Discussion Paper

February 6, 2026

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Introduction

The British Columbia Human Rights Tribunal is reviewing its practice for exercising its dismissal power under s. 27(1) of the *Human Rights Code*.

To assist in this process, the Tribunal has convened an Advisory Group of volunteers to provide input on feasible procedural options for exercising its dismissal power under s. 27(1) of the *Code*. Feasible options are those that the Tribunal could adopt without additional resources.

As part of the review process, the Tribunal has prepared this discussion paper.

The purpose of this paper is to provide background information to facilitate informed and productive discussion by the Advisory Group and to assist in identifying and recommending procedural options going forward. Specifically, this paper sets out background information regarding:

- the Tribunal's operating reality which includes backlog, delay, and limited resources;
- the legal framework and principles that guide the Tribunal's decision-making under s. 27(1);
- a history of the Tribunal's practice in respect of s. 27(1);
- feedback received by the Tribunal regarding its practice in respect of s. 27(1); and
- the Tribunal's recent experience with the Case Path Pilot Project [**CPP**].

This paper also identifies procedural options going forward and considerations and discussion questions relevant to identifying and recommending those options.

This paper is intended for internal discussion purposes.

In this process, the Tribunal will not discuss the merits or ongoing decision making in respect of any active complaints.

Background

1. Context of backlog, delay, and limited resources

The Tribunal's operational reality informs this review of the Tribunal's practices for exercising its dismissal power under s. 27(1). The effectiveness of the Tribunal's practices can only be understood in the context of significant backlog and delay and the reality that the Tribunal does not currently have control over its funding and resulting resources.

The Tribunal has operated in the context of significant backlog and delay for several years, particularly since 2020. In its 2024/25 Annual Report, the Tribunal reported:

> From 2020-2023, the Tribunal had the capacity to close an average of 1,322 complaints annually, but people filed an average of 2,824. This left the Tribunal processing the overflow complaints from the previous year while multiple years' worth of volume continued to come in each successive year. As this carry-over compounded, so did delays. The Tribunal was forced into a state of perpetual backlog without sufficient resources to match the twin demand of increased volume and compounding overflow. Existing staff and systems were increasingly under strain. By the end of the 2022/23 fiscal year, people had filed roughly 4,500 more complaints than the Tribunal could absorb in just three years.
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> In the 2023/24 fiscal year, the Government increased the Tribunal's funding. The Tribunal implemented its Backlog Strategy in the second quarter and onboarded new Member and Registry resources in the third. These steps slowed backlog growth significantly, dropping the average overflow carry-over from the previous year even with the new-complaint volume increase. […] While the Tribunal continues to seek efficiencies, current delays in processing time can be expected to remain. Further, there is no room for the Tribunal to absorb another volume shock.

As of January 2026, the Tribunal had about 7,300 active complaints, with 3,336 complaints at screening (1,990 2024-filed and 1,346 2025-filed). Of complaints past mediation and disclosure, 155 were ready for case path review, and 117 had dismissal applications with concluded submissions awaiting assignment or decision.

2. Section 27(1) Dismissal Power

Section 27(1) grants the Tribunal discretion to dismiss all or part of a complaint, "at any time after a complaint is filed and with or without a hearing" on seven grounds.

a. Purpose of s. 27(1)

The purpose of s. 27(1) of the *Code* is to permit the Tribunal to "more effectively supervise and administer the *Code* as a whole".[1] The grounds for dismissal refer to circumstances that make hearing the complaint presumptively unwarranted.[2]

The *Code* does not circumscribe when the Tribunal may exercise its s. 27(1) power beyond stating "at any time after a complaint is filed" and "with or without a hearing". In fact, the Tribunal exercises this power at various stages of the process, including at the screening stage,

[1] *Gichuru v. Pallai*, 2018 BCSC 2220 at para. 18.

[2] *British Columbia (Workers' Compensation Board) v. Figliola*, 2011 SCC 52 at para. 40.

all the way through to a hearing on the merits. In many circumstances, the earlier in the process that the Tribunal dismisses such complaints, the better.

b. The grounds for dismissal

Next, we provide a brief summary of the grounds for dismissal under s. 27(1)(a) through (g).

No jurisdiction: Section 27(1)(a)

Under s. 27(1)(a), the Tribunal may dismiss all or part of a complaint where it is not within the jurisdiction of the Tribunal. In practice, there are very few "true" jurisdictional questions.[3] However, jurisdictional questions arising under s. 27(1)(a) may include division of powers issues and whether there is a sufficient connection to BC. They may also include circumstances where the respondent is immune from complaints under the *Code*, as in the case of judicial or prosecutorial immunity. Certain clear jurisdictional issues are often addressed at the screening stage, with the Tribunal referring complainants to the Canadian Human Rights Commission, where a respondent is federally regulated, for example.

No arguable contravention: Section 27(1)(b)

Under s. 27(1)(b), the Tribunal may dismiss all or part of a complaint where the acts or omissions alleged in the complaint do not contravene the *Code*. Here the Tribunal considers whether the complaint alleges facts that could, if proven, contravene the *Code*. The threshold for passing the arguable contravention test is low. The Tribunal applies this threshold at screening to every complaint before deciding whether to proceed with the complaint.

No reasonable prospect of success: Section 27(1)(c)

Under s. 27(1)(c), the Tribunal may dismiss all or part of a complaint where it is satisfied that there is no reasonable prospect that the complaint will succeed.

The Tribunal does not make findings of fact under s. 27(1)(c). Instead, the Tribunal looks at the evidence filed on the application to decide whether there is no reasonable prospect that findings of fact that would support the complaint could be made on a balance of probabilities after a full hearing of the evidence.

The Tribunal may dismiss a complaint under s. 27(1)(c) where it determines that there is no reasonable prospect the complainant will establish an element of their case. The burden on a complainant is low, as they do not need to prove their case at this stage but need only take the complaint out of the realm of conjecture. The Tribunal may determine it is not possible to decide the matter without an oral hearing.

[3] See e.g. *Canada (Canadian Human Rights Commission) v. Canada (Attorney General),* 2018 SCC 31 at para. 33. See also *Child L (by Mother L) v. BC Ministry of Education*, 2025 BCHRT 27 at para. 16.

The Tribunal may also dismiss a complaint where it determines that the respondent is reasonably certain to establish a defence at a hearing.[4]

Proceeding with the complaint would not benefit the person(s) alleged to have been discriminated against or would not further the purposes of the Code: Section 27(1)(d)

Under s. 27(1)(d), the Tribunal may dismiss all or part of a complaint where it is satisfied that proceeding with the complaint would not benefit the person, group or class alleged to have been discriminated against (s. 27(1)(d)(i)), or would not further the purposes of the *Code* (s. 27(1)(d)(ii)).

Applications under s. 27(1)(d)(ii) arise more frequently than applications under s. 27(1)(d)(i). Applications under s. 27(1)(d)(ii) can arise in circumstances such as where a respondent argues that:

- the complaint should be dismissed against an individual respondent in circumstances where there is an institutional respondent;[5]
- the parties settled the complaint;
- the respondent remedied the complaint by taking the problem seriously and addressing the harm to the complainant;
- the respondent made a reasonable offer to settle the complaint;
- where, based on the outcome of another proceeding, the Tribunal is satisfied that it would not further the purposes of the *Code* to proceed.[6]

Complaint made in bad faith or for an improper purpose: Section 27(1)(e)

Under s. 27(1)(e), the Tribunal may dismiss all or part of a complaint if it is satisfied that the complaint was filed for improper purposes or made in bad faith. Applications under s. 27(1)(e) must meet a high standard. Such applications require fact-finding, including a finding of wrongdoing.[7]

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[4] In its first decision on the issue, *Trevena v. Citizens' Assembly on Electoral Reform and others*, 2004 BCHRT 24, the Tribunal considered if the respondent had established a *bona fide* occupational requirement for its hiring decision. In *Purdy v. Douglas College and others*, 2016 BCHRT 117, the Tribunal said it must be "reasonably certain" the respondent will establish the defence at a hearing.

[5] In light of the considerations set out in *Daley v. B.C. (Ministry of Health) and others*, 2006 BCHRT 341 [***Daley***] at paragraphs 60-62.

[6] See for example *SA v. Greater Vancouver Regional District dba Metro Vancouver Housing Corporation*, 2023 BCHRT 15.

[7] *O v. I Co. and another*, 2012 BCHRT 55 at para. 73; *Mokhtari v. Hain-Celestial Canada (No. 1),* 2007 BCHRT 196 at paras. 7-10.

It is often difficult to meet the standard on a preliminary application, without an oral hearing, where the parties are not subject to cross-examination. The Tribunal has, however, dismissed complaints under s. 27(1)(e) after a full oral hearing.[8]

Substance of the complaint was appropriately resolved in another proceeding: Section 27(1)(f)

Under s. 27(1)(f), the Tribunal may dismiss all or part of a complaint if it is satisfied that its substance has been appropriately dealt with in another proceeding.

Such applications may arise where all or some of the parties to a complaint are involved in another proceeding. Such circumstances are not unusual, particularly in complaints arising from the employment context.[9] The Tribunal considers whether the other proceeding has appropriately dealt with the substance of the complaint. This analysis includes consideration of whether there was concurrent jurisdiction to decide human rights issues; whether the previously decided legal issue was essentially the same as what is being complained of to the Tribunal; and whether there was an opportunity for the complainants or their privies to know the case to be met and have the chance to meet it, regardless of how closely the previous process procedurally mirrored the one the Tribunal prefers or uses itself. It is really a question of whether it makes sense to expend public and private resources on the relitigation of what is essentially the same dispute.[10]

The basis for these applications may arise before or after the complaint is filed.

Complaint is late filed: Section 27(1)(g)

Under s. 27(1)(g), the Tribunal may dismiss a complaint where the contravention alleged in the complaint or that part of the complaint occurred more than one year before the complaint was filed unless the complaint or that part of the complaint was accepted under s. 22(3) of the *Code*.

These applications may require the Tribunal to consider whether the complaint alleges a continuing contravention and, if the complaint is late filed, whether it would be in the public interest to accept it and the delay in filing will not result in substantial prejudice to any person. As with jurisdiction, timeliness is often addressed at the screening stage under s. 22, with the

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[8] *Lungu v. BC (Ministry of Children and Family Development) (No. 2)*, 2011 BCHRT 341 at paras. 67-70 (petition for judicial review dismissed, *Lungu v. British Columbia (Ministry of Children and Family Development)* (unreported) Vancouver Registry No. S120705 (BCSC, 20 February 2014); *Yaniv v. Various Waxing Salons (No. 2)*, 2019 BCHRT 222.

[9] See e.g. *Young Worker v. Heirloom and another,* 2023 BCHRT 137 at para. 95. Similarly, citing the example of employment discrimination complaints before the Tribunal, our Court of Appeal has observed that it is "not unusual to have alternative fora, capable of providing substantially the same relief, but drawing on different sources of jurisdiction, and applying different criteria to the adjudication of the dispute falling within that jurisdiction": *Hui v. The Owners, Strata Plan BCS3702*, 2024 BCCA 262.

[10] *British Columbia (Workers' Compensation Board) v. Figliola*, 2011 SCC 52.

Tribunal seeking submissions from the parties in tandem with giving the respondent(s) notice of the complaint.

3. Brief history of the Tribunal's s. 27(1) practice

In this section, we provide a brief history of the Tribunal's practice under s. 27(1) of the *Code,* from 2003 to the present.

When the Tribunal became a direct-access tribunal in 2003, it administered its discretion to dismiss complaints under s. 27(1) principally through two mechanisms: (1) screening complaints on intake; and (2) allowing respondents to apply to dismiss a complaint in accordance with the timelines set by the Tribunal. The former practice continues while the latter has been modified by the Case Path Pilot.

a. 2003-2014: The first years of the direct-access system

Screening

The Tribunal began the practice of screening complaints for jurisdiction and no arguable contravention in 2003 (27(1)(a) and (b)). From 2003-2013, this practice resulted in an average of 26% of complaints being rejected at the outset, without any respondent involvement in the Tribunal process.[11] (As discussed below, the percentage of complaints rejected at screening has increased in recent years.)

The Tribunal also screened complaints for timeliness under s. 22 of the *Code.* If all or part of a complaint appeared to be filed after the time limit, the Tribunal sought submissions from the parties and would make a decision about the timeliness of the complaint.

Dismissal applications

Where a complaint proceeded past screening,[12] the Tribunal set a deadline for the respondent to opt to file a dismissal application 70 days after filing a response to a complaint or within 35 days of new information. After *Kirk v. Burnaby (City)*, 2014 BCSC 155, the Tribunal revised its process to require respondents to complete disclosure before filing a dismissal application.

In the first ten years of the direct-access system, dismissal applications were successful an average 47.5% of the time.[13] Overall, however, this means that in over half of the cases where

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[11] BC Human Rights Tribunal Annual Report 2012-13 Tenth Anniversary Edition [**Tenth Anniversary Annual Report**], at p. 21: 10-year average of 12%, 13%, 23%, 22%, 26%, 32%, 35%, 29%, 31%, 40%.

[12] In *Gichuru v. Vancouver Swing Society*, 2021 BCCA 103, this Court held the Tribunal's screening power is found in s. 27(1) of the *Code*, which gives the Tribunal the discretion to "dismiss" a complaint, rather than to refuse to accept a complaint. Prior to that decision the Tribunal used the language of "accepting a complaint for filing" after screening. Rule 12 now refers to a decision to "proceed with a complaint".

[13] **Tenth Anniversary Annual Report**, at p. 22.

an application was filed, the Tribunal both decided the application and devoted resources toward hearing preparation.[14]

Also in the first ten years, dismissal applications accounted, on average, for 10% of cases closed and 23% of cases closed by decision-making.[15]

b. 2015-2020: Emerging delay and modifications to the application to dismiss process

Between 2015 and 2020, an issue emerged with the Tribunal's ability to render timely decisions on applications to dismiss. While the Tribunal took steps during that time – which we identify below – to respond to emerging delays, those steps were insufficient and, by 2020, clear delays were emerging across the process.

The Tribunal identified an issue in its Annual Report for 2015-2016 with the number of outstanding preliminary decisions, including applications to dismiss, "appear[ing] to be inching upward."[16] At the time, the Tribunal attributed the trend to a number of factors, including that the Tribunal operated for several months below its full member complement, as well as changes to its rules that required earlier document disclosure. The Tribunal observed that in the wake of the rules changes, preliminary applications were "more lengthy and legally complex" and suggested that this may be an "unintended consequence" of the changes to the Tribunal's rules.[17]

Also in the Annual Report for 2015-2016, the Tribunal described strategies to minimize decision delay, including encouraging members to write shorter, more succinct decisions and to render decisions in letter form where appropriate. The Tribunal also reported that it was considering a process to deal with preliminary applications based on oral submissions.[18]

By late 2017, the Tribunal had introduced goals for how long it took to deal with a complaint at each stage of its process, referred to as "service standards". The Tribunal identified that it aims to meet its service standards at least 80% of the time. The service standards on applications to dismiss a complaint without a hearing was to issue a decision within 90 days of receiving submissions. For other applications it was 30 days. Previously the Tribunal had, internally, a 90-day "performance standard", for the publication of decisions on applications to dismiss.

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[14] That said, the number of complaints that have a hearing is low, historically accounting for up to only 5% of cases closed. In the first ten years as a direct access system, the Tribunal closed about 50 complaints per year after a hearing, accounting for 5% of the cases closed.

[15] Cases closed by decision-making at screening, dismissal applications, and after a hearing: see Appendix B.

[16] BC Human Rights Tribunal Annual Report 2015-2016 [**Annual Report 2015-2016**] at p. 3.

[17] Annual Report 2015-2016 at p. 3.

[18] Annual Report 2015-2016 at p. 3.

Though the Tribunal aimed to achieve its service standards, the Annual Reports from 2016 to 2020 indicate that:

- the Tribunal continued to have a significant workload with an all-time high case load;
- applications to dismiss represented a significant portion of the preliminary decisions before the Tribunal;
- the Tribunal was not meeting its service standards for applications to dismiss; and
- notwithstanding efforts to address the issue, the queue of outstanding applications that was "inching upward" continued to grow.

In 2016-2017, applications to dismiss represented 43% of all preliminary applications filed. In the context of its service standards, the Tribunal continued to use strategies set out the previous year. [19]

In 2017-2018, applications to dismiss represented one third of all preliminary decisions rendered by the Tribunal. The Tribunal met its service standards for applications to dismiss only 42% of the time (in contrast, the Tribunal met its service standards for other preliminary decisions 76% of the time).[20]

Importantly, that year marked a new trend, as the gap between opened and closed cases widened. The Tribunal attributed this trend to a number of pressures, including the fact that the Tribunal had been operating without a full complement of members for several years. The Tribunal also attributed delays in adjudicating dismissal applications to disputes over document disclosure.[21]

The following year, 2018-2019, the picture looked similar. With respect to applications to dismiss, they continued to represent a substantial portion of the Tribunal's preliminary decisions at 44%. Compared to other preliminary decisions, the rate for meeting the service standards for applications to dismiss was the lowest.[22] In the face of unprecedented volume, the Tribunal reported its current approach was unsustainable and that the Tribunal was seeking to meet increased demand for its services through more staff.[23]

By the following year, 2019-2020, delays had clearly emerged in issuing decisions on dismissal applications as the Tribunal continued to face challenges in meeting its service standards

[19] BC Human Rights Tribunal Annual Report 2016-2017 [**Annual Report 2016-2017**] at p. 12.

[20] BC Human Rights Tribunal Annual Report 2017-2018 [**Annual Report 2017-2018**] at p. 9.

[21] Annual Report 2017-2018 at pp. 7-8 and Appendix B.

[22] Annual Report 2018-2019 at p. 8.

[23] Annual Report 2018-2019 at pp. 1 and 6.

regarding those decisions. They represented 45% of all Tribunal preliminary decisions. The Tribunal's rate of meeting its service standards for such decisions was 45%.[24]

In 2019 the Tribunal introduced two modifications to the application to dismiss process.

First, the Tribunal issued a Practice Direction[25] that permitted early dismissal applications regarding individual respondents where there was also an institutional respondent. The intention of this practice direction was to address the policy reasons against naming individual respondents, including that, "naming individual respondents has a marked tendency to complicate and delay the voluntary resolution of complaints, the Tribunal's pre-hearing processes, and eventual hearings."[26]

Second, it issued a Practice Direction[27] that limited the number of pages of submissions on a dismissal application. The intention of the Practice Direction was to facilitate a more proportionate, efficient and cost-effective process by encouraging parties to focus on argument directly relevant to the issues in the application and avoid unnecessary argument. The intention was also to allow the Tribunal to more effectively manage the high volume of dismissal applications and issue decisions in a timelier manner.

Unfortunately, the Practice Direction on page limit restrictions did not result in a reduction in decision-making delays.[28]

In this period, the average success rate for dismissal applications was 46%, slightly below the 47.5% average in the first ten years of operation.[29]

Also in this period, decisions on dismissal applications accounted for, on average, 8% of cases closed and 20% of cases closed by decision making.[30] Again, these figures are slightly lower than in the first ten years of operation (10% and 23%, respectively).

New complaints steadily increased between 2014-2015 and 2019-2020 and active cases increased from 868 to 1,529.[31]

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[25] Practice Direction, "Application to Dismiss a Complaint Against Individual Respondents", November 7, 2019.

[26] *Daley* at para. 54.

[27] Practice Direction, "Page Restrictions on Applications to Dismiss a Complaint", November 1, 2019.

[28] Annual Report 2019-2020, "The Tribunal surveyed adjudicators over a six-month period to see what impact the page limits had on the timeliness of their decisions. 63% of the adjudicators found "no change" and 37% found that it was "easier to write" the decision."

[29] See Appendix B for years 2015-2016 through 2019-2020.

[30] Appendix B for years 2014-2015 – 2019-2020.

[31] Annual Report 2019-2020, Tribunal Workload chart.

c. 2021: Emergency Pause

By 2021, the Tribunal had a backlog of dismissal applications in the context of a significantly increased caseload that arose suddenly over the fiscal year and pressures in its staffing complement.

In 2020-2021, the active case load increased from 1,529 to 2,966, largely due to a jump in the cases filed from 1460 the previous year to 2656. Notably, the Tribunal had 27 staff and Members in 2020-21, only 2 more than at its first year of operations in 2003-2004.[32]

In July 2021, the Tribunal announced the appointment of a then-full-time member of the Tribunal as Tribunal Chair effective August 1, 2021 for a three-year term. For the six months before Chair Ohler's appointment, the Tribunal was led by an acting chair, while the recruitment process for a permanent chair was underway. In November 2021, the Tribunal had only 8 full-time Members including the Chair and Registrar, with the latter retiring at the end of December. At that time, there were roughly 97 hearings scheduled, and 274 applications to dismiss ready to assign.

On November 8, 2021, the Tribunal issued a Practice Direction[33] that suspended the Rule allowing respondents to file a dismissal application. The practice direction was "an interim emergency measure to address the significantly increased workload at the Tribunal, including the large number of outstanding applications to dismiss complaints made under s. 27 of the *Code*."

The purpose of this was twofold: to compartmentalize the backlog that had accumulated and to allow for a transition to a new approach, which the Tribunal would pilot in 2022, to administering its discretion under s. 27 feasibly and sustainably.[34]

Decisions on dismissal applications accounted for, on average, 5% of cases closed and 11% of cases closed by decision making, due to a drop in decisions that year.[35]

d. 2022: Case Path Pilot Project

On May 6, 2022, the Tribunal introduced the Case Path Pilot Practice Direction,[36] which replaced the Emergency Pause and set out an interim process under s. 27(1) of the *Code*, where the Tribunal reviews a file after disclosure to decide whether the just and timely resolution of the

[32] Annual Report 2020-2021 at p. 20.

[33] Practice Direction, "Emergency Pause on New Applications to Dismiss", November 8, 2021.

[34] Annual Report 2021-22 at p. 6.

[35] Appendix B 2020-2021.

[36] Practice Direction, "Case Path Pilot Practice Direction", May 6, 2022.

complaint would be furthered by proceeding directly to a hearing or proceeding to a submissions process under s. 27(1). The CPP states that in the context of significantly increased case volumes, the practice of allowing respondents to elect making a dismissal application has led to the Tribunal dedicating disproportionate resources to these applications and contributed to delay. Further, under the CPP, the Tribunal will more actively exercise its discretion to invite submissions under s. 27(1) to promote timely and fair resolution of complaints.

The CPP also allows a respondent to file a Form 7.5 – Request to File a Dismissal Application based on new information or circumstances within 14 days of the case path decision or new information.

The Tribunal has extended the CPP. It is set to end on May 1, 2026, to coincide with the Tribunal's process review work of which this Advisory Group is a part.

Under the CPP, after the deadline for document disclosure has passed, a Tribunal member reviews the complaint and response, and any amendments or screening decisions. The member determines whether to assign a complaint to the hearing path or the submissions path. The hearing path is the default, and results in the complaint being set down for a hearing. The submissions path results in the Tribunal permitting a respondent to file a dismissal application under one or more of the grounds set out in s. 27(1). A member permits submissions under s. 27(1) if they determine that doing so will further the fair and timely resolution of the complaint.

If a complaint is assigned to the hearing path, a respondent may request permission to file a dismissal application based on new information or circumstances not set out in the complaint or complaint response. And, if a complaint is assigned to the submissions path, a respondent may request permission to include another ground for dismissal under s. 27(1), again based on new information or circumstances not set out in the complaint or complaint response. In either case, a respondent files a Form 7.5 – Request to File Dismissal Application.

e. 2023: Backlog strategy

In the two fiscal years following the 2020-2021 spike in complaints filed, case volumes continued to grow, with no new resources. In 2021-2022, new cases spiked again to 3,192, with active cases at 4,114.[37] In 2022-2023, there were 2,624 new complaints and 5,396 active cases.[38]

[37] Annual Report 2021-2022 at p. 25.

[38] Annual Report 2022-2023 at p. 19.

In the fiscal years 2021-2023, the Tribunal issued a total of 172 decisions on dismissal applications, dismissing a total of 80 complaints (46.5%). These decisions represented 3% of total cases closed and 6% of cases closed by decision.[39]

In fall of 2022, the Tribunal onboarded four new Members, and in the summer of 2023, submitted a request for appointment to the Government of further new Members in the wake of increased funding. On June 30, 2023, the Chair issued a message to the public about the Tribunal's backlog strategy, in anticipation of onboarding the additional Members and Registry staff. This included:

- adjourning most 2023 hearings for complaints filed in 2020 or later
- pausing CPP review of complaints filed in 2020 or later
- a COVID Case Project
- a Screening Inventory Project
- an Outstanding Dismissal Applications Project

The Tribunal issued updates on December 15, 2023, May 1, 2024, and March 7, 2025.

Screening

Under the backlog strategy related to the Screening Inventory Project, the Tribunal changed its approach to screening for no arguable contravention of the *Code.* The Tribunal described the change in the change as follows:

> This project involves adding resources and reviewing our screening thresholds for efficiencies to facilitate faster screening. Specifically, the Tribunal will no longer be perfecting complaints by parsing out specific grounds or allegations.

Specifically, under its screening backlog project, the Tribunal has screened in complaints that appear to contain at least one arguable contravention. If the complaint canvasses more than one event or possibly many events, the scope of the alleged discrimination may be unclear. First, the complaint may not be clear about whether it includes some events as background information only. Second, the decision to screen in a complaint may not identify what the Tribunal has identified as an arguable contravention.

The Tribunal continued to screen for clear cases of lack of jurisdiction and for timeliness issues.

In the 2023-2024 year, the Tribunal dismissed a record high number of cases at screening at over 900. The 2024-2025 year was even higher at almost 1,300. These figures compare to an average of about 300 complaints per year up to and including the 2020-2021 fiscal year. In the last two years, screening represented 47% of cases closed and around 90% of cases closed by

[39] Appendix B.

decision. These figures are significantly higher than any year before 2021, when screening represented on average less than 30% of cases closed on about 70% of cases closed by decision. The two most significant changes in 2020 were the introduction of the online complaint form and the start of several years of a high number of complaints filed in the Covid-19 context, including about mask wearing.

Dismissal applications

Regarding outstanding dismissal applications, in the backlog strategy the Tribunal announced as follows:

> **Outstanding Dismissal Applications Project**
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> **Background:** The Tribunal's current case load includes a large number of complaints in which the parties are waiting for a decision on a respondent's application to dismiss the complaint without a hearing. While this number is relatively small compared to the Tribunal's overall caseload, these applications are resource intensive. The Tribunal has not had the capacity to decide these applications in a timely way or reduce this backlog. The result is significant delay in decisions about whether the complaint will proceed to a hearing.
>
> **What to expect:** For the balance of 2023, the Tribunal will concentrate Member resources on clearing this backlog. To do this, we have made the difficult decision to adjourn the majority of 2023 hearings of complaints filed in 2020 or later. The Tribunal's capacity to conduct hearings will increase in 2024 with the hiring of new Tribunal Members. All hearings will be scheduled, or re-scheduled, based on the date the complaint was filed, from oldest to newest. The Tribunal paused its review of complaints filed in 2020 or later, under its Case Path Pilot Project, which determines which will proceed to hearing and which may proceed through the application to dismiss process, in June 2023. In mid-December, 2023, the Tribunal lifted the pause and recommenced Case Path reviews.

The Outstanding Dismissal Applications Project concluded in November 2024. In the 2023-2024 year, the Tribunal issued 270 decisions on dismissal applications, dismissing 99 complaints (37%), representing 5% of cases closed and 9% of cases closed by decision making. (The decrease in the percentage of cases closed by decision making in this fiscal year and the next is largely due to the spike in cases closed at screening, as identified above.)

In the 2024-2025 fiscal year, the Tribunal issued 200 decisions on dismissal applications, resulting in 100 complaints dismissed. This represents 3.7% of cases closed and 7% of cases

closed by decision making.[40] Respondents filed 191 new dismissal applications in the fiscal, which closed with 111 outstanding dismissal applications.[41] As noted above, as of January 2026, there were 117 outstanding dismissal applications with concluded submissions, nearly all filed in 2024 and 2025.[42]

4. Feedback received regarding the Tribunal's s. 27(1) practice

The Tribunal's process review has taken longer than originally anticipated, due to the need to focus scarce Tribunal resources on the backlog, and a general shortage of resources to dedicate to the review. Regarding s. 27(1) practice specifically, the Tribunal did not start deciding dismissal applications under the CPP until it had cleared much of the pre-CPP decision backlog, which created lag in the ability to assess the pilot.

a. Preliminary feedback – early 2022

In late 2021, the Tribunal Chair had a discussion with two members of the human rights bar about the process for consultations on Tribunal process. Following that discussion, those lawyers convened focus groups to address some specific questions. In February 2022, the Tribunal received that preliminary feedback from members of the human rights bar on various aspects of the Tribunal's process.

To the extent the groups specifically provided feedback on the Tribunal's application to dismiss process, we reproduce the feedback below.

The feedback on applications to dismiss was provided in response to the following questions:

- Should different subsections be triggered at different times in the process (i.e., a, g)?
- How to scope to keep aligned with purpose of the discretion & purposes of the *Code*?
- When/how to ensure the Tribunal is effectively and consistently exercising its gatekeeping function?

The respondent counsel group provided the following feedback:

- There was some support for the current process, which they felt was generally working. The issue is that the Tribunal does not have enough resources.
- A suggestion of limiting the evidence to 100 pages.

[40] 2024-2025 Annual Report p. 17 identifies 2,704 total cases closed; 47.6% dismissed at screening (or 1,287 complaints); 3.7% by dismissal application (or 100 complaints); 1.3% after a hearing on the merits (or 35 complaints). The total complaints closed by decision was 1,422, with dismissal applications representing 7%.

[41] Annual Report 2024-2025 p. 5.

[42] https://www.bchrt.bc.ca/update-from-the-chair-on-backlog-and-delay/

The complainant counsel group provided the following feedback:

- Some subsections of s. 27(1) could be dealt with earlier in the process.
- If a respondent raises grounds for dismissal in their response, the Tribunal should convene a case conference to determine whether to permit an application, and on which grounds.
- Members should be clear that certain grounds, e.g., s. 27(1)(e) will not be entertained unless clear grounds exist for allowing them. They could require a respondent to provide some evidence at the case conference to support an allegation of bad faith.
- Section 27(1)(c) applications need to be drastically reeled in (and prevented in most cases). They give respondents "two kicks at the can". Members cannot assess evidence properly without cross-examination. These applications waste time and prevent fair and timely decisions on a proper evidentiary basis. They also make it harder to settle. Respondents have high expectations that the Tribunal will dismiss the case against them because it grants 50% of applications.
- There is concern about the Tribunal dismissing cases based on reasonable settlement offers.
- If the Tribunal denies a dismissal application, decisions could be much shorter. There is no procedural fairness issue if the respondent gets a hearing. Any judicial review could be argued to be premature.
- The Tribunal could consider costs for unsuccessful or improper applications to dismiss; including those brought contrary to a Member's instructions at a case conference.
- If the Tribunal is going to keep open the possibility of a summary dismissal, it should also open the possibility of a summary judgment in favour of the complainant.
- There is frustration with page limits.

b. Process review feedback – Spring 2023

In February 2023, the Tribunal formally sought public feedback about possible changes to improve its processes. The Tribunal sought feedback on all stages of its processes. The Tribunal received the feedback in the spring of 2023.

On the topic of applications to dismiss, the Tribunal asked:

1. Do you have feedback on the page limits for argument?

2. Do you have feedback on the deadline for filing an application to dismiss?

3. Do you have feedback on the Case Path Pilot?

4. Do you have other feedback on the process for applications to dismiss a complaint without a hearing?

Feedback on the CPP was mixed. Some encouraged the Tribunal to keep the CPP but expressed concern about delay in the CPP process. Other feedback expressed concerns about the CPP, saying:

- It is unclear what the threshold is or what factors are applied. It is confusing and appears to be inconsistently applied.
- Placing more complaints into hearing path does not appear to be streamlining the process, noting that it is not economical for parties to go to hearing over every issue in a complaint where a complaint could be narrowed.
- There is no way to file an application before an application is permitted, including if, for example, the complaint was resolved in another proceeding or raises a jurisdictional issue.
- The Tribunal does not have all the relevant information to make the case path selection.
- The dismissal application process, even if it does not dispose of the complaint, tends to narrow the issues between the parties and provides a source of sworn evidence that is beneficial to have at a hearing.
- If the Tribunal continues some version of the CPP, it should consider other means by which it could engage s. 27(1) early in the complaint process including, for example, seeking submissions on narrow issues such as timeliness, or scope, at a case management conference.

To the extent the Tribunal received feedback more generally on the application to dismiss process (not limited to CPP), we heard that delay in decision-making was the biggest concern. Regarding the page limits on submissions, we heard (1) that page limits are acceptable if the Tribunal retains discretion to extend the limit and addresses extension request expeditiously, (2) that the Tribunal may want to relax the page limit for applications based on multiple grounds, and (3) that the Tribunal may want to set a page limit appropriate to the each complaint.

c. Expanding Our Vision Committee – Fall 2024

The Tribunal also consulted with its Expanding Our Vision [**EOV**] Committee on its existing process under s. 27(1). The EOV feedback included the following observations. Before the CPP, respondents would often file dismissal applications as a matter of course. This could delay the process and be very difficult for complainants. While some dismissal applications raise legitimate bases for dismissal, some may be used as a strategy to delay a complaint or create a barrier to the complaint proceeding. CPP has helped to ensure that these applications are allowed more judiciously, in cases where they may further the just and timely resolution of the *Code*.

Indigenous complainants face specific barriers in bringing complaints forward. Complainants may not understand all the requirements to show discrimination. They may be intimidated by the paperwork involved and engaging with big office buildings / colonial spaces. The application

itself may discourage a complainant, especially an Indigenous complainant without supports, from continuing their complaint at all. Dismissing a complaint when a complainant does not understand the process or law is not justice.

At the same time, the EOV Committee said that the Tribunal must guard against some types of cases that can risk overwhelming and distracting the Tribunal from cases of merit and must recognize that it does not serve complainants to proceed where they are bound to lose. These include complaints that are:

- frivolous, vexatious, bound to fail, or have no air of reality;
- do not identify discrimination that the Tribunal can deal with or the basic facts of a human rights violation;
- outside of the Tribunal's jurisdiction;
- already appropriately addressed by a court or another tribunal; and/or
- very unlikely to succeed.

d. Tribunal survey about the Case Path Pilot – Spring 2025

In March 2025, the Tribunal sought input about the CPP via a survey on its website.

Appendix C sets out the feedback. The following is a summary.

The survey results are of somewhat limited value in that only 29 people responded. However, the feedback identifies strengths and weaknesses of both the previous process and CPP process and suggestions for improving both.

Of those who favoured the previous process, some viewed it as a right under the *Code*. That issue is under judicial review and is outside the scope of this discussion paper, which assumes – until and unless the court says otherwise – that the CPP is a reasonable exercise of the Tribunal's rule-making authority.

Some survey respondents also based their views on disagreement with the outcome of Tribunal's decision-making and the view that it is sending more complaints that do not warrant a hearing to a hearing.

The survey results reflect the following general ideas:

- Hearings can be resource-intensive, costly, and stressful.
- Not all complaints warrant a full oral hearing on their merits.
- Dismissal applications can be resource-intensive, costly, stressful, and can disadvantage self-represented complainants.
- Some respondents are thoughtful about whether an application is appropriate and about the scope of the application.

- Some respondents may file dismissal application as a matter of course or use them to delay the process or file “kitchen sink” or “scattershot” applications that lack merit.

In this context, survey respondents identified that the CPP process can help to:

- identify cases that do not appear to have merit or otherwise do not warrant a hearing; and
- streamline dismissal applications, preventing grounds that are unlikely to succeed and avoid “kitchen sink” applications.

Survey respondents raised general concerns about the CPP process not addressing delay and backlog, and being resource-intensive, where resources could more usefully be employed at screening or case management. They identified that the CPP process has weaknesses and could be improved if retained. They identified concerns and opportunities for improvement as follows:

- Lack of transparency about considerations or standards for path selection.
- Delay in decision making and unpredictability of the timing of decisions at the case path stage and on Form 7.5 requests, requiring stricter timelines and/or resources.
- Deadlines for dismissal applications may be too short in some cases and the basis for extensions unclear.
- Does not provide respondents a meaningful opportunity to say why an application is suitable and makes decisions on partial information. The Tribunal should:
    - Consider an early opportunity to explain why an application is suitable, and
    - Consider an early case management conference to hear submissions and render a timely case path decision.
- Puts complaints on the hearing path where complainants have not complied with disclosure obligations.
- Weaknesses in the CPP may be exacerbated with screening which permits allegations that are not arguable contraventions of the *Code* to proceed.
- The Form 7.5 process:
    - is limited to new information and circumstances and there appears to be inconsistent understanding about what this means,
    - adds unnecessary work, for example, when requests have been allowed based on document disclosure that should have been evident, and
    - does not include a process for a complainant to oppose a request to file a dismissal application.

Survey respondents identified strengths of the previous process, including that it:

- provided the ability to swiftly address complaints that did not warrant a hearing, assuming sufficient resources to make a timely decision on each application,

- ensured the Tribunal had all relevant information regarding whether an application was appropriate and a hearing warranted,
- was more predictable, and
- resulted in either dismissal of the complaint or the Tribunal and parties having a better understanding of the issues, which can facilitate an efficient hearing or help the parties assess whether to settle.

Survey respondents identified weaknesses of the previous process and suggested improvements if the Tribunal reverts to it:

- Delay in decision making. Options to reduce this include:
    - Strictly enforce page limits for submissions,
    - Reduce length of evidence permitted,
    - Set and enforce shorter submission schedules,
    - Shorter decisions.
- Unfair to complainants absent a similar summary process to find a complaint is justified.
- There is no means by which a complainant can recover costs for the time spent responding to an unsuccessful application.
- Complainants are required to respond to frivolous or clearly unmeritorious applications. Options to address this include:
    - Screen for a good arguable case of sufficient merit warranting a response before setting a submission schedule,
    - Allow respondents to make brief submissions about why the complaint is suitable for an application, as in a summary trial process,
    - Ability to argue not suitable for a dismissal application.
- Consider a short hearing on the application with the possibility of oral decisions.
- Consider the ability to file on certain grounds without leave, and leave required on others to avoid scattershot applications.

5. The Tribunal's experience with the Case Path Pilot Project

a. Summary

The Tribunal has now conducted a preliminary review of the impact of the CPP on dismissal applications.[43]

For context, we note that due to limitations with the Tribunal's electronic case management system, the Tribunal cannot easily generate data regarding the Case Path Pilot. As a result, access to data is typically manual and resource intensive, and this has taken time.

[43] Based on a review of CPP decisions from inception through 2024.

While the Tribunal has not historically tracked the percentage of complaints in which a respondent filed a dismissal application, we identify below the percentage of cases in which the Tribunal has permitted an application to dismiss all or part of a complaint. Whereas dismissal applications succeeded in full in roughly 48% of the cases before the CPP,[44] roughly 64% of dismissal applications filed after CPP succeeded in dismissing the complaint in full, with an additional 21% in part.[45]

b. Data analysis

CPP decision outcomes

The Tribunal reviewed CPP decisions made in the first 30 months of CPP through December 2024. In a few, the Tribunal either sought more information or dismissed the complaint without further information. Of the complaints in which it directed a path:

- 41% was to the submissions path for all respondents to the complaint
- 4% was to the submissions path for some respondents to the complaint
- 55% was to the hearing path for some or all respondents to the complaint

About 23% of respondents receiving the hearing path filed requests to file a dismissal application and a few sought to add grounds of dismissal. Of the approximately 75 Form 7.5 requests, the Tribunal

- permitted a dismissal application for all respondents in about 40%
- permitted a dismissal application for some respondents in about 5%
- denied the request in 55% of cases

The Tribunal did not historically track the percentage of complaints in which a respondent filed a dismissal application, so there is no direct comparison point.

Dismissal application outcomes

Following the initial submissions path selection, the Tribunal dismissed the complaint in full in 64% of cases and in part in 21% of cases.[46] While preliminary, this indicates that the success rate for dismissal applications filed under the CPP is higher than the success rate of dismissal applications filed before the introduction of CPP. Some increase over historical averages may be explained in part by the number of COVID-related complaints that were dismissed. However,

[44] 10-year average to 2021-2022: see Appendix B.

[45] Based on decisions made to December 31, 2025 on dismissal applications filed after CPP.

[46] Based on review of decisions made by December 31, 2025 for dismissal applications made under CPP in the 30-month review period.

the higher rate of dismissal suggests there may be value in the Tribunal having a more active role in identifying candidates for dismissal applications.

Following the Form 7.5 requests, the Tribunal dismissed the complaint in full in 46% of cases and in part in 8% of cases. This suggests there is value in respondents having an opportunity to identify for the Tribunal why submissions under s. 27(1) may facilitate the just and timely resolution of the complaint.

Resource implications

There is some indication that CPP has somewhat reduced decision writing time on applications to dismiss. Anecdotally, Tribunal Members report that writing time is reduced by more focused applications and submissions. While CPP decision-making also requires resources, these are not typically resource-intensive decisions.

Hearings

The Tribunal's s. 27(1) process is closely linked to its hearing process, since one outcome of under s. 27(1) is to remove a complaint from the pre-hearing and hearing process. The impact of early dismissal versus remaining in the hearing path for an individual complaint will depend in part on the relative resources required in the s. 27(1) and hearing processes. We do not yet have data that could illustrate the impact of the CPP on the hearing process generally. Again, this is because of the time needed to clear a backlog of pre-CPP dismissal applications.

Tribunal resources in the hearing process relate to case management, pre-hearing conferences, pre-hearing applications, hearings, and decision making. Data that is generally available is the number of hearing days. For example, in the past two fiscal years (2023-2025), looking at the 65 final decisions after a hearing, the average hearing was 5 days and the median hearing length was 4 days. More specifically:

- 29% of hearings were 2 days or less
- 46% of hearings were 3 days or less
- 72% of hearings were 1 week or less
- 92% of hearings were 2 weeks or less
- 8% of hearings were longer than 2 weeks, the longest being 6 weeks

These statistics show that hearing length in the past two years is slightly longer than a similar measurement from 2008-2010, where the Tribunal reported that about half of the hearings were 2 days or less (now about half are 3 days or less), and an average of just over 4 days (now 5 days).[47] As noted, however, this change does not flow from the CPP but is part of the context in which the Tribunal considers its s. 27(1) process.

[47] 2010 Information Brief - British Columbia Law Institute Workplace Dispute Resolution Consultation (bchrt.bc.ca)

Procedural Options

The purpose of the Advisory Group is to provide feedback and recommendations on procedural options available to the Tribunal for administering its s. 27(1) discretion. In this section, we provide information regarding the Tribunal's authority and identify some possible procedural options.

The Tribunal has a broad statutory authority to design the complaint process, subject to the *Code* and the principles of procedural fairness in any given complaint.

In terms of administering its discretion under s. 27(1) of the *Code*, there are several procedural options available to the Tribunal.

Before identifying the procedural options, we make three observations.

First, the purpose of the Advisory Group process is to obtain input on **feasible** procedural options for exercising its dismissal power under s. 27(1) of the *Code*. Feasible options are those that the Tribunal could adopt without additional resources.

Second, the process for administering the Tribunal's discretion under s. 27(1) is closely linked to its hearing process and more generally to its process as a whole. Improvements or changes to the hearing process, for example, may make a hearing a preferable option. The Tribunal has sought and received feedback on hearing options, which it will consider. Options include a simplified hearing process and summary hearings, akin to the summary trial process in the BC Supreme Court. We have not included those options in this discussion paper but recognize that hearing process options are part of the backdrop to its s. 27(1) process.

Third, part of the backdrop to the Tribunal's decision-making process options is the fact that the majority of complaints resolve other than by decision, most commonly, mediation.

1. List of procedural options

This list is not intended to be exhaustive, nor are the items on the list intended to be mutually exclusive. The purpose of the list is to facilitate a productive discussion amongst the Advisory Group and Tribunal.

Procedural options include:

1. Changes to the scope of the application of s. 27(1) at the screening stage.
2. After the screening stage:
    a. Respondents elect whether to file dismissal applications, and on what grounds, but perhaps:
        i. with parameters such as:
            1. limiting the amount of evidence; and/or

2. some grounds under s. 27(1) requiring exercise of Tribunal discretion to invite submissions; or

ii. with other strategies, such as resources to promote organized and concise applications (*e.g.*, argument templates, or revised information sheets) or oral submissions in some cases.

b. Tribunal exercises discretion about the filing of dismissal applications. Possible options include:

i. Identifying in the Form 2 – Complaint Response all the grounds for dismissal;

ii. exercise discretion with additional information related to the resources required for a hearing, e.g. witness lists;

iii. the Tribunal reviews every complaint file as under the CPP; and

iv. the Tribunal reviews complaints only where a respondent requests to file a dismissal application.

2. Discussion Items

In this section we identify discussion items arising from the many ideas raised in public feedback relating to the Tribunal's administration of its discretion under s. 27(1). These discussion items are intended to spark rather than limit discussion and collaborative thinking about options to improve the process.

a. General

The broad question is how to ensure that the process for exercising the Tribunal's authority under s. 27(1) of the *Code* furthers the purposes of the *Code* and facilitates a fair and timely resolution relative to a process that fully adjudicates the merits of the complaint at a hearing on its merits. General discussion items include:

- How can the Tribunal improve the process for s. 27(1) to facilitate the just and timely resolution of complaints?
- How can the Tribunal ensure that the Registry and Member resources allocated to dismissal applications are proportionate relative to the resulting resource savings?

b. Specific discussion items – ensuring proportionality

As noted above, it is important that the Tribunal ensure that the resources it devotes to dismissal applications are proportionate relative to the time and expense of a full hearing on the merits, bearing in mind that roughly half of the complaints that go through the dismissal application process will end up *also* proceeding at least to hearing preparation. This topic gives rise to a host of considerations, including the utility of having a discretionary process for

dismissal applications and/or placing restrictions on the materials filed on an application to dismiss.

In this section we identify potentially relevant considerations for further discussion.

- Should the Tribunal change its application of s. 27(1) at the screening stage?
- Should the Tribunal adopt a discretionary process for dismissal applications?
- Could a discretionary process for some or all dismissal applications – improving on the CPP – facilitate a just and timely process?
- What procedures would ensure that the Tribunal had the information necessary to determine whether to permit the application and its scope?
- What are the possible resource implications of this approach?
- How could the Tribunal address concerns about delay in decision-making?
- Should the process for dismissal applications depend on the ground for dismissal? If yes, how so?
- Should the process for dismissal applications depend on whether a dismissal application has the potential to resolve all of a complaint? What if only part?
- For circumstances where the complaint will turn on the credibility of witnesses at a hearing, what can or should the Tribunal do to ensure the proportionate use of its limited resources to facilitate the just and timely resolution of complaints in such cases?
- Are some applications amenable to focused, meritorious applications, perhaps early in the process?
- How should the Tribunal account for circumstances where a complaint could reasonably be resolved on the merits in a short (one-to-two-day) hearing, given that it be more fair, efficient, and timely to proceed to a hearing in such circumstances, absent some reason to believe that even a short hearing is not warranted and could be avoided with fewer resources.

Should the Tribunal restrict the materials parties can file on an application to dismiss?

As early as 2016, the Tribunal observed that the length and complexity of preliminary applications was impacting the Tribunal's ability to meet its service standards for the timeliness of such decisions. Particularly under s. 27(1)(c), the volume of materials filed on applications to dismiss has been an issue for some time, and has been a factor relevant to the dismissal of applications under that subsection.[48] This challenge does not appear to have subsided, though the Tribunal has restricted the length of submissions since 2019.

[48] See e.g., *School H v. British Columbia (Human Rights Tribunal),* 2016 BCSC 672; and *Cariboo Chevrolet Pontiac Buick GMC Ltd. v. Becker*, 2006 BCSC 43

Against this backdrop, an issue to consider is whether and to what extent restrictions on the evidence parties can file on an application to dismiss may address concerns about proportionality and delay. To date, the Tribunal has not limited the evidence that a party may file on an application. This means in some cases that the Tribunal must review volumes of documentary evidence which can take days. Early in the process review, we heard a suggestion from respondent-side counsel that the Tribunal could limit evidence, for example to 100 pages.

Could limits on evidence help? If so: (1) what would an appropriate limit be? And (2) should there be a process for requesting to file evidence beyond the limit or for making a case that the Tribunal should consider a dismissal application with more evidence?

Should the Tribunal adopt strategies to promote organized and concise applications?

Are there other ways the Tribunal could ensure that the material filed is organized and limited to what is necessary to the application? Would argument templates help? If so, how?

Relatedly, voluminous dismissal applications may discourage complainants from continuing and that complainants may face barriers in responding to an application. Another issue to consider is how can the Tribunal address barriers to participation in the current and previous processes for applications to dismiss?

Should the Tribunal adopt an oral submissions process?

Could an oral submissions process on applications to dismiss facilitate a just and timely process, in at least some circumstances? If so, given the Tribunal's lack of resources to provide an opportunity to make oral submissions in every case, in what circumstances would oral submissions be warranted?

While acknowledging insufficient resources, an oral submissions process may also be relevant to accessibility. It may increase accessibility for some parties, as the Tribunal could address barriers by hearing the complainant's submissions or asking questions. On the other hand, it may be hard for a self-represented party to answer questions on the spot and, for some people, a written process may be more accessible, perhaps with the possibility of video or audio evidence. Written applications can allow reflecting and the seeking of legal advice.

Could case management be used as a tool for ensuring proportionate dismissal applications? If so, how?

Section 27.3 gives the Tribunal the power to make rules or orders requiring pre-hearing conferences to discuss issues relating to a complaint and the possibility of simplifying or disposing of issues. As identified, we have heard feedback suggesting and supporting the idea of early case management to facilitate the just and timely resolution of complaints. Case management can be an effective tool.

However, case management tends to be resource intensive. As a result, case management of all complaints is not currently a viable option. The Tribunal does not have the resources to assign a Tribunal Member to case manage each complaint. The issue, therefore, may be whether it is possible to identify which cases warrant Tribunal Member management to ensure proportionate dismissal applications. In other words, could targeted case management be used to ensure proportionate dismissal applications. If so, how would those cases be identified?

c. Limiting reasons

The *Code* requires reasons to dismiss a complaint: s. 27(2). The Tribunal's practice has been to provide reasons to deny a dismissal application as well.

Early in the process review, we heard from complainants-side counsel that decisions denying an application should be short, since a respondent does not lose procedural fairness if the complaint proceeds to a hearing. We note that, in exceptional circumstances, the court has discretion to judicially review these decisions before the Tribunal has finished its work adjudicating the merits of the underlying complaint. Accordingly, given the possibility of judicial review, it seems that the Tribunal must provide at least some form of reasons for a decision denying a dismissal application.

Certainly, the Tribunal has encouraged, and continues to encourage, Members to write shorter, more succinct decisions and to render them in letter form, where appropriate. The Tribunal has also created decision templates for members and continues to support and provide educational opportunities for members related to decision-making and decision writing.

In this context, the Advisory Group may want to provide feedback on whether limiting reasons on applications to dismiss could facilitate the just and timely resolution of complaints, and if so, how.

Appendix A – Statistics from Annual Reports – Cases opened and closed

Fiscal Year	Cases Opened	Cases Closed	Closed at screening	Closed by dismissal application	Closed by hearing	Closed by decision (total)
2003 – 2004	1,145	740	140	36	24	200
2004 – 2005	1,099	1,015	144	75	39	258
2005 – 2006	1,131	1,170	264	141	53	458
2006 – 2007	1,018	1,110	222	111	82	415
2007 – 2008	1,053	1,017	276	94	46	416
2008 – 2009	1,141	1,188	366	105	72	543
2009 – 2010	1,123	1,181	395	125	48	568
2010 – 2011	1,163	882	335	80	38	453
2011 – 2012	1,092	1,112	336	129	45	510
2012 – 2013	1,028	1,232	409	131	51	591
2013 – 2014	1,102	1,108	301	114	36	451
2014 – 2015	1,184	1,136	303	104	28	435

2015 – 2016	1,227	1,180	354	80	20	454
2016 – 2017	1,273	1,231	32%=394	97	11	502
2017 – 2018	1,340	1,130	29%=328	70	14	412
2018 – 2019	1,445	1,228	31%=381	8% = 98	23	502
2019 – 2020	1,460	1,384	28%=388	104	29	521
2020 – 2021	2,656	1,150	27%=310	41	26	377
2021 – 2022	3,192	1,416	40%=566	49	20	635
2022 – 2023	2,624	1,357	607[49]	31	23	661
2023 – 2024	2,537	2,023	917	99	29[50]	1,045
2024 – 2025	3,036	2,704	47.6%=1,287	100	35	1,422

[49] Not stated in annual report. Calculated based on other reasons for closing 1,357 complaints: 262 mediation; 4%=54 parties settle; 23 final decisions, 28%=380 withdrawn, 31 dismissal application=750 other closures.
[50] Error in annual report identified in 2024-2025.

Appendix B – Statistics from Annual Reports – Dismissal Applications

Year	Dismissal applications decided	Dismissal applications granted in full	% of dismissal applications granted in full	Complaints dismissed by dismissal application as % of cases closed	Complaints dismissed by dismissal application as % of cases closed by decision
2003 – 2004	124	36	29%	5%	18%
2004 – 2005	219	75	34%	7%	29%
2005 – 2006	287	141	49%	12%	31%
2006 – 2007	294	111	38%	10%	27%
2007 – 2008	186	94	51%	9%	23%
2008 – 2009	224	105	47%	9%	19%
2009 – 2010	226	125	55%	11%	22%
2010 – 2011	161	80	50%	9%	18%
2011 – 2012	213	129	61%	12%	25%
2012 – 2013	241	131	54%	11%	22%
2013 – 2014	233	114[51]	49%	10%	25%

[51] Note this is from page 2. At page 5, the number is 127 (55%).

2014 – 2015	201	104	52%	9%	24%
2015 – 2016	195	80	41%	7%	18%
2016 – 2017	186	97	52%	8%	19%
2017 – 2018	170	70	41%	6%	17%
2018 – 2019	44% of 426 = 187	98	52%	8%	20%
2019 – 2020	232	104	45%	8%	20%
2020 – 2021	94	41	44%	4%	11%
2021 – 2022	113	49	43%	3%	8%
2022 – 2023	59	31	53%	2%	5%
2023 – 2024	270	99	37%	5%	9%
2024 – 2025	200	100	50%	4%	7%

Appendix C – Public Feedback Survey Results

29 people responded. The majority acted for respondents (over 60%) and a large majority (26 of 29 or 90%) appeared regularly. A large majority (25 of 29 or 86%) had experience before and after the CPP process.

Perhaps not surprisingly, given the percentage of respondents-side responses, most (18 or 62%) reported a generally negative experience with case path decisions, most (19 or 65%) preferred the previous process, and most (18 or 62%) favoured reverting to the previous process. Eight (28%) favoured continuing with the CPP, two (7%) favoured a modified version, and 1 (3%) favoured other options.

Of those who favoured the previous process, some viewed it as a right under the *Code*. That issue is under judicial review and is outside the scope of this discussion paper, which assumes – until and unless the Court says otherwise – that the CPP is a reasonable exercise of the Tribunal's rule-making authority.

Some survey respondents also based their views on disagreement with the outcome of Tribunal's decision-making and the view that it is sending more complaints that do not warrant a hearing to a hearing. The Tribunal aims, however, to base its review of the CPP on the data it has been able to collect about outcomes.

1. Case path

a. Strengths of the CPP

- Streamlines dismissal applications so parties can home in on issues flagged
- Narrows grounds and prevents grounds unlikely to succeed
- Less likely to be faced with a "kitchen sink" application
- Eliminates lengthy, costly, complex dismissal applications often filed as a matter of course
- Ensures unmeritorious dismissal applications are not regularly made to delay or burden complainants
- Identifies cases that do not appear to have merit while cases that ought to proceed to hearing go directly there, missing an unnecessary step

b. Weaknesses of the CPP

- View that respondents have a right to apply to dismiss under s. 27(1)
- View that it is exceptional where Tribunal selects the submissions path
- Disagreement with the selection of the hearing path
- View that there is no real assessment of the potential merits of assigning to the submissions path

- View that it has resulted in an increased number of complaints that do not warrant a hearing going on the hearing path, increasing delay, costs, stigma for respondents
- View that it is unfair to respondents – where it puts a complaint on the default hearing path and the complaint does not warrant a hearing, this adds cost, time, and stress for respondents, and unfair payouts to complainants to avoid a hearing
- Lack of transparency about considerations or standards / insufficient detail about the factors the Tribunal assesses to select path / criteria unclear
- Lack of reasons
- View that Tribunal does not consider disclosure lists, including no disclosure to support a disability
- Selection of hearing path when complainant has not complied with document disclosure
- No opportunity to make submissions about whether to permit a dismissal application
- The only opportunity to provide information before the case path decision is in the response which is limited to 5 pages
- Delay in case path decisions and decisions on Form 7.5 requests – acts as a bottleneck
- Delay – getting to a hearing, addressing ongoing discrimination, defending against allegations
- It requires Tribunal resources that could be spent elsewhere
- It seems to have diverted resources from initial screening to case path screening and does not seem to have reduced delay
- Unpredictable timing of case path decisions is challenging, especially if arrive in batches
- Does not appear to have addressed backlog or delay
- It does not seem to have reduced delay or to be more efficient than focusing on complaint screening and then managing self-represented parties' participation
- Sometimes too short deadlines for submissions that do not take into account complexity and that complainants are often unhappy with the submissions path and not inclined to agree to another schedule
- Risks transforming responses into arguments for early dismissal which is not appropriate
- Decisions based on partial information / without relevant information
- Concern that weaknesses are exacerbated with screening permitting allegations that are not arguable contraventions of the *Code*

c. Case path letter permitting submissions

Of the 16 respondents who had received a letter permitting a dismissal application,

- 6 found it helpful
- 5 did not find it helpful
- 5 were neutral

Of those who did not find it helpful, reasons included:

- Contains little information beyond which subsections may be pursued
- Does not explain why others cannot be pursued
- Inconsistent between complaints
- Vague and difficult to explain to clients
- Concern that it is confusing, especially in light of letters in the new screening process
- Generally adds nothing to analysis or preparation of a dismissal application

d. Form 7.5 process

Of the 22 people with experience with the Form 7.5 process,

- 2 found it generally positive
- 17 found it generally negative
- 3 were neutral

Of those who found it generally negative or who identified weaknesses, concerns included:

- it adds resources and duplicative decision making
- it adds delay
- can only be pursued on new information and circumstances so no access to submissions path after initial decision made
- view that new information or circumstances must arise after response is filed and therefore that the process does not recognize complaints may be deficient on their face
- adds unnecessary work, for example, when requests have been allowed based on document disclosure
- no process by which a complainant can oppose a request – one-sided nature is problematic
- view that Tribunal is overly deferential to respondent counsel
- view that Tribunal does not appear to give due consideration to the requests
- waste of resources – requests have all been allowed but these were cases that should have been identified in the first place, e.g., no evidence of disability

Of those who found it generally positive, they reported:

- would appreciate more guidance on the factors to highlight
- view that Tribunal has been doing a good job of identifying cases where a dismissal application may be appropriate

Of those who found it neutral, they identified the concern:

- Adds delay

2. Previous process

a. Strengths of the previous process

- Barrier-free dismissal applications on any ground
- Given the costs of pursuing a dismissal application, the firm does not pursue frivolous applications and, while the Tribunal devotes resources to deciding dismissal applications, respondents must expend resources to proceed to a multi-day hearing
- Ability to swiftly address claims that should be dismissed (if there were sufficient resources to make a timely decision on each application)
- This strength is more important with more complains screened in on tenuous grounds
- Reduces complaints proceeding to a hearing
- Allows for dedicating hearing resources to cases that warrant a hearing
- More efficient and predictable process
- A successful dismissal application ends the complaint therefore saving resources
- An unsuccessful one provides information that helps in assessing whether to try to resolve without a hearing and gives parties and Tribunal a better understanding of the issues to facilitate an efficient hearing
- Did not limit all applicable grounds whereas, under CPP, it is not clear when some of those arguments may be made if a dismissal application is not allowed or not allowed on that ground
- Ensured Tribunal had materials it needs to determine if a hearing is warranted
- Increased confidence in Tribunal
- Consistent timing, with the dismissal application coming in with the respondent's disclosure
- More predictable and streamlined

b. Weaknesses of the previous process

- Delay in decision making, often because of the amount of evidence
- When dismissal applications are filed in the normal course, adds delay and cost
- Baseless applications and frivolous grounds, often pleading every subsection of s. 27(1) and arguing credibility issues
- Allowed respondents to use them to slow the process and add costs for complainants; no deterrent to doing so
- Unfair to complainants who do not have a similar summary process / complainant cannot apply to summarily dismiss a bad defence
- dismissal applications are complex and document heavy and very hard to navigate without legal assistance / responding to dismissal applications is resource-intensive, onerous, especially for self-represented complainants

- dismissal applications essentially become written hearings, with very large amounts of evidence and technical submissions, placing complainants, especially those facing barriers, at a significant disadvantage
- there is no means by which a complainant can recover costs for the time spent responding to an unsuccessful dismissal application
- volume and length of applications contributed to delay
- Tribunal spends too much time addressing whether a complainant can amend their complaint once the dismissal application is filed

3. Suggestions if revert to previous process

- Strictly enforce page limits for submissions
- Screen for a good arguable case of sufficient merit warranting a response before setting a submission schedule
- Address delay in decision-making
- Provide shorter decisions
- Issue more simplified reasons
- Add resources to issue timely decisions
- Add a means to defer frivolous or clearly unmeritorious applications
- Conduct a short hearing on the dismissal application
- Option of a one-day hearing on a dismissal application with simplified materials where parties could elect an oral decision
- Provide an option to elect to bring a dismissal application through a short virtual hearing with pre-hearing disclosure of affidavits and an outline of the argument
- Reduce page length of submissions
- Reduce page length of affidavits
- Set and enforce shorter submission schedules
- Allow respondents to make brief submissions about why the complaint ought to be considered for a dismissal application to address concerns about volume and length of submissions
- Implement safeguards to manage the resources required, such as imposing page limits, and making respondents confirm the process is suitable for a dismissal application, as they would have to do in a summary judgment or trial process
- Page limits could perhaps be based on the complexity of the complaint
- Ability to argue complaint not appropriate for a dismissal application
- Provide a right to file on certain grounds, e.g., (c), (d), (f), but require leave on other grounds, to avoid especially self-represented respondents filing scattershot dismissal applications

4. Suggestions if keep CPP

- Early case management conference to hear submissions and render a case path decision with 21 days
- Increased transparency
- Increased predictability about timing of decisions – stricter timelines for Tribunal to follow
- Longer time to file a dismissal application (a return to 8 weeks)
- Clearer policy on when extensions may be granted
- Possibility of a case management conference to set deadlines
- A right of review/appeal on case path selection
- Meaningful mechanism to apply to file a dismissal application, not requiring new information or circumstances
- Address delay
- Devote more resources to prompt case path decisions
- Make decision after response filed and do not wait for disclosure which is not relevant or which the Tribunal does not consider
- Invite respondents and give a meaningful opportunity to explain why a dismissal application is warranted, at the response stage / opportunity to apply for dismissal under s. 27 early in the process
- Opportunity to request to file a dismissal application, not restricted to new information
- Be consistent about what gets dealt with at screening versus on a dismissal application – screen out no arguable contravention and untimely complaints early
- Improved screening

5. Simplified hearing process

A simplified hearing process would be a short hearing where parties only exchange documents that they will rely on at a hearing. For example, if a complaint is about an event that happened on one day, after the response is filed, the parties agree to book a one-day hearing.

- 13 (45%) considered this a helpful option
- 14 (48%) did not consider it a helpful option
- 2 (7%) were neutral

For those who said it would be helpful,

- Anything to help simple cases move faster and more cost-effectively
- Other tribunals have a similar process, and, for simple complaints, there is no reason to mimic the court process

- Would be a better process for the many single incident cases provided decision to refer to this process are timely, transparent, consistent, and predictable, and assuming no dismissal applications would be permitted
- Would be well-suited for single interaction complaints or complaints based on a short period of time
- Would benefit from a pre-hearing conference to confirm the scope of the complaint
- Could work very well but would need clear guidelines on when it would be appropriate (or a day could be wasted arguing about suitability) or perhaps it should only be available where the parties all agree.
- Could be a good alternative to an application to dismiss in appropriate cases

For those who said it would not be helpful and gave reasons,

- Concern that lack of disclosure leads to longer hearings and adjournments in any event
- Concern about procedural fairness if parties are not tendering relevant documents
- Runs serious risk of curtailing a party's ability to make or respond to allegations
- View that there are not single-instance complaints that warrant a hearing
- Process described unclear, including about the testing of evidence
- Seems impractical and difficult to estimate hearing length at an early stage
- Preferable to provide brief written submissions on a dismissal application

For those who were neutral,

- Consideration would need to be given to protect respondents, i.e., opportunity for full defence

6. Summary hearing process

A summary hearing process would be based on affidavit evidence instead of witness testimony at an oral hearing. It is like an application to dismiss, except that the Tribunal could decide if discrimination occurred (if it was able to fairly decide that without cross-examination, like a "summary trial" in the BC Supreme Court):

- 13 (45%) considered this a helpful option
- 11 (38%) did not consider it a helpful option
- 5 (17%) were neutral

For those who said it would be helpful,

- It is essentially the dismissal application framework so absent credibility concerns, no issue

- It would not be a big pivot to add the ability to make factual findings on a dismissal application
- Would be more efficient
- Could permit cross-examinations on affidavits
- Could provide a balanced approach to the dismissal application process with a summary result of either the complaint being justified or dismissed
- Would need to be up to party to decide whether to apply for it and not for Tribunal to decide if appropriate
- Would need to acknowledge the difficulty some self-represented parties would have preparing materials
- Tribunal would need ability to move the matter to the regular hearing list if cross-examination was needed to find facts
- Helpful so long as decisions about this path are prompt and consistent – perhaps should be initiated by the parties by application
- Both parties would need to agree
- Would need to be an alternative to and not in addition to the dismissal application process

For those who said it would not be helpful,

- Written hearings create significant barriers to many complainants, including those with disabilities, do not speak English, may not be literate, and cannot afford legal assistance
- Self-represented litigants will not understand it, and it will be a big mess with a lot of work to respond to
- Would require considerable safeguards, as with summary trials in civil court
- Should only be permitted in specific circumstances, where a determination can be made on affidavit evidence
- Should permit cross-examination on affidavits
- Considerable issues using affidavits where so many complainants are self-represented
- Concern that testimony is needed to make a finding of discrimination
- Concern that credibility is often at issue
- Cross-examination is a fundamental component of the litigation process
- Preferable to provide brief written submissions on a dismissal application
- View that the BCSC summary trial process is “a mess” because a lack of judicial resources has created delays in scheduling; not confident running multiple tracks on a hearing would result in more efficiency rather than more backlog
- Limiting submission or evidence on a summary trial would breach procedural fairness and be readily reviewable on judicial review

For those who are neutral,

- Not opposed to one modeled on BCSC's summary trial process but worry resources could be better spent on existing processes such as dismissal applications or more active case management conferences, where members might suggest agreed statements of fact or order direct evidence by way of affidavit
- Would prefer CPP plus simplified hearing process
- Will only work if parties are represented by counsel