mines Ltd. v Harvey*, 2022 BCSC 385. There were no leave applications filed with the Supreme Court of Canada. The BC Supreme Court issued seven judgments regarding petitions on Tribunal decisions. The Court struck one petition, dismissed four petitions, and remitted one decision to the Tribunal for reconsideration.

The BC Court of Appeal issued four judgments. The Court dismissed one appeal as moot. It dismissed two appeals from orders dismissing petitions.

Other judgments involved interim matters, as set out below.

Judgments on Petitions and Appeals

### PREMATURE JUDICIAL REVIEW

The BC Supreme Court dismissed two petitions as premature, as the Tribunal had not completed its process and the petitioner had not established exceptional circumstances that warranted judicial review at the time:

- *Independent School Authority v. Parent*, 2022 BCSC 570
- *University of British Columbia (Faculty of Medicine) v. Gregory*, 2022 BCSC 119.



## MOOT APPEAL

The BC Court of Appeal dismissed an appeal as moot because the Tribunal had issued a decision on the court-ordered reconsideration: *Byelkova v. Fraser Health Authority*, 2022 BCCA 205

## DISCRETION TO DISMISS A COMPLAINT

The BC Supreme Court remitted one matter for reconsideration under s. 27(1©) of the *Code*: *McNeil v. British Columbia (Human Rights Tribunal)*, 2023 BCSC 481.

The BC Court of Appeal upheld two orders dismissing petitions for judicial review from decisions dismissing a complaint under s. 27(1) of the *Code*:

*Miller v. The Union of British Columbia Performers*, 2022 BCCA 358

*Conklin v. University of British Columbia*, 2022 BCCA 333

The BC Court of Appeal upheld an order dismissing a petition about a decision that a complaint was late-filed: *White v. Baptist Housing Enhanced Living Communities*, 2022 BCCA 419.

Highlighted judgment: *Miller v. The Union of British Columbia Performers*, 2022 BCCA 358

The complainant alleged that the respondent discriminated against her by offering preferential admission to a workshop to “[I]ndigenous, LGBTQ+ and diverse Members.” The complainant identifies as a heterosexual woman who is biracial but has been told she does not look ethnic enough to be considered diverse. Her complaint alleged that the respondent discriminated against her based on her sexual orientation and ancestry, because the respondent “had decided that heterosexual women deserve less support than ethnic minorities and LGBTQ members”.

The Tribunal dismissed the complaint under s. 27(1)(c) of the *Code*, because it had no reasonable prospect of success. The complainant had not applied for the workshop and therefore was not prevented from participating. The complainant’s assertion that she would have been rejected was pure conjecture.

The Tribunal also addressed the argument “at the heart of the complaint”: that white, cisgender, heterosexual women also continue to face discrimination and, by choosing to target other groups, the respondent further contributed to their marginalization. The Tribunal accepted that all women have faced historical and ongoing disadvantage. However, it took notice that women with “intersecting sites of disadvantage” have progressed more slowly than white, cisgender, heterosexual women and accepted that this group enjoy more advantage than men or non-binary people in some contexts. Programs designed to ameliorate the disadvantage of one group inevitably exclude those from other groups but this does not necessarily amount to “reverse discrimination.” Not every program designed to promote equity must include all women.

The Court of Appeal dismissed the complainant’s appeal. The Court summarized the complainant’s argument that she was “unfairly pushed aside” due to the respondent’s discriminatory preference for



diverse and LGBTQ+ members. The Court rejected this argument, saying that substantive equality is at the core of the Code's protections and the Tribunal's analysis. The Court repeated the well-accepted principle that "not every difference in treatment between individuals produces inequality" and explained further at para. 58:

... a program that distinguishes between individuals based on a protected ground to ameliorate the conditions of a disadvantaged group furthers substantive equality and is not discriminatory even though such programs necessarily exclude people from other groups. This is because differential treatment in the service of equality for disadvantaged groups is an expression of equality, not an exception that requires exemption.

The Court also rejected the complainant's argument that a special program approval under s.42 of the *Code* was required for the respondent to target certain marginalized groups and be non-discriminatory. The complainant's interpretation of the *Code* did not accord with the well-established principles of substantive equality and human rights.

### JUDGMENTS ON OTHER MATTERS

The courts made decisions on applications to:

- Strike a petition: *Harun-ar-Rashid v. British Columbia (Human Rights Tribunal)*, 2022 BCSC 965
- Intervene in an appeal: *Gibraltar Mines Ltd. v. British Columbia (Human Rights Tribunal)*, 2022 BCCA 234
- Stay the Tribunal process: *CFO v. The Organization*, 2022 BCSC 1309.



## VI. Financial Disclosure: Tribunal Operating Costs

Although Tribunal expenditures in fiscal year 2022-23 exceeded the delegated budget, approval was received from the Ministry of Attorney General to access up to \$800,000 in emergency funding. The Tribunal deployed the emergency funds by:

- Hiring staff and onboarding Tribunal members.
- Contracting with 17 mediators to provide mediation services at lower cost and free-up member resources for decision-making and adjudication.

The Tribunal was not able to access the full emergency funding because of delays in hiring processes and the addition of these funds coming part way through the year.

DESCRIPTION	EXPENDITURES	DELEGATED BUDGET	VARIANCE
<b>Salaries</b>	\$ 2,928,187	\$ 2,700,000	\$ (228,187)
<b>Supplementary Salary Costs</b>	\$ 836	\$ 0	\$ (836)
<b>Employee Benefits</b>	\$ 753,269	\$ 686,000	\$ (67,269)
<b>Fees for Temporary Members</b>	\$ 178,951	\$ 150,000	\$ (28,951)
<b>Travel</b>	\$ 3,022	\$ 0	\$ (3,022)
<b>Professional Services</b>	\$ 305,969	\$ 170,000	\$ (135,969)
<b>Information Services</b>	\$ 114,891	\$ 100,000	\$ (14,891)
<b>Office and Business Expenses</b>	\$ 48,942	\$ 50,000	\$ 1,058
<b>Other Expenses</b>	0	0	0
<b>Subtotal</b>	\$4,334,067	\$3,856,000	\$(478,067)
<b>CONTINGENCY FUNDING</b>		\$ 800,000	
<b>TOTAL</b>	\$4,334,067	\$4,656,000	\$ 321,933



## Appendix 1: Case Volume

### NEW CASES FILED 2022-2023

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 2,624 new cases with the Tribunal this fiscal year. Of these, 211 related to the Covid-19 Pandemic, a marked reduction in this category of cases. The total case volume was more in line with that of the 2021-22 fiscal year, though still nearly double historic rates.

### ACTIVE CASES

The fiscal year started with an all-time high number of active cases and ended with a greater number still, with 5,396 active cases at March 31, 2023.

The additional active cases this fiscal year are mainly in the early stages of our process with backlogs particularly acute at the screening stage. The existing inventory continues to present 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 1,357 complaints in the 2022-23 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, roughly 76% of new complaints proceeded past screening.

#### **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 452 mediations over the fiscal period, of which 262 resolved.

**Resolved independently by parties**

Parties are encouraged to settle complaints on their own, especially where all are represented by a lawyer. This year, 4% of the cases closed resulted from settlement by the parties without Tribunal assistance.

**Dismissed in preliminary decision**

Over the course of the fiscal year, the Tribunal issued a total of 59 dismissal application decisions, of which 31 cases were dismissed, representing 2% 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 2022-23, the Tribunal issued a total of 23 final decisions. Of those decisions, 5 cases were dismissed, representing 0.4% 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, 28% of complaints closed because the complainant abandoned or withdrew their complaint.

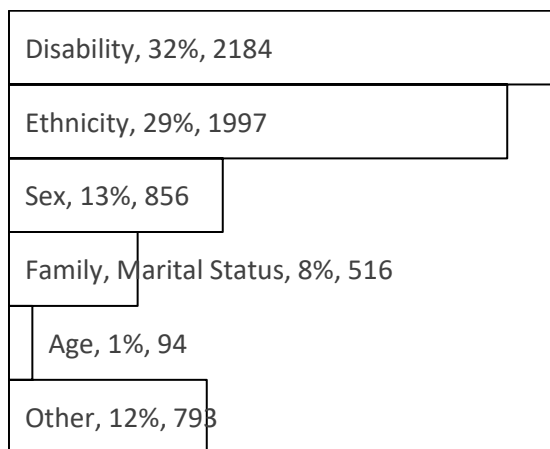


## Appendix 2: Complaints by Areas and Grounds of Discrimination

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.

### COMPLAINTS BY GROUNDS OF DISCRIMINATION

As with previous years, in the 2022-23 fiscal year, disability remained the most common ground of discrimination alleged (32%); followed by ethnicity (which includes race, place of origin, ancestry, Indigenous Identity, and colour) (29%); sex (13%); family and marital status (8%), and religion (6%). The grounds of sexual orientation and political belief composed 5% of new complaints. Notably, many complaint allege more than one ground.



April 1, 2022 – March 31, 2023

<b>Total – Disability</b>	<b>2184</b>	<b>32%</b>
Physical Disability	1036	15%
Mental Disability	1148	17%
<b>Total – Ethnicity</b>	<b>1997</b>	<b>29%</b>
Race	660	10%
Place of Origin	407	6%
Ancestry	318	5%
Indigenous Identity	243	4%
Colour	369	5%
<b>Total – Sex</b>	<b>856</b>	<b>13%</b>
Sex, Harassment, Pregnancy	611	9%
Gender Identity or Expression	245	4%
<b>Total – Family and Marital Status</b>	<b>516</b>	<b>8%</b>
Family Status	330	5%
Marital Status	186	3%
<b>Age</b>	<b>94</b>	<b>1%</b>
<b>Total – Other</b>	<b>793</b>	<b>12%</b>
Religion	385	6%
Sexual Orientation	226	3%
Unrelated Criminal Conviction	53	1%
Political Belief	121	2%
Lawful Source of Income	8	0.1%
Retaliation and Undetermined	382	6%
<b>Grounds</b>		
<b>TOTAL</b>	<b>6822</b>	

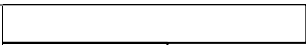
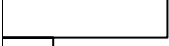













Employment cases have historically made up about 60% of the Tribunal’s overall caseload. This year that percentage was 50%. Service complaints, which have historically been around 23%, decreased from 40% in the previous year to 27%. These changes are largely attributable to the decrease of pandemic-related services complaints related to mask wearing and proof of vaccination.

### COMPLAINTS BY AREAS OF DISCRIMINATION

April 1, 2022 – March 31, 2023

<b>Employment</b>	<b>1418</b>	<b>50%</b>	
Services	771	27%	
Tenancy	239	8%	
Retaliation	200	7%	
Membership	122	4%	
Publications	51	2%	
Purchase of Property	13	0.5%	
Employment Advertisement	2	0.1%	
Wages	1	0.04%	
Other	105	4%	
<b>TOTAL</b>	<b>2817</b>		

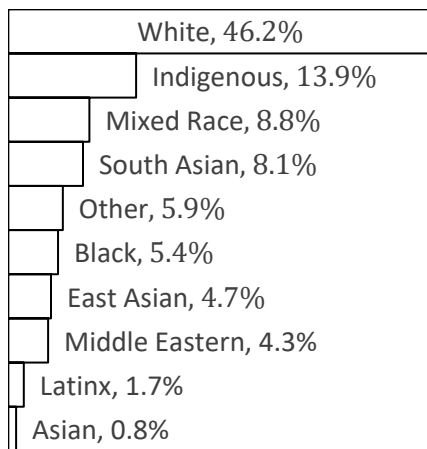


## Appendix 3: Who is filing complaints?

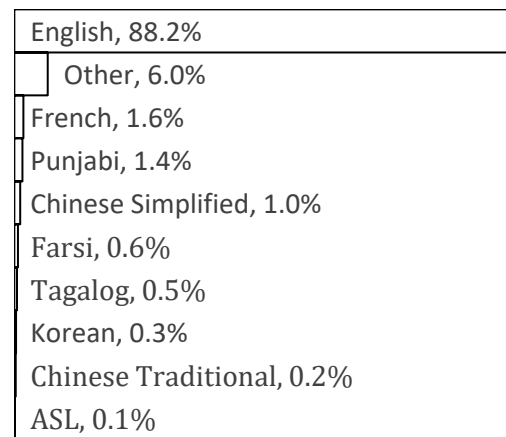
### COMPLAINANTS' DEMOGRAPHIC INFORMATION

At the end of June 2020, the Tribunal began collecting demographic information from complainants on a strictly volunteer and confidential basis. Approximately 52% 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 2022 and March 2023 as set out below.

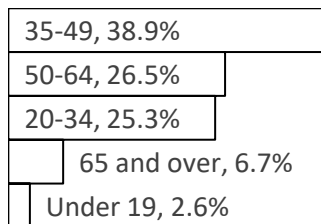
#### Racial Identity



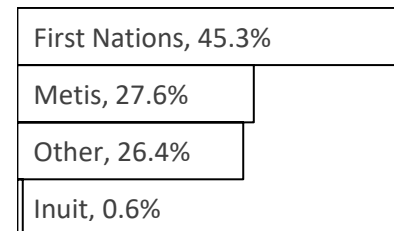
#### Language



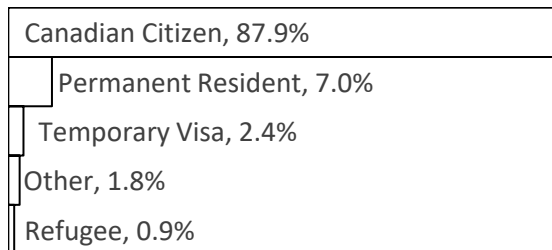
#### Age



#### Indigenous Identity

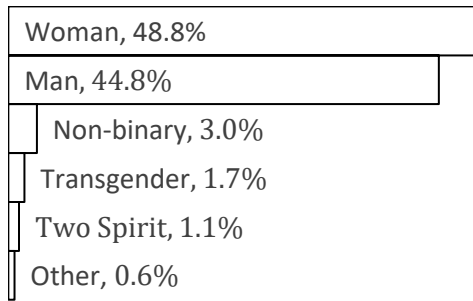


#### Immigration Status

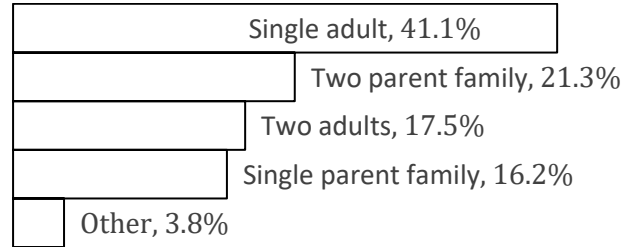




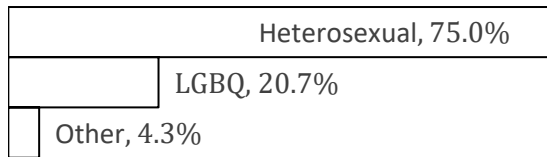
### Gender Identity



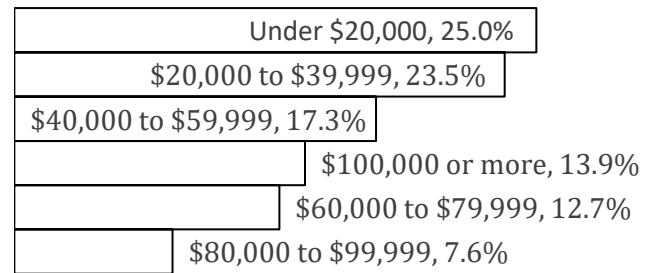
### Household Type



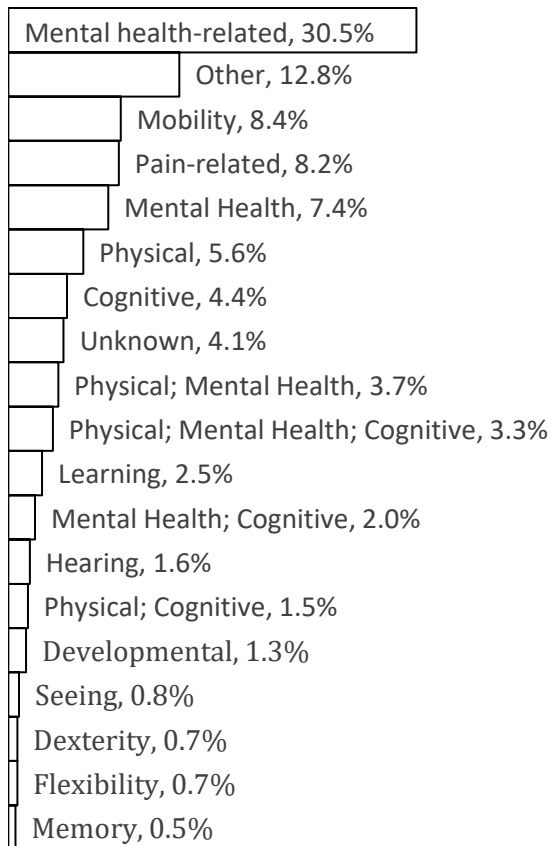
### Sexual Orientation



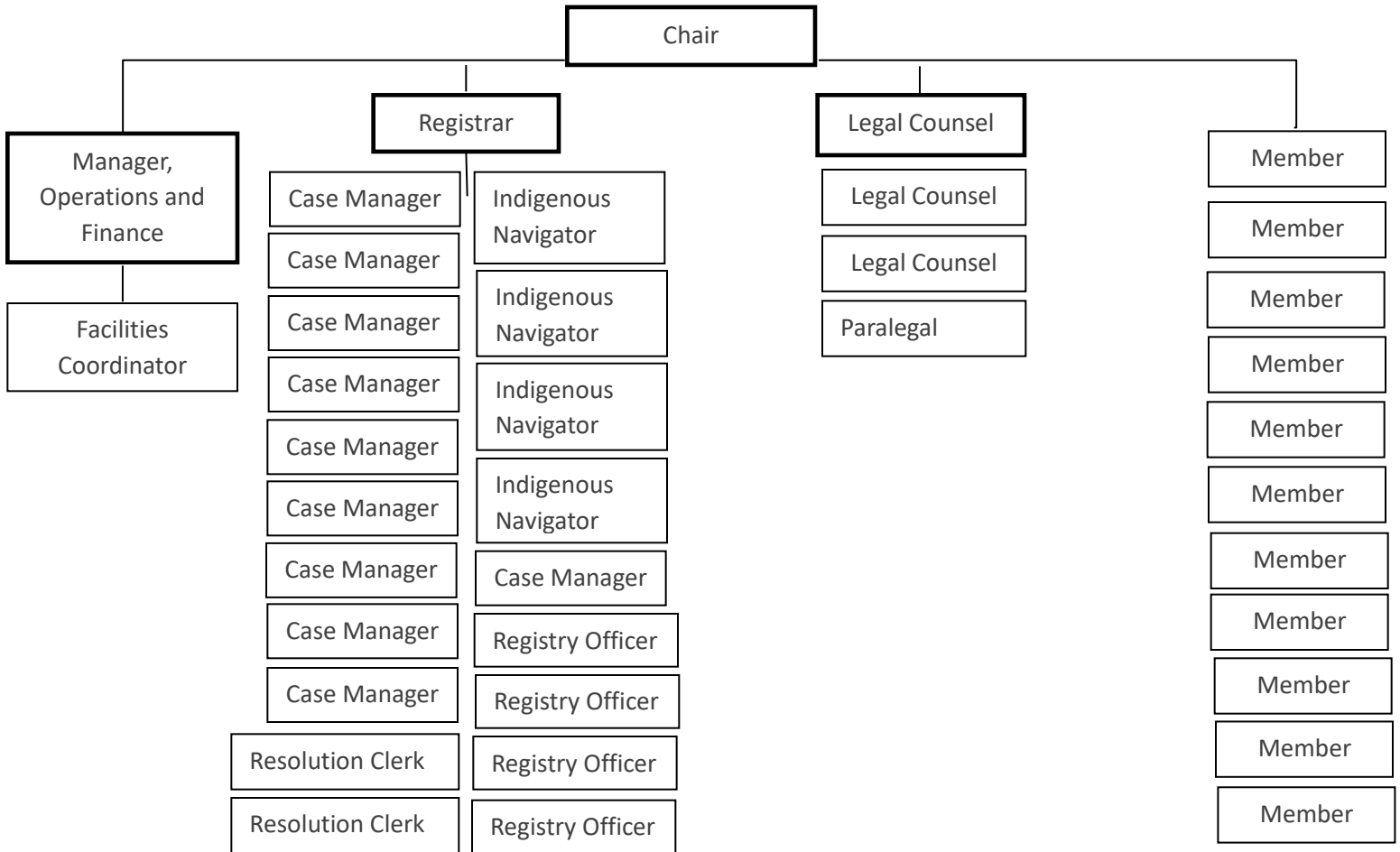
### Household Income After Tax



### Disability Requiring Accommodation



# 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. The 2022-23 fiscal year saw considerable turnover due in large part to the availability of emergency funding which allowed for the late onboarding of temporary additional resources.

### **Chair**

Emily Ohler (Chair and Member)

### **Registrar**

Rose Chin (Acting, partial year)

Steven Adamson (partial year)

### **Tribunal Members**

Steven Adamson (Registrar and Member, partial year)

Shannon Beckett (partial year)

Kylie Buday (partial year)

Grace Chen (partial year)

Devyn Cousineau

Jessica Derynck

Beverly Froese

Ryan Goldvine (partial year)

Pamela Murray (partial year)

Sonya Pighin

Amber Prince

Kathleen Smith

Karen Snowshoe

Edward Takayanagi (partial year)

Marlene Tyshinski (partial year)

### **Legal Counsel**

Katherine Hardie

Rose Chin (partial year)

Joana Thackeray (partial year)

Shawnee Monchalin (partial year)

### **Registry Staff**

Cheryl Bigelow

David Christie (partial year)

Genevieve Gatus (partial year)

Pedro Guerra (partial year)

Kerry Jervelund

Maxine Jones (partial year)

Mattie Kalicharan

Erin Kakeeway (partial year)

Ainsley Kelly (partial Year)

Carla Kennedy

Anne-Marie Kloss

Lorne MacDonald

Luana Magno

Nikki Mann

Chantelle Martin (partial year)

Sarah Muench

Kate O'Brien

Nicole Seeley (partial year)

Meagan Stangl

Britt Stevens

Sandy Tse

Daniel Varnals

### **Legal Department Staff**

B. Ho (partial year)

### **Manager of Finance and Operations**

Andrea Nash (partial year)