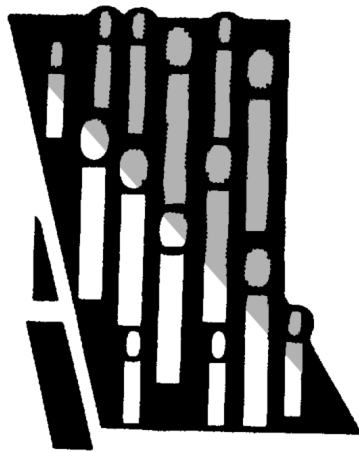


# Human Rights

## Your Rights To Know



The B.C. Human Rights Coalition is a coalition of groups and individuals whose objective is to better human rights conditions in B.C. through advocacy and education. We are community-based, non-profit, and are not part of government.

8th edition, January 2012

The B.C. Human Rights Coalition receives funding for the provincial Human Rights Clinic Program from the Ministry of the Attorney General of B.C. Additional funding is provided by the City of Vancouver and various other sources on a program by program basis.

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# introduction

## THERE ARE LAWS AGAINST DISCRIMINATION

We don't live in a perfect world. Discrimination is all around us and it can interfere with our daily lives.

Human rights violations can happen to just about anyone.

- You are a waitress and your boss leers and grabs at you.
- You are an Indo-Canadian worker and you are fired as a “trouble-maker” for objecting to racist graffiti in the workplace.
- You are disabled and in a wheelchair. You enter a restaurant and the manager tries to “shoo” you out because your wheelchair will take up too much space and scuff up his floor.
- You are an Aboriginal person looking for a hotel room. You see a vacancy sign on a hotel and go in to inquire about a room. The clerk claims they're all booked but as you leave you notice a non-Native couple being told there are rooms available.

All of these incidents are examples of human rights violations.

In Canada, there are federal and provincial human rights laws to protect people against discrimination.

The Canadian Human Rights Act covers all federally regulated businesses and agencies. The Canadian Human Rights Commission is the federal agency that deals with federal human rights complaints.

The British Columbia Human Rights Code deals with the same things on a provincial level. Some 85% of employers in B.C. come under the provincial law.

In B.C. we have a Human Rights Tribunal that accepts and resolves human rights complaints. The Tribunal offers parties an opportunity to resolve complaints through alternate dispute resolution (ADR) and will conduct public hearings where ADR does not resolve the complaint.

**THIS BOOKLET IS ABOUT PROVINCIAL HUMAN RIGHTS LAW**

This booklet deals with the provincial human rights law. It explains what protection the law offers, how you can make a complaint under the Human Rights Code, and who will help you.

The Human Rights Code of B.C. protects our rights in three main areas:

1. Employment.
2. Tenancy and purchase of property.
3. Accommodation, services and facilities customarily available to the public.

The Code also prohibits hate propaganda and protects complainants against retaliation.

**HOW DO I TELL IF FEDERAL OR PROVINCIAL LAW APPLIES?**

If you're not sure whether your complaint is a federal or provincial matter, contact the B.C. Human Rights Tribunal at their toll free number: 1-888-440-8844.

The B.C. Human Rights Coalition is also here to help explain the system. There is a directory at the end of this booklet. It gives places and phone numbers of groups, including the Coalition, that can help you deal with human rights problems.

# ***scope of human rights protections***

THIS SECTION looks at the protections offered by the B.C. Human Rights Code in these areas: employment; accommodation, services and facilities customarily available to the public; tenancy and purchase of property; and hate propaganda.

## on the job

6

### **EMPLOYMENT**

A person cannot be refused work, promotion, be fired or forced to work under different conditions because of:

- Age (19 and over)
- Ancestry
- Colour
- Conviction for a criminal or summary conviction charge that is unrelated to the employment
- Family status
- Marital status
- Physical or mental disability
- Place of origin
- Political belief
- Race
- Religion
- Sex (including sexual harassment, pregnancy, and gender – which also includes protection for transgendered people)
- Sexual orientation (includes protection for heterosexuals, bi-sexuals, gay men & lesbians)

**EMPLOYMENT ADVERTISEMENTS**

Employers are not allowed to exclude any class or category of person from their advertisements unless the preference is based on a genuine occupational requirement. For example, an ad for a cab driver could specify “sighted people only” as vision is a genuine occupational requirement for driving.

**JOB APPLICATIONS AND INTERVIEWS**

Employers can ask you personal questions related to protected categories listed on page 6. For example, an employer can ask about your age, if you have children, or about your health. However, an employer cannot refuse to hire or promote you on the basis of how you answer these questions. If you believe that your answers to any question related to these grounds are used to deny you an opportunity to work or a promotion then you may have a legitimate human rights complaint.

**WAGES**

The Human Rights Code prohibits discrimination in wages based on sex. The most frequent wage discrimination is directed against women. Women and men should receive the same rate of pay for work that is the same or substantially similar.

**UNIONS & OTHER EMPLOYMENT-RELATED ORGANIZATIONS**

You can’t be excluded, expelled, suspended or discriminated against by any trade union, employers’ organization or occupational association because of any of the categories listed on page 6.

## finding a home

**TENANCY**

A landlord cannot refuse to rent to you, and cannot vary any condition of the tenancy (increase the rent, for example) on the basis of:

- Age (19 and over)
- Ancestry

- Colour
- Family status
- Marital status
- Physical or mental disability
- Place of origin
- Race
- Religion
- Sex (including sexual harassment, pregnancy, and gender – which also includes protection for transgendered people)
- Sexual orientation (includes protection for heterosexuals, bi-sexuals, gay men & lesbians)
- Source of income

#### **EXCEPTIONS UNDER TENANCY**

- The Code doesn't cover you if you are applying to rent a place where sleeping, bathroom or cooking facilities are shared. However, if you have already moved in, you may be covered under the Code.
- Apartment buildings which house only people aged 55 years or older, and housing designed for people with disabilities are allowed to show preference for people in these categories. After someone has moved in, however, the provisions of the Code may apply.
- Although source of income is protected under the Code, a landlord can ask you to show you can afford to pay the rent.
- Issues specific to landlord tenant relations fall under the Residential Tenancy Act. Some examples are damage deposits and rent increases.

## **purchasing property**

It is discrimination to deny the opportunity to buy a commercial or dwelling unit, land or an interest in land on the basis of:

- Ancestry
- Colour
- Marital status

- Physical or mental disability
- Place of origin
- Race
- Religion
- Sex (including sexual harassment, pregnancy, and gender – which also includes protection for transgendered people)
- Sexual orientation (includes protection for heterosexuals, bi-sexuals, gay men & lesbians)

Note: There is no protection against discrimination in property purchase on the basis of age or family status.

## open to everyone

### **ACCOMMODATIONS, SERVICES AND FACILITIES**

You cannot be denied access to accommodation, services or facilities generally available to the public because of discriminatory policies or practices.

In addition, the quality and condition of service also cannot be varied due to discrimination. For example, suppose you are in a wheelchair. You go to see a movie and the only space for wheelchairs is in the front of the first row of seats. This is an inferior service to the one offered to other members of the public.

The Human Rights Code says that no one can deny a person accommodation, service or use of a facility that is customarily available to the public or vary the quality of service because of:

- Age (19 and over)
- Ancestry
- Colour
- Family status
- Marital status
- Physical or mental disability
- Place of origin

- Race
- Religion
- Sex (including sexual harassment, pregnancy, and gender – which also includes protection for transgendered people)
- Sexual orientation (includes protection for heterosexuals, bi-sexuals, gay men & lesbians)

### **EXEMPTIONS UNDER ACCOMMODATIONS AND SERVICES**

- The Code exempts the category of sex when the maintenance of public decency is involved. For example, men cannot use women's change rooms.
- It also exempts age, sex, physical and mental disability when it relates to determining premiums and benefits for life or health insurance. However, insurance schemes must have sound financial reasons and/or objective scientific evidence for refusing coverage.

## hate propaganda

The B.C. Human Rights Code prohibits the publication or display of any notice, sign, symbol, emblem or other representation that is likely to expose a person or class of persons to hatred or contempt because of:

- Age (19 and over)
- Ancestry
- Colour
- Family status
- Marital status
- Race
- Religion
- Physical or mental disability
- Place of origin
- Sex (including sexual harassment, pregnancy, and gender – which also includes protection for transgendered people)
- Sexual orientation (includes protection for heterosexuals, bi-sexuals, gay men & lesbians)

Note: These provisions do not apply to private communications.

## protection from retaliation

It's important for you to know that you and any witnesses are protected from retaliation because you have filed a complaint. The person against whom you've filed the complaint cannot try to punish you in any way. The Code says that it is unlawful for anyone to evict, discharge, suspend, expel, intimidate, impose any penalty or otherwise discriminate against you or anyone who assists you because a complaint has been filed.

If retaliation happens, you have grounds for a separate complaint.

## exemptions under the Human Rights Code

The Code exempts organizations which provide housing, employment and services to promote the welfare of an identifiable group or class of persons based on: age (19 and over), ancestry, colour, marital status, physical or mental disability, place of origin, political belief, race, religion, and sex. Preference can be given to members of the group served. For example, it would be possible for a group to form a housing co-op that gives preference to people with disabilities, or for a Chinese service organization to give preference in hiring to Chinese people.

This exemption does not give special interest organizations the absolute right to discriminate. People within the group could complain if they faced discrimination on other grounds. Or someone not in the group might have a complaint if an opportunity, which was unrelated to promoting the interests of the group, was denied.

In addition, the Tribunal can approve special programs that are designed to benefit groups who have been historically disadvantaged. For example, education programs can be aimed specifically at First Nations people.

# ***a walk through the system***

HERE IS A STEP-BY-STEP GUIDE to filing a human rights complaint, and what happens to your complaint within the system. Each complaint is unique, so you may not need to go through all the steps.

If you have questions about how to file a complaint, or about what your role is when the Tribunal is dealing with the complaint, call us at the B.C. Human Rights Coalition.

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## who can file a complaint

1. Individuals who experience discrimination can file a complaint or they can authorize someone else to file it on their behalf.
2. If the victim of discrimination is a child or someone who does not have sufficient mental or physical capacity, a parent or legal guardian can file a complaint.
3. Class Actions. The Code allows an individual or group to file a complaint on behalf of others if they have the permission of the victim(s) or if the Tribunal believes the complaint is in the interest of a class or group of persons.

## before you file a complaint

Look at the other options first. For instance, if you are in a union and your complaint is workplace related, you may want to file a grievance. It is the employer's responsibility to provide a workplace free from discrimination and your union must impress this upon the employer. Whatever alternatives you may pursue, make sure that they provide you with legal human rights solutions. You may wish to contact the B.C. Human Rights Coalition at this point and ask for further information about your options.

Before you file a complaint, make a list of all this information:

- The date(s) of the incident(s).
- The place where the incident occurred.
- The name, address, etc., of the person or place that discriminated against you.
- A description of the incident(s).

It may take some time before your case is resolved so it is important to keep a written record of each incident and to keep track of any witnesses. Keep copies of all written correspondence and records of all telephone conversations, meetings, etc. It is also a good idea to have thought out what solutions you might seek.

The following information will strengthen your position:

1. Did anyone else observe a discriminatory practice against you? Or has anyone else received the same discriminatory treatment? If so, make a record of this information. See if you can get written statements from these witnesses including names, addresses and phone numbers.
2. If you have contacted any other agencies for help (such as unions, women's groups, immigrant centres, welfare workers, etc.) keep a written record of who you talked to, what was said, and what if any action was taken.

## when to file a complaint

A complaint must be filed within 6 months of the incident of discrimination although the Tribunal may accept complaints after this deadline in special cases.

# what happens when you file a complaint

A human rights complaint goes through four steps outlined in this section. As each complaint is unique, your complaint may not proceed through all steps. You can get information from the B.C. Human Rights Tribunal about their complaint process and you can also get information regarding Code protections from the Ministry of the Attorney General. A publicly funded Human Rights Clinic can also offer information, advice and representation.

## **Publicly funded Representation**

The Human Rights Clinic program run by the B.C. Human Rights Coalition and the Community Legal Assistance Society is staffed by advocates (paralegals) and lawyers who specialize in human rights law. The clinic can provide information and advice to anyone who has a human rights concern and may be able to provide full representation to those who have lodged a formal human rights complaint with the B.C. Human Rights Tribunal. Services are available province wide at no cost.

Where representation is requested, qualifying criteria relating to your complaint are considered and a letter authorizing us to act on your behalf is required. As we assist many complainants, we do require notice in order to provide quality service. You should contact us as early in the process as possible.

A system exists to protect your human rights and uphold a standard for everyone in our province. Use it when your rights have been violated and help keep the rights we do have alive and well in B.C.

## step one: filing the complaint

To file a complaint, get a copy of the Tribunal's complaint form, fill it in, and file it with the Tribunal. The form asks you to describe your version of what happened, who you are, who you are complaining about, and whether you are interested in trying to resolve your complaint early in the process. Once received by the Tribunal, your complaint will be assigned to a Case Manager.

Your Case Manager will review your complaint form to ensure all information is complete and that it was filed within the six month time limit. Case Managers also assess complaints to ensure the Tribunal has the power to deal with your issue. Where more information is required, or where it appears your complaint falls outside the Tribunal's jurisdiction, you will be notified and provided with an opportunity to respond.

Complaint forms ask the person lodging the complaint if they are interested in trying to resolve their complaint early in the process. This is the first opportunity you have to resolve your complaint before the process becomes more formal. (See 'Assisted Alternate Dispute Resolution Options' on page 18).

If you choose this option, your Case Manager will ask the respondent(s) if they too are interested. Where both parties agree to such a meeting, your Case Manager will coordinate all details. If this early settlement meeting resolves your issue, your formal complaint with the Tribunal will be closed. Where this meeting does not resolve your issue, or where parties do not feel it's an appropriate option, other forms of alternate dispute resolution will be discussed with you after the respondent has replied to your complaint.

## step two: responding to a complaint

Once a completed complaint form is on hand, the Case Manager will notify the other side (who is called the respondent) that a complaint

has been filed against them and provide them with an opportunity to respond. The Tribunal sends a copy of your complaint form and other materials submitted with your complaint to the respondent in order to assist them in their response.

A respondent has 35 days to formally respond to a complaint. They do this by filling in a response to complaint form, sending a copy to the person making the complaint, and filing the original with the Tribunal.

Where the person making the complaint (who is called the complainant) indicates an interest in early settlement, the Tribunal will ask the respondent if they are also interested. When both parties agree to attend such a meeting, respondents are not required to complete the response form until after this meeting.

A response form seeks the respondent's version of the story and asks whether there is a defense to the complaint. The Case Manager will review the form to ensure all information is complete and that it is filed within the 35 day time period. Where more information is required, the respondent will be notified and given a set time to reply.

Respondents may also ask the Tribunal to dismiss all, or part, of the complaint because they believe:

- o the Tribunal lacks jurisdiction to address the complaint,
- o the acts described in the complaint don't conflict with the Code,
- o there is no reasonable prospect of success,
- o proceeding would not benefit the complainant or further the purposes of the Code,
- o the complaint was filed for improper purposes or in bad faith, or
- o another proceeding has dealt with the substance of the complaint.

Where an application seeking dismissal has been filed, the complainant will receive a copy of the application and will be given a set time to respond. Once the Tribunal has received the parties' forms and responses, or when time limits have passed, a Tribunal Member will decide the issue and notify the parties of their decision in writing.

**Tribunal Members, Decisions and Review Processes**

Tribunal Members are experts in human rights law and are appointed by the Lieutenant Governor in Council. Members act with authority under the B.C. Human Rights Code to hear and decide complaints. Members also decide all preliminary applications such as those seeking dismissal, document disclosure, adjournment and jurisdiction and Members may also conduct settlement meetings from time to time. When a Tribunal Member makes a decision, that decision is usually in writing and includes an explanation of how it was reached. Member decisions are considered decisions of the Tribunal. When individuals do not agree with a Tribunal decision, they may apply to have that decision judicially reviewed. A judicial review differs from an appeal which asks the court to look at whether it agrees with a decision or not. A judicial review asks the court to review the decision to see if an error was made in making that decision. Where an error is found, the court will set aside the Tribunal decision and may direct it to re-determine the issue at hand.

## step three: pre-hearing process

Once the Tribunal has accepted a complaint and notified the parties, a number of pre-hearing processes begin such as outlining the particulars of the remedy sought, evidence disclosure and alternate dispute resolution.

Complainants must outline the particulars of the remedy they are seeking and provide respondents with that information. Disclosure means that documents and other evidence will be shared between parties before a hearing takes place and both these processes must happen by timelines established by the Tribunal. Where parties agree to an alternate settlement process, rules governing disclosure timelines may be suspended by the mutual consent of parties.

Alternate dispute resolution is a voluntary process allowing parties an opportunity to settle their issue prior to attending a full public hearing. It is often the best way for parties to restore relationships and to move forward in a timely and fair manner. The process allows parties an opportunity to present their stories, to gain an understanding of the issues and concerns of the other side, and to present and negotiate their own resolution. If you are unsure about going to such a meeting or do not know what would be an appropriate settlement, contact the B.C. Human Rights Coalition for assistance.

## **TRIBUNAL ASSISTED ALTERNATE DISPUTE RESOLUTION OPTIONS**

Where possible, the Tribunal will encourage people to reach mutually agreeable settlements and is flexible in the ways that it can help. Case Managers will explore options with the parties and will make all formal arrangements where agreement for a specific format has been reached. Some options you may consider include:

- a. an early settlement meeting at the time of filing your complaint. This is the first opportunity to resolve your issue before it reaches a more formal stage as discussed under steps one and two,
- b. to have a Mediator assist in resolving your complaint. Mediators are neutral in the process and do not impose decisions. Rather, they are meant to help parties understand each other's issues and to help them find ways of resolving their differences,
- c. an early evaluation, where a Mediator will assist both sides in understanding the strengths and weaknesses of their case, or,
- d. where no settlement is possible, and parties consent, a Tribunal Member may provide a final determination on the merits of a case.

When a settlement is reached, both parties are asked to sign a settlement agreement and once filed with the Tribunal, the formal

complaint will be closed. Where necessary, settlements may be enforced through the courts.

In cases where the settlement process is not successful, there will be a public hearing before a Tribunal Member. The Tribunal posts information on its website 90 days prior to hearing including the names of the parties, the hearing location and scheduled hearing dates, as well as the grounds of the complaint in question.

## step four: the Tribunal hearings

Public hearings are usually conducted by one Member of the Tribunal. In more complex cases, a panel of three Tribunal Members may hear your complaint. In either case, parties have the opportunity to present their side of the story by providing oral and written evidence, calling witnesses, and if required, presenting expert evidence. Both parties are also provided the opportunity to respond to evidence and to cross examine witnesses.

Most decisions are not made at the Tribunal hearing. You may have to wait for a written decision where the Tribunal will explain how it reached its decision and what if any remedy has been ordered. A final order can be filed at any time at Supreme Court and enforced as a judgment of the Court.

## if you win your case

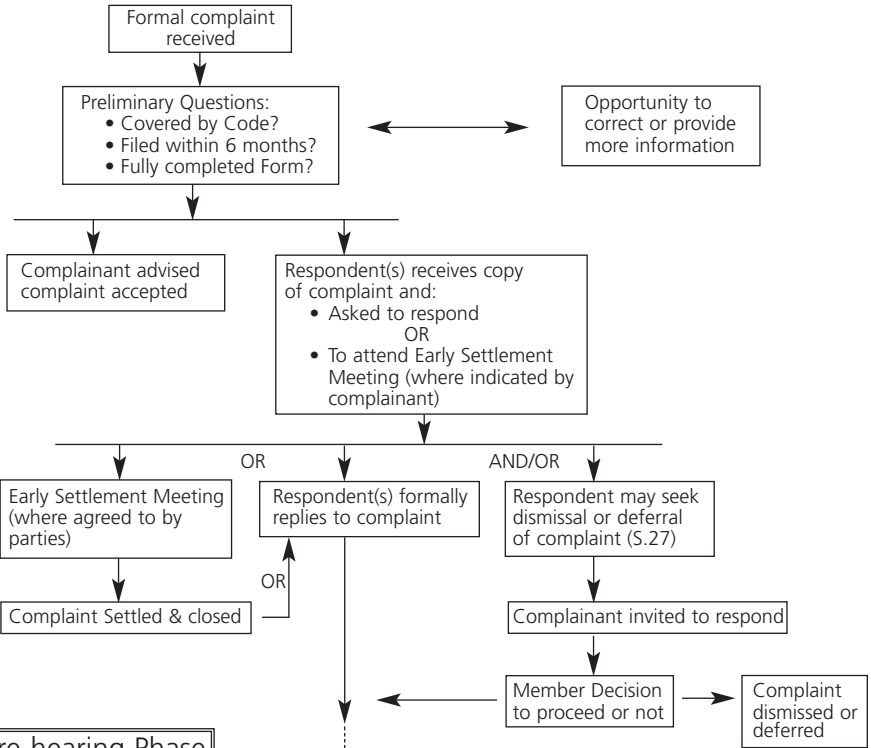
If you win your case the Tribunal can order the person or organization you complained against to do one or all of the following:

- Stop the discriminatory practice.
- Return to you the right or opportunity that was denied.
- Pay for actual financial losses—wages, moving costs etc.
- Pay you compensation for hurt feeling and insult. Although there is no upper limit on how much money can be awarded, the amounts are usually not very high.

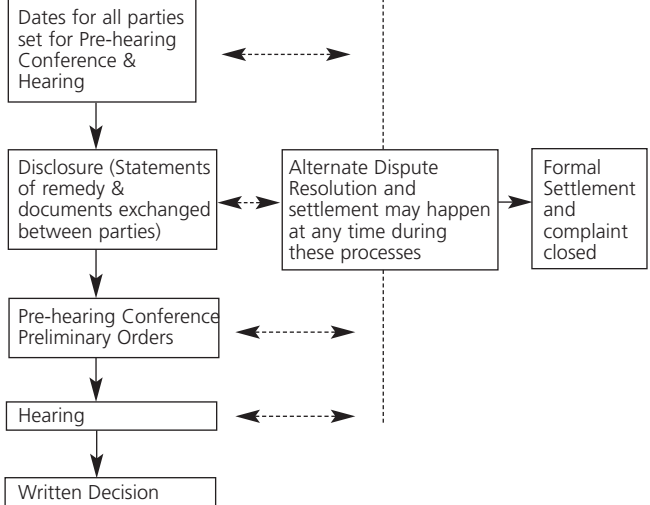
# complaint process

This chart will help you understand what happens when a formal complaint is filed with the BC Human Rights Tribunal

## Complaint Phase



## Pre-hearing Phase



## Hearing Stage

- \* Each complaint is unique & may not proceed through all steps.
- \* Any written Decision or Order made by the Tribunal is open to a Judicial Review at the BC Supreme Court.
- \* A complaint can be withdrawn at any stage in this process.
- \* This chart is not intended to replace the complaint process as detailed in the BC Human Rights Tribunal's Rules of Practice and Procedure.

## ADVOCACY

### **B.C. Human Rights Coalition Provincial Human Rights Clinic Program**

#1202 – 510 West Hastings Street  
Vancouver, B.C., V6B 1L8  
Telephone: (604) 689-8474  
Toll Free: 1-877-689-8474  
Website: [www.bchrcoalition.org](http://www.bchrcoalition.org)

## ENFORCEMENT

### **B.C. Human Rights Code**

#### **B.C. Human Rights Tribunal**

#1170 – 605 Robson Street  
Vancouver, B.C., V6B 5J3  
Telephone: (604) 775-2000  
Toll Free: 1-888-440-8844  
TTY: (604) 775-2021  
FAX: (604) 775-2020  
Website: [www.bchrt.bc.ca](http://www.bchrt.bc.ca)

#### **Local Government Agent Offices**

Can provide access to Tribunal  
Forms and User Guides and assists  
in filing materials with the Tribunal.

Call Service B.C. **1-800-663-7867**  
and be transferred free of charge to  
your local office.

Vancouver: (604) 660-2421

Victoria: (250) 387-6121

Website:

[www.governmentagents.gov.bc.ca](http://www.governmentagents.gov.bc.ca)

## Educational Materials

### **Ministry of the Attorney General**

3rd Floor – 703 Broughton Street  
PO Box 9243 Stn Prov. Govt.  
Victoria, B.C., V8W 2H5  
Telephone: (250) 387-1480  
FAX: (250) 387-1189  
TTY: call Enquiry BC  
Website:  
[www.ag.gov.bc.ca/human-rights-  
protection](http://www.ag.gov.bc.ca/human-rights-protection)

### **Canadian Human Rights Act**

#### **Western Region**

#### **Canadian Human Rights**

#### **Commission (Canada Place)**

Suite 1645, 9700 Jasper Avenue  
P.O. Box 21  
Edmonton, Alberta, T5J 4C3  
Telephone: (780) 495-4040  
Toll Free: 1-888-214-1090  
TTY: (780) 495-4108  
TTY: 1-888-643-3304  
FAX: (780) 495-4044

**OTHER RESOURCES****B.C. Coalition of Persons with Disabilities**

#204 – 456 W. Broadway  
 Vancouver, B.C., V5Y 1R3  
 Telephone: (604) 872-1278  
 Toll Free: 1-800-663-1278  
 TTY: (604) 875-8835  
 Website: [www.bccpd.bc.ca](http://www.bccpd.bc.ca)

**Downtown Eastside Women's Centre**

302 Columbia Street  
 Vancouver, B.C., V6A 4J1  
 Telephone: (604) 681-8480  
 Website: [www.dewc.ca](http://www.dewc.ca)

**End Legislated Poverty**

#211 – 456 W. Broadway  
 Vancouver, B.C., V5Y 1R3  
 Telephone: (604) 879-1209  
 Toll Free: 1.866.879.1209  
 Website: [www2.povnet.org/elp](http://www2.povnet.org/elp)

**First United Church**

320 East Hastings Street  
 Vancouver, B.C., V6A 1P4  
 Telephone: (604) 681-8365

**MOSAIC**

2nd Floor – 1720 Grant Street  
 Vancouver, B.C., V5L 2Y7  
 Telephone: (604) 254-9626  
 Website: [www.mosaicbc.com](http://www.mosaicbc.com)

**Tenants' Resource & Advisory Centre**

#306 – 535 Thurlow Street  
 Vancouver, B.C., V6E 3L2  
 Telephone: (604) 255-3099  
 Toll Free: 1-800-665-1185  
 Website: [www.tenants.bc.ca](http://www.tenants.bc.ca)

**United Native Nations**

678 East Hastings Street  
 Vancouver, B.C., V6A 1R1  
 Telephone: (604) 688-1821  
 Website: [www.unns.bc.ca](http://www.unns.bc.ca)

**Qmunity**

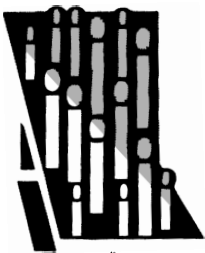
1170 Bute Street  
 Vancouver, B.C., V6E 1Z6  
 Telephone: (604) 684-5307  
 Website: <http://www.qmunity.ca/>

**Positive Living Society of B.C.**

2nd Floor, 1107 Seymour Street  
 Vancouver, B.C., V6B 5S8  
 Telephone: (604) 893-2200  
 Toll Free: 1-800-994-2437  
 Website:  
<http://www.positivelivingbc.org>

**Vancouver Status of Women**

2652 East Hastings Street  
 Vancouver, B.C., V5K 1Z6  
 Telephone: (604) 255-6554  
 Website: [www.vsw.ca](http://www.vsw.ca)



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**Website: <http://www.bchrcoalition.org>**  
**Twitter: <https://twitter.com/bchrc>**