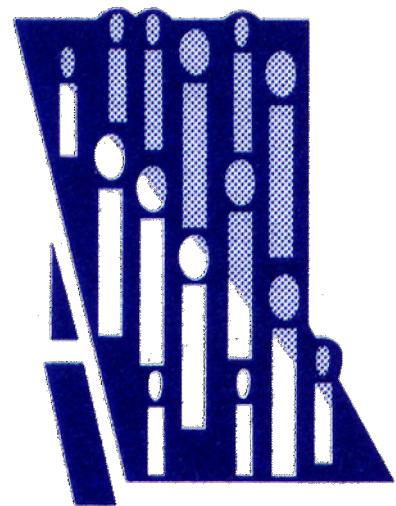


# Human Rights Process in BC

## The System Explained



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## Executive Summary

### History

Human rights legislation in BC has been evolving and changing since the first Human Rights Code was enacted in 1973. Prior to the proclamation of Section 15 (equality rights provision) of the *Canadian Charter of Rights and Freedoms*, legislators were free to decide which rights to protect and how to protect them. Consequently, in 1983 the government repealed the human rights legislation, leaving BC with no protection for a full year. The ensuing legislation weakened rights. The arrival of Section 15 of the *Charter* laid out fully enumerated grounds henceforward available to all Canadians. Following this, legislators could only change the model of enforcement.

In 1997 a human rights enforcement model was established which involved a split Commission/Tribunal Model, where the Commission investigated complaints, and the Tribunal heard those complaints if referred by the Commission. The data shows us that the Commission could take up to three years investigating a complaint before the Tribunal could even look at it. Although well-intentioned in its outset, this model did not result in efficiency or fairness.

In 2002, the government engaged in the Administrative Justice Reform Project, and following intensive review, set up the direct access Tribunal in 2003. The Human Rights Tribunal deals with all forms of discrimination, including in the context of employment, public services, tenancy and purchase of property. At the time of its inception, and with the involvement of the stakeholder communities, the human rights system was reformed. Innovative measures taken by the Tribunal included procedural reforms, including early settlement, early disclosure, continuing settlement, and preliminary decisions. Under this system more than 1100 complaints are filed each year, and only between 50 and 60 actually proceed to a Hearing. If complaints do proceed to a Hearing, the timeline is approximately 12 – 14 months. There is no backlog at the Tribunal.

### The BC Human Rights Coalition and Clinic

The BC Human Rights Clinic consists of three entities: the BC Human Rights Coalition, the Community Legal Assistance Society (“CLAS”) and University of Victoria’s Law Centre.

The University of Victoria’s Law Centre assists Complainants and Respondents from the Capital Regional District. The Law Centre will help Complainants and Respondents in preparing an initial complaint or reply, mediating a complaint, and representing Complainants or Respondents at Tribunal Hearings as required.

## Human Rights Process: The System Explained

The BC Human Rights Coalition and CLAS work closely together to run the Human Rights Clinic. The Coalition assists in the early stages of the complaint by helping draft complaints, filing amendments, attending mediation, preparing submissions on applications to dismiss, producing disclosure and statement of remedy. The Coalition also conducts a short service clinic at the Tribunal's offices every Monday to assist Complainants with their complaints.

### Effectiveness

In accepting human rights complaints, the Tribunal screens out 28% at the "intake" stage. These are cases that appear without legal merit.

Once a complaint is accepted the respondent and the complainant may elect to attend an early settlement meeting ("ESM") If either one or both of the parties do not want to attend at an ESM then the Respondent has 35 days from the date of the letter of acceptance of the complaint to file a reply and another 35 days to file an application to dismiss. In the 2009-2010 reporting period 58% of accepted complaints were settled at ESM's. Overall, the Tribunal settles 70% of complaints filed.

On average over the last 4 years 65 cases a year have gone to a full and final hearing. This is 5.9% of the total cases filed, and in line with civil litigation.

After our seven years of operating under the direct access system for human rights protections in British Columbia, we can now conclude a number of things with some certainty. First the number of complaints filed in any year has remained remarkably consistent, being 1,100 to 1,200 complaints. Second, when fully staffed, the Tribunal can process that number of complaints within a year. Third, regardless of the nature of the complaint, and with few exceptions, both complainants and respondents want and do receive a quick, fair resolution.

## Legislative and Structural System in BC

The first Human Rights Code in BC was enacted in 1973, and slightly amended in 1979.. It provided for a small Commission which looked at social issues of discrimination such as farm workers and domestic workers. The staff of the Commission investigated human rights complaints, and if a Hearing was required a Board of Inquiry would be appointed by the Minister of Labour. This legislation did not provide protection from discrimination on the grounds of family status, physical disability or sexual orientation.

In the summer of 1983 the government of the day repealed 22 pieces of legislation including the Human Rights Code, and British Columbia was without human rights protection for a full year until the Human Rights Act was introduced in May, 1984. The Act was changed to add physical and mental disability to the grounds of protection. In 1992, Bill 63 amended the Act to broaden

## Human Rights Process: The System Explained

age protection from 45-65 to 19-65, and added the grounds of family status and sexual orientation. In this enforcement model the B. C. Human Rights Council supervised the investigation of human rights complaints by Industrial Relations Officers, decided which complaints got to hearing, and then adjudicated the complaints. The Council had no educational or promotional function.

In 1985 s. 15 of the Canadian Charter of Rights and Freedom was proclaimed, forever changing the way that human rights legislation and enforcement would be viewed in Canada. Entrenching equality rights into the constitution meant that no provincial government, nor the federal government, could alter the grounds of protection in human rights legislation.

In 1994 the government of the day commissioned Professor William Black of the UBC Law School (and a former Human Rights Commissioner) to review the human rights legislation and enforcement process. He recommended a split Commission/Tribunal where the Commission investigated complaints and the Tribunal heard those complaints when referred by the Commission<sup>1</sup>. This was an improvement on the B. C. Council of Human Rights, because it separated the investigation and Hearing steps.

In 1995 the government implemented Bill 32 – The Human Rights Amendment Act 1998, which brought into force the Human Rights Code. Although this Code did nothing to augment rights, it created a Human Rights Commission and Advisory Council, and separated the Commission from the Human Rights Tribunal. The Human Rights Commission was charged with the responsibility for investigating, mediating and dismissing or referring to hearing complaints of discrimination, developing a program of public education and consultation, and promoting compliance with the Code.

In 2001, the government engaged in the Administrative Justice Reform Project. Part of this project was a Human Rights Review built on a background paper by Deborah K. Lovett, Q. C.,<sup>2</sup> and Angela Westmacott. Their report focused on the Commission model and looked at issues such as duplication between the Commission and the Tribunal (intake processes, mediation) timeliness of the Commission's process (investigation), and the gate-keeping function of the Commission. (Only those complaints referred by the Commission could access the Tribunal). They put forward differing models and included in these was today's Direct Access Tribunal. The Paper was widely circulated between December 2001, and July, 2002. Following this, the

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<sup>1</sup> *Report on Human Rights in British Columbia* (Vancouver: B.C. Ministry Responsible for Multiculturalism and Human Rights, 1994)

<sup>2</sup> [http://www.justice.gc.ca/eng/news-nouv/ja-nj/2008/doc\\_32211.html](http://www.justice.gc.ca/eng/news-nouv/ja-nj/2008/doc_32211.html)

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Attorney General decided to implement the Direct Access Tribunal. Our current Human Rights Code came into effect March 31, 2003. I suggest that there be a concluding comment about the system being changed four times in 39 years. This might then allow a comment later to the effect that the current system might usefully be allowed to continue with modifications instead of major change.

### Current System (Overview)

The current direct access B. C. Human Rights Tribunal (the “Tribunal”) regime was established by the BC Liberal Government following the 2002 Administrative Justice Reform Project. This Tribunal deals with enumerated forms of discrimination including in the context of employment, services available to the public, tenancy and purchase of property.

At the time of its inception, under the leadership of the Chair, and with involvement of the stakeholder communities, the human rights system was reformed. These reforms led the way and were ahead of the courts and many other tribunals, which are only now beginning to implement some of these same initiatives. The Tribunal introduced a number of innovative measures into the new system. Procedural reforms including early settlement, early disclosure, continuing settlement, and preliminary decisions simplified the new system and made it more accessible, informal, simple, efficient, proportional and affordable. In other words, despite some growing pains it met the goals of the Administrative Justice Project.

This system replaced the previous Commission/Tribunal model, where human rights complaints were investigated by the Commission and then dismissed or referred to the Tribunal. The data shows that the Commission could take up to three years investigating a complaint compared with the current system where 24% of all accepted cases are resolved at an Early Settlement Meeting approximately 3-4 months after the complaint was accepted. Another 34 (30%) settled at later settlement meetings, during some point in the proceedings. Out of more than 1100 complaints filed a year only between 50 and 60 actually proceed to a formal hearing. In fact, the existing Tribunal adjudicates the same number of final complaints it did in the Commission/Tribunal model but get to those hearing much more quickly. It is also noteworthy that if complaints do proceed to hearing, the timeline is approximately 12 – 14 months. There is no backlog at the Human Rights Tribunal.

In fact, looking at the Tribunal’s annual report it can be seen that the Tribunal was able to absorb all the Commission files it inherited and reduce the amount of files it had on hand during its first few years. Essentially it was able to handle more cases than were being filed and was able therefore to close old Commission files.

One of the reasons that a direct access Human Rights Tribunal model was chosen was because of the specialization and expertise inherent in that Tribunal. Specialization is at the heart of administrative law. It is the reason why the courts afford curial deference, and why decisions of

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the Human Rights Tribunal cannot be appealed, only be reviewed for jurisdictional error by the courts.

Human rights protections are considered to be quasi-constitutional - rights and freedoms to which all humans are entitled. It is more akin to the *Charter* than any other legislation.

The goal of human rights legislation is to eradicate enumerated forms of discrimination, and only a specialized human rights tribunal with its expertise can be expected to accomplish such a goal.

### The BC Human Rights Tribunal

The BC Human Rights Tribunal indicates in its annual report for 2009-2010;

#### Tribunal Mandate and Purposes<sup>3</sup>

The Tribunal is an independent, quasi-judicial body created to fulfill the purposes set out in section 3 of the *Human Rights Code*:

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

The Tribunal was established in 1997. It was continued as a standing adjudicative body pursuant to March 31, 2003 amendments to the *Code*,

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<sup>3</sup> BCHRT Annual Report 2009-2010

[http://www.bchrt.bc.ca/annual\\_reports/info/Annual\\_Report\\_2009-2010.pdf](http://www.bchrt.bc.ca/annual_reports/info/Annual_Report_2009-2010.pdf)

## Human Rights Process: The System Explained

which instituted a direct access model for human rights complaints. Its authority and powers are set out in the *Code*. The direct access model is complainant driven. The Tribunal does not have investigatory powers. Complaints are filed directly with the Tribunal which is responsible for all steps in the human rights process. On receipt, the complaint is reviewed to see that the information is complete, the Tribunal appears to have jurisdiction over the matters set out in it, and the complaint is filed within the six-month time period set out in the *Code*. If it is accepted for filing, the Tribunal notifies the respondents of the complaint and they file a response to the allegations of discrimination. Unless the parties settle the issues, or a respondent successfully applies to have the complaint dismissed, a hearing is held and a decision about whether the complaint is justified is rendered. The Tribunal's office and hearing rooms are located in Vancouver, although the Tribunal conducts hearings and settlement meetings throughout the Province. The Tribunal manages its staff, budget and physical facilities, and engages its own consultants and specialists. Pursuant to the *Code*, the Tribunal developed rules to govern its practice and procedure. Its registry function is managed by a Registrar who is a lawyer. Some complainants and respondents may access government-funded legal assistance to participate in the human rights process. The provincial government allocates funding to other organizations to provide these services.

### Lessons Learned

After our seven years of operating under the direct access system for human rights protection in British Columbia, we can now conclude a number of things with some certainty. First, the number of complaints filed in any year has remained remarkably consistent, being 1,100 to 1,200 complaints. Second, when fully staffed and resourced, the Tribunal can process that same number of complaints within a year so that the number of complaints in the system at any time does not exceed 1,100 to 1,200. Third, regardless of the nature of the complaint, and with few exceptions, both complainants and respondents want a quick, fair resolution. As a result, the investment of the Tribunal's resources in all forms of settlement meetings, at any stage in the process, is beneficial. Settlements crafted by the parties, most commonly with the Tribunal's assistance, save the Tribunal's and the parties' time and resources, reduce the stress on those involved in a human rights complaint, and offer more creative, acceptable and durable solutions than adjudicated results. Settlements often extend beyond the human rights complaints to other disputes between the parties. Fourth, while historical areas and grounds of discrimination continue to be a source of much of the Tribunal's work, that work increasingly deals with issues that are controversial as our

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understanding of the rights and obligations under the *Human Rights Code* evolve. As our society evolves, the potential for competing interests, values and rights continues to grow, making human rights adjudication ever more challenging. Fifth, the timeliness and quality of the appointments and reappointments of Members to the Tribunal is essential to its ability to effectively handle the case volume and to render quality decisions with respect to what the courts have called the “almost constitutional” nature of the rights protected in the *Code*. Finally, since the successful implementation of the direct access model, two other jurisdictions in Canada, Nunavut and Ontario, have modeled their human rights systems after it.

### The BC Human Rights Coalition and Clinic

The BC Human Rights Clinic consists of three entities: the BC Human Rights Coalition, the Community Legal Assistance Society (“CLAS”) and University of Victoria’s Law Centre.

The B.C. Human Rights Coalition is a charitable non-profit community based organization that seeks to promote and strengthen human rights throughout British Columbia.

Services integrate information, education, training, consultation, investigation, mediation, research and advocacy. With the exception advocacy, these services are provided to complainants, respondents, employers, unions – anyone who finds value in them.

The Advocacy program protects existing rights, the education, training and consultation program help to prevent discrimination and law reform work seeks to expand human rights protections. Together this integrated approach works to promote and strengthen human rights.

Anyone with questions relating to human rights can contact our office either in writing or by phone and get answers to questions. Some of these are questions about process, but most are about whether a specific situation is a human rights complaint or not. If someone needs assistance in making a complaint they can attend at our short service clinic (see below). If they require interpretation services they can contact us and an appointment will be made where an interpreter can attend. The coalition pays for the interpreter.

Once the BC Human Rights Tribunal has accepted the complaint the complainant may apply for representation from the Coalition part of the Clinic, and respondents can apply to UVic part of the Coalition (due to cutbacks now only available in South Vancouver Island. The complainant has 30 days in which to apply to the Clinic for representation. The time limit is short because the process moves quickly and the Clinic needs to be involved to assure that they have input on setting dates for settlement meetings, or adequate time to respond to applications to dismiss. If

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the application for representation is declined the complainant has 14 days to provide further information and appeal to the Appeals Committee.

The BC Human Rights Coalition and CLAS work closely together to run the Human Rights Clinic. The Coalition assists in the early stages of the complaint by helping draft complaints, filing amendments, attending mediation, preparing submissions on applications to dismiss, preparing submissions on applications to add parties, producing disclosure and statements of remedy. If the case cannot be settled, is not withdrawn, and is not dismissed on a preliminary application, the file is sent to CLAS prior to the hearing. CLAS' lawyers have the legal expertise to litigate the complaint. On average the Coalition processes 392 files a year (2003-2010).<sup>4</sup> CLAS attempt to settle cases prior to hearing but this is not always possible or beneficial. On average over the last 4 years CLAS has represented clients at 8 hearings a year.<sup>5</sup> CLAS also does judicial reviews of Human Rights Tribunal decisions at the BC Supreme Court. If these are appealed CLAS can represent to the BC Court of Appeal and the Supreme Court of Canada.

### **Short Service Clinic**

The BC Human Rights Coalition conducts an onsite Clinic service every Monday between 10:00 a.m. and 4:00 p.m. at the Tribunal's offices in Vancouver. An advocate and an information officer assist complainants during the initial or entry stage of complaints by explaining Tribunal process and procedures and assisting those who have difficulty framing complaints, dealing with amendments, or replying to applications. Possible outcomes are also explained. This service is provided on a first come first serve basis. 351 people were assisted through the 39 sessions held last year.

In addition, in special circumstances where necessitated by disability, exigent circumstances, geography, or language our advocates have given short service clinic assistance at the Coalition offices on an as needed basis.

For the past year and a half this service has been offered every second month in Kelowna by appointment. This service has been accessed by people throughout the Okanagan region.

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<sup>4</sup> BC Human Rights Coalition Annual Reports 2003-2004 through 2009-2010

<sup>5</sup> BC Human Rights Tribunal Annual Reports 2006-2007 through 2009-2010

**Community Legal Assistance Society (“CLAS”)**

CLAS’ annual report<sup>6</sup> indicates,

CLAS’s mission is to provide legal advice and assistance and to use and develop the law for the benefit of people throughout British Columbia who are mentally, socially, economically or otherwise disadvantaged or whose human rights need protection.

...

Through our BC Human Rights Clinic, we provided counsel to complainants appearing before the BC Human Rights Tribunal.

Our BC Human Rights Clinic is operated in partnership with the BC Human Rights Coalition. Jointly, CLAS and the BC Human Rights Coalition provide legal representation to complainants whose complaints have been accepted by the Human Rights Tribunal. CLAS also provides legal representation for judicial reviews and systemic cases. Our lawyers also offer workshops to assist self-represented complainants in preparing for their hearings in cases where we cannot provide full representation due to the lack of resources.

**University of Victoria Law Centre**

The University of Victoria Law Centre<sup>7</sup> describes their human rights clinic service in the following way;

**(a) General Description of the Service**

The Law Centre will assist Complainants from the Capital Regional District who contact or are referred to it for assistance in filing a human rights complaint. It will also help Respondents from all parts of the province who

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<sup>6</sup> CLAS Annual Report 2009 - <http://www.clasbc.net/publications/details.php?ID=52>

<sup>7</sup> The Law Centre Website - [http://www.thelawcentre.ca/human\\_rights\\_clinic](http://www.thelawcentre.ca/human_rights_clinic)

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have been notified that a complaint under the Human Rights Code has been filed against them. The Law Centre will help Complainants and Respondents with understanding the Human Rights Code and the Human Rights Tribunal process, preparing an initial complaint or reply, mediating the complaint with or without involvement of the Human Rights Tribunal, and representing the Complainants or Respondents at Tribunal hearings as required.

### **(b) Specific Services**

Complainants and Respondents can receive:

- Initial advice about how to make or respond to a complaint so they will have information to allow them to deal with the matter on their own;
- Advice on the strengths and weaknesses of the evidence to support a complaint, and on reasonable settlement options;
- Assistance in the mediation of the complaint;
- Preparation of written submissions;
- Representation at preliminary or other hearings of the Human Rights Tribunal, either by telephone or through personal appearance;
- Preparation for a hearing before the Human Rights Tribunal, including;
- Legal research, contacting witnesses, preparing evidence, doing pre-hearing motions, preparing documents, complying with disclosure of documents, and discussing settlement options.

### **(c) Eligibility**

To be eligible a Complainant or Respondent must:

- Meet a financial eligibility test;
- Agree to and sign a Retainer (which does not call for the payment of fees);
- Provide demographic and business profile information required by the Province under a Memorandum of Agreement pursuant to which services to Respondents are being provided. This information includes;
- For a Respondent business: business type, size of business in annual revenue and number of employees, type of business organization (sole proprietorship, partnership, corporation, etc.), and geographic location of business;
- For an individual Respondent: the person's age, gender, languages the person is fluent in, income level, education level, the size of the population centre where the person lives, and if the individual Respondent has special needs.

**British Columbia Law Institute (“BCLI”) Review of the Tribunal**

In June 2010 the Ministry of Labour requested the British Columbia Law Institute (“BCLI”) to undertake a brief study of the merits of establishing a Workplace Tribunal for British Columbia which would incorporate the BC Human Rights Tribunal. The BCLI issued a report<sup>8</sup> to the Ministry of Labour and the Ministry of the Attorney General with respect to its findings. During the study many facts became clear. Most of them support the continuation of the Tribunal in substantially the same form as it is now.

The BCLI report indicates;

The BCLI consultation revealed dissatisfaction with the current system in BC. However, dissatisfaction was not universal and was characterized by serious divisions among the stakeholder sectors. One vision of a Workplace Tribunal envisages a newly created, well-funded tribunal, with efficient costs and experienced and proficient members. However, it is not clear that creating a new entity will result in improved funding, better efficiency and greater experience and that existing problems will not be imported into the new Tribunal.

The BCLI recently held consultation sessions to discuss changes to the Human Rights Tribunal and other employment relates Tribunals.

- a) The following assertions were made at the consultation sessions and reported in the BCLI paper.
- b) The HRT has an inadequate intake process, such that too many unmeritorious and inappropriate complaints proceed through the system.
- c) There is a perception of institutional bias against employers — a bias that the complaint must have some foundation — such that too many unfounded or weak complaints get to a hearing. Other consultation participants described HRT decisions as fair, balanced and reasonable.

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<sup>8</sup> British Columbia Law Institute, Workplace Dispute Resolution Project, Report to the Ministry of Labour and the Ministry for the Attorney General October 31, 2010

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- d) Tribunal members act as though their role is to protect individuals. This may be a function of limited access to publicly funded representation, such that parties require more assistance to make out their case, especially given the complex nature of human rights law. This may result in a perceived blurring of the role between adjudicator and advocate. Other participants claimed that HRT members approached their decision-making from a policy perspective whereas decision-makers should be neutral.
- e) Although HRT processes have been designed to ensure a perception of fairness and protection for individual rights, in practice the processes are described as bureaucratic and overly formal. The process is litigious and paper-driven and therefore expensive for parties. Decisions can be as long as 300 pages and hearings can take weeks. Other participants stated that the HRT writes simple decisions that unsophisticated clients are able to understand, that it is rare for a hearing to last longer than 2-3 days, that there is no backlog of cases at the HRT, and the HRT accepts cases and delivers final decisions in a timely manner.
- f) Length of a hearing or decision can be a function of the complexity of the case but can also result in inordinate preliminary applications. Delay and formalism are driven by the parties and are not endemic to the system. The process was formalized to some extent to create greater transparency for the parties who may be unfamiliar with legal processes. However, this process has become a tool for delay.
- g) Some participants stated that the HRT does not provide a forum for speedy decision-making and indicated that speed is crucial in the workplace context.
- h) The HRT approach is appropriate for dealing with the parties to a human rights case. Further, the tribunal does an excellent job making the process accessible to parties who are not knowledgeable about legal processes as well as accommodating the particular needs of parties, including significant mental health issues. A number of participants commented that unrepresented human rights complainants can be very demanding but that the HRT handles these individuals appropriately and sensitively.

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- i) There is inadequate public funding of representation for small employers for whom a human rights complaint, regardless of merit, is a huge cost. Too often, due to the cost associated with a human rights complaint, even an application to dismiss, employers feel pressured to settle claims that have little merit.
- j) The process is not sufficiently solution-focused. Critics of the HRT stressed that the HRT focuses on rights at the expense of dispute resolution and suggested that the HRT should move from an adjudicative model to a dispute resolution model. Other participants expressed the view that the HRT has skilled members, including the previous Chair, but needs to experience a cultural shift in order to be more effective. Still others claimed the view that the HRT is not results and problem-solving oriented is outdated.
- k) Some participants suggested that HRT members are not skilled mediators. Others stated that human rights mediation is effective, resulting in a high proportion of cases settling prior to a hearing and succeeding in bringing government to the table to craft creative remedies to systemic problems.
- l) There was general disagreement about how appropriately the HRT exercises its discretion to accept cases covered by a collective agreement. Some stakeholders described the application to dismiss process as an expensive affidavit war. Other participants stated that the HRT deals well with the overlap in jurisdiction utilizing sections 25 and 27 of the Code. Another participant expressed concern that respondents were filing applications to dismiss even when the applications had little merit, resulting in pre-mature one-sided disclosure of the complainant's case as well as premature dismissal of cases with merit.
- m) A number of human rights stakeholders cautioned that the direct access human rights system is only now just getting off the ground. While it might be an appropriate time to review the operation of the HRT and identify areas for improvement, it is premature to explore dismantling the tribunal, especially given how much change the human rights system has seen throughout the past decades. At the same time a number of stakeholders advocated for the re-creation of a human rights commission with a mandate to

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engage in public education and intervene in select cases, but no role in investigation or intake of complaints.

- n) There was some discussion as to whether it would be appropriate for the HRT to be able to award costs in some instances, for example, against a respondent in the context of an unsuccessful application to dismiss. A concern was expressed that legal costs can absorb most if not all of an injury to dignity award, resulting in an ineffective remedy going to a successful complainant. Other participants cautioned that the threat of costs could also have a “chilling effect” on the willingness of individuals to file complaints, thereby undermining access to justice in the area of human rights protection.

It is clear that the fate of the HRT will have a significant impact on British Columbians and that stakeholders hold strong and polarized opinions about reforms in this area. If the Ministry intends to pursue any reform of jurisdiction over human rights complaints arising out of the workplace, we recommend further consultation in a more public manner. Consultation should be informed by a detailed, publicly available discussion paper. This recommendation flows both from the consultation carried out as part of this study, which was necessarily limited by time and the terms of reference, and from our comparative analysis. In each jurisdiction that we studied, the success of significant reform in the area of employment and labour law appears connected to the extent to which the government provided stakeholders with an opportunity for meaningful consultation.

### Human Rights Tribunal Efficiency

The following is a statistical analysis of metrics to help understand the efficiency of the Tribunal. The former BC Human Rights Commission did screen complaints. It investigated complaints to determine if there was any merit and if the complaint should be processed and ultimately be sent to the Tribunal. This system was abandoned because it was inefficient and took too long to resolve complaints. Resolving complaints quickly is beneficial for both respondents and complainants and reduces legal costs on both sides. In keeping with recent judicial trends the Tribunal allows complaints to be easily filed, (greater access to independent third parties to resolve disputes) but thereafter provides speedy methods for mediating disputes, responding to the allegations, and making applications to dismiss.

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### Screening

In order to get a complaint accepted the complaint must allege a breach under the BC Human Rights Code (the “Code”) and provide facts supporting a *prima facie* case. The average of cases filed with the Tribunal over the last 4 years is 1085. In the last 4 years the average of complaints screened out by the Chair at the “intake” stage was 28%. Cases that appear without legal merit are screened out at this stage.<sup>9</sup>

YEAR	FILED	SCREENED	%	ACCEPTED
05/06	1131	350	30.9%	781
06/07	1018	222	21.8%	796
07/08	1053	276	26.2%	777
08/09	1141	366	32.0%	775
<b>AVERAGE</b>	1084	303	28.0%	781

### Early Resolution (see attached flowchart of Tribunal process)

Once a complaint is accepted, the respondent and the complainant may elect to attend an early settlement meeting (“ESM”). If either one or both of the parties do not want to attend at an ESM then the respondent has 35 days from the date of the letter of acceptance of the complaint to file their respondent reply and another 35 days to file their application to dismiss. In most cases these are both filed at the 35 day mark.

If both parties agree to attend at an ESM the Tribunal provides a mediator to assist the parties in resolving the complaint. Generally speaking the ESM will be set for about 3-4 months from when the complaint was accepted. If the parties agree to go to an ESM the filing of the respondent reply (defence) is delayed.

The Tribunal does not always keep separate statistics for ESM’s versus Regular Settlement Meetings (“SM”) but they did so for the 09-10 reporting period. The majority are ESM’s, accounting for approximately 58% of all settlement meetings. There is no reason to believe that this ratio would be different for other years.

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<sup>9</sup> Tribunal Statistics are derived from Annual Reports (05/06 through 08/09), except where noted.

## Human Rights Process: The System Explained

The BC Human Rights Tribunal reports that the parties were able to resolve their disputes in over 70% of all cases in which the Tribunal provided assistance.<sup>10</sup> As can be seen this leads to 34% of the total complaints accepted being resolved by way of settlement meetings. For the latest reporting period this would mean the 188 cases (70%) of cases settled at an ESM. This means that 24% of all accepted cases are resolved at an ESM. This would be approximately 3-4 months after the complaint was accepted. Another 34 (30%) settled at later settlement meetings, during some point in the proceedings.

Year	Settlement Meetings (ESM and SM)
2005/06	346
2006/07	371
2007/08	(not reported)
2008/09	393
2009/10	383 (269 ESM 70% – 114 SM- 30%)

If the ESM does not resolve the complaint the respondent has 35 days to file their respondent reply and any application to dismiss. This filing would occur then in the 4-5 month range after the complaint was accepted.

The parties may also resolve the complaint through direct negotiations prior to the ESM, or at any stage of the proceedings. If this occurs the complaint is resolved in less than 4 months.

### **Applications to Dismiss**

Tribunal rules allow for applications to dismiss to be made 70 days after the letter of acceptance is issued (although they are usually filed after 35 days with the respondent reply), at the time disclosure is obtained, or upon a party obtaining “new” evidence. An application to dismiss may also be filed within 35 days from when an early settlement meeting does not resolve a complaint. Section 27 of the Code deals with the grounds for applications to dismiss and reads as follows.

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<sup>10</sup> BCHRT Annual Report 08/09

***(i) Dismissal of a complaint***

- 27** (1) A member or panel may, at any time after a complaint is filed and with or without a hearing, dismiss all or part of the complaint if that member or panel determines that any of the following apply:
- (a) The complaint or that part of the complaint is not within the jurisdiction of the tribunal;
  - (b) The acts or omissions alleged in the complaint or that part of the complaint do not contravene this Code;
  - (c) There is no reasonable prospect that the complaint will succeed;
  - (d) Proceeding with the complaint or that part of the complaint would not
    - (i) benefit the person, group or class alleged to have been discriminated against, or
    - (ii) further the purposes of this Code;
  - (e) The complaint or that part of the complaint was filed for improper motives or made in bad faith;
  - (f) Substance of the complaint or that part of the complaint has been appropriately dealt with in another proceeding;
  - (g) The contravention alleged in the complaint or that part of the complaint occurred more than 6 months before the complaint was filed unless the complaint or that part of the complaint was accepted under section 22 (3).

Over the past 4 years there has been an average of 246 applications to dismiss filed each year. On average 46% were totally successful, with 16% managing to have part of the complaint dismissed. 38% of the applications to dismiss were denied. If we compare the number of average cases accepted and average number of cases fully dismissed we find that 57.7% of accepted cases filed are fully dismissed at this stage. This shows that respondents have a good screening mechanism to make sure that non-meritorious complaints do not proceed.

## Human Rights Process: The System Explained

Year	Total Applications to Dismiss	As % of Cases Accepted
2005/06	287	36.7%
2006/07	289	36.3%
2007/08	186	23.9%
2008/09	224	28.9%
<b>Total</b>	<b>986</b>	<b>33.4%</b>

Year	Dismissed	Denied	Total
2005/06	141 full/ 39 in part	107	287
2006/07	111/ 64	114	289
2007/08	94/ 26	66	186
2008/09	105/ 32	87	224
<b>Total</b>	<b>451 = 46% Full, 161 = 16% in part<sup>11</sup></b>	<b>374=38%</b>	<b>986</b>

### Costs

Costs refer to two different things. The first, is the legal costs associated with hiring a lawyer, and the related costs of engaging the complaint. In most cases the parties before the Human Rights Tribunal pay their own costs. The second, refers to costs (nominal) awarded by the Tribunal to one party because the other party engaged in “improper conduct”. The latter is intended to be punitive.

The Tribunal has awarded the actual legal costs incurred by a complainant in only rare circumstances. *Senyk v. WFG Agency Network (No. 2)*, 2008 BCHRT 376. In that case the Tribunal awarded the complainant \$35,000 for injury to dignity, but her real legal costs were estimated to be above \$50,000. The Tribunal determined that in order to “ameliorate” the effects of the discrimination it would be unfair not to award her those legal expenses.

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<sup>11</sup> 46% and 16% of the total number of applications to dismiss filed.

## Human Rights Process: The System Explained

Complainants can apply for free legal representation from the Human Rights Clinic. Until recent cutbacks respondents of limited means (small businesses) could receive free legal assistance from the Human Rights Clinic (UVIC – Law Centre). As noted above almost 60% of complainants indicate their household income is less than \$35,000 and 25% indicate a household income of less than \$15,000. Many people who file human rights complaints allege that they have lost their jobs as a result of discrimination. Almost 10% of the cases the Clinic deals with are cases alleging discrimination on the basis of pregnancy. In most of these cases the complainants would not be able to afford legal representation. Another factor to be considered is that the awards at the Tribunal are relatively small. Most cases are in the \$5,000-\$10,000 range. Arguably legal costs in most cases would amount to more than the damages received.

The second form of costs is for improper conduct. These costs are intended to be punitive. The following are some examples;

The Tribunal awarded costs where the complainant made false statements and irrelevant comments about his employer, was disrespectful, untruthful and attempted to intimidate a witness. *Grewal v. Simard Westlink and others*, 2010 BCHRT 51

The Tribunal awarded costs when the complainant took positions that either exaggerated or downplayed the extent of her disabilities when she believed that such positions would benefit her. She was also untruthful with respect to the “central aspects” of the complaint. *McDougall v. Superior Building Maintenance (No. 8)*, 2009 BCHRT 93

A complaint being justified in part is not a bar to an award of costs against the complainant. The complainant gave untruthful evidence calculated to mislead and as a result the respondent was awarded costs. *Ferguson v. Kimpton (2)*, 2006 BCHRT 62

The Tribunal has awarded costs where the complainant has failed to diligently pursue the complaint., (*McKay v. Compass Group and others*, 2008 BCHRT 380) and where the respondent delayed the hearing, left the country, dissolved the corporate respondent, and did not provide instructions to their counsel so that he would be able to represent them at hearing. (*Halliday v. Craft Welders and Kastner (No. 3)*, 2006 BCHRT 479).

## The Role of the Tribunal in relation to complaints arising in employment settings

### Supposed Inefficiency

Recently there have been some suggestions made that there is inefficiency with respect to having various bodies dealing with employment issues (Employment Standards Branch, Labour Relations Board, BC Human Rights Tribunal)? This was the subject of the BLCI report.

Employment issues can come to the Tribunal in two ways. One is when the complaint is filed under section 13, alleging discrimination in employment. The second is when a person alleges discrimination by a union or employer association, under section 14 of the *Code*.

According to the Tribunal Annual Reports (05/06-08/09) 67% of the cases filed at the Tribunal in the last 4 years cite employment as an area (either Section, 13 or 14). In general 60% are section 13 cases, and 5% are Section 14 cases. Thus, an overwhelming majority of the cases filed at the Tribunal involve employment, but not necessarily unions.

The Tribunal does not track the number of persons who are union members who file complaints. However, the BC Human Rights Clinic does. The percentage of Clinic clients who request assistance that are union members is on average 20.33% (last 28 months). This means that only about 1/5 of the cases filed in the areas of employment are filed by union members. So as a percentage of the Tribunal cases filed under employment it is safe to say that only 20% of them would involve unionized workers.

### Deferral

Is there a wasteful duplication of resources when a complaint proceeds both as “another proceeding” and a human rights complaint? Another proceeding may be a wrongful dismissal suit, an allegation of a breach under the Employment Standards Act, an appeal at an educational institution, or a grievance under a collective agreement, or a Section 12 complaint against a Union. Grievances are by far the most often cited “other proceeding”. Section 25 of the BC Human Rights Code allows that a Tribunal Member may defer a complaint pending the outcome of another proceeding

Section 25 of the *Code* provides,

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

## Human Rights Process: The System Explained

- (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.

In following the principles articulated in *Young v. Coast Mountain Bus Company Ltd.*, 2003 BCHRT 28 the Tribunal looks at a variety of factors when assessing whether to grant an application to defer.

These include:

1. the subject matter of the other proceeding,
2. the nature of the other proceeding,
3. the adequacy of the remedies available in the other proceeding,
4. the fairness of deferring consideration of the complaint
5. the timely resolution of the human rights issue, and
6. the status of the other proceeding in relation to the status of the complaint.

The one point that seems to get the most weight is speed; which proceeding will likely produce the timeliest resolution of the complaint? The Tribunal will generally defer a human rights complaint where the other proceeding will resolve the matter before the Tribunal will have the opportunity to hear it. Grievances are often filed before the human rights complaint is filed. Grievances are usually filed around the time the issue arose, while often the complainant will wait as long as possible, in the hopes the issue is resolved, before filing their human rights complaint. The limitation period for filing a human rights complaint is 6 months. The grievance process is often slower to resolve a dispute than a human rights complaint. But the grievance often gets a 6 month head start.

Nonetheless, when looking at the issue of duplication through the lens of applications to defer we find that there is little duplication. In the 08/09 year 100% of applications to defer were successful. On average, over the last 4 years 64% of the applications to defer were successful. If the “Young” factors were properly applied then it would be the assessment of the Tribunal Member that the remaining 36% of the cases would be more efficiently dealt with at the Human Rights Tribunal. If this was true and the issue was resolved at the Human Rights Tribunal then it would also likely be resolved as a grievance, as in most cases with resolution of the complaint the union would withdraw the grievance. There does not seem to be a great duplication of resources here.

## Human Rights Process: The System Explained

<b>Deferrals</b>	2005/06	32 applications / 17 deferred
	2006/07	20/12
	2007/08	9/6
	2008/09	12/12
	<b>Average over 4 years 64.4%</b>	<b>73/47</b>

The parties, if they wish, may file applications to defer. There may be other occasions when the parties may not want to defer the complaint, and in that case it is hard to argue that there is a waste of resources as the parties see benefit in having both processes move forward simultaneously.

There is no reason to believe that union members are more likely to file human rights complaints, and some reason to believe that as they have the grievance process they may be less likely to do so. Also, not all union workers will have a grievance filed on the same issue as their human rights complaint. In fact, some collective agreements contain “deviation” clauses which require a union member to either grieve or file a human rights complaint, but they cannot do both.

A deviation clause requires a unionized worker to choose between having the union proceed with a grievance on their behalf, or proceeding with a human rights complaint in their own name. These may be unconstitutional as they contract out of human rights, and may, in addition, be a violation of section 43 of the *Code* (Retaliation). Nonetheless, some collective agreements have these clauses and exercise them. This suggests that in more than 80% of the cases there is no duplication of process between a human rights complaint and a grievance.

### Hearings

Over the last 4 years an average of 65 cases a year have gone to a full and final hearing. This is 5.9% of the total cases filed. This is in line with civil litigation. The number of hearings that dealt with section 14 cases (against a union) was on average 1.7% of the cases filed.

## Human Rights Process: The System Explained

Hearings			Sec 14 Complaints		
2005/06	68	6.0%	2005/06	2	2.94%
2006/07	76	7.4%	2006/07	0	0%
2007/08	45	4.2%	2007/08	0	0%
2008/09	72	6.3%	2008/09	3	4.16%
<b>Average</b>	65	5.9%	<b>Average</b>	1.25	1.7%

**Complainant resources**

As has been shown it is likely only about 1/5 of the cases filed alleging discrimination in employment (sections 13 & 14) are filed by union members. 80% would be filed by workers in non-union settings. The Tribunal's direct access model makes it easy for these "lay" individuals to file complaints without the need of extensive legal knowledge or the necessity of access to financial resources. The BC Human Rights Clinic tracks the income of persons requesting assistance. This is done on a "household" basis. 59.2% of persons applying indicate their household income as less than \$35,000. 25.1% indicate that it is less than \$15,000. The direct access model makes it easy for these individuals to access justice if they have been discriminated against, or have the belief they have been discriminated against.

<b>Coalition Statistics<sup>13</sup></b>		
<b>Earnings Per Household-</b>	<b>151</b>	
<b>Less than \$15,000</b>	38	25.1 %
<b>\$15,000 to \$24,999</b>	35	23.1 %
<b>\$25,000 to \$34,999</b>	22	14.6 %
<b>\$35,000 to \$44,999</b>	19	12.6 %
<b>\$45,000 to \$74,999</b>	20	13.2 %
<b>\$75,000 to \$99,000</b>	8	5.3 %
<b>More than \$100k</b>	1	0.7 %

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<sup>12</sup> BCHRC 4<sup>th</sup> Quarter Report 2009-2010

<sup>13</sup> BCHRC 4<sup>th</sup> Quarter Report 2009-2010

## Human Rights Process: The System Explained

### **Respondent Resources**

More should be done to assist respondents. The Law Centre Program to assist respondents should be re-instated to the way it was. The program no longer assists respondents or complainants outside of the southern part of Vancouver Island. The BC Human Rights Coalition has created many resources directed at assisting respondents. Web pages include FAQ's for respondents, how to respond to a complaint, and the law on applications to dismiss. The Law Foundation provided a grant in the 09/10 year for a one-day human rights seminar for small businesses throughout the province. This was delivered in 17 different cities and continues to be delivered in Vancouver. But this is not enough. There should be more resources to assist employers in understanding human rights, their duties and their rights.

### **Summary**

Are there problems with the Tribunal and its process, including unnecessary duplication of process? We see no statistical evidence to support those assertions. Especially when compared with other models.

### **28% of cases are screened out during the initial intake process.**

The direct access model has been shown to resolve complaints more quickly than previous models. Persons who believe they have been discriminated against have a process that gives them easy and fast access to make complaints and the possibility of quick resolution. If the respondents believe they have been wrongly accused the system allows them to respond and apply to have the case dismissed. Respondents may take up to 70 days to file their applications to dismiss, but may do so earlier (and usually do) if they desire.

### **70% of all cases where the Tribunal provided mediation resulted in resolution.**

The parties were able to resolve their disputes in over 70% of all cases in which the Tribunal provided assistance. After having been named in a complaint the parties can either attend at an early settlement meeting (3-4 months), or the respondent can file their defence (35 days). If the case does not settle at an early settlement meeting the respondent must file their defence 35 days late. On average settle meetings settle more than 70% of the time. Overall 24% of all cases accepted for filing settle at an early settlement meeting.

### **57% of all cases fully dismissed on preliminary application.**

A large number of cases are dismissed on preliminary applications. This is usually done at a time when the respondent first replies to the complaint and puts their version of events forward. This is generally done 35 days after the letter of acceptance is received, or 35 days from when the early settlement meeting fails to resolve the issue. Generally speaking a decision on an application to dismiss would be received in 3-6 months from when the complaint was accepted.

## Human Rights Process: The System Explained

### Overlap of Union and Non-Union Workers

Statistics imply that only about 20% of the people who file complaints work in a unionized setting. There is no reason to believe that union members are more likely to file human rights complaints and some reason to believe that they may be less likely to do so as they have access to grievance processes. Also, not all unionized workers will have a grievance filed on the same issue as their human rights complaint. In fact, some collective agreements have deviation clauses which require a union member to either grieve or file a human rights complaint, but they cannot do both. This suggests that in more than 80% of the cases there is no possibility of duplication of process between a human rights complaint and a grievance.

### Deferral – Where there may be overlap

Where there is both a grievance and a human rights complaint (and sometimes other kinds of proceedings) any of the parties may make an application to defer the human rights complaint pending the outcome of the grievance. Over the last 4 years applications to defer have been granted an average of 64% of the time. Last year 100% were granted. If the parties do not make an application to defer, it could be assumed that they must both agree that there is some benefit to having both processes proceed.

### Hearings

On average hearing dates are set approximately 12-16 months from the date the complaint was accepted. This depends on the whether or not there is an early settlement meeting, a second settlement meeting, how many days are required for the hearing, and the number of parties and their representatives involved. Having said that, on average only 5.9% of all cases go to hearing; not unlike civil law processes.

### Unions

Complaints that went to hearing involving a union under section 14 of the *Code* constituted 1.7% of all cases.

### Quick and easy access

9% of the BC Human Coalition cases involve pregnancy – cases where pregnant women are fired or not provided with the opportunity to return to work. The majority of the other cases deal with either a mental or physical disability issue in the workplace. In cases such as these, vulnerable people are out of work. Quick and efficient resolution is paramount.

### Assessing the need for change

Historically, governments considering policy change in the human rights arena have engaged in significant research and public consultation<sup>14</sup>. See, for example:

1. The Black Report<sup>15</sup> that resulted in the tripartite system introduced into BC January 1, 1997;
2. The 2001 Human Rights Review<sup>16</sup> that resulted in the current BC model for adjudicating human rights disputes on March 31, 2003; and
3. The La Forest Report<sup>17</sup>, the Federal Human Rights Review also recommending a form of “direct access” human rights tribunal, released in 2000.

In their 2001 Human Rights Review, Lovett and Westmacott state:

The point should also be made that legislative reform in the area of human rights raises both complex and sensitive issues for governments. The controversial and complicated nature of any significant legislative reform in this area does much to explain why governments have generally been slow to act on recommendations contained in human rights reviews.

Following the release of the Human Rights Review, then Attorney General Geoff Plant said in a letter:

I want to begin by restating government’s fundamental commitment to human rights and to an administrative system that protects those rights. We are committed to a human rights system that operates at arm’s length from government and is publicly accountable, cost-effective, affordable and accessible.

As the BCLI report noted:

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<sup>14</sup> BCHRT October 5, 2010 Information Brief

<sup>15</sup> *Report on Human Rights in British Columbia* prepared by Professor William Black, 1994 [Black Report]

<sup>16</sup> “Human Rights Review, A Background Paper” prepared by Deborah K. Lovett, Q.C. and Angela R. Westmacott for the Administrative Justice Project, Victoria, B.C. 2001 <http://www.ag.gov.bc.ca/ajo/down/hrr.pdf> [Human Rights Review]

<sup>17</sup> Canadian Human Rights Act Review Panel Report, *Promoting Equality: A New Vision* (Canada, 2000) [La Forest Report]

## Human Rights Process: The System Explained

A number of human rights stakeholders cautioned that the direct access human rights system is only now just getting off the ground. While it might be an appropriate time to review the operation of the HRT and identify areas for improvement, it is premature to explore dismantling the tribunal, especially given how much change the human rights system has seen throughout the past decades. At the same time a number of stakeholders advocated for the re-creation of a human rights commission with a mandate to engage in public education and intervene in select cases, but no role in investigation or intake of complaints.

Arguably a Commission adds another layer of government bureaucracy, and forestalls access to an independent third party, the Tribunal, to adjudicate a complaint on its merits

### Suggested Improvements

Like any system periodic review and modifications are useful. The Tribunal is no exception. However, there seems to be no strong evidence pointing to the need for the kind of major changes that have occurred several times over the relatively short period that human rights have been protected in BC.

The Coalition would like to suggest various improvements (not in order of priority.).

1. That Tribunal Members be appointed on merit, and re-appointed on merit and/or tenure. This would assure independence especially since the government is often a respondent and Tribunal Members should not have to worry about the impact of unpopular decisions.
2. There should be more support for persons with assistance in framing complaints, especially those with mental and physical disabilities.
3. The Law Centre provision of assistance for respondents who are unable to afford it should be reinstated.
4. A centre for excellence should be established to provide education on human rights.
5. A commission should be created to act as a public interest intervenor. In Ontario which adopted the direct access model, they retained a Commission for this purpose.
6. There should be more assistance for immigrant/newcomers.
7. The Human Rights Code should be amended so that when a complainant dies during the course of their complaint the complaint is not automatically dismissed, if there is enough evidence to proceed.

## BC Human Rights Coalition – In Depth

The B.C. Human Rights Coalition is a charitable non-profit community based organization governed by a volunteer Board of Directors that seeks to promote and strengthen human rights throughout British Columbia. The Coalition does this through advocacy, education, and Law Reform.

Their purpose is to provide:

- a. An opportunity for better understanding of human rights issues among organizations and individuals with an interest in those issues;
- b. Assistance and mediation services for people in B.C. with respect to their human rights under the provincial and federal human rights legislation, and the Canadian Charter of Rights and Freedoms;

### To Encourage:

- a. Dialogue on human rights matters from different points of view;
- b. Cross-interest awareness and involvement between and among the members of the public.

### To Educate:

- a. Members and the public about human rights problems encountered by different groups and individuals;
- b. And assist people in British Columbia with respect to human rights issues.

Summary of Services - Services integrate information, education, training, consultation, investigation, mediation, research and advocacy. The Advocacy program protects existing rights, education, training and consultation program helps to prevent discrimination, and law reform work seeks to expand human rights protections. Together this integrated approach works to promote and strengthen human rights.

In delivering these services the Coalition often coordinates with other service providers to ensure the most effective allocation of resources.

The Coalition does much education. Human Rights Coalition delivers human rights workshops throughout the province, in the regions of Greater Vancouver, Fraser Valley, Central Interior, North East, North West, Vancouver Island, Kootenay /SE Interior, Sunshine Coast and Okanagan.

### Employer Education/Toolkits Program

One of the Education programs is the “Human Rights Toolkit”. This is a one day seminar presented by the BC Human Rights Coalition intended to assist employers and employees

## Human Rights Process: The System Explained

navigate increasingly complex workplaces while understanding and avoiding human rights complaints, which can be costly and time consuming. This seminar was delivered to 17 cities throughout BC. It is currently being offered in Vancouver, but can be delivered elsewhere upon request.

The seminar deals with topics such as:

- What are human rights?
- What is accommodation?
- Addressing bullying and harassment
- Dealing with sexual harassment, drugs and alcohol in the workplace
- Developing and implementing a respectful workplace policy
- Avoiding human rights complaints
- Investigating complaints
- Resolving informal complaints
- Responding to formal human rights complaints
- Understanding the grounds on which to get formal complaints dismissed
- Navigating the Human Rights Tribunal process

The seminar also covers the question of what constitutes a physical or mental disability for human rights purposes, along with the law on the duty to accommodate. This includes the duty to inquire, the duty to actively engage in efforts to accommodate, the law on drugs and alcohol. The seminar is open to anyone who wants to attend, but the content is intended to assist small businesses, small business owners and managers, human resources personnel, workplace and business consultants, union reps, and employees interested in human rights.

The Coalition is active in law reform, previously doing work on eliminating mandatory retirement. Our current focus is on workplace bullying.

### **BC Human Rights Coalition Law Reform – BullyFreeBC ([www.BullyFreeBC.ca](http://www.BullyFreeBC.ca))**

The BC Human Rights Coalition has been active in spearheading a campaign to eliminate workplace bullying. This campaign is being coordinated under the name BullyFreeBC. BullyFreeBC began in 2007 as a community based initiative. The purpose of the group from the start was to advocate for workplace bullying law reform in B.C.

BullyFreeBC (“BFBC”) is comprised of a group of organizations and individuals who see the need to address the issue of workplace bullying. The group includes lawyers, psychologists, human resources practitioners, union representatives, social justice organizations, and interested individuals.

## Human Rights Process: The System Explained

Quebec, Ontario, Saskatchewan, and Manitoba have all passed workplace anti-bullying legislation. BFBC believes workplace anti-bullying legislation is needed in British Columbia. Workplace bullying is a serious problem in Canada and BFBC is trying to do something about it. Their goal is to raise awareness about the issue of workplace bullying and ultimately ask BC Legislators to look at legislation to deal with it.

The first project organized by the group was a one-day invitational symposium. More than 80 participants attended, including human resource professionals, psychologists, lawyers, employment counsellors, executive coaches, management consultants, public sector administrators, social service providers, academics and occupational health and safety advisors. The day ended with consensus that dealing with workplace bullying would require both legislation and education/awareness.

In November 2008 a smaller group of about 25 participants reconvened to continue the project. The initiative needed a new sponsor and chair. Susan O'Donnell, Executive Director of the B.C. Human Rights Coalition and an original member of the group, stepped in so that the project could continue.

Participants formed a Legislation Working Group (Chair: Robyn Durling) to study workplace bullying law reform and produced a framework for a bill.

Study materials for the Legislation Working Group included original research papers written by participants.

Based on study and discussion, the Legislation Working Group produced a document on proposed legislative changes to encourage expanded public dialogue on workplace bullying law reform in BC.

Following the lead of Ontario, Manitoba and Saskatchewan, the law reform proposal is for changes to Workers' Compensation legislation/ Occupational Health and Safety regulations.

### **Information for Immigrants**

The Coalition received funding from the BC Ministry of the Attorney General (through the Federal Immigration Department) to create and distribute brochures and posters to immigrants to help them understand human rights in Canada.

In order to promote the literature it was distributed to a variety of organizations at the front lines of dealing with immigrants. These include organization such as Immigrant Services Society, DiverseCity, MOSAIC, S.U.C.C.E.S.S., Service Canada, Churches, Temples, libraries, ESL schools etc.

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The BC Human Rights Coalition received funding to augment the brochures for immigrants with videos which will be distributed as DVD's and online through a variety of sources. As of March 2011 these have been scripted and should be made available online at various law related web sites, and as a DVD for immigration related agencies by the end of April 2011.