The Law Society of British Columbia

Memo

To: The Benchers
From: Policy and Legal Services Department
Date: March 31, 2014
Subject: Follow up to Enquiries from the February 28, 2014 Benchers Meeting

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Several enquiries were made at the February 28, 2014 Benchers Meeting seeking further information in connection with the decision concerning Trinity Western University's law school.

Responses to those enquiries are set out below and attached.

1. British Columbia Human Rights Tribunal

Reports from the British Columbia Human Rights Tribunal for the years 2009-2010 through to 2012 – 2013 are attached as Appendices 1 – 4. Each year's report identifies complaints statistics, including grounds of discrimination or complaints by area and ground, and reviews certain decisions made by the Tribunal during that year.

2. Annual Reports of the Law Society Equity Ombudsperson

Annual reports of the Law Society Equity Ombudsperson for each of the years 2009 – 2012 are attached as Appendices 5 – 8. Any complaints relating to discrimination that occurred during any of those particular years are listed. Brief explanations of the types of complaints are included. Confidentiality assurances given to those who raise concerns with the Equity Ombudsperson limit any additional information. Where complaints are isolated or very few in number, the Ombudsperson will frequently not provide a narrative example to ensure confidentiality and anonymity.

3. Enquiries made of Law Deans

Each of the deans of the three British Columbia law faculties was asked to ascertain whether there have been any complaints or concerns relating to discriminatory conduct by graduates of Trinity Western University whilst attending law school.

Interim Dean Pappas at Thompson Rivers University advised that TRU Law is unable to identify any records that disclose issues of the nature giving rise to the request relating to Trinity Western University graduates who are enrolled in the Faculty of Law at that University.

A response from the University of Victoria is attached as Appendix 9. The University of British Columbia is considering disclosure issues in connection with any response it can make.

4. American Bar Association's anti-discrimination policy and religious law schools

A discussion concerning the provisions of the American Bar Association's *Standards and Rules of Procedures for Approval of Law Schools* and, in particular, Standard 211 that prohibits discrimination in law school admission and hiring practices, is set out in paragraphs 54 – 62 of the Federation of Law Societies of Canada's Special Advisory Committee's Final Report on Trinity Western University's Proposed School of Law, dated December 2013.

5. Standards and Policies regarding Sexuality and Discrimination at Selected Religious-Based American Universities

Law faculties at several religious-based American universities were identified and copies of their rules or standards with respect to sexuality and/or discrimination were obtained from the internet. Information obtained is as follows:

- Baylor University – Appendix 10
- J. Reuben Clarke Law School (Brigham Young University) – Appendix 11
- Boston College – Appendix 12
- Liberty University – Appendix 13
- Fordham University – Appendix 14
- Notre Dame University – Appendix 15

6. Other regulatory bodies in British Columbia

Enquiries were made of each of the Teachers Regulation Branch and the College of Registered Nurses of British Columbia regarding whether either of those bodies had any indication or evidence that graduates from Trinity Western University have raised any concerns relating to sexual orientation that have resulted in complaints or discipline.

The Commissioner for Teacher Regulation advised that the Teacher Regulation Branch does not keep statistics with reference to the university from which a teacher complained about received his or her degree. The TRB record tracking system does not permit that information to be obtained. The Commissioner however noted that, generally speaking, concerns relating to sexual

orientation appeared to be more heavily weighted against teachers who have been in the profession for a longer period of time and that generally speaking it has not come to the TRB's attention that TWU graduates are particularly problematic in this respect.

The College of Registered Nurses of British Columbia advises that they have recognized the TWU nursing program without any issues.

7. Law Society statistics concerning complaints involving discrimination

Law Society records disclose that, of the 23973 complaints made since the beginning of 1997, 70 (or 0.29% of the total) have been categorized under "discrimination." Of those complaints, 27 were closed as "not valid" or "unfounded." Ten were unproveable, and seven were outside the Law Society's jurisdiction. Seven were referred to the Discipline Committee, and one of those resulted in the issuance of a citation although the grounds referred to in the citation itself are not based on discrimination.

Annual Report

2009-2010

BRITISH COLUMBIA

British Columbia Human Rights Tribunal

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July 26, 2010

Honourable Michael de Jong
Attorney General
Province of British Columbia
Room 232
Parliament Buildings
Victoria, BC V8V 1X4

Dear Attorney General:

It is my pleasure to present the seventh Annual Report from the BC Human Rights Tribunal, covering the period April 1, 2009, to March 31, 2010.

This report has been prepared in accordance with section 39.1 of the *Human Rights Code*.

Yours truly,

Heather M. MacNaughton
Chair

HM/ll

Enclosure

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MESSAGE FROM THE CHAIR

I am pleased to present this annual report on the Tribunal's activities in 2009-10.

TRIBUNAL MANDATE AND PURPOSES

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*, 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 to1,200 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 to1,200.

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, the Tribunal's work increasingly deals with issues that are controversial as our 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 modelled their human rights systems after it.

MEMBERS

The skill of the Tribunal's Members as mediators, and adjudicators in the hearing process, is essential to meeting the Tribunal's statutory mandate in a professional, competent and efficient way.

At the end of 2009-10, a senior Member of the Tribunal resigned and recruitment efforts are currently underway to replace her.

To fill a vacancy, the Tribunal holds a competition in which participants are required to relate their past experience to the work of the Tribunal, write two decisions based on representative fact patterns, attend a situational interview with a panel, including a representative of the Board Resourcing and Development Office, meet with the Chair, and undergo thorough reference checks.

TRIBUNAL WORKLOAD

MEMBERS

The Tribunal continued to have a significant workload. We released 437 decisions in the year, 380 of which were preliminary decisions many of which finally determined the issues in the complaint. The number of final decisions released was 57.

The trend of parties participating in our proceedings without the benefit of legal counsel continues. It results in the need for additional resources at all levels of processing of a complaint and longer hearings. The skills required of Tribunal Members include the ability to deal with self-represented participants and those who have literacy challenges and mental health issues.

At the start of the year, the Tribunal had 834 active cases in its inventory. By the end of the year that number had decreased to 829 despite the fact that there were 1,123 new complaints filed, up more than ten percent than the previous year. Active cases do not include cases deferred or stayed at the request of the parties pending the outcome of another proceeding, those settling, or cases where petitions for judicial review have been filed after a final decision.

LEGAL COUNSEL

Most of the Tribunal's legal counsels' time and attention is spent appearing on behalf of the Tribunal on

judicial review of its decisions. As will be seen from the summary of the judicial reviews which is outlined on the following pages, Tribunal decisions are consistently upheld by the BC Supreme Court and the BC Court of Appeal.

SETTLEMENTS

The Tribunal's settlement meeting services continue to be heavily used.

We encourage participation in settlement discussions and provide the option of a tribunal-assisted settlement meeting before the respondent files a response to the complaint, and at any later stage in the process. Each member schedules an average of six settlement meetings a month, and the Tribunal continues to use contract mediators and legal counsel as needed. Many complaints settle as a result of these efforts and creative solutions are achieved which could not be ordered after a hearing.

The Tribunal conducted 269 early settlement meetings (before a response to the complaint is filed) and 114 settlement meetings (at any point after a response to the complaint is filed and prior to the commencement of a hearing). In addition, the Tribunal provided settlement assistance to the parties in 12 cases in the midst of hearing. The parties are able to resolve their disputes in over 70% of all cases in which the Tribunal provides assistance. In addition, some cases settle without the Tribunal's involvement.

Because settlement meetings are usually a confidential process, the Tribunal does not publish the results. In many cases, the settlement meeting resolves other aspects of the parties' relationship and this has transformative impacts without the adversarial process of a hearing. Some cases resolve on the basis of an acknowledgement that there has been a breach of the *Code* and an apology. In others, the mediated solution results in systemic change and awards greater than those that might be obtained after a hearing.

THE COMING YEAR

The Tribunal is not immune from the fiscal challenges facing all agencies of government. Most of the Tribunal's budgetary expenditures are for salaries and rent. In regard to staff, as the organization chart that appears later in this Annual Report indicates, we are a very lean organization. The Tribunal's rent is fixed pursuant to a five-year lease on accessible and purpose-built premises. Our next biggest expenditure is in travel. The Tribunal significantly reduced its travel budget as a result of initiatives introduced in the last two years. Access to available government video conferencing facilities is still under discussion with the Ministry of the Attorney General. Staff suggestions and belt-tightening resulted in a significant reduction in our office and business expenses.

In June of this year, I was advised that my appointment as Chair of the Tribunal would not be renewed when it expires at the end of July. As a result, this will be my last Annual Report. A change in the head of an organization is always an unsettling time and that is particularly the case where the Chair has been largely responsible for the creation and management of the structure. I have been proud to serve in my capacity as Chair for the last ten years and believe that the structure that is in place will assist the dedicated and hard working Tribunal staff to weather the transition.

MY THANKS

The achievements of the Tribunal, about which you will read in this report, are the result of all those who work with me. They exemplify the highest standards of public service.

Heather M. MacNaughton
Chair

Cost of Operation

BC Human Rights Tribunal Operating Cost
Fiscal Years 2008-09 and 2007-08

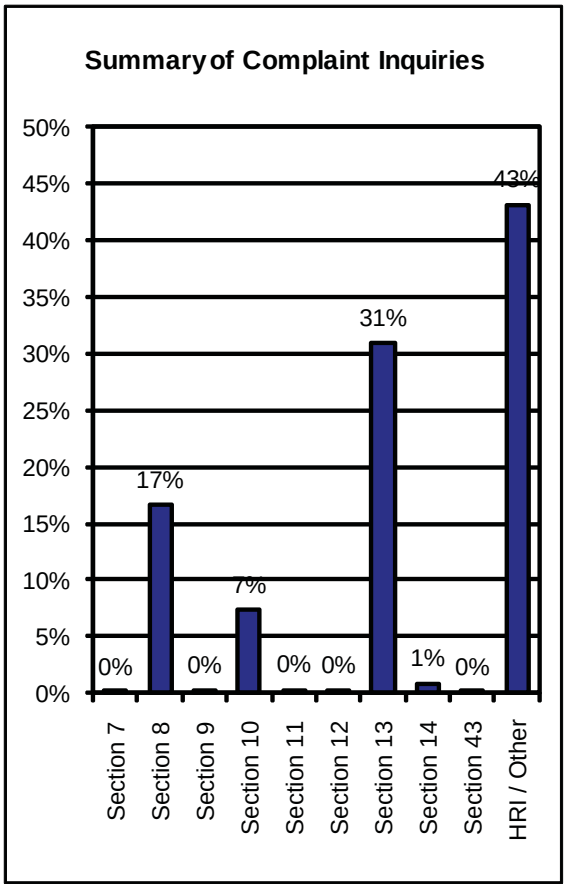
Category	2009-2010 Expenditure	2008-2009 Expenditure
Salaries (Chair, Members, Registry and Administration)	$ 2,241,133	$ 2,234,406
Employee Benefits	$ 576,215	$ 527,195
Retired Members – Fees for Completing Outstanding Decisions	$ 0	$ 2,100
Travel	$ 75,227	$ 87,034
Centralized Management Support Services	$ 0	$ 0
Professional Services	$ 67,769	$ 62,070
Information Services, Data and Communication Services	$ 3,495	$ 2,810
Office and Business Expenses	$ 64,598	$ 111,233
Statutory Advertising and Publications	$ 4,892	$ 4,933
Amortization Expenses	$ 33,933	$ 45,244
Building Occupancy and Workplace Technology Services	$ 630,349	$ 600,891
Total Cost	**$ 3,697,611**	**$ 3,677,916**

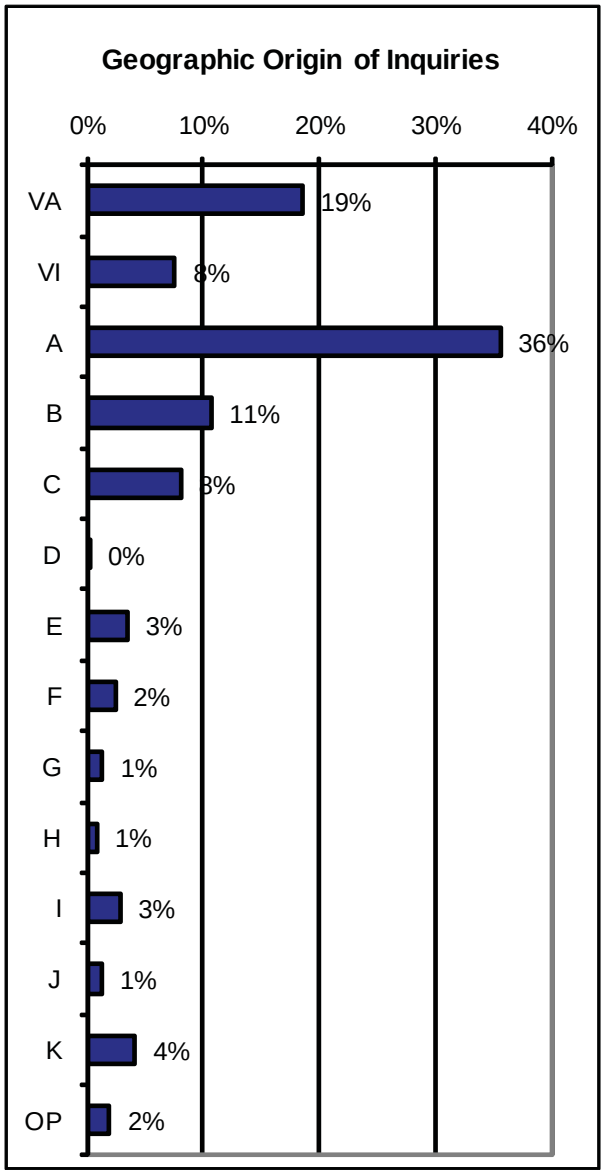
Inquiry Statistics

General inquiries about the Tribunal process are answered by two Inquiry Officers. The Inquiry Officers also provide basic information about the *Code* protections and refer callers to appropriate resources. They answered 9,092 inquiries this year, averaging 36 calls daily.

The highest percentage of complaint inquiries, 32%, related to employment (s. 13 and 14 of the *Code*). Inquiries relating to services (s. 8), represented 17% of the total inquiries, and those relating to tenancy (s. 10) represented 7%.

A toll-free number enables callers throughout the province to access the Inquiry Officers. The geographic origin of inquiries indicates that 19% originated from Vancouver, 36% from the Lower Mainland (excluding Vancouver), 8% from Victoria, and 38% from elsewhere in the province.





Legend

VA ..... Vancouver
VI ..... Victoria
A ..... Lower Mainland (Excluding Vancouver)
B ..... Vancouver Island & Gulf Islands (Excluding Victoria)
C ..... Okanagan
D ..... Rocky Mountains
E ..... Squamish / Kamloops
F ..... Kootenays
G ..... Sunshine Coast
H ..... Cariboo
I ..... Prince George Area
J ..... Skeena
K ..... Northern BC
OP ..... Out of Province

Complaint Statistics

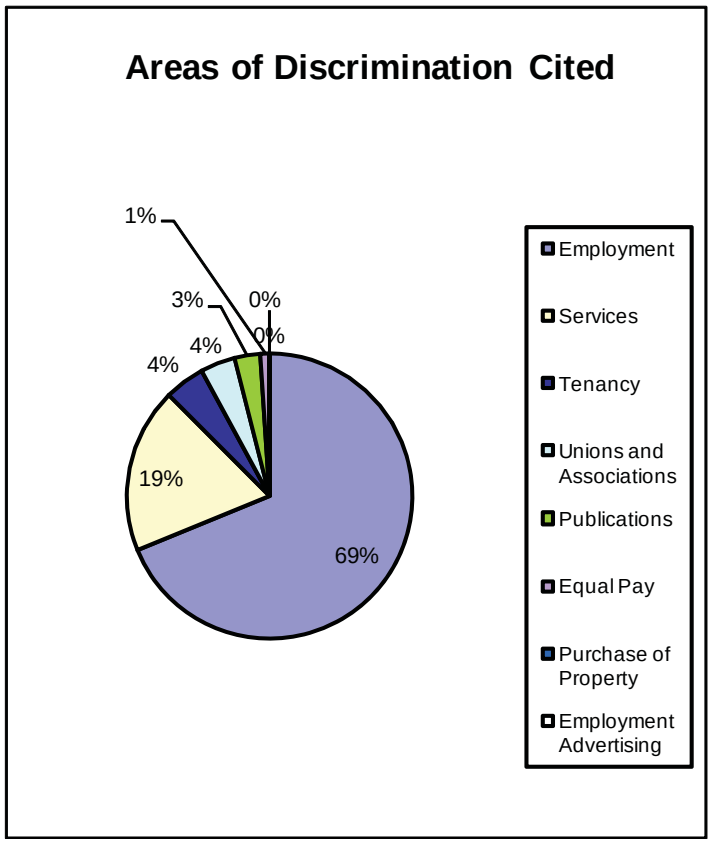
New Complaints

There were 1,123 new complaints filed at the Tribunal, of which 395 were screened out at the initial screening stage. The Chair makes all initial screening decisions to ensure consistency.

Areas of Discrimination

The *Code* prohibits discrimination in the areas of employment, employment advertisements, wages, services, tenancy, purchase of property, publication and membership in unions and associations. It also forbids retaliation against a person who makes a complaint under the *Code*.

Complainants cited the area of employment most frequently (69%), followed by services (19%), tenancy (4%), and membership in unions and associations (4%).

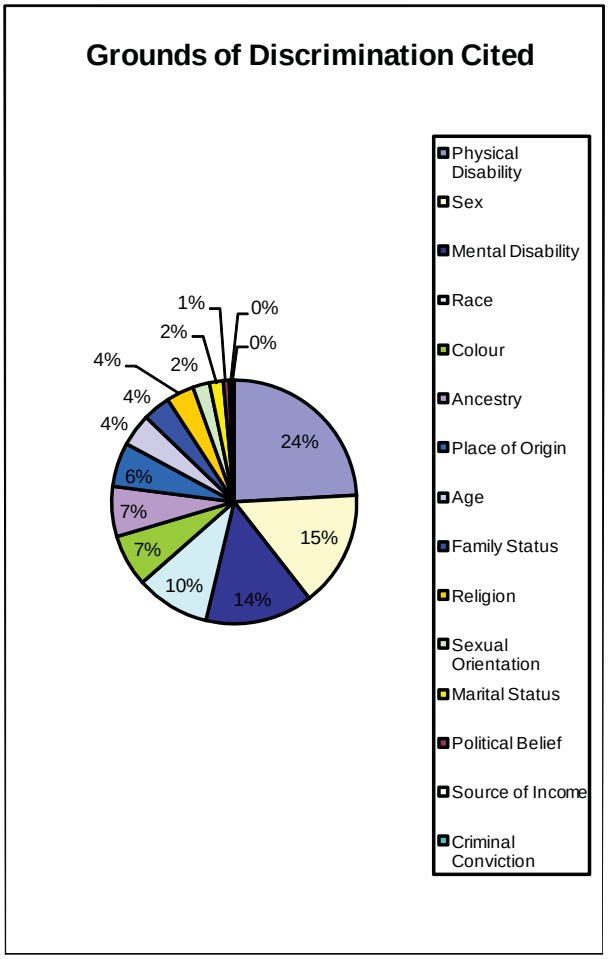


Grounds of Discrimination

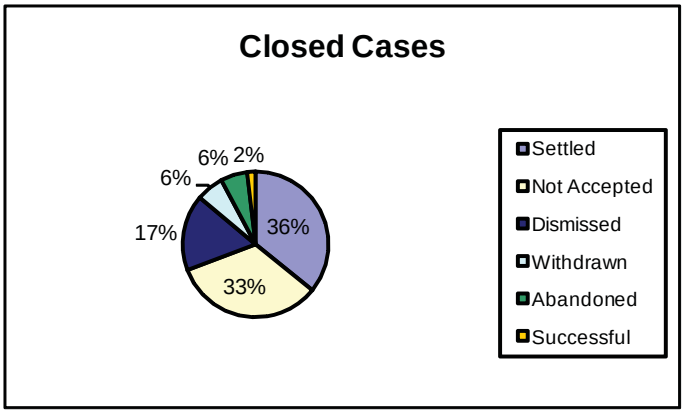
There are 15 prohibited grounds of discrimination: age (19 and over), ancestry, colour, family status, lawful source of income, marital status, place of origin, physical and mental disability, political belief, race, religion, sex (including harassment and pregnancy), sexual orientation, and unrelated criminal conviction. Not all grounds apply to all areas.

Some complaints cite more than one area and ground of discrimination. For instance, a complainant with a race-based complaint may also select grounds of ancestry, colour and place of origin.

As can be seen from the chart on the next page, the most common ground cited was physical disability (24%), followed by sex (including harassment and pregnancy) (15%), mental disability (14%), race (10%), and colour and ancestry (7%). Place of origin was at 6%, and age, family status and religion were at 4%. Sexual orientation and marital status were at 2%, while political belief was at 1%. Retaliation was cited in 3% of complaints. As a result of a BC Supreme Court decision in *Cariboo Chevrolet Pontiac Buick GMC Ltd. v. Becker*, 2006 BCSC 43, the ground of retaliation only applies after a human rights complaint has been filed.



The Tribunal has changed the way that it records complaints which are the subject of judicial review applications. This may marginally affect some of the statistics reported in this year as compared to earlier years.



CLOSED CASES

The Tribunal closed 1,181 cases this year. Cases are closed when they are not accepted at the initial screening stage, withdrawn because they have settled or otherwise, abandoned, dismissed, or a decision is rendered after a hearing. This year, 395 complaints were not accepted at the initial screening stage, 125 were dismissed under s. 27, 48 were dismissed under s. 22, and 48 decisions were rendered after a hearing, of which 22 were successful and 26 were dismissed. Due to administrative timing, some of these cases may not be closed in the same fiscal year as the decisions were rendered. The balance (565) were settled, withdrawn or abandoned.

Dismissal Applications

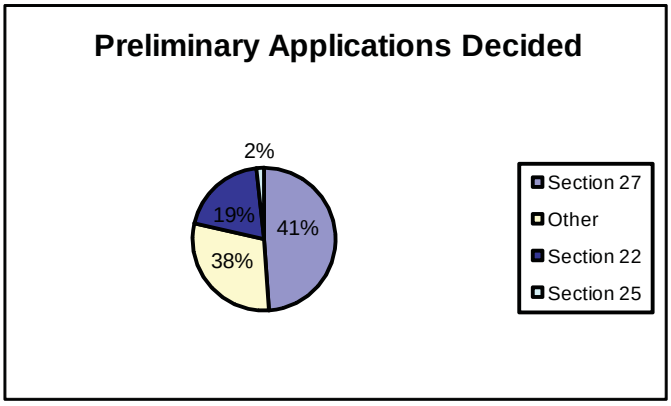
Screening

Normally, the Tribunal decides whether to accept a complaint based only on the complainant's submissions. On occasion, the Tribunal notifies the respondents of the complaint and asks for submissions on whether a complaint should be accepted at the screening stage.

Cases of Note:

A complainant alleged that a female co-worker was sexually harassed and the employer did not take appropriate steps to address the discrimination. He quit his job as a result. His complaint was not accepted for filing because it did not allege acts or omissions that could constitute discrimination on the basis his sex. (*da Silva v. Sammy J. Peppers and others*, 2009 BCHRT 379)

The issue of whether a complaint was within provincial or federal jurisdiction could not be resolved on the materials filed, so the Tribunal accepted it for filing and did not make a final decision on the jurisdictional issue at the screening stage. (*Motuz v. Songhees Nation and another*, 2009 BCHRT 405)



Dismissal Applications

Section 27(1) allows the Tribunal to dismiss, on a preliminary basis, complaints that do not warrant the time or expense of a hearing on the merits.

A complaint may be dismissed under s. 27(1) without a hearing. Generally, applications to dismiss a complaint are decided based on written submissions and materials. The Tribunal's *Rules of Practice and Procedure* require applications to dismiss to be brought early in the processing of a complaint.

The *Code* sets out seven reasons for dismissing a complaint without a hearing:

- There is no jurisdiction;
- There is no contravention of the *Code*;
- There is no reasonable prospect of success;
- Proceeding with it would not benefit those discriminated against or further the purposes of the *Code*;
- The complaint was filed for improper motives or in bad faith;
- The complaint was appropriately dealt with in another proceeding; and
- The complaint was filed out of time.

Applications to dismiss accounted for 41% of preliminary decisions this year. Of the 226 decisions, 125 (55%) were dismissed and 27 (12%) were partially dismissed. 74 (33%) dismissal applications were denied.

The Role of the Tribunal

When to consider applications to dismiss a complaint, and whether to do so, are discretionary decisions. The Tribunal exercises its specialized expertise in adjudicating human rights complaints and does so in accordance with the purposes of the *Code* and the Tribunal's Rules. In dismissing a complaint on a preliminary basis, the Tribunal performs what the Court of Appeal has called a "gate-keeping" function, by deciding whether a complaint warrants the time and resources of a full oral hearing. (*D'Cruz v. Stl'atl'imx Tribal Police Board and others (No. 3)*, 2009 BCHRT 420)

SECTION 27(1)(a) - NO JURISDICTION

The Tribunal may dismiss a complaint because of a lack of jurisdiction when it is against a federally-regulated company, the conduct was outside BC, or if the alleged area or ground of discrimination does not apply to the facts alleged.

CASES OF NOTE:

A transportation company falls under federal jurisdiction if its international or interprovincial services are a "continuous and regular" part of its operations. This is true even if the complainant was not involved in that part of the business. Jurisdiction is determined by the scope of the business, not the complainant's involvement in it. (*Bombo v. Livingston International and others*, 2009 BCHRT 236) (See also: *Schramm v. Auntie Fanny's and another*, 2009 BCHRT 416)

The Tribunal has jurisdiction over a complaint against a company in the business of fish farming, processing, distribution, and sales. The company's labour relations, including human rights protections, are not integral to the federal authority over fisheries. (*Krawietz v. Marine Harvest and another*, 2010 BCHRT 22)

Employment by a band under the *Indian Act* is subject to federal jurisdiction. It is different from employment by an agency that a band operates to provide essentially provincial services. (*Charleyboy v. Soda Creek Indian Band*, 2009 BCHRT 268

The Tribunal has jurisdiction over a complaint that the Employment and Assistance Appeal Tribunal discriminated when it processed an appeal. (The complaint was dismissed on other grounds.) (*B v. B.C. (Min. of Housing and Social Development) and others*, 2009 BCHRT 299)

SECTION 27(1)(b) - NO CONTRAVENTION OF THE *CODE*

The Tribunal can dismiss a complaint under s. 27(1)(b) if the acts or omissions alleged do not contravene the *Code*.

The Tribunal performs a gate-keeping function in considering these applications and the threshold a complainant must satisfy is low. The Tribunal only considers the facts set out in the complaint to determine whether if those facts are proven, it can draw an inference that discrimination occurred.

CASES OF NOTE:

The complainant alleged that because of his disability, he was excluded from an early retirement plan offered to able-bodied employees. This information set out the required elements of a complaint and the only facts considered are those alleged in the complaint. The purpose, structure and rationale behind the early retirement plan are set out in the response to the complaint, and are considered under s. 27(1)(c) of the *Code*, not s. 27(1)(b). (*Norbert v. Clear Lake Sawmills and Canfor Corporation*, 2009 BCHRT 157)

SECTION 27(1)(c) - NO REASONABLE PROSPECT OF SUCCESS

The Tribunal can dismiss a complaint under s. 27(1)(c) where it concludes, based on all the material filed, that there is no reasonable prospect it would be found to be justified if the complaint goes to a hearing.

CASES OF NOTE:

A complainant is not required to establish a reasonable prospect of success, rather the burden is on a respondent to show that the complaint has no reasonable prospect of success. Because of their religious beliefs, bed and breakfast operators denied accom-

modation to a gay couple. The respondents applied to dismiss the complaint. The case involved balancing competing rights and in the absence of evidence and legal argument, the Tribunal could not determine there was no reasonable prospect of success. (*Eadie and Thomas v. Molnar and others*, 2010 BCHRT 69)

On the other hand, a complainant must provide more that speculation that the alleged conduct was based on a ground of discrimination.

Disputes arise in the workplace where an employer is dissatisfied with an employee's performance. The employer may take corrective action. However, it is not discrimination unless an employer's actions were, at least in part, because of a prohibited ground in the *Code*. There is no reasonable prospect of success where an allegation of discrimination is merely speculative. (*Weilbacher v. Dyrand Systems (No. 2)*, 2010 BCHRT 6)

While the Tribunal acknowledged that it is difficult to prove discrimination in the hiring process, a complaint of age and gender discrimination was speculative. The employer provided enough information to show that the successful candidate was more suitable, that it wanted to consider the complainant for other positions consistent with his age and experience, and that it employed both older and male employees. (*White v. Abbotsford Community Services*, 2009 BCHRT 269)

The Tribunal assesses credibility on a global basis to determine, on all of the materials before it, whether a complaint has no reasonable prospect of success. A denial that the alleged conduct occurred would not usually, on its own, be enough to show there is no reasonable prospect of success. The Tribunal dismissed a complaint, however, where the respondents provided detailed affidavits, including one denying the alleged comments. The complainant had not identified the offensive remarks in his complaint, had changed his version of the context, timing and content of them, and in a complaint in another forum said that the respondent had "said nothing". (*Zampieri v. Maple Leaf Self Storage and others*, 2009 BCHRT 171)

However, where the parties allege significant differences in their versions of the events, and those differences are crucial to a determination, a hearing will often be needed to test the conflicting evidence. (*Dickey v. Coast Mountain Bus Company*, 2009 BCHRT 323)

The Tribunal denied an application to dismiss where there were conflicting affidavits on central issues. It noted that in many cases about accommodation of disability, it is difficult to determine on a preliminary basis whether each party fulfilled its responsibilities. Here, the employer and employee disagreed about both the accommodation process and its outcome. (*Jussila v. Finning International*, 2009 BCHRT 413)

The Tribunal dismissed a student's complaint alleging a failure to accommodate her learning disabilities. While the post secondary institution had a duty to accommodate, each time it responded to her complaints, she made new complaints and it was impossible to satisfy her escalating demands. The complainant had an obligation to accept a reasonable accommodation, not demand a perfect one. (*Fodor v. Justice Institute of British Columbia*, 2009 BCHRT 246)

A condominium owner alleged her strata discriminated against her on the ground of physical disability by installing new windows that negatively affected her medical condition. There was no reasonable prospect the complainant would be able to show the strata knew of her disability before the installation, or that her medical information supported that the windows had an adverse impact on her condition. Further, the complaint was premature since she had not given the strata the information it needed to

determine if an accommodation was required or to what extent, and what options were available short of undue hardship. (*Menzies v. Strata Plan NW 2924*, 2010 BCHRT 33)

In the area of publication, the Tribunal dismissed a complaint about a newspaper column that portrayed feminists in a negative stereotypical manner. The Tribunal considered:

- the need to balance the right to equality and the right to freedom of expression;
- women continue to be subject to discrimination;
- the words used were offensive to the complainant but not "hateful" and do not "expose the target group to feelings of an ardent nature and unusually strong and deeply felt emotions of detestation, calumny and vilification"; nor are they likely to have an adverse effect on women;
- the writer acknowledged he was expressing his opinions which were controversial on matters of social and religious debate;
- the social and historical background of the publication;
- the credibility and manner and tone of presentation of the article;
- that it is not enough that a publication is poorly researched, inaccurate or based on negative stereotypes to breach the *Code*. (*Watt v. The Abbotsford Times and others*, 2009 BCHRT 141)

SECTION 27(1)(d)(i) - PROCEEDING WITH THE COMPLAINT WOULD NOT BENEFIT THE PERSON, GROUP OR CLASS ALLEGED TO HAVE BEEN DISCRIMINATED AGAINST

The Tribunal dismissed a complaint where the respondent companies were defunct and the complainant agreed that there would be no benefit to her by continuing the complaint process. (*Larsen v. Opel Financial and Investment Group and others (No. 3)*, 2009 BCHRT 186)

SECTION 27(1)(d)(ii) - PROCEEDING WITH THE COMPLAINT WOULD NOT FURTHER THE PURPOSES OF THE *CODE*

The Tribunal dismissed a complaint of sex discrimination where men working at a historic tourist attraction were prohibited from wearing earrings. While workplace dress and grooming policies should usually be applied equally, in limited circumstances, such as hair length and earrings, the law allows some latitude for minor distinctions based on sex. Here, the restriction was not arbitrary, but was related to the period dress employees wore. (*Callahan v. Capilano Suspension Bridge*, 2009 BCHRT 127)

It would not be an efficient use of the Tribunal's or the parties' resources to hold a hearing where the employer had promptly addressed the discrimination issue, offered the job opportunity to the complainant, and made a reasonable "without prejudice" settlement offer. The offer met the requirement for a "with prejudice" offer on an application to dismiss under s. 27(1)(d)(ii) of the *Code*. It also met the second requirement of being reasonable. While not an admission of liability, the offer acknowledged that the conduct may have violated the *Code*. The compensation offered was within the Tribunal's range of awards at hearings. (*Moiceanu v. BC Hydro and Power Authority and another*, 2009 BCHRT 275)

It would not further the purposes of the *Code* to proceed with a complaint where the respondents made a reasonable settlement offer which it left open for two weeks after the decision on the dismissal application. While the offer was not marked "with prejudice", it was clear that the respondents would disclose the offer to the Tribunal in a dismissal application. Although not identical to the remedies that might be ordered if the complaint was successful at a hearing, the offer was comprehensive in accordance with the goals the *Code*, and there were no public policy considerations requiring that the complaint proceed. (*Grant v. FortisBC and others*, 2009 BCHRT 336)

Dismissal Applications

The Tribunal dismissed a complaint where the employer promptly took appropriate steps to remedy the alleged discrimination, by arranging that the complainant no longer had to work with the other employee, who received training to ensure that similar conduct would not reoccur. The Tribunal encourages employers to establish, use and enforce workplace discrimination policies to deal directly and appropriately with discrimination allegations. (*McLuckie v. London Drugs and another*, 2009 BCHRT 409)

Section 27(1)(e) - Complaint filed for improper purposes or in bad faith

It is not enough to present a different version of events and allege the complainant is untruthful to establish that the complaint was filed for improper motives or made in bad faith. Only exceptionally will the Tribunal be satisfied that a complaint was filed without an honest belief that the complainant experience discrimination. (*Benny v. Ben Moss Jewellers and another*, 2009 BCHRT 335)

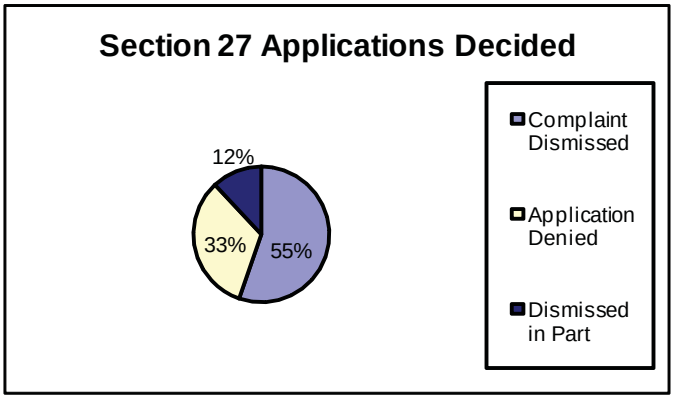
Applications under s. 27(1)(e), alleging that a complaint is filed for improper purposes or in bad faith, raise serious issues, which may have very serious consequences for a complainant, including dismissal of the complaint, findings of personal impropriety and potential liability for costs for improper conduct. A respondent must meet a high standard to have a complaint dismissed under s. 27(1)(e). Here, the employer made an arguable case, but both parties deserved a full opportunity to put forward all their information before the Tribunal decided the issue. (*Matesan v. B.C. (Min. of Public Safety)*, 2009 BCHRT 281) (See also: (*D'Cruz v. Stl'atl'imx Tribal Police Board and others (No. 3)*, 2009 BCHRT 420)

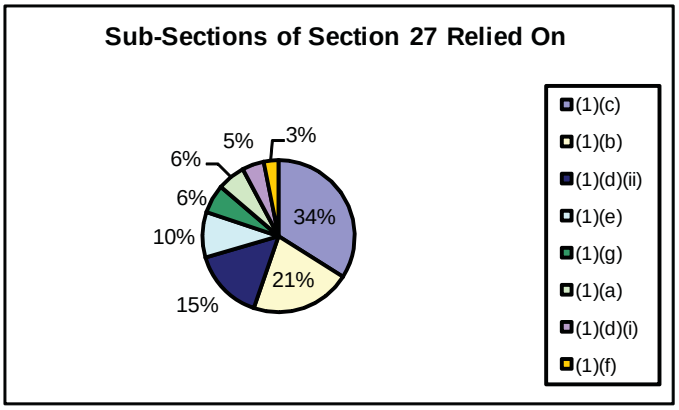
Section 27(1)(f) - Complaint appropriately resolved in another proceeding

An employee complained that the collective agreement discriminated against him on the basis of physical disability. He had made the same complaint about the union to the Labour Relations Board under s. 12 of the *Labour Relations Code*, and it, and a reconsideration panel, denied the complaint. The complainant and the union were parties to both proceedings, and while the complaint to the Board could only be filed against the union, the discrimination issue against the employer was fully litigated before the Board, where the employer was given an opportunity to respond. The complaint was dismissed as it had been appropriately dealt with and should not be relitigated at the Tribunal. (*Sharrock v. Nanaimo Forest Products and PPWC, Local 8 (No. 2)*, 2009 BCHRT 339)

Section 27(1)(g) - Alleged contravention outside the time limit

Decisions on applications to dismiss a complaint under section 27(1)(g) are reviewed under time limit decisions (section 22). There were 33 applications which resulted in 12 complaints being dismissed in whole or in part.





OTHER PRELIMINARY APPLICATIONS

SCREENING

The Tribunal did not accept a complaint where a male manager resigned because the company refused to dismiss a male employee who had sexually harassed a female employee. He alleged employment discrimination on the basis of sex. While it may be principled and honourable, the manager's resignation was not the result of discrimination against him based on his sex, as s. 13 of the *Code* requires. (*da Silva v. Sammy J. Peppers and others*, 2009 BCHRT 379)

A complainant alleged he was discriminated against in employment by the Chief of an Indian Band on the ground of family status. He was the successful candidate for a job at the Band health centre, but said that his employment was not confirmed after he was asked about his relationship with his sister, a Band member. The Tribunal did not have jurisdiction because the employment was federally regulated. The Band operated a federally funded health centre targeting health concerns disproportionately affecting aboriginals. Its services were provided by Band members for Band members on a reserve. The job was integral to the primary federal competence over Indians under s. 91(24) of the Constitution Act, 1867. (*Yamelst v. Blain*, 2009 BCHRT 400)

The Tribunal held that it had jurisdiction over a complaint alleging discrimination in employment and differential wages based on sex, involving a fish farming company. The company's labour relations, including human rights protections, were not integral to the exercise of federal authority over fisheries. (*Krawietz v. Marine Harvest and another*, 2010 BCHRT 22)

TIME LIMIT

That a complaint was about a poorly understood disability might be a factor making it in the public interest to accept it late but not where there was an inadequately explained lengthy delay. (*Wilkinson v. Edgewood Treatment Centre*, 2009 BCHRT 155)

The public interest in a complaint of serious allegations of racial segregation in the workplace outweighed the fact it was filed a week late. (*Hansen v. Lyncorp Drilling Services and others*, 2009 BCHRT 156)

The Tribunal refused to accept a complaint that was 3 days late where the complainant had legal advice to file it on time. (*Andres v. Hiway Refrigeration and Grehan*, 2009 BCHRT 135)

A Tribunal case manager mistakenly accepted for filing a complaint that was out of time. The Tribunal had jurisdiction to seek submissions and decide whether to accept the late filed complaint. (*Seifi v. North Shore Multicultural Society*, 2009 BCHRT 144)

Without deciding whether allegations about similar conduct experienced by two or more complainants separately could form a continuing contravention of the *Code*, it was a relevant factor that they related to different individuals and were separated by a significant time gap. (*Jimenez and Ayers v. Primerica Financial and another*, 2009 BCHRT 230)

Other Applications

A complaint of sexual harassment filed a year late was not accepted. The employee participated in an internal investigation and she and her union representative must have been aware of a collective agreement reference to the right to file under the *Code*. (*Humpherville v. Gateway Casinos and another*, 2009 BCHRT 270)

The Tribunal accepted a disability complaint filed 2 months late. The complaint raised substantial issues about discrimination and an employer's duty to accommodate. There was a public interest in accepting it, in the absence of strong countervailing reasons not to. The employer knew of the complainant's concerns throughout and the Tribunal did not accept the arguments of substantial prejudice without a factual foundation. (*Mitchell v. CNIB*, 2009 BCHRT 354)

The Tribunal accepted a complaint filed 10 months late where the complainant pursued her concerns in other forums, including filing a complaint at the Canadian Human Rights Commission within its time limit only to be advised it did not have jurisdiction. (*Clair v. WorkSafe BC*, 2009 BCHRT 390)

A Métis complainant alleged he was denied a licence to sell jewellery from 2006 to 2009 on a city harbour controlled by a First Nations Band because of his status. The Tribunal found that the applications prior to 2009 were not continuing contraventions as each denial was a new and separate act that lacked a continuing character and the separation in time between each year's request and denial was too great. Also, it was not necessary to accept the earlier allegations in order for the Tribunal to consider whether the policy was discriminatory. (*Motuz v. Songhees Nation and another*, 2009 BCHRT 405)

The Tribunal accepted an employment complaint on the ground of mental disability although some of it was filed late. The disability was difficult to diagnose or recognize and the complaint raised significant and infrequently encountered legal questions about when there may be an obligation to inquire about the possibility of a disability, and the related difficulty of arranging and settling matters without knowledge of a mental disability. These factors engaged the *Code*'s purposes and the answers may guide parties in the future. (*Rezaei v. University of Northern British Columbia and another*, 2009 BCHRT 406)

The Tribunal accepted an employment complaint filed 10 months late where the complainant's mental disability prevented her from filing in time. It is important to ensure that mental disability does not act as a bar to accessing the Tribunal's process. (*Wangler v. Varsteel*, 2010 BCHRT 18)

It was not in the public interest to accept a complaint filed 6 months late where it would require revisiting a settlement reached 5 years earlier. (*Gabre v. City of Surrey and CUPE, Local 402*, 2010 BCHRT 82)

Section 27(1)(g)

The Tribunal relied on the complainant's inaccurate chronology in initially accepting a complaint. That information, and a later affidavit, showed a pattern of misleading statements about the timeliness of the complaint, and were considered to be equitable factors favouring giving the respondent the benefit of the statutory time limit. (*Stewart v. Victoria Habitat for Humanity and others*, 2009 BCHRT 100)

A parent alleged continuing contraventions by a school district that included a teacher's failure to deal appropriately with problems between her child and other students. The Tribunal found no continuing contravention because the allegations did not link the teacher's conduct to the grounds of disability or place of origin, so the actions complained of could not be part of a repetition or succession of acts that could constitute contraventions of the *Code*. The Tribunal also did not accept that comments allegedly made by the school principal were part of a continuing contra-

vention when no date or context was provided. The complainant provided no explanation for the delay and a change in the school district's policy made part of the complaint moot. (*A obo B v. School District No. C and another*, 2009 BCHRT 256)

A deaf complainant alleged that she was evicted from her apartment because of complaints about her care dog and also complained about a note posted about the dog. The Tribunal found that it was in the public interest to accept the part of the complaint about the note, which was several days late, as it raised a novel question of whether a note on an apartment bulletin board amounts to publication under the *Code*, and if so, whether its substance was discriminatory. In addition, the posting of the note was inextricably linked to timely allegations of discrimination in tenancy. (*Devine v. david burr and others*, 2009 BCHRT 345)

A union filed a complaint against a government ministry and the Workers' Compensation Board on behalf of ambulance drivers, attendants and paramedics alleging discrimination in services on the grounds of physical and mental disability in respect of a statutory and policy framework about compensation for mental stress. Both respondents applied to dismiss the complaint under s. 27(1)(g). Only one union member's complaint was in time, the others were 5 to 24 months late.

The Tribunal held that it did not need to decide if the complaint had to be timely with respect to all members of the class. It was in the public interest to accept it because it related to the operation of workers' compensation legislation and policies, which had far reaching application and consequences for workers. One of the purposes of the *Code* is to identify and eliminate persistent patterns of inequality. Dealing with the issue as a class complaint was a more efficient use of resources, and promoted consistency in decision-making. Treating each person within a class as an individual complainant would defeat the purpose of s. 21(4), which allows a complaint on behalf of a class of persons and to provide an efficient means of redress for those who have been discriminated against. Accepting the class complaint was also consistent with the principle of fair access to the Tribunal, as it would be unfair to allow some members to pursue his complaint while denying other similarly affected members the right to do so.

The Tribunal concluded it would not presume prejudice from a substantial delay. Time issues regarding individual members and remedy could be addressed at the hearing. (*CUPE, Local 873 v. B.C. (Min. of Labour and Citizens' Services) and WCB (No. 2)*, 2009 BCHRT 446)

DEFERRAL

While most of the factors the Tribunal applies when considering deferring its proceedings to a grievance were neutral, a time limited deferral was appropriate. Proceeding with both would sap the parties' resources, particularly where one party was a non-profit organization. (*Balga v. Delta Community Living and another*, 2009 BCHRT 257)

The Tribunal deferred a retaliation complaint until an arbitration, nearing completion, finished. The arbitration had taken significant time and resources and the complainant conceded it might resolve his retaliation complaint. The original complaint had already been deferred to the same arbitration and both complaints should be dealt with together to determine whether the arbitration had appropriately dealt with the issues. (*Doherty v. B.C. (Min. of Children and Family Development) and another*, 2009 BCHRT 348)

Other Applications

Adding Respondents

In a racial discrimination complaint, an employee applied to add as respondents unidentified people who may have worked for the employer and a foreman who had been disciplined for an incident. The Tribunal declined to add the respondents because it was not in the public interest to do so as there was no persuasive explanation for the complainant's delay, and he failed to show that he would be deprived of a remedy. The foreman had a reasonable expectation that the racial incident had been dealt with. (*Scott v. Otis Canada (No. 2)*, 2009 BCHRT 213)

A factor in whether to add a respondent is the public interest. The Tribunal added a car manufacturer as a respondent in a paraplegic's complaint against a dealership that did not provide a courtesy car with hand controls. The Tribunal decided that it was in the public interest to add the manufacturer as the complaint raised issues not previously considered in regard to whether the manufacturer could be in a service relationship with the complainant. (*Derksen v. Murray Pontiac and another*, 2009 BCHRT 288)

Correction and Reconsideration of Decisions

The Tribunal's jurisdiction under Rule 37.1 to correct a technical error in a decision does not extend to making a new finding of fact. The Tribunal would also not reopen a decision, pursuant to its equitable jurisdiction, to address the effects of the Tribunal's factual findings on a non-party who had not been identified by name. (*Kalyn v. Vancouver Island Health Authority (No. 4)*, 2009 BCHRT 134)

The Tribunal reopened a decision to accept a late-filed complaint and reversed its conclusion where the Tribunal's decision to accept the complaint was based on the complainant's incomplete, inaccurate and misleading representations. The respondent acted prudently, reasonably, and promptly, in ruling out other explanations for the inconsistencies before applying to reopen, following receipt of disclosure of documents. In these circumstances, it was not in the public interest to accept her late-filed complaint. (*Wells v. UBC and others (No. 3)*, 2009 BCHRT 284)

The Tribunal refused to reconsider a dismissal decision under s. 27(1)(d)(ii) where the complainant had filed a petition for judicial review. He asserted that the Tribunal preferred the respondents' material and argued that he was not given a chance to respond to an affidavit. He further alleged unfairness because he did not have an opportunity to present evidence at a hearing. The complainant did not ask to file a sur-reply. As the Tribunal does not sit in appeal of its own decisions, its authority to reconsider does not extend to reopening decisions because one party or another feels that it contains errors. (*Karbalaeiali v. Vancouver Trolley and another (No. 2)*, 2009 BCHRT 370)

Limiting Publication

The Tribunal refused to grant an order limiting publication of information where some information was already published in an earlier decision. It noted that parties face a loss of privacy because the public has access to its legal proceedings. The applicant feared harm to her reputation but she had not discharged the heavy burden of showing that her privacy interest outweighed the public interest in the tribunal process. (*Kung v. Peak Potentials Training and others (No. 2)*, 2009 BCHRT 154)

The Tribunal ordered that employees not named as respondents, against whom potentially damaging allegations of sexual harassment had been made in the complaint, be identified by initials only until the hearing. Information about the location of the particular store concerned was also limited to protect them,

but the Tribunal refused to protect the identity of the corporate respondent. Sexual harassment allegations may be more damaging to personal reputations than other sorts of allegations, especially prior to hearing. It was not an impediment that there was no affidavit evidence respecting their privacy interests as they could be reasonably inferred in this case. (*Musa v. Costco*, 2009 BCHRT 271)

The Tribunal refused a newspaper's access to exhibits entered in an ongoing hearing. The exhibits were professional disciplinary files containing complaints against persons who were not parties to the Tribunal proceedings and who had an expectation of privacy. Many disciplinary proceedings had resolved without publicity. Some contained highly personal information that would be difficult to redact while retaining the context. Such Disclosure might undermine public confidence in the Tribunal's and the disciplinary body's processes. The application was made early in the hearing, so there had been no determination made on the information's relevance or weight. (*Brar and others v. B.C. Veterinary Medical Association and Osborne (No. 13)*, 2010 BCHRT 81)

TIME EXTENSIONS

The Tribunal did not extend the time limit for filing an application to dismiss where the respondent may have misunderstood the process, but it was unlikely to be successful and allowing an extension might have a negative impact on settlement meeting and hearing dates. (*Moore v. Vanguard Security Services and others*, 2009 BCHRT 168)

ADJOURNMENTS

With no submissions from the complainant, the Tribunal refused a respondent's application to adjourn deeming it unreasonable as it was based on unspecified and unsupported "scheduling conflicts" and "travel requirements" of "key staff", and the hearing date had been set months before. (*Pupic v. Gateway West Property Management (No. 3)*, 2009 BCHRT 296)

A professional regulatory body sought a six-month adjournment of a hearing after 280 completed hearing days to secure funding. An insurer had withdrawn coverage of defence costs. Coverage with another insurer was close to its limits. Because of concerns about confidentiality and privilege in its discussions with the first insurer and the government, the respondent provided no certainty that a lengthy adjournment might result in a positive outcome. It was also open to the respondent to raise money from its membership and it had not committed to take this step in the six-month period. That there had been breaks in the hearing dates did not mean that yet another gap would not prejudice the other parties.

The Tribunal accepted that the complainants' vulnerability to allegedly discriminatory disciplinary practices might be magnified if there were a further delay, but a short delay would not necessarily add to it. It granted a two week adjournment, indicated the information needed if a further adjournment was requested, and instructed the parties to ascertain if settlement discussions were possible. (*Brar and others v. B.C. Veterinary Medical Association and Osborne (No. 11)*, 2009 BCHRT 382)

A further adjournment was subsequently granted. (*Brar and others v. B.C. Veterinary Medical Association and Osborne (No. 12)*, 2009 BCHRT 422)

A lengthy hearing was adjourned pending a judicial review of a Tribunal decision removing individual respondents from a complaint. If the judicial review was successful, a hearing involving the individuals would have to be held and an adjournment would prevent fragmented, duplicated hearings. To limit any delay, the Tribunal agreed to set new hearing

dates as soon as the judicial review outcome was known. (*Zahedi v. Xantrex Technology (No. 3)*, 2009 BCHRT 403)

AMENDMENT OF A COMPLAINT

The Tribunal refused to accept proposed amendments, characterized as "particulars", to a complaint filed years earlier, as they were really late-filed amendments and would amount to a significant retroactive expansion of the time frame of the complaint. It was not in the public interest to adjudicate on whether stereotypical presumptions about men and fathers were applied in 1996 as too much time had passed to make a decision relevant to fulfilling the purposes of the *Code*. To accept the amendments would be prejudicial to the Director due to the passage of 13 years. (*Trociuk v. B.C. (Ministry of Health) (No. 3)*, 2009 BCHRT 361)

NO EVIDENCE MOTION

An aboriginal person alleged individual and systemic discrimination on the basis of ancestry and religion because he was denied access to aboriginal spiritual services while in prison. The Tribunal refused to dismiss the systemic complaint on a no evidence motion, or to limit the range of remedies available if the individual complaint was found to be justified. The relief should be addressed at the conclusion of the case. Further, as in this case, evidence of individual and systemic discrimination is often interwoven. Information about the systemic aspect was within the respondent's knowledge and control and the complainant could rely on evidence in the respondent's case. It was in the public interest to address the issues as completely as possible at this time. (*Kelly v. B.C. (Min. of Public Safety and Solicitor General) (No. 2)*, 2009 BCHRT 363)

SUR-REPLY

The Tribunal denied the respondents' application for sur-reply, deciding that a just and timely resolution of the complaint could be effected by not considering the part of the complainant's reply submission that tried to amend her complaint by alleging further violations of the *Code*, which were not part of the original complaint. (*Preston v. TRIUMF and others*, 2009 BCHRT 388)

Sur-reply is not limited to a response to new issues. The fundamental question is not whether new issues or information are raised but whether fairness requires that a party be given an opportunity to file further submissions in reply. Here, a complainant wanted to introduce new information which he could have discovered before his response was filed. The information was clearly relevant to an application under s. 27(1)(e), which could have serious consequences beyond dismissal of the complaint and places a high standard on a respondent seeking dismissal. Because of the potential consequences, fairness demanded that both parties have a full opportunity to put all relevant information before the Tribunal. The complainant was permitted to file submissions and affidavits in sur-reply and the respondent was permitted to cross-examine on the affidavits. (*Matesan v. B.C. (Min. of Public Safety)*, 2009 BCHRT 281)

DISCLOSURE

On the basis of privilege, a complainant opposed an application for disclosure of communications between him and the association which was his exclusive bargaining agent. The Tribunal accepted that communications between a union member and a union representative about a member's rights in relation to their employer satisfy the Wigmore test and are privileged. Although the association was not a union and there was no grievance filed, the Tribunal found that the Wigmore test did not turn on the certification

as a union, but on the confidential and representative nature of the relationships. As it decided there was no distinction between the association and a union, relevant to the issue of privilege, the Tribunal refused to order disclosure of most of the documents. (*Worobec v. University of British Columbia (No. 2)*, 2010 BCHRT 47)

FINAL DECISIONS

This year there were 48 final decisions made after a hearing on the merits.

Forty-two per cent of the complaints (20 of 48) were found justified after hearing. This compares to 36% in 2008/2009, 33% in 2007/08, 36% in 2006/07, and 40% in 2005/06. The success rate where the complainant appeared at the hearing was higher: 47% of the complaints (20 of 43) this year, as compared to 38% in 2008/2009, 42% in 2007/2008, and 42% in 2006/2007.

REPRESENTATION BEFORE THE TRIBUNAL

The Tribunal dismissed five complaints where the complainant did not attend.

Respondents did not attend three hearings. The Tribunal found the complaints justified in two of those cases, but dismissed the complaint where neither party attended.

As in prior years, complainants were unrepresented in more hearings than respondents. They had legal counsel in 20 cases, while respondents had legal counsel in 30 cases. Counsel from the Human Rights Clinic represented complainants in five of the cases. Complainants had no legal representation in 53% (23 of 43) hearings they attended. On the other hand, respondents had no legal representation in 33% (15 of 45) hearings they attended.

In past years, the Tribunal has noted a correlation between success and legal representation for complainants. This year, the difference in the success rate was not as significant. Complainants with counsel succeeded in 50% of their cases, while those without counsel succeeded in 43%. (Last year the success rate was 52% with counsel and 28% without.)

For respondents, the complaint was found to be justified in 40% of the cases where the respondent had counsel, as well as where they did not. (Last year the percentages were 38% and 30%, respectively.)

The complaints were found to be justified in 43% of the cases where both parties had legal counsel (6 of 14) and where only the respondent had legal counsel (also 6 of 14). The complaints were justified in 50% of the cases where only the complainant had counsel (2 of 4) and 44% of the cases where neither party had counsel (4 of 9). Complainants also had counsel in two of the cases where the respondent did not appear.

CASE HIGHLIGHTS

A complaint may cite allegations of discrimination in more than one area and ground. This year, the final decisions involved complaints in the areas of employment (s. 13), lower rate of pay based on sex (s. 12), services (s. 8), tenancy (s. 10), publication (s. 7), membership in a union, employer's organization, or occupational association (s. 14), and retaliation (s. 43). No decisions were about purchase of property (s. 9) or employment advertisements (s. 11).

EMPLOYMENT

Employment cases totalled 34 of the 48 final decisions (71%). Thirteen (38%) were found to be justified. Another employment case was found justified under s. 12, lower rate of pay based on sex. The vast majority of the employment cases (97%) were on the grounds of disability or sex.

Final Decisions

Disability Complaints

Twenty (59%) of the employment decisions involved allegations of disability discrimination, and in 9 of those (45%), discrimination was found to be proven. Sixteen decisions involved only the ground of physical disability, with 5 justified (31%), and four involved both physical and mental disability, each justified.

Cases of Note:

The respondents knew of the complainant's depression, and it was a factor in the respondents decision to withdraw a job offer and then terminate her. While medical evidence to establish a mental disability must be reliable, it need not be from a psychiatrist or psychologist. The type of evidence required will depend on the nature of the mental disability. In this case, the Tribunal accepted the general practitioner's evidence that he was qualified to diagnose major depression. It rejected the argument that because the employee was able to work, her depression was not a disability. The fact that a person is able to continue working is not inconsistent with a conclusion that a mental disability exists, just as many physical disabilities can be controlled and only cause occasional impairment. The complainant did not need to prove that her depression impaired her work performance, just that her depression, actual or perceived, was a factor in the employer's decisions. The Tribunal awarded lost wages, expenses and $12,500 for injury to dignity, feelings and self-respect. (*Bertrend v. Golder Associates*, 2009 BCHRT 274)

The union represented four mill workers on long-term disability leave, alleging the employer had discriminated against them based on physical and mental disability when it terminated them for non-culpable absenteeism. The Tribunal accepted that if an employer has in place, and regularly follows, a *bona fide* termination program for non-culpable absenteeism, then the application of that program to an individual employee, even if it results in the loss of entitlement to severance pay, is not discrimination. Here, however, the Tribunal found that the termination program itself was *bona fide*, while its application was not. Rather, the employer had rushed to terminate the employees before the mill was closed or the closure was announced, with the consequence that the employees would not be paid severance when the mill closed. The Tribunal ordered the mill workers to be reinstated to their employment status with credit for lost seniority. The Tribunal ordered that the mill workers be paid severance and amounts for their individual injury to dignity, feelings and self-respect ranging from $5,000 to $20,000. (*USWA, Local 1-423 v. Weyerhaeuser Company*, 2009 BCHRT 328)

Duty to Accommodate

The employer failed to accommodate an employee with a degenerative back problem in the months leading up to an approved medical leave on Employment Insurance benefits. Arrangements were not made to assist her to perform her work, and the employer did nothing in response to the information contained in a doctor's note it sought. It also cancelled her group insurance benefits without discussing the impact of her medical leave on those benefits and provided inaccurate information to the insurance provider. The Tribunal awarded expenses and $5,000 for injury to dignity, feelings and self-respect. (*Matonovich v. Candu Glass and Marklund (No. 6)*, 2009 BCHRT 145)

The Tribunal found that the employer knew about the complainant's back problems and unreasonably issued a Record of Employment stating he quit. The Tribunal rejected the employer's allegation that he did not provide medical information or stay in contact. The employer failed in its duty to accommodate by making no inquiries about the complainant's medical condition or ability to return to work, either in his

own or a modified position. The Tribunal awarded the complainant damages wage loss and $5,000 for injury to dignity, feelings and self-respect, but declined to award reinstatement. (*Wyse v. Coastal Wood Industries*, 2009 BCHRT 180)

The employer initially accommodated the complainant's sensitivity to light as a result of an injury by providing inside duties, but then insisted on regular duties without getting medical information necessary to determine if they could accommodate him. The employer failed to consider possible accommodations, and reduced his hours, removed him from the work schedule and then gave him a Record of Employment stating he quit. Because the complainant did not seek an award for injury to dignity, feelings and self-respect, none was awarded. (*Roberts v. T. MacRae Family Sales dba Canadian Tire and MacRae*, 2009 BCHRT 181)

The complainant had a degenerative visual impairment. The Tribunal found that the employer's refusal to allow her to return to work after a disability leave was *prima facie* discriminatory. The employer did not try to accommodate her in her previous or in another position, and the eventual return to work plan it developed was deficient. The Tribunal awarded significant wage loss and damages in the amount of $30,000 for injury to her dignity, feelings and self-respect, but declined to award future wage loss. (*Kerr v. Boehringer Ingelheim (No. 4)*, 2009 BCHRT 196, upheld on judicial review *Boehringer Ingelheim (Canada) Ltd./Ltée. v. Kerr*, 2010 BCSC 427. A Notice of Appeal has been filed)

The Tribunal found that the employer discriminated against the complainant when it refused to allow her to return to work after she submitted medical clearance of fitness to return. The Tribunal rejected the employer's argument that she was a casual employee who was not entitled to any hours on her return to work. The employer admitted that it could have accommodated the complainant by providing a special chair at her work station. The Tribunal reduced its wage loss award for failure to mitigate, and awarded $2,000 as damages for injury to dignity, feelings and self-respect. (*Mahowich v. Westgate Resorts dba Red Coach Inn and Carhoun (No. 2)*, 2009 BCHRT 247)

The complainant's mobility was affected by a back injury and she needed to alternate between standing and sitting. Her employer constantly assigned tasks that did not allow this accommodation, removed her stool, and criticized her slow movements. The employer viewed her as "lazy" and fired her, claiming it believed she was not "mentally ready" for work. This unfounded belief could not justify the termination and the evidence did not support the employer's claim that they went out of their way to accommodate her. The employer mistakenly believed they could terminate an employee during a probationary period without meeting the *Code*'s obligations. The Tribunal ordered compensation for wage loss and expenses. While the Tribunal accepted the complainant's evidence about her hyper-vigilance when starting her subsequent job, an expert opinion would be required to prove that the termination caused her incapacitation for the following year. Taking into account the complainant's vulnerability as she re-entered the workforce after a lengthy period of rehabilitation, the employer's lack of regard for her sense of dignity, the devastating effect the abrupt and unfounded termination had on her self-respect, and the humiliation she suffered due to the employer's false statements on her record of employment, the Tribunal awarded her $8,000 for injury to her dignity feelings and self-respect. (*Hurn v. Healthquest and others*, 2009 BCHRT 435)

Duty to Accommodate Satisfied

The Tribunal dismissed a complaint where the employer took reasonable steps to accommodate the complainant's back injury and provided her with a

harassment free workplace on the basis of disability and sex. The employer, among other things, paid for multiple assessments by qualified specialists, assigned modified work recommended by the specialists, allowed transfers to other positions and maintained her extended health benefits when she chose to leave active employment. (*Neumann v. Lafarge Canada (Richmond Cement Plant) (No. 6)*, 2009 BCHRT 187)

REQUEST FOR MEDICAL EVALUATIONS REASONABLE

An employee, off work for the stated reason of "medical stress leave" set out in a doctor's note, was unable to complete a functional capacity evaluation and refused to attend an independent medical evaluation. The Tribunal found the employer's request for these evaluations reasonable as it needed information to determine if he could return to work, in what capacity, and whether accommodations might be required. All parties involved in a search for an accommodation must participate meaningfully in the process. Ultimately, the complaint was not justified. (*Sluzar v. City of Burnaby (No. 3)*, 2010 BCHRT 19)

EMPLOYMENT WARNINGS

The complainant and his employer settled a complaint of discrimination on the basis of physical disability. Thereafter, he filed another complaint alleging further discrimination, and claiming retaliation for filing the original complaint. All allegations were dismissed on a preliminary basis, except one related to a warning letter the respondent sent regarding non-culpable absenteeism. The Tribunal concluded that putting the complainant on notice that his employment could be in jeopardy if his attendance did not improve was not discrimination. (*Horn v. Norampac Burnaby, a Division of Cascades Canada (No. 2)*, 2009 BCHRT 243)

After he returned from medical leave, with an accommodation, the employer terminated the complainant for poor performance. He argued that the employer should have inquired whether his disability affected his performance and warned him before firing him. The Tribunal found that there was nothing in the complainant's behaviour that alerted, or should have alerted, the respondent that his physical disability was affecting his job performance. An employer who grants an employee the accommodation sought is not obliged to make any further inquiries, where there is no evidence of a change in behaviour or job performance. While the employer could have warned him that his employment was in jeopardy and asked him if he required further accommodation or whether his poor performance was affected by his disability, the fact that it did not take these steps does not amount to a failure to accommodate contrary to the *Code*. (*Stevenson v. Dave Wheaton Pontiac Buick GMC (No. 2)*, 2010 BCHRT 67) (See also *Sluzar v. City of Burnaby (No. 3)*, 2010 BCHRT 19)

CONSTRUCTIVE DISMISSAL DUE TO DISABILITY

The complainant's manager perceived that her Parkinson's disease affected her memory and work performance, and proposed a four day work week. The complainant rejected this proposal twice but eventually reduced her work week using an unpaid day, rather than using sick time, because her manager pursued the issue. Although the employer believed its actions were beneficial to the complainant, it had not requested medical information or identified a serious safety issue and did not pay her. In the absence of medical information, the Tribunal could not infer either that the complainant's condition or medication affected any aspect of her work. Her performance was seen as satisfactory until she disclosed her disability, and there were reasonable explanations for a perceived decline in performance not related to it, and the employer made a stereotypical assumption that her performance must be related to her disability.

After the reduction in her work week, she filed an internal human rights complaint and left work. She was first told she could use sick leave pending mediation, but was then told she could not and had to return to work. Her offer to provide medical information was rejected. Her manager decided they could not work together effectively and she was offered a buy-out. In all of the circumstances, she was entitled to resign and not return to a poisoned working relationship. Her loss of employment flowed directly from the imposition of the reduced work week and resulting damaged relationship with her manager. The Tribunal awarded compensation for lost wages and $10,000 for injury to dignity, feelings and self-respect. The complainant filed an application for judicial review which was dismissed. A Notice of Appeal has been filed. (*Morgan-Hung v. Provincial Health Services and others (No. 4)*, 2009 BCHRT 371)

LACK OF SENIORITY ACCRUAL WHILE ON LEAVE NOT DISCRIMINATORY

The Tribunal found that the complainant's failure to accrue seniority while on unpaid sick leave and long-term disability was not discriminatory. She established *prima facie* discrimination, as her disability was a factor in the suspension of her seniority, however, the employer demonstrated a *bona fide* occupational requirement. When considering the operation of the collective agreement as a whole, a system of benefits and trade-offs had been negotiated in good faith, which linked seniority accrual for both compensation and access purposes in an integrated manner. The Tribunal found that it would unduly interfere with the operation of the collective agreement to disentangle compensation-related from access-related benefits and would fundamentally alter the earned benefit concept of seniority accrual under the collective agreement. Further, the Tribunal said that this was not a case where no reasonable steps were taken to accommodate the complainant's disabilities. Rather, substantial benefits had been negotiated to support and accommodate her during various periods of absence. (*Goode v. Interior Health Authority*, 2010 BCHRT 95)

SEX DISCRIMINATION

Thirteen decisions (38%) cited the ground of sex, with five (36%) found to be justified.

Four of the cases involved allegations of sexual harassment. Two were justified.

On hiring a 24 year old woman in her first professional employment, the complainant's 56 year old boss hugged and kissed her. He called her and asked her out to coffee before her first day of work and then hugged and kissed her again, and asked personal questions. She decided not to return to the workplace. The Tribunal found the complainant credible and that she was sexually harassed. It ordered compensation for wage loss and $6,000 for injury to dignity, feelings and self-respect, taking into account the nature and duration of the harassment, the age disparity, the complainant's vulnerability, and that as a result of the harassment, she sought counselling from her pastor and became more wary and untrusting. (*Kwan v. Marzara and another (No. 3)*, 2009 BCHRT 418)

An employee was sexually harassed by the owner of the company, which detrimentally affected her work environment and she resigned. The conduct was ongoing, included comments, touching and sexual invitations, and culminated in the owner forcing his way into her hotel room and aggressively kissing and groping her while they were out of town on business. The Tribunal awarded $25,000 in damages for injury to dignity, feelings and self-respect, the largest award in a sexual harassment complaint to date. This was due to the significant physical nature of the harassment and the fact that, due to the nature of the work, the complainant was isolated and vulnerable. (*Ratzlaff v. Marpaul Construction and Rondeau*, 2010 BCHRT 13)

Three of the cases involved allegations of pregnancy discrimination. One, also on the ground of family status, was justified.

The Tribunal found that the employer discriminated against the complainant because of her pregnancy including by not consulting with her about significant changes that might impact her job duties and earning potential, and establishing a new sales structure while she was on maternity leave. The changes while she was on leave included the elimination of her management duties, and denying her past flexibility with respect to working from home and scheduling her own time. The employer also discriminated on the basis of family status when it reneged on its promise of permanent flexible working conditions to allow her to meet her childcare obligations. The Tribunal awarded $10,000 as damages for injury to dignity, feelings and self-respect, but declined to exercise its discretion to award wage loss to her because of her failure to mitigate. (*Brown v. PML Professional Mechanical and Wightman (No. 4)*, 2010 BCHRT 93)

The one case alleging lower rate of pay based on sex was justified. The employer discriminated when it paid a female employer a lower hourly rate than it paid to men doing similar or substantially similar work. A judicial review has been filed. (*Pennock v. Kraska dba Centre City Drywall (No. 3)*, 2009 BCHRT 192)

Of the other six complaints of sex discrimination, one was justified.

A male registered care aide who was not hired to work in a residential care home was discriminated against in employment based on sex. The complainant, who was tall and muscular, was as qualified as other applicants, but was not hired because of the respondent's stereotypical gender-related assumptions that he was aggressive and thus unsuitable for hire. The Tribunal ordered lost wages, expenses and $5,000 as damages for injury to dignity, feelings and self-respect. (*Morrison v. Slizeck Investments dba AdvoCare Home Health Services and Pistak and Wright-Day*, 2009 BCHRT 298)

OTHER GROUNDS

Two decisions involved the grounds of race, colour, ancestry and place of origin. Both complaints were dismissed. Age was a ground two cases, both dismissed. Religion and sexual orientation were grounds in one complaint (also brought on other grounds), which was dismissed.

Family status was a ground in one complaint (also brought on the ground of sex), which was justified. (*Brown v. PML Professional Mechanical and Wightman (No. 4)*, 2010 BCHRT 93. See summary above.)

In another family status complaint, the complainant alleged that his employer discriminated on the basis of family status when it required him to work overtime and fired him when he refused, as overtime interfered with his ability to care for his young son. The Tribunal dismissed the complaint. Neither the pattern of the employee's work nor his childcare demands or arrangements had changed. Nothing took the case out of the ordinary obligations of parents who must juggle the demands of their employment and the provision of appropriate childcare, nor did the facts did establish a serious interference with a substantial parental or other family duty or obligation, as the case law requires. (*Falardeau v. Ferguson Moving and Storage and Reano and MacInnes*, 2009 BCHRT 272)

SERVICES

The Tribunal decided six complaints in the area of services. Three of the six complaints (50%) were justified.

Two of the unsuccessful complaints involved allegations of sex discrimination in a bar or restaurant (in one of these the complainants did not appear at the hearing). The other involved an allegation of discrimination on the grounds of race and ancestry against a government agency.

The Tribunal dismissed a complaint in the area of services based on sex against a bar that banned sleeveless "muscle" shirts on men, stating the prohibition was to discourage gang members and aggressive patrons. The Tribunal decided that the person involved in the complaint was not adversely affected by the prohibition. Even if he had been, the prohibition was a *bona fide* reasonable justification because it was reasonably necessary to maintain a safe night club and making an exception was not possible without undue hardship. (*Payne obo Payne v. Blue Grotto and Willey (No. 2)*, 2010 BCHRT 60)

Each of the successful complaints was on the ground of disability. They involved municipal by-law enforcement, a hunting permit scheme, and services provided by a strata corporation.

BY-LAW

Two complainants in a same-sex relationship alleged that City discriminated against them on the basis of their sexual orientation, marital status, and physical disability. One had a Health Canada permit to grow marijuana because of his physical disability. When the renewal of the permit was delayed, and knowing the history of the complainant's valid permits and that renewal was pending, the City enforced a bylaw prohibiting illicit marijuana cultivation and ordered the complainants to vacate their home and disconnected the water supply.

The Tribunal found that City had discretion in applying the bylaw, and failed to take into account the complainant's physical disability and that the production and possession of marijuana was to treat its symptoms when it decided to enforce the bylaw. The City failed to show how it would have caused undue hardship to accommodate the complainant. The City discriminated against the complainant based on physical disability, but not marital status or sexual orientation. The Tribunal ordered the ameliorative orders sought by the complainants. (*James and Moynan v. City of Salmon Arm*, 2009 BCHRT 285)

HUNTING PERMITS: ACCOMMODATION FOR HUNTERS WITH DISABILITIES

The Ministry of the Environment restricted motor vehicle access for hunting in designated areas. Disabled hunters were adversely affected by restrictions made to protect ecosystems and wildlife habitats, and to limit hunting pressures on wildlife. The main issue was whether disabled hunters were reasonably accommodated.

The Ministry discussed accommodations for motor vehicle access to the designated areas for disabled hunters and it largely met its obligation to allow access to areas inaccessible to them because of their disabilities. The Ministry is not obliged to provide a perfect accommodation or increase disabled hunters' competitive advantage. The speed, distance and weight restrictions were reasonably necessary and sufficiently accommodated disabled hunters' need to travel in motor vehicles for the purpose of hunting. A 100-metre walking requirement was also reasonably necessary; it was used only as a guideline and did not determine if motor vehicle access would be granted.

However, the Tribunal was not satisfied that the restriction to one non-hunting companion sufficiently accommodated disabled hunters. Allowing one hunting companion to travel in the motor vehicle would not cause undue hardship to the environment and, while the Ministry does not want to benefit hunting companions from hunting on the disabled hunter's access permit, this could be addressed in other ways,

such as license restrictions. Pursuant to the parties agreement, the appropriate remedies are to be decided separately. (*Hall v. B.C. (Min. of Environment) (No. 5)*, 2009 BCHRT 389)

STRATA CORPORATIONS

The complainant's lung disease was worsened by exposure to air conditioning. He installed a solar screen on the front window of his strata unit, which the strata council advised was contrary to strata by-laws and ordered removed. The Tribunal found that the strata corporation discriminated in the area of services based on physical disability, as it failed to demonstrate that it would involve undue hardship to allow the solar screen to remain on the front window of the home. The Tribunal allowed the reinstallation of the screen, and ordered the strata to deal with future applications from owners to alter the exterior of their homes in accordance with its obligation not to discriminate contrary to s. 8 of the *Code*. It awarded $2,500 for injury to the complainant's dignity, feelings and self-respect. (*Shannon v. The Owners, Strata Plan KAS 1613 (No. 2)*, 2009 BCHRT 438)

The Tribunal dismissed a complaint where a caretaker alleged the strata council discriminated by terminating him after conducting a survey where an owner, who was not on the council, may have expressed a discriminatory view. It did not infer that the strata council's decision was tainted by the owner's views. It concluded that it would be impossible for strata councils to get input of owners otherwise, which would be undemocratic and contrary to the way strata corporations are supposed to be run. This was not a case where one or two people with discriminatory motivations were able, through influence or power, to obtain a discriminatory result. (*Gordon v. AWM-Alliance Real Estate Group and The Owners, Strata Plan BCS 1461 (No. 2)*, 2009 BCHRT 279)

TENANCY

The Tribunal decided six complaints in the area of tenancy. Two were proven: one on the grounds of mental disability and family status, and one on the grounds of disability, lawful source of income, and sexual orientation. Four were dismissed. The grounds alleged were race and place of origin; race, colour and sex; physical disability; and sexual orientation. One of the unsuccessful complaints (physical disability) also included an allegation of discrimination in relation to a publication (s. 7).

The complainants received government benefits as they were unable to work due to disabilities. One roommate is gay and one is two-spirited. Their landlord and his son, acting as agent for him, discriminated in regard to their tenancy on the basis of sexual orientation, disability and lawful source of income. They used homophobic names, referred to them pejoratively in regard to having AIDS, disparaged their source of income, and physically assaulted them so that they were forced move. This had a profound negative impact on their self-esteem, sense of trust and safety, human dignity and health. The Tribunal ordered the respondent to pay each of the complainants $15,000 for injury to dignity, feelings and self-respect. A judicial review has been filed. (*Bro and Scott v. Moody (No. 2)*, 2009 BCHRT 8)

A 90 year old mother lived with, and was dependant on, her son, who suffered from mental illness and multiple physical disabilities. They complained they were adversely affected when the landlord of their residential trailer park failed to respond to repair requests, actively avoided the son, and encouraged other tenants to do the same, creating an intolerable living environment, and then evicted them. The landlord drew negative inferences about the son's behaviour based on her perceptions of his mental disability, and this played a central role in her decision to evict the complainants. There was no factual foundation for the landlord to have a reasonable

belief that the son's behaviour was actually a threat to the residents' safety. Her view was based on speculation, exaggeration, rumour, and a stereotypical view that some mentally ill persons are unpredictable, dangerous and a safety threat. A landlord has responsibilities to all tenants, including addressing safety concerns, but must also ensure compliance with the *Code*. The Tribunal ordered compensation for expenses and for a rent and utility differential for one year. Compensation of $9,000 for the son, and $6,000 for the mother was ordered for injury to dignity, feelings and self-respect. Both suffered considerable emotional distress during and after the events. A judicial review has been filed. (*Petterson and Poirier v. Gorcak (No. 3)*, 2009 BCHRT 439)

MEMBERSHIP IN AN OCCUPATIONAL ASSOCIATION

One decision dealt with membership in an occupational association.

The Law Society of BC, which is responsible for ensuring applicants are fit to practice law, discriminated on the ground of mental disability by requiring applicants for membership to disclose any treatment for certain listed psychiatric conditions. The Law Society assumed that the disabilities concerned are a risk to the public and conducted a more intensive and intrusive evaluation of a candidate who indicated that they had received treatment for psychiatric conditions. The review could result in delay of approval for membership and conditions on membership. This adverse treatment related to a disability or perceived disability must be viewed in the context of the historical disadvantage suffered by the mentally ill, and the significant stigma involved.

While the fitness standard was adopted in good faith, the Law Society did not show that the question was reasonably necessary to ensure fitness to protect clients and the public. It might have considered other approaches with a less discriminatory effect. Of the illnesses listed, "paranoia" is not a psychiatric diagnosis, and "major affective disorder" appeared to be included due to staff concerns rather than on the recommendation of experts. Other conditions that might affect the ability to practice law, such as delusional disorders, were excluded. There was no time limit involved despite the fact that the longer the remission, the less likely there will be a recurrence. It was not clear that the question effectively identified risk factors, as significantly fewer applicants reported a major disorder than the statistical occurrence in the general population and information suggested a higher percentage of law students and lawyers might suffer from depression. Therefore, the question as formulated had a discriminatory effect not justified by the Law Society.

The complainant confirmed he had suffered from depression which, coupled with other career events, resulted in an extensive review of his employment record. The Law Society required an independent psychiatric assessment, a more intrusive and invasive of his privacy than other options. It required closer to an absolute assurance rather than a reasonable assurance of medical fitness to practice law. The remedy will be determined at a later hearing. (*Gichuru v. The Law Society of British Columbia (No. 4)*, 2009 BCHRT 360)

OTHER

One decision, also in the area of tenancy, dealt with publication; it was dismissed. Two, also in the area of employment, alleged retaliation; both were dismissed.

COSTS

Claiming poor health, the complainant withdrew her complaint the day before a three-week hearing was due to begin and after settlement negotiations failed. The Tribunal did not accept that proceeding would

have been detrimental to the complaint's health, and awarded $1,500 in costs against her for abruptly terminating her complaint at the last minute, which had an adverse impact on the respondent and the Tribunal. (*Richardson v. Strata Plan NW1020 (No. 3)*, 2009 BCHRT 158)

In a previous decision, the Tribunal ordered the respondents to pay half of the complainants' actual costs until a particular point in the hearing. Section 37(4) costs awards are punitive, not compensatory, and are a tool to control the integrity of the Tribunal's processes. Unlike civil proceedings, costs do not "follow the cause". The success of a party is not determinative in awarding costs. A successful party who engages in improper conduct may be be subject to a costs order. The respondents were given an opportunity to make submissions about the reasonableness of the complainants' claim for actual costs, including whether they reasonably reflected the issues, the complexity of the proceedings, the nature of the improper conduct involved and its impact, and the time spent in preparation and hearing. (*Construction and Specialized Workers' Union Local 1611 obo Foreign workers v. SELI Canada, SNCP-SELI Joint Venture and SNC Lavalin Constructors (Pacific) (No. 9)*, 2009 BCHRT 161)

The respondent waited until the hearing to apply to dismiss the complaint on the basis it was federally regulated and therefore outside the Tribunal's jurisdiction. This caused unnecessary costs to the complainant and wasted the Tribunal's resources. Taking into account the complainant's actual costs and the respondent's improper conduct, the Tribunal awarded $6,500. A judicial review has been filed. (*Chaudhary v. Smoother Movers (No. 2)*, 2009 BCHRT 176)

The complainant settled an age discrimination complaint with the University, which allowed her to work past age 65, until June 2008. When legislation eliminated mandatory retirement in January 2008, the complainant filed a second complaint alleging that the enforcement of the settlement agreement was age discrimination. The Tribunal decided that proceeding with the complaint would not further the purposes of the *Code*, or in the alternative the complaint had no reasonable prospect of success because of the settlement, but declined to order costs against either party. The complainant had not engaged in improper conduct and significant weight was placed on the intervening amendment to the *Code*. (*Dyson v. University of Victoria*, 2009 BCHRT 209)

The Tribunal ordered $3,000 in costs where the complainant filed his complaint improperly to get a financial windfall similar to the settlement of a previous complaint, punish his employer, affect his employment conditions, and protect himself from the consequences of his behaviour. He made a serious but unsubstantiated allegation that his life was deliberately endangered, displayed a reckless disregard for the truthfulness of his testimony, and made malicious remedial requests, including that two employees be fired. (*Horn v. Norampac Burnaby, a Division of Cascades Canada (No. 2)*, 2009 BCHRT 243)

The respondent disclosed settlement discussions from a Tribunal-assisted mediation on a provincial media website and to a local newspaper reporter. The Tribunal awarded $2,000 costs against the respondent because it breached the Tribunal's confidentiality rule that settlement discussions and a signed agreement. The Tribunal's decision was overturned on judicial review and an appeal has been filed. (*Pivot Legal Society and VANDU obo individuals who are, or appear to be street homeless and/or drug addicted v. Downtown Vancouver Business Improvement Association and City of Vancouver (No. 2)*, 2009 BCHRT 372)

The Tribunal ordered $1,000 in costs because the complainant made false statements to shore up his complaint, was disrespectful about the religious

adequacy of witnesses, made inappropriate and unfounded allegations that those individuals only provided evidence because of threatened job loss, and attempted to intimidate a witness. (*Grewal v. Simard Westlink and Hensen and Bertran*d, 2010 BCHRT 51)

The Tribunal ordered $10,000 in costs where a respondent swore an inaccurate and misleading affidavit on an application to dismiss. The *Code*'s "direct access" system, results in hundreds of applications to dismiss complaints each year. In considering those applications, the Tribunal must rely on the information provided by the parties, often in affidavit form. Opposing parties rarely seek to cross-examine affiants and filing a misleading or inaccurate affidavit could lead to a complaint being dismissed unfairly, with little recourse for the complainant. Even successfully responding to such affidavits will put a party to additional and unnecessary expense. Given the heavy reliance on materials filed on preliminary applications to dismiss, the Tribunal must be vigilant to ensure that any impropriety is met with serious sanctions to deter others from engaging in similar conduct. (*Brown v. PML Professional Mechanical and Wightman (No. 4)*, 2010 BCHRT 93)

The Tribunal refused to award costs against a lawyer who represented a party and was not himself a party in the proceedings. It refused to add the lawyer as a party to the complaint. A lawyer who is not personally a complainant or a respondent is not a proper party. Here, the complainant engaged in improper conduct that could warrant a costs award against her. She was less than candid and forthright about the facts underlying her application to file her late complaint with the Tribunal. Her reliance on her counsel's advice did not absolve her of a costs award. A party is responsible for the improper conduct of their counsel while acting on their behalf. (*Wells v. UBC and others (No. 4)*, 2010 BCHRT 100)

LEGAL EXPENSES

The Tribunal's case law on whether it has the authority to order compensation for a complainant's legal expenses under s. 37(2)(d)(ii) of the *Code* is in a state of uncertainty.

In *Senyk v. WFG Agency Network (No. 2)*, 2008 BCHRT 376, pursuant to its power to order expenses arising from the breach of the *Code*, the Tribunal ordered a respondent to pay a complainant's reasonable legal expenses as a remedy for discrimination. Subsequently, one of the cases that the Tribunal relied on to support its legal expenses order was overturned. (*Canada v. Mowat*, 2009 FCA 309).

Following the release of *Mowat*, in *Kerr v. Boehringer Ingelheim (Canada) (No. 5)*, 2010 BCHRT 62, the Tribunal determined that it did not have jurisdiction to order a respondent to pay for legal expenses incurred by a complainant in the processing of her human rights complaint.

After the *Kerr* decision was released, the Supreme Court of Canada granted leave to appeal in *Mowat*. The hearing is scheduled for December 2010.

There are several other applications for legal expenses currently before the Tribunal. With agreement of the parties, those applications have been held in abeyance pending release of the Supreme Court of Canada's decision in *Mowat*.

Judicial Reviews and Appeals

Judicial Reviews and Appeals

The *Code* does not provide for appeals of Tribunal decisions but judicial review to the B.C. Supreme Court, pursuant to the *Judicial Review Procedure Act* and the *Administrative Tribunals Act* ("*ATA*") is available. Applications for judicial review must be filed within 60 days.

Judicial review is a limited type of review. Generally, the Court considers the information that the Tribunal had before it and decides if the Tribunal made a decision within its power or in a way that was wrong.

The Court applies the standards of review in s. 59 of the *ATA*, which set out when the Tribunal's decision may be set aside or when it should stand even if the Court does not agree with it. If the Tribunal's decision is set aside, the Court may send it back to the Tribunal for reconsideration, or, if there can only be one right answer to the issue, the Court may supply the answer.

To assist parties, the Tribunal provides information sheets on how to seek judicial review and explains the Tribunal's role.

The Supreme Court's decision may be appealed to the BC Court of Appeal. A Court of Appeal decision can only be appealed to the Supreme Court of Canada if that Court agrees to hear it.

Judicial Reviews in BC Supreme Court

This year 24 petitions for judicial review were filed in the Supreme Court, an increase of 2 from 2008/2009. Parts of two petitions filed after the statutory time limit in the *ATA* were not accepted by the court.

The Court issued 11 judgments, in which 8 petitions were unsuccessful. One of the 3 successful petitions was overturned on appeal. In that case, the Court had remitted the Tribunal's decision back for reconsideration, and later held that the Tribunal was not in contempt when it subsequently granted an application delaying reconsideration until the outcome of the appeal. (*Armstrong v. British Columbia (Ministry of Attorney General*) (November 11, 2009, Victoria Reg. No. 08 1163, Johnston, J.)

Review of Final Decisions

In an oral decision, the Court upheld a Tribunal decision dismissing a complaint of tenancy discrimination, on the ground of family status and sexual orientation. Credibility issues and conflicting evidence as to the facts were not enough to convince the Court that the Tribunal's findings were made without evidence or otherwise unreasonable. The Court was also satisfied that the Tribunal had applied the proper test for discrimination, and was not biased or unfair. (*Ross and Dadvand v. BC Human Rights Tribunal and others*) (May 1, 2009, Vanc. Reg. No. L042211, Walker, J.)

Where much of the evidence was circumstantial, the Court held that the Tribunal was entitled to draw on its expertise to conclude that race, and family and marital status were factors in the complainants' loss of employment. It refused to interfere with the Tribunal's findings of fact and inferences as they were reasonable and within the range of acceptable outcomes. (*Langtry Industries Ltd. v. British Columbia (Human Rights Tribunal)*, 2009 BCSC 1091

A housing cooperative allowed only one member per residential unit. The Court found that the Tribunal erred in finding that the widow of a member was discriminated against on the grounds of marital or family status when she had to apply for membership to continue to occupy the suite and was unsuccessful. Under traditional human rights analysis, the "one member rule" was not discriminatory because it applied to the complainant because she was a non-member, not because of a change in her marital status. Under a comparator group analysis, the

comparator group was non-member single persons residing with members. She suffered no discrimination because, like all non-members whether single or married, she had to apply for membership when the member she lived with died. The Supreme Court of Canada decisions in Dunsmuir and Khosa did not change BC law that the correctness standard applies to all questions of mixed fact and law. An appeal has been filed. (*Lavender Co-operative Housing Association v. Ford*, 2009 BCSC 1437)

The Court found that the Tribunal was not biased or unfair when it decided that an employer discriminated on the basis of race, religion, place of origin and political belief when it did not deal with the poisoned work environment of an Arab Muslim employee who had been reported to police by a co-worker after the September 11, 2001 terrorist attacks. The Court refused to interfere with the Tribunal's discretionary award for injury to dignity, feelings and self-respect, finding that it had not fettered its discretion. It also found no basis to intervene in the discretionary decision to award costs against the employer for misconduct. (*Kinexus Bioinformatics Corporation v. Asad*, 2010 BCSC 33)

The Court upheld the Tribunal's finding of discrimination where an employer did not take meaningful steps to determine if it could accommodate an employee's visual impairment, once she was ready to return to work after a disability leave. It disagreed that the test for prima facie discrimination required the complainant to provide objective evidence that she was able to work, as this would insert the accommodation analysis into the prima facie test and place a greater burden on her than the law required at any stage. Even at the accommodation stage, the employee was not responsible for proving objective evidence of ability to work, as that was for the employer to assess and decide. Further, for the employer's argument to succeed, the court had to accept its version of the facts in preference to the Tribunal's findings. This was not the court's function nor within its jurisdiction on judicial review. An appeal has been filed. (*Boehringer Ingelheim (Canada) Ltd./Ltee. v. Kerr*, 2010 BCSC 427)

PRELIMINARY DECISIONS

The Tribunal correctly refused to accept part of a complaint alleging discrimination by a Provincial Court Judge during a trial. The complainant was a lawyer who alleged that the judge attacked her personally when she tried to schedule a matter for half days to accommodate her physical disability. The principle of judicial immunity applied because the judge was acting within his jurisdiction. (*Gonzalez v. Ministry of Attorney General*, 2009 BCSC 63)

The Tribunal dismissed a complaint of racism in employment under s. 27(1)(c) on the basis that it had no reasonable prospect of success. It found that the complainant had misconducted himself by filing inappropriate material, but did not decide whether the complaint could also be dismissed for this reason under s. 27(1)(e), as being filed in bad faith or for improper motives. The Court upheld the Tribunal's decision under s. 27(1)(c) as the Tribunal had made no error respecting the legal test to be applied and had not considered irrelevant factors. The Tribunal could make a finding of misconduct on an alternate ground, without relying on it in the result. An appeal has been filed. (*Gichuru v. British Columbia (Workers Compensation Appeal Tribunal)*, 2009 BCSC 904)

A complainant alleged that she and her same sex partner were discriminated against when a comedian performing in a restaurant made homophobic and sexist comments, and was physically aggressive. The Tribunal refused a preliminary application to dismiss the complaint against the comedian, the restaurant and its owner/manager. It found that the latter were service providers and that the comedian was their agent or employee. It had jurisdiction because, if true, the acts alleged could constitute a breach of

the *Code*, there was a reasonable prospect that the complaint could succeed and the remedies under the *Code* could benefit the complainant. On judicial review, the comedian argued he was providing a service, and that his actions were protected expression under the *Charter*. The Court did not accept that these were questions of pure law that could be answered without the Tribunal first having the opportunity to do so. It remitted the jurisdictional aspect back to the Tribunal for reconsideration on more fulsome argument, including any *Charter* arguments. (*Earle v. British Columbia Human Rights Tribunal, Pardy, Ismail and Zesty Food Services Inc*.) (September 10, 2009, Vanc. Reg. No. S085249, Willcock, J.)

A lawyer alleged that the Law Society retaliated against him for filing a complaint against it, when it chose not to proceed with a professional misconduct complaint that he made against his former supervisor, who was also a lawyer. The Court upheld the Tribunal's dismissal of the retaliation complaint under s. 27(1)(c), finding that its reasons were thorough and the outcome wholly reasonable. An appeal has been filed. (*Gichuru v. The Law Society of British Columbia and BC Human Rights Tribunal*) (October 2, 2009, Vanc. Reg. No. S087831, Pitfield, J.)

The Court upheld the Tribunal's dismissal of a complaint under s. 27(1)(b) of the *Code*, confirming it correctly found the allegations did not disclose a connection between the complainant's mental disability and adverse treatment in his employment or his membership in a union. (*Engler v. BC Human Rights Tribunal*) (March 11, 2010, Vanc. Reg. No. S - 094582, Grauer, J.)

COURT OF APPEAL

This year the general upward trend in the number of judicial reviews generated an increase in appeals. Seven appeals were filed, including an application for leave to appeal a ruling made during a judicial review. The Court of Appeal issued four judgements. It upheld one final Tribunal decision, and two of three of its preliminary decisions.

FINAL DECISIONS

The Court restored the Tribunal's final decision that there was no discrimination on the basis of sex where a man had to pay for a PSA screening test for prostate cancer, while mammograms and pap tests to screen for women's cancers were free. It held that the Tribunal correctly set out the three part test for prima facie discrimination. The third step, which requires a link or nexus between the protected ground or characteristic and the adverse treatment, did not require the complainant to show, as a separate requirement, that the government's decision not to fund PSA testing was based on arbitrariness or stereotypical presumptions. (*Armstrong v. British Columbia (Ministry of Health*), 2010 BCCA 56)

PRELIMINARY DECISIONS

The Court affirmed the Tribunal has jurisdiction to dismiss a complaint under s. 27(1)(d)(ii) for failure to accept a reasonable settlement offer. The respondent's offer approximated the remedy the complainant wanted, but did not include an admission of liability, which the complainant believed would provide an advantage in related court proceedings. The Tribunal's decision was not patently unreasonable and the high level of deference due to it on this standard was not changed by the Supreme Court of Canada decision in *Dunsmuir*. (*Carter v. Travelex Canada Limited*, 2009 BCCA 180)

On an application under s. 27(1)(c), the Tribunal refused to dismiss a complaint that an insurer's policy making drivers in low velocity collisions go through a separate process for compensation claims was discriminatory, as it was based on a perception that they were not disabled. On appeal, the Court held that the chambers judge applied the proper principles in

deciding that the petition was not premature. It found that the Tribunal misread the *Code* as protecting anyone from being discriminated against on the basis that they were not disabled, and erred in characterizing an insurance company's differentiation between those with compensable injuries and those who are not injured as being discriminatory, when that was its function as an insurer. (*ICBC v. Yuan*, 2009 BCCA 279)

The Court confirmed that the legislature gave the Tribunal jurisdiction to adjudicate a complaint that a Workers' Compensation Board chronic pain compensation policy was discriminatory, even if the Board had already found the policy non-discriminatory. It affirmed the Tribunal's discretion under s. 27(1)(f) to decide whether to hear such complaints and its decision was reviewable on the patent unreasonableness standard. Common law doctrines, particularly those dealing with the finality of litigation such as res judicata and issue estoppel, may guide the Tribunal's exercise of its discretion, but they are neither directly applicable nor determinative. (*Workers' Compensation Board v. British Columbia (Human Rights Tribunal)*, 2010 BCCA 77)

SUPREME COURT OF CANADA

There were no applications for leave to appeal this year.

SPECIAL PROGRAMS AND POLICY

Section 42(3) of the *Code* recognizes that treating everyone equally does not always promote true equality and the elimination of discrimination. The section provides for the establishment of special programs which treat disadvantaged individuals or groups differently to recognize their diverse characteristics and unique needs.

Under the *Code*, applicants may apply for the approval of a special or employment equity program which has as its objective amelioration of the conditions of disadvantaged individuals or groups.

The effective of an approval is to deem the special or employment equity program not to be in breach of the *Code*. All approvals are time-limited and are generally for six months to five years but may be renewed. Employment equity programs are usually approved for several years. Periodic reporting may be a condition of approval.

Special programs do not require Tribunal approval, but are not protected from a human rights complaint if approval is not granted.

NEW SPECIAL PROGRAMS

The Chair approved five new special programs this year.

The College of New Caledonia received a five-year special program approval on a number of terms, including reports to the Tribunal. It may restrict hiring to Aboriginal applicants for a broad range of positions, including employees who provide direct operational, instructional or administrative service to primarily Aboriginal students; employees instructing courses whose content is primarily Aboriginal; and employees offering services or programs funded through Aboriginal-specific funding initiatives. The College also received approval to use language indicating a requirement of Aboriginal heritage, and proof of Aboriginal ancestry. The special program's goal is to close the socio-economic gap between Aboriginal and non-Aboriginal British Columbians by increasing the access, retention, completion and transition opportunities for Aboriginal learners, increasing the receptivity and relevance of post-secondary institutions and programs for Aboriginal learners, and strengthening partnerships and collaboration in Aboriginal post-secondary education.

Special Programs

Thompson Rivers University received five-year special program approval for two special programs allowing it to restrict hiring to a person of Aboriginal descent for the positions of Aboriginal Maternal and Child Health Endowed Research Chair and Aboriginal Transition Planner. The Research Chair will conduct research designed to inform and improve policies and practices related to community and women's health. The Planner will help the university make the campus curriculum and university community welcoming, supportive and positive environments for Aboriginal students to achieve their education goals. The University must report annually to the Tribunal on the positions.

Polaris Employment Services Society is a registered charitable society providing services to job seekers with developmental disabilities. It was granted approval to permit it to hire an individual with a developmental disability to work as a Customer Service Intern. The goal of the position is to provide a paid opportunity for an individual to gain skills in public speaking, customer service and as a greeter in a financial institution. The special program approval was given for the duration of the Intern position, ending December 31, 2009. Mid-term and final reports were required.

Seasons Consulting Group was granted five-year special program approval to allow it to advertise for and hire male candidates to provide certain disabled male clients with one-to-one cognitive and physical rehabilitation and community integration services. As a result of their disabilities, the clients exhibit fear and/or sexual disinhibition with female workers. The special program approval meets the specific needs of its male clients and provides a safe working environment for its employees. Seasons must report annually on the number of staff hired under the special program.

The Tribunal also granted several new special program approvals to organizations with existing approved special programs.

Métis Family Services, which administers child and family protection and care services for the benefit of Métis people, has an existing special program approval allowing it to restrict its services to Métis and to allow hiring preference to Métis for the Executive Director and Family Development Supervisor positions. This year, the Tribunal granted five-year approval to change "Métis" to the term Aboriginal, to specify a preference in hiring in future job postings and to extend the existing approval to all positions.

North Island College has a special program approval to restrict hiring to persons of Aboriginal ancestry for the position of Coordinator, Aboriginal Education in the Port Hardy, Port Alberni and Comox Valley/ Campbell River regions. The Tribunal granted the College's new special program application to allow the same restriction for the positions of Aboriginal Advisors; Faculty, Aboriginal Programming; and Elders. The special program will allow the College to implement effectively its expanded programming in Aboriginal Education, which includes a commitment to provide employment opportunities that reflect cultural diversity in local communities, strengthen relationships with Aboriginal communities, and model success for Aboriginal learners. The approval was granted for five years, and the College is required to report annually to the Tribunal.

The Legal Services Society is an independent, non-profit organization which provides legal aid for residents of British Columbia, particularly those living in poverty. The Society was granted five-year special program approval last year to limit hiring and give preference to people of Aboriginal ancestry for lawyer and staff positions in Terrace and Nanaimo. This year it was also granted approval for a staff position in Port Hardy. The purpose of the Special Program is to improve services to Aboriginal clients.

School District No. 36 (Surrey) has an existing special program approval allowing it to restrict advertising and hiring of 18 Multicultural Support Workers from specific minority cultures and linguistic backgrounds who speak specific languages, and, in some cases, require that the applicant be a member of that community. This year, the Tribunal granted a new five year special program to allow the District to hire a maximum of 24 Support Workers in Schools who speak one or more of the following languages: Russian, Punjabi, Hindi, Urdu, Mandarin, Cantonese, Lao, French, Spanish Karen, Burmese, Korean, Vietnamese, Swahili, Farsi, Azeri, Kurdish, Turkish, Tagalog, German, Somali, Arabic, Dinka, Polish and Taiwanese.

TRIBUNAL MEMBERS

During the 2009-2010 fiscal year, the Tribunal had nine full-time Members including the Chair, who mediate and decide human rights complaints under the *Code*. The Chair was appointed in 2000 and has acted as the head of human rights and equity tribunals in Canada for almost sixteen years. The eight members were qualified and experienced lawyers.

APPOINTMENTS

Members are appointed by the Lieutenant Governor in Council for renewable five-year terms, following a merit-based, multi-step qualification process. Candidates must demonstrate their ability for adjudicative work through decision-writing, situational interviews and peer reviews. Under the *Administrative Tribunals Act*, the Chair may appoint a member for two consecutive six-month terms to address workload issues and the Minister may appoint for temporary terms to address absences. During the 2008-2010 fiscal year, one member was appointed on a five-year term.

CODE OF CONDUCT

The Chair supervises the Members, designates preliminary applications and hearings to be decided by them, and monitors adherence to performance standards and timeliness. Members are subject to a Code of Conduct in the performance of their role, and complaints about the conduct of Members may be made to the Chair. Section 30 of the *Administrative Tribunals Act* requires Members to faithfully, honestly and impartially perform their duties and to maintain confidentiality.

DECISIONS

In making their decisions, Members are required by law to be independent and impartial. Although the Ministry of the Attorney General provides budget funding, the government may not direct or influence Members in their decision-making or otherwise interfere with their independence through administrative and budgetary matters that touch on decision-making.

The Tribunal does not make decisions on human rights complaints on a consensus basis. Each Member decides the matter before them independently and in good faith, according to the law and their own best judgment. To ensure flexibility in the application of the *Code*, Members are not bound by each others' decisions but are bound to follow decisions of the BC courts and the Supreme Court of Canada and may find guidance in decisions of courts and tribunals in other jurisdictions. To ensure consistency, Members departing from earlier Tribunal jurisprudence render decisions explaining why. Members' draft decisions are subject to a voluntary internal review process. To further promote the development of a principled and coherent body of jurisprudence, Members meet regularly to discuss, at a general level, their evolving articulation of the rights protected by the *Code*, and the practices and procedures that support it. Members and legal counsel also meet to discuss existing and

emerging legal issues and to review appeals and judicial reviews of their decisions.

HUMAN RIGHTS EDUCATION

Pursuant to sections 5 and 6 of the *Code*, the Attorney General is responsible for educating the public about human rights, and researching and consulting on matters relevant to the *Code*. The Tribunal does not have a mandate to monitor the state of human rights in the province, but it is a source of information to the public about their rights and responsibilities under the *Code*. Through open hearings, publication of its decisions, public speaking and media reporting, complaints which are upheld or dismissed perform an educative function.

PROVINCIAL CONTRIBUTIONS

During the last year, the Chair made presentations to the Continuing Legal Education Seminars on Human Rights and on Labour Law, the Human Rights section of the BC Branch of the Canadian Bar Association and a Lancaster House conference, and addressed a University of Victoria law and policy class. Legal counsel spoke at the Continuing Legal Education Seminar on Human Rights.

The Tribunal's Chair is the Chair of the BC Council of Administrative Tribunals' (BCCAT) Education Committee and spoke at their annual conference. The Chair is actively involved in training members of other administrative tribunals on hearing and mediation skills and decision writing. Due to her contribution, BCCAT gave the Chair a recognition award.

This year, the Chair and Tribunal hosted and trained members of the Nunavut Human Rights Tribunal.

Two Tribunal members are directors on BCCAT's board, two spoke at a Lancaster House conference and one was an adjunct professor at the University of British Columbia and taught administrative law.

EXTRA-PROVINCIAL CONTRIBUTIONS

The Chair is a director on the Canadian Council of Administrative Tribunals' Board and chairs the Nomination Committee. She presented a paper at CCAT's annual conference on models for government support for tribunal training without interference with independence, and moderated a panel discussion on the challenges presented to administrative justice by self and under-represented litigants.

The Chair is also a Director on the Canadian Institute for the Administration of Justice's Board and chairs its Administrative Tribunals Sub-Committee. She organized, chaired and moderated the National Roundtable on standards of review post Dunsmuir and Khosa, and presented a paper on comparative remedies in the human rights context at its annual conference.

The Chair also presented a paper on the lessons learned from the direct access model of human rights protection at the Canadian Association of Statutory Human Rights Agency's annual conference.

HEATHER MACNAUGHTON, CHAIR

Ms. MacNaughton was first appointed as Chair of the Tribunal on August 1, 2000, and was reappointed for a further five-year term beginning July 31, 2005.

She holds both a Bachelor of Laws (1982) and Master of Laws (1998) from Osgoode Hall Law School and a Bachelor of Arts (with distinction) from Brock University (1979). Her Master's work focused on the Litigation Process and Alternative Dispute Resolution.

Prior to her appointment to the Tribunal, Ms. MacNaughton chaired both the Ontario Human Rights Board of Inquiry and the Ontario Pay Equity Hearings Tribunal.

Ms. MacNaughton left private practice in 1995 to become a Vice Chair of the Ontario Human Rights Board of Inquiry, the Pay Equity Hearings Tribunal, and the Employment Equity Tribunal. Prior to that, she had been a partner with a national law firm practising in the areas of Labour, Employment, Human Rights, Administrative Law and Civil Litigation.

J.A. (TONIE) BEHARRELL, MEMBER

Ms. Beharrell was appointed as a full-time Member of the Tribunal on December 2, 2002 for a five-year term. She was most recently reappointed for a five-year term expiring in December 2012.

She holds a law degree from the University of British Columbia (1997) and a Bachelor of Arts from Simon Fraser University (1994).

Prior to joining the Tribunal, Ms. Beharrell was an Associate at a national law firm practising in the areas of Labour, Employment, Human Rights, and Administrative Law.

MURRAY GEIGER-ADAMS, MEMBER

Mr. Geiger-Adams was appointed a full-time Member of the Tribunal effective March 9, 2009 for a six-month term under a Chair's appointment. He was most recently reappointed for a five-year term expiring in January 2015.

He holds a law degree from the University of Toronto (1985), and a Bachelor of Arts (Honours) degree in political science from the University of British Columbia (1975).

Prior to joining the Tribunal, and from 1997-2008, Mr. Geiger-Adams was legal counsel for a professional association responsible for collective agreement administration.

Before that, and from 1985-1997, he was a student, associate and then partner in a Vancouver law firm, representing clients in matters including labour, human rights, aboriginal rights and employment.

BARBARA HUMPHREYS, MEMBER

Ms. Humphreys was appointed as a full-time Member of the Tribunal in 1997. She was most recently reappointed for a five-year term expiring in December 2014.

She holds a law degree from the University of Victoria (1984) and a Bachelor of Arts from Sir George Williams University (1969).

Ms. Humphreys joined the B.C. Council of Human Rights in 1990. She was actively involved in the transition from the former B.C. Council of Human Rights to the Human Rights Tribunal.

Prior to joining the B.C. Council of Human Rights, Ms. Humphreys was an Ombudsman Officer for the Office of the Ombudsman.

Tribunal Members

Lindsay Lyster, Member

Ms. Lyster was appointed as a full-time Member of the Tribunal on September 30, 2002 for a five-year term. She was most recently reappointed for a five-year term expiring in September 2011.

She holds a law degree from the University of British Columbia (1991) and a Bachelor of Arts (with distinction) from the University of Victoria (1987).

Ms. Lyster was an Associate at a national law firm practising in the areas of Labour, Human Rights, Constitutional Law, Administrative Law, and Employment Law. Prior to joining the Tribunal, Ms. Lyster was Policy Director of the B.C. Civil Liberties Association.

She left private practice to become an Adjunct Professor, Faculty of Law, University of British Columbia, teaching in the area of Canadian Constitutional Law.

Enid Marion, Member

Ms. Marion was appointed as a full-time Member of the Tribunal, effective July 27, 2008. She holds a law degree from the University of Victoria (1988).

Prior to joining the Tribunal, Ms. Marion practiced labour, employment and human rights law as an Associate with a Vancouver law firm and as an Associate and then Partner with another Vancouver law firm.

Kurt Neuenfeldt, Member

Mr. Neuenfeldt was appointed as a full-time Member of the Tribunal on January 6, 2003 for a five-year term. He was most recently reappointed for a five-year term expiring in January 2012.

He holds a law degree from the University of British Columbia (1978) and a Bachelor or Arts degree from the University of Wisconsin (1972).

For several years, Mr. Neuenfeldt worked with the Legal Services Society of BC. While there, he held a range of positions including Staff Lawyer, General Counsel and Director of Client Services. He then practised privately in Vancouver.

Prior to joining the Tribunal, Mr. Neuenfeldt had been a member of the Immigration and Refugee Board of Canada for over nine years.

Judith Parrack, Member

Ms. Parrack was appointed as a full-time Member of the Tribunal on August 1, 2005 for a five-year term. Ms. Parrack holds a law degree from Osgoode Hall Law School (1987).

Ms. Parrack was an Associate with a national law firm from 1989 to 1994 and a staff lawyer at the B.C. Public Interest Advocacy Centre from 1995 to 1999. She was a full-time Member of the B.C. Human Rights Tribunal from 1999 to 2002.

Prior to re-joining the Tribunal in 2004, Ms. Parrack was in private practice in the areas of Labour, Human Rights and Administrative Law.

MARLENE TYSHYNSKI, MEMBER

Ms. Tyshynski became a full-time Member of the Tribunal on December 1, 2005 for a temporary six-month term.

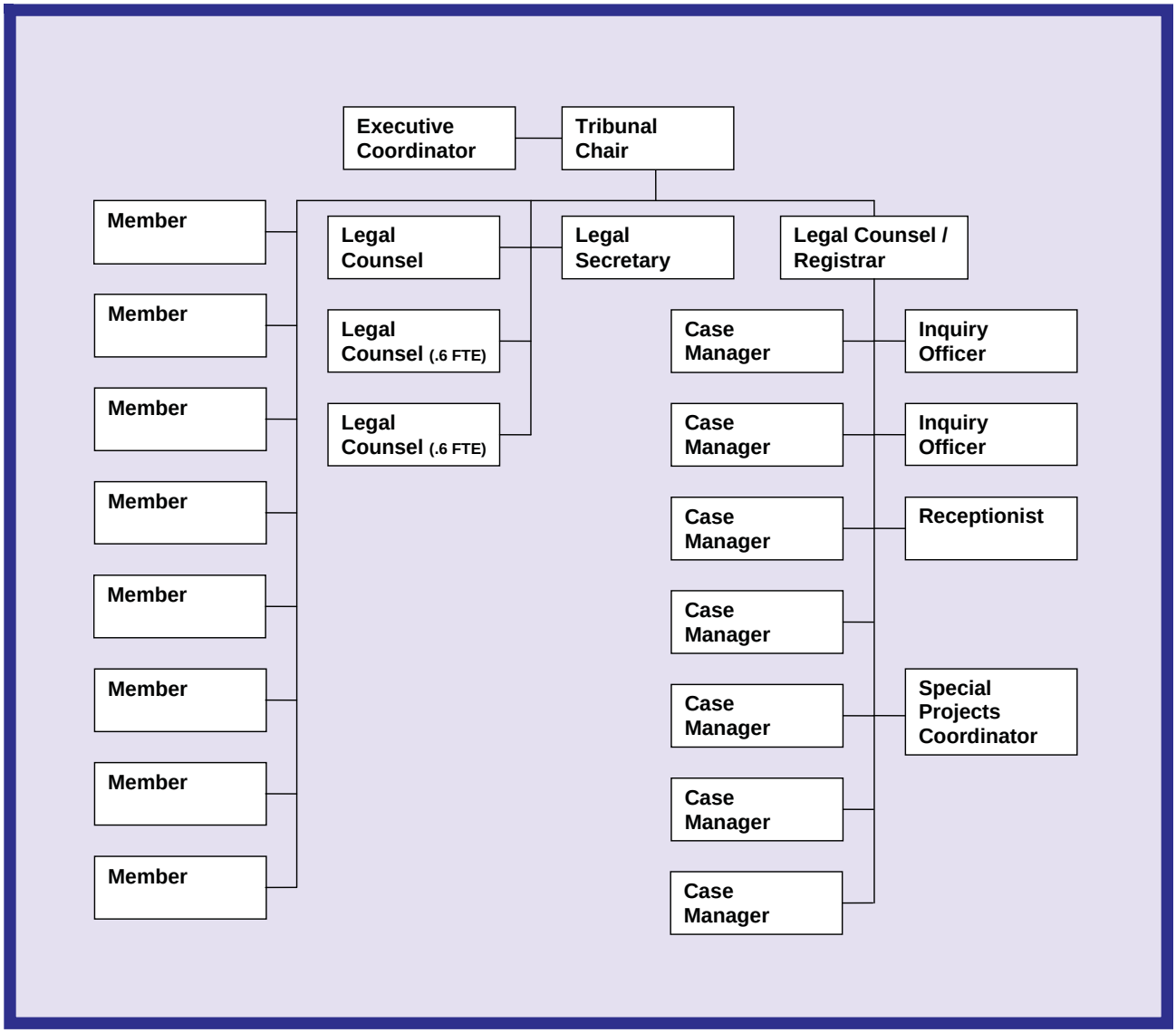
Upon expiry of her term, Ms. Tyshynski returned to her position as legal counsel to the Tribunal. In October 2007, following amendments to the *Administrative Tribunals Act*, the Chair appointed her to a second six-month term. She was most recently reappointed to a five-year term expiring in April 2013.

She holds a law degree from the University of Victoria (1988), a Master of Social Work degree from Wilfred Laurier University (1978) and an Honours Bachelor of Applied Science degree from the University of Guelph (1976).

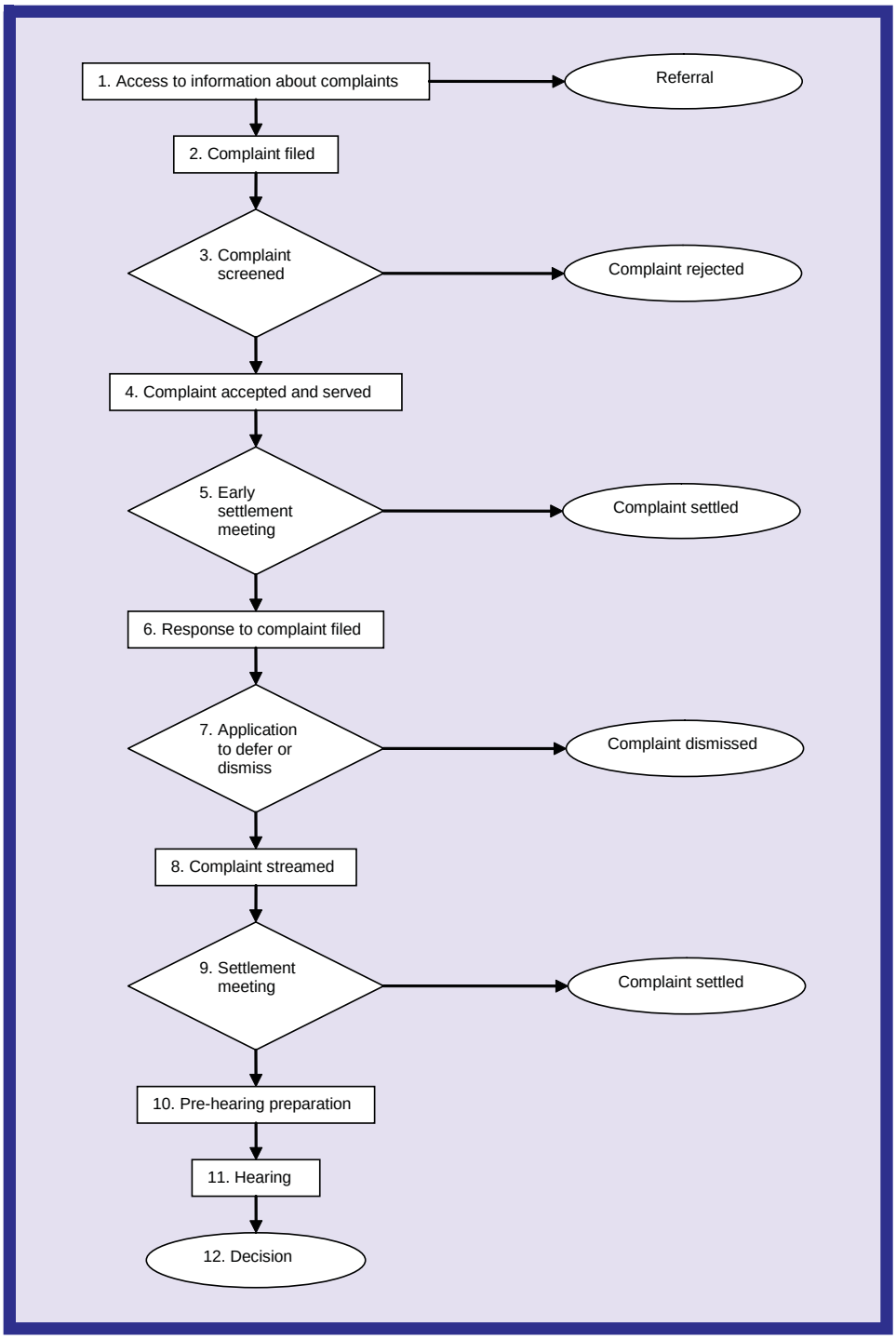
At the outset of her career, Ms. Tyshynski was an associate with two law firms in Victoria. She was in private practice for several years specializing in, among other areas, Administrative Law, then she worked as a staff lawyer for the Legal Services Society.

Prior to her appointment as Member, Ms. Tyshynski served as legal counsel to the Tribunal for three years.

Organization Chart



Complaint Flow Chart



Steps in the Complaint Procedure

1. Access to Information about Complaints

Two Tribunal inquiry officers give callers basic information about human rights protection under the *Code*, the complaint process and other organisations providing assistance in human rights matters. If the call is not about a human rights matter, the inquiry officers may refer the caller to another agency. Complaint forms, guides and information sheets are available from the Tribunal, on its website, at government agents' offices, the Human Rights Clinic and other organisations.

2. Complaint Filed

The first step in the complaint process is filing a complaint form.

3. Complaint Screened

The complaint is assigned to a case manager who reviews it to see it is complete, appears to be within the jurisdiction of the Tribunal, and is within the six-month time limit.

If the complaint form is not complete, the case manager explains why and gives the complainant a limited time to complete it.

If it is clear that the complaint does not involve a provincial matter or a human rights matter covered by the *Code*, the case manager will recommend to the Chair that the complaint be rejected.

If it appears that the complaint was filed after the six-month time limit, the case manager asks the parties whether it is in the public interest to accept the complaint and whether anyone would be substantially prejudiced by the delay in filing. A Tribunal member decides whether to accept the complaint.

4. Complaint Accepted and Served

After the complaint is screened, the Tribunal notifies the parties that it has been accepted.

5. Early Settlement Meeting

The parties may meet with a Tribunal mediator who will help them resolve the complaint before any further steps are taken. Many complaints are settled at this stage.

6. Response to Complaint Filed

If the parties do not settle or do not want an early settlement meeting, the respondent files a response to the complaint form and may also file an application to defer or dismiss the complaint.

7. Application to Defer or Dismiss

If a respondent applies to have the complaint deferred or dismissed, the Tribunal gets submissions from the parties and a Tribunal member makes a decision. Complaints may be deferred if there is another proceeding capable of appropriately dealing with the substance of the complaint. Complaints may be dismissed for the reasons provided in section 27(1) of the *Code*.

8. Complaint Streamed

Once a response to the complaint is filed and screened, the Tribunal decides whether it will follow the standard stream or be case-managed by a Tribunal member because of its complexity or other special characteristics.

9. Settlement Meeting

After the complaint is streamed, the parties have another opportunity to take part in a settlement meeting.

10. Pre-Hearing Preparation

If the complaint does not settle, the parties must prepare for the hearing and exchange relevant documents, witness lists, and positions on remedy. The case manager will telephone them several weeks before the hearing to check that they are ready.

11. Hearing

Hearings are held before a Tribunal member or a panel of three members in exceptional cases. The parties attend in person and the hearing is open to the public. Evidence is given through witnesses, documents and other items. Each party has an opportunity to challenge the other party's evidence and to make arguments supporting their position.

12. Decision

Based on the evidence, the arguments and the relevant law, the Tribunal member or panel decides whether the complainant has proven that discrimination occurred and, if so, whether the respondent has a defence to the discrimination. If the complaint is not justified, it is dismissed. If the complaint is justified, orders are made to remedy the discrimination.

Publications and Staff

The following Guides, Information Sheets and Policies are available in English, Chinese and Punjabi on our web-site or by contacting the Tribunal. Please refer to the back cover of this report for contact information.

Guides

1– The BC Human Rights Code and Tribunal
2– Making a Complaint and guide to completing a Complaint Form
3– Responding to a Complaint and guide to completing a Response to Complaint Form
4– The Settlement Meeting
5– Getting Ready for a Hearing

Information Sheets

1– Tribunal's Rules of Practice and Procedure
2– How to Name a Respondent
3– What is a Representative Complaint?
4– Time Limit for Filing a Complaint - Complainants
5– Time Limit for Filing a Complaint - Respondents
6– Tribunal Complaint Streams
7– Standard Stream Process - Complainants
8– Standard Stream Process - Respondents
9– How to Ask for an Expedited Hearing
10– How to Deliver Communications to Other Participants
11– What is Disclosure?
12– How to Make an Application
13– How to Add a Respondent
14– How to Add a Complainant
15– How to Make an Intervenor Application
16a–Applying to Dismiss a Complaint Under Section 27
16b–How to Respond to an Application to Dismiss a Complaint
17– How to Request an Extension of Time
18– How to Apply for an Adjournment of a Hearing
19– How to Require a Witness to Attend a Hearing
20– Complainant's Duty to Communicate with the Tribunal
21– How to Find Human Rights Decisions
22– Remedies at the Human Rights Tribunal
23– How to Seek Judicial Review
23a–Judicial Review: The Tribunal's Role
24– How to Obtain Documents From a Person or Organization Who is Not a Party to the Complaint
25– How to Enforce Your Order
26– Costs Because of Improper Conduct

Policies

- Complainant's Duty to Communicate with the Tribunal
- Public Access and Media Policy
- Settlement Meeting
- Special Programs

Tribunal Staff

Registrar / Legal Counsel
Vikki Bell, Q.C.

Executive Coordinator
Andrea Nash

Legal Counsel
Jessica Connell
Katherine Hardie (part-time)
Denise Paluck (part-time)

Legal Secretary
Mattie Kalicharan

Case Managers
Pam Bygrave
Janice Fletcher
Lindene Jervis
Anne-Marie Kloss
Lorne MacDonald
Maureen Shields
Margaret Sy (partial year)

Special Projects Coordinator
Luke LaRue

Administrative Assistant
Graeme Christopher (partial year temp assignment)

Inquiry Officers
Cheryl Seguin
Stacey Wills

Reception
Janet Mews

NOTES

NOTES

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Annual Report

2010-2011

BRITISH COLUMBIA

British Columbia Human Rights Tribunal

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July 15, 2011

Honourable Barry Penner, Q.C.
Attorney General
Province of British Columbia
Room 232
Parliament Buildings
Victoria, BC V8V 1X4

Dear Attorney General:

It is my pleasure to present the eighth Annual Report from the BC Human Rights Tribunal, covering the period April 1, 2010, to March 31, 2011.

This report has been prepared in accordance with section 39.1 of the *Human Rights Code*.

Yours truly,

Bernd Walter,
Acting Chair

BW/ll

Enclosure

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MESSAGE FROM THE CHAIR

It is my honour, in introducing the Tribunal's Annual Report for the 2010-2011 fiscal year, to provide my thoughts and reflections on the past seven months.

In July of 2010, I learned that the tenure of Heather MacNaughton, the Tribunal's highly respected Chair, was to expire. I was asked by then Attorney General, the Honourable Michael de Jong, to serve as Acting Tribunal Chair for a term of six months, from August 1, 2010, while also maintaining my duties as Chair of the British Columbia Review Board.

On my arrival, I found the Tribunal to be facing a number of pressing challenges. On the workload front, the volume of inquiries, processing and case management of incoming complaints, interim applications, demands for mediations, scheduling of hearings and decision writing, was matching that of previous years.

Adding to workload pressures, the Tribunal had lost a full-time Member due to resignation in March 2010.

The burden on remaining members was further intensified by the departure of the Chair and the expiry of the appointment of another valued and long-serving Member.

The Tribunal's case management and inquiry operations were equally beset by staff shortages.

Superimposed on these pressures, the Tribunal itself was the subject of speculation and rumours about its future, the origins of, or rationale for which, were unclear. The Tribunal took the opportunity to develop, submit and publish its own perspectives on the matter, in a paper presented to the BC Law Institute: http://www.bchrt.gov.bc.ca/news/BCLI_BRIEF_OCT_5_2010.pdf

Despite these conditions, I have had the good fortune, indeed the privilege, to join a high-functioning workplace, comprised of committed professionals, working to their utmost capacity. They are, every one of them, the face and heart of the Tribunal. They have been, without exception, gracious and welcoming. They are public servants in the very best sense of that phrase!

Since August, the Tribunal has taken steps to fill vacancies at the inquiry and case management levels. Two new Case Managers and an Inquiry Officer have been hired.

To cope with the intense demand on the remaining Tribunal Members, who preside at hearings, write interim and final decisions, and also conduct settlement meetings and mediations throughout the Province, funds were re-allocated to retain mediators on a contractual basis.

Nevertheless, the recent loss of Members, as well as a further resignation, has effectively left the Tribunal short of experienced adjudicators to deal with demand.

With the assistance of Tribunal Counsel and the consistent support of the Board Resourcing and Development Office, we were able to accelerate the member screening and appointment process. This has resulted in the appointment, in January 2011, of a new, highly qualified, full-term Member. A second Member joined the Tribunal in early March on a six-month term. Welcome additions indeed!

I have also considered it part of my mandate to participate in the eventual recruitment of a permanent Tribunal Chair; an individual with human rights credibility and the leadership skills to inspire continued public pride in, and to maintain the credibility of, the Tribunal, and also to lead its future development. Identifying and selecting that new leader remains a

Message from the Chair

work in progress, pending which, I have been asked and have agreed to remain in the office until August 1, 2011.

Looking to the future, and without purporting to bind a future Chair, I would like to share my own brief observations about potential future directions for the Tribunal.

After a period of eight years, spanning initial implementation of the new direct access model to its current level of maturation, under excellent leadership, it would in my view, benefit the Tribunal to undertake an orderly review of its policies, procedures and systems at a number of levels including:

- Streamlining and simplifying its forms and documentary processes, with an emphasis on electronic document processing and exchange.
- Undertaking a comprehensive review of the Tribunal's Rules of Practice and Procedure with a view to streamlining and ease of use.
- Reviewing its intake, screening and case management processes, including additional staff training for consistency, and the updating of electronic case management systems/architecture.
- Reconsidering the complexity and formality of interim proceedings and resulting decisions.
- Re-examining the hearing process including the length and formality of hearings and decisions.
- Considering amendments to the *Code* and/or the *Administrative Tribunals Act* to bring greater certainty and finality to the Tribunal's decisions thereby reducing the volume of resource intensive Judicial Reviews.

I offer these observations on the basis of my own experience in policy development and legislative reform in a number of provinces. In my view any program or statute, however well functioning, can, after a decade of operation, benefit from a rigorous process of review, considering and utilizing its operational history, stakeholder/consumer experience and jurisprudence in order to re-assess its adherence to core principles and values and to evaluate its relevance and responsiveness to those it is intended to serve.

British Columbia is indeed fortunate that any future changes that may be contemplated have the benefit of the sound and effective foundation which has been established for the BC Human Rights Tribunal.

Bernd Walter,
Acting Chair

TRIBUNAL MANDATE AND PURPOSES

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*, 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 has 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.

Inquiry and Complaint Statistics

Inquiry Statistics

General inquiries about the Tribunal process are answered by two Inquiry Officers. Inquiry Officers also provide basic information about the *Code*'s protections and refer callers to appropriate resources. A toll-free number enables callers throughout the province to access the Inquiry Officers.

This year, the Tribunal responded to 9,472 inquiries, averaging 38 calls daily.

New Complaints

The Tribunal reviews all complaints to ensure that the forms are complete, that the complaint is within provincial jurisdiction, and that the complaint includes sufficient information to set out a possible contravention of the *Code*.

In the 2010/2011 year, the Tribunal received 1,163 complaints. 335 (29%) of those complaints were screened out at the initial screening stage.

The Tribunal accepted 828 (71%) complaints for filing.

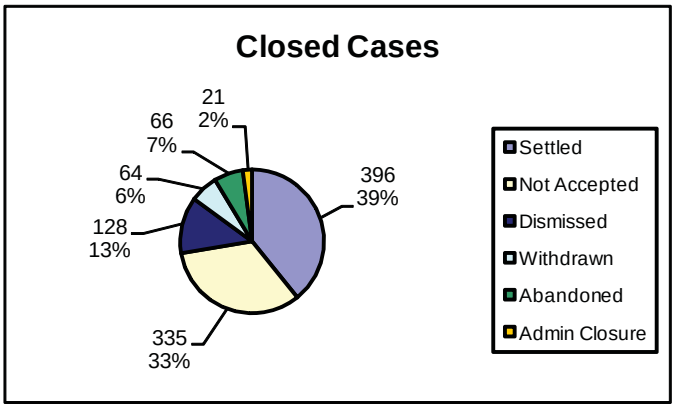
Closed Cases

Cases are closed when they are not accepted at the initial screening stage, withdrawn because they have settled or otherwise, abandoned, dismissed, or a decision is rendered after a hearing.

In 2010/2011:

- 1,010 cases were closed;
- 335 complaints were not accepted at the screening stage;
- 80 complaints were dismissed under section 27;
- 31 complaints were dismissed under section 22;
- 38 decisions were rendered after a hearing (18 successful; 20 dismissed); and
- 565 complaints were settled, withdrawn or abandoned.

The Tribunal has changed the way that it records complaints which are the subject of judicial review applications. This may marginally affect some of the statistics reported in this year as compared to earlier years.

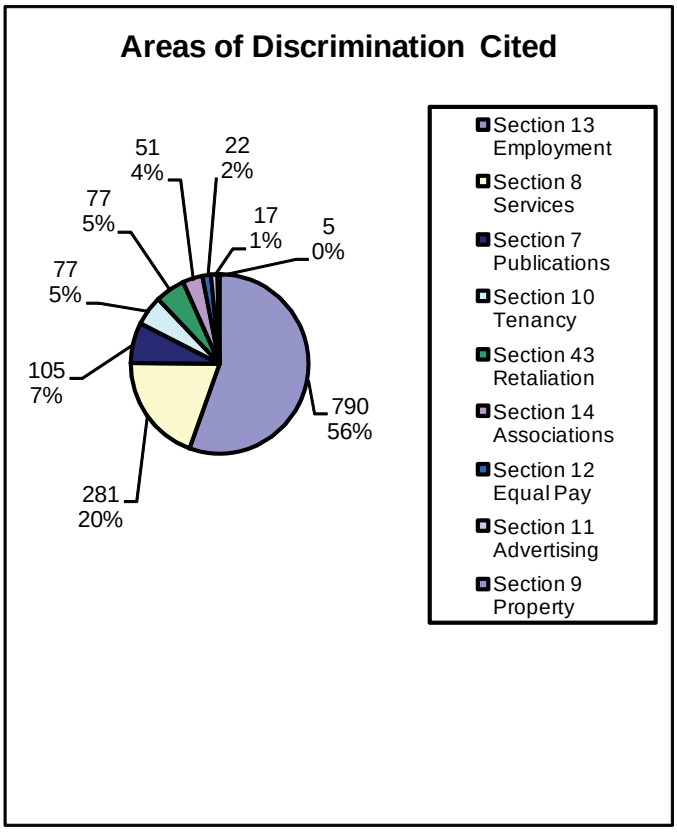


AREAS OF DISCRIMINATION

The *Code* prohibits discrimination in the areas of employment, employment advertisements, wages, services, tenancy, purchase of property, publication and membership in unions and associations. It also prohibits retaliation against a person who makes a complaint under the *Code.* As a result of a BC Supreme Court decision in *Cariboo Chevrolet Pontiac Buick GMC v. Becker*, 2006 BCSC 43, the ground of retaliation only applies after a human rights complaint has been filed.

AREAS CITED MOST FREQUENTLY

- employment 55%
- services 20%
- discriminatory publication 7%
- tenancy 5%
- retaliation 5%



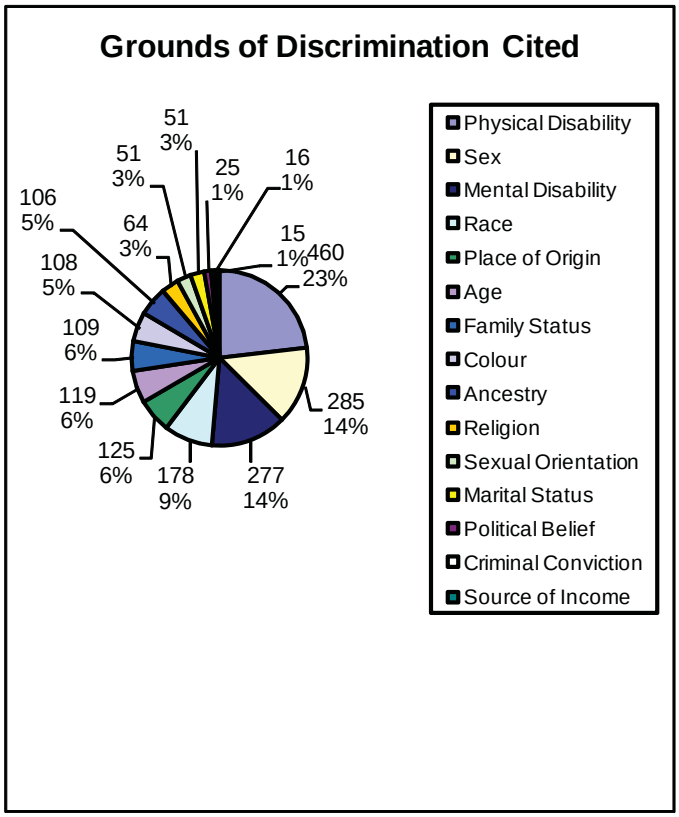
GROUNDS OF DISCRIMINATION

There are 15 prohibited grounds of discrimination: age (19 and over), ancestry, colour, family status, lawful source of income, marital status, place of origin, physical and mental disability, political belief, race, religion, sex (including harassment and pregnancy), sexual orientation, and unrelated criminal conviction. Not all grounds apply to all areas.

Some complaints cite more than one area and ground of discrimination. For instance, a complainant with a race-based complaint may also select grounds of ancestry, colour and place of origin.

GROUNDS CITED MOST FREQUENTLY

- physical disability 23%
- sex (including harassment and pregnancy) 14%
- mental disability 14%
- race 9%
- place of origin and age 6%



Settlement Meetings

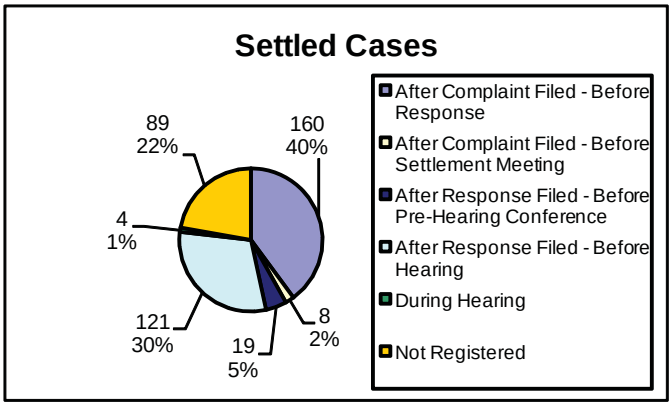
Settlement Meetings

The Tribunal's settlement meeting services continue to be heavily used.

We encourage participation in settlement discussions and provide the option of a tribunal-assisted settlement meeting before the respondent files a response to the complaint, and at any later stage in the process. Many complaints settle as a result of these efforts and creative solutions are achieved which could not be ordered after a hearing.

The Tribunal conducted 276 early settlement meetings (before a response to the complaint is filed) and 104 settlement meetings (at any point after a response to the complaint is filed and prior to the commencement of a hearing). In addition, the Tribunal provided settlement assistance to the parties in four cases in the midst of hearing. The parties were able to resolve their disputes in over 82% of all cases in which the Tribunal provided assistance. In addition, some cases settled without the Tribunal's involvement.

Because settlement meetings are usually a confidential process, the Tribunal does not publish the results. In many cases, the settlement meeting resolves other aspects of the parties' relationship and this has transformative impacts without the adversarial process of a hearing. Some cases resolve on the basis of an acknowledgement that there has been a breach of the *Code* and an apology. In others, the mediated solution results in systemic change and awards greater than those that might be obtained after a hearing.



Time Limit Applications

In section 22 of the *Code*, there is a six-month time limit for filing complaints.

The time limit is designed to permit respondents to go about their activities without worrying about the possibility of stale complaints being filed against them.

A complaint about events more than six months before the complaint was filed is timely if it alleges a "continuing contravention" where the most recent incident occurred within six months of the complaint being filed.

The Tribunal considered 94 applications under section 22 of the *Code*. This includes applications to dismiss a complaint made under section 27(1)(g), discussed below.

The Tribunal found that 39 complaints were untimely at least in part. 32 complaints were not accepted or were dismissed as untimely. The Tribunal accepted 22 late-filed complaints under section 22(3).

Continuing Contravention

A "continuing contravention" includes repeated instances of discrimination of the same character. For example, a complaint alleged that an employer did

not accommodate the complainant's disability and twice denied her employment-related opportunities. Only one event regarding employment opportunities occurred within 6 months of filing the complaint. The two events regarding employment opportunities were similar and occurred close together, and were a timely continuing contravention. An ongoing failure to accommodate is a continuing contravention, but the accommodation allegations were of a different nature from the allegations regarding the denial of employment opportunities and occurred more than four months earlier. The accommodation allegations were out of time, as they were not part of the continuing contravention regarding employment opportunities. (*Bates v. Vancouver Island Health Authority and Hospital Employees Union*, 2010 BCHRT 174)

Discretion to Accept Late-Filed Complaints

The Tribunal may accept a complaint or part of a complaint filed after the time limit if it determines that it is in the public interest to do so and no substantial prejudice would result to anyone because of the delay.

Whether it is in the public interest to accept a complaint filed outside the six-month time limit is decided in light of the purposes of the *Code* set out in section 3 and depends on the circumstances of the case. The length of the delay, the reasons for the delay, and the uniqueness or possible significance of the allegations of discrimination are factors.

For example, it was not in the public interest to accept a complaint where:

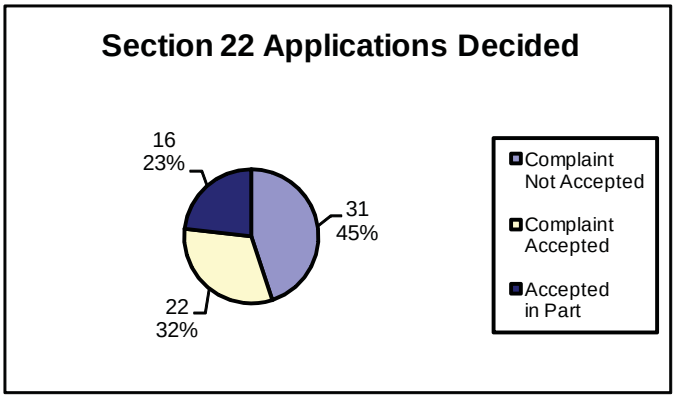
- the complaint was filed one month late without a reasonable explanation for the delay in filing, and because other recourse was available. (*Harris v. Victoria Police Department*, 2010 BCHRT 117)
- the complaint was filed three and a half months late after an unsuccessful grievance process. Complaints should be filed on time while other options are pursued and there was no explanation for the delay after the grievance was denied. (*Castro-Llego v. SHARE and another*, 2010 BCHRT 120)
- the complaint was filed two and a half weeks late, and the allegations, even if proven, would not contravene the *Code*. (*Miller v. Northern Metalic and another*, 2010 BCHRT 130)
- the complaint was filed over one year late, and the complainant did not provide medical evidence that the delay was due to her psychological condition. (*Clabburn v. UBC and CUPE Local 2950*, 2010 BCHRT 173)
- the complaint was filed five months late, there was no explanation for the delay, and it is not in the public interest to reopen an accommodation agreement or to duplicate a grievance process capable of addressing allegations of a failure to accommodate. (*Bates v. Vancouver Island Health Authority and Hospital Employees Union*, 2010 BCHRT 174)

On the other hand, the Tribunal accepted late-filed complaints where:

- the complaint was filed three months late, but the complainant did not know her union was not pursuing a grievance until two and a half months after the time limit, she filed her complaint soon after, and the respondent took no position on the time limit application. The complainant's dismissal was a live issue between the union and employer until shortly before the complaint was filed so the delay did not result in substantial prejudice. (*Meek v. H. Y. Louie*, 2011 BCHRT 21)

Preliminary Decisions

- the complaint was filed one day late and the issues raised were infrequently addressed by the Tribunal. (*Hansen v. All Seven Star Homes and others*, 2010 BCHRT 296)



Applications to Dismiss a Complaint

Section 27(1) allows complaints to be dismissed that do not warrant the time or expense of a hearing on the merits. Generally, applications are decided based on written submissions early in the process.

Applications to dismiss accounted for 59% of preliminary decisions this year. Of the 161 decisions, 80 (49%) were dismissed and 16 (10%) were partially dismissed. 65 (40%) applications were denied.

The Tribunal may dismiss a complaint for the following reasons:

1. No jurisdiction: section 27(1)(a)

The Tribunal may dismiss a complaint because of a lack of jurisdiction when it is against a federally regulated company, if the conduct was outside BC, or if the area or ground of discrimination does not apply to the facts alleged.

For example, the Tribunal concluded that the relationship between a law firm and one of its partners was one of "employment" and that it has jurisdiction over the complaint. (*McCormick v. Fasken Martineau Dumoulin (No. 2)*, 2010 BCHRT 347) Upheld on judicial review, 2011 BCSC 713. An appeal has been filed.

2. No contravention of the *Code*: section 27(1)(b)

The Tribunal may dismiss a complaint under section 27(1)(b) if the acts or omissions alleged in the complaint do not contravene the *Code*. The Tribunal assesses whether the complaint alleges facts that, if proven, could constitute a contravention of the *Code*. No consideration is given to any alternative explanation or alternate version of events put forward by the respondent.

For example, the Tribunal dismissed a complaint that the complainant was laid off due to a disability because it did not allege facts which, if proven, could establish the necessary nexus between the lay off and his disability. (*Heye v. Sandman Hotels*, 2010 BCHRT 225).

The Tribunal declined to dismiss a complaint where an allegation that a complainant supported a co-worker's harassment complaint, that the respondent was aware of her support, and that she was terminated shortly after the respondent became aware that the co-worker had filed a complaint with the tribunal, could if proven constitute a breach of the *Code*. (*Martin v. Kamloops Cariboo Regional Immigrant Society*, 2010 BCHRT 343)

3. No reasonable prospect of success: section 27(1)(c)

The Tribunal may dismiss a complaint under section 27(1)(c) where there is no reasonable prospect it would be found to be justified at a hearing.

The Tribunal considers the materials before it on a global basis, and applies its specialized expertise in human rights to determine whether there is no reasonable prospect that the complaint will succeed.

Factual disputes or credibility issues do not mean the Tribunal cannot dismiss a complaint under section 27(1)(c). However, significant differences in the versions of events put forward by the parties on crucial issues may require a hearing to fully explore and test that evidence. (*Marshall v. Teck Coal*, 2010 BCHRT 271)

4. Proceeding with the complaint would not benefit the person, group or class alleged to have been discriminated against: section 27(1)(d)(i)

The Tribunal may dismiss a complaint if it determines that proceeding with the complaint would not benefit the person, group or class alleged to have been discriminated against.

The Tribunal dismissed a complaint because the person who filed the complaint was not an appropriate representative for the class. It said:

- The Tribunal must ensure it does not make the requirements for a complaint on behalf of a group or class so onerous that the purposes, efficiency and advantages gained from proceeding with a representative complaint are nullified.

- The *Code* does not require that the members authorize the filing of a representative complaint on their behalf, nor must the representative canvas all members with respect to their interest in proceeding.

- The nature and scope of the notice and communication obligations placed on a representative depend on the individual circumstances in any complaint.

It was not in the interests of the class for the complaint to proceed because the representative had not identified the individuals who may be included in the class he represents, he had not effectively communicated with the class, and the Tribunal was not satisfied that the representative's interests were aligned with those of the class members. (*Jones obo residents of Norquay v. City of Vancouver*, 2010 BCHRT 207)

5. Proceeding with the complaint would not further the purposes of the *Code*: section 27(1)(d)(ii)

Proceeding with a complaint would not further the purposes of the *Code* where a reasonable "with prejudice" settlement offer remains open, or where a respondent promptly took appropriate steps to remedy the alleged discrimination. The Tribunal dismissed complaints where:

- the complainant, in a grievance process, had signed a release including all claims arising under the *Human Rights Code*. (*Harck v. City of Port Coquitlam*, 2010 BCHRT 348)

- two other processes and a settlement between the parties did not explicitly deal with a discrimination complaint, but addressed the complainant's dignity and the conduct that was the subject matter of the complaint. (*Sipes v. West Vancouver Police Department (No. 2)*, 2010 BCHRT 281)

6. Complaint filed for improper purposes or in bad faith: section 27(1)(e)

A respondent must meet a high standard to have a complaint dismissed under section 27(1)(e). It is not enough to present a different version of events or allege the complainant is not truthful. (*Morris v. Jordan Development and another (No. 2)*, 2010 BCHRT 214)

Preliminary Decisions

7. Complaint appropriately resolved in another proceeding: section 27(1)(f)

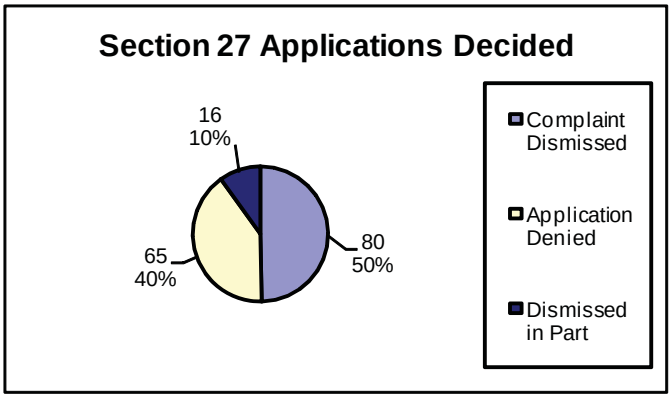
The Tribunal may dismiss a complaint where it determines that the substance of the complaint has been appropriately resolved in another proceeding, such as a grievance proceeding.

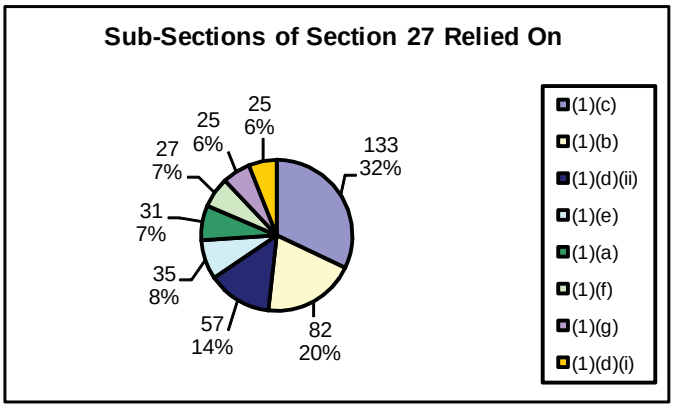
Under section 27(1)(f), the Tribunal does not determine if another decision was correct, but whether the decision-maker proceeded fairly, on the proper principles, with due consideration of the facts and human rights law relevant to the discrimination issue. The Tribunal found an arbitrator's decision appropriately decided the substance of a complaint where:

- the discrimination issue was squarely raised by the union at the arbitration;
- the same overall factual issues were raised in the arbitration and in the complaint;
- there was no suggestion that the hearing was unfair;
- there was no suggestion that the union's representation of the complainant was inadequate; and
- the arbitrator reviewed the applicable human right principles, and determined that no discrimination had been established. (*Brekelmans v. B.C. (Ministry of Housing and Social Development)*,2010 BCHRT 292)

8. Alleged contravention outside the time limit: section 27(1)(g)

If the Tribunal does not identify a time limit issue in its screening process, a respondent can apply to dismiss a complaint on the basis that it is not timely. It determines if the complaint is timely, and if not, whether it should accept the late-filed complaint.





Other Decisions

The Tribunal also makes oral and written decisions on other matters. Other decisions accounted for 33% of the preliminary decisions. Of the 89 decisions rendered, 34 (39%) were granted, 2 (2%) were granted in part, and 51 (56%) were denied.

Deferral

The Tribunal may defer consideration of a complaint under section 25 of the *Code* if another proceeding is capable of appropriately dealing with the substance of the complaint.

The Tribunal did not defer in a case where there was no information about whether the legal framework in the other proceeding was consistent with human rights principles, or indicating that the complainant had access to any remedial provisions if successful.

(*Chaun v. Anderson*, 2011 BCHRT 3)

ADDING RESPONDENTS

The Tribunal may add a respondent to a complaint, on the application of a party, but:

- A complainant may not apply to add a respondent to circumvent the time limits set out in the *Code*. If a complaint against the proposed respondent would be late-filed, the Tribunal will consider if it is in the public interest to add the respondent, and whether there would be substantial prejudice to any person because of the delay.

- The Tribunal considers whether there are allegations that could breach the *Code*, whether adding the proposed respondent would assist in resolving the case, natural justice concerns, and other relevant circumstances. (*Mucciolo v. Hayworth Communities*, 2010 BCHRT 160)

AMENDING A COMPLAINT

A complainant must apply to amend a complaint if the hearing is less than two months away, the amendment adds an allegation that is out of time, or there is an outstanding application to dismiss the complaint.

The Tribunal did not allow an amendment filed following a dismissal application, as expanding the scope of the complaint would unfairly deprive the respondents of the opportunity to frame their dismissal application in accordance with the complaint as accepted. (*Preston v. TRIUMF and another (No. 2)*, 2010 BCHRT 211)

LIMITING PUBLICATION OR ACCESS

The Tribunal's process is public, and information may become public as specified in rule 6 of the Tribunal's *Rules of Practice and Procedure*. This includes in a published decision, on the Tribunal's hearing list, as well as public access to parts of a complaint file before a hearing. A party may apply to limit publication, including delaying the posting of a complaint on the hearing list if the parties are in settlement discussions, or anonymizing a decision. A party may also apply to have a hearing conducted in private, but public access is the general rule.

TIME EXTENSIONS

The Tribunal sets time limits in the complaint process, but a party may request or apply for additional time.

DISCLOSURE

The parties must provide each other with any documents that may relate to issues in dispute and the Tribunal may order a party to disclose particular documents after first establishing that they are arguably or potentially relevant. It may also order conditions to protect privacy. (*Gichuru v. The Law Society of British Columbia (No. 5)*, 2010 BCHRT 137)

INTERVENORS

The Tribunal may permit a person or group to intervene in a complaint, especially if they will bring a different and useful perspective to the issues and their participation will not unduly affect the parties.

ADJOURNMENTS

A party who wants to adjourn a hearing must show that the request is reasonable and would not unduly prejudice the other participants.

RECONSIDERATION

The Tribunal has an equitable power, not specified in the *Code*, to reconsider a matter. This power is

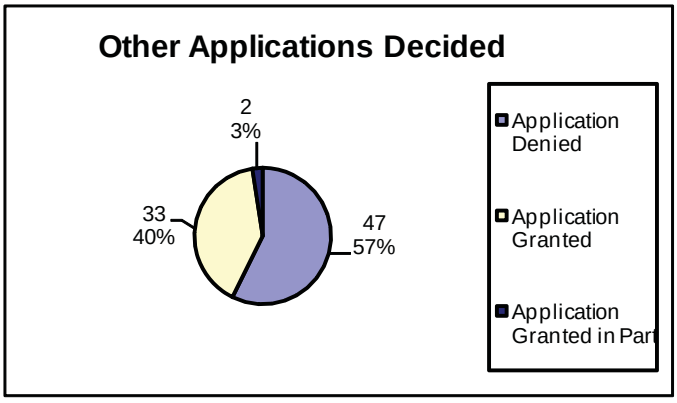
Final Decisions

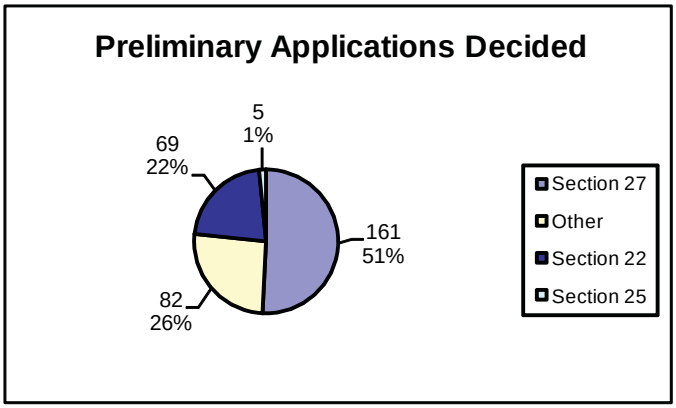
exercised when required by the interests of fairness and justice.(*S v. B.C. (Min. of Children and Family Development) and others (No. 2)*, 2010 BCHRT 144)

Costs

The Tribunal may order costs if a party engaged in improper conduct during the course of a complaint or contravened a rule, decision, order or direction of the Tribunal. Costs may be ordered during the proceeding or after a final decision is made.

The Tribunal ordered the respondent to pay one third of the complainant's legal costs, for improper conduct that had a significant impact on the integrity of the Tribunal's process and a significant prejudicial impact on the complainant. The respondent tried to obtain disclosure of medical documents from the complainant's doctor without making a request to the complainant, while she was unrepresented, and before disclosure was due. The respondent also applied for disclosure of her former spouse's contact information, when he clearly had no relevant evidence to give, when it was most likely to cause disruption to the hearing, and one motivation was to cause maximum anxiety and discomfort to the complainant. (*Ford v. Peak Products Manufacturing and another (No. 3)*, 2010 BCHRT 155)





Final Decisions

This year, the Tribunal made 38 final decisions after a hearing on the merits.

47% of the complaints (18 out of 38) were found justified in whole or part after a hearing.

Representation before the Tribunal

This year there was one case where the complaint was dismissed because the complainant did not appear. There were two cases where no respondent appeared, and in both cases the complaint was found to be justified.

Consistent with prior years, more complainants were self-represented in hearings on the merits than respondents. Complainants had a lawyer in 10 cases, while respondents had a lawyer in 19 cases. There were 9 cases where all parties had a lawyer and 18 cases where all parties were self-represented.

In past years, there has been a correlation between legal representation for complainants and success. In 2009/2010, complainants with counsel succeeded in 50% of cases. This year, represented complainants won 50% of their cases, while complainants without legal representation won 48% of their cases. Respondents with lawyers succeeded in 58% of the cases, and were unsuccessful in 47% of the

cases when unrepresented. This year, there were notably more cases where both parties were self-represented (47%) as compared to last year (19%).

CASE HIGHLIGHTS

The following are some key highlights of this year's final decisions:

- the majority of final decisions (31 out of 38 cases heard) involved the area of employment (s. 13); 47% were found to be justified;
- 5 decisions involved services (s. 8); 40% were found to be justified;
- 3 decisions involved retaliation (s. 43);
- 1 decision involved tenancy (s. 10);
- no decision involved the areas of publication (s. 7); membership in a union, employer's organization or occupational association (s. 14); purchase of property (s. 9); employment advertisements (s. 11); or lower rate of pay based on sex (s. 12);

With respect to grounds of discrimination:

- 23 of the 38 final decisions dealt with physical and/or mental disability; 45% were found to be justified;
- sex discrimination due to pregnancy or sexual harassment was the subject of 9 final decisions; 44% of these complaints were found to be justified;
- 3 final decisions each on the grounds of religion, age, and race/colour/ancestry or place of origin;
- 1 decision each on family status, marital status, sexual orientation and political belief.
- no decision respecting the grounds of source of income or criminal conviction.

FINAL DECISIONS OF INTEREST

SINGLE SLUR, TAKEN IN CONTEXT, NOT DISCRIMINATORY

A police officer did not discriminate in handling a custody-related dispute at a daycare, where the complainant father was arrested for refusing to leave the premises. When the father complained of unfair treatment and said his wife should be arrested, the officer said something like "Go back to China if you think they deal with these situations better", or "If you don't like it, go back to China." The Tribunal found that this language, viewed in context, was an inappropriate comment arising out of a very strained and tense situation, but not discrimination. (*ML v. LeQuesne*, 2010 BCHRT 247)

EMPLOYER FIRES WORKER RATHER THAN DEALING WITH SEXUAL HARASSER'S CONDUCT

A younger worker was sexually harassed by her much older male supervisor, who used his workplace access to her cell phone number to contact her at home and pursue her. She said that she was not interested and complained to her employer about his conduct. After a verbal reprimand about his behaviour, he lured her to his home on a work-related pretext, made further inappropriate comments and threatened to interfere with her employment. When she again complained, the employer terminated her employment, as it was easier to remove a short-term employee than deal with the supervisor's conduct. As against the supervisor, the company and its owner, the Tribunal awarded lost wages and $5,000 for injury to dignity. It also made a declaratory order, and ordered that a copy of the decision to be given to every current employee. (*Soroka v. Dave's Custom Metal Works and*

others, 2010 BCHRT 239)

DISMISSAL OF MENTALLY DISABLED WORKER ON LEAVE WITH AN UNKNOWN RETURN DATE

An employee on short-term medical leave due to depression and anxiety was expected to return to work but the return date was unknown. The company discriminated when it terminated her employment because she was not available to work within a foreseeable time, and she was not given the opportunity to provide further information. She lost her job shortly before qualifying for long-term disability benefits. The company did not provide evidence of undue hardship in continuing to employ her until she could apply for these benefits. It did not incur any cost as a result of the worker's absence other than operational inconvenience. The complaint against the company's owner, who was not directly involved in the decision to terminate, was dismissed. A declaratory order was made and the complainant was awarded lost wages, hearing-related expenses and $25,000 for injury to dignity based on evidence that she was suffering from serious mental health issues that were exacerbated by the termination. She was also awarded costs in the amount of one third of her legal costs, because the company's conduct went beyond the bounds of a vigorous defence and into the realm of intimidation. (*Ford v. Peak Products Manufacturing*, 2010 BCHRT 155)

DISCUSSION ABOUT AN EMPLOYEE'S FUTURE PLANS NOT AGE OR DISABILITY DISCRIMINATION

An employer privately discussed his age and future plans with an unhappy employee, to try to find out what would improve his situation. This was not age or disability discrimination, as there was no adverse work-related impact on him. Further, when the employee was unable to return to work because of a mental disability, his failure to provide the employer with requested information about the nature of his disability, and how to structure the accommodation, frustrated the accommodation process. (*Fletcher v. Meadow Gardens (No. 2)*, 2010 BCHRT 148)

REFUSAL TO ALLOW DISABLED EMPLOYEE TO COMPLETE PHYSICAL TESTING FOR APPRENTICESHIP

A physically-disabled employee was not allowed to take the physical testing component of a job, which required lifting 40 pound refrigerant bottles onto roofs. The employer's attempts at accommodation, viewed globally, were sufficient to show undue hardship. While the employer did not consult the employee because of a difficult work relationship, the duty to accommodate process was satisfied because the employer already had information about the employee's limitations and asked if his condition had changed. The employer explored whether an assistive device could be created to lift the refrigerant bottles, but concluded that only a fixed device could be used, which would have to be installed on every building serviced. Although it failed to consider using smaller bottles, the outcome would not have been any different. There was also no age discrimination in management's comment that apprenticeship positions were historically given to younger workers but that was changing, or that a younger candidate was successful. This was not sufficient to establish a link between the complainant's age and the refusal to allow the employee to complete the physical testing. (*Pausch v. School District No. 34 and others*, 2010 BCHRT 134)

SMALL BUSINESS CHANGES DISABLED WORKER'S JOB

An office worker in a family-run bus company was injured in a workplace accident. While she was away, the new owner reduced the administrative support for the company. When told she would have to do some bus driving because the office work was

reduced, she quit. The Tribunal held that the reorganization was not linked to the complainant's mental and physical disabilities. Further, her position was better than other part-time employees as she still had some office duties to do. She had not established a *prima facie* case of discrimination nor had she co-operated in the process by quitting when her old job was not available. The Tribunal noted that accommodation options are more limited in a small family business than in larger multi-faceted enterprises. (*Williams v. Sechelt School Bus Service and another (No. 2)*, 2010 BCHRT 251)

BODY WEIGHT A PERCEIVED DISABILITY IN NOT OFFERING WORK

A flagger was not offered work because his employer perceived him to be unable to stand for long periods of time because of his weight. The employer told him that his weight was the reason for not being called in to work, to avoid telling him that a contractor was unhappy with his previous conduct and did not want him back at its worksite. He received an immediate apology afterwards and was given more information about why he was not offered work. The Tribunal awarded $2,000 for injury to dignity, feelings and self-respect. (*Johnson v. D & B Traffic Control and another*, 2010 BCHRT 287)

NO DISCRIMINATION WHERE WORKER RETURNING FROM MATERNITY LEAVE REJECTED PART-TIME WORK IN ECONOMIC DOWNTURN

A hotel was sold while a server was on pregnancy leave. The new owner did not know that the server was an employee, but when this was verified, some hours were quickly offered, with more hours to equal the reduced hours being given to other employees. The server did not show up for work because it was not full time. The Tribunal found that the server's hours and conditions of employment were not adversely changed due to her leave. The owner was entitled to make changes to his business which resulted in all servers working part-time. The server refused to return to work and was deemed to have abandoned her job. The Tribunal also dismissed the server's retaliation complaint. (*Facchin v. Crossroads Restaurant and another*, 2010 BCHRT 288)

RACISM COMPLAINT DISMISSED WITH COSTS AGAINST THE COMPLAINANT

The complainant alleged that security personnel in a retail store targeted him as a shoplifter, and falsely arrested and subjected him to a racial comment because they perceived him to be an Indian. He sought costs for the store's alleged destruction and concealment of a security video recording. The Tribunal concluded that the alleged comment and other parts of complainant's evidence were fabricated, and found his complaint to be unjustified. The store produced the video and provided an unshaken explanation why the entire footage was not available. The Tribunal awarded costs of $3,000 against the complainant. He was found to be untruthful about the central allegation in his complaint and had manufactured evidence by surreptitiously recording a conversation with store personnel tailored to obtain incriminating statements. A petition for judicial review has been filed. (*Barta v. Sears Canada and another (No. 2)*, 2010 BCHRT 289)

PHYSICALLY-DISABLED STUDENT DEMEANED AND HUMILIATED

The complainant took a vocational school nail technician course. She used a wheelchair, and required a catheter. Several times she was told to leave class in front of her classmates, often in tears, because of "odour" and once she was relegated to the hall for four hours. She was moved to an evening class and then offered one on one instruction, instead of attending the class. She received only 280 of 350 instructional hours, and failed her exam by 1%. The Tribunal

found that she was discriminated against in services because of her physical disability. She would have passed the course if given the full instructional hours and had a 70% likelihood of being employed had she graduated. The Tribunal awarded $10,000 for injury to dignity, loss of future income and full compensation for student loans taken out to pay for tuition. (*Laberge v. Martier School of Hair Design & Esthetics and another (No. 2)*, 2010 BCHRT 302)

EMPLOYER FIRES MANAGER WITHOUT INQUIRING ABOUT ROLE OF DISABILITY

A manager was fired for not attending a board meeting. The Tribunal did not accept that there were gross performance deficiencies that justified the termination. The employer reasonably ought to have been aware that there might be a relationship between the manager's mental condition and his absence, and had a duty to inquire before terminating him. His disability, therefore, was a factor in the loss of his job. He was awarded $10,000 for injury to dignity, lost wages, compensation for the wage difference in his new employment and other expenses. (*Bowden v. Yellow Cab*, 2011 BCHRT 14)

IF SEXUAL PRACTICE "LIFESTYLE" PROTECTED, NO DISCRIMINATION PROVEN

The complainant, a Pagan and a BDSM (bondage/domination/sadism/masochism) "lifestyler", alleged he was discriminated against when the police denied him a chauffeur's permit. The permit was eventually granted when he appealed. Assuming, without deciding, that the complainant was a member of a protected group on the basis of his religion and/or sexual orientation, he did not establish that the permit was denied because of the real or perceived characteristics of a BDSM "lifestyler" being attributed to him, nor that there was a connection between his religion and BDSM. The police refused the permit because they believed that he presented an unacceptable risk to vulnerable members of the public. (*Hayes v. Vancouver Police Board*, 2010 BCHRT 324)

SEXUAL HARASSMENT AFTER WORKPLACE ROMANCE

The complainant had a consensual personal relationship with her boss. After she ended the relationship, he continued to text sexual messages despite repeated objections, which detrimentally affected her work environment. The Tribunal did not accept that she was the "workplace flirt", nor that opening and sometimes responding to the messages, and not deleting them, made her a willing participant. She eventually took stress leave and quit. Compensation was awarded for lost wages, reimbursement of expenses, and $12,500 for injury to dignity. The creation and implementation of a workplace policy on sexual harassment was strongly encouraged. (*McIntosh v. Metro Aluminum Products*, 2011 BCHRT 34)

RETALIATORY DENIAL OF MEMBERSHIP RENEWAL IN A NON-PROFIT ORGANIZATION

The complainant worked was a volunteer and then a member of a non-profit society. The Tribunal dismissed a complaint he made against the society, which the society viewed as a drain on its resources. The society then changed its policy to require applications for membership to be approved by its board, rather than approved administratively as before, purporting to bring its practice into compliance with its bylaws. When the complainant sought to renew membership, he had to apply formally as if he were a new member, and was unsuccessful. The Tribunal held that the denial of membership application was "retaliatory", as the complainant found working for a good cause to be meaningful and enjoyable, and membership also entitled him to a store discount. There was no credible evidence supporting the board's claim that the complainant's membership was denied because staff were afraid of him, or that he did not contribute any

particular skill as a volunteer. The Tribunal ordered that the complainant be reinstated as a member and awarded $3,000 for injury to dignity. (*Stewart v. Habitat for Humanity Victoria*, 2010 BCHRT 322)

PRETEXTUAL FIRING OF DISABLED EMPLOYEE IN A SMALL COMMUNITY AN AGGRAVATING FACTOR

A Dairy Queen employee was called a derogatory name by her manager that referred to her having one arm. Her employer made her job more difficult by creating more work and requiring work to be done that was known to be more challenging for a person with her disability to do. The Tribunal found that the employer's explanation that she was terminated for cause was a pretext and the reasons given for the termination were serious and hurtful. They included that she stole, gave food away and talked for extended periods of time to people who were not customers. The complainant was devastated and she suffered financial hardship, exacerbated because she lived in a small community. The Tribunal ordered compensation for lost wages and $15,000 for injury to dignity. (*Vernon v. Howatt Enterprises*, 2010 BCHRT 313)

FAILURE TO PROVIDE FURTHER WORK DUE TO PERCEIVED DISABILITY AND INTIMIDATING CONDUCT BEFORE HEARING RETALIATORY

When a young warehouse worker who injured his back on the job returned to work, without restrictions and fully recovered after a short absence, his supervisor told him that he was being dismissed because it was likely that he would reinjure his back. The Tribunal found that he was discriminated against based on a perceived disability; a weak back that might be susceptible to further injury. It also found that the employer retaliated against him for filing a complaint when he went to his former place of business to provide his list of witnesses for the hearing. He was sworn at, threatened with the police, almost physically charged and escorted off the property publicly while being videotaped. This behaviour was designed, at least in part, to scare him on the eve of the hearing. The Tribunal ordered partial lost wages, reimbursement for a training course required to find other employment and $4,000 for injury to dignity. A further $4,000 was awarded for injury to dignity resulting from the retaliatory conduct. (*Cartwright v. Rona and another*, 2011 BCHRT 65)

WIFE BANNED FROM ACCESSING SERVICES DUE TO SERVICE-PROVIDER'S DISPUTE WITH HER HUSBAND

The complainant and her husband purchased property on a remote island to retire and build a small resort. Virtually every service, including essentials like food, fuel and emergency access off the island was owned by the corporate respondent and its owner, and most residents worked for the company. As a result of a billing dispute with the complainant's husband, the company banned them from all island services. The Tribunal found that the complainant wife was discriminated against based on marital status, even though she had not been on the island during the three months that the ban was in effect. The Tribunal awarded compensation for expenses incurred to attend the hearing and prove the complaint and $2,000 for injury to dignity for the humiliation of not being able to access her island home. (*Bray v. Shearwater Marine and another*, 2011 BCHRT 64)

Judicial Reviews and Appeals

Judicial Reviews and Appeals

The *Code* does not provide for an appeal of Tribunal decisions but a party may petition for a judicial review in B.C. Supreme Court within 60 days, pursuant to the *Judicial Review Procedure Act* and the *Administrative Tribunals Act* ("*ATA*").

Judicial review is a limited type of review. Generally, the Court considers the information that the Tribunal had before it and decides if the Tribunal made a decision within its power or in a way that was wrong. The Court applies the standards of review in section 59 of the *ATA*, to decide if the decision should be set aside or stand even if the Court does not agree with it. If the decision is set aside, it is usually sent back to the Tribunal for reconsideration.

A BC Supreme Court judicial review decision may be appealed to the BC Court of Appeal. A further appeal to the Supreme Court of Canada may occur with leave of that court.

Judicial Reviews in BC Supreme Court

This year, 14 petitions for judicial review were filed in the Supreme Court, as compared to 24 in the prior year.

The Court issued 10 judgements, granting two petitions. Three of these judgements reviewed final decisions:

- A finding of wage discrimination against a female drywall finisher was upheld. (*Kraska v. Pennock*, 2011 BCSC 109)

- An award of costs was set aside. (*Downtown Vancouver Business Improvement Association v. Pivot Legal Society*, 2010 BCSC 807) (Notice of Appeal filed)

- A remedial award for employment discrimination on the grounds of mental and physical disability (Parkinson's Disease) was upheld but set aside and remitted for reconsideration on appeal. (*Morgan Hung v. British Columbia Human Rights Tribunal and Provincial Health Services Authority* (17 June 2010) New West Reg. S124628 (B.C.S.C.); 2011 BCCA 122)

Seven of the judgements reviewed preliminary decisions of the Tribunal:

- A judicial review of a decision respecting the admissibility of documents was found to be moot. (*Gichuru v. The Law Society of British Columbia*, 2010 BCSC 522)

- A complaint dismissed pursuant to section 27(1)(d)(ii) on the basis that an employer appropriately responded to an offensive cartoon posted in the workplace, and subsequent reconsideration by the same member, was upheld. (*Karbalaeiali v. British Columbia (Human Rights Tribunal)*, 2010 BCSC 1130; *Karbalaeiali v. British Columbia (Human Rights Tribunal)*) (15 October 2010) Vancouver S096365 (B.C.S.C.)

- Dismissal of an employment complaint under section 27(1)(c) was upheld. (*Hamedanian v. The British Columbia Human Rights Tribunal and others* (09 February 2011) Vancouver S098351 (B.C.S.C.))

- A dismissal under section 27(1)(c) of a race-based complaint about denial of access to a cabaret was set aside and remitted back to the Tribunal. (*White v. The Roxy Cabaret Ltd.*, 2011 BCSC 374)

- Judicial review of a decision to defer answering certain jurisdictional questions until a hearing was held to be premature. (*HMTQ v. Swetlishoff*,

2010 BCSC 1252)

- A dismissal under section 27(1)(c) of a complaint of discrimination in employment on the basis of sex and marital status, and a refusal to reconsider it, was upheld. (*Routkovskaia v. British Columbia (Human Rights Tribunal)*, 2011 BCSC 144) (Notice of Appeal filed)

- A refusal to accept a late-filed complaint was upheld. (*Lorenz v. The BC Human Rights Tribunal and others* (23 February, 2011) Vancouver No. S108205 (B.C.S.C.))

COURT OF APPEAL

This year, there were four Notices of Appeal filed, as compared to six in the prior year.

In addition, leave was granted to appeal a ruling made during a judicial review that private transcripts made by one of the parties are part of the record of proceedings. (*SELI Canada Inc. v. Construction and Specialized Workers' Union, Local 1611*, 2010 BCCA 276)

The Court of Appeal issued seven judgments on appeals of judicial review decisions.

The Court upheld one final decision and set aside three others:

- The Court affirmed a decision by a chambers judge that the Tribunal erred in finding that a student with dyslexia had been discriminated against individually and systemically by a school district and the Province when efforts to accommodate his disability were made "too little, too late". The Court disagreed with the Tribunal that the service at issue was general education. Rather, it was special education services and there was no *prima facie* discrimination as the complainant had received those services. (*British Columbia (Ministry of Education) v. Moore*, 2010 BCCA 478) Leave to appeal to the Supreme Court of Canada has been granted.

- The Court upheld a Tribunal decision that an attendance management program systemically discriminated against workers with chronic or recurring disabilities in the way that it was applied, and that the employer failed to show that it was impossible to accommodate these workers without undue hardship. (*Coast Mountain Bus Company Ltd. v. National Automobile, Aerospace, Transportation and General Workers of Canada (CAW - Canada), Local 111*, 2010 BCCA 447)

- The Court decided that the Tribunal should reconsider part of its remedial award because its wage loss award was based on a factual error, and insufficient reasons were given for the decision respecting medical expenses and the requested removal of an adverse note on a personnel file. The award for injury to dignity was upheld. (*Morgan-Hung v. British Columbia (Human Rights Tribunal)*, 2011 BCCA 122)

- The Court affirmed a chambers judge's decision overturning a Tribunal finding of discrimination in services provided by a housing co-operative that allowed only one member per residential unit. A widow of a member did not suffer any adverse treatment because of her marital or family status, though she lost her suite because her application for membership was denied. She was treated like other non-members living in the co-op, who were subject to the "one member rule". (*Lavender Co-operative Housing Association v. Ford*, 2011 BCCA 114)

In addition, in the *Coast Mountain Bus Company* and *Lavender Co-operative* decisions, the Court affirmed that the correctness standard applies to judicial review of questions of mixed fact and law, such as findings of discrimination, pursuant to section 59(1)

of the *ATA*.

The Court also upheld two Tribunal dismissal decisions under section 27(1)(c): *Gichuru v. British Columbia (Workers Compensation Appeal Tribunal)*, 2010 BCCA 191 (employment discrimination), and *Gichuru v. Law Society of BC*, 2010 BCCA 543 (retaliation). It also found that was not premature for a chambers judge to review, and overturn, a section 27(1)(c) decision: *Workers' Compensation Appeal Tribunal v. Hill*, 2011 BCCA 49.

SUPREME COURT OF CANADA

There were four applications for leave to appeal served on the Tribunal this year.

Leave was denied in *Armstrong v. British Columbia (Ministry of Health)*, [2010] S.C.C.A. No. 128 (QL) and *Gichuru v. British Columbia (Workers' Compensation Appeal Tribunal)*, [2010] S.C.C.A. No. 217 (QL).

Leave was granted in *British Columbia (Workers' Compensation Board) v. British Columbia (Human Rights Tribunal)*, [2010] S.C.C.A. No. 180 (QL). The appeal was heard March 16, 2011.

Leave was granted in *British Columbia (Ministry of Education) v. Moore*, 2010 BCCA 478 (QL).

SPECIAL PROGRAMS AND POLICY

Section 42(3) of the *Code* recognizes that treating everyone equally does not always promote true equality and the elimination of discrimination. It allows approval of special programs which treat disadvantaged individuals or groups differently to recognize their diverse characteristics and unique needs and improve their conditions.

Approvals are generally for six months to five years but may be renewed. Employment equity programs are usually approved for several years. Periodic reporting may be required.

Tribunal approval is not required, but when a special program is approved by the Chair, its activities are deemed not to be discrimination.

The Tribunal's Special Programs Policy and a list of special programs approved are posted on the Tribunal's website.

Tribunal Members

Bernd Walter, Acting Chair

Mr. Walter was appointed as acting Chair of the Tribunal on August 1, 2010. He continues to Chair the British Columbia Review Board during his tenure with the Tribunal.

Mr. Walter has chaired a number of BC Tribunals. He has also served as an ADM in the BC Public Service, as well as in Alberta and Ontario. He served as Alberta's First Children's Advocate.

His background includes program, policy and law reform, in particular in child protection, adoption, Aboriginal child and family services, child, youth and adult mental health and children's rights. He has also participated in First Nations Residential Schools reconciliation and healing work.

Heather MacNaughton, Chair and Member

Ms. MacNaughton was appointed as Chair of the Tribunal on August 1, 2000, and was reappointed for a second five-year term from July 31, 2005 to July 31, 2010. She was authorized, pursuant to section 7 of the *Administrative Tribunals Act*, to continue to exercise powers as a member over continuing proceedings until January 2011.

She holds both a Bachelor of Laws (1982) and Master of Laws (1998) from Osgoode Hall Law School and a Bachelor of Arts (with distinction) from Brock University (1979). Her Master's work focused on the Litigation Process and Alternative Dispute Resolution.

Prior to her appintment to the Tribunal, Ms. MacNaughton chaired both the Ontario Human Rights Board of Inquiry and the Ontario Pay Equity Hearings Tribunal.

Ms. MacNaughton left private practice in 1995 to become a Vice Chair of the Ontario Human Rights Board of Inquiry, the Pay Equity Hearings Tribunal, and the Employment Equity Tribunal. Prior to that, she had a been a partner with a national law firm practising in the areas of Labour, Employment, Human Rights, Administrative Law and Civil Litigation.

J.A. (Tonie) Beharrell, Member

Ms. Beharrell was appointed as a full-time Member of the Tribunal on December 2, 2002 for a five-year term. She was most recently reappointed for a five-year term expiring in December 2012.

She holds a law degree from the University of British Columbia (1997) and a Bachelor of Arts from Simon Fraser University (1994).

Prior to joining the Tribunal, Ms. Beharrell was an Associate at a national law firm practising in the areas of Labour, Employment, Human Rights, and Administrative Law.

Murray Geiger-Adams, Member

Mr. Geiger-Adams was appointed a full-time Member of the Tribunal effective March 9, 2009 for a six-month term under a Chair's appointment. He was most recently reappointed for a five-year term expiring in January 2015.

He holds a law degree from the University of Toronto (1985), and a Bachelor of Arts (Honours) degree in political science from the University of British Columbia (1975).

Prior to joining the Tribunal, and from 1997-2008, Mr. Geiger-Adams was legal counsel for a professional association responsible for collective agreement administration.

Before that, and from 1985-1997, he was a student, associate and then partner in a Vancouver law firm, representing clients in matters including labour, human rights, aboriginal rights and employment.

Barbara Humphreys, Member

Ms. Humphreys was appointed as a full-time Member of the Tribunal in 1997. She was most recently reappointed for a five-year term expiring in January 2015. Ms. Humphreys has announced she will retire on July 1, 2011.

She holds a law degree from the University of Victoria (1984) and a Bachelor of Arts from Sir George Williams University (1969).

Ms. Humphreys joined the B.C. Council of Human Rights in 1990. She was actively involved in the transition from the former B.C. Council of Human Rights to the Human Rights Tribunal.

Prior to joining the B.C. Council of Human Rights, she was an Ombudsman Officer for the Office of the Ombudsman.

Diana Juricevic, Member

Ms. Juricevic was appointed as a full-time Member of the Tribunal on March 3, 2011 for a temporary six-month term, pursuant to section 6 of the *Administrative Tribunals Act*. She holds a Juris Doctor and Master of Economics degree from the University of Toronto (2004). She also holds an Honours Bachelor of Arts degree from the University of Toronto (2001).

Prior to joining the Tribunal, Ms. Juricevic practised international criminal law before tribunals in The Hague and Cambodia. She was also the Acting Director of the International Human Rights program at the University of Toronto Faculty of Law where she taught courses on international criminal law and human rights advocacy.

At the outset of her career, Ms. Juricevic was an associate at a national law firm practising in the areas of civil litigation, administrative law, and human rights.

Enid Marion, Member

Ms. Marion was appointed as a full-time Member of the Tribunal, effective July 27, 2008 for a five-year term. She holds a law degree from the University of Victoria (1988).

Prior to joining the Tribunal, Ms. Marion practiced labour, employment and human rights law as an Associate with a Vancouver law firm and as an Associate and then Partner with another Vancouver law firm.

Kurt Neuenfeldt, Member

Mr. Neuenfeldt was appointed as a full-time Member of the Tribunal on January 6, 2003 for a five-year term. He was most recently reappointed for a five-year term expiring in January 2013.

He holds a law degree from the University of British Columbia (1978) and a Bachelor or Arts degree from the University of Wisconsin (1972).

For several years, Mr. Neuenfeldt worked with the Legal Services Society of BC. While there, he held a range of positions including Staff Lawyer, General Counsel and Director of Client Services. He then practised privately in Vancouver.

Prior to joining the Tribunal, Mr. Neuenfeldt had been a member of the Immigration and Refugee Board of Canada for over nine years.

Judith Parrack, Member

Ms. Parrack was appointed as a full-time Member of the Tribunal on August 1, 2005 for a five-year term and she is authorized, pursuant to section 7 of the *Administrative Tribunals Act*, to continue to exercise powers as a member over continuing proceedings until completion. Ms. Parrack holds a law degree from Osgoode Hall Law School (1987).

Ms. Parrack was an Associate with a national law firm from 1989 to 1994 and a staff lawyer at the B.C. Public Interest Advocacy Centre from 1995 to 1999. She was a full-time Member of the B.C. Human Rights Tribunal from 1999 to 2002.

Prior to re-joining the Tribunal in 2004, Ms. Parrack was in private practice in the areas of Labour, Human Rights and Administrative Law.

NORMAN TRERISE, MEMBER

Mr. Trerise was appointed as a full-time Member of the Tribunal on December 2, 2010 for a five-year term.

He holds a law degree from the University of British Columbia (1973) and a Bachelor of Arts degree from the University of Oregon (1969).

Prior to his appointment, Mr. Trerise practised labour, employment, human rights and administrative law as a partner with a national law firm.

MARLENE TYSHYNSKI, MEMBER

Ms. Tyshynski became a full-time Member of the Tribunal on December 1, 2005 for a temporary six-month term.

Upon expiry of her term, Ms. Tyshynski returned to her position as legal counsel to the Tribunal. In October 2007, following amendments to the *Administrative Tribunals Act*, the Chair appointed her to a second six-month term. She was most recently reappointed to a five-year term expiring in April 2013.

She holds a law degree from the University of Victoria (1988), a Master of Social Work degree from Wilfred Laurier University (1978) and an Honours Bachelor of Applied Science degree from the University of Guelph (1976).

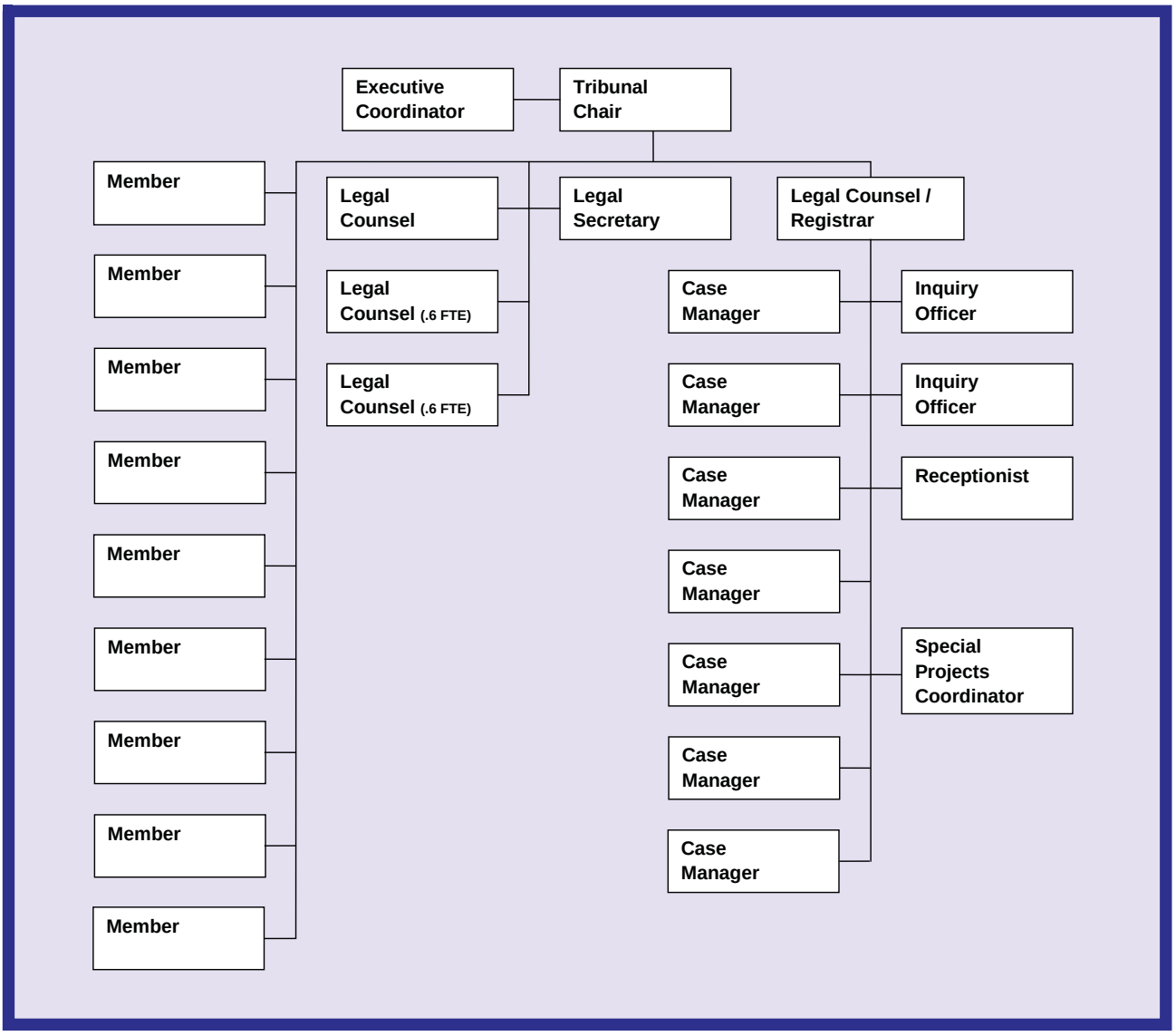
At the outset of her career, Ms. Tyshynski was an associate with two law firms in Victoria. She was in private practice for several years specializing in, among other areas, Administrative Law, then she worked as a staff lawyer for the Legal Services Society.

Prior to her appointment as Member, Ms. Tyshynski served as legal counsel to the Tribunal for three years.

BC Human Rights Tribunal Operating Cost
Fiscal Year 2010-2011

Category	Expenditure	Delegated Budget	Variance
Salaries (Chair, Members, Registry and Administration)	$ 2,092,551	$ 2,177,000	$ 84,449
Employee Benefits	$ 511,518	$ 533,000	$ 21,482
Expired-Term Members – Fees for Completing Outstanding Decisions	$ 54,994	$ 20,000	$ (34,994)
Travel	$ 70,439	$ 108,000	$ 37,561
Centralized Management Support Services	$ 0	$ 0	$ 0
Professional Services	$ 151,561	$ 80,000	$ (71,561)
Information Services, Data and Communication Services	$ 2,700	$ 17,000	$ 14,300
Office and Business Expenses	$ 77,827	$ 59,000	$ (18,827)
Statutory Advertising and Publications	$ 3,600	$ 5,000	$ 1,400
Amortization Expenses	$ 0	$ 46,000	$ 46,000
Total Cost	**$ 2,965,190**	**$ 3,045,000**	**$ 79,810**

Organization Chart



Steps in the Complaint Procedure

1. Access to Information about Complaints

Two Tribunal inquiry officers give callers basic information about human rights protection under the *Code*, the complaint process and other organisations providing assistance in human rights matters. If the call is not about a human rights matter, the inquiry officers may refer the caller to another agency. Complaint forms, guides and information sheets are available from the Tribunal, on its website, at government agents' offices, the Human Rights Clinic and other organisations.

2. Complaint Filed

The first step in the complaint process is filing a complaint form.

3. Complaint Screened

The complaint is assigned to a case manager who reviews it to see it is complete, appears to be within the jurisdiction of the Tribunal, and is within the six-month time limit.

If the complaint form is not complete, the case manager explains why and gives the complainant a limited time to complete it.

If it is clear that the complaint does not involve a provincial matter or a human rights matter covered by the *Code*, the case manager will recommend to the Chair that the complaint be rejected.

If it appears that the complaint was filed after the six-month time limit, submissions are sought and a Tribunal member decides whether the complaint is in time or, if not, whether the Tribunal should exercise its discretion to accept it.

4. Complaint Accepted and Served

After the complaint is screened, the Tribunal notifies the parties that it has been accepted.

5. Early Settlement Meeting

The parties may meet with a Tribunal mediator who will help them resolve the complaint before any further steps are taken. Many complaints are settled at this stage.

6. Response to Complaint Filed

If the parties do not settle or do not want an early settlement meeting, the respondent files a response to the complaint form and may also file an application to defer or dismiss the complaint.

7. Application to Defer or Dismiss

If a respondent applies to have the complaint deferred or dismissed, the Tribunal gets submissions from the parties and a Tribunal member makes a decision. Complaints may be deferred if there is another proceeding capable of appropriately dealing with the substance of the complaint. Complaints may be dismissed for the reasons provided in section 27(1) of the *Code*.

8. Complaint Streamed

Once a response to the complaint is filed and screened, the Tribunal decides whether it will follow the standard stream or be case-managed by a Tribunal member because of its complexity or other special characteristics.

Steps in the Complaint Procedure

9. Settlement Meeting

After the complaint is streamed, the parties have another opportunity to take part in a settlement meeting.

10. Pre-Hearing Preparation

If the complaint does not settle, the parties must prepare for the hearing and exchange relevant documents, witness lists, and positions on remedy. The case manager will telephone them several weeks before the hearing to check that they are ready.

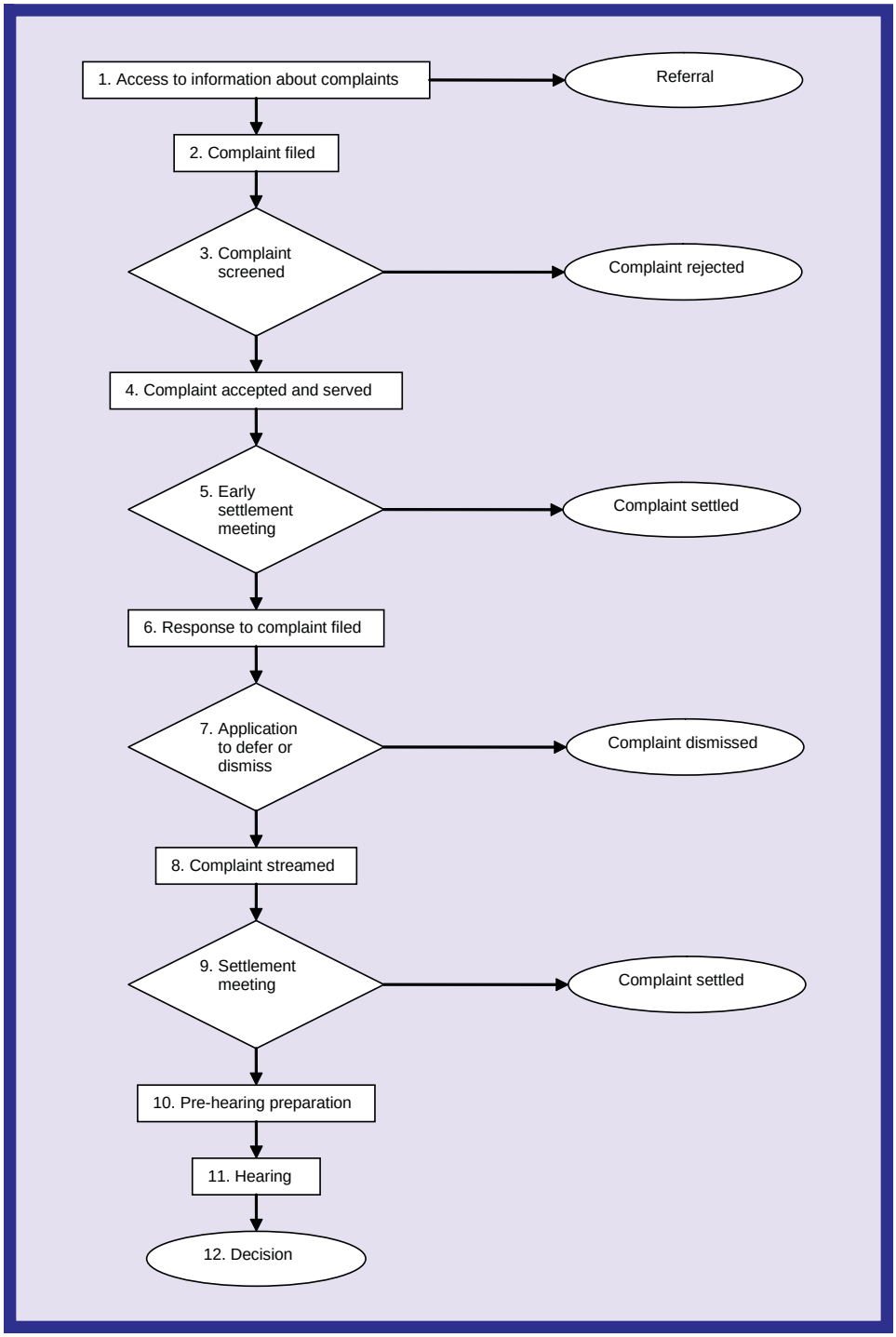
11. Hearing

Hearings are held before a Tribunal member or a panel of three members in exceptional cases. The parties attend in person and the hearing is open to the public. Evidence is given through witnesses, documents and other items. Each party has an opportunity to challenge the other party's evidence and to make arguments supporting their position.

12. Decision

Based on the evidence, the arguments and the relevant law, the Tribunal member or panel decides whether the complainant has proven that discrimination occurred and, if so, whether the respondent has a defence to the discrimination. If the complaint is not justified, it is dismissed. If the complaint is justified, orders are made to remedy the discrimination.

Complaint Flow Chart



Tribunal Publications

The following Guides, Information Sheets and Policies are available in English, Chinese and Punjabi on the Tribunal's website or by contacting the Tribunal. Please refer to the back cover of this report for contact information.

Guides

1– The BC Human Rights Code and Tribunal
2– Making a Complaint and guide to completing a Complaint Form
3– Responding to a Complaint and guide to complet ing a Response to Complaint Form
4– The Settlement Meeting
5– Getting Ready for a Hearing

Information Sheets

1– Tribunal's Rules of Practice and Procedure
2– How to Name a Respondent
3– What is a Representative Complaint?
4– Time Limit for Filing a Complaint - Complainants
5– Time Limit for Filing a Complaint - Respondents
6– Tribunal Complaint Streams
7– Standard Stream Process - Complainants
8– Standard Stream Process - Respondents
9– How to Ask for an Expedited Hearing
10– How to Deliver Communications to Other Participants
11– What is Disclosure?
12– How to Make an Application
13– How to Add a Respondent
14– How to Add a Complainant
15– How to Make an Intervenor Application
16A–Applying to Dismiss a Complaint Under Section 27
16B–How to Respond to an Application to Dismiss a Complaint
17– How to Request an Extension of Time
18– How to Apply for an Adjournment of a Hearing
19– How to Require a Witness to Attend a Hearing
20– Complainant's Duty to Communicate with the Tribunal
21– How to Find Human Rights Decisions
22– Remedies at the Human Rights Tribunal
23– How to Seek Judicial Review
23A–Judicial Review: The Tribunal's Role
24– How to Obtain Documents From a Person or Organization Who is Not a Party to the Complaint
25– How to Enforce Your Order
26– Costs Because of Improper Conduct

Policies

- Complainant's Duty to Communicate with the Tribunal
- Public Access and Media Policy
- Settlement Meeting
- Special Programs

ADMINISTRATIVE STAFF

Registrar / Legal Counsel
Vikki Bell, Q.C.

Executive Coordinator
Andrea Nash (partial year)
Sheila O'Reilly (partial year)

Legal Counsel
Jessica Connell
Katherine Hardie (part-time)
Denise Paluck (part-time)

Legal Secretary
Mattie Kalicharan (partial year)
Snezana Mitic (partial year)
Nikki Mann (partial year)

Case Managers
Pam Bygrave (partial year)
Lindene Jervis
Anne-Marie Kloss
Lorne MacDonald
Maureen Shields
Margaret Sy
Cristin Popa (partial year)
Daniel Varnals (partial year)

Special Projects Coordinator
Luke LaRue

Administrative Assistant
Graeme Christopher (partial year - temp assignment)
Paul Rondeau (partial year - temp assignment)

Inquiry Officers
Cheryl Seguin
Mattie Kalicharan (partial year)
Carla Kennedy (partial year - temp assignment)

Reception
Janet Mews

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Annual Report

BC Human Rights Tribunal

2011-2012

The core mission of the British Columbia Human Rights Tribunal is the timely and fair resolution of disputes involving the human rights of all British Columbians

LETTER TO THE ATTORNEY GENERAL

BRITISH COLUMBIA

British Columbia Human Rights Tribunal

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August 24, 2012

Honourable Shirley Bond
Minister of Justice and Attorney General
Province of British Columbia
Room 232, Parliament Buildings
Victoria, BC V8V 1X4

Minister:

Pursuant to section 39.1 of the *Human Rights Code*, I herewith present the Annual Report of the British Columbia Human Rights Tribunal, along with some key highlights in the life of the Tribunal during the fiscal year April 1, 2011 to March 31, 2012.

HIGHLIGHTS

1. THE REFORM AGENDA

In August 2011, I was asked to develop a wide-ranging plan for the review of the Tribunal's operations, including its policy and procedural framework, to improve and to render more efficient and effective, the delivery of its services to the public.

In December 2011, the Ministry approved a series of strategic objectives encompassing all dimensions of the Tribunal's operations, including:

- expediting, simplifying, streamlining and rendering more timely and consistent, the Tribunal's case management functions, from screening through to file closure;
- enhancing further the Tribunal's capacity to offer its parties early, informal complaint resolution and settlement opportunities;
- exploring practices and approaches to encourage shorter, less formal, more inquisitorial and procedurally flexible hearings, including summary or expedited hearing alternatives;
- promoting the production of less lengthy, less complex and more timely written decisions;
- considering legislative options which appropriately facilitate the reform agenda and which address such issues as the formality and extent of case management processes; the nature, array and disposition of preliminary

applications; Judicial Review and the finality of the Tribunal's decisions, including the standard of review; and

- the Tribunal's organizational environment, considering both its internal operating structure as well as opportunities to share resources through functional integration and co-location with other administrative entities.

This process of review and reform is intended to unfold over a period of eighteen months.

2. OPERATIONAL ISSUES AND REALITIES

In launching the reform agenda, the Tribunal undertook a scan of its environment and sought input from its stakeholder communities in some key areas of its operations, to quickly identify and prioritize a number of immediate, short-term change targets.

As an example, some new complaints which had been filed in August 2011, were still being screened for initial acceptance or rejection in January 2012. Though the actual receipt of a complaint was acknowledged within days, a decision to reject the complaint, or to seek additional factual detail, might be outstanding for as long as 130 days without any intervening or further progress.

Once a complaint was accepted for filing purposes, it might often be the subject of protracted correspondence seeking clarification producing information of limited value and delaying notification of the Respondent.

If a respondent chose to apply to dismiss the complaint without a full hearing, some decisions were found to be outstanding as long as 230 to 400 days from the date of the application.

Hearings were being scheduled a year in advance with numerous potential intervening changes.

Final decisions, following an evidentiary hearing, might be outstanding anywhere from six months to more than one year.

Such delays do not, from my perspective, comport with sound, accountable public service and are not acceptable for a frontline adjudicative tribunal/agency.

3. FIRST STRATEGIES

SCREENING SURGE

Under the leadership of first, the Acting, and later the Tribunal's new Registrar, case management staff were offered opportunities for overtime work surges. As a result, the total number of complaints in the screening process has been reduced. Importantly, both the number of complaints in the screening process for more than 60 days and those in screening less than 60 days, have each reduced dramatically.

Currently, all new complaints are reviewed by the Registrar. Recommendations for rejection are brought immediately to the Chair for decision. Remaining complaints are assigned to case managers with detailed processing instructions. Complainants are only invited to provide additional information with the specific direction of the Registrar.

FORMS REVISION

The Tribunal's complaint, response, and other forms are being dramatically revised.

Complaint forms will be structured to assist a complainant to set out her/his complaint in a manner which answers critical questions and steps in the process, consistent with Human Rights jurisprudence. Complainants will also be asked to articulate the remedy they are seeking in order to resolve their complaint.

The new forms will be supported by clear instructions and user guides for both complainants and respondents.

These materials will not only assist parties to formulate more effective complaints, amendments and responses, but will also standardize and render more consistent, the Tribunal's screening decisions and procedures.

The implementation of these forms in Fall 2012 will make it far more straightforward to accept or to reject a complaint for filing and should also reduce the frequency of, and the time lag associated with, requests for additional information in order to properly assess a complaint, at the screening stage.

The Tribunal will also be in a position, as has been frequently requested, to notify respondents of a complaint far sooner, so they can develop their own positions and strategies with respect to settlement, applying to dismiss, or responding to the complaint.

CASE MANAGEMENT CORRESPONDENCE

Routine case management correspondence between Tribunal staff and parties is now more directive, shorter and simpler. It will be subject to ongoing monitoring, review and revision to ensure its relevance and effectiveness.

It is my hope that these innovations will ultimately enable the Tribunal to determine whether a complaint will be accepted for filing and to serve the respondent within 14 days of filing or less.

HEARING SCHEDULES

Given the fluidity of the Tribunal's hearing schedules, because of dismissal applications and settlements, hearings and disclosure requirements will no longer be set as early in the process. Hearings will be scheduled after preliminary applications and settlement conferences are largely completed. Setting hearing dates later in the process reduces the investment of time and resources in

scheduling dates and out-of-town venue arrangements that remain too tentative and uncertain to be meaningful. Parties are, of course, still able to apply for an expedited hearing under the Tribunal's Rules of Practice and Procedure.

SETTLEMENT SERVICES AND DECISION MAKING: CHALLENGES AND DEVELOPMENTS

The Tribunal offers highly successful settlement services, through its adjudicative members as well as through contracted mediators.

As a result of the loss of members through retirement, resignation, non-reappointment or delay in new appointments since March 2010, the Tribunal has, at times, been under-resourced by as many as four adjudicative members.

Adverse implications, in terms of the Tribunal's capacity to provide trained, expert mediators to resolve disputes as well as to assign members to preside on evidentiary hearings and render timely, legally-sound decisions in accordance with its statutory mandate, are self-evident.

The Tribunal has recently retained additional contracted mediators. They, together with Tribunal members have, since January 2012, achieved an astonishing settlement rate of over 90%.

With the very positive support of the Minister, Deputy Attorney General and Board Resourcing and Development Office, the Tribunal has succeeded in securing member appointments, to the point where the Tribunal will be at close to full complement for Fiscal Year 2012-2013. We are, however, still effectively short one member as one individual is appointed by the Chair under s. 7 of *the Administrative Tribunals Act* ("*ATA*"), and restricted to working on a single matter which was under her jurisdiction before the expiration of her appointment.

The matter of outstanding decisions therefore remains an ongoing concern. I am, however, pleased to report that, as a result of our current members' extraordinary efforts, and despite an increase in the absolute number of pending decisions, the number of preliminary decisions outstanding for more than 90 days has been cut in half, as have final decisions outstanding more than 180 days.

THE TRIBUNAL AND THE COURTS

As identified above, the number of Tribunal decisions which become the subject of petitions for judicial review, has been an issue for some time.

Judicial Review is a complex, and at times, misunderstood process. Frequently, parties are seeking to re-argue discretionary decisions, challenge found-facts or are seeking appeal of a decision regarding the merits of a complaint which is not available on judicial review. This significantly prolongs finality and it perpetuates uncertainty, and undermines the objectives of an accessible, timely, and cost-effective administrative justice regime.

Despite the fact that relatively few petitions are actually successful, judicial reviews consume a disproportionate share of the Tribunal's attention and resources.

An immediate strategy has been the decision to record the Tribunal's hearings which can, in whole or part, be filed with a reviewing court. This should have the effect of discouraging parties from seeking to reargue found facts using extrinsic affidavit material on judicial review.

It is also timely to consider legislative options which bring more certainty and greater finality to Human Rights complaints, for example, a privative clause, amendments to the *ATA*, or exempting the Tribunal from the *ATA* altogether and leaving matters to common law standards of review which have been considerably simplified or resolved by the Supreme Court of Canada.

In the meantime, considering the general tenor of decisions resulting from judicial review, the impact on scarce resources and considering also the outcome risks, I have determined that the Tribunal's participation in judicial reviews will focus on those cases where there is a clear institutional interest at stake.

The decision to participate, and the extent of the Tribunal's participation in a judicial review, will be predicated on a rigorous, case-by-case analysis and assessment, against articulated criteria, of the risks and benefits of non-participation.

This change in direction is freeing the Tribunal's legal resources to support more pressing work in such areas as research, policy analysis and development, and support to staff and members, all in the interests of maximizing the Tribunal's responsiveness to its stakeholders, its parties and the public.

4. LOOKING FORWARD

In keeping with the stated objectives of the reform initiative, the months ahead will focus efforts on the following key areas:

- Identification of additional areas of procedural change to streamline the hearing process, including exploration of summary hearings based on written submissions, agreed statements of fact, as well as considering the efficacy of video conferencing for both mediations and hearings;
- Revision of the Tribunal's Rules of Practice and Procedure in response to process and procedural changes;
- Completion of an RFL requesting modest amendments to the *Code* to enhance fairness and timeliness; and
- Development of staff and member performance expectations.

5. MAINTAINING THE AGENDA: SOME MODEST PROPOSALS

The Tribunal has been assigned an ambitious, time-limited program of reform. No additional funds or human resources have been provided to resource the agenda. Staff and Members are expected to discharge their ongoing responsibilities. The Tribunal, as a whole, is expected to continue to deliver its core legislative mandate and to further the purposes of the *Code*.

I have consistently avoided requests for additional resources and preferred to manage my assignments or appointments within constraints. On that note, I am pleased to report a year-end surplus of $97,000 in terms of the Tribunal's fiscal delegation, though this is largely due to Member vacancies and the sharing of certain expenditures with the BC Review Board.

In order to maintain the momentum and focus of the reform agenda, and fully recognizing and acknowledging the government's and the Ministry's fiscal pressures, I nevertheless consider it necessary to request additional resources in the following general areas of the Tribunal's activities and operations:

I. CONTRACT FUNDS

Additional funds, or access to the budget surplus of the BC Review Board, which I also chair, are required to continue the reform agenda which has been assigned to the Tribunal, to enable it to develop the policy and public materials necessary to further this initiative.

II. CONSOLIDATION AND CO-LOCATION

New models for the organization and consolidation of Tribunal functions are being implemented in Canada and internationally. Ontario has recently enacted legislation to achieve the "clustering" of kindred Tribunals with congruent mandates. The BC Human Rights Tribunal and the BC Review Board are positioned and poised to demonstrate integration of key functions while maintaining and discharging distinct statutory mandates. The Minister and Deputy Attorney General have signalled their support for such an initiative; the review process mandates it. I await the support of program staff to achieve the vision of administrative integration which will enable the affected Tribunals to considerably reduce their respective leasehold footprints.

III. INFORMATION TECHNOLOGY ENHANCEMENTS AND TRANSFORMATION

The Tribunal's existing case management system ("TABS"), is seriously lacking in its capacity to generate critical management, productivity and forecasting metrics and to adapt to process changes. TABS requires functional enhancements to enable, for example, electronic filing and document exchange to reduce processing time, eliminate paper-based files and reduce postage costs.

IV. MEMBER COMPENSATION

Tribunal compensation rates are set by Treasury Board Directive which, despite its articulated three-year review cycle, has not had further consideration since early 2007, over five years ago.

The remuneration of highly-accomplished and respected, full-time Tribunal adjudicators, has therefore remained static. During the same period, as a result of negotiated sectoral agreements, compensation for legal counsel has, and continues to, automatically increase yearly.

The creeping, incremental wage gap, amongst what are in fact administrative law judges and the legal counsel who support them, continues to widen.

The impact is two-fold. First, it makes it difficult, at a time when government appears committed to broadening the jurisdiction of, and even establishing additional administrative justice entities, to recruit, retain and maintain the commitment of very qualified, expert adjudicators. Second, it will threaten workplace morale.

It is, in my view, time to reinvigorate the process and to meaningfully reconsider the compensation issue.

V. ADDITIONAL MEMBER(S)

Finally, insofar as one adjudicator is authorized under s. 7 of the *ATA*, to conduct but a single proceeding through to completion, the Tribunal continues, in fact, to operate with a reduced complement of adjudicative members. It would assist the Tribunal to maintain and strengthen its public service orientation to be able to recruit an additional adjudicative member.

Bernd Walter,
Chair

BW/lil

Enclosure

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Tribunal Mandate and Purpose

The British Columbia Human Rights Tribunal is an independent, quasi-judicial body, established under the *Human Rights Code*, to resolve and adjudicate human rights complaints in a manner that is consistent with the purposes set out in section 3:

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*.

Amendments to the *Code* as of March 31, 2003 instituted a direct access model for human rights complaints.

BC's direct access Tribunal 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 resolution and adjudication of human rights complaints.

Complaints are reviewed to see that the information is adequate, the Tribunal has jurisdiction over the matters set out, and that they are filed within the six-month time period set out in the *Code*. If a complaint is accepted, the Tribunal notifies the respondents 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, and how it should be remedied, is rendered.

The Tribunal conducts hearings and settlement meetings throughout the Province. The Tribunal's practices and procedures are governed by its rules.

Inquiry and Complaint Statistics

Inquiry Statistics

Inquiries about the Tribunal's complaint process are answered by Inquiry Officers, who provide information about the *Code*'s protections and also make referrals to other appropriate community and government resources. A toll-free number and email address allow the public, anywhere in the province, to access the Tribunal.

This year, the Tribunal responded to 8,275 telephone and 2,029 email inquiries.

New Cases

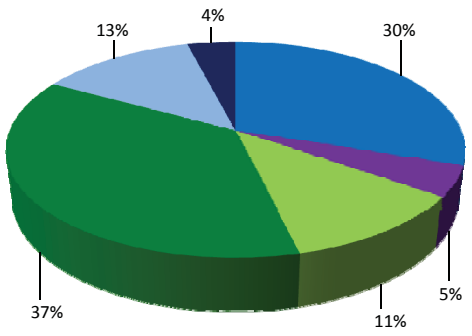
The Tribunal reviews all complaints to ensure that they are within provincial jurisdiction, and that they include sufficient information to enable the Tribunal to determine whether they set out a contravention of the *Code*.

Cases Handled April 1, 2011 - March 31, 2012	
New Cases	1092
Cases Rejected	387
Cases Accepted for Filing	705

Closed Cases

Cases are closed when they are not accepted for filing at the initial screening stage, withdrawn because they have settled or are abandoned, dismissed or a decision is rendered after a hearing.

Cases Closed by Reason April 1, 2011 - March 31, 2012		
Cases Rejected During Screening	336	30%
Late Filed Complaints Rejected	51	5%
Applications to Dismiss Granted	127	11%
Cases Settled	408	37%
Cases Withdrawn or Abandoned	145	13%
Decisions Rendered After Hearing	45	4%
Total Cases Closed	1112	



Complaints by Areas and Grounds

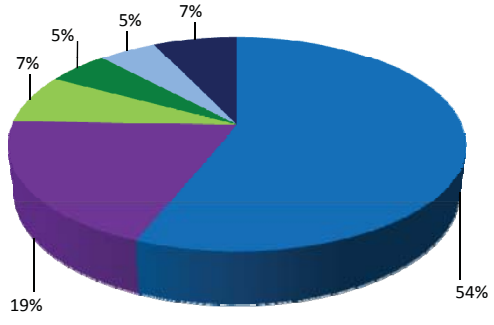
Areas and Grounds of Discrimination

The *Code* prohibits discrimination in the areas of employment, service, publication, tenancy, membership in unions and associations, employment advertisements, wages, and purchase of property. It also prohibits retaliation against a person who has made a complaint under the *Code*.

There are 15 prohibited grounds of discrimination: physical disability, mental disability, sex (including sexual harassment and pregnancy), race, place of origin, colour, ancestry, age (19 and over), family status, marital status, religion, sexual orientation, political belief, unrelated criminal conviction and lawful source of income.

Complaints by Areas of Discrimination
April 1, 2011 - March 31, 2012

Section 13 - Employment	**742**	**56%**
Section 8 - Service	**258**	**19%**
Section 7 - Publication	**98**	**7%**
Section 10 - Tenancy	**68**	**5%**
Section 43 - Retaliation	**65**	**5%**
Total Other - (listed below)	**94**	**7%**
Section 14 - Membership	56	4%
Section 11 - Employment Ads	15	1%
Section 12 - Wages	14	1%
Section 9 - Purchase of Property	9	1%
Total Areas Alleged	**1363**	

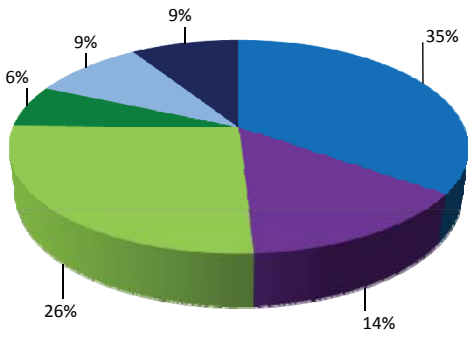


Not all grounds apply to all areas.

A complaint may include more than one area or ground of discrimination. For instance, an employment-based complaint may also include the area of wages; a race-based complaint may also include grounds of ancestry, colour and place of origin.

Complaints by Grounds of Discrimination
April 1, 2011 - March 31, 2012

Total - Disability	**682**	**35%**
Physical Disability	417	21%
Mental Disability	265	14%
Sex (Including Sexual Harassment and Pregnancy)	**280**	**14%**
Total - Ethnicity	**513**	**26%**
Race	178	9%
Place of Origin	132	7%
Colour	102	5%
Ancestry	101	5%
Age	**123**	**6%**
Total - Family and Marital Status	**183**	**9%**
Family Status	118	6%
Marital Status	65	3%
Total Other - (listed below)	**178**	**9%**
Religion	63	3%
Sexual Orientation	52	3%
Political Belief	23	1%
Unrelated Criminal Conviction	23	1%
Lawful Source of Income	17	1%
Total Grounds Alleged	**1959**	



Settlement Services

The Tribunal always encourages parties to engage in settlement discussions.

Tribunal-assisted settlement services are initiated before the respondent files a response to the complaint, and at any later stage in the progress of a complaint. Many complaints settle as a result of these efforts. Often, creative solutions are achieved which could not be ordered after a hearing.

The Tribunal conducted 276 early settlement meetings (before a response to the complaint was filed) and 104 settlement meetings (after a response to the complaint was filed and prior to the commencement of a hearing).

The parties were able to resolve their disputes in over 82% of all cases in which the Tribunal provided assistance. Some cases settle without the Tribunal's involvement.

Settlement meetings are a confidential process. The Tribunal does not publish the results.

This year, 408 cases settled.

TIME LIMIT APPLICATIONS

Section 22 of the *Code* provides a six-month time limit for filing complaints.

The time limit is designed to permit respondents to go about their activities without worrying about the possibility of stale complaints being filed against them.

A complaint about events more than six months before the complaint was filed may be accepted if it alleges a "continuing contravention" where the most recent incident occurred within six months of filing. A "continuing contravention" involves repeated instances of discrimination of the same character.

Calculating the Time Limit for Filing

In the screening process, the Tribunal may provide a complainant an opportunity to provide further information in the form of an amendment. The timeliness of the complaint is calculated based on the initial filing date, rather than the date of any subsequent amendment. (*Berikoff v. Labatt Brewing*, 2011 BCHRT 232)

Discretion to Accept Late-Filed Complaints

The Tribunal may accept a complaint or part of a complaint filed after the time limit if it determines that it is in the public interest to do so and no substantial prejudice would result to anyone because of the delay.

This year, the Tribunal considered 128 applications under s. 22 of the *Code*. This includes applications to dismiss a complaint made under s. 27(1)(g), discussed below.

The Tribunal found that 77 complaints were untimely at least in part. Fifty-two complaints were not accepted or were dismissed as untimely. The Tribunal accepted 17 late-filed complaints under s. 22(3).

REPRESENTATIVE COMPLAINTS

Section 21(5) of the *Code* gives the Tribunal authority to refuse to accept a group or class complaint for filing if it is satisfied that proceeding is not in the interest of the group or class.

The Tribunal refused to accept a representative complaint for filing that did not contain sufficient particulars about how the individuals in the proposed class had been discriminated against, where the description of the proposed class was "overbroad and indeterminate" and the representative did not disclose an adequate strategy for communicating with the proposed class. (*Larrain and others v. Harbour Centre Complex and others*, 2012 BCHRT 85)

JOINING COMPLAINTS

Section 21(6) of the *Code* provides that the Tribunal may proceed with two or more complaints together if it is fair and reasonable to do so in the circumstances.

The Tribunal declined to join four complaints where the bulk of the evidence would likely relate to the individual circumstances of the complainants, though the cases raised some similar legal issues. The Tribunal was not satisfied that joining the cases would save time or resources in completing the adjudication. (*CAW - Canada, Local 111 v. Coast Mountain Bus Company*, 2011 BCHRT 325)

The Tribunal joined three complaints, but not another, in *Francis and others v. Victoria Shipyards and others (No. 2)*, 2011 BCHRT 346.

Preliminary Decisions

Deferral of Complaints

The Tribunal usually defers a complaint if a complainant has filed both a grievance and a human rights complaint in regard to the same subject matter, and if the union and employer are both actively engaged in and advancing the grievance process in a timely manner to arbitration.

The Tribunal deferred a complaint where arbitration dates were not yet set, but the parties submitted a timeline indicating the matter was proceeding expeditiously. The Tribunal's order expressly permitted either party to apply to lift the deferral if the grievance/arbitration process was not completed within six months. (*Schmidt v. Vancouver Public Library*, 2011 BCHRT 186)

The Tribunal did not grant a deferral where the complainant said she would not participate in the arbitration proceeding and, as a result, the union cancelled the arbitration. (*Lessey v. School District No. 36 and others*, 2011 BCHRT 241)

Applications to Dismiss

Section 27(1) allows complaints that do not warrant the time or expense of a hearing on the merits, to be dismissed without a hearing. Generally, applications are decided based on written submissions.

Applications to dismiss accounted for 60% of preliminary decisions this year.

Of the 213 decisions, 129 (60%) were dismissed and 22 (10%) were partially dismissed.

Sixty-two (29%) applications were denied.

Grounds for Dismissal

The Tribunal may dismiss a complaint for the following reasons:

Section 27(1)(a): No jurisdiction

The Tribunal may dismiss a complaint under section 27(1)(a) because of a lack of jurisdiction when it is against a federally regulated company, if the conduct was outside BC, or if the area or ground of discrimination does not apply to the facts alleged.

Section 27(1)(b): No contravention of the Code

The Tribunal can dismiss a complaint under section 27(1)(b) if the acts or omissions alleged do not contravene the *Code*. The Tribunal assesses whether the complaint alleges facts that, if proven, could constitute a contravention of the *Code*. No consideration is given, at this stage, to any alternative explanation or alternate version of events put forward by the respondent.

Section 27(1)(c): No reasonable prospect of success

The Tribunal can dismiss a complaint under section 27(1)(c) where there is no reasonable prospect it would be found to be justified at a hearing.

The Tribunal found no reasonable prospect the complainant could establish:

- he had a mental disability where he provided only his self-diagnosis of a mental disability. (*Cool v. Town Taxi*, 2011 BCHRT 248)
- a nexus between the alleged adverse impact and grounds of discrimination. (*Joan William v. City of Kelowna and another*, 2012 BCHRT 8)
- a discriminatory impact where the alleged con-

duct was acknowledged and remedied and the complainant was provided with the service he had initially sought. (*Coughlin v. Pacific Coach Lines*, 2011 BCHRT 271)

Section 27(1)(d)(i): Proceeding with the complaint would not benefit the person, group or class alleged to have been discriminated against

The Tribunal can dismiss a complaint under section 27(1)(d)(i) if it determines that proceeding with the complaint would not benefit the person, group or class alleged to have been discriminated against.

The Tribunal declined to dismiss a complaint where, if successful, the complainant would be entitled to a full range of remedies and therefore could benefit from the proceeding. (*Fe Lee v. Fit Foods Manufacturing and others*, 2012 BCHRT 83)

Section 27(1)(d)(ii): Proceeding with the complaint would not further the purposes of the Code

Proceeding with a complaint would not further the purposes of the *Code* where a reasonable "with prejudice" settlement offer remains open, or where a respondent promptly took appropriate steps to remedy the alleged discrimination.

The Tribunal dismissed complaints where:

- an agreement respecting the duty to accommodate was reached between the employer, the complainant and her union; an addendum was signed by the employer and the union provided monetary compensation; the settlement documents were intended to settle the dispute, and the complainant did not appeal the union's decision to settle. (*De Silva v. Fraser Health Authority and BCNU (No. 2)*, 2011 BCHRT 195 (petition for judicial review filed))

- a release specifically referred to claims under the *Code*, and stated that the complainant had received advice from the union and that she had read and understood the agreement. (*Bennett v. Accenture Business Services (No. 2)*, 2011 BCHRT 206)

- the employer investigated the allegations that an employee had made racial slurs, the employee acknowledged some of the allegations against him, took responsibility, and apologized. (*Sidhu v. Coast Mountain and another*, 2012 BCHRT 52)

The Tribunal dismissed a complaint against an individual respondent under s. 27(1)(d)(ii) where:

- the respondent acknowledged the individuals' acts or omissions were its own; the respondent had the capacity to fulfill any remedies the Tribunal might order; while both individuals were involved in the decision to terminate the complainant's employment and could be considered to be the "directing minds" of that decision, the decision was made squarely within the scope of their employment, and there was no significant measure of individual culpability in the actions alleged. (*Lessey v. School District No. 36 and others*, 2011 BCHRT 241)

Section 27(1)(e): Complaint filed for improper purposes or in bad faith

A respondent must meet a high standard to have a complaint dismissed under s. 27(1)(e). It is not enough to present a different version of events or allege the complainant is not truthful.

The Tribunal denied an application to dismiss where the respondent alleged the complainant "repeatedly" boasted that he had sued previous employers for wrongful dismissal and had obtained settlements. (*Lebovich v. Home Depot and others*, 2011 BCHRT

83)

Section 27(1)(f): Complaint appropriately resolved in another proceeding

The Tribunal may dismiss a complaint under section 27(1)(f) where it determines that the substance of the complaint has been appropriately resolved in another proceeding, such as a grievance.

For example, an internal academic appeal process is another proceeding for purposes of s. 27(1)(f). The Tribunal dismissed a complaint where the factual allegations were identical and the essence of the complaint was raised before the University's Senate Committee, although different procedures were used and the Committee was not independent of the respondent university. (*Baharloo v. University of British Columbia and another (No. 2)*, 2011 BCHRT 290)

The Tribunal dismissed a complaint based on *issue estoppel* where the Director of Employment Standards had found as a fact that the respondent employer did not know that the complainant was pregnant when it terminated her employment. That fact was key to her human rights complaint, and the Tribunal found that it should not be relitigated before the Tribunal. (*Krsmanovic v. Snowflake Trading*, 2012 BCHRT 113)

Section 27(1)(g): Alleged contravention outside the time limit

If the Tribunal does not identify a time limit issue in its screening process, a respondent can apply to dismiss a complaint on the basis that it is not timely. The Tribunal determines if the complaint is timely, and if not, whether it should accept the late-filed complaint under the criteria in section 22.

OTHER DECISIONS

The Tribunal makes oral and written decisions on other matters, including:

File Sur-Reply

Where a party applies to file a sur-reply, the Tribunal considers whether the reply raised new issues, whether the decision will turn on the point, and any prejudice to the applicant in permitting the sur-reply. (L v. B.C. (Ministry of Children and Family Development), 2011 BCHRT 214)

Extension of Time

Rule 26(3) provides that time to apply to dismiss may be extended on consent or application.

The Tribunal denied an application where the reason for the delay was ignorance of the process. (*Ayotte v. Liberty University and another (No. 2)*, 2012 BCHRT 82)

The Tribunal extended time where the complainants were aware that the respondents planned to file an application to dismiss if settlement discussions were not fruitful and had ignored the last offer; the respondents moved promptly to file their application to dismiss once they had a basis for inferring that the discussions were over; the Tribunal had not yet set hearing dates, and the application may avoid the need for a lengthy hearing. (*Borutski and others v. Crescent Housing Society and another (No. 2)*, 2012 BCHRT 69)

Adding Respondents

The Tribunal may add a respondent to a complaint, on the application of a party.

A respondent may raise an allegation, not raised in the complaint, as the basis for an application to add

a respondent, so long as the complainant does not oppose the application. (*Winchester v. West Fraser Timber and others*, 2011 BCHRT 264)

Amending a Complaint

A complainant must apply to amend a complaint if the hearing is less than two months away, the amendment adds an allegation that is out of time, or there is an outstanding application to dismiss the complaint.

Where a dismissal application was outstanding, the Tribunal rejected proposed amendments that significantly added to the scope of the allegations set out in the original complaint; allowed amendments that "fleshed out" previous allegations, and allowed one amendment respecting a "fresh allegation" that arose after the original complaint was filed because it was preferable to have the issues between the parties determined in one rather than multiple proceedings. (*Westbrook and another v. Strata Corporation Plan VIS 114*, 2012 BCHRT 142)

Limiting Publication or Access

The Tribunal's process is public, and information may become public as specified in rule 6. This includes in a published decision, on the Tribunal's hearing list, as well as public access to parts of a complaint file before a hearing. A party may apply to limit publication, including delaying the posting of a complaint on the hearing list if the parties are in settlement discussions, or to anonymize a decision. A party may also apply to have a hearing conducted in private. Public access is the general rule.

The Tribunal granted applications to anonymize:

- to protect the privacy of a child named in a complaint. (*A obo B v. Surrey School District No. 36*, 2011 BCHRT 126)

- to protect the identities of faculty members where publication would severely compromise their functionality and usefulness to the respondent university, as well as to protect the reputations of the individuals and the entire program at the University. (*Masters Student A v. University B and others*, 2011 BCHRT 113)

The Tribunal denied an application where the complainant's assertion that publishing the nature of his disability would, among other things, affect his ability to find other academic employment was consistently speculative. (*Rezaei v. University of Northern British Columbia and another (No. 2)*, 2011 BCHRT 118)

Disclosure of Witness Contact Information

The Tribunal may direct a party to provide contact information for witnesses where it is necessary for the just and timely resolution of a complaint. It declined to do so where the complainants were unable to provide the full names or sufficient identifying information to allow the respondent to ascertain whether it had contact information, and the information provided by the complainants was insufficient to determine whether the proposed evidence of the potential witnesses was likely to be relevant to the complaint. (*Pepper and Young v. Interior Health Authority*, 2012 BCHRT 122)

Third Party Disclosure

The Tribunal may order a third party to disclose documents that are admissible and relevant to an issue in the complaint. The Tribunal ordered the complainant's disability insurer to disclose documents in *Chow v. Gowling Lafleur Henderson*, 2012 BCHRT 103.

Expert Evidence

The Tribunal declined to make a ruling on the admissibility of an expert report before a hearing. Given the nature of the concerns and the limited information

before the Tribunal, the concerns were more appropriately and fairly raised at the hearing. (*Northern Interior Woodworkers' Assn. obo Souter v. Pacific Island Resources*, 2011 BCHRT 294)

Adjournments and Stays

A party who wants to adjourn a hearing or stay the proceedings must show that the request is reasonable and would not unduly prejudice the other participants.

Reconsideration

The Tribunal has an equitable power, not specified in the *Code*, to reconsider a matter. This power is limited to cases where the interests of fairness require it. The Tribunal has jurisdiction to re-open a decision when required by the interests of fairness and justice.

The Tribunal denied a request:

- to reconsider an application to accept a late-filed complaint, where part of the request was based on a disagreement with the Tribunal's decision and a belief that the Tribunal erred; part was based on new medical information, but the medical information provided was not recent and the complainant did not explain the delay in filing. (*Blaszczyk obo Jankowska v. St. Regis Hotel and another (No. 2)*, 2011 BCHRT 122)

- to re-open a hearing where the complainants did not provide a reasonable explanation for failing to bring the evidence and witnesses they thought were important to their case to the hearing, and did not otherwise establish that it would be fair or just to re-open the hearing to permit them to "shore up or expand on the case they presented there". (*Day v. Kumar and another (No. 2)*, 2011 BCHRT 215)

- to re-open a complaint dismissed for failure to pursue it , because while the complainant acted quickly to seek a re-opening, she did not provide a reasonable explanation for her default. (*Mains v. The Cambie Malone's Corporation*, 2011 BCHRT 189)

Costs

The Tribunal may order costs if a party engaged in improper conduct during the course of a complaint or contravened a rule, decision, order or direction of the Tribunal. Costs may be ordered during the proceeding or after a final decision is made.

Final Decisions

This year, the Tribunal made 45 final decisions after a hearing on the merits.

Forty-two percent of the complaints (19 out of 45) were found justified in whole or part after a hearing.

Representation Before the Tribunal

More complainants were self-represented in hearings on the merits than respondents. Complainants had a lawyer in 18 cases, while respondents had a lawyer in 31 cases.

There were 14 cases where all parties had a lawyer and 10 cases where all parties were self-represented.

Complainants with counsel succeeded in 56% of their cases. Without counsel, they succeeded in only 31%.

In cases where at least one respondent had a lawyer, the respondents succeeded (the complaint was dismissed) in 58% of the cases.

On the other hand, respondents were successful in 67% of the cases when unrepresented.

Case Highlights

Key highlights of this year's final decisions:

- the majority of final decisions (29 out of 45 cases heard or 64%) involved the area of employment (s. 13), eleven (38%) were found to be justified;
- twelve decisions involved services (s. 8); six (50%) were found to be justified;
- three decisions involved tenancy (s. 10); one (33%) was found to be justified;
- two decisions involved retaliation (s. 43); neither were found to be justified;
- one decision involved the area of publication, and was found to be justified (s. 7);
- one decision involved membership in a union, employer's organization or occupational association (s. 14), and was found to be justified;
- no decisions involved purchase of property (s. 9); employment advertisements (s. 11); or lower rate of pay based on sex (s. 12).

Regarding the grounds of discrimination:

- twenty-two of the 45 final decisions dealt with physical and/or mental disability; eleven (50%) were found to be justified;
- sex discrimination, including due to pregnancy or sexual harassment, was the subject of nine final decisions; three (33%) of these complaints were found to be justified;
- six final decisions dealt with race; one (17%) was found to be justified;
- four final decisions on colour; one (25%) was found to be justified;
- four final decisions on age; none were found to be justified;
- four final decisions on place of origin; two (50%) were found to be justified;
- three final decisions on the ground of ancestry; two (67%) were found to be justified;
- two final decisions each on religion, sexual orientation and source of income; all of which were found to be justified;

- one final decision on marital status, which was found to be justified;
- one final decision on family status, which was found not to be justified;
- no decisions on the grounds of criminal conviction or political belief.

FINAL DECISIONS OF INTEREST

Pardy v. Earle and others (No. 4), 2011 BCHRT 101 (A judicial review has been filed)

The Tribunal held that the host of an open microphone comedy night, the restaurant where it was being held and the restaurant owner discriminated against the complainant in services because of her sex and sexual orientation. The Tribunal found that the complainant did not heckle or otherwise provoke the host. Rather, when the host saw the complainant's same-sex partner give her a kiss, he directed repeated and virulent insults, both on and off stage, at her based on her personal characteristics as a woman and a lesbian. The Tribunal also held that the restaurant and its owner were employers of the host, and were liable for his conduct under s. 44(2) of the *Code*. In addition to cease and refrain and declaratory orders, the Tribunal ordered the host to pay $15,000 and the restaurant and its owner to pay $7,500 as damages for injury to the complainant's dignity, feelings and self-respect. She was also awarded lost wages for time taken off of work to attend the hearing.

C1 and Sangha v. Sheraton Wall Centre (No. 2), 2011 BCHRT 147

The Tribunal found that the respondent hotel had discriminated against the complainants regarding a service because of their ancestry and place of origin when it denied them room bookings for participants in a Bhangra dance and music event they were organizing. The previous year, a different organization that had "Bhangra" in its name held a competition at the hotel. During the group's stay, there were a number of concerns about the participants' conduct. The complainants and their group had never been involved in any way with that other group, however, the hotel denied them the booking. The Tribunal found that the hotel refused the booking based on the erroneous conclusion, without inquiry, that the two groups were, as Bhangra groups, indistinguishable. The hotel based its decision, in whole or in part, on a presumed association between membership in a Bhangra group, with its strong connection with ancestry or place of origin in the Punjab, and the risk of damage and disruption to the hotel. In addition to cease and refrain and declaratory orders, the Tribunal ordered the hotel to pay each of the complainants $2,500 as damages for injury to their dignity, feelings and self-respect.

Kelly v. B.C. (Ministry of Public Safety and Solicitor General) (No. 3), 2011 BCHRT 183

The Tribunal found that the complainant, who was incarcerated in various facilities, had been discriminated against regarding a service because of his religion and ancestry. Despite making requests at each of the facilities he was incarcerated in, the complainant was not provided access to an Aboriginal spiritual advisor or Aboriginal spiritual literature while housed in segregation. He also experienced differential treatment regarding the provision of religious programs and literature while in segregation because when he requested, he received timely visits from a Chaplain and Christian literature, but when he requested to see an Aboriginal spiritual advisor, he did not receive a visit and when he requested Aboriginal spiritual literature, the request went unfulfilled. The Tribunal ordered the respondent to cease the contravention and refrain from committing the same or similar contravention in the future, and $5,000 in damages for injury to dignity, feelings and self-respect.

Kelly v. UBC (No. 3), 2012 BCHRT 32

The complainant, who has Attention Deficit Hyperactivity Disorder – Inattentive Type, a Non-Verbal Learning Disability and has, at times, suffered from anxiety and depression, was enrolled in the Family Practice Residency Program at University of British Columbia's Faculty of Medicine. The complainant's disabilities affected his learning and work environment, and the University ultimately terminated his enrolment for unsuitability. The Tribunal found that this was discrimination in services and employment on the basis of mental disability, and that the University had not met its obligation to accommodate him in the Residency Program, including by precluding him access to further remediation or probation.

Judicial Reviews and Appeals

The *Code* does not provide for appeals of Tribunal decisions. Judicial review is available in B.C. Supreme Court, pursuant to the *Judicial Review Procedure Act* and subject to a 60-day time limit for final decisions.

Judicial review is a limited type of review. Generally, the Court considers the information that the Tribunal had before it and decides if the Tribunal made a decision not within its power or in a way that was wrong. The Court applies standards of review in s. 59 of the *Administrative Tribunals Act* to determine whether the Tribunal's decision should be set aside or should stand even if the Court does not agree with it. If the Tribunal's decision is set aside, the usual remedy is to send it back to the Tribunal for reconsideration.

A decision on judicial review may be appealed to the BC Court of Appeal. There is a further appeal to the Supreme Court of Canada if the Court agrees to hear it.

Judicial Reviews in BC Supreme Court

This year 27 petitions for judicial review were filed in the Supreme Court, as compared to 14 in the prior reporting year.

The Court issued 15 judgments, granting 9 petitions in whole or part, including 4 petitions that were heard together. Six of these judgements reviewed final decisions.

Nine of the judgements reviewed preliminary decisions of the Tribunal.

Court of Appeal

This year there were 4 notices of appeal filed; the same number as in the prior year.

The Court of Appeal issued one judgement on appeal of a judicial review of a final decision by the Tribunal, one judgement on appeal of judicial review of a preliminary decision and two judgements on appeals of rulings made on judicial review.

Supreme Court of Canada

There were 2 applications for leave to appeal served on the Tribunal this year. Leave to appeal was denied on January 19, 2012 in *J.J. v. Canadian Union of Public Employees, Local 561, et al.*, [2011] S.C.C.A. No. 446 (QL) and the other matter was discontinued.

The Supreme Court of Canada decided one appeal respecting the Tribunal's refusal to dismiss a complaint under s. 27(1)(f) of the *Code* that the Workers' Compensation Board's chronic pain compensation policy was discriminatory. The Tribunal had decided that the Board's Review Division's determination that the policy was non-discriminatory did not appropriately address the substance of the complaint. This was upheld on appeal, but overturned by the Supreme Court of Canada.

The Supreme Court stated that s. 27(1)(f) was a statutory reflection of the principles underlying issue estoppel, abuse of process and collateral attack, but not a codification of them. Decisions under s. 27(1)(f) should be guided by the goals of finality in decision-making and the avoidance of unnecessary relitigation of matters already decided. (*British Columbia (Workers' Compensation Board) v. Figliola*, 2011 SCC 52)

SPECIAL PROGRAMS AND POLICY

Section 42(3) of the *Code* recognizes that treating everyone equally does not always promote true equality and the elimination of discrimination. It allows the Chair to approve special programs which treat disadvantaged individuals or groups differently to recognize their diverse characteristics and unique needs and improve their conditions. When a special program is approved by the Chair, its activities are deemed not to be discrimination.

Approvals may range from six months to five years but may be renewed. Employment equity programs are usually approved for several years. Periodic reporting may be required.

The Tribunal's Special Programs Policy and a list of special programs approved are posted on the Tribunal's website.

The Chair approved six new Special Programs this year:

- **Atira Women's Resource Society**: Hiring restricted to a self-identified woman for the temporary position of Student Advocate. The Student Advocate will work in Atira's Legal Advocacy Program to provide direct services to women in Vancouver's Downtown Eastside in legal areas such as Aboriginal justice, family law, women, people with disabilities and housing issues.

- **Ending Violence Association of BC**: Preferential hiring for persons with Aboriginal ancestry to provide legal information and training to Aboriginal service providers to enhance Aboriginal communities' ability to respond to domestic and sexual violence and child abuse and neglect.

- **School District 23 (Central Okanagan)**: Preferential hiring for persons with Aboriginal ancestry for teaching positions until the percentage of teachers with Aboriginal ancestry is equal to the percentage of students with Aboriginal ancestry.

- **School District No. 70 (Alberni)**: Preferential hiring to persons of Aboriginal ancestry for teaching positions until the percentage of teachers with Aboriginal ancestry is equal to the percentage of student with Aboriginal ancestry.

- **Thompson Rivers University**: Hiring restricted to a person of Aboriginal ancestry for the position of Student Counselor, Faculty of Student Development. The Student Counselor provides personal, crisis and student success counseling for students with the main focus on Aboriginal students.

- **Thompson Rivers University**: Hiring restricted to a person of Aboriginal ancestry for the position of Divisional Secretary II, Services for Aboriginal Students. The Division Secretary II serves as the first point of contact for Aboriginal students, provides administrative support to students and department staff and corresponds with various First Nations Bands in the Kamloops and surrounding regions.

Tribunal Members

J.A. (Tonie) Beharrell, Member (partial year - to January 13, 2012)

Ms. Beharrell was appointed a full-time Member of the Tribunal on December 2, 2002 for a five-year term. She was most recently reappointed for a five-year term expiring in December 2012.

She holds a law degree from the University of British Columbia (1997) and a Bachelor of Arts from Simon Fraser University (1994).

Prior to joining the Tribunal, Ms. Beharrell was an Associate at a national law firm practising in the areas of Labour, Employment, Human Rights, and Administrative Law.

Robert B. Blasina, Member (partial year - from August 2, 2011)

Mr. Blasina was appointed a full-time Member of the Tribunal on August 2, 2011. Mr. Blasina graduated from the University of Toronto in 1971, with a Bachelor of Arts in Economics and from Queen's University in 1974, with a Bachelor of Laws. He was called to the Bar of British Columbia in 1977, and he obtained a Chartered Arbitrator designation in 1999 through the British Columbia Arbitration and Mediation Institute.

He first practiced labour law, representing a number of trade-unions, and then as an arbitrator and mediator with respect to collective agreement and employment issues. Prior to coming to the Tribunal, Mr. Blasina had twenty-four years' experience as a consensual arbitrator and mediator, and has served on the Boards of the Arbitrators' Association of British Columbia and the British Columbia Arbitration and Mediation Institute.

Murray Geiger-Adams, Member

Mr. Geiger-Adams was appointed a full-time Member of the Tribunal on March 9, 2009 for a six-month term under a Chair's appointment. He was most recently reappointed for a five-year term expiring in January 2015.

He holds a law degree from the University of Toronto (1985), and a Bachelor of Arts (Honours) degree in political science from the University of British Columbia (1975).

Prior to joining the Tribunal, and from 1997-2008, Mr. Geiger-Adams was legal counsel for a professional association responsible for collective agreement administration.

Before that, and from 1985-1997, he was a student, associate and then partner in a Vancouver law firm, representing clients in matters including labour, human rights, Aboriginal rights and employment.

Barbara Humphreys, Member (partial year - to July 1, 2011)

Ms. Humphreys was appointed a full-time Member of the Tribunal in 1997. She was most recently reappointed for a five-year term expiring in January 2015. Ms. Humphreys retired on July 1, 2011.

She holds a law degree from the University of Victoria (1984) and a Bachelor of Arts from Sir George Williams University (1969).

Ms. Humphreys joined the B.C. Council of Human Rights in 1990. She was actively involved in the transition from the former B.C. Council of Human Rights to the Human Rights Tribunal.

Prior to joining the B.C. Council of Human Rights, she was an Ombudsman Officer for the Office of the Ombudsman.

DIANA JURICEVIC, MEMBER

Ms. Juricevic was appointed a full-time Member of the Tribunal on February 16, 2012 for a five-year term. She holds a Juris Doctor and Master of Economics degree from the University of Toronto (2004). She also holds an Honours Bachelor of Arts degree from the University of Toronto (2001).

Prior to joining the Tribunal, Ms. Juricevic practised international criminal law before tribunals in The Hague and Cambodia. She was also the Acting Director of the International Human Rights program at the University of Toronto Faculty of Law where she taught courses on international criminal law and human rights advocacy.

At the outset of her career, Ms. Juricevic was an associate at a national law firm practising in the areas of civil litigation, administrative law, and human rights.

ENID MARION, MEMBER

Ms. Marion was appointed a full-time Member of the Tribunal, effective July 27, 2008 for a five-year term. She holds a law degree from the University of Victoria (1988).

Prior to joining the Tribunal, Ms. Marion practiced labour, employment and human rights law as an Associate with a Vancouver law firm and as an Associate and then Partner with another Vancouver law firm.

KURT NEUENFELDT, MEMBER (PARTIAL YEAR - TO AUGUST 19, 2011)

Mr. Neuenfeldt was appointed a full-time Member of the Tribunal on January 6, 2003 for a five-year term. He was most recently reappointed for a five-year term expiring in January 2013.

He holds a law degree from the University of British Columbia (1978) and a Bachelor or Arts degree from the University of Wisconsin (1972).

For several years, Mr. Neuenfeldt worked with the Legal Services Society of BC. While there, he held a range of positions including Staff Lawyer, General Counsel and Director of Client Services. He then practised privately in Vancouver.

Prior to joining the Tribunal, Mr. Neuenfeldt had been a member of the Immigration and Refugee Board of Canada for over nine years.

JUDITH PARRACK, MEMBER

Ms. Parrack was appointed a full-time Member of the Tribunal on August 1, 2005 for a five-year term. She is currently authorized, pursuant to section 7 of the *Administrative Tribunals Act*, to continue to exercise powers as a member over continuing proceedings until completion. Ms. Parrack holds a law degree from Osgoode Hall Law School (1987).

Ms. Parrack was an Associate with a national law firm from 1989 to 1994 and a staff lawyer at the B.C. Public Interest Advocacy Centre from 1995 to 1999. She was a full-time Member of the B.C. Human Rights Tribunal from 1999 to 2002.

Prior to re-joining the Tribunal in 2004, Ms. Parrack was in private practice in the areas of Labour, Human Rights and Administrative Law.

NORMAN TRERISE, MEMBER

Mr. Trerise was appointed a full-time Member of the Tribunal on December 2, 2010 for a five-year term.

He holds a law degree from the University of British Columbia (1973) and a Bachelor of Arts degree from the University of Oregon (1969).

Prior to his appointment, Mr. Trerise practised labour, employment, human rights and administrative law as a partner with a national law firm.

MARLENE TYSHYNSKI, MEMBER

Ms. Tyshynski became a full-time Member of the Tribunal on December 1, 2005 for a temporary six-month term.

Upon expiry of her term, Ms. Tyshynski returned to her position as legal counsel to the Tribunal. In October 2007, following amendments to the *Administrative Tribunals Act*, the Chair appointed her to a second six-month term. She was most recently reappointed to a five-year term expiring in April 2013.

She holds a law degree from the University of Victoria (1988), a Master of Social Work degree from Wilfred Laurier University (1978) and an Honours Bachelor of Applied Science degree from the University of Guelph (1976).

At the outset of her career, Ms. Tyshynski was an associate with two law firms in Victoria. She was in private practice for several years specializing in, among other areas, Administrative Law, then she worked as a staff lawyer for the Legal Services Society.

Prior to her appointment as Member, Ms. Tyshynski served as legal counsel to the Tribunal for three years.

BERND WALTER, CHAIR

Mr. Walter was appointed as acting Chair of the Tribunal on August 1, 2010. He continues to Chair the British Columbia Review Board during his tenure with the Tribunal.

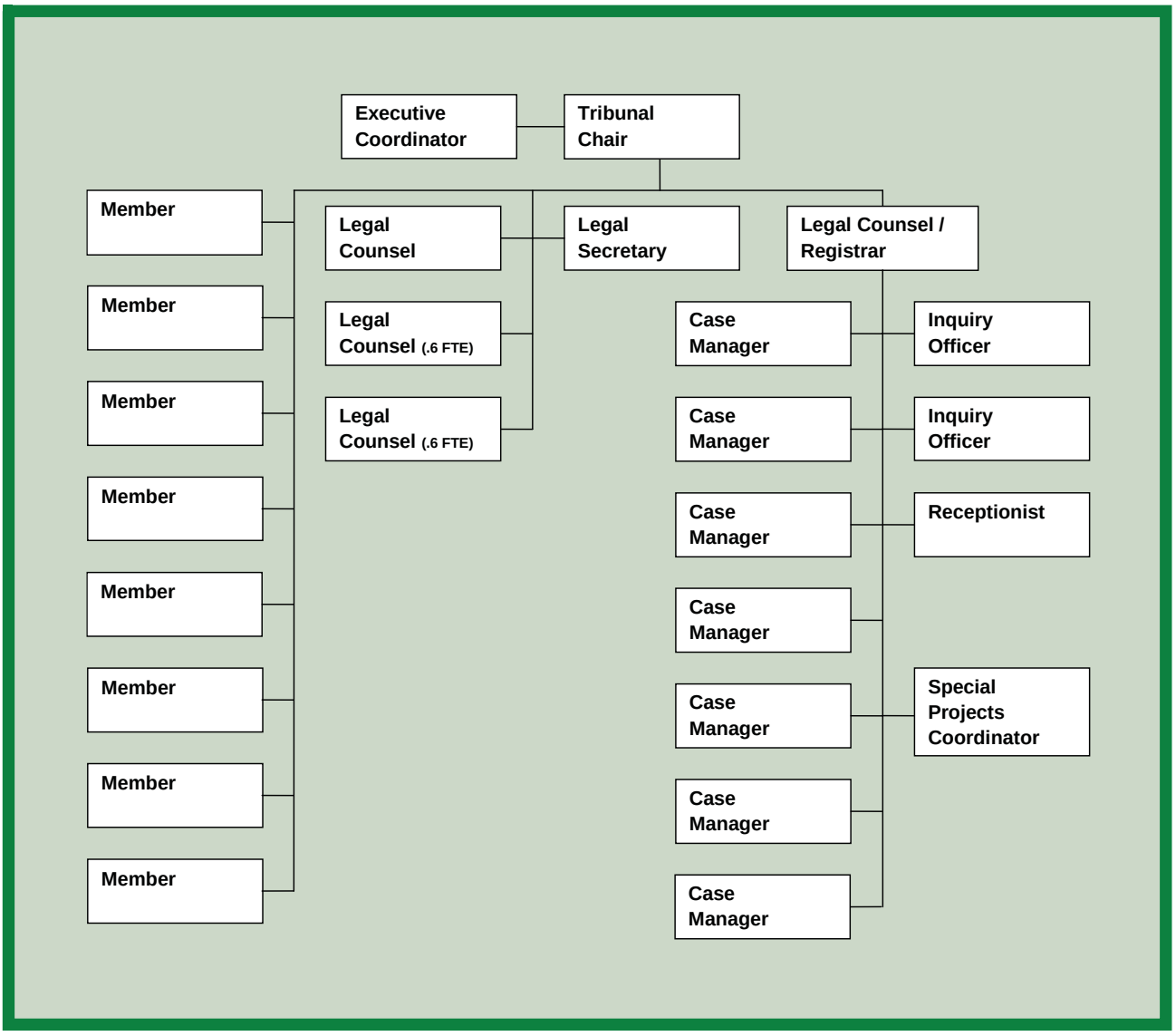
Mr. Walter has chaired a number of BC Tribunals. He has also served as an ADM in the BC Public Service, as well as in Alberta and Ontario. He served as Alberta's First Children's Advocate.

His background includes program, policy and law reform, in particular in child protection, adoption, Aboriginal child and family services, child, youth and adult mental health and children's rights. He has also participated in First Nations Residential Schools reconciliation and healing work.

BC Human Rights Tribunal Operating Cost
Fiscal Year 2011-2012

Category	Expenditure	Delegated Budget	Variance
Salaries (Chair, Members, Registry and Administration)	$ 2,126,367	$ 2,183,000	$ 56,633
Employee Benefits	$ 483,393	$ 502,000	$ 18,607
Expired-Term Members – Fees for Completing Outstanding Decisions	$ 39,957	$ 20,000	$ (19,957)
Travel	$ 61,029	$ 110,000	$ 48,971
Centralized Management Support Services	$ 0	$ 0	$ 0
Professional Services	$ 141,157	$ 80,000	$ (61,157)
Information Services, Data and Communication Services	$ 1,443	$ 17,000	$ 15,557
Office and Business Expenses	$ 66,927	$ 59,000	$ (7,927)
Statutory Advertising and Publications	$ 4,585	$ 5,000	$ 415
Amortization Expenses	$ 0	$ 46,000	$ 46,000
Total Cost	**$ 2,924,858**	**$ 3,022,000**	**$ 97,142**

Organization Chart



Tribunal Publications

The following Guides, Information Sheets and Policies are available in English, Chinese and Punjabi on the Tribunal's website or by contacting the Tribunal. Please refer to the back cover of this report for contact information.

Guides

1– The BC Human Rights Code and Tribunal
2– Making a Complaint and guide to completing a Complaint Form
3– Responding to a Complaint and guide to complet ing a Response to Complaint Form
4– The Settlement Meeting
5– Getting Ready for a Hearing

Information Sheets

1– Tribunal's Rules of Practice and Procedure
2– How to Name a Respondent
3– What is a Representative Complaint?
4– Time Limit for Filing a Complaint - Complainants
5– Time Limit for Filing a Complaint - Respondents
6– Tribunal Complaint Streams
7– Standard Stream Process - Complainants
8– Standard Stream Process - Respondents
9– How to Ask for an Expedited Hearing
10– How to Deliver Communications to Other Participants
11– What is Disclosure?
12– How to Make an Application
13– How to Add a Respondent
14– How to Add a Complainant
15– How to Make an Intervenor Application
16a–Applying to Dismiss a Complaint Under Section 27
16b–How to Respond to an Application to Dismiss a Complaint
17– How to Request an Extension of Time
18– How to Apply for an Adjournment of a Hearing
19– How to Require a Witness to Attend a Hearing
20– Complainant's Duty to Communicate with the Tribunal
21– How to Find Human Rights Decisions
22– Remedies at the Human Rights Tribunal
23– How to Seek Judicial Review
23a–Judicial Review: The Tribunal's Role
24– How to Obtain Documents From a Person or Organization Who is Not a Party to the Complaint
25– How to Enforce Your Order
26– Costs Because of Improper Conduct

Policies

Complainant's Duty to Communicate with the Tribunal
Public Access and Media Policy
Settlement Meeting
Special Programs

Tribunal Staff

Registrar / Legal Counsel
Jessica Connell (partial year)
Steve Adamson (partial year)

Executive Coordinator
Sheila O'Reilly

Legal Counsel
Jessica Connell
Katherine Hardie (part-time)
Denise Paluck (part-time)

Legal Secretary
Snezana Mitic (partial year)
Nikki Mann (partial year)

Case Managers
Lindene Jervis
Anne-Marie Kloss
Lorne MacDonald
Cheryl Seguin (partial year)
Maureen Shields
Margaret Sy (partial year)
Cristin N. Popa
Sandy Tse (partial year)
Daniel Varnals

Special Projects Coordinator
Luke LaRue

Inquiry Officers
Cheryl Seguin (partial year)
Mattie Kalicharan
Carla Kennedy (temp assignment)

Reception
Janet Mews

NOTES

NOTES

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BC Human Rights Tribunal

Annual Report 2012–2013

Tenth Anniversary Edition

BRITISH COLUMBIA

British Columbia Human Rights Tribunal

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Vancouver BC V6B 5J3

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July 2, 2013

Honourable Suzanne Anton
Minister of Justice and Attorney General
Province of British Columbia
Room 232, Parliament Buildings
Victoria, BC V8V 1X4

Minister:

Congratulations on your appointment as Minister of Justice and Attorney General of British Columbia!

I am pleased to provide you with the Annual Report of the British Columbia Human Rights Tribunal for the Fiscal Year April 1, 2012 to March 31, 2013. You will note that this edition also celebrates the 10th Anniversary of BC's Direct Access Human Rights Tribunal.

The report is submitted in accordance with section 39.1 of the *Human Rights Code*.

By way of context, my letter to your predecessor the Honourable Shirley Bond, accompanying last year's Annual Report, highlighted the Tribunal's Policy and Procedures Reform agenda; its then operational challenges and initial response strategies; its priorities for FY 2012-13; and its identified needs in a number of key areas.

I propose to use the opportunity of this annual filing to provide you with an update respecting our strategies and progress in various areas of our operations over the past year.

OPERATING ENVIRONMENT: A COMPARATIVE SUMMARY OF FY 2012-13 WORKLOAD INDICATORS

The following highlights some key dimensions of the Tribunal's activities during the past year along with a comparison with the previous year (FY 2011-12):

ACTIVITY	FY 2012-13 VOLUME	% CHANGE	FY 2011-12 VOLUME
Complaints Received	**1028**	**(-6%)**	**1092**
• Accepted for Processing	580	(-18%)	705
• Rejected at Screening	448	(+16%)	387
Complaints Settled	**479**	**(+17%)**	**408**
Total Decisions Rendered [1]	**415**	**(+2%)**	**405**
• Time Limit Decisions	109	(-15%)	128
• Applications to Dismiss	241	(+13%)	213
• Decisions After a Hearing	51	(+13%)	45
• Others (including complaint deferrals)	117	(+10%)	106

We have provided summaries of key indicators spanning the Tribunal's ten-year history starting at page 20 of this report.

PROGRESS UPDATE

Last year I set out those Tribunal activities which were targeted for immediate or short-term change, including the screening of new complaints; the revision of complaint-associated forms; the case management process; settlement services; scheduling of hearings; decision making, as well as aspects of the Tribunal's constitutive legislative framework.

The following summary updates the Tribunal's progress in these key spheres.

1. COMPLAINT INTAKE AND SCREENING

Screening is the critical first step in the assessment of a complaint to determine whether it properly falls within the mandate of the Tribunal. Timeliness and consistency are central to this function. In the pursuit of those goals we have implemented the following process changes:

- Complaints are screened by a full-time experienced case manager with the support and oversight of the Tribunal Registrar;
- Complaints not accepted, are acknowledged and rejection letters are issued within days;
- Complaints accepted in whole or in part (where no further information is required), are served on Respondents within a week;
- Where a rejected complaint warrants, complainants are provided with the opportunity to provide additional information within 21 days; if no response is received, the file remains closed;

[1] Some of these contain more than one type of decision or determine more than one issue.

- Some complaints are partially accepted with more information invited; where no information is forthcoming within 21 days, the accepted portion of the complaint is served on the Respondent;
- Uniform correspondence templates track the key elements of a *prima facie* case of discrimination and are explicit regarding what is accepted, rejected and/or what additional information is needed.

These changes have already yielded the following dramatic, measurable results when compared to screening statistics of a year ago:

STAGE	**April 2012**	**March 2013**
Total Complaints in screening	200	78
Complaints awaiting screening	124	42
Complaints awaiting more information	76	36
Complaints in screening 60+ days	103	28

Our goal is to have complaints screened within 30 days of filing.

2. FORMS REDESIGN AND REVISION

Last year I reported that the Tribunal's Complaint and Response forms and associated instructional materials would be redesigned and restructured for clarity, ease of use and consistency. I indicated these changes would be implemented in the fall of 2012.

Rather than implementing these two forms on their own, we have determined to roll out the Tribunal's entire suite of new forms, including those for representative complaints, retaliation complaints, amendments, time limit issues and applications, contemporaneously.

We are, at the same time, arranging to have all forms as well as complete instructions available for completion and filing in electronic online formats.

This decision has required additional time to design, test, refine and obtain focused external stakeholder input to finalize the new forms. All this is being moved forward within existing staff resources and remains a top priority.

3. SETTLEMENT SERVICES

Last year I reported that the addition of contracted mediators, to ameliorate the mediation workload of Tribunal members, was yielding positive results in terms of the successful, timely resolution of complaints, as well as on overall workload management, including the production of decisions.

This year the Tribunal has, once more, assertively pursued the mediation option. Where parties agree, early settlement meetings are scheduled even earlier after a complaint is accepted for filing. The result is that mediations can often be completed within three to four months of the filing of a complaint.

This fiscal year 479, or 76%, of accepted complaints were successfully settled after mediation.

4. PRELIMINARY APPLICATIONS TO DISMISS A COMPLAINT WITHOUT HEARING

As a result of more rigorous, consistent screening, the Tribunal expects fewer applications to dismiss complaints without a full hearing in future.

Wherever possible, Members have been encouraged to author preliminary decisions which are shorter and less complex, and, in straightforward, routine or procedural matters, to render decisions less formally in the form of a letter to the parties.

As a result, and thanks to the diligence of its Members, the Tribunal's outstanding preliminary decisions as compared to a year ago have dropped from 130 to 40.

On a similar note, outstanding final decisions have been reduced from between 30-40 a year ago, to less than 9.

This positive direction is of course also attributable to the fact that we have the benefit and capacity of an almost full complement of Tribunal Members appointed.

5. SCHEDULING OF HEARINGS

Last year I reported the Tribunal would be scheduling full evidentiary hearings later in the process, after preliminary applications and settlement conferences were largely completed.

This relatively straightforward change in process has shown tremendous benefit. Complaints which are dismissed on a preliminary application or otherwise resolved or settled early in the process, never reach the hearing schedule. Hearings can, therefore, be readily scheduled within a matter of a few months rather than a year in advance. Coupled with the added benefits of more rigorous "hearing readiness" procedures, schedules are more stable and predictable; costly "no-shows" and late adjournments are avoided.

In the coming year the Tribunal will also be testing expedited, summary or informal "active hearing" strategies.

6. LEGISLATIVE AMENDMENTS

In last year's letter I identified the need to consider areas of the *Human Rights Code* and/or the *Administrative Tribunals Act* for amendment. In my experience in law and legislative

reform, any enactment, no matter how sound its policy underpinnings or how skillful its drafting can, especially after a decade in operation, benefit from reconsideration on the basis of experience and judicial interpretation.

Arising from, and consistent with its Strategic Review and Reform Agenda directed by government in December 2011, the Tribunal has identified a number of areas which will benefit from legislative amendment in the interests of timeliness and fairness. These have been developed with the insightful support of the Deputy Attorney General and in collaboration with Ministry staff.

I recommend modest amendments to the *Code* in respect of the following:

- Providing for the authority, by enactment or delegation, to assess and screen complaints, to be exercised by the Tribunal's Registrar;
- Refining, reducing and simplifying the grounds for dismissing a complaint without a hearing under s. 27(1);
- Adding the procedural powers and authorities necessary to allow for more active, timely, informal, streamlined and summary approaches to the adjudication and processing of complaints;
- Simplifying the standards which the courts apply in reviewing Tribunal decisions.

Once the amendments are approved to proceed and our revised forms are ready for implementation, the Tribunal's *Rules of Practice and Procedure* will be redrafted to capture the changes, again consistent with the objectives of simplification, consistency, timeliness, flexibility and ease of use.

MAINTAINING MOMENTUM

The progress demonstrated over the past year could not have occurred but for the fact that the Tribunal has had the benefit of an almost full roster of appointed Members. As of this report, two adjudicative appointments are on the cusp of expiring. I will be vigorously advocating for re-appointments, as soon as possible in consultation with the Minister. I also reiterate my concern that Members' compensation continues to lag in relation to the value of their work and has not been reconsidered since 2007.

In keeping with my previous comments in respect of the directed consolidation and co-location of the BC Human Rights Tribunal and the BC Review Board, I simply observe this initiative would benefit from a greater commitment from involved central agencies.

On a related note, I am aware that, as part of identifying amendments to the *Administrative Tribunals Act*, the concept of "clustering" of Tribunals has been proposed. Although the two Tribunals which I have the honour of chairing are attempting to demonstrate leadership in this area, it is nevertheless my sincere hope, on behalf of these and the array of other B.C. Tribunals, that decisions in respect of mandates will not pre-empt a rigorous and fulsome policy debate regarding the objectives, means, respective congruencies, and organizational implications of any proposed model "clusters".

I am pleased to report, that despite the complement of Members, and staff, and any additional expenditures associated within the reform agenda, the Tribunal is once again declaring a year end surplus of $47,000.00 in its fiscal allocation.

Finally I must acknowledge the efforts of the Tribunal's Members, Legal Counsel, Registrar and Administrative Staff. It is nothing less than a privilege to work with such an accomplished and committed group of individuals.

While, as Minister Bond's March 2013 comments observe, much has been accomplished under Canada's first Direct Access Tribunal Model, there is more to be done.

I trust the foregoing will assist in introducing and familiarizing you with the operations and agenda of the BC Human Rights Tribunal.

Best wishes in your position.

Bernd Walter
Chair

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Tribunal Mandate and Purpose

The British Columbia Human Rights Tribunal is an independent, quasi-judicial body, established under the *Human Rights Code*, to resolve and adjudicate human rights complaints in a manner that is consistent with the purposes set out in section 3:

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*.

On March 31, 2003, British Columbia instituted a direct access model for human rights complaints.

The direct access Tribunal 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 resolution and adjudication of human rights complaints.

New complaints are assessed to see that the information provided is adequate, that the Tribunal has jurisdiction over the matters set out, and that they are filed within the six-month time period set out in the *Code*. If a complaint is accepted for filing, the Tribunal notifies the respondents who then 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, and how it should be remedied, is rendered.

The Tribunal conducts hearings and settlement meetings throughout the Province. The Tribunal's practices and procedures are governed by its Rules.

Inquiry and Complaint Statistics

Inquiry Statistics

Inquiries about the Tribunal's complaint process are answered by Inquiry Officers. They provide information about the *Code* and also make referrals to other relevant community and government resources. The Tribunal is accessible from anywhere in the province by toll-free number or email.

In 2012/13, the Tribunal responded to 6,649 telephone and 2,154 email inquiries.

New Cases

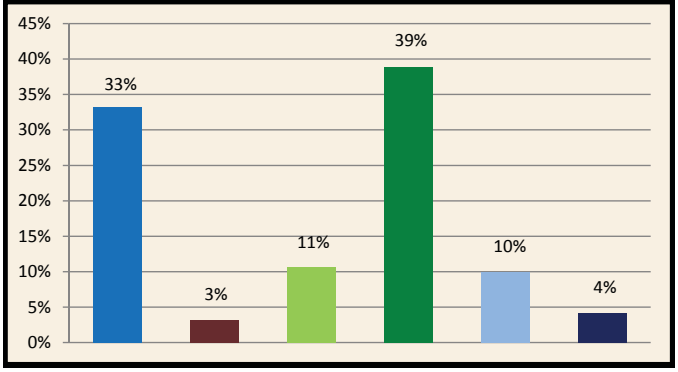
The Tribunal screens all complaints to ensure that they are within provincial jurisdiction, and to determine whether they set out a contravention of the *Code*.

Cases Handled April 1, 2012 - March 31, 2013		
New Cases	1028	
Cases Rejected	409	40%
Cases Accepted for Filing	619	60%

Closed Cases

Cases are closed when they are not accepted for filing at the initial screening stage, withdrawn because they have settled or are abandoned, dismissed or when a decision is rendered after a hearing.

Cases Closed by Reason April 1, 2012 - March 31, 2013		
Cases Rejected During Screening	409	33%
Late Filed Complaints Rejected	39	3%
Applications to Dismiss Granted	131	11%
Cases Settled	479	39%
Cases Withdrawn or Abandoned	123	10%
Decisions Rendered After Hearing	51	4%
Total Cases Closed	1232	



Complaints by Areas and Grounds

Areas and Grounds of Discrimination

The *Code* prohibits discrimination in the **areas** of employment, service, publication, tenancy, membership in unions and associations, employment advertisements, wages, and purchase of property. It also prohibits retaliation against a person who has made a complaint under the *Code*.

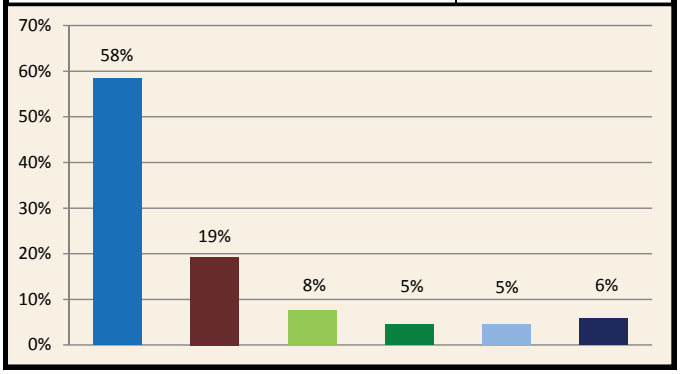
There are 15 prohibited **grounds** of discrimination: physical disability, mental disability, sex (including sexual harassment and pregnancy), race, place of origin, colour, ancestry, age (19 and over), family status, marital status, religion, sexual orientation, political belief, unrelated criminal conviction and lawful source of income.

Not all grounds apply to all areas.

A complaint may include more than one **area** or **ground** of discrimination. For instance, an employment-based complaint may also include the **area** of wages; a race-based complaint may also include **grounds** of ancestry, colour and place of origin.

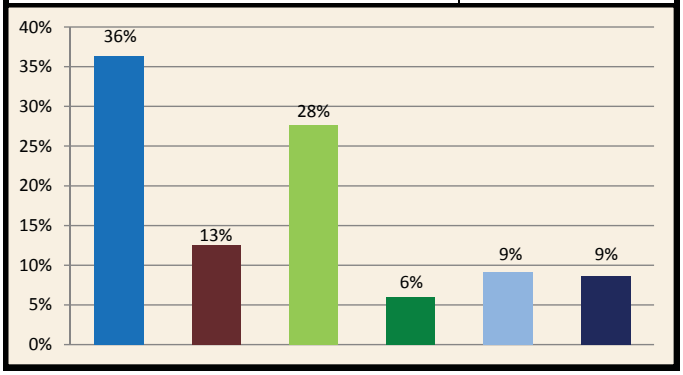
Complaints by Areas of Discrimination
April 1, 2012 - March 31, 2013

Section 13 - Employment	**667**	**58%**
Section 8 - Service	**220**	**19%**
Section 7 - Publication	**86**	**8%**
Section 10 - Tenancy	**52**	**5%**
Section 43 - Retaliation	**52**	**5%**
Total Other - (listed below)	**66**	**6%**
Section 14 - Membership	40	3%
Section 12 - Wages	12	1%
Section 11 - Employment Ads	10	1%
Section 9 - Purchase of Property	4	1%
Total Areas Alleged	**1143**	



Complaints by Grounds of Discrimination
April 1, 2012 - March 31, 2013

Total - Disability	**597**	**36%**
Physical Disability	350	21%
Mental Disability	247	15%
Sex (Including Sexual Harassment and Pregnancy)	**206**	**13%**
Total - Ethnicity	**454**	**28%**
Race	172	10%
Place of Origin	101	6%
Colour	87	5%
Ancestry	94	6%
Age	**97**	**6%**
Total - Family and Marital Status	**150**	**9%**
Family Status	96	6%
Marital Status	54	3%
Total Other - (listed below)	**141**	**9%**
Religion	59	4%
Sexual Orientation	47	3%
Political Belief	18	1%
Unrelated Criminal Conviction	16	1%
Lawful Source of Income	1	0%
Total Grounds Alleged	**1645**	



Settlement Services and Statistics

The Tribunal encourages parties to engage in settlement discussions.

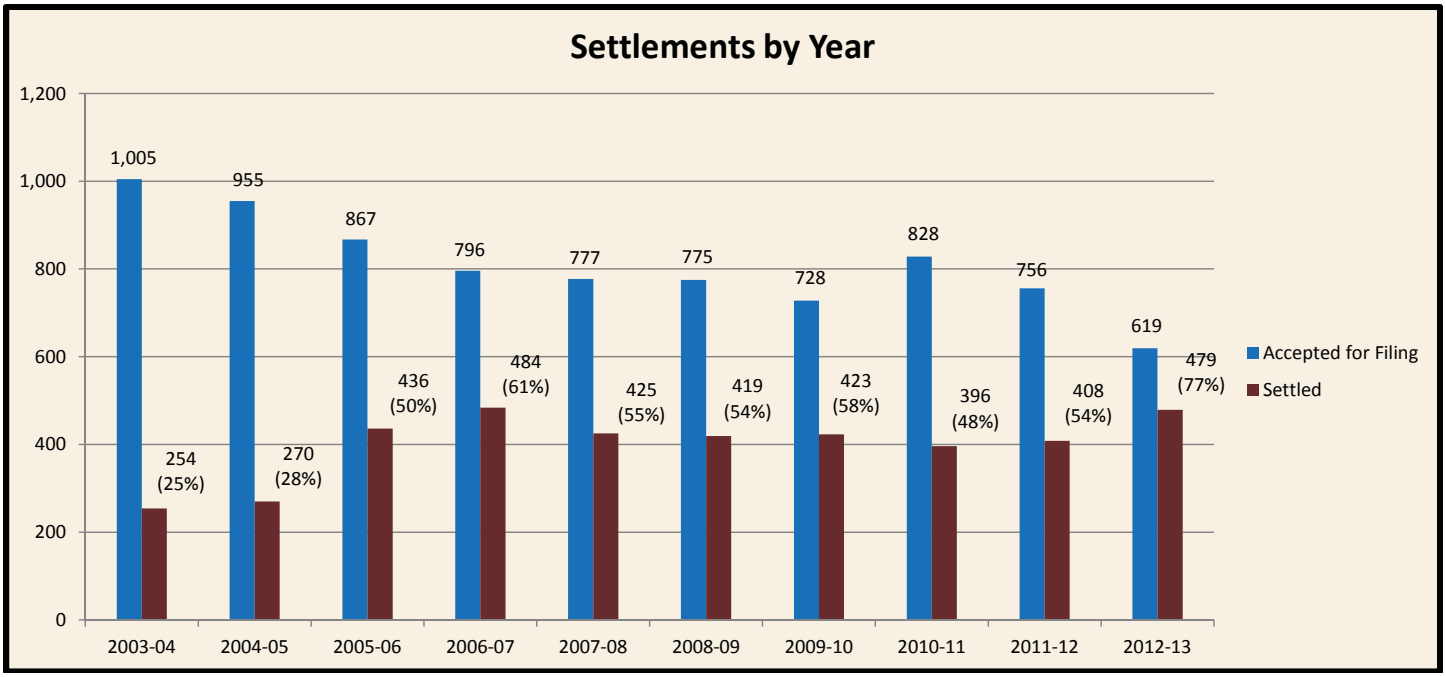
Tribunal-assisted settlement services are initiated even before the respondent files a response to the complaint, and at any later stage in the progress of a complaint. Many complaints settle as a result of these efforts, including solutions which could not be ordered after a hearing.

In 2012-13, the Tribunal conducted 438 settlement meetings.

The parties were able to resolve their disputes in 332 (76%) cases in which the Tribunal provided assistance. Some cases settle without the Tribunal's involvement.

Settlement meetings are confidential. The Tribunal does not publish the results.

In 2012-13, 479 cases settled.



Preliminary Decisions

Time Limit Applications

Section 22 of the *Code* provides a six-month time limit for filing complaints.

A complaint about events which occurred more than six months before the complaint was filed may be accepted if it alleges a "continuing contravention", where the most recent incident occurred within six months of filing.

The Tribunal may accept a complaint or part of a complaint filed after the time limit if it is in the public interest to do so and no substantial prejudice would result to anyone because of the delay.

This year, the Tribunal considered 109 applications under s. 22 of the *Code*, representing 30% of preliminary decisions. This number includes applications to dismiss a complaint made under s. 27(1)(g), discussed below.

The Tribunal found that 88 complaints were untimely, at least in part.

Fifty-five complaints were not accepted or were dismissed as untimely; twenty-one were dismissed in part.

The Tribunal accepted twelve late-filed complaints; six under s. 22(3) and six under s. 22(2).

Continuing Contravention

A "continuing contravention" includes repeated instances of discrimination of the same character. It includes an ongoing failure to accommodate a disability (*Futcher v. Victoria Shipyards and another*, 2013 BCHRT 70) and continuous sexual harassment in the workplace (*Sleightholm v. METRIN and another*, 2013 BCHRT 12).

The onus is on the complainant to provide dates for the alleged allegations to establish a continuing contravention. (*Sharma v. Coast Mountain Bus Company*, 2013 BCHRT 35; *Sethi v. Abbotsford Taxi and another*, 2012 BCHRT 433)

Large gaps in time between similar allegations may weigh against a finding of a continuing contravention, but must be considered in context, including the explanation for the gaps. (*Reynolds v. Overwaitea Food Group*, 2013 BCHRT 67)

Discretion to Accept Late-Filed Complaints

Whether it is in the public interest to accept a complaint filed outside the six-month time limit is decided in light of the purposes of the *Code* set out in s. 3 and depends on the circumstances of the case. The length of the delay, the reasons for the delay, and the uniqueness or possible significance of the allegations of discrimination are factors.

In two cases, a brief delay combined with an error of counsel resulted in acceptance of a late-filed complaint. (*Greaves v. Slegg Construction Materials*, 2012 BCHRT 292; *Lipskaia v. Fabcor*, 2013 BCHRT 2)

Deferral of Complaints

The Tribunal usually defers a complaint if a complainant has filed both a grievance and a human rights complaint in regard to the same subject matter, and if the union and employer are both actively engaged in proceeding through the grievance process and advancing in a timely manner to arbitration. (*Szepat v. B.C. (Ministry of Children and Family Development) and another*, 2012 BCHRT 185)

Generally, wrongful dismissal actions are not capable of dealing appropriately with the substance of a complaint, because the issue of whether a termi-

nation is wrongful does not answer the question of whether it was discriminatory. (*Saifi v. Acuren Group and another*, 2013 BCHRT 52)

The Tribunal was persuaded to defer a complaint where the court action involved complex employment issues, there was a significant overlap between the complaint and the civil claim, including the validity and *bona fides* of the court action, and where the damages claimed may overlap. (*Britnell v. Axis Insurance*, 2013 BCHRT 24)

APPLICATIONS TO DISMISS

Section 27(1) allows complaints that do not warrant the time or expense of a hearing on the merits, to be dismissed without a hearing. Generally, applications to dismiss are decided based on written submissions early in the process.

Applications to dismiss accounted for 67% of preliminary decisions this year.

Of 241 decisions, 131 (54%) were dismissed and 21 (9%) were partially dismissed.

Ninety (37%) applications to dismiss were denied.

GROUNDS FOR DISMISSAL

The Tribunal may dismiss a complaint for the following reasons:

Section 27(1)(a): No jurisdiction

The Tribunal may dismiss a complaint under section 27(1)(a), against a federally regulated company, because of a lack of jurisdiction, if the conduct was outside BC, or if the area or ground of discrimination does not apply to the facts alleged.

The Tribunal has no jurisdiction over a complaint where the interprovincial and international transportation of goods is a regular and continuous part of the respondent's business operations. (*Thiessen v. Coastal Pacific Xpress*, 2013 BCHRT 14)

Section 27(1)(b): No contravention of the Code

The Tribunal may dismiss a complaint under section 27(1)(b) if the acts or omissions alleged do not contravene the *Code*. No consideration is given, at this stage, to any alternative explanation or version of events put forward by the respondent.

Section 27(1)(c): No reasonable prospect of success

The Tribunal may dismiss a complaint under section 27(1)(c) where there is no reasonable prospect it would be found to be justified at a hearing.

Differences in the parties' versions of the facts is not necessarily enough to require a hearing. The Tribunal dismissed a complaint where only the respondent filed documentary evidence corroborating its version of events. (*Pala v. Community Living Society*, 2013 BCHRT 51)

The Tribunal has found that a hearing is required where the conflicts on the facts go to the root of the issues the Tribunal needs to determine. (*Desrochers v. Teksmed Services*, 2013 BCHRT 56)

Section 27(1)(d)(i): Proceeding with the complaint would not benefit the person, group or class alleged to have been discriminated against

The Tribunal may dismiss a complaint under section 27(1)(d)(i) if it determines that proceeding with the complaint would not benefit the person, group or class alleged to have been discriminated against.

Preliminary Decisions

Section 27(1)(d)(ii): Proceeding with the complaint would not further the purposes of the Code

The Tribunal declined to dismiss a complaint based on a settlement offer because of the proposed terms of the release, which included claims under legislation other than the *Code*. A broad release may properly be the result of negotiations conducted under the auspices of the Tribunal. However, an offer is not reasonable for the purposes of s. 27(1)(d)(ii) if it requires the complainant's agreement to something that the Tribunal could not order as the result of a hearing. (*Lowther v. Vancouver Island Health Authority*, 2013 BCHRT 20)

Section 27(1)(e): Complaint filed for improper purposes or in bad faith

A respondent must meet a high standard to have a complaint dismissed under s. 27(1)(e). It is not enough to present a different version of events or allege the complainant is not truthful.

Section 27(1)(f): Complaint appropriately resolved in another proceeding

The Tribunal may dismiss a complaint under section 27(1)(f) where it determines that the substance of the complaint has been appropriately resolved in another proceeding, such as a grievance.

The Tribunal dismissed a complaint where an arbitrator dealt with the human rights issues, saying it would not second-guess the arbitrator and Labour Relations Board. (*Randhawa v. Vancouver Police Department and Wager (No. 2)*, 2012 BCHRT 261)

The Tribunal declined to dismiss a complaint following an interim order issued by an arbitrator and where accommodation issues remained outstanding. (*Waters v. Mainroad Howe Sound Contracting*, 2013 BCHRT 61)

Section 27(1)(g): Contravention outside the time limit

If the Tribunal does not identify a time limit issue in its screening process, a respondent can apply to dismiss a complaint on the basis that it is not timely. The Tribunal determines if the complaint is timely, and if not, whether it should accept the late-filed complaint under the criteria in section 22.

Other Decisions

The Tribunal makes oral and written decisions on other matters, such as amending complaints, adding respondents, disclosure, costs, and limiting publication.

The Tribunal published 104 (29% of preliminary decisions) decisions on other matters. Examples are:

Representative Complaints

Section 21(5) of the *Code* gives the Tribunal authority to refuse to accept a group or class complaint for filing if it is satisfied that proceeding is not in the interest of the group or class.

The Tribunal refused to accept a representative complaint for filing because the class was too vague and overbroad, and the Tribunal was not convinced that the representative could adequately represent the interests of the class. (*A and B obo C v. B.C. (Ministry of Health)*, 2012 BCHRT 145)

Joining Complaints

Section 21(6) of the *Code* provides that the Tribunal may proceed with two or more complaints together if it is fair and reasonable in the circumstances to do so.

The Tribunal joined complaints where some of the legal issues were different between complaints of discrimination based on disability and complaints of retaliation, but there would be considerable overlap between the two cases in the areas of parties, witnesses, documents, and representation. (*Braund v. Northwestern Systems and others (No. 2)*, 2012 BCHRT 161)

Particulars

The Tribunal may order further and better particulars of a complaint. Particulars must provide sufficient facts to permit the other parties to prepare themselves for the hearing. (*George v. Provincial Health Services Authority and another*, 2012 BCHRT 421)

Reconsideration

A party may also ask the Tribunal to reconsider a decision. The applicant must show that the interests of fairness and justice require reconsideration. Reconsideration is not an opportunity to re-argue a matter. (*Vinarskaia v. Lepin Law Corporation and another (No. 2*), 2012 BCHRT 423)

Final Decisions

This year, the Tribunal made 51 final decisions after a hearing on the merits.

Forty-nine percent of the complaints (25 out of 51) were found justified in whole or in part after a hearing.

Representation Before the Tribunal

The complaint was dismissed in one case because the complainant did not appear.

No respondent appeared in two cases and the complaint was found to be justified in both.

Consistent with prior years, more complainants were self-represented in final hearings on the merits than respondents.

Complainants had a lawyer in 16 cases (32%).

Respondents had a lawyer in 27 cases (57%).

In 10 cases, all parties had a lawyer.

In 16 cases, all parties were self-represented.

There has historically been a correlation between legal representation and success for complainants. This year, complainants with counsel succeeded in 75% of their cases.

Without counsel, they succeeded in only 38%.

This year, a complaint was dismissed in 59% of the cases in which respondents had legal counsel, and in 45% of the cases where the respondents did not have legal counsel.

Case Highlights

Key highlights of this year's final decisions:

- the majority of final decisions (38 of 51 cases heard) involved the area of employment (s. 13); 16 (31%) were found to be justified;
- nine decisions involved services (s. 8); four (44%) were found to be justified;
- five decisions involved tenancy (s. 10); four (80%) were found to be justified;
- five decisions involved retaliation (s. 43); two (40%) were found to be justified;
- one decision involved lower rate of pay based on sex (s. 12); it was not found to be justified;
- no decision involved publication (s. 7); purchase of property (s. 9); employment advertisements (s. 11); or membership in a union, employer's organization or occupational association (s. 14);

Regarding the grounds of discrimination:

- twenty-four final decisions dealt with physical and/or mental disability; thirteen (54%) of these complaints were found to be justified;
- eleven final decisions on sex discrimination which includes pregnancy (five decisions) and sexual harassment (two decisions); six (55%) were found to be justified;
- seven final decisions on race, colour, ancestry and/or place of origin; one (14%) was found to be justified;
- seven final decisions on age; one (14%) was found to be justified;

- five final decisions on family status; one (20%) was found to be justified;
- three final decisions on marital status; one (33%) was found to be justified;
- two final decisions on source of income; both were found to be justified;
- two final decisions on sexual orientation; one was found to be justified;
- two final decisions on religion; neither was found to be justified;
- one final decision on criminal conviction unrelated to employment; found not to be justified; and
- one final decision on political belief; found to be justified.

FINAL DECISIONS OF INTEREST

Malin v. Ultra Care and another (No. 2), 2012 BCHRT 158

The Tribunal found that the respondents discriminated when, after learning that the complainant was HIV positive, they did not provide him with further work. The respondents admitted that the complainant's HIV positive status was at least a part of the reason he was not recalled. The complainant was an excellent worker accustomed to being favoured in the offer of jobs. He was provided no work for the remainder of the year. The respondents did not lead evidence that could establish that they made any effort to inquire into whether the complainant needed accommodation, which the complainant said he did not, nor lead any evidence of an offer to accommodate the complainant in any way. The Tribunal ordered the respondents to cease the discrimination and refrain from committing the same or similar contravention, and declared that the respondents' conduct was discrimination. The Tribunal awarded the complainant lost wages for the period he expected to be called back to work, and $20,000 to compensate for injury to dignity, feelings and self-respect. The Tribunal also ordered costs against the respondents for failing to disclose potentially relevant documents.

Eadie and Thomas v. Riverbend Bed and Breakfast and others (No. 2), 2012 BCHRT 247

Once they learned that the complainants were a gay couple, the respondents cancelled the complainants' reservation for a room at their bed and breakfast. The Tribunal found that the respondents discriminated against the complainants in the provision of a service on the basis of sexual orientation. The respondents argued that they had bona fide and reasonable justification in refusing the complainants because they are Evangelical Christians. The Tribunal found that the bed and breakfast was not operated by a church or religious organization, and fell more toward the commercial end of the spectrum. While the business was operated by individuals with sincere religious beliefs respecting same-sex couples, and out of a portion of their personal residence, it was still a commercial activity. The respondents were not deprived of a meaningful choice in the exercise of their religion. Having entered into the commercial sphere, the respondents, like other business people, were required to comply with the laws of the Province, including the *Code*, which is quasi-constitutional legislation that prohibits discrimination on the basis of sexual orientation. In addition to cease and refrain and declaratory orders, the Tribunal awarded each complainant $1,500 for injury to dignity, feelings and self-respect, and expenses incurred and wage loss as a result of attending the hearing.

Winkelmeyer v. Woodlands Inn and Suites, 2012 BCHRT 312

The complainant, who has Cerebral Palsy, sought

employment from the respondent as a room attendant. He alleged that after he disclosed during a telephone call that he required the assistance of a cane for mobility, the tone of the conversation immediately shifted from positive to stiff. He attempted to salvage the situation by describing how he had done similar work at another employer by finding different ways to cope with the duties, and offered to attend the hotel to showcase his abilities. The complainant was not invited for an interview. The Tribunal found that the complainant was discriminated against in employment on the basis of physical disability. In addition to a cease and refrain order, the Tribunal awarded the complainant $5,000 for injury to dignity, feelings and self-respect. The Tribunal found that the complainant had established a serious possibility that, but for his disability, he would have been hired by the respondent, and therefore awarded lost wages, reduced by 30% to account for uncertainty respecting the possibility of hire.

Nicolosi v. Victoria Gardens Housing Co-operative and another (No. 2), 2013 BCHRT 1 (a judicial review has been filed)

The complainant, her son, her daughter, and her daughter's son applied for membership in the respondent housing co-op. Their application was accepted, and they were put on the top of the waiting list. The complainant's daughter moved into the co-op. The complainant sent a number of emails on her daughter's behalf concerning various issues with her daughter's move in. Subsequently, the complainant and her son were both taken off the waiting list for another unit. The Tribunal found that part of the reason the complainant was removed from the waiting list was that she had sent the emails on her daughter's behalf and was perceived by the co-op to be "high maintenance". The Tribunal found that the co-op's actions were, at least in part, due to the complainant's relationship with her daughter, and that this constituted discrimination based on family status. Since the purpose of the remedial provisions of the *Code* is to put the complainant back into the position she would have been but for the discriminatory conduct, the Tribunal ordered that the complainant be placed on the top of the waiting list for the next two-bedroom suite that became available, and that the co-op's Board consider the complainant's application on the basis that the Membership Committee had recommended her. The Tribunal also ordered that the respondent cease and refrain from discriminating, and $7,500 for injury to dignity, feelings and self-respect.

McCreath v. Victoria International Running Society and another, 2013 BCHRT 53

The Tribunal found that the respondents discriminated against the complainant, who is blind, in the provision of a service, by refusing him a five-minute early start time for a ten-kilometre run. The complainant and his running guide had experienced difficulty navigating the run safely because of congestion and therefore requested the early start. The respondents refused, arguing that congestion was a problem for both sighted and unsighted runners and citing safety concerns for all runners. The Tribunal found that the complainant had established that he suffered an adverse impact because he was not able to safely participate in the run and was no longer able to run with his regular running guide, and that there was no undue hardship in providing the early start. In addition to cease and refrain and declaratory orders, the Tribunal ordered that the respondents receive anti-discrimination training and institute a policy respecting the accommodation of blind runners, and give the complainant the opportunity to start the run early in any future races. The Tribunal also awarded $2,500 for injury to the complainant's dignity, feelings and self-respect, as well as the complainant's lost wages for time taken off work to attend the hearing.

Final Decisions

Wali v. Jace Holdings, 2012 BCHRT 389

The complainant, a pharmacist, was in a car accident and sought a reduced work week. He subsequently went on vacation and then on medical leave. Around the same time, the College of Pharmacists was in the process of establishing a new bylaw that would allow pharmacy technicians to provide certain services without direct supervision from a pharmacist. The complainant felt that it was the pharmacist's responsibility to ensure patient safety and that to give a pharmacy technician the increased scope of responsibility without any kind of pharmacist supervision would put the public at risk. He circulated to every pharmacist in BC a proposed resolution requesting that the College reconsider, and expressed opposition at the College's Extraordinary General Meeting. He did not identify himself as an employee of the respondent and was speaking on behalf of himself as a member of the College. The respondent supported the regulation of pharmacy technicians and their expanded scope of practice, and was concerned that the complainant would be misinterpreted as representing its views. The complainant was subsequently terminated. The respondent said the complainant was terminated without cause for business reasons, including in part because of his position regarding pharmacy technicians, but argued that the ground of political belief was not engaged.

The Tribunal found that the complainant had been discriminated against in employment on the basis of disability and political belief. With respect to disability, the respondent had difficulty scheduling reduced work weeks and had a policy against them, absent compelling circumstances. In the circumstances, the Tribunal found that the complainant's disability was one of the business reasons he was terminated. With respect to political belief, the Tribunal found that the free speech of College members on matters affecting the regulation of their profession falls within the scope of political belief, given the legislative framework under which the College operates and the express regulatory mandate given the College by the government regarding pharmacy technicians. This was a new legislated initiative, that involved the public welfare, and that was being debated within the pharmacy community. The Tribunal made cease and refrain and declaratory orders, and awarded the complainant $10,000 for injury to dignity, feelings and self-respect, as well as lost wages which took into account his delay in starting to look for work.

Stewart v. Satorotas Enterprises and others, 2012 BCHRT 442

The complainant, who was 68 years old at the time of the hearing, has severe osteoporosis and a club-foot and requires a walker for mobility, requested that the respondent apartment building build a ramp to allow her to safely access the five stairs leading to her apartment. The respondents refused, arguing that there was no legal requirement for them to do so because they are not a seniors' facility or a facility for the disabled, and that they could not afford to build a ramp when the complainant made the request because they had already spent a significant amount of money on other renovations. The Tribunal found that the respondents had not established that they would suffer undue hardship if they were required to build a ramp, and that the complainant had been discriminated against with respect to her tenancy on the basis of age and physical disability. The Tribunal ordered that the respondents cease contravening the *Code* and refrain from committing the same or similar contravention. The logical effect of the cease and refrain order required the building of a ramp, and the Tribunal therefore ordered the respondents to construct a front door entrance ramp to the apartment building which would allow the complainant to access her apartment with safety and dignity. The Tribunal ordered $15,000 for injury to her dignity, feelings and self-respect. The Tribunal also awarded $500 in costs against the respondents for their failure to disclose documents.

Judicial Reviews and Appeals

The *Code* does not provide for appeals of Tribunal decisions. Judicial review is available in B.C. Supreme Court, pursuant to the *Judicial Review Procedure Act*, subject to a 60-day time limit for final decisions prescribed in the *Administrative Tribunals Act* ("*ATA*").

Judicial review is a limited type of review. Generally, the Court considers the information that the Tribunal had before it and decides if the Tribunal made a decision within its power or in a way that was wrong. The Court applies standards of review in s. 59 of the *ATA* to determine whether the Tribunal's decision should be set aside or should stand even if the Court does not agree with it. If the Tribunal's decision is set aside, the usual remedy is to send it back to the Tribunal for reconsideration.

A decision on judicial review may be appealed to the BC Court of Appeal. There is a further appeal to the Supreme Court of Canada if the Court agrees to hear it.

Judicial Reviews in BC Supreme Court

This year, 26 petitions for judicial review were filed in the Supreme Court, as compared to 27 in the prior reporting year.

The Court struck one petition and issued 11 judgments on the merits.

Four petitions were granted in whole or part.

Four of these judgements reviewed final decisions and one reviewed a costs decision made after a final decision.

- In *J.J. v. School District No. 43 (Coquitlam)*, 2012 BCSC 523, the Supreme Court overturned a Tribunal finding that a painter failed to mitigate her wage loss by not agreeing to terms and conditions of employment that would have allowed her to work again for her former employer. The Tribunal's decision was restored on appeal.

- In *Moody v. Scott*, 2012 BCSC 657, the Court considered a decision by the Tribunal which found discrimination in tenancy on the basis of sexual orientation, disability and lawful source of income. The respondent had been absent from the hearing, though substitutionally served. The Tribunal refused the respondent's application to reopen the hearing after he received the decision, as he had been adequately notified. The Court held that it could consider the reopening decision as context of the discrimination decision under review. Applying the principle of issue estoppel, the Court concluded that the respondent was bound by the reopening decision and could not argue that the discrimination decision was unfair because he had no notice of the hearing. It also found that the fact that the Tribunal's compensatory award for injury to dignity was greater than the amount in authorities relied upon by the complainants was not evidence of bias.

- In *Silver Campsites v. James*, 2012 BCSC 1437, the court granted part of the petition. It found that the Tribunal erred in finding that a privileged communication was discriminatory, and in awarding compensation for injury to dignity in the absence of evidence as to impact of the discrimination on the complainant and for the purpose of punishing the respondent rather than compensating the complainant. A Notice of Appeal has been filed.

- In *Smoother Movers v. British Columbia Human Rights Tribunal, Todd Chaudhary, and The Attorney General of British Columbia*, 29 June 2012, BCSC Vanc. S094594, the Court found that the Tribunal did not have jurisdiction to order costs where it lacked jurisdiction over the complaint at first instance, it had not retained jurisdiction to

determine an application for costs after rendering its final decision, and no application to reopen had been made.

- In *Caster v. Walter F. Evans (1973) Ltd.*, (06 February 2013) Vancouver S124384 (BCSC), the Court refused to overturn findings of fact and credibility findings. It refused to admit affidavit evidence as to rulings made during the hearing where a transcript could have been ordered. It also held that even assuming procedural rulings made by the Tribunal were unfair, overall there was no breach of natural justice and the result would have been the same. A Notice of Appeal has been filed.

Seven judgements reviewed preliminary decisions of the Tribunal, and one petition was struck.

- In *Kamali v. Affordable Housing Societies*, 2012 BCSC 692, the Court upheld the Tribunal's dismissal of a tenancy complaint under s. 27(1)(c). A Notice of Appeal has been filed.

- In *Dela Merced v. Aluminum Curtainwall System Inc. and Luciani*, (BCSC Cranbrook Reg. No. 21618) July 17, 2012, Holmes, J., the Court found that the Tribunal's refusal to accept an employment complaint for filing and to reconsider that decision was not patently unreasonable.

- In *I.J. v. J.A.M.*, 2012 BCSC 892, a petition for judicial review of a time limit and publication ban decision was struck as being bound to fail. A Notice of Appeal has been filed.

- In *De Silva v. Fraser Health Authority*, 2012 BCSC 1710, the court upheld a Tribunal decision dismissing a worker's complaint against her union under s. 27(1)(c) and against her employer under s. 27(1)(d)(ii) about accommodation of her disability. A Notice of Appeal has been filed.

- In *Rush v. British Columbia Human Rights Tribunal*, 2012 BCSC 1661, the Court upheld the Tribunal's dismissing an employment complaint under s. 27(1)(c) of the *Code*.

- In *Salvo v. Shoppers Drug Mart Store #2222*, 2012 BCSC 1789, the Court overturned a dismissal of a mental disability complaint under s. 27(1)(c).

- In *Legere v. The Provincial Health Services Authority*, 2013 BCSC 306, the Court affirmed the Tribunal's discretionary decision that a disability employment complaint was not a continuing contravention and refusal to accept it as late-filed. A Notice of Appeal has been filed.

COURT OF APPEAL

This year there were seven notices of appeal filed, which is three more than the prior year.

The Court of Appeal issued two judgements on appeal of a judicial review of final decisions by the Tribunal and one judgement on appeal of judicial review of preliminary decisions.

- In *Friedmann v. MacGarvie*, 2012 BCCA 445, the Court of Appeal restored the Tribunal's decision. It found that the Tribunal was correct in interpreting the Supreme Court of Canada's decision in *Janzen v. Platy Enterprises Ltd.*, [1989] 1 S.C.R. 1252 as holding that sexual harassment is sex discrimination. The Court said that sexual harassment does not require proof of differential treatment and the very nature of it can be sufficient to establish that the complainant's gender was a factor in the adverse treatment. In this case, a landlord's sexual harassment of a female tenant was discrimination regarding the term of quiet enjoyment because of her sex, contrary to s. 10(1)(b) of the *Code*.

- In *J.J. v. School District 43 (Coquitlam)*, 2013 BCCA 67, the Court of Appeal restored the Tribunal's remedial award in respect of a complaint of sexual harassment in employment. The Court stated that assessing compensation under s. 37(2)(d)(ii) of the *Code* was discretionary in nature and that the Tribunal was not bound to apply the doctrine of mitigation.

- In *Fasken Martineau DuMoulin LLP v. British Columbia (Human Rights Tribunal)*, 2012 BCSC 313, the Court of Appeal held that the Tribunal did not have jurisdiction over an employment complaint by a lawyer who was a partner in a limited liability partnership. An application for leave to appeal to the Supreme Court of Canada was filed.

SUPREME COURT OF CANADA

Leave to appeal to the SCC in *McCormick v. Fasken Martineau DuMoulin LLP* was granted on March 7, 2013.

In *Moore v. British Columbia (Education)*, 2012 SCC 61, the SCC upheld the Tribunal's finding that a student with a severe learning disability (dyslexia) was not accommodated by the school district when it closed a diagnostic centre for financial reasons, that could have provided the student with the intensive remediation that he required, while maintaining other discretionary programs. It did not consider alternatives to meeting his needs within the public school system, but rather advised his parents to send him to a private school. The Court said that the service in issue was education generally, not special education. Adequate special education was not a dispensable luxury but a ramp enabling access to the Province's statutory commitment to provide education to all learners. With respect to the Province, the Court held that the Tribunal's systemic orders against it were too remote from the scope of the complaint.

SPECIAL PROGRAMS AND POLICY

Section 42(3) of the *Code* recognizes that treating everyone equally does not always promote true equality and the elimination of discrimination. It allows approval of special programs which treat disadvantaged individuals or groups differently to recognize their diverse characteristics and unique needs and improve their conditions.

Special Program approvals are generally for six months to five years but may be renewed. Employment equity programs are usually approved for several years. Periodic reporting is required.

When a special program is approved by the Chair, its activities are deemed not to be discrimination.

The Tribunal's Special Programs Policy and a list of special programs approved are posted on the Tribunal's website.

The Chair approved nine new Special Programs this year:

- **Community Connections Society**: Hiring restricted to a woman for the position of Community Support Worker to work with a female client who has developmental and other disabilities. Community Connections is a non-profit social service agency which provides integrated, accessible social services to individuals and their families in Revelstoke, BC.

- **First Nations Education Steering Committee Society**: Recruitment and hiring preference to persons of First Nations ancestry. FNESCS is an independent, non-profit society that is committed to improving education for First Nations students in BC. The organization's employees provide services to build capacity in First Nations communities, advocating on behalf of First Nations learners, facilitating communications, and responding to emerging issues with respect to First Nations education.

- **North Island College**: Priority admission for a number of self-declared Aboriginal applicants in the Bachelor of Science Nursing Program; the Early Childhood Care and Education Program; the Human Service Worker Program; the Health Care Assistant Program; and Practical Nursing Program. Reserving seats will enhance the likelihood of academic achievement and provide increased employment opportunities.

- **Office of the Representative for Children and Youth**: Hiring restricted to Aboriginal applicants for the position of Associate Deputy Representative, Advocacy, Aboriginal and Community Relations. The Representative is responsible for advocacy, youth engagement, and community relations, with particular consideration given to issues as they relate to Aboriginal youth and families. The Representative is also responsible for consultation and direction with respect to engaging with Aboriginal people and communities and ensuring issues in relation to Aboriginal children and youth are raised and addressed.

- **School District No. 39 (Vancouver)**: Hiring preference given to individuals of Aboriginal ancestry to create or exceed parity in the proportion of Aboriginal educators and Aboriginal students in the District.

- **School District No. 50 (Haida Gwaii)**: Restrict hiring to a female Education Assistant to work with a female student with disabilities who requires personal care.

- **School District No. 72 (Campbell River)**: Restrict hiring to a male Educational Assistant to work with a female student with disabilities who works better with male staff.

- **School District No. 73 (Kamloops/Thompson)**: Restrict hiring to a person of Aboriginal ancestry for the position of District Principal – Aboriginal Education.

- **Vancouver Island University**: Restrict hiring to a person of Aboriginal ancestry for the position of BC Regional Innovation Chair in Aboriginal Early Childhood Development.

B.C.'s Human Rights Tribunal celebrates 10-year anniversary on March 31

By Shirley Bond
Minister of Justice and Attorney General
March 26, 2013

VICTORIA - Human rights movements around the globe have been pivotal in supporting open, democratic societies where individuals can lead safe, happy and fulfilled lives.

The movements have been critical in building societies, including British Columbia's, that aspire to eliminate discrimination against individuals because of their race, colour, ancestry, place of origin, religion, marital status, family status, physical or mental disabilities, sex, sexual orientation or political belief. Human rights movements have opened employment doors, helped people put roofs over their heads, and curbed exposure to hateful comments and ideas.

Ten years ago, the British Columbia Human Rights Tribunal as we now know it was created and the new direct access model - the first of its kind in Canada - strengthened our dispute resolution mechanisms for ensuring that the rights of individuals are protected. Under the direct access model, human rights complaints go directly to the tribunal, which handles the complaint from start to finish. This process is efficient and accountable.

When reflecting on the services offered by the Human Rights Tribunal, it's important to understand how it works and what it represents. The tribunal is an independent, quasi-judicial body responsible for screening, mediating and adjudicating human rights complaints in a manner consistent with the purposes as stated in the Human Rights Code:

- 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.
- To promote a climate of understanding and mutual respect where all are equal in dignity and rights.
- To prevent discrimination prohibited by the code.
- To identify and eliminate persistent patterns of inequality associated with discrimination prohibited by the code.
- To provide a means of redress for those persons who are discriminated against contrary to the code.

Its commitment and innovation in providing services to British Columbians is reflected in the number of cases the Human Rights Tribunal addresses annually. In 2011-12, it received almost 1,100 new cases and responded to more than 10,000 telephone and email enquiries. The most common types of human rights complaints concerned discrimination on the basis of disability (35 per cent), ethnicity (26 per cent), sex and sexual harassment (14 per cent), family and marital status (nine per cent) and age (six per cent).

Tenth Anniversary Message

The tribunal's commitment to continuous improvement helps to make services to British Columbians even better. In recent years, the tribunal has streamlined the way complaints are resolved and results of this reform have been remarkable:

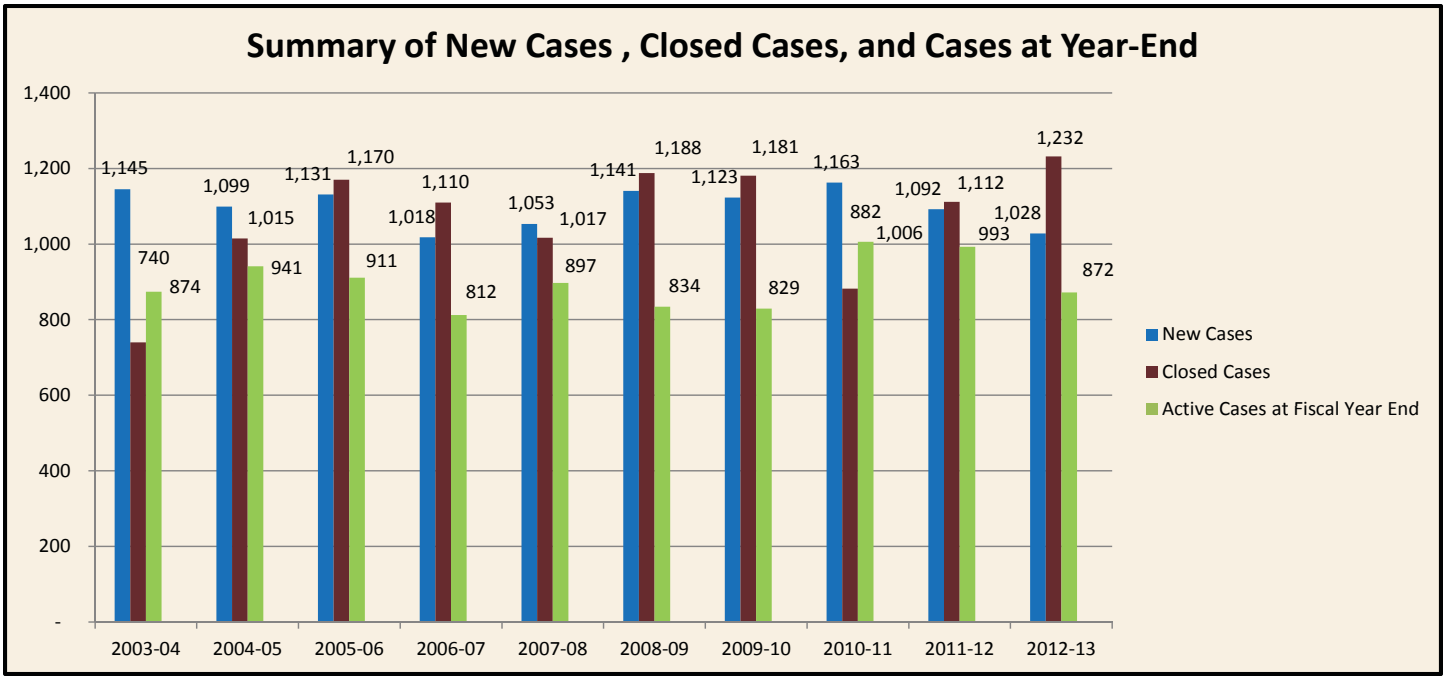
- The screening process is often completed within 60 days of filing.
- Seventy-four per cent of cases referred to mediation are successfully resolved.
- Effective use of preliminary dispute resolution and settlement services has resulted in only four per cent of the complaints referred to oral hearings.

As we celebrate the 10th anniversary of the direct access model implemented through changes to the Human Rights Code that were brought into force by the B.C. government on March 31, 2003, I ask all British Columbians to reflect on how fortunate we are to live in an open and tolerant society, and how important it remains for citizens around the globe to keep challenging the status quo in jurisdictions that don't have effective human rights protection.

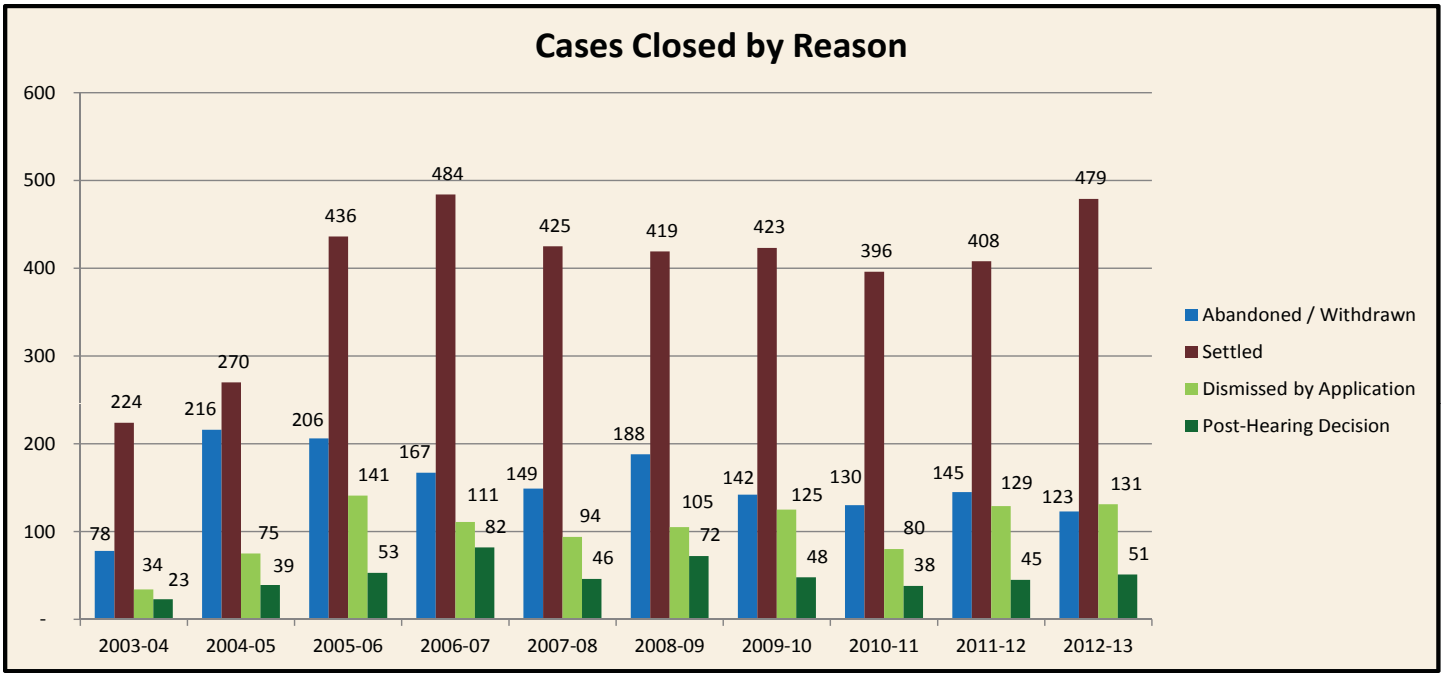
Contact:

James Beresford
Communications
Ministry of Justice
250 356-6423

2003-2012: Ten-Year Comparison of Workload Indicators

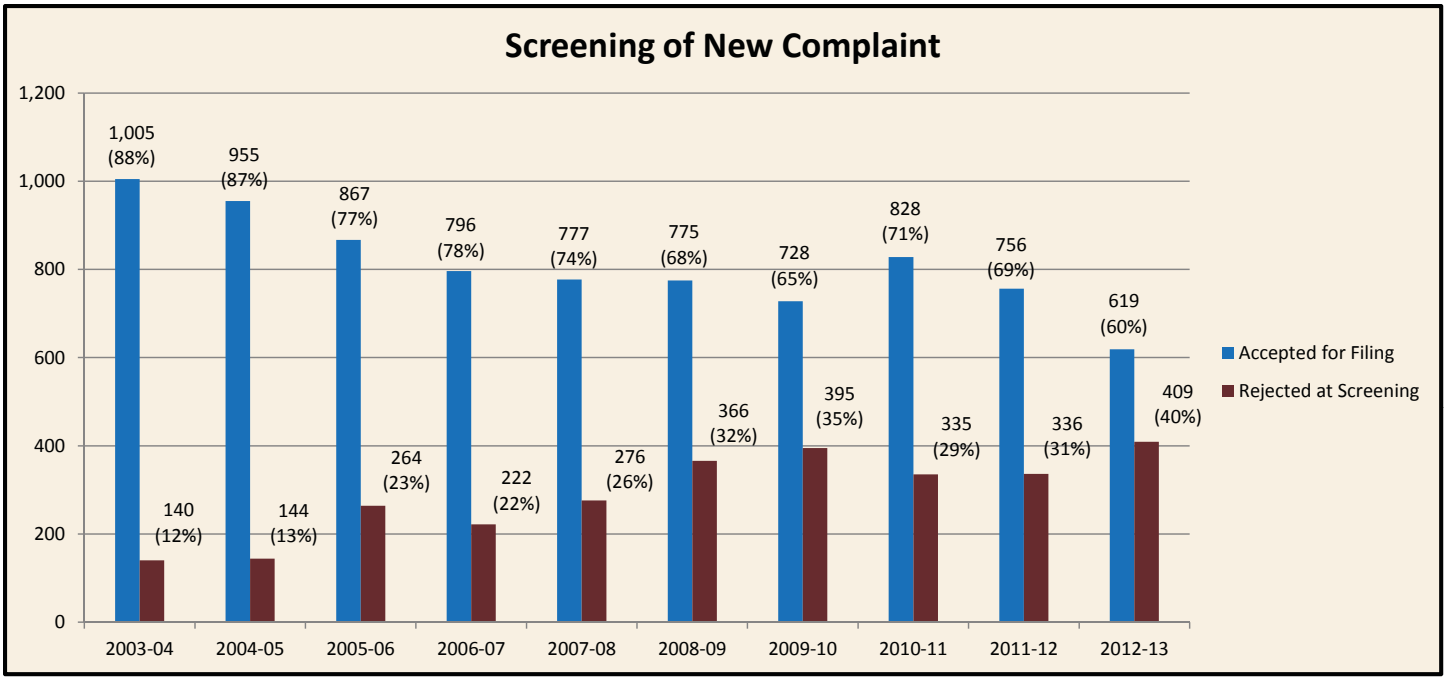


Total intake of new complaints compared to total output of resolved complaints with number of active complaints in inventory at fiscal year-end



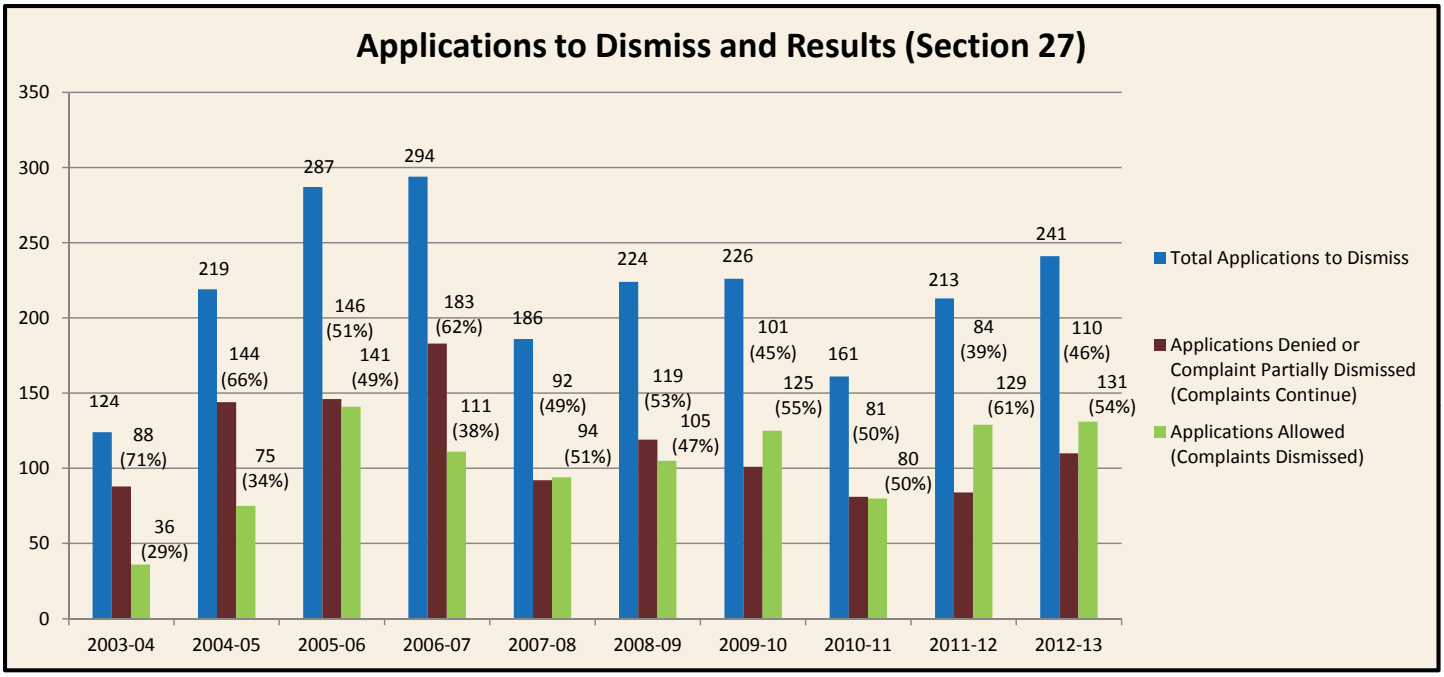
Reason for closure of complaints previously accepted for filing

2003-2012: Ten-Year Comparison of Workload Indicators

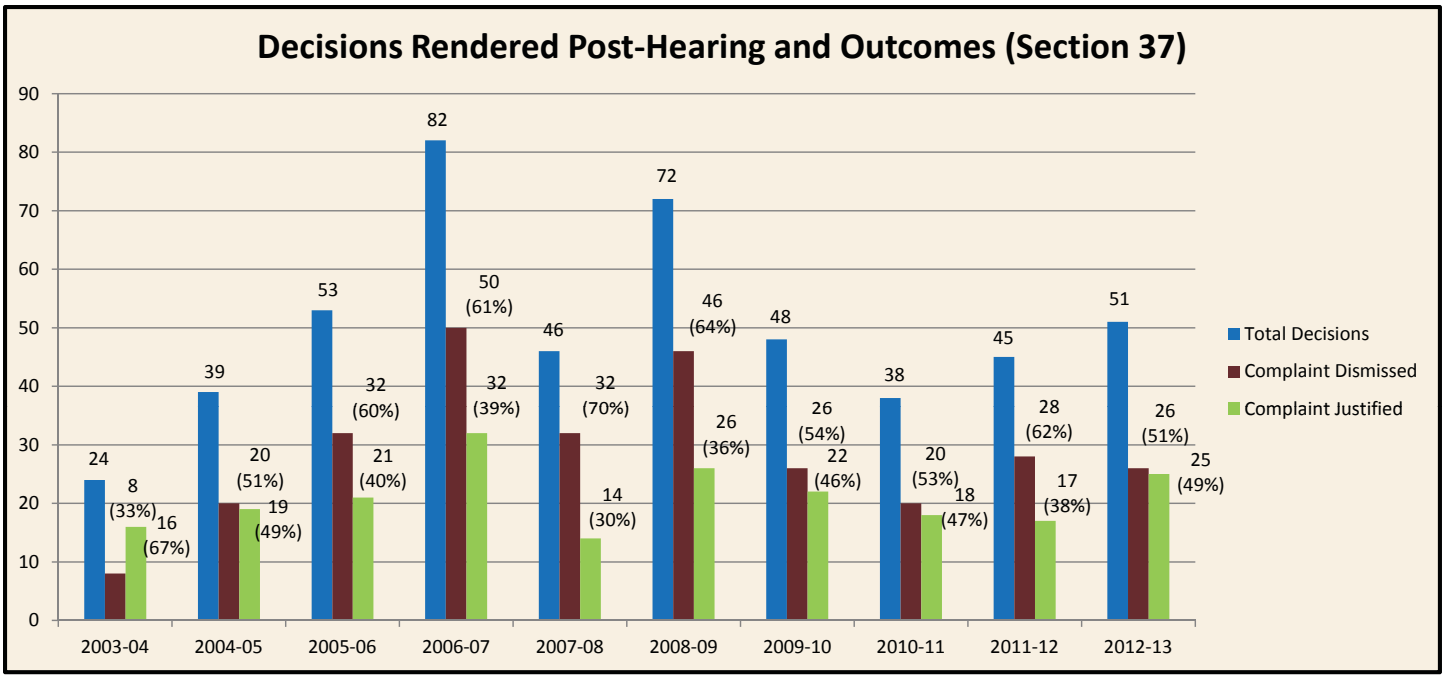


Total new complaints accepted for filing or rejected for lack of jurisdiction or lack of information at screening

2003-2012: Ten-Year Comparison of Workload Indicators



Applications to dismiss a complaint before conducting a hearing, with decision outcomes



Final decision outcomes after a hearing on the merits of the complaint

Tribunal Members

Robert B. Blasina, Member

Mr. Blasina was appointed a full-time Member of the Tribunal on August 2, 2011. Mr. Blasina graduated from the University of Toronto in 1971, with a Bachelor of Arts in Economics and from Queen's University in 1974, with a Bachelor of Laws. He was called to the Bar of British Columbia in 1977, and he obtained a Chartered Arbitrator designation in 1999 through the British Columbia Arbitration and Mediation Institute.

He first practiced labour law, representing a number of trade-unions, and then as an arbitrator and mediator with respect to collective agreement and employment issues. Prior to coming to the Tribunal, Mr. Blasina had twenty-four years' experience as a consensual arbitrator and mediator, and has served on the Boards of the Arbitrators' Association of British Columbia and the British Columbia Arbitration and Mediation Institute.

Murray Geiger-Adams, Member

Mr. Geiger-Adams was appointed a full-time Member of the Tribunal on March 9, 2009 for a six-month term under a Chair's appointment. He was most recently reappointed for a five-year term expiring in January 2015.

He holds a law degree from the University of Toronto (1985), and a Bachelor of Arts (Honours) degree in political science from the University of British Columbia (1975).

Prior to joining the Tribunal, and from 1997-2008, Mr. Geiger-Adams was legal counsel for a professional association responsible for collective agreement administration.

Before that, and from 1985-1997, he was a student, associate and then partner in a Vancouver law firm, representing clients in matters including labour, human rights, Aboriginal rights and employment.

Diana Juricevic, Member

Ms. Juricevic was appointed a full-time Member of the Tribunal on February 16, 2012 for a five-year term. She holds a Juris Doctor and Master of Economics degree from the University of Toronto (2004). She also holds an Honours Bachelor of Arts degree from the University of Toronto (2001).

Prior to joining the Tribunal, Ms. Juricevic practised international criminal law before tribunals in The Hague and Cambodia. She was also the Acting Director of the International Human Rights program at the University of Toronto Faculty of Law where she taught courses on international criminal law and human rights advocacy.

At the outset of her career, Ms. Juricevic was an associate at a national law firm practising in the areas of civil litigation, administrative law, and human rights.

Enid Marion, Member

Ms. Marion was appointed a full-time Member of the Tribunal, effective July 27, 2008 for a five-year term expiring in July 2013. She holds a law degree from the University of Victoria (1988).

Prior to joining the Tribunal, Ms. Marion practiced labour, employment and human rights law as an Associate with a Vancouver law firm and as an Associate and then Partner with another Vancouver law firm.

Tribunal Members

Catherine McCreary, Member

Ms. McCreary was appointed a full-time Member of the Tribunal on April 2, 2012 for a temporary one-year term. In May 2012, she was appointed on a five-year term expiring in May 2017. A graduate of the University of Calgary Faculty of Law, she worked in British Columbia and Alberta as an arbitrator, mediator and investigator. She was a Vice-Chair of the BC Labour Relations Board from 2000 to 2006. Ms. McCreary worked as in-house counsel to Teamsters Local 213 after moving to BC from Alberta in 1997. In Alberta, she worked with the law firm McGown Johnson and acted as counsel, usually to unions and employees.

Ms. McCreary served on the boards of directors of Vancity and Central 1 Credit Union and recently was appointed by FICOM to serve on the Task Force on Credit Union Governance. She sometimes works as a Governance Coach to member-based organizations.

Judith Parrack, Member

Ms. Parrack was appointed a full-time Member of the Tribunal on August 1, 2005 for a five-year term. She is currently authorized, pursuant to section 7 of the *Administrative Tribunals Act*, to continue to exercise powers as a member over continuing proceedings until completion. Ms. Parrack holds a law degree from Osgoode Hall Law School (1987).

Ms. Parrack was an Associate with a national law firm from 1989 to 1994 and a staff lawyer at the B.C. Public Interest Advocacy Centre from 1995 to 1999. She was a full-time Member of the B.C. Human Rights Tribunal from 1999 to 2002.

Prior to re-joining the Tribunal in 2004, Ms. Parrack was in private practice in the areas of Labour, Human Rights and Administrative Law.

Norman Trerise, Member

Mr. Trerise was appointed a full-time Member of the Tribunal on December 2, 2010 for a five-year term.

He holds a law degree from the University of British Columbia (1973) and a Bachelor of Arts degree from the University of Oregon (1969).

Prior to his appointment, Mr. Trerise practised labour, employment, human rights and administrative law as a partner with a national law firm.

Marlene Tyshynski, Member

Ms. Tyshynski became a full-time Member of the Tribunal on December 1, 2005 for a temporary six-month term.

Upon expiry of her term, Ms. Tyshynski returned to her position as legal counsel to the Tribunal. In October 2007, following amendments to the *Administrative Tribunals Act*, the Chair appointed her to a second six-month term. In april 2008, Ms. Tyshynski was appointed to a five-year term expiring in April 2013 and has recently been appointed to a six-month term expiring in October 2013.

She holds a law degree from the University of Victoria (1988), a Master of Social Work degree from Wilfred Laurier University (1978) and an Honours Bachelor of Applied Science degree from the University of Guelph (1976).

At the outset of her career, Ms. Tyshynski was an associate with two law firms in Victoria. She was in private practice for several years specializing in, among other areas, Administrative Law, then she worked as a staff lawyer for the Legal Services Society.

Prior to her appointment as Member, Ms. Tyshynski served as legal counsel to the Tribunal for three years.

Tribunal Members

Bernd Walter, Chair

Mr. Walter was appointed Chair of the Tribunal on August 1, 2011 for a five-year term. He also chairs the British Columbia Review Board.

Mr. Walter has chaired a number of BC Tribunals. He has also served as an ADM in the BC Public Service, as well as in Alberta and Ontario. He served as Alberta's First Children's Advocate.

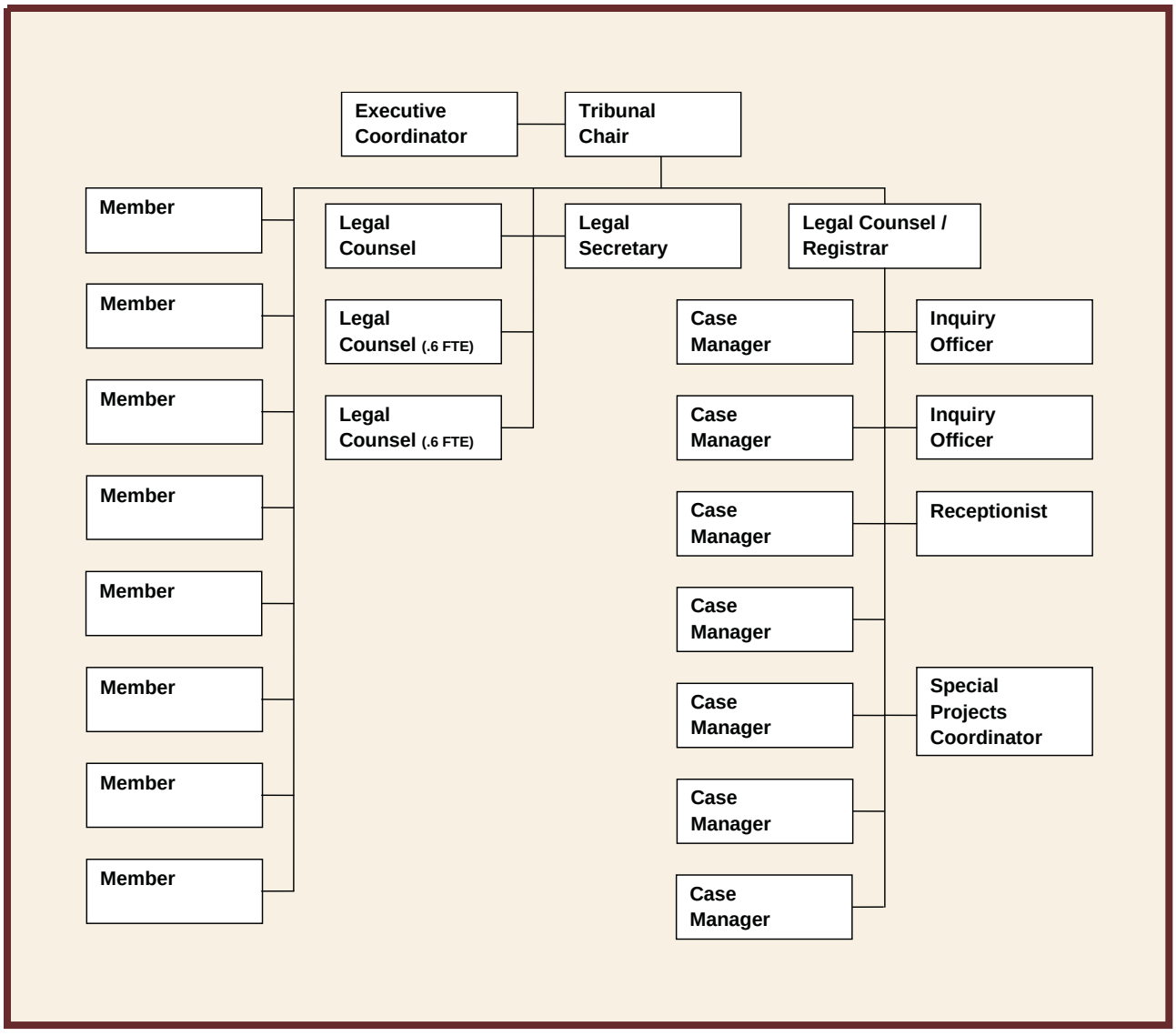
Mr. Walter's background includes program, policy and law reform, in particular in child protection, adoption, Aboriginal child and family services, child, youth and adult mental health and children's rights. He has also participated in First Nations Residential Schools reconciliation and healing work.

Cost of Operation

BC Human Rights Tribunal Operating Cost
Fiscal Year 2012-2013

Category	Expenditure	Delegated Budget	Variance
Salaries (Chair, Members, Registry and Administration)	$ 2,097,454	$ 2,207,000	$ 109,546
Employee Benefits	$ 482,320	$ 507,000	$ 24,680
Expired-Term Members – Fees for Completing Outstanding Decisions	$ 0	$ 20,000	$ 20,000
Travel	$ 50,559	$ 110,000	$ 59,441
Centralized Management Support Services	$ 0	$ 0	$ 0
Professional Services	$ 260,368	$ 103,000	$(157,368)
Information Services, Data and Communication Services	$ 879	$ 17,000	$ 16,121
Office and Business Expenses	$ 87,717	$ 59,000	$ (28,717)
Statutory Advertising and Publications	$ 1,344	$ 5,000	$ 3,656
Total Cost	**$ 2,980,641**	**$ 3,028,000**	**$ 47,359**

Organization Chart



Tribunal Publications

The following Guides, Information Sheets and Policies are available in English, Chinese and Punjabi on the Tribunal's website or by contacting the Tribunal. Please refer to the back cover of this report for contact information.

Guides

1– The BC Human Rights Code and Tribunal
2– Making a Complaint and guide to completing a Complaint Form
3– Responding to a Complaint and guide to completing a Response to Complaint Form
4– The Settlement Meeting
5– Getting Ready for a Hearing
Guide for Self-Represented People

Information Sheets

1– Tribunal's Rules of Practice and Procedure
2– How to Name a Respondent
3– What is a Representative Complaint?
4– Time Limit for Filing a Complaint - Complainants
5– Time Limit for Filing a Complaint - Respondents
6– Tribunal Complaint Streams
7– Standard Stream Process - Complainants
8– Standard Stream Process - Respondents
9– How to Ask for an Expedited Hearing
10– How to Deliver Communications to Other Participants
11– What is Disclosure?
12– How to Make an Application
13– How to Add a Respondent
14– How to Add a Complainant
15– How to Make an Intervenor Application
16a–How to Apply to Dismiss a Complaint under Section 27
16b–How to Respond to an Application to Dismiss a Complaint
17– How to Request an Extension of Time
18– How to Apply for an Adjournment of a Hearing
19– How to Require a Witness to Attend a Hearing
20– Complainant's Duty to Communicate with the Tribunal
21– How to Find Human Rights Decisions
22– Remedies at the Human Rights Tribunal
23– How to Seek Judicial Review
23a–Judicial Review: The Tribunal's Role
24– How to Obtain Documents from a Person or Organization who is not a Party to the Complaint
25– How to Enforce Your Order
26– Costs because of Improper Conduct
27– Reconsideration of Decisions

Policies

Complainant's Duty to Communicate with the Tribunal
Public Access and Media
Settlement Meeting
Special Programs

Administrative Staff

Registrar / Legal Counsel
Steven Adamson

Executive Coordinator
Andrea Nash

Legal Counsel
Jessica Connell
Katherine Hardie (part-time)
Denise Paluck (part-time)

Legal Secretary
Nikki Mann

Case Managers
Carla Kennedy (partial year)
Anne-Marie Kloss
Lorne MacDonald
Cristin N. Popa
Cheryl Seguin
Maureen Shields (partial year)
Sandy Tse
Daniel Varnals

Special Projects Coordinator
Luke LaRue

Inquiry Officers
Mattie Kalicharan
Carla Kennedy (partial year)

Reception
Janet Mews

The core mission of the
British Columbia Human Rights Tribunal
is the timely and fair resolution of disputes
involving the human rights of all
British Columbians

BC Human Rights Tribunal
1170 - 605 Robson Street
Vancouver, BC V6B 5J3
Website: www.bchrt.bc.ca

Phone: 604-775-2000
Fax: 604-775.2020
TTY: 604-775-2021
Toll Free: 1-888-440-8844

The Law Society of British Columbia

Annual Report of the Law Society of British Columbia Equity Ombudsperson Program for the Term January 1, 2009 to December 31, 2009

For: **The Benchers**
Date: **April 2010**

Purpose of Report: For Information

Prepared by: Anne Bhanu Chopra, Equity Ombudsperson, LSBC
B. Comm., MIR., LL.B

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PREFACE

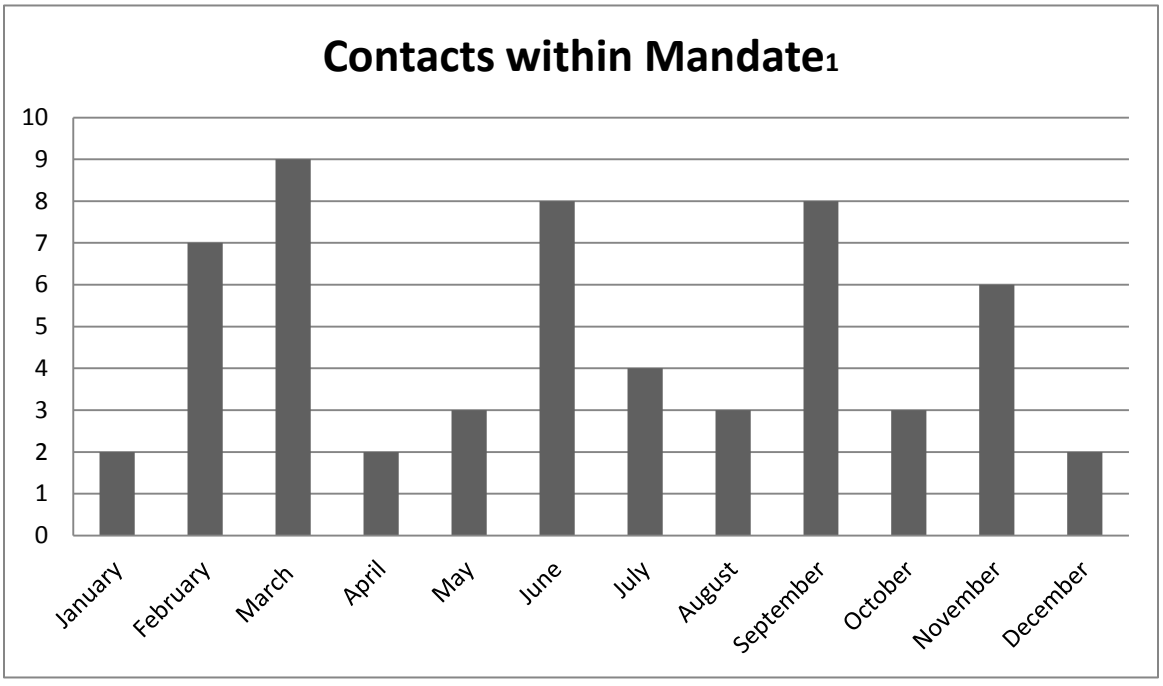
The Following report is prepared by the Equity Ombudsperson on an annual basis and disseminated to the Law Society of British Columbia for information purposes. Should the reader have any questions about the report or comment contained in same, please feel free to email the Equity Ombudsperson at achopra1@novuscom.net.

A. OVERVIEW OF NEW CONTACTS

1. The Law Society of British Columbia (the "Law Society") Equity Ombudsperson Program (the "EOP" or "Program") received 91 calls from individuals during the reporting period (January 1 to December 31, 2009). These were calls from individuals with a new matter. Of the 91 calls, 57 of these new contacts were within the Mandate (as defined below) of the Program. Further, each caller may have contacted the Program on the new matter, on a number of occasions. As a result, the total number of contacts made with the EOP during this period was 258 contacts. (See Table 2 and 3 for information on the total contacts made with the Program.)

2. The below Table 1, displays the distribution of the 91 new contacts made with the EOP, during the reporting period:

TABLE: 1



[1] Mandate = Calls from lawyers, articling students, staff dealing with issues arising from the prohibited grounds of discrimination, including workplace harassment.

3. The initial contact made by these callers is distributed as follows: 85 (93%) used the telephone to make their initial contact, 4 (4%) used email and 2 (2%) used regular mail.

4. Further, of the 91 new contacts with the Program, 78 (86%) were made by women and 12 (13%) were made by men.

5. The following Table 2 notes the contacts made with the EOP since 2006 and the geographic distribution in British Columbia:

TABLE 2: CONTACTS : 2006-2009

GEOGRAPHIC DISTRIBUTION:

	2006	2007	2008	2009
Total Contacts[1]:	286	297	275	258
Vancouver (Lower Mainland):	121	142	133	128
Victoria:	78	65	68	64
Outside (Lower Mainland /Victoria)	49	34	41	32
Outside the Mandate[2]:	38	56	33	34

NOTE:

[1]Contacts = All email, phone, in person, fax and mail contacts made with the EOP. Some contacts may have resulted in more than one issue.

[2]Outside Mandate= callers are from the public and/ or lawyers dealing with issues not within the Mandate of the EOP.

6. The following Table 3 identifies the profile of the caller (based on position, gender and size of firm) since 2006:

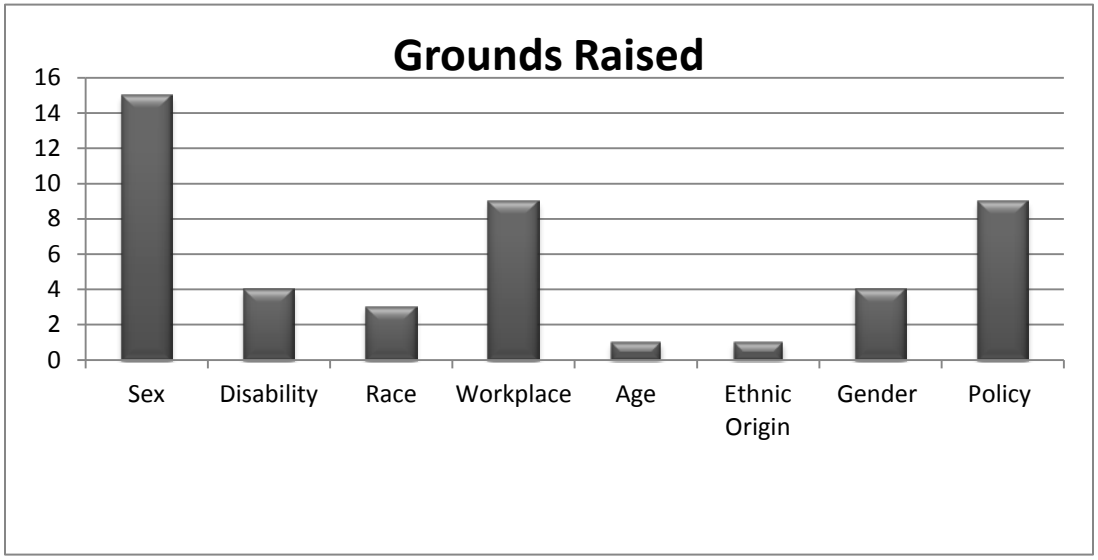
TABLE 3: PROFILE DISTRIBUTION

Profile Distribution:	**2006**	**2007**	**2008**	**2009**
Associates	50	55	56	53
Partners	60	58	43	38
Students	12	8	13	11
Articling Students	58	49	51	50
Support Staff	68	71	79	72
Females	168	164	170	178
Males	80	77	72	46
SIZE OF FIRM IN (PERCENT %)				
Small	(1-10)	45%	39%	42%
Medium	(10-50)	29%	35%	32%
Large	(50 +)	26%	23%	24%

B. OBSERVATIONS AND NARRATIVE EXAMPLES OF THE CALLERS WITHIN THE MANDATE:

1. Table 4 below, displays the grounds of discrimination which were raised in the complaints from the callers: sex, disability, race, religion, age, ethnic origin, gender, policy and workplace/personal harassment:

TABLE: 4



2. It is interesting to note the following observations:

- Of the 57 contacts, 46 individuals made human rights based discrimination or harassment and workplace harassment complaints against lawyers. Of these complaints, they were made as follows: 24% associates, 9% partners, 28% articling students 9% law students and 30% support staff; and
- Six (6) of the 46 complaints (13%) from within the legal profession were made by the complainant in reference to their employment or a job interview experience.

3. During this period, the EOP received a number of complaints, based on the above grounds. The following examples may assist the reader in appreciating the types of complaints received by the EOP:

<u>Based on sex:</u>

- Three women complained about sexist treatment and/or sexual harassment by a male partner in the firm.
- Two female lawyers complained about pregnancy-related discrimination in their employment.
- One female lawyer complained that her employer was refusing to accommodate pregnancy-related health concerns.

Based on disability:

- Two individuals complained that their employer was failing to accommodate their disability.

- Two individuals complained about employment-related discrimination based on disability. Specifically, a female lawyer reported that her employer was refusing to employ her after having received a note from her doctor to have bed rest for few days at the early stage of her pregnancy. The firm advised her that they viewed her continued employment as a health risk to her pregnancy and refused continued employment. The firm's position was not supported by any medical documentation.

Based on race:

- An Asian female lawyer complained about derogatory racialized remarks made by her partner about her abilities when giving her feedback on her work. He attributed her weakness to her race.

- A female articling student of colour complained about racial harassment by his principal at his firm.

- A male articling student complained about racialized jokes made by a partner in the firm.

Based on ethnic origin.

- A female law student complained that she was asked inappropriate questions about her ethnicity during a job interview by a law firm, athough she was offered the position.

Based on personal/workplace harassment:

- One complaint involved a woman who had a senior woman publically humiliate and bully her. Specifically, the senior lawyer advised an articling student that she had no intelligence and screamed at her when she made an error. We learned that this was the female lawyer's pattern with previous students at her firm.

- The other two (2) cases involved the partners in the firm verbally humiliating a student and a junior lawyer in front of the support staff.

C. SERVICES PROVIDED TO CALLERS

Table 5 below, denotes the services provided to the caller. These services are advertised on the LSBC website and pamphlets are provided when the Equity Ombudsperson delivers presentations.

TABLE: 5	
CALLER:	**SERVICES PROVIDED:**
LAW FIRM	• Advise them of their obligations under the Human Rights Act and the Law Society Professional Conduct Handbook • Confidentially assist them with the particular problem, including discussing strategies, obligations and possible training. • Provide information to firm on education seminars or training workshops
COMPLAINANT	• Listen to the complainant and provide safe haven for their story. • Assist in identifying the issues the complainant is dealing with. • Provide the complainant with their options, (internal complaints process in their firm, formal complaint process, mediation, litigation and the Human Rights Tribunal) including any costs, references for legal representation, remedies which may be available and time limits for the various avenues, as relevant. • Mediation is offered to the complainant, where feasible. To date, only informal mediation sessions have taken place. • Provide the complainant information on resources, such as Interlock and LAP, as relevant. • Direct them to relevant resource materials available from other organizations, including the Law Society and the BC Human Rights Tribunal.
GENERAL INQUIRES	Providing the inquirer with information about the: • EOP mandate • Services offered by the EOP • a information seminar

	• on the EOP • Reporting and Statistics gathered by the EOP
CALLER (outside Mandate)	• All callers outside the mandate are re-directed. Minimum time is consumed by the caller. • The EOP has a detailed voice mail on the phone, to act as a screener of the calls. • The EOP does not assist these callers beyond the initial contact.

D. SUMMARY OF CALLERS

In summary, Table 6 notes the distribution of all the issues, as raised by a caller, within the Mandate, during this period:

TABLE 6: ISSUE DISTRIBUTION

Issues addressed:	**2006**	**2007**	**2008**	**2009**
1. Information:				
a) General Information:	21	25	27	24
b) Office Policy Concerns:	18	16	13	14
2. Discussion/Request:				
a) Article, Training or Presentation	31	37	28	26
3. Discuss specific issue or concern:				
Discrimination				
a) Gender	15	20	21	17
b) Racial	20	16	13	12
c) Disability	33	21	17	16
d) Sexual Orientation[1]	n/a	n/a	n/a	0
Harassment				
a) Sexual harassment:	65	6	64	59
b) Workplace harassment:	39	43	40	37
Policy				
a) Leave policy:	14	21	17	18
b) Other policies:	12	6	2	1

1 New Category-2010

E. MARKETING ACTIVITIES

1. The Equity Ombudsperson Program is included under the Law Society website under member support.

2. Articles and Information pieces are included in the Benchers Bulletin periodically, to promote the Program.

3. The EOP continues to makes contact with various organizations. The EOP has emphasized organizations which have a high number of paralegal/legal assistants as these groups are in need of the Program and there remains a lack of awareness of the same.

4. Continued dissemination of contact information about the Program is provided to the various organizations so that there is increased awareness and referrals to the Program. The types of organizations include: LEAF, Capilano College, LAP, Interlock, University of Victoria and University of British Columbia (law school).

F. EDUCATIONAL/TRAINING ACTIVITIES

1. The Program aims to provide ongoing education on respectful workplace issues. With that goal in mind, articles and speaking engagements are conducted, and an informational brochure is distributed.

2. The educational engagements at which the Program was discussed and brochures distributed:

    - Benchers Bulletin Information Article;
    - Brochures distributed at the LEAF Breakfast;
    - Presented the Role of the Equity Ombudsperson for PLTC, Victoria;
    - Presented the Role of the Equity Ombudsperson for PLTC, Vancouver;

- Disseminated Equity Ombudsperson brochures to women lawyers at the AGM of WLF/CBA, Mentoring Program Orientation/WLF, PLTC, UBC, and UVIC;

- Attended a session in Victoria and delivered a presentation to the students regarding the role of the Equity Ombudsperson; and

- Attended a number of the Benchers Meetings to be available to meet with the Benchers, as requested.

3. A number of requests were made for training, and the EOP provided information and discussed possible options with the caller.

G. OBJECTIVES ACHIEVED DURING 2009

1. The following are the objectives achieved by the Equity Ombudsperson in 2009:

- To raise awareness of the Equity Ombudsperson Program;

- To provide general education to the legal profession in British Columbia about respectful workplace issues;

- To receive and handle individual concerns and complaints about discrimination and harassment;

- To provide consultation on workplace policies and initiatives, as requested;

- To continue to disseminate the Equity Ombudsperson informational brochure;

- To follow-up on contacts made through seminars, presentations, the confidential phone line, fax, e-mail and post-office box;

- To exchange information with provincial Equity Ombudsperson counterparts and other equity experts with the other law societies;

- To closely work with Susanna Tam, Staff Lawyer, Policy and Legal Services, so there is enhanced communication between the Equity Ombudsperson and the Law Society.
- To serve as liaison/ resource for the Law Society's Equity and Diversity Advisory Committee so as to ensure and encourage exchange of information.

H. RECOMMENDATIONS FOR 2010

I continue to encourage the Law Society to take an integrative approach in regards to the issues of Equity and Diversity, by considering the concerns, issues and feedback provided by the EOP Program and the Equity and Diversity Advisory Committee (the "Feedback") on a pro-active basis. Specifically, taking into consideration the Feedback when:

i) approaching/addressing any issues on the Law Society task forces;

ii) establishing the membership of a taskforce/committee; and

iii) drafting and implementing new Law Society initiatives, policies and programs.

I am also pleased to report, that I met with a number of Benchers and the WLF to discuss the continuing challenges of sexual harassment; and constructive ways that we may reduce these types of issues arising in law firms.

I thank the Equity and Diversity Advisory Committee for their work and the individuals who have assisted me in the preparation of this report, specifically, Susanna Tam, Staff Lawyer, Policy and Legal Services and Michael Lucas, Manager, Policy & Legal Services.

Presented to the Board on January 2009

I. APPENDIX A

Background

The Law Society of British Columbia (the "Law Society") launched the Discrimination Ombudsperson program in 1995, the first Canadian law society to do so. It is now referred to as the Equity Ombudsperson Program, (the "Program") to reflect its pro-active and positive approach. The purpose of the program was to set up an informal process at arms-length to the Law Society, which effectively addressed the sensitive issues of discrimination and harassment in the legal profession as identified in the various gender and multiculturalism reports previously commissioned by the Law Society.

In the past thirteen years, the Program has been challenged with funding. Accordingly, it has undergone a number of reviews and revisions to address program efficiency, cost-effectiveness and the evolving understanding of the needs of the profession. In 2005, ERG Research Group ("ERG") was retained to conduct an independent study of the Program. ERG concluded that the complainants who accessed the Program "were overwhelmingly satisfied with the way the complaint or request was handled."

The Program has been divided into the following five (5) key functions:

1. Intake and Counseling: receiving complaints from, providing information to, and discussing alternative solutions regarding complaints with members, articled students, law students and support staff working for legal employers;

2. Mediation: resolving complaints informally with the consent of both the complainant and the respondent;

3. Education: providing information and training to law firms about issues of harassment in the workplace;

4. Program Design: at the request of a law firm, assisting in the development and implementation of a workplace or sexual harassment policy; and

5. Reporting: collecting statistics on the types of incidences and their distribution in the legal community, of discrimination or harassment and preparing a general statistical report to the Law Society, on an annual basis.

The original intention of the Law Society was to apportion these key functions among several parties, as follows:

A. The Ombudsperson would be responsible for: 1. Intake and Counselling and 5. Reporting

B. A Panel of Independent Mediators would be responsible for: 2. Mediation

C. The Law Society and the Ombudsperson would both be responsible for: 3. Education and 4. Program Design

From a practical perspective, the above responsibilities have not been apportioned to the intended parties.

With regard to education, the Law Society is not actively involved, other than to distribute model policies on demand. Further, from an operational side, it has become quite evident that it is very impractical to call on mediators from a roster. When a situation demands attention, it is on an expedited and immediate basis. Further, no evidence exists to date that there is a need for a mediator on a regular basis. For example, over the last two years mediators were called on four occasions but they were unavailable due to various reasons: delay in returning the call; a conflict made them unable to represent the client; one did not have the capacity to take the work; and another was on vacation. Accordingly, it was concluded that it was challenging to retain a qualified mediator with the requisite expertise, in an appropriate length of time. The costs and inefficiencies to retain a mediator to address highly stressed, emotional and potentially explosive situations was also a concern and consequently the Ombudsperson has been directly handling the conflict by using her mediation skills. As a result, all components of the Program are currently being handled, primarily, by the Ombudsperson.

i) **Description of Service since 2006**

The Equity Ombudsperson:

- provides confidential, independent and neutral assistance to lawyers, support staff working for legal employers, articling students and clients who have concerns about any kind of discrimination or harassment. The Ombudsperson **does not** disclose to anyone, including the Law Society, the identity of those who contact her about a complaint or the identity of those about whom complaints are made;

- provides mediation services to law firms when required to resolve conflict or issues on an informal and confidential basis;

- is available to the Law Society as a general source of information on issues of discrimination and harassment as it relates to lawyers and staff who are engaged in the practice of law. From a practical perspective, the Ombudsperson is available to provide information generally, where relevant, to any Law Society task force, committee or initiative on the forms of discrimination and harassment;

- delivers information sessions on the Program to PLTC students, law students, target groups, CBA sub-section meetings and other similar events;

- provides an annual report to the Law Society. The reporting consists of a general statistical nature in setting out the number and type of calls received;

- liaises with the Law Society policy lawyer, Susanna Tam, in order to keep her informed of the issues and trends of the Program; and

- provides feedback sheets for the Program to callers who have accessed the service.

ii) **Objective of the Program**

The objective of the Program is to resolve problems. In doing so, the Equity Ombudsperson maintains a neutral position and does not provide legal advice. She advises complainants about the options available to them, which include filing a formal complaint with the Law Society or with the Human Rights Tribunal; commencing a civil action, internal firm process, or having the Ombudsperson attempt to resolve informally or mediate a discrimination or harassment dispute.

The Equity Ombudsperson is also available to consult with and assist any private or public law office which is interested in raising staff awareness about the importance of a respectful workplace environment. She is available to assist law firms in implementing office policies on parental leave, alternative work schedules, harassment and a respectful workplace. She can provide educational seminars for members of firms, be available for personal speaking engagements and informal meetings, or can talk confidentially with a firm about a particular problem. The services of the Equity Ombudsperson are provided free of charge to members, staff, articling students and law students.

Equity Ombudsperson programs have been a growing trend among Canadian law societies since 1995. Currently the Law Societies of British Columbia, Alberta, Manitoba, Ontario and Saskatchewan have Equity Ombudsperson type positions. The Nova Barristers' Society has a staff Equity Officer who fulfills a similar role.

As these law societies have established and publicized these services, it has assisted staff and lawyers, from a practical perspective, to access information and resources to assist them in learning about their options, so that they are in a position to consider and take the appropriate steps to deal with the issues of discrimination and harassment. Further, the establishment of the Program continues to send a positive and powerful reminder to the legal profession about the importance of treating everyone equally, with respect and dignity. Achieving this goal is crucial to ensure a respectful and thriving legal profession.

The Law Society of British Columbia

Annual Report of the Law Society of British Columbia Equity Ombudsperson Program for the Term January 1, 2010 to December 31, 2010

For: The Benchers
Date: April 21, 2011

Purpose of Report: For Information

Prepared by: Anne Bhanu Chopra, Equity Ombudsperson, LSBC
B. Comm., MIR, LL.B

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PREFACE

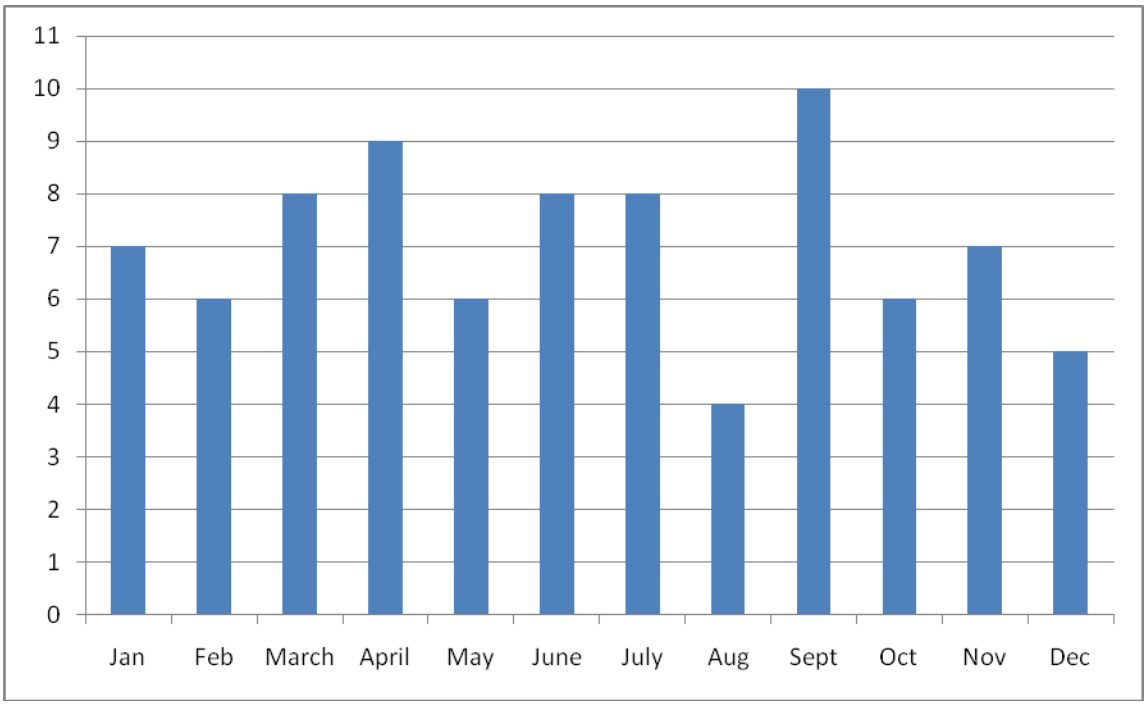
The following report is prepared by the Equity Ombudsperson on an annual basis and disseminated to the Law Society of British Columbia for information purpose. Should the reader have any questions about the report or comment contained in same, please feel free to email the Equity and Ombudsperson at achopra1@novuscom.net.

A. OVERVIEW OF NEW CONTACTS

1. The Law Society of British Columbia (the "Law Society") Equity Ombudsperson Program (the "EOP" or "Program") received 84 calls from individuals during the reporting period (January 1 to December 31, 2010). These were calls from individuals with a new matter. Of the 84 calls, 56 of these new contacts were within the Mandate (as defined below) of the Program. Further, each caller may have contacted the Program on the new matter, on a number of occasions. As a result, the total number of contacts made with the EOP during this period was 260 contacts. (See Table 2 and 3 for information on the total contacts made with the Program.)

2. The below Table 1, displays the distribution of the 84 new contacts made with the EOP, during the reporting period:

TABLE: 1



[1] Mandate = Calls from lawyers, articling students, staff dealing with issues arising from the prohibited grounds of discrimination, including workplace harassment.

3. The means of initial contact deployed by these callers is distributed as follows: 4 (4%) made in person 73 (87%) used the telephone to make their initial contact, 6 (7%) used email and 1 (%) used regular mail.

4. Further, of the 84 new contacts with the Program, 79 (94%) were made by women and 5 (6%) were made by men.

5. The following Table 2 notes the contacts made with the EOP since 2006 and the geographic distribution in British Columbia:

TABLE 2: CONTACTS : 2006-2010

GEOGRAPHIC DISTRIBUTION:

	2006	2007	2008	2009	2010
Total Contacts[1]:	286	297	275	258	260
Vancouver (Lower Mainland):	121	142	133	128	135
Victoria:	78	65	68	64	65
Outside (Lower Mainland /Victoria)	49	34	41	32	32
Outside the Mandate[2]:	38	56	33	34	28

NOTE:

[1]Contacts = All email, phone, in person, fax and mail contacts made with the EOP. Some contacts may have resulted in more than one issue.

[2]Outside Mandate= callers are from the public and/ or lawyers dealing with issues not within the Mandate of the EOP.

6. The following Table 3 identifies the profile of the caller (based on position, gender and size of firm) since 2006:

TABLE 3: PROFILE DISTRIBUTION OF CALLS IN MANDATE

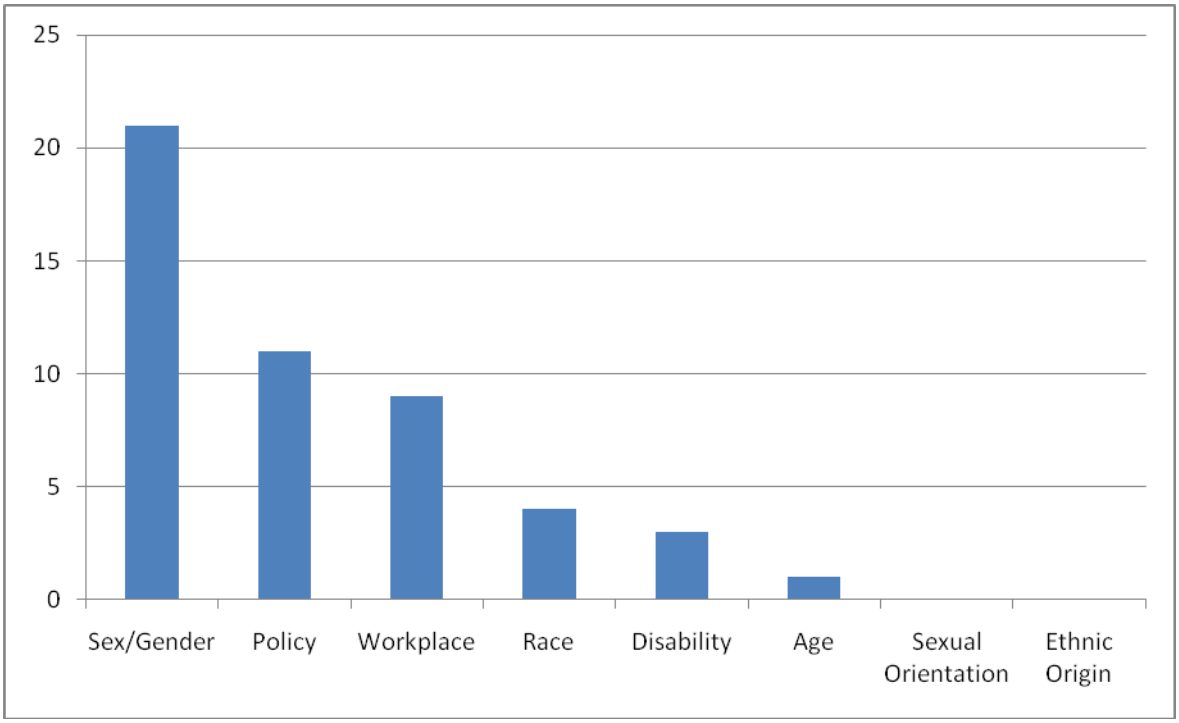
Profile Distribution:	**2006**	**2007**	**2008**	**2009**	**2010**
Associates	50	55	56	53	58
Partners	60	58	43	38	26
Students	12	8	13	11	16
Articling Students	58	49	51	50	58
Support Staff	68	71	79	72	74
Females	168	164	170	178	191
Males	80	77	72	46	41
SIZE OF FIRM IN (PERCENT %)					
Small	(1-10)	45%	39%	42%	51%
Medium	(10-50)	29%	35%	32%	20%
Large	(50 +)	26%	23%	24%	29%

7. The writer notes there has been 9 % increase in calls from small firms and a 12 percent decrease in calls from medium sized firms.

B. OBSERVATIONS AND NARRATIVE EXAMPLES OF THE CALLERS WITHIN THE MANDATE:

1. Table 4 below, displays the grounds of discrimination which were raised in the complaints from the callers: sex/gender, disability, race, religion, age, ethnic origin, sexual orientation, policy and workplace/personal harassment:

TABLE: 4



2. It is interesting to note the following observations:

- Of the 56 contacts, (89%) 50 individuals made human rights based discrimination or harassment and workplace harassment complaints against lawyers. Of these complaints, they were made as follows: 24% associates, 9% partners, 28% articling students 9% law students and 30% support staff; and
- Nine (9) of the 50 complaints (18%) from within the legal profession were made by the complainant in reference to their employment or a job interview experience.
- The writer notes there has been 5(%) percent increase in calls from complaints in regards to questions being asked in the articling interview.

3. During this period, the EOP received a number of complaints, based on the above grounds. The following examples may assist the reader in appreciating the types of complaints received by the EOP:

<u>Based on sex/gender:</u>

- Two women complained that the maternity policies were not available to them once they advised the firm they were pregnant.

- Two female lawyers complained that there was personal harassment and abuse once the firm became aware that they were pregnant.

- Three female articling students were asked inappropriate questions during the articling process (with regards, to marital status, sexual preferences and whether they planned to have a family)

Based on disability:

- One individual complained that she had to disclose information on a past disability (which was irrelevant to her current condition and performance) and this disclosure made the process into the LSBC challenging and difficult.

- Two individuals had similar complaints and the same were from medium sized firms: the individuals were not given support once the firm learned of a potential long term illness/disability-- the firm stopped giving them work .

Based on race:

- A junior female lawyer of colour complained about racial type jokes that were about her personal life.

- One female and one male law student complained that they were asked inappropriate questions about her race and status during a job interview by a law firm.

Based on personal/workplace harassment:

- Two individuals complained that their principal or a senior lawyer was making degrading and humiliating remarks in front of clients and support staff to the lawyers involved.

C. SERVICES PROVIDED TO CALLERS

Table 5 below, denotes the services provided to the caller. These services are advertised on the LSBC website and pamphlets are provided when the Equity Ombudsperson delivers presentations.

TABLE: 5	
CALLER:	**SERVICES PROVIDED:**
LAW FIRM	

	• Advise them of their obligations under the Human Rights Act and the Law Society Professional Conduct Handbook • Confidentially assist them with the particular problem, including discussing strategies, obligations and possible training. • Provide information to firm on education seminars or training workshops
COMPLAINANT	• Listen to the complainant and provide safe haven for their story. • Assist in identifying the issues the complainant is dealing with. • Provide the complainant with their options, (internal complaints process in their firm, formal complaint process, mediation, litigation and the Human Rights Tribunal) including any costs, references for legal representation, remedies which may be available and time limits for the various avenues, as relevant. • Mediation is offered to the complainant, where feasible. To date, only informal mediation sessions have taken place. (Please note, the EOP was asked in this 2010 period to provide, on two occasions in-person/informal type of mediations). • Provide the complainant information on resources, such as Interlock and LAP, as relevant. • Direct them to relevant resource materials available from other organizations, including the Law Society and the BC Human Rights Tribunal.
GENERAL INQUIRES	Providing the inquirer with information about the: • EOP mandate • Services offered by the EOP • a information seminar • on the EOP • Reporting and Statistics gathered by the EOP
CALLER (outside Mandate)	• All callers outside the mandate are re-directed. Minimum time is consumed by the caller. • The EOP has a detailed voice mail on the phone, to act as a screener of the calls. • The EOP does not assist these callers beyond the initial contact.

D. SUMMARY OF CALLERS

In summary, Table 6 notes the distribution of all the issues, as raised by a caller, within the Mandate, during this period:

TABLE 6: ISSUE DISTRIBUTION

Issues addressed:	**2006**	**2007**	**2008**	**2009**	**2010**
1. Information:					
a) General Information:	21	25	27	24	30
b) Office Policy Concerns:	18	16	13	14	16
2. Discussion/Request:					
a) Article, Training or Presentation	31	37	28	26	14
3. Discuss specific issue or concern:					
Discrimination					
a) Gender	15	20	21	17	24
b) Racial	20	16	13	12	14
c) Disability	33	21	17	16	10
d) Sexual Orientation[1]	n/a	n/a	n/a	0	0
Harassment					
a) Sexual harassment:	65	6	64	59	60
b) Workplace harassment:	39	43	40	37	38
Policy					
a) Leave policy:	14	21	17	18	15
b) Other policies:	12	6	2	1	2
Inappropriate questions asked in the interview process[2]:				6	9

1 New Category-2009

[2] New Category in 2010

E. MARKETING ACTIVITIES

1. The Equity Ombudsperson Program is included under the Law Society website under member support.

2. Articles and Information pieces are included in the Benchers Bulletin periodically, to promote the Program.

3. The EOP continues to makes contact with various organizations. The EOP has emphasized organizations, which have a high number of paralegal/legal assistants as these groups are in need of the Program and there remains a lack of awareness of the same.

4. Continued dissemination of contact information about the Program is provided to the various organizations so that there is increased awareness and referrals to the Program. The types of organizations include: LEAF, Capilano College, LAP, WLF/CBA, Interlock, University of Victoria and University of British Columbia (law school).

F. EDUCATIONAL/TRAINING ACTIVITIES

1. The Program aims to provide ongoing support on education on respectful workplace issues. With that goal in mind, articles and speaking engagements are conducted, and an informational brochure is distributed at events and upon request.

2. The educational engagements at which the Program was discussed and brochures distributed:

- Benchers Bulletin Information Article;
- Brochures distributed at the LEAF Breakfast;
- Presented the Role of the Equity Ombudsperson for PLTC, Victoria;
- Presented the Role of the Equity Ombudsperson for PLTC, Vancouver;
- Disseminated Equity Ombudsperson brochures to women lawyers at the AGM of WLF/CBA, Mentoring Program Orientation/WLF, PLTC, UBC, and U of VIC; and
- Attended a number of the Benchers Meetings, so as to be available to meet with the Benchers, as requested.

3. Only one of request was made for training, and the EOP provided information and discussed the caller's options.

G. OBJECTIVES ACHIEVED DURING 2010

1. The following are the objectives achieved by the Equity Ombudsperson in 2010:

- To raise awareness of the Equity Ombudsperson Program;
- To provide general support/ education to the legal profession in British Columbia about respectful workplace issues;
- To receive and handle individual concerns and complaints about discrimination and harassment;
- To provide consultation on workplace policies and initiatives, as requested;
- To continue to disseminate the Equity Ombudsperson informational brochure;
- To follow-up on contacts made through seminars, presentations, the confidential phone line, fax, e-mail and post-office box;
- To exchange information with provincial Equity Ombudsperson counterparts and other equity experts with the other law societies;

- To closely work with Susanna Tam, Staff Lawyer, Policy and Legal Services, so there is enhanced communication between the Equity Ombudsperson and the Law Society.

- To serve as liaison/ resource for the Law Society's Equity and Diversity Advisory Committee so as to ensure and encourage exchange of information.

H. TRAVEL OBJECTIVE:

The EOP determined that it would attempt, in each calendar year to ensure that it expanded the physical presence of the Program throughout British Columbia, by travelling to different areas of B.C. During the term of this Report, travel outside the Lower Mainland consisted of only Victoria, Burnaby and Surrey. The EOP communicated and made effort with two groups to increase the rate of participation, to facilitate travelling to Kelowna and Nanaimo. However, this effort resulted in little success this year. There was insufficient anticipated enrolment for the sessions and /or the group in question did not proceed with the planned event. The writer advises, that the two trips to Burnaby and Surrey were a result of two independent law firm requests for the EOP to attend at their firm (in person) to address firm issues.

Currently, the EOP is working on possible initiatives in Kelowna with the Kelowna Bar and the CBA, with reference to Nanaimo.

I. RECOMMENDATIONS FOR 2011

I commend the LSBC for taking a more practical and tangible approach to issues on Equity and Diversity. Specifically, I note the work of the Equity and Diversity Advisory Board with reference to their efforts to obtain funding to set up a mentoring program for aboriginals. It is my hope and recommendation that once this is set up, that we can also set up a program for lawyers with disabilities.

I thank the Equity and Diversity Advisory Committee for their work and the individuals who have

Assisted the EO in the preparation of this Report, specifically, Susanna Tam, Staff Lawyer, Policy

and Legal Services and Michael Lucas, Manager, Policy & Legal Services.

Presented to the Board on January 2009

J. APPENDIX A

Background

The Law Society of British Columbia (the "Law Society") launched the Discrimination Ombudsperson program in 1995, the first Canadian law society to do so. It is now referred to as the Equity Ombudsperson Program, (the "Program") to reflect its pro-active and positive approach. The purpose of the program was to set up an informal process at arms-length to the Law Society, which effectively addressed the sensitive issues of discrimination and harassment in the legal profession as identified in the various gender and multiculturalism reports previously commissioned by the Law Society.

In the past thirteen years, the Program has been challenged with funding. Accordingly, it has undergone a number of reviews and revisions to address program efficiency, cost-effectiveness and the evolving understanding of the needs of the profession. In 2005, ERG Research Group ("ERG") was retained to conduct an independent study of the Program. ERG concluded that the complainants who accessed the Program "were overwhelmingly satisfied with the way the complaint or request was handled."

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4. Program Design: at the request of a law firm, assisting in the development and implementation of a workplace or sexual harassment policy; and

5. Reporting: collecting statistics on the types of incidences and their distribution in the legal community, of discrimination or harassment and preparing a general statistical report to the Law Society, on an annual basis.

The original intention of the Law Society was to apportion these key functions among several parties, as follows:

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C. The Law Society and the Ombudsperson would both be responsible for: 3. Education and 4. Program Design

From a practical perspective, the above responsibilities have not been apportioned to the intended parties.

With regard to education, the Law Society is not actively involved, other than to distribute model policies on demand. Further, from an operational side, it has become quite evident that it is very impractical to call on mediators from a roster. When a situation demands attention, it is on an expedited and immediate basis. Further, no evidence exists to date that there is a need for a mediator on a regular basis. For example, over the last two years mediators were called on four occasions but they were unavailable due to various reasons: delay in returning the call; a conflict made them unable to represent the client; one did not have the capacity to take the work; and another was on vacation. Accordingly, it was concluded that it was challenging to retain a qualified mediator with the requisite expertise, in an appropriate length of time. The costs and inefficiencies to retain a mediator to address highly stressed, emotional and potentially explosive situations was also a concern and consequently the Ombudsperson has been directly handling the conflict by using her mediation skills. As a result, all components of the Program are currently being handled, primarily, by the Ombudsperson.

i) **Description of Service since 2006**

The Equity Ombudsperson:

- provides confidential, independent and neutral assistance to lawyers, support staff working for legal employers, articling students and clients who have concerns about any kind of discrimination or harassment. The Ombudsperson **does not** disclose to anyone, including the Law Society, the identity of those who contact her about a complaint or the identity of those about whom complaints are made;

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- delivers information sessions on the Program to PLTC students, law students, target groups, CBA sub-section meetings and other similar events;

- provides an annual report to the Law Society. The reporting consists of a general statistical nature in setting out the number and type of calls received;

- liaises with the Law Society policy lawyer, Susanna Tam, in order to keep her informed of the issues and trends of the Program; and

- provides feedback sheets for the Program to callers who have accessed the service.

ii) **Objective of the Program**

The objective of the Program is to resolve problems. In doing so, the Equity Ombudsperson maintains a neutral position and does not provide legal advice. She advises complainants about the options available to them, which include filing a formal complaint with the Law Society or with the Human Rights Tribunal; commencing a civil action, internal firm process, or having the Ombudsperson attempt to resolve informally or mediate a discrimination or harassment dispute.

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Equity Ombudsperson programs have been a growing trend among Canadian law societies since 1995. Currently the Law Societies of British Columbia, Alberta, Manitoba, Ontario and Saskatchewan have Equity Ombudsperson type positions. The Nova Barristers' Society has a staff Equity Officer who fulfills a similar role.

As these law societies have established and publicized these services, it has assisted staff and lawyers, from a practical perspective, to access information and resources to assist them in learning about their options, so that they are in a position to consider and take the appropriate steps to deal with the issues of discrimination and harassment. Further, the establishment of the Program continues to send a positive and powerful reminder to the legal profession about the importance of treating everyone equally, with respect and dignity. Achieving this goal is crucial to ensure a respectful and thriving legal profession.

The Law Society of British Columbia

Annual Report of the Law Society of British Columbia Equity Ombudsperson Program for the Term January 1, 2011 to December 31, 2011

For: The Benchers
Date: April 17, 2012

Purpose of Report: For Information

Prepared by: Anne Bhanu Chopra, Equity Ombudsperson, LSBC
B. Comm., MIR, LL.B

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PREFACE

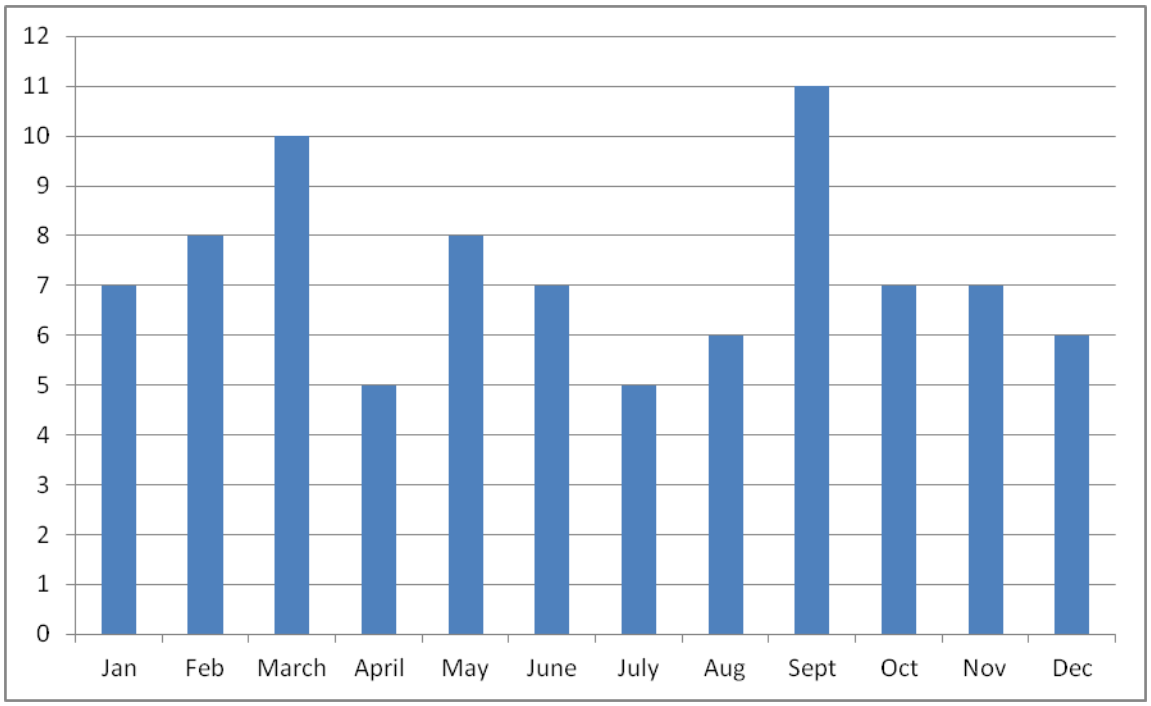
The following report is prepared by the Equity Ombudsperson on an annual basis and disseminated to the Law Society of British Columbia for information purpose. Should the reader have any questions about the report or comment contained in same, please feel free to email the Equity and Ombudsperson at achopra1@novuscom.net.

A. OVERVIEW OF NEW CONTACTS

1. The Law Society of British Columbia (the "Law Society") Equity Ombudsperson (the "EO") Program (the "EOP" or "Program") received 87 calls from individuals during the reporting period (January 1 to December 31, 2011). These were calls from individuals with a new matter. Of the 87 calls, 55 of these new contacts were within the Mandate (as defined below) of the Program. Further, each caller may have contacted the Program on the new matter, on a number of occasions. As a result, the total number of contacts made with the EOP during this period was 256 contacts. (See Table 2 and 3 for information on the total contacts made with the Program.)

2. The below Table 1, displays the distribution of the 87 new contacts made with the EOP, during the reporting period:

TABLE: 1



[1] Mandate = Calls from lawyers, articling students, staff dealing with issues arising from the prohibited grounds of discrimination, including workplace harassment.

3. The means of initial contact deployed by these callers is distributed as follows: 5 (5 %) made in person, 77 (92%) used the telephone to make their initial contact, 4 (5%) used email and 1 (1 %) used regular mail.

4. Further, of the 87 new contacts with the Program, 76 (87%) were made by women and 11 (13%) were made by men.

5. The following Table 2 notes the contacts made with the EOP since 2007 and the geographic distribution in British Columbia:

TABLE 2: CONTACTS : 2007 – 2011

GEOGRAPHIC DISTRIBUTION:

	2007	2008	2009	2010	2011
Total Contacts[1]:	297	275	258	260	256
Vancouver (Lower Mainland):	142	133	128	135	140
Victoria:	65	68	64	65	60
Outside (Lower Mainland /Victoria)	34	41	32	32	24
Outside the Mandate[2]:	56	33	34	28	32

NOTE:

[1]Contacts = All email, phone, in person, fax and mail contacts made with the EOP. Some contacts may have resulted in more than one issue.

[2]Outside Mandate= callers are from the public and/ or lawyers dealing with issues not within the Mandate of the EOP.

6. The following Table 3 identifies the profile of the caller (based on position, gender and size of firm) since 2007:

TABLE 3: PROFILE DISTRIBUTION OF CALLS IN MANDATE

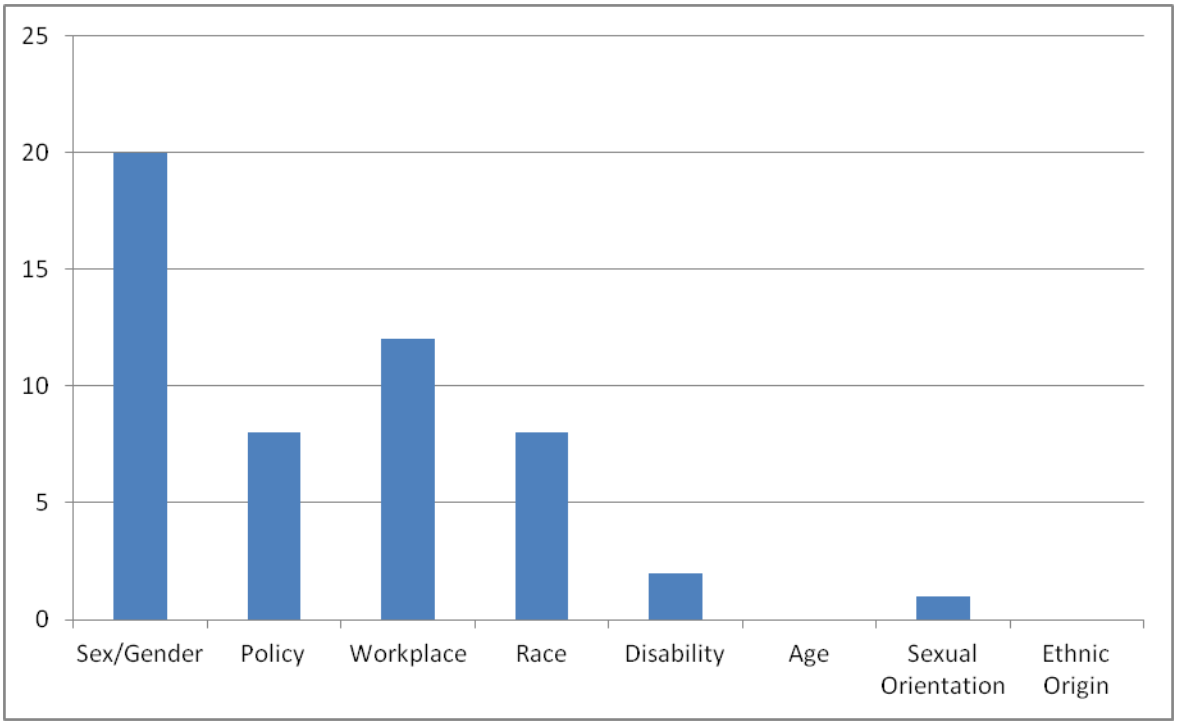
Profile Distribution:		**2007**	**2008**	**2009**	**2010**	**2011**
Associates		55	56	53	58	56
Partners		58	43	38	26	21
Students		8	13	11	16	19
Articling Students		49	51	50	58	52
Support Staff		71	79	72	74	76
Females		164	170	178	191	189
Males		77	72	46	41	35
SIZE OF FIRM IN (PERCENT %)						
Small	(1-10)	45%	39%	42%	51%	42%
Medium	(10-50)	29%	35%	32%	20%	28%
Large	(50 +)	26%	23%	24%	29%	30%

7. The writer notes that in 2011, there has been a 9 (%) percent decrease in calls from small firms and a 8 (%) percent increase in calls from medium sized firms. This is similar to the 2009 break down of calls, based on firm size distribution.

B. OBSERVATIONS AND NARRATIVE EXAMPLES OF THE CALLERS WITHIN THE MANDATE:

1. Table 4 below, displays the grounds of discrimination which were raised in the complaints from the callers: sex/gender, disability, race, religion, age, ethnic origin, sexual orientation, policy and workplace/personal harassment:

TABLE: 4



2. It is interesting to note the following observations:

- Of the 55 contacts, (89%) 49 individuals made human rights based discrimination or harassment and workplace harassment complaints against lawyers. Of these complaints, they were made as follows: 20 % associates, 5% partners, 25 % articling students 14 % law students and 36 % support staff; and
- Seven (7) of the 49 complaints (14%) from within the legal profession were made by the complainant in reference to their employment or a job interview experience.
- The writer notes that firms are continuing to ask inappropriate questions during the interview process and in the workplace.

3. During this period, the EOP received a number of complaints, based on the above grounds. The following examples may assist the reader in appreciating the nature of complaints received by the EO:

<u>Based on sex/gender:</u>

- Three women complained that when they approached the law firm when dealing with their issue of maternity leave, it was difficult to get the leave. One lawyer

found she had no job to return to, upon completion of her mat-leave. Generally, there was difficulty in securing the leave for the time the formal policy permitted.

- One female lawyer complained that there was personal harassment and abuse, once the firm became aware that she was pregnant.

- Four female articling students were asked inappropriate questions during the articling process (with regards, to marital status, sexual preferences and whether they planned to have a family).

Based on disability:

- One lawyer complained that when she advised the law firm of her disability, there was no accommodation, and there was harassment. The complaint consisted of the firm not providing her with files and criticizing her work, when she completed her work. This was not the case prior to her discussing her disability.

- One student complained that when the law firm learned about her disability, they did not offer her a position.

Based on race:

- A male lawyer complained about various stereo type jokes and comments being made in the workplace.

- One female lawyer associate complained that she was asked inappropriate questions about her race and marital status during a job interview by a law firm.

Based on personal/workplace harassment:

- One female lawyer associate complained that she was verbally abused in front of junior staff and associates as to her skills. On various occasions, the senior lawyer humiliated her and did not give her any constructive feedback. He only spoke about her work in front of other staff and lawyers.

SERVICES PROVIDED TO CALLERS

Table 5 below, denotes the services provided to the caller. These services are advertised on the LSBC website and pamphlets are provided when the Equity Ombudsperson delivers presentations.

TABLE: 5	
CALLER:	**SERVICES PROVIDED:**
LAW FIRM	• Advise them of their obligations under the Human Rights Act and the Law Society Professional Conduct Handbook • Confidentially assist them with the particular problem, including discussing strategies, obligations and possible training. • Provide information to firm on education seminars or training workshops
COMPLAINANT	• Listen to the complainant and provide safe haven for their story. • Assist in identifying the issues the complainant is dealing with. • Provide the complainant with their options, (internal complaints process in their firm, formal complaint process, mediation, litigation and the Human Rights Tribunal) including any costs, references for legal representation, remedies which may be available and time limits for the various avenues, as relevant. • Mediation is offered to the complainant, where feasible. To date, only informal mediation sessions have taken place. (Please note, the EOP was asked in this 2010 period to provide, on two occasions in-person/informal type of mediations). • Provide the complainant information on resources, such as Interlock and LAP, as relevant. • Direct them to relevant resource materials available from other organizations, including the Law Society and the BC Human Rights Tribunal.

GENERAL INQUIRES	Providing the inquirer with information about the: • EOP mandate • Services offered by the EOP • a information seminar • on the EOP • Reporting and statistics gathered by the EOP
CALLER (outside Mandate)	• All callers outside the mandate are re-directed. Minimum time is consumed by the caller. • The EOP has a detailed voice mail on the phone, to act as a screener of the calls. • The EOP does not assist these callers beyond the initial contact.

C. SUMMARY OF CALLERS

In summary, Table 6 notes the distribution of all the issues, as raised by a caller, within the Mandate, during this period:

TABLE 6: ISSUE DISTRIBUTION

Issues addressed	2007	2008	2009	2010	2011
1. Information direction or referral:					
a) General Information:	25	27	24	30	24
b) Office Policy Concerns:	16	13	14	16	15
2. Discussion/Request:					
a) Article, Training or Presentation	37	28	26	14	21
3. Discuss specific issue or concern:					
Discrimination:					
a) Gender	20	21	17	24	20
b) Racial	16	13	12	14	14
c) Disability	21	17	16	10	10
d) Sexual Orientation[1]	n/a	n/a	0	0	4
Harassment:					
a) Sexual harassment:	62	64	59	60	55
b) Workplace harassment:	43	40	37	38	37
Specific Policy Concern:					
a) Materinity leave policy:	21	17	18	15	13
b) Other policies:	6	2	1	2	1

Inappropriate questions asked in the interview process[2]:	6	9	10

1 New Category-2009

[2] New Category in 2010

MARKETING ACTIVITIES

1. The Equity Ombudsperson Program is included under the Law Society website under member support.

2. Articles and Information pieces are included in the Benchers Bulletin periodically, to promote the Program.

3. The EOP continues to makes contact with various organizations. The EOP has emphasized organizations, which have a high number of paralegal/legal assistants as these groups are in need of the Program and the EOP is continuing to consider options to enhance the awareness of the Program.

4. Continued dissemination of contact information about the Program is provided to the various organizations so that there is increased awareness and referrals to the Program. The types of organizations include: LEAF, Capilano College, LAP, WLF/CBA, Interlock, University of Victoria and University of British Columbia (law school).

D. EDUCATIONAL/TRAINING ACTIVITIES

1. The Program aims to provide ongoing support on education on respectful workplace issues. With that goal in mind, articles and speaking engagements are conducted, and an informational brochure is distributed at events and upon request.

2. The educational engagements at which the Program was discussed and brochures distributed:

- Benchers Bulletin Information Article;
- Brochures distributed at the LEAF Breakfast;
- Presented the Role of the Equity Ombudsperson for PLTC, Victoria;
- Presented the Role of the Equity Ombudsperson for PLTC, Vancouver;
- Disseminated Equity Ombudsperson brochures to women lawyers at the AGM of WLF/CBA, Mentoring Program Orientation/WLF, PLTC, UBC, and U of VIC; and
- Attended a number of the Benchers Meetings, so as to be available to meet with the Benchers, as requested

OBJECTIVES ACHIEVED DURING 2011

1. The following are the objectives achieved by the Equity Ombudsperson in 2011:

- To raise awareness of the Equity Ombudsperson Program;
- To provide general support/ education to the legal profession in British Columbia about respectful workplace issues;
- To receive and handle individual concerns and complaints about discrimination and harassment;
- To provide consultation on workplace policies and initiatives, as requested;
- To continue to disseminate the Equity Ombudsperson informational brochure;
- To follow-up on contacts made through seminars, presentations, the confidential phone line, fax, e-mail and post-office box;
- To exchange information with provincial Equity Ombudsperson counterparts and other equity experts with the other law societies;

- To closely work with Susanna Tam, Staff Lawyer, Policy and Legal Services, so there is enhanced communication between the Equity Ombudsperson and the Law Society.

- To serve as liaison/ resource for the Law Society's Equity and Diversity Advisory Committee so as to ensure and encourage exchange of information.

- To enhance the awareness of the EOP to new and existing Benchers of the LSBC.

E. OUTREACH AND TRAVEL OBJECTIVE:

The EO determined that she would attempt, in each calendar year to ensure that she expanded the physical presence of the Program throughout British Columbia, by travelling to different areas of B.C. During the term of this Report, travel outside the Lower Mainland consisted of only Victoria, Burnaby and Surrey. The EOP reports that the effort and time to attract sufficient attendees in geographic locations, outside of lower mainland have not been successful. The scheduling and availability of lawyers to attend is limited. Accordingly, the EO will be open to travelling to different geographic locations, as they present themselves, and if the budget permits. However, she shall not be actively making efforts to arrange events and opportunities.

Based on the above, the EO determined it was best to use her time and effort to undertake alternative methods of outreach. One initiative taken in 2011 was to focus on Benchers, as means to disseminate information and understanding of the EOP. As the Benchers represent various geographic locations, they could be vital in transmitting information on the EOP to a large group, members of the Bar in all of B.C. and articling students, during student interviews. Preliminary efforts have been made in this regard, and the EO, intends to continue the same in 2012. These outreach initiatives, to date, with the Benchers, in the opinion of the EOP are beneficial. In an informal environment, the EO is able to answer some challenging and uncomfortable questions that Benchers have and also make her more approachable to the Benchers. As the Benchers develop comfort and understanding of the EOP role, they are more able to assist the articling students, who are dealing with issues of discrimination and harassment.

F. COMMENT AND NEW GOAL FOR 2012

I am pleased to report that the EOP was included in the 2012 Bencher Orientation session. It is the EO's opinion that the brief opportunity, which was presented to the EO to speak to the Benchers, will result in greater awareness of the Program among the Benchers, if the same is presented to the EO, on a regular basis. Each Bencher is in contact with numerous lawyers and students, in various geographic locations. It has been the EO's experience, that the EOP has been receiving calls as a result of few of the Benchers, who are well aware of the mandate of the EOP. The EO has been able to assist these Benchers by being a resource to the individual that the Bencher has referred to the EOP. Further, the Bencher has been assisted, in

that he/she has had a resource which they could rely on, in a particular challenging situation. Effectively, the Bencher in question, has been effective in outreach for the EOP, among members of the bar and students, by advising them of the resource.

It is the EOP's objective to further increase this awareness of the EOP in 2012, by the following means: 1) attending various bencher meetings, dinner meetings and other occasions, so as to meet and speak to individual Benchers directly; 2) develop a roster of volunteer lawyers with diverse backgrounds of race, ethnicity, disability and sexual orientation, who would be willing to speak to lawyers, about their experience in constructive ways, to effectively deal with challenges/discrimination based on race/ethnicity /religion, sexual orientation and disability; and 3) work with CLE, to include information on the EOP in their programs and website.

I thank the Equity and Diversity Advisory Committee for their work and the individuals who have assisted the EO in the preparation of this Report, specifically, Susanna Tam, Staff Lawyer, Policy and Legal Services, Michael Lucas, Manager, Policy & Legal Services and Adam Whitcombe, Chief Information and Planning Officer.

Presented to the Board on January 2009

G. APPENDIX A

Background

The Law Society of British Columbia (the "Law Society") launched the Discrimination Ombudsperson program in 1995, the first Canadian law society to do so. It is now referred to as the Equity Ombudsperson Program, (the "Program") to reflect its pro-active and positive approach. The purpose of the program was to set up an informal process at arms-length to the Law Society, which effectively addressed the sensitive issues of discrimination and harassment in the legal profession as identified in the various gender and multiculturalism reports previously commissioned by the Law Society.

In the past thirteen years, the Program has been challenged with funding. Accordingly, it has undergone a number of reviews and revisions to address program efficiency, cost-effectiveness and the evolving understanding of the needs of the profession. In 2005, ERG Research Group ("ERG") was retained to conduct an independent study of the Program. ERG concluded that the complainants who accessed the Program "were overwhelmingly satisfied with the way the complaint or request was handled."

The Program has been divided into the following five (5) key functions:

1. Intake and Counseling: receiving complaints from, providing information to, and discussing alternative solutions regarding complaints with members, articled students, law students and support staff working for legal employers;

2. Mediation: resolving complaints informally with the consent of both the complainant and the respondent;

3. Education: providing information and training to law firms about issues of harassment in the workplace;

4. Program Design: at the request of a law firm, assisting in the development and implementation of a workplace or sexual harassment policy; and

5. Reporting: collecting statistics on the types of incidences and their distribution in the legal community, of discrimination or harassment and preparing a general statistical report to the Law Society, on an annual basis.

The original intention of the Law Society was to apportion these key functions among several parties, as follows:

A. The Ombudsperson would be responsible for: 1. Intake and Counselling and 5. Reporting

B. A Panel of Independent Mediators would be responsible for: 2. Mediation

C. The Law Society and the Ombudsperson would both be responsible for: 3. Education and 4. Program Design

From a practical perspective, the above responsibilities have not been apportioned to the intended parties.

With regard to education, the Law Society is not actively involved, other than to distribute model policies on demand. Further, from an operational side, it has become quite evident that it is very impractical to call on mediators from a roster. When a situation demands attention, it is on an expedited and immediate basis. Further, no evidence exists to date that there is a need for a mediator on a regular basis. For example, over the last two years mediators were called on four occasions but they were unavailable due to various reasons: delay in returning the call; a conflict made them unable to represent the client; one did not have the capacity to take the work; and another was on vacation. Accordingly, it was concluded that it was challenging to retain a qualified mediator with the requisite expertise, in an appropriate length of time. The costs and inefficiencies to retain a mediator to address highly stressed, emotional and potentially explosive situations was also a concern and consequently the Ombudsperson has been directly handling the conflict by using her mediation skills. As a result, all components of the Program are currently being handled, primarily, by the Ombudsperson.

i) **Description of Service since 2006**

The Equity Ombudsperson:

- provides confidential, independent and neutral assistance to lawyers, support staff working for legal employers, articling students and clients who have concerns about any kind of discrimination or harassment. The Ombudsperson **does not** disclose to anyone, including the Law Society, the identity of those who contact her about a complaint or the identity of those about whom complaints are made;

- provides mediation services to law firms when required to resolve conflict or issues on an informal and confidential basis;

- is available to the Law Society as a general source of information on issues of discrimination and harassment as it relates to lawyers and staff who are engaged in the practice of law. From a practical perspective, the Ombudsperson is available to provide information generally, where relevant, to any Law Society task force, committee or initiative on the forms of discrimination and harassment;

- delivers information sessions on the Program to PLTC students, law students, target groups, CBA sub-section meetings and other similar events;

- provides an annual report to the Law Society. The reporting consists of a general statistical nature in setting out the number and type of calls received;

- liaises with the Law Society policy lawyer, Susanna Tam, in order to keep her informed of the issues and trends of the Program; and

- provides feedback sheets for the Program to callers who have accessed the service.

ii) **Objective of the Program**

The objective of the Program is to resolve problems. In doing so, the Equity Ombudsperson maintains a neutral position and does not provide legal advice. She advises complainants about the options available to them, which include filing a formal complaint with the Law Society or with the Human Rights Tribunal; commencing a civil action, internal firm process, or having the Ombudsperson attempt to resolve informally or mediate a discrimination or harassment dispute.

The Equity Ombudsperson is also available to consult with and assist any private or public law office, which is interested in raising staff awareness about the importance of a respectful workplace environment. She is available to assist law firms in implementing office policies on parental leave, alternative work schedules, harassment and a respectful workplace. She can provide educational seminars for members of firms, be available for personal speaking engagements and informal meetings, or can talk confidentially with a firm about a particular problem. The services of the Equity Ombudsperson are provided free of charge to members, staff, articling students and law students.

Equity Ombudsperson programs have been a growing trend among Canadian law societies since 1995. Currently the Law Societies of British Columbia, Alberta, Manitoba, Ontario and Saskatchewan have Equity Ombudsperson type positions. The Nova Barristers' Society has a staff Equity Officer who fulfills a similar role.

As these law societies have established and publicized these services, it has assisted staff and lawyers, from a practical perspective, to access information and resources to assist them in learning about their options, so that they are in a position to consider and take the appropriate steps to deal with the issues of discrimination and harassment. Further, the establishment of the Program continues to send a positive and powerful reminder to the legal profession about the importance of treating everyone equally, with respect and dignity. Achieving this goal is crucial to ensure a respectful and thriving legal profession.

The Law Society of British Columbia

Annual Report of the Law Society of British Columbia Equity Ombudsperson Program for the Term January 1, 2012 to December 31, 2012

For: The Benchers
Date: June 5, 2013

Purpose of Report: For Information

Prepared by: Anne Bhanu Chopra, Equity Ombudsperson, LSBC
B. Comm., MIR, LL.B

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PREFACE

The following report is prepared by Anne B. Chopra, the Equity Ombudsperson (the "Ombudsperson") on an annual basis and disseminated to the Law Society of British Columbia for information purposes. Should the reader have any questions about the report, please feel free to email the Ombudsperson at achopra1@novuscom.net.

A. OVERVIEW OF NEW CONTACTS

1. The Law Society of British Columbia (the "LSBC") Equity Ombudsperson Program (the "Program") received 89 calls from individuals during the reporting period (January 1 to December 31, 2012) (the "Reporting Period"). These were calls from individuals with a new matter. Of the 89 calls, 50 of these new contacts were within the mandate of the Program (i.e. issues arising from the prohibited grounds of discrimination, including workplace harassment). Further, each caller may have contacted the Program on a number of occasions. As a result, the total number of contacts made with the Program during the Reporting Period was 261 contacts. (See Tables 2 and 3.)

2. The means of initial contact deployed by these individuals is distributed as follows: 13 (15%) made in person contact (e.g. after presentations); 70 (79%) used the telephone; 5 (5%) used email; and 1 (1 %) used regular mail.

3. Of the 89 new contacts, 80 (90%) were made by women and 9 (10%) were made by men.

TABLE 1: Total New Contacts—2012 (including contacts outside the mandate)

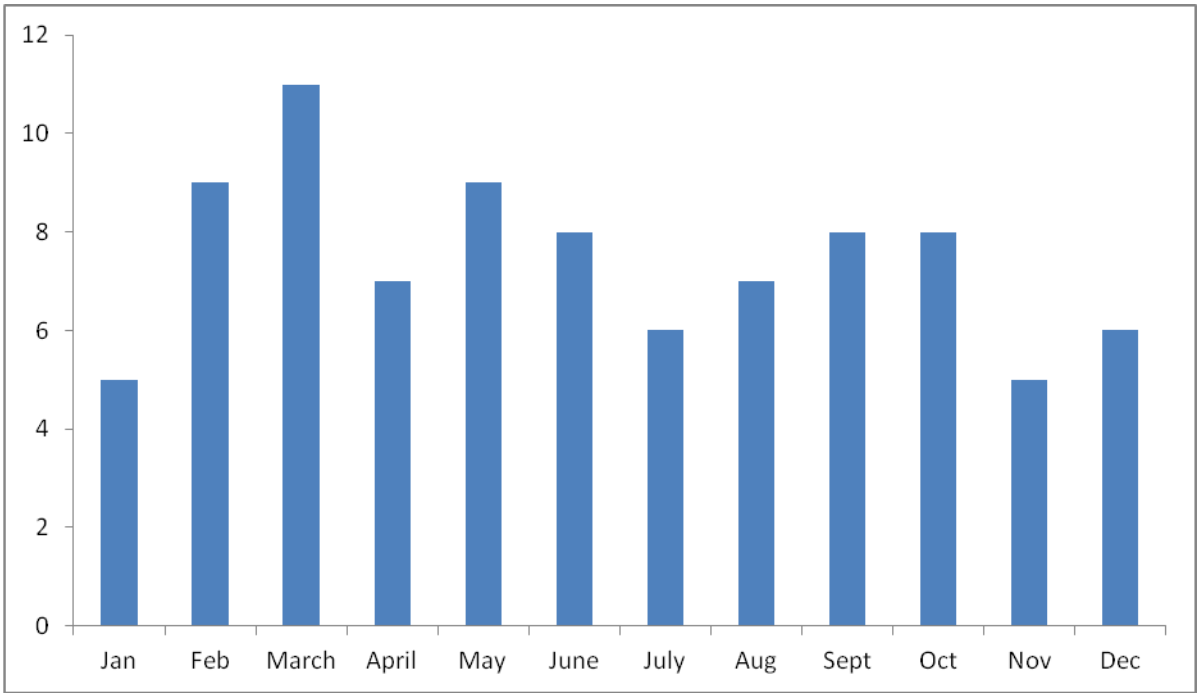


TABLE 2: Geographic Distribution of Contacts—2008-2012

	2008	2009	2010	2011	2012
Total Contacts[1]:	275	258	260	256	261
Vancouver (GVRD[2]):	133	128	135	140	133
Victoria:	68	64	65	60	58
Outside of GVRD & Victoria:	41	32	32	24	31
Outside of the mandate:	33	34	28	32	39

NOTE:

[1]Contacts include all email, phone, in person, fax and mail contacts made with the Program. Some contacts may have resulted in more than one issue.

[2]Greater Vancouver Regional District (GVRD) includes the municipalities of Vancouver, West Vancouver, North Vancouver, the District of North Vancouver, Burnaby, Richmond, New Westminister, Surrey, Delta, White Rock, the City of Langley, Coquitlam, Port Coquitlam, Port Moody, Anmore, Pitt Meadows, Maple Ridge and the University Endowment Lands.

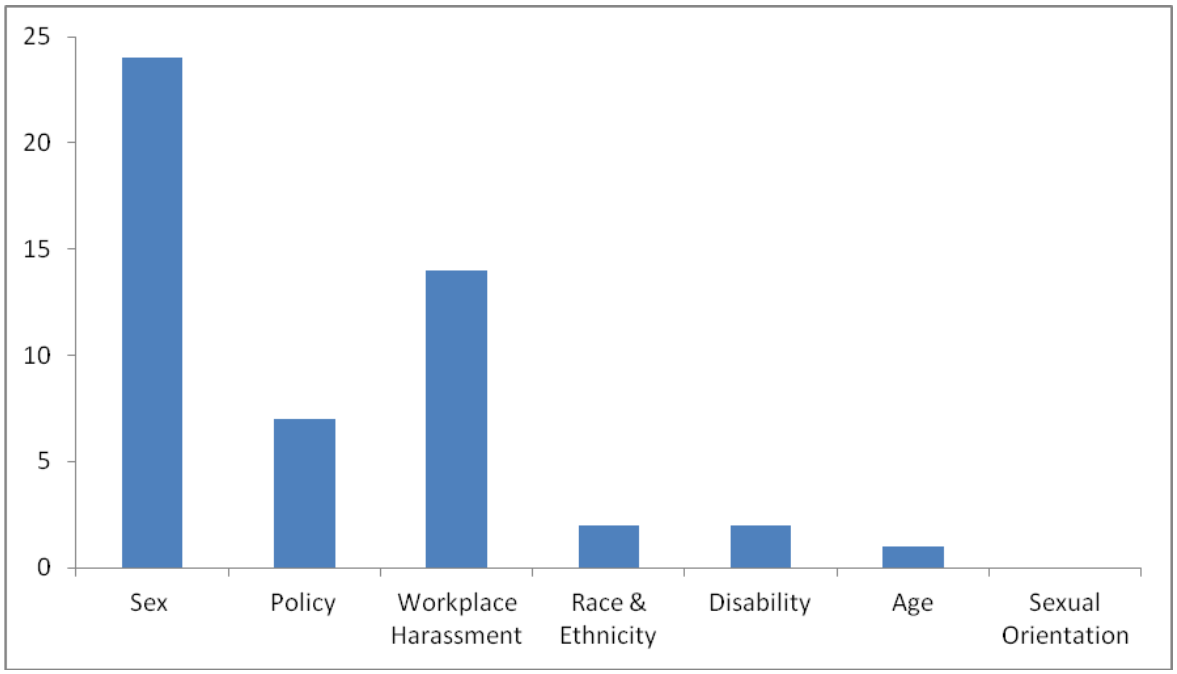
TABLE 3: Profile Distribution of Calls in the Mandate—2008-2012

Profile Distribution:		**2008**	**2009**	**2010**	**2011**	**2012**
Position						
Associates		56	53	58	56	54
Partners		43	38	26	21	23
Law Students		13	11	16	19	20
Articling Students		51	50	58	52	56
Support Staff		79	72	74	76	69
Gender						
Females		170	178	191	189	179
Males		72	46	41	35	43
Size of Firm in (Percent %)						
Small	(1-10)	39%	42%	51%	42%	40%
Medium	(10-50)	35%	32%	20%	28%	35%
Large	(50 +)	23%	24%	29%	30%	25%

4. In 2012 there was no significant change in the volume of calls as they relate to firm size.

B. EXAMPLES OF THE CONTACTS WITHIN THE MANDATE:

TABLE 4: Grounds of Discrimination by Callers—2012



1. There was no significant change in the nature and number of the complaints compared to 2011.

2. Of the 50 contacts, (96%) 48 individuals made human rights based discrimination or workplace harassment complaints against lawyers. Of these complaints, they were made as follows: 22 % associates, 4% partners, 23 % articling students 13 % law students and 38 % support staff.

3. The following examples demonstrate the types of complaints received by the Program:

<u>Sex/gender:</u>

- Two female lawyers complained that it was difficult to access the maternity leave that was provided in their law firms' policies.

- Upon returning to work after a maternity leave, one female lawyer found that many of her files were transferred permanently to other lawyers in the firm.

- One female lawyer reported experiencing workplace harassment once the firm became aware that she had requested maternity leave.

Disability:

- One female lawyer with a disability complained that the law firm that hired her made it difficult for her to function, paid her low wages, and failed to provide any accommodation.

Race and ethnicity:

- One female associate complained that she was asked inappropriate questions about her race and cultural customs during a job interview by a law firm.

- One female lawyer was asked whether she was married by arranged marriage.

Workplace harassment:

- One male lawyer was asked on various occasions how he passed the Bar and was humiliated in front of staff.

C. SERVICES PROVIDED TO CALLERS

TABLE 5: Services Provided to Callers—2004-Present

CALLERS:	SERVICES:
LAW FIRMS	• Advise them of obligations under the *Human Rights Act* and the LSBC Professional Conduct Handbook • Confidentially assist them with the particular problem, including discussing strategies, obligations and possible training • Provide information to firms via education seminars or training workshops
COMPLAINANTS	• Receive complainants • Issue identification • Provide the complainant with his or her options • Informal mediation • Refer the complainant to additional resources, such as Personal Performance Consultants (PPC) and Lawyers Assistance Program (LAP)
GENERAL INQUIRES	Provide information about: • The Program mandate and services • Statistics gathered by the Program
OUTSIDE MANDATE	• Re-direction • The Program does not assist these callers beyond the initial contact

D. SUMMARY OF CALLERS

TABLE 6: Issue Distribution—2008-2012

Issues addressed	2008	2009	2010	2011	2012
1. Information, direction or referral:					
a) General Information	27	24	30	24	20
b) Office Policy Concerns	13	14	16	15	14
2. Discussion/Request:					
a) Article, Training or Presentation	28	26	14	21	25
3. Discuss specific issue or concern:					
Discrimination:					
a) Gender	21	17	24	20	21
b) Racial	13	12	14	14	9
c) Disability	17	16	10	10	14
d) Sexual Orientation[1]	n/a	0	0	4	0
e) Age[2]	n/a	n/a	n/a	n/a	4
a) Sexual harassment	64	59	60	55	59
b) Workplace harassment	40	37	38	37	33
Specific Policy Concern					
a) Maternity leave policy	17	18	15	13	14
b) Other policies	2	1	2	1	3
Inappropriate questions asked in the interview process[1]	6	9	10	6	

[1] New Category in 2009

[2] New Category in 2012

E. OUTREACH AND EDUCATION

1. To accomplish outreach objectives during this Reporting Period, the Ombudsperson:

    a) Worked with the LSBC to publicize the Program. The Program is included under the LSBC website under *member support* and specifically referenced in the Bencher's orientation binder.

    b) Published an article in the Bencher Bulletin 2012, No. 3 titled: *Equity Ombudsperson asks: Are you acting in the best interest of your firm?*;

    b) Presented to:

        i. PLTC students in Victoria (1 session);

        ii. PLTC students in Vancouver (2 sessions);

        iii. The Women Lawyers' Forum Mentoring Lunch; and

        iv. The Women Lawyers' Forum Education Day

    c) Distributed brochures to:

        i. PLTC students in Vancouver and Victoria;

        ii. Counselors of the Personal Performance Consultants;

        iii. Women Lawyers Forum mentoring event attendees;

        iv. Women Lawyers Forum 2012 Annual General Meeting attendees; and

        v. Lawyers Assistance Program Annual Gratitude Lawyers Luncheon attendees

2. To meet educational objectives during 2012, the Ombudsperson:

    a) Developed a course titled: *Equity Ombudsperson Respectful Workplace*, which the LSBC approved for Continuing Professional Development credits. The Ombudsperson delivered this course in Campbell River, to an audience of 20 LSBC members. Participants appreciated that the Ombudsperson travelled to the region. A number of female participants conveyed the importance of informing the regional bar about respectful workplace issues. Participants discussed where the line between acceptable and non-acceptable behavior is.

b) Collaborated with the Continuing Legal Education Society of British Columbia (CLE) to develop a web-based training module on respectful workplace behaviour.

F. OBJECTIVES ACHIEVED DURING 2012

The following objectives were achieved in 2012:

- Raised awareness and knowledge of the Program;
- Provided support and education to the legal profession in British Columbia about respectful workplace issues;
- Received individual complaints about discrimination and harassment;
- Consulted on workplace policies;
- Disseminated the Ombudsperson informational brochure;
- Responded to contacts made through seminars, presentations, the confidential phone line, fax, e-mail and post-office box;
- Delivered a presentation in Campbell River in an effort to reach regional lawyers;
- Collaborated with the CLE to develop a training module for respectful workplace behaviour;
- Exchanged information with provincial Equity Ombudsperson counterparts and other equity experts with other Canadian law societies;
- Developed a relationship with the Staff Lawyer responsible for equity and diversity initiatives in the Policy and Legal Services Department of the LSBC;
- Attended LSBC Equity and Diversity Advisory Committee meetings;
- Attended Benchers' events to enhance Bencher awareness of the Program; and
- Developed a roster of five volunteer lawyers with diverse backgrounds who are willing to speak to callers about their experiences.

G. RECOMENDATIONS FOR 2013

Many of the objectives listed in section F are ongoing, and the Ombudsperson will continue to meet these objectives. In addition, in 2013, the Ombudsperson intends to:

- Continue to meet the ongoing objectives listed in section F of this report; and
- Increase awareness of the Program in more regions of the province by presenting in two geographic locations.

The Ombudsperson recommends that the LSBC consider a modest budget increase to allow sufficient resources for the Ombudsperson to:

- Attend the Law Societies Equity Network (LSEN) meetings on an annual basis. The LSEN is associated with the Federation of Law Societies, and is comprised of equity and diversity personnel from member law societies. The Ombudsperson's attendance at LSEN meetings is important for the exchange of information, knowledge and current concerns related to similar programs across Canada;

- Present to various locations outside of the GVRD; and

- Develop educational modules on a timely basis.

Specifics of the budget will be provided in due course.

APPENDIX A: Background to the Program- *Provided for New Benchers*

Background

The Law Society of British Columbia (the "Law Society") launched the Discrimination Ombudsperson program in 1995, the first Canadian law society to do so. It is now referred to as the Equity Ombudsperson Program, (the "Program") to reflect its pro-active and positive approach. The purpose of the program was to set up an informal process at arms-length to the Law Society, which effectively addressed the sensitive issues of discrimination and harassment in the legal profession as identified in the various gender and multiculturalism reports previously commissioned by the Law Society.

In the past thirteen years, the Program has been challenged with funding. Accordingly, it has undergone a number of reviews and revisions to address program efficiency, cost-effectiveness and the evolving understanding of the needs of the profession. In 2005, ERG Research Group ("ERG") was retained to conduct an independent study of the Program. ERG concluded that the complainants who accessed the Program "were overwhelmingly satisfied with the way the complaint or request was handled."

The Program has been divided into the following five (5) key functions:

1. Intake and Counseling: receiving complaints from, providing information to, and discussing alternative solutions regarding complaints with members, articled students, law students and support staff working for legal employers;

2. Mediation: resolving complaints informally with the consent of both the complainant and the respondent;

3. Education: providing information and training to law firms about issues of harassment in the workplace;

4. Program Design: at the request of a law firm, assisting in the development and implementation of a workplace or sexual harassment policy; and

5. Reporting: collecting statistics on the types of incidences and their distribution in the legal community, of discrimination or harassment and preparing a general statistical report to the Law Society, on an annual basis.

The original intention of the Law Society was to apportion these key functions among several parties, as follows:

A. The Ombudsperson would be responsible for: 1. Intake and Counselling and 5. Reporting

B. A Panel of Independent Mediators would be responsible for: 2. Mediation

C. The Law Society and the Ombudsperson would both be responsible for: 3. Education and 4. Program Design

From a practical perspective, the above responsibilities have not been apportioned to the intended parties.

With regard to education, the Law Society is not actively involved, other than to distribute model policies on demand. Further, from an operational side, it has become quite evident that it is very impractical to call on mediators from a roster. When a situation demands attention, it is on an expedited and immediate basis. Further, no evidence exists to date that there is a need for a mediator on a regular basis. For example, over the last two years mediators were called on four occasions but they were unavailable due to various reasons: delay in returning the call; a conflict made them unable to represent the client; one did not have the capacity to take the work; and another was on vacation. Accordingly, it was concluded that it was challenging to retain a qualified mediator with the requisite expertise, in an appropriate length of time. The costs and inefficiencies to retain a mediator to address highly stressed, emotional and potentially explosive situations was also a concern and consequently the Ombudsperson has been directly handling the conflict by using her mediation skills. As a result, all components of the Program are currently being handled, primarily, by the Ombudsperson.

i) **Description of Service since 2006**

The Equity Ombudsperson:

- provides confidential, independent and neutral assistance to lawyers, support staff working for legal employers, articling students and clients who have concerns about any kind of discrimination or harassment. The Ombudsperson **does not** disclose to anyone, including the Law Society, the identity of those who contact her about a complaint or the identity of those about whom complaints are made;

- provides mediation services to law firms when required to resolve conflict or issues on an informal and confidential basis;

- is available to the Law Society as a general source of information on issues of discrimination and harassment as it relates to lawyers and staff who are engaged in the practice of law. From a practical perspective, the Ombudsperson is available to provide information generally, where relevant, to any Law Society task force, committee or initiative on the forms of discrimination and harassment;

- delivers information sessions on the Program to PLTC students, law students, target groups, CBA sub-section meetings and other similar events;

- provides an annual report to the Law Society. The reporting consists of a general statistical nature in setting out the number and type of calls received;

- liaises with the Law Society policy lawyer in order to keep her informed of the issues and trends of the Program; and

- provides feedback sheets for the Program to callers who have accessed the service.

ii) **Objective of the Program**

The objective of the Program is to resolve problems. In doing so, the Equity Ombudsperson maintains a neutral position and does not provide legal advice. She advises complainants about the options available to them, which include filing a formal complaint with the Law Society or

with the Human Rights Tribunal; commencing a civil action, internal firm process, or having the Ombudsperson attempt to resolve informally or mediate a discrimination or harassment dispute.

The Equity Ombudsperson is also available to consult with and assist any private or public law office, which is interested in raising staff awareness about the importance of a respectful workplace environment. She is available to assist law firms in implementing office policies on parental leave, alternative work schedules, harassment and a respectful workplace. She can provide educational seminars for members of firms, be available for personal speaking engagements and informal meetings, or can talk confidentially with a firm about a particular problem. The services of the Equity Ombudsperson are provided free of charge to members, staff, articling students and law students.

Equity Ombudsperson programs have been a growing trend among Canadian law societies since 1995. Currently the Law Societies of British Columbia, Alberta, Manitoba, Ontario and Saskatchewan have Equity Ombudsperson type positions. The Nova Barristers' Society has a staff Equity Officer who fulfills a similar role.

As these law societies have established and publicized these services, it has assisted staff and lawyers, from a practical perspective, to access information and resources to assist them in learning about their options, so that they are in a position to consider and take the appropriate steps to deal with the issues of discrimination and harassment. Further, the establishment of the Program continues to send a positive and powerful reminder to the legal profession about the importance of treating everyone equally, with respect and dignity. Achieving this goal is crucial to ensure a respectful and thriving legal profession.

Appendix 9

From: Jeremy Webber - Dean of Law [mailto:lawdean@uvic.ca]
Sent: March-19-14 2:43 PM
To: Michael Lucas
Subject: Request for Information - Follow up to Bencher meeting of February 28

Dear Mr Lucas,

Here is our response to the query below.

We do not have systematic information on complaints or concerns of this kind for reasons I will present below, and in any case, also for reasons below, the numbers of students from TWU attending UVic would be too small to give answers that would have any statistical dependability.

First, with respect to information on such complaints: Our most systematic information, with respect to individual conduct, arises from our disciplinary procedures. It is exceptionally rare that disciplinary procedures are triggered by complaints of discriminatory conduct, although that can happen (although at most only occasionally every few years). The issues that do arise with respect to these questions are generally more subtle, having to do with insensitive or unthinking comments – comments that implicitly exclude members of disadvantaged groups, that reproduce stereotypes, or that are seen to dismiss values or concerns of importance to disadvantaged groups. We generally address such cases through informal means, such as by immediately addressing them in class or through individual discussion. We also act proactively by emphasizing respect for others in our introductory course of "Legal Process," in our orientation events, in course outlines and introductory lectures dealing with teaching methods, and in an annual equity forum and equity town hall. From time to time, we have also held special equity meetings to deal with issues of concern. The most common treatment of these issues, then, tends to take the form of discussion of the climate of the faculty generally, not assessments of individual conduct, and the approach taken tends to be educative, alerting people to issues of diversity and affirming the value of respectful conduct. We do not have detailed information, then, on what individuals were responsible for what conduct when.

Second, the number of students who have previously studied at TWU also tends to be small – generally one or two per year. They are valued members of our community – indeed, in 2011 our gold medalist had previously studied at TWU – but the numbers are clearly too small to provide any statistical measure of propensity to discriminatory conduct.

Indeed, I can add that, in the debates over the accreditation of TWU's Law program within Faculty Council and among the students, concern with a supposed propensity to discriminatory conduct played very little role. The concerns that gave rise to Faculty Council's resolution and the students' referendum (both of which you have before you) focused specifically on the appropriateness of the Law Society putting its stamp of approval on a program that discriminates at the level of admission, as an appropriate context in which to satisfy the academic qualifications for admission to the profession, as the text of the faculty and student submissions make clear.

I trust this is helpful. I would be happy to answer any further queries.

Jeremy Webber

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Sexual Misconduct
BU-PP 031

Policy:
In all disciplinary procedures, Baylor University will seek to be redemptive in the lives of the individuals involved and to witness to the high moral standards of the Christian faith. Baylor will be guided by the understanding that human sexuality is a gift from the creator God and that the purposes of this gift include (1) the procreation of human life and (2) the uniting and strengthening of the marital bond in self-giving love. These purposes are to be achieved through heterosexual relationships within marriage. Misuses of God's gift will be understood to include, but not be limited to, sexual abuse, sexual harassment, sexual assault, incest, adultery, fornication and homosexual acts.

Baylor will strive to deal in a constructive and redemptive manner with all who fail to live up to this high standard. Nothing will be done to encourage abortions or other drastic actions that might bring great harm to those involved. Dealing individually with each case, efforts will be made to counsel and assist those involved. Constructive forgiveness will guide all efforts.

Topics:
Application

Related policies:
BU-PP 705 — Faculty Dismissal Policy
BU-PP 807 — Staff Discipline
BU-PP 822 — Staff Grievance
BU-PP 833 — Staff Separation

Additional information:
None

Contact:
Human Resource Services Office (x2219)

Application—
Consistent with the statement of Baylor University concerning sexual misconduct, the University shall thoroughly review the facts and circumstances of each allegation of sexual misconduct involving a student, faculty member or staff member, and determine if the allegation is supported by credible evidence. The University may impose a sanction against the individual that is appropriate for the act committed. In doing so, the University shall offer counsel and assistance to the individual so that the sanction imposed may be a catalyst for redemption in his or her life.

Due to their unique positions as mature role models, faculty members and staff members are held to a standard of exemplary conduct. The sanctions that the University may impose against a faculty member or a staff member for an act of sexual misconduct range from censure to separation.

Under no circumstances may this policy be construed to waive any of the rights granted to Baylor University under the exemption issued to the University on September 26, 1985, by the U.S. Department of Education covering certain regulations under Title IX of the Education Amendments of 1972 or under the religious exemption Section 702 Title VII of the Civil Rights Act of 1964.

Part 3: Student Commitment and Confidential Report

Note to all applicants: You must complete and submit this form directly to the JRCLS.

Legal name: _____ _____ _____ U.S. SSN: _____–_____–_____
Surname *First* *Middle initial* LSAC Account #: _____

Check the box corresponding to your SELECTION OF PROGRAM from PART 1:
I am applying for (check only one):

☐ JD for fall 2011 ☐ JD reapplicant (previously applied for fall _____) ☐ Transfer student

☐ LLM for fall 2011 ☐ Visiting student fall 2011 and winter 2012 ☐ Fall 2011 only ☐ Winter 2012 only

REQUIREMENTS AND INSTRUCTIONS

Members of The Church of Jesus Christ of Latter-day Saints (LDS) should arrange an interview with the bishop of the ward where they live and that holds their current Church membership record.

If you are not a member of the LDS church, you may obtain an interview from an ecclesiastical (religious) leader of your choice. Please carefully read the BYU Honor Code prior to your interview.

The purpose of the interview is to determine a student's commitment to the Honor Code and the Dress and Grooming Standards. In addition, students who are members of the Church of Jesus Christ of Latter-day Saints will be asked about their Church service and attendance, and their willingness to uphold Church rules and standards.

BRIGHAM YOUNG UNIVERSITY HONOR CODE

Brigham Young University exists to provide an education in an atmosphere consistent with the ideals and principles of The Church of Jesus Christ of Latter-day Saints. This atmosphere is crated and preserved through commitment to conduct that reflects those ideals and principles. Members of the faculty, administration, staff, and student body at BYU are selected and retained from among individuals who voluntarily live the principles of the gospel of Jesus Christ. Observance of such is a specific condition of employment and admission. Those individuals who are not members of The Church of Jesus Christ of Latter-day Saints are also expected to maintain the same standards of conduct, except church attendance. All who represent BYU are to maintain the highest standards of honor, integrity, morality, and consideration of others in personal behavior. By accepting appointment on faculty, continuing in employment, or continuing class enrollment, individuals evidence their commitment to observe the Honor Code standards approved by the Board of Trustees "at all times and . . . in all places" (Mosiah 18:9).

"We believe in being honest, true, chaste, benevolent, virtuous, and in doing good to all men...If there is anything virtuous, lovely, or of good report or praiseworthy, we seek after these things" (Thirteenth Article of Faith)

As a matter of personal commitment, students, staff, and faculty of Brigham Young University seek to demonstrate in daily living those moral virtues encompassed in the gospel of Jesus Christ and will:

- Be honest
- Observe the Dress and Grooming Standards
- Obey the law and all campus policies
- Participate regularly in church services
- Respect others
- Abstain from alcoholic beverages, tobacco, tea, coffee, and substance abuse
- Live a chaste and virtuous life
- Use clean language
- Encourage others in their commitment to comply with the Honor Code

Academic Honesty Policy

BYU students should seek to be totally honest in their dealings with others. They should complete their own work and be evaluated based upon that work. They should avoid academic dishonesty and misconduct in all its forms, including plagiarism, fabrication or falsification, cheating, and other academic misconduct. Students are responsible not only to adhere to the Honor Code requirement to be honest but also to assist other students in fulfilling their commitment to be honest. (Complete version of the Academic Honesty Policy available at **http://honorcode.byu.edu**.)

Dress and Grooming Standards

The dress and grooming of both men and women should always be modest, neat and clean, consistent with the dignity adherent to representing The Church of Jesus Christ of Latter-day Saints and BYU. Modesty and cleanliness are important values that reflect personal dignity and integrity through which students, staff, and faculty represent the principles and standards of the Church. Members of the BYU community commit themselves to observe these standards which reflect the direction given by the Board of Trustees and the Church publication, *For the Strength of Youth.* The Dress and Grooming Standards are as follows:

Men: A clean and well-cared-for appearance should be maintained. Clothing is inappropriate when it is sleeveless, revealing, or form fitting. Shorts must be knee-length or longer. Hairstyles should be clean and neat, avoiding extreme styles or colors, and trimmed above the collar, leaving the ear uncovered. Sideburns should not extend below the earlobe or onto the cheek. If worn, moustaches should be neatly trimmed and may not extend beyond or below the corners of the mouth. Men are expected to be clean-shaven; beards are not acceptable. Earrings and other body piercing are not acceptable. Shoes should be worn in all public campus areas.

Women: A clean and well-cared-for appearance should be maintained. Clothing is inappropriate when it is sleeveless, strapless, backless, or revealing; has slits above the knee; or is form fitting. Dresses, skirts, and shorts must be knee-length or longer. Hairstyle should be clean and neat, avoiding extremes in styles or colors. Excessive ear piercing (more than on per ear) and all other body piercing are not acceptable. Shoes should be worn in all public campus areas.

Applicant's legal name: _____ _____ _____ U.S. SSN: _____–_____–_____ LSAC account #: _____

Surname *First* *Middle initial* *or LSDAS registration number, if used*

BYU HONOR CODE CONTINUED

Residential Living Standards

As stated in its Code of Honor, Brigham Young University is committed to providing a learning atmosphere consistent with the principles of the Church. The university is likewise committed to creating such an atmosphere for students residing on and off campus. To achieve this, BYU has established living standards to help students learn some of the high ideals and principles of behavior expected at Brigham Young University. The University requires all students to adhere to the following applicable standards.

Housing - Visitors of the opposite sex are permitted in the lobbies, living rooms, and kitchens but not in the bedroom area. The use of the bathroom by members of the opposite sex is not appropriate unless emergency or civility dictate otherwise; and then only if the safety, privacy and sensitivity of other residents are not jeopardized. This policy applies to all housing units occupied by single students. (Complete version of the Academic Honesty Policy available at http://honorcode.byu.edu/.)

Conduct

All students shall be required to conduct themselves in a manner consistent with the principles of The Church of Jesus Christ of Latter-day Saints and the BYU Honor Code. Furthermore, all students are required to abstain from possessing, serving, or consuming alcoholic beverages, tobacco, tea, coffee, or harmful drugs. Involvement with gambling, pornographic, erotic, or indecent material, disorderly, obscene, or indecent conduct or expressions, or with other offensive materials, expressions, or conduct or disruption of the peace that, in the sole discretion and judgement of the university, is inconsistent with the principles of the Church and the BYU Honor Code is not permitted in student housing. All guests of students must comply with the Residential Living Standards while on the premises of the university-approved housing. All students are required to know the Dress and Grooming Standards and abide by them. (The standards expressed above apply to students at all times whether on or off campus.)

Expectations for Continuing Enrollment

All students must abide by the Honor Code and Dress and Grooming Standards as long as they are enrolled at BYU, whether on or off campus. All enrolled continuing graduate students are required to obtain a Continuing Student Ecclesiastical Endorsement for each new academic year. Students must have their endorsements completed, submitted, and processed by the Honor Code Office before they can register for Fall semester or any semester thereafter.

LDS Students: LDS students shall be endorsed only by the bishop of the ward (1) in which they live and (2) that holds their current Church membership record.

Non-LDS Students: Non-LDS students shall be endorsed by (1) the local ecclesiastical leader if the student is an active member of the congregation, (2) the bishop of the LDS ward in which they currently reside, or (3) the non-denomination BYU chaplin.

Requirements: Whether on or off campus and between semesters, all students are expected to abide by the Honor Code, which also includes: the Academic Honesty Policy, The Dress and Grooming Standards, and the applicable Residential Living Standards. LDS students must fulfill their duty in The Church of Jesus Christ of Latter-day Saints, attend Church meetings, and abide by the rules and standards of the Church on and off campus. Students who are not members of The Church of Jesus Christ of Latter-day Saints are also expected to maintain the same standards of conduct. They are encouraged to participate in the services of their preferred religion.

For more details on specific policies, please contact the Honor Code Office: 4440 WSC, (801) 422-2847, email: hco@byu.edu, http://honorcode.byu.edu

Student Commitment

I have read the Church Educational System Honor Code, the Dress and Grooming Standards, the Expectations for Continuing Enrollment, and the Academic Honesty Policy, and I agree to abide by all requirements. If LDS, I also confirm that I have been and will continue to regularly attend my Church meetings. I certify all statements in this application to be complete and true and acknowledge that my admission and continuing status at the JRCLS is conditional upon such compliance.

Signature of applicant Date

Applicant's legal name: _____ _____ _____ U.S. SSN: _____–_____–_____ LSAC account #: _____

Surname *First* *Middle initial* *or LSDAS registration number, if used*

ECCLESIASTICAL ENDORSEMENT

To Be Completed by Interviewing Ecclesiastical (Religious) Leader

Instructions: Review with the applicant the Honor Code, the Dress and Grooming Standards, and the Expectations for Continuing Enrollment (see **http://honorcode.byu.edu**), then respond to the questions below. The endorsement interview should be a private, detailed interview to ensure the student is worthy to attend a religious sponsored institution and that the student fully understands his or her commitment to live the Brigham Young University Honor Code. If you have little or no knowledge of the student's religious activity for the past several months, please contact the student's prior ecclesiastical leader before endorsing the student.

The First Presidency of The Church of Jesus Christ of Latter-day Saints requests that ecclesiastical leaders not recommend students with unresolved moral problems or students who would undermine the faith of other BYU students. Applicants who are currently excommunicated, disfellowshipped, on formal probation, or who have asked to have their name removed from the records of The Church of Jesus Christ of Latter-day Saints are not admissible until reinstated to full fellowship. Individuals who need to reform their lives before they can contribute constructively to the BYU environment should not be recommended.

LDS Applicants

1. I have possession of the applicant's membership records. (If the response is No, please confer with the applicant's previous bishop before completing this form.) ☐ Yes ☐ No

2. I have throughly reviewed all the requirements contained in the Honor Code, the Dress and Grooming Standards, and the Expectations for Continuing Enrollment with the above-named applicant. ☐ Yes ☐ No

3.Does the applicant live a chaste and virtuous life, including avoidance of pornography, abstinence from sexual relations outside of marriage, and abstinence from homosexual conduct? ☐ Yes ☐ No

4. Does the applicant live the Word of Wisdom by abstaining from alcoholic beverages, tobacco, coffee, tea, and drug abuse? ☐ Yes ☐ No

5. The applicant has and will continue to do his or her duty in the Church and abide by the rules and standards of the Church. ☐ Yes ☐ No

6. For the past year the applicant has been and continues to abide by the standards of the BYU Honor Code. (If the response is No, answer the next statement.) ☐ Yes ☐ No

If a violation of the standards in the Honor Code has occurred, the applicant has demonstrated, over a sufficient period of time, that the infraction has been completely resolved. ☐ Yes ☐ No

7. The applicant has my unconditional endorsement for admission to BYU. ☐ Yes ☐ No

☐ *Please check this box if the applicant is currently excommunicated, disfellowshipped, on formal probation, or if the applicant has requested that his or her name be removed from the records of the Church. Note: Applicants currently under formal Church disciplinary action are not admissible until reinstated to full fellowship.*

Non-LDS Applicants

1. I have thoroughly reviewed all the requirements contained in the Honor Code, the Dress and Grooming Standards, and the Expectations for Continuing Enrollment with the above-named applicant. ☐ Yes ☐ No

2. Does the applicant live a chaste and virtuous life, including avoidance of pornography, abstinence from sexual relations outside of marriage, and abstinence from homosexual conduct? ☐ Yes ☐ No

3. The applicant will abide by the standards in the BYU Honor Code while enrolled as a student at BYU including abstinence from alcoholic beverages, tobacco, coffee, tea, and drug abuse. ☐ Yes ☐ No

4. The applicant has my unconditional endorsement for admission to BYU. ☐ Yes ☐ No

Signature and Contact Information

Printed Name of Ecclesiastical (Religious) Leader		Address of Ecclesiastical (Religious) Leader
Signature of Ecclesiastical (Religious) Leader	Date	City, State/Country
Ward/Branch or Denomination	Unit Number (for LDS applicants)	Telephone Number of Ecclesiastical (Religious) Leader
Church Position or Title of Ecclesiastical (Religious) Leader		E-mail of Ecclesiastical (Religious) Leader

UNDERGRADUATE CATALOG 2013-2014

Church Educational System Honor Code

Brigham Young University, Brigham Young University—Hawaii, Brigham Young University—Idaho, and LDS Business College exist to provide an education in an atmosphere consistent with the ideals and principles of The Church of Jesus Christ of Latter-day Saints. That atmosphere is created and preserved through commitment to conduct that reflects those ideals and principles. Members of the faculty, administration, staff, and student body at BYU, BYU—Hawaii, BYU—Idaho, and LDSBC are selected and retained from among those who voluntarily live the principles of the gospel of Jesus Christ. Observance of such is a specific condition of employment and admission. Those individuals who are not members of The Church of Jesus Christ of Latter-day Saints are also expected to maintain the same standards of conduct, except church attendance. All who represent BYU, BYU—Hawaii, BYU—Idaho, and LDSBC are to maintain the highest standards of honor, integrity, morality, and consideration of others in personal behavior. By accepting appointment on the faculty, continuing in employment, or continuing class enrollment, individuals evidence their commitment to observe the Honor Code standards approved by the Board of Trustees "at all times and . . . in all places" (Mosiah 18:9).

Honor Code Statement

We believe in being honest, true, chaste, benevolent, virtuous, and in doing good to all men. . . . If there is anything virtuous, lovely, or of good report or praiseworthy, we seek after these things (Thirteenth Article of Faith).

As a matter of personal commitment, faculty, administration, staff, and students of Brigham Young University, Brigham Young University—Hawaii, Brigham Young University—Idaho, and LDS Business College seek to demonstrate in daily living on and off campus those moral virtues encompassed in the gospel of Jesus Christ, and will

- Be honest
- Live a chaste and virtuous life
- Obey the law and all campus policies
- Use clean language
- Respect others
- Abstain from alcoholic beverages, tobacco, tea, coffee, and substance abuse
- Participate regularly in church services
- Observe the Dress and Grooming Standards
- Encourage others in their commitment to comply with the Honor Code

Specific policies embodied in the Honor Code include (1) the Academic Honesty Policy, (2) the Dress and Grooming Standards, (3) the Residential Living Standards, and (4) the Continuing Student Ecclesiastical Endorsement. (Refer to institutional policies for more detailed information.)

Good Honor Code Standing

Students must be in good Honor Code standing to be admitted to, continue enrollment at, and graduate from BYU. The term "good Honor Code standing" means that a student's conduct is consistent with the Honor Code and the ideals and principles of The Church of Jesus Christ of Latter-day Saints. Excommunication, disfellowshipment, or disaffiliation from The Church of Jesus Christ of Latter-day Saints automatically results in the loss of good Honor Code standing. Further, a student is not in good Honor Code standing if his or her ecclesiastical endorsement has either lapsed or has been withdrawn, or if the Honor Code Office has placed a "hold" on the student's records.

All students, upon admission to BYU, are required to observe the standards of the Honor Code at all times, whether on or off campus. When the Honor Code Office receives reports of misconduct prior to a prospective student's admission or readmission, those reports are referred to the Admissions Office for appropriate action. When the Honor Code Office receives reports of student misconduct after admission or readmission, but before registration for classes, the Honor Code Office typically notifies the student, indicating that a "hold" will be placed on the student's registration if the matter is not resolved to the satisfaction of the Honor Code Office by a specified date. The Honor Code Office also reserves the right to place a "hold" on the record of any student based on reports of student misconduct prior to notifying the student.

Conduct

All students are required to conduct themselves in a manner consistent with the Honor Code. In addition, students may not influence or seek to influence others to engage in behavior inconsistent with the Honor Code.

Students must abstain from the use of alcohol, tobacco, and illegal substances and from the intentional misuse or abuse of any substance. Sexual misconduct; obscene or indecent conduct or expressions; disorderly or disruptive conduct; participation in gambling activities; involvement with pornographic, erotic, indecent, or offensive material; and any other conduct or action inconsistent with the principles of The Church of Jesus Christ of Latter-day Saints and the Honor Code is not permitted.

Violations of the Honor Code may result in actions up to and including separation from the university.

Homosexual Behavior

Brigham Young University will respond to homosexual behavior rather than to feelings or attraction and welcomes as full members of the university community all whose behavior meets university standards. Members of the university community can remain in good Honor Code standing if they conduct their lives in a manner consistent with gospel principles and the Honor Code.

One's stated same-gender attraction is not an Honor Code issue. However, the Honor Code requires all members of the university community to manifest a strict commitment to the law of chastity. Homosexual behavior is inappropriate and violates the Honor Code. Homosexual behavior includes not only sexual relations between members of the same sex, but all forms of physical intimacy that give expression to homosexual feelings.

Dress and Grooming Standards

The dress and grooming of both men and women should always be modest, neat, and clean, consistent with the dignity adherent to representing The Church of Jesus Christ of Latter-day Saints and any of its institutions of higher education.

Modesty and cleanliness are important values that reflect personal dignity and integrity, through which students, staff, and faculty represent the principles and standards of the Church. Members of the BYU community commit themselves to observe the following standards, which reflect the direction of the Board of Trustees and the Church publication *For the Strength of Youth*. The Dress and Grooming Standards are as follows:

Men

A clean and well-cared-for appearance should be maintained. Clothing is inappropriate when it is sleeveless, revealing, or form fitting. Shorts must be knee-length or longer. Hairstyles should be clean and neat, avoiding extreme styles or colors, and trimmed above the collar, leaving the ear uncovered. Sideburns should not extend below the earlobe or onto the cheek. If worn, moustaches should be neatly trimmed and may not extend beyond or below the corners of the mouth. Men are expected to be clean-shaven; beards are not acceptable. Earrings and other body piercing are not acceptable. Shoes should be worn in all public campus areas.

Women

A clean and well-cared-for appearance should be maintained. Clothing is inappropriate when it is sleeveless, strapless, backless, or revealing; has slits above the knee; or is form fitting. Dresses, skirts, and shorts must be knee-length or longer. Hairstyles should be clean and neat, avoiding extremes in styles or colors. Excessive ear piercing (more than one per ear) and all other body piercing are not acceptable. Shoes should be worn in all public campus areas.

Residential Living Standards

As stated in the Honor Code, Brigham Young University is committed to providing a learning atmosphere consistent with the principles of the Church. The university is likewise committed to creating such an atmosphere for students residing on and off campus and between semesters. To achieve this, BYU has established living standards to help students learn some of the high ideals and principles of behavior expected at Brigham Young University. Therefore, the university requires students to adhere to the following applicable standards:

Visiting Hours

Helaman Halls

Visitors of the opposite sex are permitted in the lobbies but not in the bedroom area, except during an established open house, at which times room doors must remain open. Lobby visiting hours begin after 8:00 a.m. and extend until 12:00 midnight, Saturday through Thursday. On Friday night, lobby visiting hours extend until 1:30 a.m.

Heritage Halls

Visitors of the opposite sex are permitted in the lobbies and apartment kitchens but not in bedrooms or bathrooms. Lobby visiting hours are from 8:00 a.m. to 12:00 midnight daily, Saturday through Thursday, and extend until 1:30 a.m. on Fridays. Apartment visiting hours are from 10:00 a.m. to 11:00 p.m. Sunday through Thursday and extend until 12:00 midnight on Friday and Saturday.

Off-Campus Visiting Hours, Wyview Park, and Foreign Language Student Residence

Visitors of the opposite sex are permitted in living rooms and kitchens but not in the bedrooms in off-campus living units, Wyview Park, and the Foreign Language Student Residence. The use of the bathroom areas by members of the opposite sex is not appropriate unless emergency or civility dictates otherwise, and then only if the safety, privacy, and sensitivity of other residents are not jeopardized. Visiting hours may begin after 9:00 a.m. and extend until 12:00 midnight. Friday night visiting hours may extend until 1:30 a.m. Off-campus landlords may establish a shorter visiting period if proper notice is given to students.

Guests

All guests of students must comply with the Residential Living Standards while on the premises of university-contracted housing. Students are expected to help their guests and other residents understand and fulfill their responsibility under the Residential Living Standards and the Honor Code. Approval forms must be submitted for all guest requests, and are available from hall advisors and area offices. Approved guests may stay a maximum of three nights.

Maintaining the Standards

Violations of these standards may be reported to the Honor Code Office, 4440 WSC, (801) 422-2847, or the Off-Campus Housing Office, (801) 422-1513.

Continuing Student Ecclesiastical Endorsement

Students are required to be in good Honor Code standing to be admitted to, continue enrollment at, and graduate from BYU. In conjunction with this requirement, all enrolled continuing undergraduate, graduate, intern, and Study Abroad students are required to obtain a Continuing Student Ecclesiastical Endorsement for each new academic year. Students begin the Continuing Student Ecclesiastical Endorsement process online at http://www.endorse.byu.edu. For questions regarding the online process, please visit http://honorcode.byu.edu. Students should have their endorsements completed by March 15 to avoid registration delays for fall semester or any semester thereafter. Those applying to BYU should use the online new-student Admissions Application Part 3 found at http://beSmart.com.

LDS students may be endorsed only by the bishop of the ward (1) in which they live and (2) that holds their current Church membership record.

Non-LDS students are to be endorsed by (1) the local ecclesiastical leader if the student is an active member of the congregation, (2) the bishop of the LDS ward in which they currently reside, or (3) the nondenominational BYU chaplain.

Former LDS students are not eligible to receive an ecclesiastical endorsement (See Withdrawn Ecclesiastical Endorsement below).

Requirements

Whether on or off campus or between semesters, all students are expected to abide by the Honor Code, which includes (1) the Academic Honesty Policy, (2) the Dress and Grooming Standards, and (3) the applicable Residential Living Standards. Students are required to be in good Honor Code standing to graduate.

LDS students must fulfill their duty in The Church of Jesus Christ of Latter-day Saints, attend Church meetings, and abide by the rules and standards of the Church on and off campus.

Students who are not members of The Church of Jesus Christ of Latter-day Saints are also expected to maintain the same standards of conduct. They are encouraged to participate in services of their preferred religion. All students must be in good Honor Code standing to graduate, to receive a diploma, and to have the degree posted.

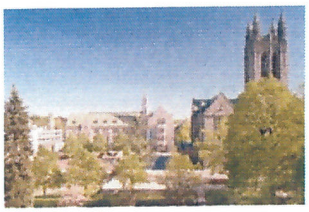
Withdrawn Ecclesiastical Endorsement

A student's endorsement may be withdrawn at any time if the ecclesiastical leader determines that the student is no longer eligible for the endorsement. If an endorsement is withdrawn, no confessional information is exchanged without authorization from the student. Students without a current endorsement are not in good Honor Code standing and must discontinue enrollment. Students who are not in good Honor Code standing are not eligible for graduation, even if they have otherwise completed all necessary coursework. Excommunication, disfellowshipment, or disaffiliation from The Church of Jesus Christ of Latter-day Saints automatically results in the withdrawal of the student's ecclesiastical endorsement and the loss of good Honor Code standing. Disaffiliation is defined for purposes of this policy as removal of an individual's name from the official records of the Church.

The decision to withdraw an ecclesiastical endorsement may be appealed through appropriate ecclesiastical leaders only. As a matter of practice, BYU does not intervene in ecclesiastical matters or endorsements. In unusual circumstances, however, a student may petition the Dean of Students Office to allow an exception to the ecclesiastical endorsement requirement. As part of the petition, a student must (i) complete an Application for Exception to Policy (this form may be obtained from the Dean of Students Office); (ii) sign a release allowing appropriate university officials to freely communicate with the student's ecclesiastical leaders; (iii) prepare a written statement outlining the reasons why, in light of the student's extenuating circumstances, the university should allow an exception; and (iv) submit the completed application, release, and relevant statements to the Dean of Students Office, 3500 WSC, Brigham Young University, Provo, Utah, 84602 for consideration.

When considering the petition, the Dean of Students will focus *not* on the merits of the ecclesiastical leader's decision to withdraw the endorsement but instead on whether the student has demonstrated sufficiently compelling grounds to warrant an exception to the university's ecclesiastical endorsement requirement. In addition to speaking with the student's present and former ecclesiastical leaders, the Dean of Students may also choose to personally interview the student, who may further explain the circumstances which might justify an exception to the ecclesiastical endorsement requirement. The student bears the burden of persuasion that he or she should be considered to be in good Honor Code standing, notwithstanding the lack of an ecclesiastical endorsement. The Dean of Student's decision regarding the petition will be reviewed by the Vice President of Student Life if requested by the student. The decision by the Vice President of Student Life is final.

Academic Honesty Policy



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Section 4. Code of Student Conduct

2013-2014 STUDENT GUIDE

ON THIS PAGE

The Office of the Dean of Students is responsible for developing, disseminating, and upholding behavioral standards that comprise the University Code of Student Conduct. It is the belief of the Dean of Students that this responsibility can be discharged best within an educational context.

As a Jesuit and Catholic institution, Boston College has a strong emphasis on self-awareness and a distinct consideration for the lives and feelings of others. The Code of Student Conduct reflects the ethics, values, and standards of the University community and its concern for all involved parties. Self-discipline, knowledge of limits, proper exercise of freedom, responsibility for judgment, and accountability for actions are all critical components of personal formation. When behavioral standards on or off campus are violated, an appropriate educational response will be forthcoming from the University through the Student Conduct System.

For more information on the administration of the system, see Section 5, Student Conduct System.

4.1 STATEMENT OF RIGHTS AND RESPONSIBILITIES

Source: Office of the Dean of Students

All Boston College students are expected to fully comply with all the policies and procedures listed in the Student Guide. In addition, resident students are expected to fully comply with the provisions detailed in the Office of Residential Life's Conditions for Residency, available on the Residential Life website at www.bc.edu/reslife.

All student members of the Boston College community have certain rights. These include:

- The right to learn, which includes the right of access to ideas, the right of access to facts and opinions, the right to express ideas, and the right to discuss those ideas with others.
- The right of peaceful coexistence, which includes the right to be free from violence, force, threats, and abuse, and the right to move about freely.
- The right to be free of any action that unduly interferes with a student's rights and/or learning environment.
- The right to express opinion, which includes the right to state agreement or disagreement with the opinions of others and the right to an appropriate forum for the expression of opinion.
- The right of privacy, which includes the right to be free of unauthorized search of personal property.

4.3.21 Property Damage

Damage or destruction of property is a very serious offense. Instances of deliberate or malicious damage will be referred to the Student Conduct System for disciplinary action and appropriate sanctions.

4.3.22 Retaliation

Boston College prohibits retaliation of any kind against any individual filing a complaint or participating in an investigation or conduct hearing involving a Boston College student. Such retaliation would result in disciplinary action.

4.3.23 Sexual Activity

As a Catholic, Jesuit institution of higher learning, Boston College adheres to the Church's teachings with respect to sexual intimacy. Consequently, sexual activity outside the bonds of matrimony may be subject to appropriate disciplinary sanctions.

4.3.24 Sexual Harassment, Sexual Assault & Sexual Misconduct

Policy Contents

Boston College attempts at all times to maintain a safe environment that supports its educational mission and is free from exploitation and intimidation as well as discrimination based upon gender. Sexual harassment, sexual assault, or sexual misconduct of any kind is antithetical to the mission of Boston College and the values it espouses and will be responded to accordingly. In accordance with Title IX, the University strives to eliminate sexual harassment, sexual assault and sexual misconduct, prevent their recurrence, and address their effects. This policy describes the University's response to victims, what conduct is prohibited, available University and community resources, and how to file a complaint.

1. Immediate Response and Care

The University encourages students to report incidents of sexual harassment, sexual assault or sexual misconduct immediately. To report such an incident, the victim/survivor may contact the Boston College Police at 617-552-4444, the Sexual Assault Network at 617-552-2211, a member of the Residential Life staff at 617-552-3060, or the Office of the Dean for Students at 617-552-3470.

Boston College recognizes the importance of offering victims of sexual harassment, sexual assault or sexual misconduct immediate treatment, counseling support, and assistance. In addition, appropriate interim measures to help assure the safety and wellbeing of the victim will be offered. Consideration of the victim's wishes will be taken into account throughout the process; however, the University may have a legal obligation to investigate allegations of sexual misconduct, even without the participation of the victim.

2. Prohibited Conduct

The University prohibits all forms of sexual harassment, sexual assault, and sexual misconduct, whether perpetrated by a stranger or acquaintance, whether occurring on or off campus, and whether directed against a member of the Boston College community or someone outside the University community. Such behavior by a Boston College student is a violation of the University Code of Conduct, and in certain cases, may also be a criminal violation.. Please also see the University's Discriminatory Harassment Policy, at

Notice of Nondiscrimination

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Liberty University School of Law
Policy on Nondiscrimination

Liberty University is a Christian academic community in the tradition of evangelical institutions of higher education. It is controlled by an all evangelical Christian Board of Trustees, has a Statement of Doctrine that, among other things, affirms the authority of the Holy Scriptures, has a published Statement of Purpose, and has a published Statement of Professional Ethics, each of which is distinctly Christian. Its admissions and employment policies directly relate to its purposes and its identity as a Christian institution and are protected by the United States Constitution.

Admission of Students

Consistent with Liberty University's nondiscrimination policy with respect to admission of students, the School of Law does not discriminate on the basis of race, religion, color, national origin, sex, age, disability, sexual orientation, or status as a veteran. The School of Law does not discriminate on the basis of sexual orientation but does discriminate on the basis of sexual misconduct, including, but not limited to, non-marital sexual relations or the encouragement or advocacy of any form of sexual behavior that would undermine the Christian identity or faith mission of the University.

Employment of Faculty and Staff

With respect to employment of staff, consistent with Liberty University's nondiscrimination employment policy, the School of Law does not discriminate on the basis of race, religion, color, national origin, sex, age, disability, or status as a veteran.

With respect to appointment to the faculty, the School does not discriminate on the basis of race, color, national origin, sex, age, disability, or status as a veteran. Because it is the School's mission "to equip future leaders in law with a superior legal education in fidelity to the Christian faith expressed through the Holy Scriptures," and the applicability of the University's distinctly Christian Statement of Professional Ethics, the School does not discriminate on the basis of religion in faculty appointments except to the extent that applicable law respects its right to act in furtherance of its religious objective.

In its employment practices, the School of Law does not discriminate on the basis of sexual orientation, but does discriminate on the basis of sexual misconduct, including, but not limited to, non-marital sexual misconduct, homosexual conduct, or the encouragement or advocacy of any form of sexual behavior that would undermine the Christian identity or faith mission of the University. This policy statement is neither intended to discourage, nor is it in fact applicable to, any analytical discussion of law and policy issues involved in the regulation of sexual behavior, or to discussions of any recommendations for changes in existing law. Discussions of these matters are both practiced and are welcomed within our curriculum.

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Sexual Offenses

Fordham University Policy on Sexual Offenses

Fordham University is committed to the development and support of its primary educational mission. The University will not tolerate sexual offenses such as rape, sexual abuse, sexual harassment, or other forms of non-consensual sexual activity.

Fordham University supports this policy through its educational prevention, counseling, and medical support services. Educational programs include, but are not limited to, campus-wide distribution of the CARE brochure; an online course regarding sexual assault that all new students are required to complete; peer education workshops on topics that include the nature of sexual offenses, stalking and/or domestic or dating violence; keys to prevention and coping with the aftermath of an assault; safety and security presentations; residential life presentations; rape awareness programs; individual and group counseling; and other victim support services. Fordham University will enforce this Policy on Sexual Offenses through internal disciplinary procedures and security programs. "Rape" and "Sexual Abuse" under this policy shall be defined as:

1. Rape: the carnal knowledge of a person forcibly and/or against that person's will, or not forcibly or against that person's will, where the victim is incapable of giving consent because of his or her temporary or permanent mental or physical incapacity. If a person engages in non-consensual sexual intercourse due to physical force, coercion or threat (actual or implied) the act is considered rape, a felony in New York state. A person who is asleep, unconscious, physically helpless or impaired due to drug or alcohol consumption, mentally incapacitated and/or disabled, is considered unable to consent.
2. Sexual Abuse: any actual or attempted non-consensual sexual activity, including, but not limited to, attempted intercourse, sexual touching and certain forms of exhibitionism.

These definitions include, but are not limited to, any form of non-consensual intercourse and/or sexual activity, actual or attempted, by person(s) known or unknown to the victim. Non-consensual activity shall include, but not be limited to, situations where the victim is unable to consent because he/she is mentally incapacitated, is physically helpless due to drug or alcohol consumption or is unconscious.

Sexual Harassment is considered an intolerable offense by University standards. Sexual violence is a form of sexual harassment. Sexual violence refers to physical sexual acts perpetrated against a person's will, or when a person is incapable of giving consent due to the use of drugs or alcohol, or is unable to give consent due to a disability. For more information regarding Sexual Harassment, please see the specific policy statement contained within this handbook.

Stalking and Domestic or Dating Violence

Fordham University is committed to maintaining a safe environment to study, work and grow. Fordham University has a zero tolerance policy relative to stalking and domestic or dating violence. Those persons who violate this standard will be held strictly accountable for their actions.

Stalking
Stalking is a pattern of repeated and unwanted attention, harassment, contact, or any other course of conduct directed at a specific person that makes that person afraid or concerned for his or her safety. Stalking occurs by frightening, unwanted communication by any means, including by phone, mail or e-mail, or internet social networks. Threats may be direct or indirect, and conduct may include following or writing to a victim.

The New York Stalking Law
The New York State Penal Law establishes the specific criminal offense of stalking and allows for the prosecution of persons who engage in an intentional course of threatening conduct. Courts can now impose severe penalties against persons found guilty of this crime. The description of the four offenses of stalking and the penalties that may be imposed by the court, upon conviction, are as follows:

- A person who repeatedly threatens the health, safety or property of a person, or repeatedly contacts or follows a person after being clearly told not to do so has committed stalking in the fourth degree, a class B misdemeanor, which upon conviction could mean up to three months in jail.
- A person who engages in a course of conduct that intentionally places another person in fear of physical injury, death or the commission of a sex offense, and any stalker who stalks three or more persons or has been previously convicted of stalking within ten years has committed stalking in the third degree, a class A misdemeanor, which upon conviction could mean up to a year in jail.
- A person aged 21 or older who stalks a child under 14 years of age, and a person who, while displaying a weapon, engages in a course of conduct that intentionally places another person in fear of physical injury, death or the commission of a sex offense, has committed stalking in the second degree, a class E felony, which upon conviction could mean up to four years in prison.
- A stalker who causes physical injury or commits another specified crime while stalking has committed stalking in the first degree, a class D felony, which upon conviction could mean up to seven years in prison.

For complete descriptions of these stalking offenses, please see NYS Penal Law Article 120.

Domestic Violence

Domestic violence is a pattern of abusive behavior, usually involving an intimate relationship, that is used one by partner to gain or maintain control over another partner. Domestic violence can be physical, sexual, emotional, economic, or psychological actions orthreats of actions that influence another person. This includes any behaviors that intimidate, manipulate, humiliate, isolate, frighten, terrorize, coerce, threaten, blame, hurt, injure, or wound the other partner. Domestic violence may include dating violence based on the type and frequency of interaction of the relationship. Victims of such violence can seek orders of protection from both the family and criminal courts.

New York's Domestic Violence Law

- requires police to arrest batterers who violate "stay away" orders of protection or commit a felony or a misdemeanor against another household or family member
- enables victims to bring their cases to family and criminal courts concurrently, instead of forcing victims to choose between them
- requires violators face felony charges when harassing or threatening a victim during an order of protection violation
- provides that, in the case of repeated violations, including threatening phone calls, faxes or e-mail messages, violators could face up to four years in prison (seven years if a victim suffers physical injury)
- maintains a statewide *Orders of Protection Registry* to aid police and courts when taking action
- allows courts to give orders of protection, even when the offender does not reside in New York State, thus giving victims who live or work in New York protection
- requires police to determine the primary physical aggressor, so that victims of domestic violence are not inappropriately arrested along with their abusers when more than one person alleges violence
- ensures safety for victims of domestic violence by promoting more rigorous interstate enforcement of orders of protection

Dating Violence

Dating Violence is defined as abusive behavior, usually but not always involving an intimate relationship, that is used by one partner to gain or maintain control over another partner. Dating violence can be physical, sexual, emotional, economic, or psychological actions or threats of actions that influence another person. This includes any behaviors that intimidate, manipulate, humiliate, isolate, frighten, terrorize, coerce, threaten, blame, hurt, injure, or wound the other

person. The definition, protocols, and practices of dating vary; however for the purposes of these grievance procedures dating is defined as people engaged in activities as a form of courtship. Whether there was such a relationship will be gauged by its length, type and frequency of interaction.

REPORTING PROCEDURES FOR THE UNIVERSITY

Individuals are encouraged to report all sexual offense, stalking, and/or domestic or dating violence incidents immediately either to safety and security via telephone, in person or online; to the dean of students; via the health center or through the counseling center. An incident report will be written and the dean of students or another designated University administrator will provide necessary assistance, information on medical and counseling resources and information related to formal reporting procedures.

In a sexual offense case, the victim may notify the Office of Safety and Security whether or not he/she goes to the hospital for a rape examination. However, a hospital visit is necessary in order to collect evidence, through a rape examination, in the event that the victim decides to file criminal charges. Staff will be available to accompany students to medical care. Personal information about the victim and records will remain confidential insofar as it does not interfere with the University's right to investigate allegations of misconduct and take corrective action where appropriate.

Victims of sexual offense, stalking, and/or domestic or dating violence by another student(s) are encouraged to report the incident(s) and use the resources of the dean of students on the campus where the incident occurred or one of the administrators identified on the resource list in the back of this brochure. An initial discussion will give the victim the opportunity to recount what has taken place and discuss how best to proceed. The dean or administrator will review the University's formal reporting procedures and possible sanctions, the formal reporting procedures of the local police agency, and available medical and counseling resources. In addition, options for, and available assistance in, changing academic and living situations can be discussed and provided if so requested, and such changes are reasonably available. It is at all times the victim's decision whether to file a complaint or to continue with any form of resolution. Confidentiality will be respected insofar as it does not interfere with the University's right to investigate allegations of misconduct and take corrective action where appropriate.

If a victim elects to initiate a formal complaint against another student or group of students, the information should be put in writing and filed with the dean of students. The student against whom the complaint is lodged is also encouraged to file a written account with the dean of students. Such a complaint would be handled in accordance with the University judicial procedures outlined in the Student Handbook. The victim and the student against whom the complaint is lodged must represent themselves during the judicial process. However, a member of the student affairs staff (either male or female) will be assigned to both parties, if so desired, to act as a support person throughout the process. While this person may be present during individual interviews conducted by the dean of students, no active participation is permitted. In sexual offense cases, the victim and the student against whom the complaint is lodged are entitled to the same opportunities to have others present during a disciplinary proceeding. Possible sanctions for persons found in violation of sexual offense, stalking, and/or domestic violence policies range up to and include suspension and/or expulsion from the University. Students subject to disciplinary sanctions that are appealable to the University Judicial Council (UJC) will follow the grievance process stated in the Student Handbook. Student complainants may file a written appeal to the Senior Vice President for Student Affairs.

In a case where there is an allegation of sexual offense, stalking, and/or domestic or dating violence, which constitutes a violation of the University Code of Conduct, both the victim and the student against whom the complaint is lodged shall be informed in writing of the final outcome of a judicial investigation. Please refer to your student handbook for more information regarding reporting procedures and the University judicial process.

It should be clearly understood that a victim of sexual offense, stalking, and/or domestic or dating violence always has legal recourse outside the University. If civil or criminal proceedings are filed, the University reserves the right to conduct its own investigation and proceedings notwithstanding the status or resolution of any civil or criminal proceedings.

For more detailed information regarding sexual offenses, rape, sexual abuse, sexual violence, stalking and domestic or dating violence please see the Campus Assault and Relationship Education (CARE) Brochure, which can be found in the Student Handbook or obtained from your Resident Assistant or Resident Director, the Residential Life Office, the Dean of Students Office, the Safety and Security Office, Student Health Services and Counseling and

Psychological Services.

Reporting Procedures for the Local Police Departments

The reporting of the incident to the police involves several aspects. If a victim calls the police to respond to the scene, a uniformed officer in a patrol car will go to the victim's location. The victim may request that a specific gender officer respond, but there is no guarantee that a specific gender officer will be available. The police, however, should make every effort to accommodate the victim. For incidents involving possible sex crimes, the uniformed officers will generally notify a detective or a specialized unit staffed with personnel who are trained to gather information about sex crimes and explain the investigative procedures of the police department, including possible options available to victims of sex crimes. The local precinct detective squad will investigate stalking and domestic violence offenses.

In sex offense cases, the officers who respond to the call will want to examine the scene of the crime and obtain evidence (clothes, sheets, etc.). If the perpetrator is known to the victim, the police will want to interview the perpetrator and any witnesses to the incident. They will also encourage the filing of a formal complaint. If you wish to press criminal charges against the perpetrator, a hospital visit should be made as soon as possible. It is best that physical evidence be collected at the hospital as soon as possible. The police will encourage a hospital visit at the time of the incident and can assist the victim in securing necessary transportation to the hospital. If charges are filed but no arrest has been made, a victim may have the option to decline further prosecution. If the perpetrator already has been arrested and indicted, withdrawing charges may not necessarily be an option for the victim.

Encourage Safe Bystander Intervention

If anyone suspects a friend, acquaintance, or stranger may be in a high risk situation for becoming a victim, is being victimized, or has been victimized of any form of sexual offense, stalking, and/or domestic or dating violence, it is important to decide as a bystander **whether there is a safe and reasonable way to intervene effectively**, and to act in a way as to assist a person whether it is before, during, or after an incident takes place. Bystanders are also encouraged to contact the appropriate person listed in the Whom to Contact, section VII of the Title IX Grievance Procedures in the Student Handbook and/or the Fordham University Office of Safety and Security (718) 817-2222; **if someone is in immediate danger**, please notify the Fordham University Office of Safety and Security (718) 817-2222 immediately. There is no legal obligation for a bystander to act or intervene.

New York State Law Regarding Sex Offenses

It is important for members of the campus community to be aware that there can be serious legal consequences for certain sexual conduct. If you do not accept another person's decision not to have sexual contact and you proceed without consent, you may be breaking the law in New York State.

Sex offenses are defined in the New York State Penal Law. Sex offenses include, but are not limited to, RAPE, CRIMINAL SEXUAL ACTS, SEXUAL ABUSE, AGGRAVATED SEXUAL ABUSE, FORCIBLE TOUCHING and SEXUAL MISCONDUCT.*

1. SEXUAL MISCONDUCT is sexual intercourse, oral sexual conduct or anal sexual conduct without such other person's consent.

2. RAPE is sexual intercourse by forcible compulsion or with another who is physically helpless, mentally disabled, incapacitated or incapable of consent because of age or other factors.

3. CRIMINAL SEXUAL ACTS occur when one engages in oral or anal sexual conduct by forcible compulsion or with one who is physically helpless, mentally disabled, or incapacitated, or incapable of consent because of age or other factors.

4. FORCIBLE TOUCHING occurs when, for no legitimate purpose, one forcibly touches sexual or intimate parts of another person for degrading or abusing such persons, or for gratifying the actors' sexual desire.

5. SEXUAL ABUSE is unlawful sexual contact with one who is incapable of consent because of age or other factors.

6. AGGRAVATED SEXUAL ABUSE is unlawful insertion of foreign objects into the vagina, urethra, penis or rectum of another with one who is incapable of consent because of age or other factors.

*For complete descriptions of these sex offenses and others, see NYS Penal Law Article 130.
Penalties for Commission of Sex Offenses:

PENAL LAW OFFENSE CLASSIFICATION PENALTY SECTION

130.20 Sexual Misconduct A Misdemeanor not to exceed 1yr
130.25 Rape 3rd Degree E Felony not to exceed 4yrs
130.30 Rape 2nd Degree D Felony not to exceed 7yrs
130.35 Rape 1st Degree B Felony not to exceed 25yrs

130.40 Criminal Sexual Act 3rd Degree E Felony not to exceed 4yrs
130.45 Criminal Sexual Act 2nd Degree D Felony not to exceed 7yrs
130.50 Criminal Sexual Act 1st Degree B Felony not to exceed 25yrs

130.52 Forcible Touching A Misdemeanor not to exceed 1yr
130.53 Persistent Sexual Abuse E Felony not to exceed 4 yrs

130.55 Sexual Abuse 3rd Degree B Misdemeanor not to exceed 3mos

130.60 Sexual Abuse 2nd Degree A Misdemeanor not to exceed 1yr

130.65 Sexual Abuse 1st Degree D Felony not to exceed 7yrs

130.65A Aggravated Sexual Abuse 4th Degree E Felony not to exceed 4yrs

130.66 Aggravated Sexual Abuse 3rd Degree D Felony not to exceed 7yrs

130.67 Aggravated Sexual Abuse 2nd Degree C Felony not to exceed 15yrs

130.70 Aggravated Sexual Abuse 1st Degree B Felony not to exceed 25yrs
130.75 Course of Sexual Conduct Against a Child 1st Degree B Felony not to exceed 25 yrs
130.80 Course of Sexual Conduct Against a Child 2nd Degree D Felony not to exceed 7 yrs
130.85 Female Genital Mutilation E Felony not to exceed 4 yrs

130.90 Facilitating a Sex Offense with a Controlled Substance D Felony not to exceed 7 yrs
130.91 Sexually Motivated Felony sentence shall be deemed the same level as the violent felony offense or felony sex offense committed

130.95 Predatory Sexual Assault A-II Felony maximum of life imprisonment
130.96 Predatory Sexual Assault Against a Child A-II Felony maximum of life imprisonment

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The sex offenses outlined in the New York State Penal Law call for a specific penalty for anyone convicted of one of these offenses as noted in the previous table. Depending on the offense committed, sentences can range from a minimum term of fifteen (15) days to a maximum term of twenty-five (25) years imprisonment or life imprisonment.

Edited by: Christopher Rodgers

Updated on Friday, August 16, 2013

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Title IX/Institutional Equity & Compliance

Office of Institutional Equity & Compliance & Title IX Coordination

The Director of Institutional Equity and Compliance is the University's compliance officer for all forms of discrimination and is specifically designated as the University's Title IX Coordinator, responsible for the University's Title IX compliance efforts, including sex and gender discrimination, sexual harassment, sexual assault and violence, stalking, intimate partner violence, domestic or dating violence, retaliation and athletics.Inquiries concerning the application of Title IX and its implementing regulation may be referred to the designated Title IX Coordinator(s) or to the U.S. Department of Education, Office for Civil Rights. The Director may be contacted at:

Anastasia Coleman
Title IX Coordinator
Director of Institutional Equity and Compliance
Administration Building, Room 114
Rose Hill Campus
718-817-3112
acoleman11@fordham.edu

Fordham University is an academic institution that, in compliance with federal, state, and local laws, does not discriminate on the basis of race, color, creed, religion, age, sex, gender, national origin, marital or parental status, sexual orientation, citizenship status, veteran status, disability, or any other basis prohibited by law.No otherwise qualified person shall be discriminated against in any programs or activities of the University because of disability.Likewise, no person shall be discriminated against on the basis of sex.Fordham University does not knowingly support or patronize any organization that engages in unlawful discrimination.

This policy is strictly enforced by the University and alleged violations receive prompt attention and appropriate corrective action. The University will take steps to prevent discrimination and harassment, to prevent the recurrence of discrimination and harassment, and to remedy the discriminatory effects of discrimination on victims and others, as appropriate.

Complaints of discrimination by students against other students should be brought to the complainant's Dean of Students for handling (Rose Hill – Dean Christopher Rodgers; Lincoln Center & Westchester – Dean D. Keith Eldridge). All other complaints involving students and employees, only employees, or third parties should be brought to the Director of Institutional Equity and Compliance for handling.

If there is any question as to where to report any incident, please contact the Title IX Coordinator and she will direct you to the proper place and person.

The various links on the left-hand side of the page list information, such as what are the university sexual harassment policies, Campus Assault and Relationship Handbook (CARE) that directs where a student can receive resources if an incident happens, and other important information.

Members of the University community may also refer to the student brochure *Campus Assault and Relationship Education (CARE)* for detailed information on what steps to take to protect oneself and others from all forms ofsex discrimination, sexual harassment, sexual assault or sexual violence, stalking and/or domestic or dating violencebefore it happens, or in the aftermath of an incident.

The Title IX Coordinator reports to the Vice President for Administration.

IMPORTANT LINKS:

- Fordham University Policy on Sexual Offenses
- Title IX Grievance

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Edited by: Web Development

- CARE (Campus Assault and Relationship Education) Handbook
- Safety & Security
- Bias Related Incidents and/or Hate Crimes
- LGBT Resources
- Equity in Athletics Disclosure Act
- Student Affairs and Athletics

Rose Hill Campus Bronx, NY 10458. (718) 817-1000
Lincoln Center Campus New York, NY 10023. (212) 636-6000
Westchester Campus West Harrison, NY 10604. (914) 367-3426

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The Law School

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Educating a Different Kind of Lawyer

Policies & Regulations

Anti-Harassment Policy

The University of Notre Dame believes in the intrinsic value of all human beings. It is, moreover, committed to the full, peaceable participation of all its members in the educational endeavor it fosters. Accordingly, the University prohibits discriminatory harassment by all administrators, faculty, staff, and students. The University is also committed to the free expression and advocacy of ideas and wishes to maintain the integrity of this commitment as well. The Office of Institutional Equity administers this policy, which defines discriminatory harassment as including harassment based on race, sex, religion, age, veteran status, sexual orientation, national origin, or disability of the victims. For reporting procedures, see http://www3.nd.edu/~equity/discriminatory_harassment/DiscriminatoryHarassmentProcedures.shtm

Nondiscrimination Policy

In compliance with federal law, Notre Dame Law School does not discriminate on the basis of race, color, national or ethnic origin, sex, disability, veteran status, or age in the administration of any of its educational programs, admissions policies, scholarship and loan programs, athletic or other school-administered programs, or in employment. The Office of Institutional Equity handles all inquiries regarding its efforts to comply with and carry out its responsibilities under the federal law and University policies.

Director, Office of Institutional Equity
414 Grace Hall
University of Notre Dame
Notre Dame, IN 46556
(574) 631-0444

As a member of the Association of American Law Schools (AALS), the Notre Dame Law School complies with the provision of AALS Bylaw 6-3 that requires member schools to provide equality of opportunity in legal education for all persons regardless of sexual orientation. In accordance with the policy stated in the University's Spirit of Inclusion, Notre Dame Law School does not discriminate on the basis of sexual orientation. We value the gay and lesbian members of our community as we do all others and we condemn harassment

based on sexual orientation. We consciously create an environment of mutual respect, hospitality, and warmth in which none are strangers and all may flourish.

The Career Development Office complies with the American Bar Association and the AALS requirements that all employers to whom we provide assistance and facilities for interviewing and other placement functions observe the principles of equal opportunity to obtain employment without discrimination or segregation on the ground of race, color, national origin, gender, sex, sexual orientation, age, disability, or discrimination on the basis of religion.

The Law School welcomes people of all faiths and religions. At the same time, consistent with American Bar Association Standard 211, the Law School reserves its right under the law to make hiring, admission, and other decisions in accord with its Catholic identity and its mission as a Catholic institution. In addition, the Law School reserves all other legal rights as a religious institution.

Policies Governing Student Life

Du Lac: A Guide to Student Life (http://dulac.nd.edu/) includes the codes, rules, regulations, and policies that establish the official parameters for student life and behavior. Unless otherwise noted, the policies and procedures in du Lac apply to all students – undergraduate, graduate, and professional — whether the behavior occurs on or off campus. Copies of du Lac are provided to all students at the time of their enrollment and may also be obtained from the Office of Residence Life and Housing.

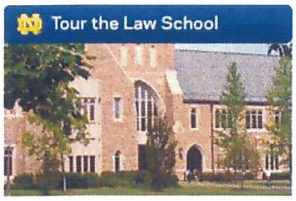
News

2013 Notre Dame Law School Commencement Awards

184 J.D. graduates, 15 LL.M. graduates, 3 J.S.D. graduates received degrees during the May 18, 2013, diploma ceremony on the lawn overlooking the Hesburgh Library's reflecting pool.

View All News

Tour



A Global Approach

Make a difference in our world through Notre Dame Law School's international programs.

Contact Info

Law School Admissions

P: 574.631.6626
F: 574.631.5474
E: lawadmit@nd.edu

Standards of Conduct

Unless otherwise noted, the standards of conduct, policies, procedures and regulations described within the du Lac website apply to all Notre Dame students — undergraduate, graduate, and professional, full or parttime. The University may respond to any report of alleged misconduct or violation of law from a student's matriculation through graduation.

The University reserves the right to address off-campus misconduct or violations of law. Judgments about these matters will depend on the facts of an individual case. The following factors are among those that will be considered:

- whether the conduct occurred at an event sponsored by the University
- whether the student involved was acting as a representative of the University
- whether the conduct has a negative impact on the University community or interferes with the pursuit of Notre Dame's mission
- whether the conduct has a negative impact on the local community.

In addition to complying with the University's standards of conduct, policies, procedures and regulations, students are expected to abide by local, state and federal law. Students may be accountable to criminal authorities and to the University for acts that violate local, state or federal laws, and they can be referred to the University Conduct Process concurrent with criminal action.

As a general rule, the University Conduct Process will proceed normally during the pendency of a criminal action. The University operates under different policies, procedures and standards, and therefore it is not necessarily bound by the findings of a court of law.

If a student is charged with a felony, the University, through the Office of Student Affairs or the Office of Community Standards, reserves the right to take summary action and temporarily dismiss the student. Similarly, the University may take summary action to temporarily or permanently dismiss any student convicted of a felony (see Emergency Actions).

University Standards of Conduct

The following actions and behaviors are clearly inconsistent with the University's expectations for membership in this community.

- Abusive or harassing behavior, including unwelcome communication
- Actions which seemingly affect only the individual(s) involved but which may have a negative or disruptive impact on the University community and/or concern a student's personal and academic growth
- Alcohol possession and use [read more]
- Behavior which causes a serious disturbance of the University community or infringes upon the rights and well-being of others
- Failure to follow the directive of a University official aimed at protecting life, health or safety, or necessary for the good order and proper functioning of the University community
- Responsibility for guests [read more]
- Sexual activity [read more]
- Undergraduate residence hall visitation (parietals) [read more]
- Willful damage to the reputation or psychological well-being of another

Depending upon the circumstances, violations of these behavioral standards will call into question a student's continued full participation in the University community.

- Discriminatory harassment [read more]
- Dishonesty, forgery or taking advantage of another
- Driving under the influence of alcohol or drugs [read more]
- Health, safety, and security policies [read more]
- Initiation and hazing [read more]
- Non-retaliation [read more]
- Possession, use, or distribution of illegal drugs [read more]
- Sexual harassment [read more]
- Sexual misconduct or assault [read more]
- Theft, damage or vandalism to property
- Unauthorized possession of explosives, incendiary devices, firearms or other weapons

- Violence or the threat of violence against another person, or any action which causes injury to another

Other University Policies and Regulations

In addition to the University Standards of Conduct outlined above, the following codes, policies and regulations are applicable to Notre Dame students.

- Academic Honor Codes
- Campus Housing Policies
- Motor Vehicles Policy
- Responsible Use of Information Technologies
- Student Activities Policies
- Student Identification Card Policy
- University Directives
- University Smoking Policy

Sexual Activity

The University embraces the Catholic Church's teaching that a genuine and complete expression of love through sex requires a commitment to a total living and sharing together of two persons in marriage. Consequently, students who engage in sexual union outside of marriage may be subject to referral to the University Conduct Process.


UNIVERSITY OF
NOTRE DAME