



News from the

# B.C. Human Rights Coalition

[www.bchrcoalition.org](http://www.bchrcoalition.org)

Volume 11.2 May 2010

## **BullyFreeBC.ca Launched on Pink Shirt Day April 14, 2010**

BullyFreeBC is a campaign aimed at eliminating workplace bullying. The goal of the campaign is to create awareness about bullying in the workplace, provide links to resources dealing with bullying, and ultimately assist with the development and drafting of workplace anti-bullying legislation. The campaign is supported by a website at BullyFreeBC.ca. The site is intended to provide information on how to join the campaign, assist in understanding the legislative options, build awareness around the issue, and aggregate resources.

Quebec, Ontario and Saskatchewan have all passed workplace bullying legislation. BC has not. Anti-bullying legislation comes in many forms. Part of the goal of BullyFreeBC is to help determine what the legislation should look like. Legislation can become part of Occupational Health and Safety (WCB) legislation, Employment Standards legislation, Human Rights legislation, or even a separate tort (civil wrong). BullyFreeBC wants input from individuals and organizations to assist in determining where the legislation might sit best.

Workplace bullying can be hard to define. One definition is;

Bullying is the act of intentionally causing harm to others, through verbal harassment, physical assault or other more subtle methods of coercion such as manipulation, including ignoring and isolating the person.

Bullying often describes a form of harassment perpetrated by an abuser who possesses more physical and/or social power and dominance than the victim. The victim of bullying is sometimes referred to as a target. Bullying can include various types of harassment such as;

Comments that make fun of or belittle or insult people, any unwelcome behaviour such as starting rumours, or ignoring someone, unfairly criticizing their work, psychologically harassing someone, keeping information from them so that they fail at their work.

*When these kinds of things happen because someone just doesn't like YOU it's bullying.*



## **Rosemary Brown Award Day June 1, 2010**

The Rosemary Brown Award will be presented this year this year on June 1, 2010 to a deserving woman who has made an exceptional contribution in the area of Social Justice and Community Development. The event will once again be held at UBC's Hycroft House.

*Contact us if you would like to attend at 604-689-8474*

**Rosemary Brown** (1930-2003) was an inspiring Canadian woman who greatly influenced and affected the global agenda towards equality and justice for all.

Each year the Award is presented to a BC woman or a BC-based women's group, who has made an outstanding contribution in one of seven theme areas championed by Rosemary Brown. She was the first Black woman to be elected to a Canadian legislature.

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If you are the subject of bullying that targets you because of a personal characteristic such as your gender (including sexual harassment and pregnancy), sexual orientation, race, ancestry, religion, place of origin, physical or mental disability; family or marital status then you may be protected under the BC Human Rights Code. However, if you are being bullied just because a person doesn't like YOU, and it's not because of one of the above personal characteristics then there is no legislation to protect you. You may have some legal remedies under employment law such as for breach of contract, but there is currently no specific legislation in BC that protects the victim. Quebec, Saskatchewan and Ontario have passed provincial legislation against bullying. In Quebec they have called it "Psychological harassment". This refers to any vexatious behaviour taking the form of repeated, hostile, and unwanted conduct, comments, actions, or gestures, that affects an employee's dignity or psychological or physical integrity and that results in a harmful work environment. A single serious incidence of such behaviour that has a lasting harmful effect on an employee may also constitute psychological harassment.

Saskatchewan has legislation against "[Personal Harassment](#)", also referred to as bullying. "Personal Harassment" is defined as any inappropriate conduct, comment, display, action or gesture by a person that:

adversely affects a worker's psychological or physical well being; and, the perpetrator knows or ought to reasonably know would cause the worker to be humiliated or intimidated. Personal harassment must involve repeated conduct or a single, serious incident that causes a lasting harmful effect on the worker. Personal harassment may include: verbal or written abuse or threat, insulting, derogatory or degrading comments, jokes or gesture, personal ridicule or malicious gossip, unjustifiable interference with another's work or work sabotage, refusing to work or co-operate with others, interference with or vandalizing personal property.

On June 15, 2010 Ontario will amend its Occupational Health and Safety Act, R.S.O. 1990 to include provisions against workplace harassment. In the Act "[Workplace harassment](#)" means engaging in a course of vexatious comment or conduct against a worker in a workplace that is known or ought reasonably to be known to be unwelcome;

"Workplace violence" means,

- (a) the exercise of physical force by a person against a worker, in a workplace, that causes or could cause physical injury to the worker,
- (b) an attempt to exercise physical force against a worker, in a workplace, that could cause physical injury to the worker,
- (c) a statement or behaviour that it is reasonable for a worker to interpret as a threat to exercise physical force against the worker, in a workplace, that could cause physical injury to the worker.

***Highlights from the BC Human Rights Tribunal Annual Report for 2008-2009:*** There were 1,141 new complaints filed at the Tribunal. The most common ground cited as the reason for discrimination was physical disability (26%), followed by mental disability (14%), sex (including harassment and pregnancy) (13%), race (9%), and ancestry (7%). Place of origin and family status were at 6%, followed by religion and colour (5%), age (3%), and marital status and sexual orientation (2%). Criminal conviction and political belief were at 1% and source of income was at less than 1% (two cites). Retaliation was cited in 5% of complaints. As a result of a BC Supreme Court decision in Cariboo Chevrolet Pontiac Buick GMC Ltd.v. Becker, 2006 BCSC 43, the ground of retaliation only applies after a human rights complaint has been filed. The complaints alleged discrimination in the area of employment most frequently (64%), followed by services (22%), tenancy (6%), and membership in unions and associations (4%). This year there were 72 final decisions made after a hearing on the merits, an increase from last year's 45 decisions, and in line with the trend seen in previous years, where there were 53 decisions in 2005/2006 and 76 in 2006/2007. Thirty-six percent of the complaints (26 of 72) were found justified after hearing. This compares to 33% in 2007/08, 36% in 2006/07, and 40% in 2005/06.

## Dismissal Where Issue Already Dealt With In Another Proceeding



We are on <http://twitter.com/bchrc>

Section 27 (1)(f) of the BC Human Rights Code allows a Tribunal Member to dismiss a complaint where the substance of the complaint has been appropriately dealt with in another proceeding. This most often occurs when a union has filed a grievance on behalf of a member and the issue has been resolved through a mediation or arbitration, but it can occur in other circumstances as well.

### Section 25 of the Code provides,

(1) In this section and in section 27, "proceeding" includes a proceeding authorized by another Act and a grievance under a collective agreement.

(2) If at any time after a complaint is filed a member or panel determines that another proceeding is capable of appropriately dealing with the substance of a complaint, the member or panel may defer further consideration of the complaint until the outcome of the other proceeding.

### As noted in *Reed and Reed v. The Owners, Strata Plan NW 2056, 2003 BCHRT 149 para 10*

I find that the term "proceeding" refers to a formally established system of dispute resolution: for example, redress mechanisms established by other laws, actions taken in the judicial system, and privately contracted dispute resolution systems such as grievances, commercial arbitration, or the application of formal redress mechanisms. In addition, as provided by in s. 25, the "proceeding" must be capable of appropriately dealing with the substances of the complaint: i.e. of considering and addressing the allegedly discriminatory impact of the policy.

### In *Thompson v. Providence Health Care [2003] BCHRT 58 (QL)*, the Tribunal noted that:

While the list of proceedings referred to in s. 25(1) is not exhaustive, it is indicative of the kinds of processes which may qualify as "proceedings" for the purposes of s. 27(1)(f). Those are processes in which some sort of legal action is taken, such as a grievance, a proceeding under some other Act, or a lawsuit.

### In *Villella v. City of Vancouver and others (No. 3), 2005 BCHRT 405 (QL)*, the Tribunal defined the terms "substance", and "appropriately", holding that:

These definitions suggest that in considering whether the substance of a complaint has been appropriately dealt with, the Tribunal should consider whether the complaint, in its essence or pith, was dealt with in a manner suitable or proper to that essence or pith. →

→ This, in turn, suggests that the appropriate manner of dealing with a complaint may differ depending on the essential nature of the complaint in issue. Further, the Tribunal should be concerned with the substance as opposed to the form of the manner in which the complaint was dealt with, focusing on the substance as opposed to the details of the matter ...

... proceedings before the Tribunal are not the sole means through which human rights issues can be appropriately resolved. Other proceedings, and in particular grievance arbitration proceedings, may be capable of appropriately dealing with the substance of a complaint. Where they have succeeded in doing so, it furthers the purposes of the Code for the Tribunal to dismiss the complaint, thereby bringing an end to the litigation between the parties, avoiding the spectre of duplicative and potentially inconsistent results, and saving the parties and the Tribunal from the needless expenditure of resources ...

At the same time, s. 27(1)(f) clearly requires the Tribunal to satisfy itself that the substance of the complaint was appropriately dealt with in the other proceeding, as a condition precedent to the exercise of its discretion to dismiss the complaint. This requires the Tribunal to examine the decision arising out of the other proceeding; for the Tribunal simply to "rubber stamp" another adjudicator's decision without doing so would be for the Tribunal to fail to exercise its statutory obligation.

Considering the meaning of "proceeding" under section 27(1)(f), the Tribunal decided that an investigation by the employer and its response to its investigative report recommendations was not a proceeding. (*Stathis v. Salvation Army and others, 2006 BCHRT 415*).

Similarly, an independent report commissioned by a school board was not a proceeding. (*Sultani and Sultani obo Sultani v. Purhar and Bailey and Ward (No. 2), 2007 BCHRT 138*) The Tribunal found that a residential tenancy arbitration did not address the substance of the complaint. (*Ettya v. Au and Lim, 2006 BCHRT 453*).

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The Tribunal has also displayed a reluctance to dismiss complaints on the basis that their substance has been dealt with in proceedings under the Employment Standards Act even when a determination and remedies have been ordered under that act in cases dealing with “discrimination” in pregnancy – where there is concurrent jurisdiction. The Tribunal confirmed that a proceeding under the *Employment Standards Act* cannot appropriately deal with a human rights complaint. (*Janie v. Erakovic and another, 2006 BCHRT 337*). *Stackhouse v. Craft and Stack Trucking, 2006 BCHRT 214*.

As can be seen the circumstance in which the Tribunal will determine if a complaint should be dismissed under this section of the Code are varied.

### Human Rights Education for Small Businesses

The Law Foundation of BC has provided a grant to the BC Human Rights Coalition for provision of a series of seminars throughout the province to assist small businesses in dealing with potential human rights complaints. Emphasis will be on understanding legal principles of human rights, how to deal with general complaints, how to deal with formal human rights complaints, understanding options in the human rights Tribunal process, and how to defend against a complaint. Although the emphasis will be on human rights in the context of employer/employee relationships some education will deal with the duty of employers as service providers and their duty to clients. Although it is anticipated that the education will be delivered to small business owners and/or managers, the benefits of the education are intended to flow-through to the employees. The goal is to provide education to assist in avoiding workplace conflict, and if it arises to have procedures in place to effectively and efficiently deal with the conflict. The programme will increase small business awareness of human rights and employment law, the Human Rights Tribunal process, and the justice system; it will provide information to assist small businesses to help themselves in developing workplace policy, dealing with formal and informal complaints, understanding the Human Rights Tribunal process, responding to complaints and understanding the law on applications to dismiss. The programme is offered as a one-day seminar in numerous cities throughout the province.

For Information contact: Diane Rodgers, BC Human Rights Coalition at [diane@bchrcoalition.org](mailto:diane@bchrcoalition.org) or (604) 689-8474, ext. 216

### GO GREEN SAVE A TREE

To get your Newsletter by Email please contact [svetlana@bchrcoalition.org](mailto:svetlana@bchrcoalition.org) Editor: Robyn Durling at [robyn@bchrcoalition.org](mailto:robyn@bchrcoalition.org). Layout by Svetlana Khakhleva. This newsletter and past issues are also available online at: [www.bchrcoalition.org](http://www.bchrcoalition.org)

**MEMBERSHIP** The Coalition is a membership based organization. We currently have approximately 100 individual and group members, and we always welcome new members to our ranks. In addition to supporting the advancement of human rights, other benefits of membership include: opportunities for networking, collaboration and training; opportunities to remain informed on current issues and concerns relating to Canada's domestic human rights law and policy; opportunities to host or sponsor educational workshops and training sessions in your community; opportunities to promote your own events; and the opportunity to be part of a great organization.

Annual membership fees are \$20.00 for both organizations and individuals. In the case of need, we will consider waiving this fee. Tax receipts are available for all donations. If you wish to join, please complete the application below and return it, with a cheque made out to the **BC Human Rights Coalition**. If you would like further information on becoming a member, or to check the status of your membership, please call or email us [info@bchrcoalition.org](mailto:info@bchrcoalition.org).

#### Membership Information (please fill out and remit with cheque)

Individual or Contact Name: \_\_\_\_\_

Company or Business: \_\_\_\_\_

Address \_\_\_\_\_

City \_\_\_\_\_ Postal Code \_\_\_\_\_

Phone (\_\_\_\_) \_\_\_\_\_ Fax (\_\_\_\_) \_\_\_\_\_

Email \_\_\_\_\_

Membership: \_\_\_\_\_