



News from the

B.C. Human Rights Coalition

www.bchrcoalition.org

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Welcome

It's been quite sometime since we've had the opportunity to provide our members and friends with an update on the Coalition's work. 2003 was a hectic yet fulfilling year and we look forward to sharing some of the year's highlights and news with you here. As we enter into 2004, we will strive to keep you better informed through a more regular and frequent use of this new Newsletter format. Please let us know if you have comments or suggestions for future issues, or if you wish to be added to our distribution list.

A Note on our Law Reform Work

As we traveled through the province last year, local workshop participants often commented that the specialized training and coordination efforts provided by the provincial Hate Crimes Team, had not extended into their local policing agencies. This left many communities feeling isolated and vulnerable when it came to addressing hate related crimes in their communities.

In early January, we joined a delegation of community groups, led by the Canadian Jewish Congress Pacific Region, in a meeting with Solicitor General Rich Coleman and Premier Gordon Campbell. All groups expressed concern about the increase of various expressions of racism and homophobia in B.C., which at its extreme, can manifest itself in hate and bias crime. The delegation pushed the government for the full restoration of the Hate Crimes Team which serves as one of the most important provincial tools in combating hate and bias related crime. At capacity the Team provides specialized training, investigative assistance and information on localized hate activities to local policing agencies. It also collects and analyzes all reports of hate crimes across the province.

The Premier and Solicitor General assured the delegation that the provincial Hate Crimes Team would be restored to its full staffing capacity. They

also expressed a willingness to assess other options that would increase the priority given by government in combating hate and bias crimes.

Many constituents of the Coalition have expressed concern and anxiety about the two-year time limit about to be imposed on social assistance recipients in B.C. There is no doubt this policy initiative will have a negative impact on many recipients across the province and there is no doubt that this initiative sets equality rights in Canada backwards. In order to support the initiatives being undertaken to eliminate this eligibility criteria, the Coalition's Law Reform and Community Liaison Committees recently endorsed a campaign coordinated by the Human Rights and Poverty Law Project to halt the time-limit. For more information about the two-year time limit and initiatives being undertaken to eliminate it, visit PovNet's website at www.povnet.org.

On a final note, watch for a submission from our Law Reform Committee in response to the B.C. Human Rights Tribunal's review of their Rules of Practice and Procedure. Submissions regarding the operation or the impact of these Rules are due by March 31, 2004.

Our Human Rights Clinic

Just over 10 months have passed since we gained our Clinic contract with the Ministry of the Attorney General. We've hired new staff, developed protocols with our clinic partner, the Community Legal Assistance Society (CLAS), and we have experienced a steep learning curve as the procedures of the new direct access Tribunal unfold.

Since April, our advocates have tested and become familiar with the new procedures of the Tribunal. In their role today, they help amend complaints, respond to respondent applications, and represent clients in early settlement meetings, negotiations and mediations. They are also responsible for disclosure and for providing a statement of remedy at an early stage of the complaint. Between April 1, 2003 and December 31, 2003 we opened 194 client files, and are proud to say that 35% of files closed in this same period were settled by our advocates. As parties become more familiar with the Tribunal procedures, we find our settlement numbers continue to rise.

The clinic's four lawyers at CLAS are kept busy representing those complaints that have moved closer to hearing. Between April 1, 2003 and December 31, 2003, 93 client files were transferred from us to CLAS. In this same period, CLAS settled approximately 78% of all closed files, while 16% went to full hearing. All decisions arising from these hearings are available on the Tribunal's website.

In addition to this client work, the Tribunal has also agreed that a clinic advocate or lawyer will be on-hand at the Tribunal every Monday between 10 am and 4 pm to help those that have difficulty framing complaints or replying

Our Human Rights Clinic continued from page 1

to applications. A similar consultation service for respondents is conducted by the law firm of Fasken Martineau DuMoulin on a pro bono basis every Friday between 10 am and 2 pm. Both onsite initiatives are offered on a first come first serve basis and will be reviewed by the Tribunal at the end of March 2004.

As a final note, we were delighted when the Ministry of the Attorney General announced that the Human Rights Clinic program now includes a place where respondents can get representation.

The University of Victoria's Law Centre runs a respondent clinic which may be

accessed by phone @ 250.385.1221 or toll free @ 1.866.385.1221. An online description of this service is available at <http://www.thelawcentre.ca/rights.html>.

Some Recent and Significant Equality and Human Rights Decisions

A number of significant equality and human rights decisions have come down in the past months and we provide brief comments on some of those decisions below. Should you wish further information, please feel free to contact us directly.

Pay Equity Case sent back to Tribunal for Reconsideration

Reid et al v. Vancouver (City) et al
2003 BCSC 1348

Reid is a long-standing pay equity complaint. It involves a series of human rights complaints made by female 911 communications operators employed by the Vancouver Police Department alleging that they were paid less than the mostly male 911 communications operators doing the same work at the Vancouver Fire Department. The females argued that the two groups shared the same employer: the City of Vancouver and relied on section 12 of the *B.C. Human Rights Code*, which prohibits an employer from paying employees of one sex a different rate of pay than the other sex when they perform the same, or substantially similar, work.

After a lengthy hearing, the Tribunal did find evidence of differential rates of pay between the female police operators and male fire department operators, but dismissed the complaint on the basis that the two groups had different employers. The Tribunal found that although both groups shared the same funding source - The City of Vancouver - the City was not to be considered a co-employer because the Police Board performed the high level management functions of collective bargaining and job classification. Hence, the Tribunal reasoned it was two independent

employers setting different rates of pay not one, and the complaint was dismissed.

On judicial review, the Court found the Tribunal's reasoning on the employer question too narrow and has sent the issue of wage discrimination back to the Tribunal for reconsideration. The Court applied the reasonableness standard in its review and found the City should be considered a co-employer as it had both the funding capacity and the funding authority to remedy a wage discrimination claim. The Court's decision is in keeping with the broad interpretation of 'employer' typically applied to the *Code*. The decision may have implications on wage rates where one employer has employees working in different departments or under different collective agreements.

A Victory for Same Sex Partners seeking Survivor's Benefits

Hislop v. Canada (Attorney General),
(2003-12-19), ONSC 01-CV-221056-CP

A December 19, 2003 decision issued by the Ontario Superior Court has awarded Canada Pension Plan (CPP) survivor benefits to same sex spouses who lost their partners between April 17, 1985 and January 1, 1998.

This case against the federal government was a merger of two class action suits filed in Ontario and B.C. by lesbian and gay spouses who had been

denied CPP survivor benefits because their spouses were of the same sex and had died before January 1, 1998. Prior to January 1, 1998, CPP survivor benefits were not extended to same sex surviving spouses. Amending legislation removed this exclusion giving equal entitlement and benefit to same-sex partners effective January 1, 1998. For those who lost partners prior to January 1, 1998, this amendment left no entitlement and no benefit.

The central issue in the case was whether the January 1, 1998 entitlement date was arbitrary and constitutionally defensible given that the equality provisions of the *Charter* came into force April 17, 1985. The Court found the January 1, 1998 date to be arbitrary and discriminatory as the date had an adverse affect on homosexual survivors only. As a result, the Court awarded benefits to all those who lost partners effective April 17, 1985.

The Federal Government has since appealed this decision and a group of lawyers representing the complainants are working to get an expedited hearing at the Ontario Court of Appeal before the summer recess.

Recent and Significant Decisions continued from page 2

Tribunal Decision Overturned by the Supreme Court of British Columbia
Vancouver Rape Relief Society v. Nixon et al., 2003 BCSC 1936

A December 19, 2003 decision issued by the British Columbia Supreme Court overturned an earlier decision of the B.C. Human Rights Tribunal. In its original decision, the Tribunal found Vancouver Rape Relief had contravened the *Code* by denying Kimberly Nixon, a male to female post-operative transsexual, a position as a volunteer peer counselor for female victims of male violence on the basis of her sex. Vancouver Rape Relief held that only persons who had been born and socialized as women were suitable for positions as peer counselors for female victims of male sexual violence.

On judicial review, the Court disagreed in part with the Tribunal's determination and found that Vancouver Rape Relief, as a charitable special interest organization, should have access to the group rights exemption clause (section 41) of the *B.C. Code*. As such, Vancouver Rape Relief is able to self

define hiring and other policies which are in keeping with its organizational goals and objectives.

Recent Tribunal Decision Increases the Pain and Suffering Award in B.C.

Gill vs. Grammy's Place Restaurant and Bakery Ltd. [BCHRT 88]

In a recent sexual harassment decision by the B.C. Human Rights Tribunal, the award for Injury to Dignity and Self-Respect was increased to a new high of \$10,000. The *B.C. Code* has no legislative ceiling on the amount of such an award under this category, although to date, the highest award has stood at \$7,500.00.

The Tribunal considered the same factors as are usually considered when contemplating an award under this category and found both the circumstances in this case, and the impact they had on the complainant, warranted a new high.

Supreme Court of Canada Broadens the Scope of Labour Arbitrators

Parry Sound (District) Social Services

Administration Board v. Ontario Public Service Employees Union, Local 324 [2003] SCJ No. 42 (QL), 2003, SCC 42

In a September 2003 decision, the Supreme Court of Canada concluded that labour arbitrators appointed under collective agreements have the authority and the responsibility to apply and enforce the substantive rights and obligations of human rights and other employment-related statutes as if they were part of the collective agreement.

While this decision reinforces the principle that no contract can fall below the standards set out in both human rights and employment standards legislation, it also opens the way for arbitrators and grievors to apply and access the same scope of remedial measures that are available to those that file complaints under the *B.C. Human Rights Code*. This could mean that more systemic measures, such as employment equity or education plans, or pain and suffering awards, could be contemplated and awarded by arbitrators in the future.

An Update on Our Education Work

Like our advocacy department, our education department has been busy this past year. We conducted over 50 educational sessions in 2003, and reached more regions of the province than ever before. An important aspect of our work last year focused on conducting a provincial tour on *Responding to Incidents of Racism and Hate* and providing information on the recent changes to the human rights system. Sessions were targeted to professional service providers and were attended by representatives from community groups, provincial and municipal governments, school district personnel, regional health authorities, local policing agencies, community advocates, and a variety of other stakeholders.

All sessions were sponsored or hosted by local community and labour related groups. Thank you all for your help and assistance!

We've also focused on building a strategy to conduct more employer focused education and training this past year. 80% of all human rights complaints originate in the area of employment and education and training are the first steps in an effective preventative strategy. Six workshop modules have been developed under a program heading of "Human Rights in the Workplace Series" and we have experienced an increase in both public and private sessions sponsored by organizations such as local Chambers of Commerce, professional employee associations, labour groups, and

private employers.

We also partnered with the Legal Services Society (LSS) in conducting regional advocate training on human rights law and procedures this past year. We were able to reach advocates in both the Northern, and the Sunshine Coast regions of the province.

In the coming months, we have a number of sessions scheduled and continue to look into further training opportunities. Please call us should you wish to discuss an educational request and check our website regularly, as information on upcoming sessions are often posted under our "What's New" section.

Renate Shearer Award 2003

Each year our Coalition, in partnership with the local chapter of the United Nations Association, hosts an event in celebration of the Universal Declaration of Human Rights. Our organizations alternate presenting the Renate Shearer Memorial Award to someone who has made an outstanding contribution in advancing equality issues at either the international or the domestic level. This award is a memorial to the life and work of Renate Shearer who was a champion of equality and dignity for all.

This year, the Coalition presented the award to *LEGIT – The Lesbian and Gay Immigration Task Force* and *The Rainbow Refugee Committee* for their long-term contribution in advancing equality rights for lesbians, gays, bisexual and trans-gendered (LGBT) persons. *LEGIT* was originally formed in Vancouver in the early 90's and has since grown to include chapters across Canada, helping thousands of same sex couples in cross-border relationships gain permanent residence in Canada. *LEGIT* also played a significant role in successfully lobbying government for positive change to the benefit of same sex couples in the *Immigration and Refugee Protection Act*. *The Rainbow Refugee Committee* was founded in 2000 and works to assist refugees and refugee claimants who have experienced persecution in their home countries due to their sexual orientation, HIV status, or gender identity.

Membership

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

Annual membership fees are \$20.00 for both organizations and individuals. In the case of need, we will consider waiving this fee. Tax receipts are available for all donations. If you wish to join, complete the application below and return it, with a cheque to the Coalition. If you would like further information on becoming a member, or to check the status of your membership, please call or email Valentina @ valentina@bchrcoalition.org.

Membership Information (please fill out and remit, with cheque, to the BC Human Rights Coalition)

Individual or Contact Name _____

Company/Business _____

Address _____

City _____ Postal _____

Phone (____) _____ Fax (____) _____

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Membership: _____

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