

LEGEND — NA = Not applicable L = Lawyer LA = Legal assistant ACTION TO BE CONSIDERED	NA	L	LA	DATE DUE	DATE DONE
<p style="text-align: center;"><b>INTRODUCTION</b></p> <p><b>Purpose and currency of checklist.</b> This checklist is designed to be used with the CLIENT IDENTIFICATION, VERIFICATION, AND SOURCE OF MONEY (A-1) and CLIENT FILE OPENING AND CLOSING (A-2) checklists. It is intended for use by counsel representing the complainant or the respondent in proceedings before the British Columbia Human Rights Tribunal (the “BCHRT” or “Tribunal”). Most procedures are the same for both the complainant and the respondent, but where procedures differ, the checklist refers specifically to one or the other. This checklist is current to September 1, 2023.</p> <p><b>New developments:</b></p> <ul style="list-style-type: none"> <li>• <b>Backlog strategy.</b> In order to address the Tribunal’s current backlog, it has implemented three plans:               <ol style="list-style-type: none"> <li>(1) COVID Case Project;</li> <li>(2) Outstanding Dismissal Applications Project; and</li> <li>(3) Screening Inventory Project.</li> </ol> <p>The COVID Case Project establishes a group dedicated to processing COVID-related cases that are in the initial stages of the Tribunal’s process, with those cases at the later stages continuing as normal. The Outstanding Dismissal Applications Project focusses resources on clearing the backlog of applications to dismiss. The Tribunal has adjourned the majority of 2023 hearings filed in 2020 or later, such that hearings will be scheduled based on the date the complaint was filed (from oldest to newest). The Screening Inventory Project will address any cases that do not fall under the COVID Case Project and are awaiting a decision as to whether the Tribunal will proceed with the complaint.</p> </li> <li>• <b>Case path pilot.</b> Effective May 6, 2022, the Tribunal launched a one-year pilot project with respect to applications to dismiss under s. 27 of the <i>Human Rights Code</i>, R.S.B.C. 1996, c. 210. Instead of allowing respondents to make an application to dismiss as of right, the Tribunal will now sort cases into two paths: the Hearing Path and the Submissions Path. Only cases under the Submissions Path will have the option to make an application to dismiss. If respondents are placed on the Hearing Path, they can submit a request to file an application to dismiss based on new information or circumstances that the Tribunal had not previously considered. This project was extended until November 2023, but as of July 2023, the Tribunal paused its review of complaints to address the Tribunal’s backlog. The Tribunal is reviewing this pause in November 2023.</li> <li>• <b>New legal test for family status.</b> In <i>British Columbia (Human Rights Tribunal) v. Gibraltar Mines Ltd</i>, 2023 BCCA 168, the court revised the test for family status discrimination under s. 13 of the <i>Code</i>. The revised test broadens the scope by requiring a complainant prove they suffered an adverse impact arising from a term or condition of employment, and the term or condition of employment amounted to a serious interference with a substantial parental or family obligation. This revision means the test no longer requires “a change” in a term or condition of employment. The court asserted that it was not overturning <i>Health Sciences Assn. of B.C. v. Campbell River and North Island Transition Society</i>, 2004 BCCA 260 (“<i>Campbell River</i>”), as the facts in that case dealt with a change to the complainant’s work schedule. As a result, the court found that <i>Campbell River</i> did not preclude a finding that family status discrimination could arise in other circumstances, including from a change in an employee’s circumstances or family status.</li> </ul>					

LEGEND — NA = Not applicable L = Lawyer LA = Legal assistant ACTION TO BE CONSIDERED	NA	L	LA	DATE DUE	DATE DONE
<ul style="list-style-type: none"> <li>• <b>Amendments to the <i>Human Rights Code</i>.</b> Amendments to the <i>Human Rights Code</i> were made effective in April and September 2020. Counsel should review these changes. Effective March 30, 2023, two provisions of the <i>Code</i> were amended to make them more gender inclusive. Section 12 (Discrimination in wages) was amended to “an employee of another sex”, from “an employee of the other sex” Section 44(2) (Style of cause for proceedings) replaced “his or her authority” with “the person’s authority.”</li> <li>• <b>Expectations of counsel regarding historical trauma and discrimination.</b> On April 28, 2021, the Tribunal issued a notice to counsel encouraging all lawyers with cases involving Indigenous Peoples and those who have experienced historical trauma and discrimination to develop their competencies in those areas. Counsel are reminded of their obligation to conduct themselves in a respectful, trauma-informed manner when appearing before the Tribunal, as set out in the Tribunal’s Rules of Practice and Procedure, ss. 4 and 5 of the Mediation Policy respecting trauma-informed processes and Indigenous justice, truth, and reconciliation, and the <i>Code of Professional Conduct for British Columbia</i>. For more information, see <a href="http://www.bchrt.bc.ca/tribunal/news/notice-to-counsel.htm">www.bchrt.bc.ca/tribunal/news/notice-to-counsel.htm</a>.</li> </ul> <p><b>Of note:</b></p> <ul style="list-style-type: none"> <li>• <b>Additional resources.</b> The BCHRT Rules, as well as practice directions, forms, guides and information sheets, are published on the Tribunal’s website at <a href="http://www.bchrt.bc.ca">www.bchrt.bc.ca</a>. See also Continuing Legal Education Society of British Columbia resources: the course presentations and materials from <i>Human Rights Law Conference 2022</i> (CLEBC, 2022); <i>British Columbia Administrative Law Practice Manual</i> (CLEBC, 2012–); <i>Administrative Law Conference 2022</i> (CLEBC, 2022), available through CLEBC Courses on Demand; and annual editions of the <i>Annual Review of Law and Practice</i> (CLEBC).</li> <li>• <b>Law Society of British Columbia.</b> For changes to the Law Society Rules and other Law Society updates and issues “Of note”, see LAW SOCIETY NOTABLE UPDATES LIST (A-3).</li> </ul> <p style="text-align: center;"><b>CONTENTS</b></p> <ol style="list-style-type: none"> <li>1. Initial Contact</li> <li>2. Initial Interview</li> <li>3. After the Initial Interview</li> <li>4. Before Commencing Proceedings</li> <li>5. Filing the Complaint</li> <li>6. Complaint Filed Out of Time/Tribunal Lacks Jurisdiction</li> <li>7. Responding to the Complaint</li> <li>8. Pre-hearing Matters</li> <li>9. Complaint Process</li> <li>10. Mediation</li> <li>11. Applications</li> <li>12. Hearing</li> <li>13. Post-hearing</li> <li>14. Closing the File</li> </ol>					

LEGEND — NA = Not applicable L = Lawyer LA = Legal assistant ACTION TO BE CONSIDERED	NA	L	LA	DATE DUE	DATE DONE
<p><b>CHECKLIST</b></p> <p><b>1. INITIAL CONTACT</b></p> <p>1.1 Arrange the initial interview.</p> <p>1.2 Conduct a conflicts of interest check and complete the CLIENT FILE OPENING AND CLOSING (A-2) checklist. Ensure that the client has not retained another lawyer or commenced another proceeding relating to the complaint (see also items 1.7.1 and 1.7.2 in this checklist).</p> <p>1.3 Confirm compliance with Law Society Rules 3-98 to 3-110 for client identification and verification and the source of money for financial transactions, and complete the CLIENT IDENTIFICATION, VERIFICATION, AND SOURCE OF MONEY (A-1) checklist. Consider periodic monitoring requirements (Law Society Rule 3-110).</p> <p>1.4 Discuss and confirm the terms of your retainer and the calculation of your fee. Refer to the CLIENT FILE OPENING AND CLOSING (A-2) checklist.</p> <p>1.5 Advise the client to list all potential witnesses and, if possible, to obtain their full names, addresses, and telephone numbers.</p> <p>1.6 Ask the client to collect all relevant records and notes and to prepare a memorandum of the facts (including sketches or photographs, where appropriate), and bring this material to your meeting.</p> <p>1.7 During initial contact or initial interview:</p> <p>.1 Determine whether the client is a union member. If so:</p> <p>(a) Is the union aware of the human rights issue, and has a grievance been filed?</p> <p>(b) If a grievance has been filed, at what stage is the proceeding?</p> <p>.2 Determine whether the client is unable to work because of the discriminatory issues. If so, is the employee entitled to claim for disability or workers' compensation benefits?</p> <p>(a) If so, have those claims been initiated in a timely fashion?</p> <p>(b) If not, should claims be initiated?</p> <p>1.8 Advise the client regarding the relevant general legal principles.</p> <p>1.9 During initial contact or the initial interview, decide whether to accept the case, considering:</p> <p>.1 Identify any imminent deadlines and the steps required to meet them.</p> <p>.2 Assess whether existing practice obligations permit you to take the case.</p> <p>1.10 If you are not in a position to act, advise the client. Make a record of the advice given, and file your notes. Send a non-engagement letter (for samples, see the Law Society website at <a href="https://www.lawsociety.bc.ca/support-and-resources-for-lawyers/practice-resources/">https://www.lawsociety.bc.ca/support-and-resources-for-lawyers/practice-resources/</a>).</p> <p><b>2. INITIAL INTERVIEW</b></p> <p>2.1 Discuss the terms of your retainer and the calculation of your fee. Refer to the CLIENT FILE OPENING AND CLOSING (A-2) checklist. Also advise that if the transaction becomes more complicated, the fees and disbursements might have to be increased.</p>					

LEGEND — NA = Not applicable L = Lawyer LA = Legal assistant ACTION TO BE CONSIDERED	NA	L	LA	DATE DUE	DATE DONE
<p>2.2 Keep a record of the interview, either by taking notes or by taping (with the client’s consent; see <i>BC Code</i> rule 7.2-3).</p> <p>2.3 Determine the client’s objectives and expectations. See also item 1.9 in this checklist.</p> <p>2.4 Discuss the Tribunal process, including the various stages, the overall length, and the estimated cost. Advise that you do not guarantee success.</p> <p>Note that there is no system of awarding costs against unsuccessful parties; costs may be ordered only if one of the parties engages in improper conduct during the course of the complaint, or contravenes a rule, decision, order, or direction of the Tribunal, or both (BCHRT Rule 4(2) and (3) and <i>Human Rights Code</i>, R.S.B.C. 1996, c. 210, s. 37(4)).</p> <p>2.5 Get particulars of any settlement proposals made by the potential opposing participant’s counsel.</p> <p>2.6 Complete an initial interview checklist (see the GENERAL LITIGATION PROCEDURE (E-2) checklist or the PERSONAL INJURY PLAINTIFF’S INTERVIEW OR EXAMINATION FOR DISCOVERY (E-3) checklist for an example). Obtain information on matters such as:</p> <ul style="list-style-type: none"> <li>.1 Client. <ul style="list-style-type: none"> <li>(a) Full name, address, telephone numbers, email address, occupation, age.</li> <li>(b) Any other details relevant to the type of complaint.</li> </ul> </li> <li>.2 Fact pattern that gave rise to the complaint. <ul style="list-style-type: none"> <li>(a) Full particulars of what happened, as well as when and where it happened.</li> <li>(b) Parties to the complaint. If representing the complainant, identify all potential respondents and intervenors. If representing the respondent, determine whether others should be added to the proceeding (BCHRT Rule 25).</li> <li>(c) Witnesses.</li> <li>(d) Evidence, such as statements and photographs.</li> </ul> </li> <li>.3 Damages sustained by the client.</li> <li>.4 Damages sustained by other potential participants, and any right of set-off.</li> <li>.5 Whether any other complaints, charges, or proceedings related to the complaint have been commenced against any of the participants.</li> </ul> <p>2.7 Consider the relevant facts and law, and give the client a preliminary opinion as to the advisability of proceeding with the complaint. If you advise proceeding, assess the potential awards or remedies.</p> <p>2.8 Discuss settlement, strategy, and the risks of proceedings. Encourage compromise or settlement if it is possible to do so on a reasonable basis. Discourage the client from commencing or continuing useless legal proceedings. See <i>BC Code</i> rule 3.2-4.</p> <p>2.9 Obtain a retainer, if appropriate, and instructions defining the extent of your authority. Also consider the form of retainer, who will give instructions, and to whom you will report.</p>					

LEGEND — NA = Not applicable L = Lawyer LA = Legal assistant ACTION TO BE CONSIDERED	NA	L	LA	DATE DUE	DATE DONE
<p>2.10 Consider the possibility of retaining experts; discuss the expense with the client and emphasize the necessity of expert support in appropriate cases. Obtain instructions.</p> <p>2.11 Obtain executed authorization forms for release of information, such as medical information, employment information, and any other information required to be released.</p> <p>2.12 Ask the client to provide you with any other documentary evidence that is, or may be, relevant. Explain the client’s duty to disclose all relevant, or possibly relevant, documents.</p> <p>2.13 Discuss employing an investigator.</p> <p>2.14 Give any other instructions or advice relevant to the type of complaint.</p>					
<p><b>3. AFTER THE INITIAL INTERVIEW</b></p>					
<p>3.1 Confirm your retainer. Refer to the CLIENT FILE OPENING AND CLOSING (A-2) checklist.</p> <p>3.2 Determine limitation periods and diarize notable dates.</p> <p>3.3 Find out if the opposing party is represented by counsel. See <i>BC Code</i>, rules 7.2-4 to 7.2-9 with respect to communications. If a person is represented by a lawyer in respect of a matter, another lawyer must not, except through or with the consent of the person’s lawyer, approach, communicate, or deal with the person on the matter or attempt to negotiate or compromise the matter directly with the person. Send a letter to the opposing participant (or, if they are represented, to their counsel):</p> <p>.1 Advising of your involvement.</p> <p>.2 Requesting copies of any statements or other documents signed by the complainant.</p> <p>.3 Revoking previously signed authorizations, if required.</p> <p>3.4 Conduct searches and obtain certified copies of documents, as required.</p>					
<p><b>4. BEFORE COMMENCING PROCEEDINGS</b></p>					
<p>4.1 Send demand letters to potential respondents, if appropriate.</p> <p>4.2 Send letters to other involved participants, if appropriate.</p> <p>4.3 Start collecting and verifying all the facts. Consult every source, including every document that may be relevant and any person who may have information.</p> <p>4.4 Study the relevant law in sufficient detail to enable you to identify all potential strategies and remedies.</p>					
<p><b>5. FILING THE COMPLAINT</b></p>					
<p>5.1 File the complaint within the one-year time limit (BCHRT Rule 12(3); <i>Human Rights Code</i>, s. 22(1) and (2)).</p> <p>5.2 Provide addresses for delivery to all participants and to the Tribunal (BCHRT Rule 8(2)).</p> <p>5.3 Unless the Tribunal directs otherwise, according to BCHRT Rule 10(3) and (4), all communications with the Tribunal must:</p> <p>.1 Be addressed to the registrar or case manager.</p>					

LEGEND — NA = Not applicable L = Lawyer LA = Legal assistant ACTION TO BE CONSIDERED	NA	L	LA	DATE DUE	DATE DONE
<p>.2 Include the complainant’s name and case number.</p> <p>.3 Include the names of the participants to whom a copy of the communication will be delivered.</p> <p>5.4 The Tribunal or a participant may deliver a communication to a participant by regular mail (which is deemed to be delivered seven days after it was mailed, unless there is evidence to the contrary), or by registered mail, or by hand, courier, process server, fax, email, notifying a participant by email that the communication was submitted online, where the Tribunal permits, or alternative methods by order of the Tribunal (BCHRT Rule 11(1), (2), and (3)). If the Tribunal requires proof of delivery, an affidavit or testimony from the deliverer, a copy of Canada Post’s registered mail confirmation, a fax transmittal record, email confirmation, or a copy of the sent email may be provided (BCHRT Rule 11(4)).</p> <p>5.5 Complete the complaint form (Form 1.1—Individual Complaint Form; BCHRT Rule 12(1)), and have the complainant sign and confirm the information is true and accurate (see Step 10 of the complaint form).</p> <p>5.6 Determine who the respondents will be, and identify them clearly.</p> <p>5.7 Provide details of the alleged discrimination in the complaint form, considering whether evidence will be available to support the allegations. Ensure the details reflect the actual fact pattern, and ensure there are sufficient facts to establish the relief sought. If a complaint is grounded in an allegation of discrimination regarding a requirement to wear a mask to access a service, consider the March 24, 2022 Practice Direction (Mask Wearing Complaints) from the Tribunal. This Practice Direction imposes additional information requirements on complainants in order for their complaint to be accepted. If this information is not included in an initial complaint, the Tribunal will not proceed with the complaint nor give a complainant a further opportunity to provide additional information.</p> <p>5.8 If the complainant is making the complaint on behalf of another person, the complainant must complete and file Form 1.2—Representative Authorization (see also the January 31, 2020 Practice Direction). If the complainant is making the complaint on behalf of a group or class of persons, the complainant must complete and file Form 1.3—Group or Class Complaint. If the complainant is making a complaint of retaliation, the complainant must complete and file Form 1.4—Retaliation Complaint (BCHRT Rule 12(1)).</p> <p>5.9 File the complaint by mail, fax, email, hand, courier, process server or submitting a form online, where the Tribunal permits, unless the Tribunal directs otherwise (BCHRT Rule 10(2)).</p> <p>5.10 If another proceeding may resolve the complaint, the Tribunal may defer the complaint pending the outcome of that proceeding (<i>Human Rights Code</i>, s. 25(2); and see Step 5 of the complaint form and BCHRT Rule 16).</p> <p>5.11 Consider an early settlement meeting (see Step 7 of the complaint form).</p> <p>5.12 If the complainant is Indigenous, consider if the Tribunal should incorporate Indigenous protocols or ways or resolving disputes (see Step 8 of the complaint form).</p> <p>5.13 Determine if the complainant wishes to fill out their demographic information (see Step 11 of the complaint form).</p>					

LEGEND — NA = Not applicable L = Lawyer LA = Legal assistant ACTION TO BE CONSIDERED	NA	L	LA	DATE DUE	DATE DONE
<p><b>6. COMPLAINT FILED OUT OF TIME/TRIBUNAL LACKS JURISDICTION</b></p> <p>6.1 If the complaint will be filed after the time limit, the complainant must complete Step 4 of the complaint form to request that the Tribunal accept it after the time limit.</p> <p>.1 The Tribunal may accept a late complaint if:</p> <p>(a) It is in public interest to accept the complaint.</p> <p>(b) No substantial prejudice will result to anyone because of the delay (<i>Human Rights Code</i>, s. 22(3); BCHRT Rule 12(3)).</p> <p>.2 If the Tribunal provides an opportunity to file submissions regarding the time limit for filing the complaint, the respondent, upon receiving the Tribunal’s letter advising of complainant’s request, must complete Form 4—Time Limit Response, deliver a copy to the other participants, and file the original with the Tribunal within the time allowed (BCHRT Rules 12(6) and 28(3) to (6)).</p> <p>.3 If the complainant wishes to reply, the complainant must complete Form 5—Time Limit Reply, deliver a copy to the other participants, and then file the original with the Tribunal within the time allowed (BCHRT Rule 12(6) and 28(3) to (6)).</p> <p>.4 Participants receive the Tribunal’s decision.</p> <p>6.2 The Tribunal has jurisdiction only over complaints that allege facts that, if proven, could be a contravention of the <i>Human Rights Code</i> against each person named as a respondent (BCHRT Rule 12(2)).</p> <p>Before deciding whether to accept a complaint for filing, the Tribunal may provide the complainant with an opportunity to file further or clarifying information. If it does so and the complainant files an amendment within the time allowed by the Tribunal, the amended complaint will be treated as if filed on the day the complaint was first filed (BCHRT Rule 12(4) and (5)).</p> <p>If the complaint cannot be accepted for filing, the Tribunal will advise the complainant of the reasons.</p> <p><b>7. RESPONDING TO THE COMPLAINT</b></p> <p>7.1 The respondent receives a copy of the complaint with the Tribunal’s notice advising that it has accepted the complaint for filing (BCHRT Rule 13(1)).</p> <p>7.2 The respondent must complete a Form 2—Complaint Response, deliver a copy to the other participants, and file the original with the Tribunal within the time allowed (BCHRT Rule 18).</p> <p>.1 To request an extension of time to respond to a complaint, a respondent must notify the Tribunal of the length of the extension requested and of either the other party’s consent or the reasons for the request (BCHRT Rule 18(7)). See also BCHRT Rule 18(8) and (9). Pursuant to BCHRT Rule 18(4), the Tribunal may also extend the time for responding to a complaint if the parties agree to a settlement meeting and a date has been set.</p> <p>7.3 If a respondent does not respond to a complaint within the time allowed, the address at which the Tribunal notified the respondent of the complaint will be deemed to be the respondent’s address for delivery (BCHRT</p>					

LEGEND — NA = Not applicable L = Lawyer LA = Legal assistant ACTION TO BE CONSIDERED	NA	L	LA	DATE DUE	DATE DONE
<p>Rule 18(10)(a)). Without consulting the respondent, the Tribunal will determine whether the hearing will be by affidavit, in person, or in any other format, and any dates in relation to the hearing (BCHRT Rule 18(10)(b)). The Tribunal may order the respondent to pay the costs incurred by any other participant as a result of the failure to respond within the time allowed; and make any other decision or order the Tribunal considers appropriate in the circumstances (BCHRT Rule 18(10)(c)).</p> <p>7.4 Advise the client and obtain instructions to defend the complaint. Also determine whether facts or any liability will be admitted.</p> <p>7.5 Examine the complaint form and consider:</p> <ul style="list-style-type: none"> <li>.1 Whether the respondent is correctly named in the complaint form (although note BCHRT Rule 4(6) regarding technical defects).</li> <li>.2 Whether the complaint discloses (alleges) discrimination contrary to the <i>Human Rights Code</i>.</li> <li>.3 Consequences of not defending the complaint.</li> <li>.4 Whether the Tribunal has jurisdiction over the complaint.</li> <li>.5 Whether there is sufficient information to enable the respondent to respond properly.</li> <li>.6 Any admission made by the complainant.</li> <li>.7 What evidence will be required to support and counter the complainant’s allegations, and whether it is available.</li> <li>.8 Any presumptions of law that may work for or against the respondent.</li> </ul> <p>7.6 Consider an early settlement meeting or mediation if the Tribunal’s letter advises that the complainant is interested in exploring settlement. Note the date for responding.</p> <ul style="list-style-type: none"> <li>.1 BCHRT Rules 18(4) and (5), which extend time limits for responding to a complaint if the parties agree to mediation, no longer apply. Under the March 24, 2022 Practice Direction (Complaint Response), the Tribunal will set a deadline of eight weeks from the date the Tribunal sends the letter notifying the parties that the complaint is proceeding for the respondent to respond to the complaint. This deadline applies whether or not the parties agree to attend mediation.</li> </ul> <p>7.7 Consider applying to defer the complaint pending the outcome of another proceeding, under <i>Human Rights Code</i>, s. 25. The application may be made by completing Step 5 of the Form 2—Complaint Response or at any time under BCHRT Rule 16(3) by application to the Tribunal using Form 7.1—General Application (BCHRT Rule 28(1)).</p> <p>If a respondent applies under BCHRT Rule 16(3) to defer a complaint at least 14 days prior to the date the response is due, the time for responding to the complaint is extended to 21 days from the date of the Tribunal’s decision denying the application or, if deferral is granted, 21 days from the date the deferral ends (BCHRT Rule 18(6)).</p> <p>7.8 Consider applying to dismiss the complaint under <i>Human Rights Code</i>, s. 27 or 27.5, or on the basis of the complainant’s refusal to accept a reasonable with prejudice offer to settle the complaint (BCHRT Rule 19(3)). However, note that the Case Path Pilot Practice Direction limits a respondent’s ability to file an application to dismiss.</p>					



LEGEND — NA = Not applicable L = Lawyer LA = Legal assistant ACTION TO BE CONSIDERED	NA	L	LA	DATE DUE	DATE DONE
<p>Only those whose matters are placed on the Submissions Path by the Tribunal will be allowed to submit applications to dismiss. Those on the Hearing Path are not able to submit applications to dismiss unless they first file a request to file a dismissal application, which considers only new information not previously considered by the Tribunal in assigning the matter to the Hearing Path.</p> <p>.1 The application (Form 7.2—Dismissal Application) must be delivered and filed within the time limit (BCHRT Rule 19(2), (3), and (4)).</p> <p>Note: there is a 15 page limit on the written argument portion of an application to dismiss (November 1, 2019 Practice Direction, Page Restrictions on Applications to Dismiss a Complaint). Should you require more space, you will need to contact your case manager and request additional pages at least one week before the written argument is due.</p> <p>.2 Consider whether sworn testimony in the form of an affidavit is required to support the application to dismiss. The 15 page limit on applications to dismiss does not apply to evidence, such as affidavits and supporting documentation. Consider your duty as an officer of the court and the professional conduct expected of an advocate in <i>BC Code</i> rules 5.1-1, 5.1-2, and 5.1-4 to 5.1-6.</p> <p>.3 An extension of time may be available by consent or upon application using Step 3 of Form 7.2—Dismissal Application (BCHRT Rule 19(4)(b)).</p> <p>NOTE: A respondent must comply with BCHRT Rule 20 (Document Disclosure Requirements) upon filing an application to dismiss the complaint without a hearing (BCHRT Rule 20(3)).</p> <p><b>8. PRE-HEARING MATTERS</b></p> <p>8.1 Consider the following pre-hearing steps:</p> <p>.1 Request for an expedited hearing or alternate process under BCHRT Rule 17. An application (using Form 7.1—General Application; BCHRT Rule 28(1)) must state the reason for the request, a description of the requested changes to the Tribunal’s process and timelines, and how granting the request will further the just and timely resolution of the complaint (BCHRT Rule 17(2)).</p> <p>.2 Whether any pre-hearing applications should be made (see item 11).</p> <p>8.2 Begin to prepare the case, ensuring continuing preparation, review, and reporting (see item 6 of the GENERAL LITIGATION PROCEDURE (E-2) checklist). For example:</p> <p>.1 Research the law. Prepare a memorandum of law, including the basis of complaint, defences, possible arguments, remedies, etc.</p> <p>.2 Organize and review documents. Collect all documents from the client and other participants. Ensure that the client understands the scope of disclosure required. Review documents and determine relevance.</p> <p>.3 While conducting the case, periodically assess the adequacy of the research and evidence, and update or modify when required. Consider any possible change in the position of the participants.</p> <p>.4 Report to the client on a regular basis.</p> <p>8.3 Witnesses and expert evidence (see also item 12 in this checklist).</p>					

LEGEND — NA = Not applicable L = Lawyer LA = Legal assistant ACTION TO BE CONSIDERED	NA	L	LA	DATE DUE	DATE DONE
<p>.1 List all prospective witnesses and find out whether they are represented by counsel. See <i>BC Code</i> rules 5.3 and 7.2-4 to 7.2-9 with respect to communicating with witnesses who may be represented by counsel or those who are unrepresented. No contact may be made with a witness who is represented by counsel, except through or with the consent of that person’s lawyer. In the opinion of the Ethics Committee, a lawyer must notify an opposing party’s counsel when the lawyer is proposing to contact an opposing party’s expert (full opinion available at <a href="http://www.law-society.bc.ca/Website/media/Shared/docs/publications/code/bb/2014-02.pdf">www.law-society.bc.ca/Website/media/Shared/docs/publications/code/bb/2014-02.pdf</a>).</p> <p>.2 Confirm availability of witnesses. Consider who will interview, or attend the interview of, prospective witnesses.</p> <p>.3 Contact each person and attempt to arrange an interview. Prepare for interview, with reference to item 6.9 of the GENERAL LITIGATION PROCEDURE (E-2) checklist.</p> <p>.4 Determine who will appear to give evidence, and prepare witnesses. See item 6.9 of the GENERAL LITIGATION PROCEDURE (E-2) checklist.</p> <p>.5 Determine the need for expert evidence on any issue. Confirm that the expert does not have a conflict. Select and prepare experts, with reference to item 6.10 of the GENERAL LITIGATION PROCEDURE (E-2) checklist, and BCHRT Rule 21.</p> <p>8.4 Negotiation and settlement.</p> <p>.1 If acting for the complainant, consider whether it is appropriate to settle. Consider all relevant factors relating to liability and remedies.</p> <p>.2 Evaluate the case and determine the minimum settlement you consider acceptable.</p> <p>.3 Interview the client and explain the case in detail, discussing the advantages and disadvantages of settlement. (Encourage compromise or settlement if it is possible to do so on a reasonable basis. Discourage the client from commencing or continuing useless legal proceedings. See <i>BC Code</i> rule 3.2-4.) When you reach agreement, get written instructions.</p> <p>.4 Decide on negotiation strategy. Pursue negotiations, with reference to item 8 of the GENERAL LITIGATION PROCEDURE (E-2) checklist, and BCHRT Rules 14 (Mediation) and 15 (Settlement and Withdrawal of a Complaint). See also item 10 in this checklist.</p>					
<p><b>9. COMPLAINT PROCESS</b></p>					
<p>9.1 Disclosure of documents, remedy sought, and witness lists.</p> <p>Note: the March 24, 2022 Practice Direction (Complaint Response) pauses the disclosure requirement if the parties agree to a mediation. In such cases, disclosure will occur if the mediation is cancelled or does not resolve the complaint.</p> <p>.1 Complainant’s document disclosure (BCHRT Rule 20(2) and (4)). Note the confidentiality requirements in Rule 23.1 and <i>Human Rights Code</i>, s. 40.</p> <p>(a) Within 35 days (BCHRT Rule 20(2)) from the date on which the response is filed, the complainant must:</p>					

LEGEND — NA = Not applicable L = Lawyer LA = Legal assistant ACTION TO BE CONSIDERED	NA	L	LA	DATE DUE	DATE DONE
<p>(i) Complete and file Form 9.1—Complainant Document Disclosure, listing all documents in the complainant’s possession or control that may be relevant to the complaint or response to the complaint.</p> <p>(ii) Deliver to any other party a copy of the completed Form 9.1 and each document listed, excluding documents over which privilege is claimed.</p> <p>.2 Respondent’s document disclosure (BCHRT Rule 20(3)) (note the confidentiality requirements in Rule 23.1).</p> <p>(a) Within 70 days (BCHRT Rule 20(3)) from the date on which the response is filed, or upon filing an application to dismiss the complaint, the respondent must:</p> <p>(i) Complete and file Form 9.2—Respondent Document Disclosure, listing all documents in the respondent’s possession or control that may be relevant to the complaint or response to the complaint.</p> <p>(ii) Deliver to any other party a copy of the completed Form 9.2 and each document listed, excluding documents over which privilege is claimed.</p> <p>.3 Witness and remedy disclosure (BCHRT Rule 20.1).</p> <p>(a) Within 21 days after the Tribunal issues a notice of hearing, a complainant must complete and file Form 9.3—Witness List, Form 9.4—Remedy Sought, and Form 9.5—Complainant Document Disclosure Regarding Remedy and deliver to any other party a copy of the completed forms and each document listed on Form 9.5, excluding documents over which privilege is claimed (BCHRT Rule 20.1(1)).</p> <p>(b) Within 14 days of receiving each of Forms 9.3, 9.4, and 9.5, the respondent must complete, file with the Tribunal, and deliver to any other party Form 9.3—Witness List, 9.6—Response to Remedy Sought, and Form 9.7—Respondent Document Disclosure Regarding Remedy and provide to any other party copies of the documents listed on Form 9.7, excluding documents over which privilege is claimed (BCHRT Rule 20.1(2), (3), and (4)).</p> <p>.4 Both parties.</p> <p>(a) Disclosure is an ongoing obligation (BCHRT Rule 20.2).</p> <p>(b) Consider agreeing to other dates for disclosure (BCHRT Rule 20.2(2)) and notify the Tribunal of the dates agreed upon (BCHRT Rule 20.2(3)).</p> <p>(c) Consider whether an application to limit or delay disclosure is required which must state why the request is reasonable and fair in the circumstances (BCHRT Rule 20.2(4)).</p> <p>9.2 If a case conference is scheduled (BCHRT Rule 27).</p> <p>.1 Confirm date and time.</p> <p>.2 Prepare for the case conference.</p> <p>.3 Attend the case conference.</p> <p>.4 Note any agreements or directions made at the case conference.</p>					

LEGEND — NA = Not applicable L = Lawyer LA = Legal assistant ACTION TO BE CONSIDERED	NA	L	LA	DATE DUE	DATE DONE
<p><b>10. MEDIATION</b></p> <p>10.1 Consider whether mediation may be of assistance to achieve resolution of all or part of the complaint (BCHRT Rule 14(1)). If so, notify the Tribunal of your request (BCHRT Rule 14(2)).</p> <p>10.2 Seek agreement from the opposing party to engage in mediation (BCHRT Rule 14(6)).</p> <p>10.3 If both parties have legal representation, the parties must do the following prior to attending the mediation:</p> <ul style="list-style-type: none"> <li>.1 Make reasonable efforts to resolve the complaint on their own.</li> <li>.2 At least four weeks before the scheduled mediation, or as soon as practicable if the legal representative is retained within four weeks of the mediation, advise the Tribunal: <ul style="list-style-type: none"> <li>(a) to cancel the scheduled mediation date; or</li> <li>(b) that the legal representatives have made reasonable efforts to resolve the complaint.</li> </ul> </li> </ul> <p>Failure to comply with these time limits will result in the Tribunal facilitated mediation being cancelled (March 24, 2022 Practice Direction, Mediation Services Where all Parties Have Legal Representation).</p> <p>10.4 Attend the mediation and evaluate outcome. All parties in a mediation must comply with the Tribunal’s Mediation Policy. Rule 14(6), which previously required parties to sign an Agreement to Participate in Mediation, is suspended (March 24, 2022 Practice Direction-Terms of Participation in Mediation).</p> <p>10.5 Consider requesting further mediation (BCHRT Rule 14(2)):</p> <ul style="list-style-type: none"> <li>.1 If the complaint settles, the complainant completes and files a complaint withdrawal form (Form 6; BCHRT Rule 15(1)).</li> <li>.2 Receive order of dismissal from the Tribunal (BCHRT Rule 15(2)).</li> </ul> <p><b>11. APPLICATIONS</b></p> <p>11.1 BCHRT Rule 28 governs the making of any pre-hearing applications, including to add a respondent (BCHRT Rule 25(2)), to be added as a complainant (BCHRT Rule 25(1)), or to apply to be an intervenor (BCHRT Rule 13(3) and (4)).</p> <ul style="list-style-type: none"> <li>.1 Except in the case of an application to dismiss all or part of a complaint under <i>Human Rights Code</i>, s. 27 or s. 27.5, the applicant should first determine whether the other participants consent, oppose, or take no position regarding the application.</li> <li>.2 The applicant must complete, deliver, and file the application form (Form 7.1—General Application; BCHRT Rule 28(1)).</li> <li>.3 The Tribunal may set a schedule for submissions, if required, or schedule a case conference to hear oral submissions (BCHRT Rule 28(2)).</li> </ul> <p>11.2 Amending a complaint (BCHRT Rule 24) or amending a response to complaint (BCHRT Rule 26).</p> <ul style="list-style-type: none"> <li>.1 Details may be added to allegations made in a complaint at any time by filing a Form 3—Amendment and delivering a copy to the other participants (BCHRT Rule 24(1)).</li> </ul>					

LEGEND — NA = Not applicable L = Lawyer LA = Legal assistant ACTION TO BE CONSIDERED	NA	L	LA	DATE DUE	DATE DONE
<p>.2 Subject to BCHRT Rule 24(4), an allegation which, if proven, could establish a contravention of the <i>Human Rights Code</i> may be added to a complaint by filing a Form 3—Amendment and delivering a copy to the other participants (BCHRT Rule 24(2) and (3)).</p> <p>.3 An application to amend is required if the proposed amendment adds an allegation that occurred outside the time limit for filing a complaint under s. 22 of the <i>Human Rights Code</i>, where there is an outstanding application to dismiss the complaint or if the hearing date is less than four months from the date the amendment is filed (BCHRT Rule 24(4)).</p> <p>(a) The respondent may respond to an amended complaint by filing and delivering a Form 3—Amendment within 21 days of receiving the Tribunal’s letter advising that it has accepted the amended complaint for filing (BCHRT Rule 24(5)). If a respondent does not respond within the time allowed, the respondent’s response to the complaint will be deemed to be the response to the amended complaint (BCHRT Rule 24(6)).</p> <p>.4 A respondent may amend the response to a complaint by filing a Form 3—Amendment and delivering a copy to the other participants (BCHRT Rule 26(1)).</p> <p>.5 An application to amend is required if the hearing date is less than four months from the date the amendment is filed (BCHRT Rule 26(2)).</p> <p>11.3 A party may apply to defer (BCHRT Rule 16(3) or <i>Human Rights Code</i>, s. 25) or dismiss (BCHRT Rule 19 or <i>Human Rights Code</i>, s. 27) a complaint. Note the time limits for filing an application to dismiss in BCHRT Rule 19(2), (3), and (4).</p> <p>11.4 A party may be added under BCHRT Rule 25:</p> <p>.1 A new complainant may be added by filing a separate complaint under BCHRT Rule 12 and applying under s. 21(6) of the <i>Human Rights Code</i> to have the complaints joined (BCHRT Rule 25(1)).</p> <p>.2 A respondent may be added to the complaint by following the procedures of BCHRT Rule 25(2) and filing a Form 7.1—General Application (BCHRT Rule 28(1)).</p> <p>11.5 See BCHRT Rule 13(3) and <i>Human Rights Code</i>, s. 22.1, regarding intervenors. Add any person or group allowed to intervene to your list of participants in the complaint.</p> <p>11.6 See BCHRT Rule 23(1) to request a document from another party, and BCHRT Rule 23(2) in regard to disclosure from a non-party.</p> <p>11.7 BCHRT Rule 30 governs applications for adjournments. Note the time limit of two full business days before the hearing (unless the information or circumstances forming the basis of the application have not come to your attention by that time).</p> <p>11.8 See BCHRT Rule 4(3) and <i>Human Rights Code</i>, s. 37(4) to apply for costs.</p> <p>11.9 Under <i>Human Rights Code</i>, s. 21(6), the Tribunal may proceed with two or more complaints together if it is fair and reasonable to do so.</p>					

LEGEND — NA = Not applicable L = Lawyer LA = Legal assistant ACTION TO BE CONSIDERED	NA	L	LA	DATE DUE	DATE DONE
<p><b>12. HEARING</b></p> <p>12.1 See BCHRT Rules 5—Public Access to Complaint File and Proceedings, 6—Interpreters and Other Accommodations, 21—Requirement to Disclose Expert Evidence, 31—Requiring Witness to Attend a Hearing, and 32—Hearings.</p> <p>12.2 Receive the notice of hearing. Note the dates set for hearing.</p> <p>12.3 Witnesses. (See also item 8.3.1 in this checklist regarding <i>BC Code</i> obligations when communicating with witnesses or potential witnesses.)</p> <p>.1 Request a summons from the Tribunal by filing a completed Form 8—Order to Attend Hearing for each witness (BCHRT Rule 31(1)).</p> <p>.2 Receive an Order to Attend Hearing from the Tribunal.</p> <p>.3 Serve summonses on witnesses within a reasonable time (BCHRT Rule 31(2)).</p> <p>.4 Note the date and method of service on the witness and the name of the person who served the witness, and keep proof of service, if any.</p> <p>.5 Determine whether any witnesses wish to swear an oath involving a religious text and arrange to have the religious text brought to the hearing (BCHRT Rule 32(9)).</p> <p>.6 Consider whether to apply to have a participant or witness attend by phone or video; the application must be made at least six weeks before the hearing (BCHRT Rule 31.1).</p> <p>12.4 Consider whether you will require an interpreter or any other accommodation. If so, notify the Tribunal at least 21 days before the hearing (BCHRT Rule 6(2)).</p> <p>12.5 The Tribunal records hearings of complaints (BCHRT Rule 32(2)). Consider whether you wish to have a copy of the audio recording and apply for a copy, whether as an accommodation or for other reasons (BCHRT Rule 32(3); see also the Tribunal’s Practice Direction of February 17, 2015, regarding hearing recordings and transcripts).</p> <p>Consider whether you wish to have a certified transcript of all or part of a hearing and notify the Tribunal to request directions (BCHRT Rule 32(5), (6), and (7)).</p> <p>12.6 Expert evidence. (See also item 8.3.1 in this checklist regarding <i>BC Code</i> obligations when communicating with experts.)</p> <p>.1 Consider whether expert evidence is necessary.</p> <p>.2 Note the dates for the exchange of expert reports and summaries in BCHRT Rule 21 (90 days before the hearing; and 30 days after receipt of the report or summary for a response).</p> <p>12.7 Evidence.</p> <p>.1 The Tribunal is not bound by the rules of evidence (<i>Human Rights Code</i>, s. 27.2).</p> <p>.2 Prepare copies of all documents you intend to put into evidence for the witness, the Tribunal, and for every other participant (BCHRT Rule 32(10)).</p>					

LEGEND — NA = Not applicable L = Lawyer LA = Legal assistant ACTION TO BE CONSIDERED	NA	L	LA	DATE DUE	DATE DONE
<p>12.8 Legal authorities: prepare copies of legal authorities you intend to rely on (one for the Tribunal and one for each other participant) (BCHRT Rule 32(11); see the Tribunal’s Practice Direction of May 28, 2018, regarding authorities).</p> <p>12.9 Consider whether to apply for costs (<i>Human Rights Code</i>, s. 37(4) and BCHRT Rule 4(3)).</p>					
<p><b>13. POST-HEARING</b></p>					
<p>13.1 Receive decision.</p>					
<p>13.2 Enforcement of order.</p> <p>.1 File with the Tribunal a request for certified copy of the final decision containing the order (BCHRT Rule 34).</p> <p>.2 Consider filing a certified copy of the order with the British Columbia Supreme Court.</p>					
<p>13.3 Correcting decisions and orders. A request to correct a technical error in a written decision or order may be made in writing to the Tribunal (BCHRT Rule 35).</p>					
<p>13.4 Consider whether reconsideration by the Tribunal is warranted and note that there is a time limit of 14 days for an application for reconsideration (BCHRT Rule 36).</p>					
<p>13.5 Judicial review:</p> <p>.1 Consider whether there are grounds for judicial review.</p> <p>.2 If there are grounds, file a petition under the <i>Judicial Review Procedure Act</i>, R.S.B.C. 1996, c. 241, s. 2, within the time limit set by <i>Administrative Tribunals Act</i>, S.B.C. 2004, c. 45, s. 57 (generally 60 days from the date of the decision, subject to extension by the court).</p>					
<p><b>14. CLOSING THE FILE</b></p>					
<p>14.1 Prepare a reporting letter and account as soon as practicable after closing. (For a sample reporting letter, see the Law Society website at <a href="https://www.lawsociety.bc.ca/support-and-resources-for-lawyers/practice-resources/">https://www.lawsociety.bc.ca/support-and-resources-for-lawyers/practice-resources/</a>)</p>					
<p>14.2 Close the file. See the CLIENT FILE OPENING AND CLOSING (A-2) checklist.</p>					

