

**BRITISH COLUMBIA
HUMAN RIGHTS TRIBUNAL**

**ANNUAL REPORT
2020/2021**

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Message from the Chair

I am pleased to present the Annual Report of the British Columbia Human Rights Tribunal for the fiscal year April 1, 2020 to March 31, 2021, submitted in accordance with s. 59.2 of the *Administrative Tribunals Act* and s. 39.1 of the *Human Rights Code*. I am accountable for the results as reported.


The COVID-19 pandemic has presented unique and difficult challenges for the Tribunal this fiscal year as it has for all British Columbians and the global community. Despite these challenges, we have strived to maintain effective operations in the face of an unprecedented increase in complaint volume. To that end, and as detailed later in the report, the Tribunal conducted more hearings and a similar number of mediations this pandemic-marred fiscal year than it did last fiscal year. This is a testament to the work ethic and perseverance of Tribunal staff and members during this period of uncertainty and adversity.

Our Tribunal is committed to improving access to justice for all British Columbians in resolving their human rights complaints. We aim to resolve human rights complaints through fair, effective, timely, and accessible dispute resolution services. Our innovations and improvements are guided by the following values:

- Appropriate Resolution
- Public Confidence
- Service Excellence
- Access to Justice Innovation

We proudly endorse the Access to Justice Triple Aim which guides our innovation efforts. Our focus is to improve the accessibility and experience of those who turn to our Tribunal and to ensure that our services work for them.

In our continuing efforts to improve access to justice for British Columbians, we have undertaken some major initiatives this fiscal year including implementing a new case management system to modernize Tribunal services, implementing Justice Walkem's recommendations from her report Expanding Our Vision: Cultural Equality & Indigenous Peoples' Human Rights to address underrepresentation of Indigenous complainants accessing the Tribunal, and collaborating with the BC Office of the Human Rights Commissioner to build a

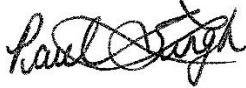


strong, principled, and sustainable partnership grounded in our shared commitment to improve access to justice for British Columbians.

Our Tribunal staff and members espouse our commitment to public service, and it is a great privilege to work with them.

Together, we are proud to service British Columbians.

Yours truly,



Paul Singh
Acting Tribunal Chair

Pandemic Response

This fiscal year began in the midst of a global pandemic. Responding to the challenges of the COVID-19 pandemic has been at the forefront of the Tribunal's activities. By April 2020, the Tribunal moved its operations online with almost every staff person and member working at home where they remained throughout the fiscal year. Fortunately, the Tribunal was already equipped with a functioning work-at-home program supported by laptops on a virtual network which enables access to the Tribunal's electronic complaint files. Despite some challenging initial weeks, Tribunal staff and members transitioned effectively to full-time remote work without significant disruption in their productivity.

Providing in-person proceedings virtually was a major challenge the Tribunal tried to overcome this fiscal year. Fortunately, our mediation program already included a significant proportion of telephone mediations and we were able to effectively transition in-person mediations to the established telephone format. Where access to justice required mediations by video, we utilized existing videoconferencing capabilities on a limited basis while exploring upgrades. By the end of the fiscal year, we were effectively offering a variety of videoconferencing platforms, based on suitability, for every mediation scheduled. While a few in-person mediations were adjourned at the start of the fiscal year, the Tribunal's mediation program quickly adapted to a fully virtual setting, which continued uninterrupted throughout the year. There were 572 mediations held this fiscal year, which is only slightly less than the 583 mediations held in the last fiscal year.

Tribunal hearings were almost exclusively conducted in-person before the pandemic. This fiscal year all hearings were conducted virtually by videoconference as part of the Tribunal's pandemic response. Interestingly, the Tribunal held more hearings this fiscal year (33 hearings and 7 hearing continuations) than in the previous fiscal year (33 hearings and 3 hearing continuations). As with Tribunal mediations, we experimented with and transitioned to new and better videoconferencing platforms for our hearings over the course of the fiscal year. Staff worked diligently to offer virtual hearing room support, while presiding members tailored virtual hearing processes for their hearings. A [guide to online hearings](#) was created to navigate parties through the process and [public access to virtual hearings](#) was established to maintain the openness of our proceedings. On a number of occasions, participants unable to access videoconferencing technology attended video-equipment equipped Tribunal meeting rooms to participate in virtual hearings while following the Tribunal's COVID-19 safety protocols.



The Tribunal also partnered with the Office of the Police Complaints Commissioner of BC to have our hearing and mediation rooms assessed and set up for safe in-person use this fiscal year. While the Office of the Police Complaints Commissioner used this space for their own proceedings, the Tribunal also made this space available to our parties for in-person hearings, if necessary. However, this option was not used this fiscal year since the few Tribunal hearings scheduled to proceed in-person adjourned for other reasons, such as settlement.


After a brief period early in the fiscal year, the Tribunal safely reopened its reception to walk-in traffic following a safety assessment. A reduced compliment of front-line staff worked in the office to maintain important access for those needing to make in-person inquiries or hand deliver documents in paper format. The Tribunal also maintained this in-person reception for the other tribunals co-located at our shared facility.

In October 2020, the Tribunal began receiving an influx of inquiries and new complaints related to the issue of pandemic mask wearing. Prior to that, the Tribunal handled only a small number of pandemic related complaints and inquiries involving primarily employment and tenancy claims. From October onwards, about half of all inquiries and complaints received by the Tribunal were related to mask wearing in service settings. The Tribunal established a separate process for mask complaints to manage the high volume of new complaints without overwhelming the Tribunal's regular processes. Features of the separate mask cases process included providing parties with specialized information about rights and obligations related to mask wearing in service settings, and offering case manager assisted mediation to facilitate expedited, proportionate resolution of these complaints.

Access to Justice

Implementing Expanding Our Vision recommendations

The Tribunal's 2019/20 Annual Report set out the recommendations of Ardith Walpetko We'dalx Walkem QC (now Justice Walkem) in Expanding Our Vision: Cultural Equality & Indigenous Peoples' Human Rights. The Tribunal is committed to fully implementing those recommendations.



The Tribunal gratefully acknowledges the work and commitment of the members of the Expanding Our Vision Implementation Committee [**Committee**], who guide us in this work.¹ The 2020/21 Committee members were:

- Patricia M. Barkaskas, Academic Director, Indigenous Community Legal Clinic, Instructor I (Tenure Track), Peter A. Allard School of Law, The University of British Columbia
- Jade Baxter, Union of BC Indian Chiefs Youth Representative, Nlaka’pamux Nation
- Romona Baxter, Executive Director, Nzen’man’Child and Family Development Centre Society, Nlaka’pamux Nation
- Cynthia Callison, Callison & Hanna Indigenous Advocate, Tahltan Nation Member
- Rosalind Campbell, Musqueam Indian Band, Councillor, Musqueam Indian Band
- Dylan Cohen, Red River Métis
- Devyn Cousineau, Member, Human Rights Tribunal
- Trish Garner, Executive Director, Research and Policy, Office of the Human Rights Commissioner for British Columbia
- Andrea Glickman, Policy Director, Union of BC Indian Chiefs
- Katherine Hardie, Legal counsel, Human Rights Tribunal
- Andrea Hilland, Policy counsel, Law Society of British Columbia
- Juli Holloway, Director of Communications and Engagement, First Nations Justice Council
- Ali LaFond, Indigenous Youth Intern, Ministry of Indigenous Relations and Reconciliation
- Jo-Ann Nahanee, Member, Squamish Nation, and advocate for the rights of her community and next generation.
- Amber Prince, Member, Sucker Creek (Cree) Nation, Member, Human Rights Tribunal
- Lissa Dawn Smith, Vice-President, Metis Nation BC
- Tsee’tsee’watul’wit Sharon Thira, Executive Director, Education & Engagement, Office of the Human Rights Commissioner for British Columbia

In accordance with recommendation 2.4, the Tribunal provides the following report on its progress in implementing the Report’s recommendations.

¹ Recommendations 2.2 and 4

Indigenous Representation at the Tribunal²

Internal audit

In March 2020, the Committee identified increasing Indigenous representation within the Tribunal as one of two initial priorities. The Tribunal:

- audited its hiring processes and identified factors that may create barriers to the recruitment and hiring of Indigenous persons; and
- prepared a draft Framework for Recruitment, Hiring and Retention of Indigenous Peoples.³

Tribunal members

Following improved recruitment efforts, the Tribunal received a record number of applications for the position of Tribunal member in 2020, including a large number of highly qualified Indigenous candidates. Following a rigorous, merit-based hiring process, three Indigenous lawyers were appointed as members of the Tribunal for four-year terms: Karen Snowshoe, Amber Prince, and Sonya Pighin. On the Committee's advice, we publicized this information widely.

Tribunal mediators⁴

Also following improved recruitment efforts, the Tribunal undertook a rigorous, merit-based process for contract mediators in 2020. Through that process, the Tribunal added Indigenous lawyer and mediator Laura Matthews to its roster of mediators. The Tribunal has sought funding to increase the number of Indigenous mediators (see below).

Tribunal staff

In the summer of 2020, the Tribunal began work on developing an Indigenous Navigator position and has sought funding for three positions (see below).

² Recommendation 1.3

³ Recommendations 4.2-4.4

⁴ Recommendation 4.1

Feedback to improve recruitment and hiring

The Tribunal sought feedback from applicants in both the member and mediator hiring processes to further improve those processes.

Cultural Safety at the Tribunal⁵

The second priority identified by the Committee was to develop cultural competency, humility, and safety within the Tribunal.

In the spring of 2020, the Tribunal began to develop an Indigenous Cultural Competency and Humility Framework and began implementation through:

- monthly small group meetings for all staff and members
- training through the government's House of Indigenous Learning
- training on trauma-informed practice⁶

The Tribunal has established an internal working group to further ongoing Indigenous initiatives related to professional development and learning.

Indigenous Identity under the *Human Rights Code*

In May 2020, the Tribunal requested an amendment to the *Human Rights Code* to add Indigenous identity as a ground of discrimination.⁷ The government consultation process is currently underway.

Complaint Form⁸

In June 2020, the Tribunal issued new complaint forms, which now include:

- Plain language
- Space for a complainant's traditional name
- Example of trauma as a reason for late filing
- Voluntary demographic information, including Indigenous identity
- An example of smudging as a protocol that can be incorporated

⁵ Recommendations 1.4(b) and 9.1

⁶ Recommendation 10

⁷ Recommendation 1.2

⁸ Recommendation 9.4

- A stated commitment to Truth and Reconciliation including incorporating Indigenous protocols or ways of resolving disputes in its process
- An option for a participant to identify as Indigenous and request contact from the Tribunal to talk about the process, process options, and incorporating Indigenous protocols.

Complaint Process⁹

Before June 2020, the Tribunal did not collect demographic information about parties at the Tribunal.

From June 2020 onwards, the Tribunal began developing a process for those complaints where the complainant self-identifies as Indigenous. In the nine months following the new complaint forms, 244 people self-identified as Indigenous in the complaint form. While the Tribunal does not have earlier comparison data, we are confident that this is a significant increase in the number of Indigenous persons filing complaints following release of the Report.

The Tribunal process includes these elements:

- a trauma-informed approach¹⁰ that aims to build trust in relationships with the Tribunal and limits, where possible, party contact to one case manager
- a case manager contacts the complainant to talk about the process and identify the possibility of Indigenous traditions, protocols, ceremony, and dispute resolution processes (in future, this will be an Indigenous Navigator)
- if the complainant requests an Indigenous approach to addressing the issues in the complaint, an Indigenous member works with the parties to put a process into place (see Indigenous Dispute Resolution Processes below)

Review of Gate-Keeping Processes¹¹


In the summer of 2020, Professors Bethany Hastie and Patricia Barkaskas agreed to undertake a review of the Tribunal's gate-keeping decisions to identify barriers to Indigenous persons. That report will be released in 2021/22.

In 2021, on the recommendation of the Committee, the Tribunal instituted a new process respecting screening of complaints at the filing stage. If the complainant self-identifies as

⁹ Recommendations 1.5, 2.1, and 9.3

¹⁰ Recommendation 10

¹¹ Recommendation 1.5



Indigenous, an Indigenous Tribunal member reviews the letters in which the Tribunal seeks more information from the parties and makes any decision not to proceed with a complaint. Through this process, the Tribunal will assess and address barriers at the initial gatekeeping stage.

Coordination with the Canadian Human Rights Commission¹²

The Report identified that a challenge Indigenous Peoples face in bringing human rights claims is knowing the appropriate legislation – federal or provincial. The Report recommended that the Tribunal discuss with the federal body – the Canadian Human Rights Commission – a coordinated process for sorting jurisdiction.

In the fall of 2020, the Tribunal began discussions with the Canadian Human Rights Commission to create a seamless complaint process for complaints filed in either organization that raise jurisdictional issues. Under the current protocol, if it appears that the Commission has jurisdiction over the complaint, the Tribunal forwards the complaint, with party consent, to the Commission. Similarly, the Commission forwards cases within provincial jurisdiction directly to the Tribunal. The Tribunal and Commission also liaise where there is a case involving the same matter in both forums to determine whether any joint process is useful in resolving the complaint.

Indigenous Dispute Resolution Models¹³

Together with its approach to the complaints process, the Tribunal has affirmed its commitment to Indigenous traditions and dispute resolution approaches. This is set out in the new complaint forms and [Mediation Policy](#). The Tribunal processes have included Elders and smudging.

In one complaint, the Tribunal also worked with the parties to provide a Healing Circle, a process based in the practices of the complainant’s First Nation and contracted the services of a facilitator for this process.

The Mediation Policy provides that an Indigenous party may tell their case manager that they want:

- a traditional ceremony before or after the mediation, such as a smudge, prayer, or song
- an Indigenous mediator

¹² Recommendation 7

¹³ Recommendation 12.1

- an Indigenous dispute resolution approach

The policy requires that lawyers appearing before the Tribunal act consistently with cultural competency and humility and be learning and developing the skills needed to be culturally competent.

The policy also affirms the Tribunal’s commitment to a trauma-informed approach to its processes, in accordance with recommendation 10,¹⁴ and requires parties to act consistently with an approach that does no harm and is safe and respectful for everyone.

Funding Request

The Committee identified a number of recommendations which will require further funding to fully implement. In December 2020, the Tribunal requested funding from the BC Ministry of the Attorney General for the following initiatives:

Staffing

- Indigenous Liaison¹⁵ and three Indigenous Navigators¹⁶
- Indigenous Youth Intern, Articled Student, and Term Student¹⁷
- User Experience and Public Information Manager¹⁸

Contracted Services

- Mediators and other dispute resolution services¹⁹
- Honorariums
- Cultural support services²⁰
- Development of Indigenous stream
- Plain language review of communications²¹

¹⁴ Recommendation 10.1 provides: Adopt a trauma-informed practice overall, including for assessing and accommodating delays or requests for extensions. The BCHRT staff and tribunal members should be provided with training on how trauma may impact Indigenous Peoples’ actions or interactions within the BCHRT system.

¹⁵ Recommendation 3.1

¹⁶ Recommendation 9.2

¹⁷ Recommendation 4.1

¹⁸ Recommendations 1.4(a), 5.2, 5.3, 8.0, 12.2, 17

¹⁹ Recommendations 9.3, 12.1

²⁰ Recommendations 16.3, 16.5

²¹ Recommendation 14.1

- Feedback and evaluation²²
- Training for members, staff, and mediators²³
- Website design²⁴
- Culturally-safe Tribunal spaces

Travel

- Mediation services in community
- Hearings in community

The Tribunal expects to learn in 2021/22 whether this funding request has been approved.

Conclusion

The Tribunal remains committed to working under the guidance of the Committee to implement the Report's recommendations and to continue to improve access to justice for Indigenous persons.

Improving Tribunal processes

This fiscal year the Tribunal trialed several early staff contact initiatives with self-represented parties to increase parties' access to justice. The results were positive, and we hope to soon have the resources to make these initiatives part of the regular process.


The first initiative involved new complaint screening.

Complaints filed by a complainant with proper representation are almost always allowed to proceed as they generally contain allegations that, if proven, could be a contravention of the *Human Rights Code*. Complaints that cannot proceed are almost entirely filed by self-represented complainants. The Tribunal's current screening process involves review of a new complaint followed by a written request for more information if the complainant has not made their case. Many self-represented complainants face barriers in providing the necessary information for reasons related to literacy and the technical challenges related to making out a human rights case. To address this issue, a Tribunal staff person began making direct contact by phone with self-represented complainants when a complaint lacked sufficient information to proceed and it appeared reasonable and efficient for the complainant to provide requested

²² Recommendation 12.2

²³ Recommendations 1.4(b), 4.2, 8.1, 9.1, 10.1, 13.1, 14.1

²⁴ Recommendation 17.1



information over the phone than in writing. Staff conducting these in-person screening inquiries reported improvements in the information received as compared to that received after a written request for more information. Further, the trial resulted in greatly reduced wait times for screening of complaints where we requested more information to fill in gaps.

The second staff contact initiative to improve access to justice involved a staff person calling complainants and respondents days after the respondent was notified that a complaint was proceeding. Once again, this was done only in cases where the parties are self-represented. The staff person made telephone contact to ensure the parties understood their role in the process and their complaint process options. Parties were also given information about obtaining free representation if they qualified. They were also told about the current timelines for complaint resolution. Reaching out with in-person contact appears to improve participant satisfaction in the process and the parties' level of participation. It also appears to have helped parties set reasonable expectations about complaint resolution timelines and increased the prospect of early resolution through mediation.

The Tribunal also introduced new easy-to-use plain language online intake forms to assist parties. Complainants can still opt to use a print and fill form, but over two thirds of complainants chose to use the new online version of the intake forms over the print and fill version since they were introduced in mid-2020.

A new Case Access Centre participant portal was also introduced on some cases in July 2020. Participants entering the Case Access Centre will see all their complaints, should they have multiple complaints, the status of each complaint, contact information for all participants and most complaint documents. They are also able to file applications and make requests online directly into the system. Parties can now manage their own complaints via the Case Access Centre, which should reduce complaint status inquiries and barriers to filing with the Tribunal. Parties can also agree to use the Cases Access Centre as the method of service for applications and requests on other parties to a complaint. When fully implemented, it is anticipated that the Case Access Centre will greatly reduce the number of email correspondence items received by the Tribunal, such that administrative time spent forwarding items to the correct case owner and uploading them into the system will be significantly reduced.

Implementing a new Tribunal case management system

In June 2020, the Tribunal launched a new case management system, called the Dispute Resolution Suite (“DRS”), replacing its original system from 2003. The new system enhances the Tribunal’s existing paperless case file capabilities through better organization of electronic documents. The DRS has superior organization of case information, better case search capabilities and communicates directly from the system to participants.


In addition to this “back end” portion of the DRS, the Tribunal built two important “front end” or public facing portions that enhance user experience and access to justice.

First, new online intake forms were created that allow complainants to submit new complaints directly into the DRS system via a series of questions, answers to which populate a complaint form and fields in the DRS. Complainants still have the option of completing a PDF or paper version of the Tribunal’s intake forms. In addition to making filling out a complaint form easier, the new system populates DRS information fields directly so that staff time previously dedicated to data entry of complaints can be used in a more effective manner. From July 2020 to March 2021, 68% (1822 complaints) were filed with the Tribunal using the new on-line intake forms while 32% (589 complaints) were filed using PDF or paper version of the Tribunal’s intake forms. With this amount of uptake, it appears complainants prefer to use the online forms over the PDF or paper version of the forms.

The second public facing portion of DRS aimed at improving access to justice is the Case Access Centre, an on-line complaint participant portal. As the DRS is rolled out, and as set out earlier, an increasing number of complaint participants are being provided access to their electronic case file. Participants entering the Case Access Centre will see all their complaints, the status of their complaint, contact information for all participants and most complaint documents. They are also able to file applications and make request online directly into the system. Parties can now manage their own complaints via the Case Access Centre, which will reduce complaint status inquiries and barriers to filing with the Tribunal.

Collaborating with the Office of the Human Rights Commissioner

British Columbia’s Office of the Human Rights Commissioner [BCOHRC] exists to address the root causes of inequality, discrimination, and injustice in the province. Together, our organizations continue to build a strong, principled, sustainable partnership grounded in our shared commitment to improve access to justice within the province’s human rights



framework. We support efforts to promote transparency, accountability, and the independence of both bodies. This fiscal year, we have collaborated and transitioned with BCOHRC by:

- Transferring special programs from the Tribunal to BCOHRC under s. 42 of the *Human Rights Code* at the start of this fiscal year. After providing some start up support in the initial months of the fiscal year to the BCOHRC, no ongoing major support was needed.
- Temporarily assigning a Tribunal staff person to assist BCOHRC with establishing its processes and positions related to receiving and responding to human rights queries and mechanisms for public engagement.
- Continuing renewals of our temporary information sharing agreement to enable BCOHRC's access to Tribunal records under s. 47.13 of the *Human Rights Code* and working together towards a permanent agreement and a finalized framework for information sharing.
- Implementing BCOHRC's access to the Tribunal's new document management system under 47.13 of the *Human Rights Code* and enabling them to view specific complaint information and build their own reports.
- Working with BCOHRC on the committee developing and launching the Tribunal's new case management system with a focus on providing access to justice for British Columbians using the participant portal and online intake forms.
- Working with BCOHRC and other human rights institutions in British Columbia on the "no wrong door" unified response to inquiries on human rights issues by British Columbians. This fiscal year we supported each other in our responses to pandemic related issues by keeping each other informed about information, guidance and special processes being introduced. We also ensured that our public information and in-person referrals linked British Columbians to the other institutions' information and processes. Another important initiative included compiling advocacy resources information for the province for all institutions to share with British Columbians.
- Continuing BCOHRC membership on the Expanding our Vision Implementation Committee to help remedy the underrepresentation of Indigenous complainants accessing the Tribunal.

- Collaborating to advance legislative amendments to the *Human Rights Code*.
- Continuing bi-monthly meetings between the Commissioner and Tribunal Chair to support strong institutional and independent ties.
- Established monthly meetings with the Tribunal Registrar and Deputy Commissioner, and others in both institutions as needed, to keep current in appropriate ways on important initiatives and occurrences.

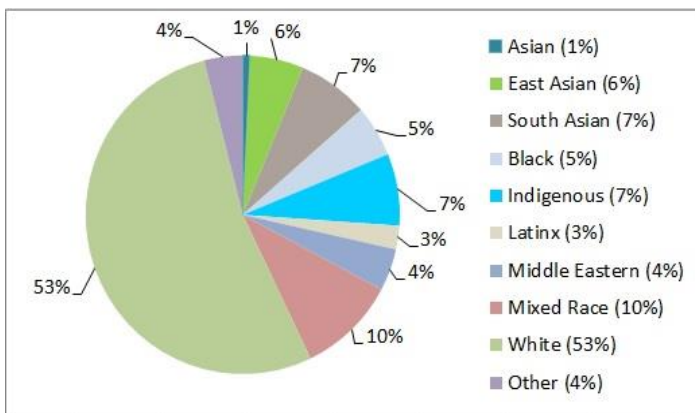
Public Inquiry

We respond to a multitude of public inquiries about the *Human Rights Code*, including making referrals to other community and government agencies. Our [website](#) has become the most important tool for the public to find information they need. The number of Tribunal website visits has increased from 234,399 in 2015-2016 to 728,398 in 2020-2021, a significant 210% increase over a five-year period.

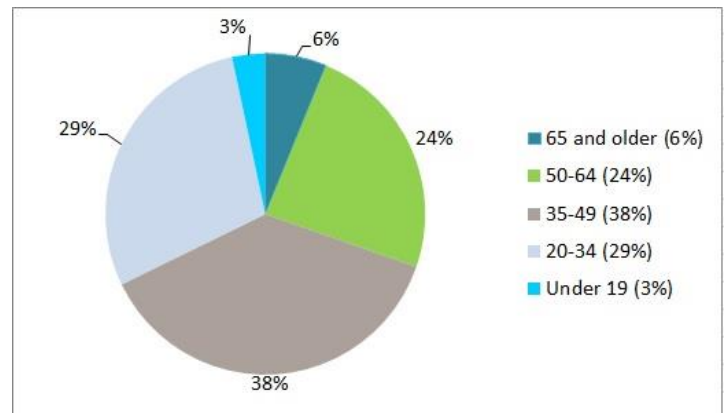
Complainants' Demographic Information

At the end of June 2020, the Tribunal began collecting demographic information from complainants on a strictly volunteer and confidential basis. Approximately 44% of complainants opted to provide some demographic information. Based on this data, the Tribunal can report on who is accessing and using its process between July 2020 and March 2021 as set out below.

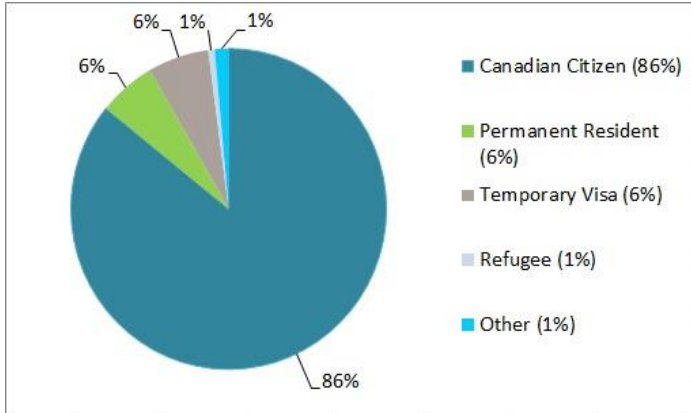
Racial Identity



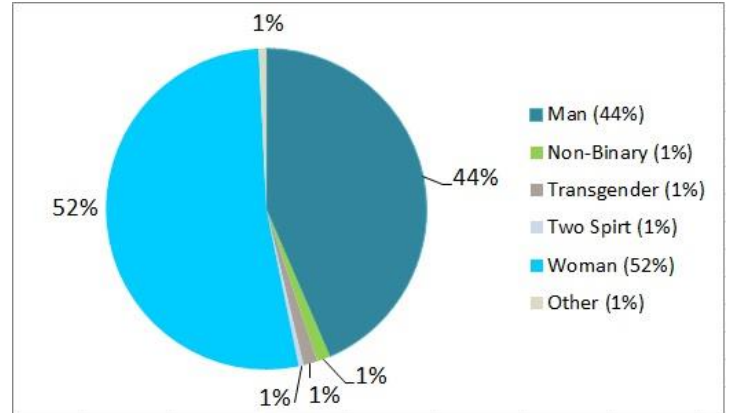
Age



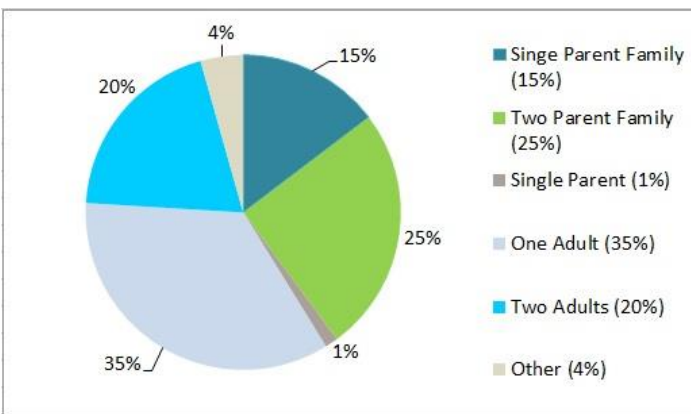
Immigration Status



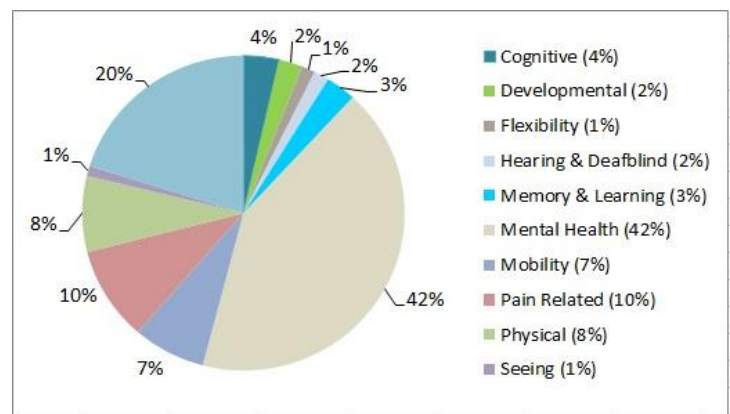
Gender Identity



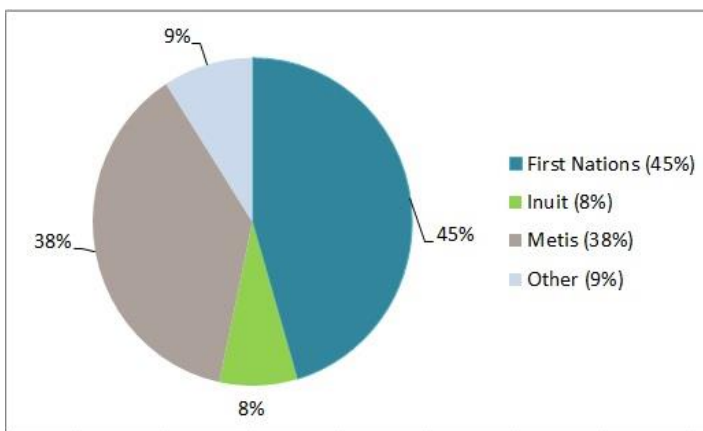
Household Type



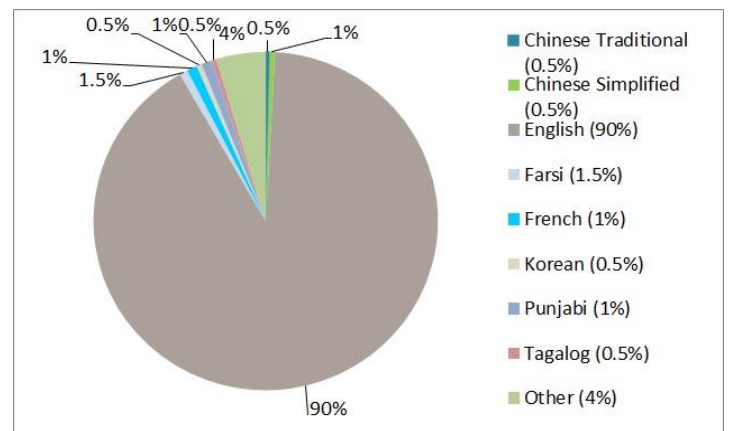
Disability Requiring Accommodation



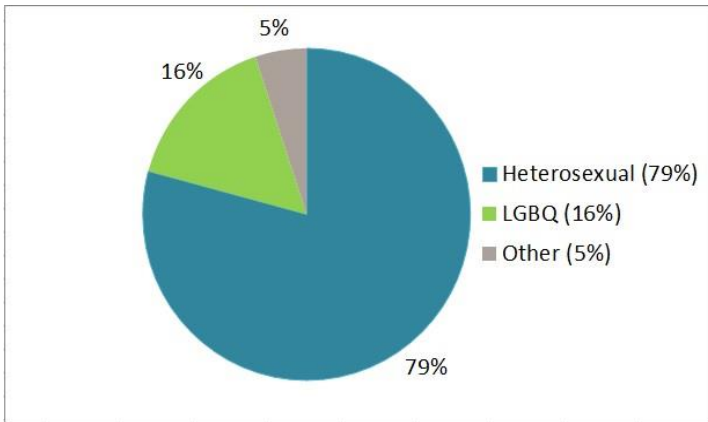
Indigenous Identity



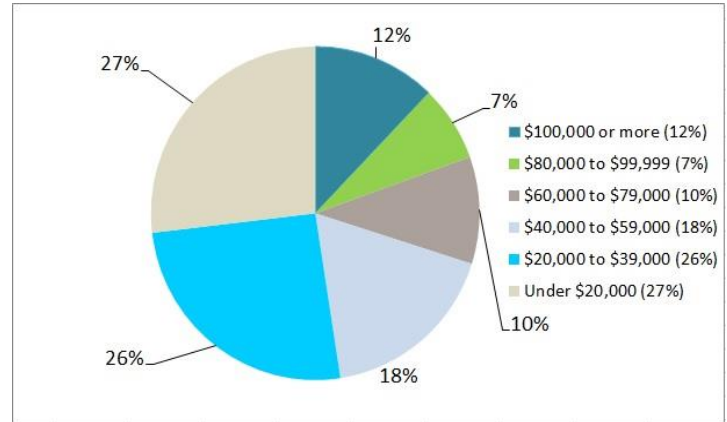
Language



Sexual Orientation



Household Income After Tax

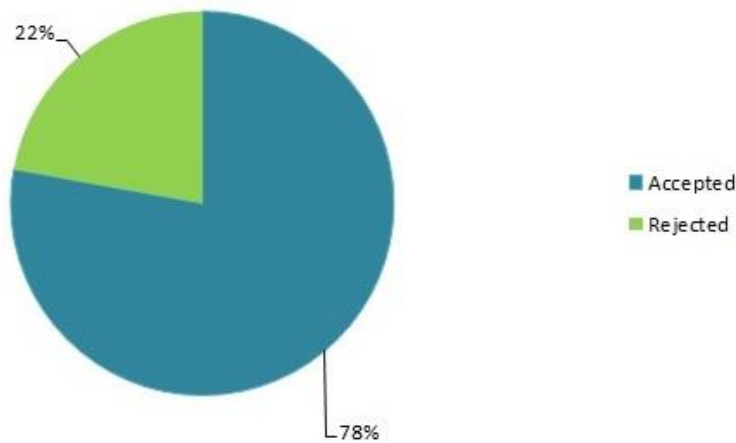


New Complaints

Complaints are filed directly with the Tribunal, which is responsible for all steps in the human rights process.

The Tribunal received a total of 2,656 new complaints during the past year. Of those, 1,162 new complaints were accepted for filing, and 1,163 complaints were in the screening process at year end. Screening ensures complaints are within the Tribunal’s jurisdiction, are timely, and set out a possible contravention of the *Human Rights Code*. This fiscal year, the Tribunal accepted 78% of complaints for filing which is in line with the ten-year average of 74%.

Screening Outcomes



Service Standards

The core purpose of the Tribunal is the timely and fair resolution of human rights complaints. In 2017 the Tribunal established certain service standards to further this purpose.

Screening

Our service standard for screening is that, 80% of the time, we will complete our screening process and notify parties within 30 days of filing. Where additional information to satisfy screening requirements is necessary, we will complete our screening process and notify parties within 60 days of filing. The Tribunal did not meet either targets for screening this fiscal year with average times to screen complaints taking approximately six months, given the large increase in new complaints filed this fiscal year.

Preliminary Decisions

The service standard for applications to dismiss complaints is to issue decisions 90 days after submissions are complete 80% of the time. The Tribunal did not meet this service standard this fiscal year. The timeliness target was met 32% of the time, which is down from 45% last fiscal year.

The Tribunal's service standard for issuing preliminary decisions, apart from applications to dismiss, is 30 days after submissions are complete 80% of the time. The Tribunal did not meet this service standard this fiscal year. The timeliness target was met 60% of the time, which is down from 75% last fiscal year.

We are working vigorously to maintain the timeliness of our decisions within the constraints of our resources and increasing case volume.

Mediations

We are committed to scheduling mediations at the earliest possible date that parties are ready and available. The Tribunal has set a service standard of two months to schedule a mediation from the date the Tribunal notifies the parties that the complaint will proceed, 80% of the time. This fiscal year, the Tribunal did not meet this timeliness target as mediations were offered an average of more than four months after the parties were notified that the complaint was proceeding. When this delay was combined with the screening delays noted above, parties were attending mediations over a year after the complaint was filed.

Hearings

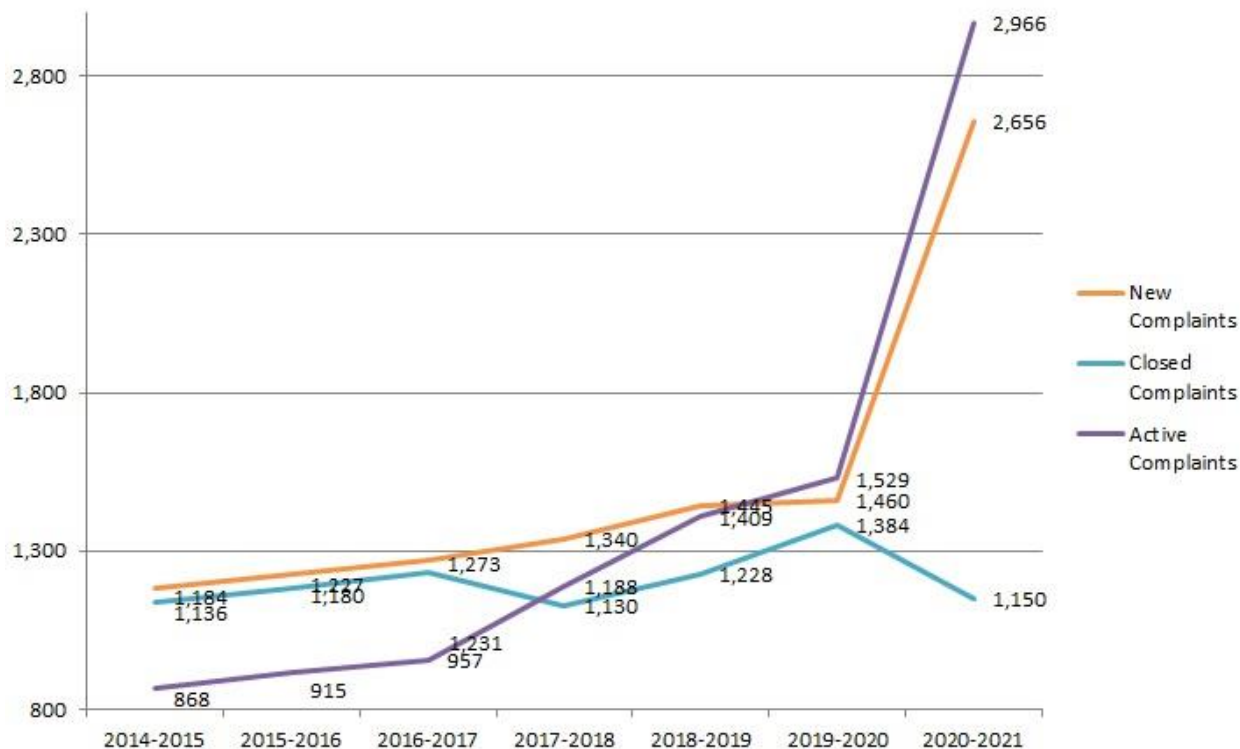
We are committed to scheduling hearings at the earliest date the parties are ready and available. Hearing dates are usually set if a respondent does not apply to dismiss a complaint by the deadline for doing so, or if the Tribunal denies an application to dismiss the complaint. From that date, the service standard for offering a date for hearings 2 days or less is 60 days and 3 days or more is 120 days, 80% of the time. The Tribunal is not meeting these standards with the average hearing dates being scheduled a year later than when they are ready for scheduling.

For decisions following a hearing, the Tribunal's service standard is that we will issue final decisions on the merits of a complaint within 90 days, or 180 days in cases where the hearing lasts more than 3 days, 80% of the time. This fiscal year we issued decisions within the set timeframes 82% of the time, meeting the standard.

Tribunal Workload


We have reported on what we are doing, and what we need to do better to fulfill our mandate under s. 3 of the *Human Rights Code*. This fiscal year we tried again to implement the Access to Justice Triple Aim in balancing the three goals of improving population access to justice, improving user experience, and improving costs. Two unforeseen factors have put additional pressures on the Tribunal - the first was a staggering 74% one year increase in new complaints filed (from 1,529 to 2,656), and the second was the pandemic-related shift to remote online work for almost every staff and member within the limitations of existing remote work technology.

The vast increase in new cases coupled with our relatively steady rate of closing cases has left the Tribunal with an all-time high number of active cases at year end (2,966). Active cases mean those that require active engagement by Tribunal case managers and members. The additional active cases this fiscal year are mainly in the early stages of our process and present an enormous challenge for the coming year.



The Tribunal’s active cases inventory has increased dramatically as it received many more new complaints than it can resolve. The Tribunal resolved 1150 cases this fiscal year, despite the challenges of working remotely during a pandemic. However, our increased total active cases are reflected in not meeting our service standards on timeliness, with a greater delay this fiscal year at the early stages in the process. This fiscal year, complaints waited about six months for an initial review to determine whether they can proceed. Notification to parties of complaints that can proceed took a further five months after the initial review. This resulted in it taking more than a year for parties to get an opportunity for a mediation. By comparison, in previous years the early stages of the process took no more than six months.

The Tribunal has managed to continue operations with its increased caseload volume, but, as noted earlier, the timeliness service standards have all suffered. We have taken steps to increase the parties’ awareness of delays on our website, in our Outlook receipt of email notifications, and through letters from the Chair explaining dismissal application delays. We have also centralized queues, with complaints longest on the waiting list being attended to first, with the exception of expedited cases.



The Tribunal has managed this fiscal year’s historic caseload volume by stretching human resources and implementing operational efficiencies but continues to be in a significant financial deficit given existing resources.

Complaints by Areas and Grounds of Discrimination

The *Human Rights 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 16 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, gender identity and expression, political belief, unrelated criminal conviction, and lawful source of income.

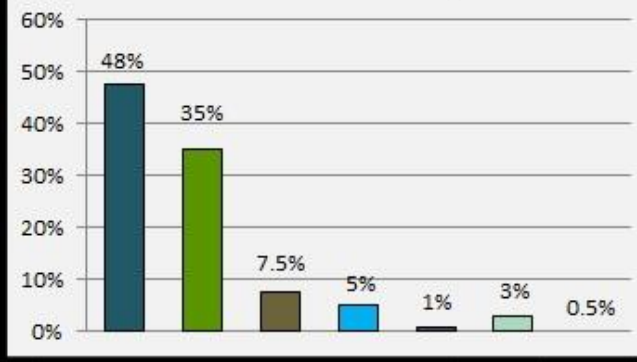
Not all grounds apply to all areas. A complaint may also include more than one area or ground of discrimination. For instance, an employment-based complaint may also include the area of wages; a race-based complaint may also include grounds of ancestry, colour and place of origin.

Employment cases have historically been about 60% of the Tribunal’s caseload. This fiscal year that percentage dropped significantly to 48%. On the other hand, services complaints, which have historically been around 23%, increased significantly to 35%. These changes are attributable to the influx of pandemic services complaints related to mask wearing.

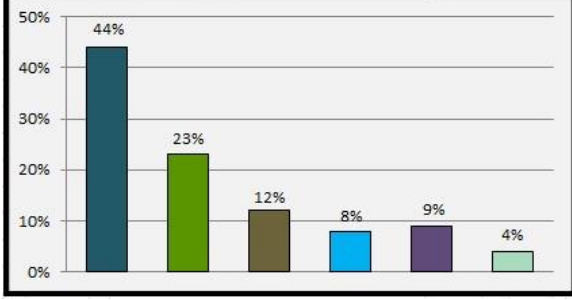
As set out below, of the over 3500 areas of discrimination alleged in complaints filed this fiscal year, discrimination in employment was the most common area (48%) followed by services (35%), tenancy (7.5%) and retaliation (5%).

Of the over 6000 grounds of discrimination alleged in complaints filed this fiscal year, disability was the most common ground (44%) followed by race/place of origin/ancestry/colour (23%), sex (12%) and family status (8%).

Complaints by Areas of Discrimination April 1, 2020 - March 31, 2021		
Section 13 - Employment	1882	48%
Section 8 - Service	1381	35%
Section 10 - Tenancy	297	7.5%
Section 43 - Retaliation	194	5%
Section 14 - Membership	128	3%
Section 7 - Publication	41	1%
Total Other - (listed below)	22	0.5%
Section 12 - Wages	8	
Section 11 - Employment Ads	2	
Section 9 - Purchase of Property	12	
Total Areas Alleged	3945	



Complaints by Grounds of Discrimination April 1, 2020 - March 31, 2021		
Total - Disability	2732	44%
Physical Disability	1486	24%
Mental Disability	1246	20%
Total - Ethnicity	1465	23%
Race	587	9%
Place of Origin	307	5%
Ancestry	242	4%
Colour	329	5%
Total - Sex	771	12%
Sex (including Harassment and Pregnancy)	623	10%
Gender Identity or Expression	148	2%
Total - Family and Marital Status	517	8%
Family Status	333	5%
Marital Status	184	3%
Total Other - (listed below)	531	9%
Religion	244	4%
Sexual Orientation	143	2%
Unrelated Criminal Conviction	44	1%
Political Belief	62	1%
Lawful Source of Income	38	1%
Age	243	4%
Total Grounds Alleged	6259	

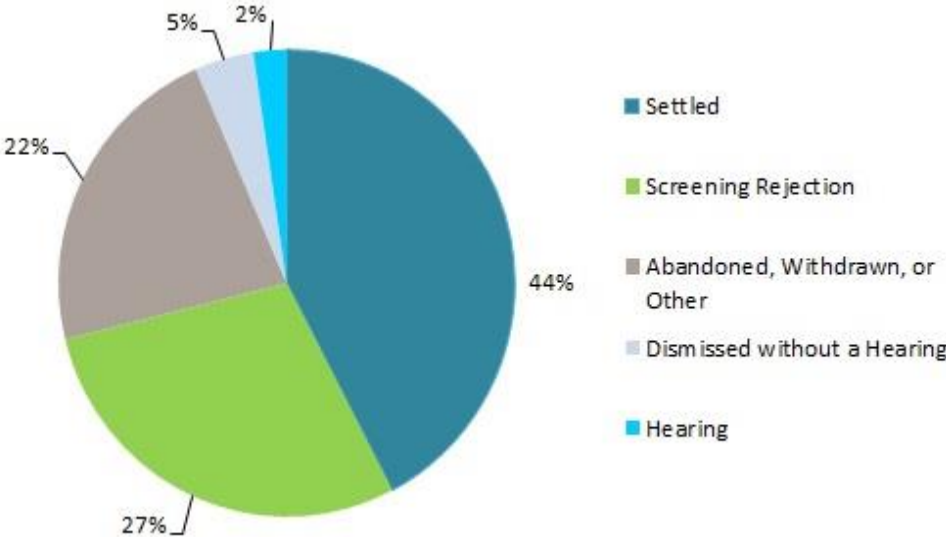


Complaint Resolution

Human rights complaints may conclude for a number of reasons. First, they may be rejected at the screening stage. Of the 1,150 closed complaints, 27% of the complaints were closed because they were rejected at the screening stage.

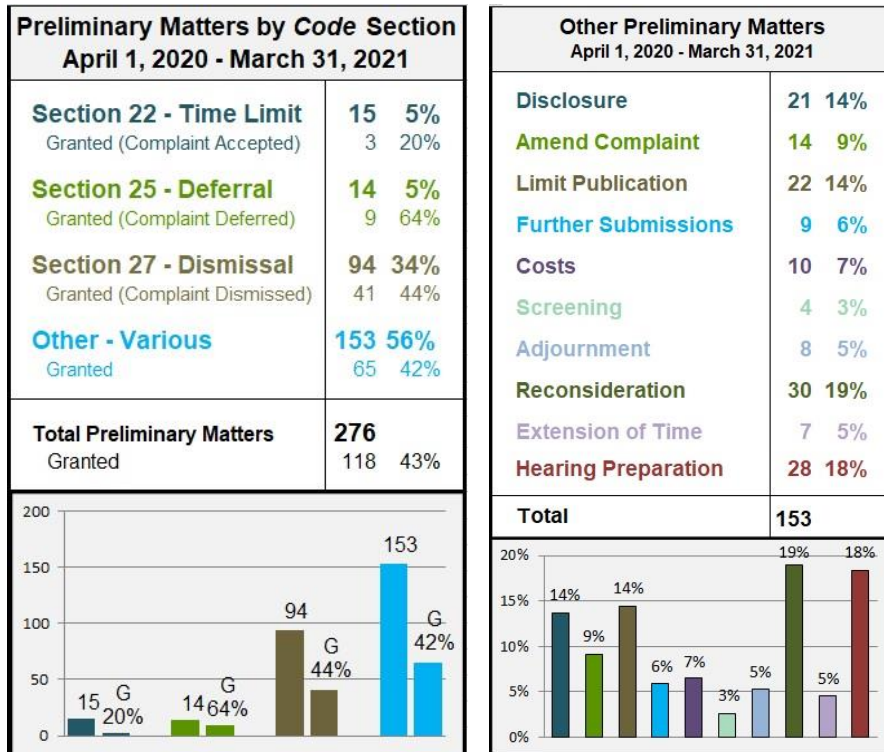
After being allowed to proceed, the vast majority of complaints resolve through mediation, which remains the primary method of resolution by parties. This fiscal year, of all cases closed, 44% were closed due to settlement. 5% of complaints closed after a dismissal decision without a hearing, and 2% closed after a hearing on the merits of a complaint. 22% of complaints closed because they were abandoned or withdrawn by the complainant, and for other reasons. This category includes complaints that were previously deferred for other proceedings and settled by the parties on their own.

Complaint Outcomes



Preliminary Decisions

The Tribunal issued a total of 276 preliminary decisions this fiscal year. A breakdown of the type and frequency of the decisions is set out below.



Mediations

The Tribunal’s mediation services continue to be heavily used. Mediations are confidential, and the Tribunal does not publish the results. In many cases, mediations resolve other aspects of the parties’ relationship and can have transformative impacts in the justice system. Mediated settlements may also result in systemic change that is beyond the scope of remedies available under the *Human Rights Code* after a hearing.

The Tribunal encourages parties to engage in mediation at every stage of the complaint process. Tribunal-assisted settlement services are most often initiated before the respondent files a response to the complaint (82%) and can occur at any later stage in the progress of a complaint. As noted earlier, of all cases closed, 44% were closed due to settlement this fiscal year.

Hearings

This fiscal year, the Tribunal made 26 decisions after a hearing on the merits of a complaint. In addition, the Tribunal issued one decision on remedy. For comparison, the Tribunal issued 29 decisions after a hearing in 2019-2020, 23 in 2018-2019, and 14 in 2017-2018.

Through its case management strategy, the Tribunal works closely with the parties to ensure that the number of hearing days is proportionate to the issues in dispute. The average hearing duration was four days, with six hearings lasting more than five days.

The complainant succeeded fully or in part in 12 of the 26 cases or 46% of the cases. Again, for comparison, 41% succeeded fully or in part in 2019-2020, 35% in 2018-2019, and 29% in 2017-2018.

Grounds and Areas of Discrimination in Final Decisions

The final decisions dealt with the following grounds of discrimination:

- Nine of the 26 complaints alleged discrimination based on physical disability. Four of those nine complaints succeeded.
- Three complaints alleged discrimination based on mental disability. Two succeeded.
- Five of seven complaints based on sex succeeded. One of those complaints also succeeded on the ground of marital status.
- One of six complaints based on race, colour, ancestry, and/or place of origin succeeded.
- The Tribunal dismissed two complaints based on religion.
- Three complaints alleged discrimination based on sexual orientation. One of those also alleged discrimination based on gender identity or expression. All three complaints were dismissed.
- The Tribunal dismissed three complaints based on family status, and two based on age.
- No cases addressed the grounds of political belief, criminal conviction, or source of income.

The final decisions dealt with the following areas of daily life:

- Employment continues to be the most litigated area of discrimination: 16 of 26 decisions (62%). Six of 16 complaints in the area of employment succeeded (38%).
- Nine of 26 decisions were in the area of services (35%). Five of nine complaints in the area of services succeeded (55%).

- One decision was in the area of tenancy. The complaint was dismissed.
- One services decision and two employment decisions also included complaints of retaliation contrary to s. 43 of the *Human Rights Code*. All three complaints of retaliation succeeded.
- No decisions addressed publications, purchase of property, employment advertisements, wage discrimination based on sex, or unions and occupational associations.

Representation Before the Tribunal in Final Decisions

The complainant appeared in all 26 hearings. The complainant had a lawyer in 11 of 26 hearings (42%). In 2019-2020, the complainant had a lawyer in 54% of the hearings. In 2018-2019, the complainant had a lawyer in 32% of the hearings.

The respondent appeared in 24 of the 26 hearings. The respondent had a lawyer in 18 of those 24 hearings (75%). In 2019-2020, the respondent had a lawyer in 77% of the hearings. In 2018-2019, the respondent had a lawyer in 74% of the hearings.

In past annual reports, the Tribunal has noted a correlation between legal representation and outcomes, though we have noted that the statistics are less helpful when the number of decisions is small. This fiscal year's number of final decisions (26) is again small for statistical purposes.


This fiscal year, complainants did significantly better when represented by a lawyer.

In the 11 cases where the complainant had a lawyer, the complaint succeeded in eight (73%). In 10 of those 11 cases, the respondent also had a lawyer. The complainant succeeded in the one case where only the complainant had a lawyer.

In the 15 cases where the complainant did not have a lawyer, the complainant succeeded in three (20%). In those three cases, the respondent did not appear in two, and did not have a lawyer in one. In the 12 cases where a complainant without a lawyer lost their case, the respondent had a lawyer in eight.

For respondents, they did slightly worse when represented by a lawyer.

In the 18 hearings where the respondent had a lawyer, the complaint was dismissed in 11 cases (61%). In the six hearings where the respondent did not have a lawyer, the complaint was



dismissed in four cases (67%). In the two cases where the respondent did not participate, both complaints succeeded.

Discrimination in a Service – Disability

Jacobsen v. Strata Plan SP1773 (No. 2), 2020 BCHRT 170

Ms. Jacobsen has lived in her strata unit for many years. Her health has deteriorated over time and she now requires use of a wheelchair for mobility. The platform at the building entrance is not wheelchair accessible and there are three steps in the hallway leading to Ms. Jacobsen's unit that she cannot navigate. She cannot enter or exit her home without help from her friends to carry her wheelchair over these inaccessible parts of the building.

Ms. Jacobsen first asked the strata for accommodation in 2014. The strata ignored her requests until it took some steps over four years later that did not ultimately resolve the accessibility issues. The Tribunal found the strata did not accommodate Ms. Jacobsen's disability to the point of undue hardship. This was discrimination. Ms. Jacobsen was a prisoner in her own home. The Tribunal ordered that the strata must: obtain architectural drawings to install a lift or external elevator and make the building entrance platform accessible; seek approval of the drawings from the appropriate authorities; and if approved, make reasonable efforts to implement within 9 months. The Tribunal also ordered \$35,000 as compensation for injury to Ms. Jacobsen's dignity, feelings and self-respect.

Daughter by Parent v. The Owners, A Strata, 2020 BCHRT 105

The Daughter is 14 years old and lives with her Parent in a strata unit. The Daughter experienced escalating symptoms of depression and anxiety, which impeded her ability to manage her diabetes and manifested in suicidal ideation. She identified that a dog may help her manage her disabilities, and her doctor agreed. The Parent asked the strata for an exemption from the no-dog bylaw to support her Daughter's mental health. The strata asked owners to vote on the request and it was denied. Despite this, the Parent got her Daughter a dog and her wellbeing improved dramatically. The Tribunal found that not having her dog would cause the Daughter to suffer a significant, disability-related adverse effect and that applying the no-dog bylaw in the circumstances was discrimination based on disability. The Tribunal ordered the bylaw was unenforceable in respect of the Daughter's dog. The Parent did not request damages for injury to the Daughter's dignity, feelings and self-respect and none were ordered.

Fernandes v. City University of Seattle in Canada and another (No. 2), 2020 BCHRT 116

Mr. Fernandes was a student in the University's graduate counselling program. The University removed him from the program "for safety reasons" pending confirmation of his "mental stability" due to an email message, a comment and two photos he posted online that the University described as "sexist and sexualized content." Mr. Fernandes ran a business selling undergarments. He accidentally sent his professor an email from his business account titled "sex surrender." He sent his classmates a message about a class exercise that involved being videotaped and wrote, "don't forget to apply perfume and lipstick. You want to look good." The photos on his personal Facebook account were a picture of cherry tomatoes with the comment "17 sexy little tomatoes" and a picture of him sticking out his tongue.

The Tribunal found that holding Mr. Fernandes out of school and requiring medical confirmation of his fitness to return was not reasonable in the circumstances. The University acted on a stereotypical view that Mr. Fernandes posed a threat of violence based on its perception that he was mentally unstable. This was discrimination based on disability. The Tribunal ordered compensation for expenses and \$17,500 for injury to Mr. Fernandes' dignity, feelings and self-respect.


Belusic obo Canadian Federation of the Blind v. City of Victoria and another (No. 4), 2020 BCHRT 197

This class complaint alleged the City's floating bus stops are unsafe for people who are blind. The floating bus stops are located between a vehicle travel lane and a bike lane. Passengers access the floating bus stops by crossing the bike lane that runs between the sidewalk and the floating bus stop. The Tribunal found the City's installation of pedestrian activated audible flashing lights at crosswalks to some of the floating bus stops was a reasonable accommodation. The remaining floating stops which do not have audible flashing lights at the crosswalks discriminate against the class based on disability. A hearing on remedy will be scheduled for a future date.

Discrimination in a Service – Race

Ben Maaouia and others v. Toscani Coffee Bar and another, 2021 BCHRT 23

The four complainants are friends and were long-time customers of Toscani Coffee Bar. One day, Toscani's owner felt disrespected by the group and – in the heat of the moment – told one of the complainants that she did not want "you Arabs" to come to the coffee shop anymore and to "tell your friends". The owner later confirmed that she would not serve Mr. Ben Maaouia or his



friends anymore. The Tribunal found this was discrimination based on race. It ordered the respondents to pay the four complainants \$1,000 each for their injury to dignity, feelings and self-respect.

Discrimination in Employment – Sex Discrimination / Sexual Harassment

MP v. JS, 2020 BCHRT 131


MP worked as a cleaner in JS’s home. One day when she was at work, JS pushed her onto his bed and touched her sexually. The Tribunal found that MP did not consent to this sexual contact and that JS knew or reasonably ought to have known that the sexual contact was unwelcome. This incident detrimentally affected MP’s work environment and she never returned to work for JS. This was discrimination based on sex. The Tribunal awarded damages for lost wages, expenses and \$40,000 for injury to MP’s dignity, feelings and self-respect.

Basic v. Esquimalt Denture Clinic and another, 2020 BCHRT 138

Ms. Basic worked as a receptionist at the Esquimalt Denture Clinic. The Clinic owner Mr. Lee repeatedly commented on the size of her breasts and remarked that she was so attractive that she would “likely be sexually assaulted in another workplace.” He also regularly engaged in physical conduct as he slapped her buttocks with a magazine, grabbed her breasts, hugged her, rubbed her back, rubbed her leg, rested his head on her shoulder, kissed the top of her head, pressed his body up against hers and pulled her onto his lap. The respondents ultimately fired Ms. Basic for reasons related to the sexual harassment. This was discrimination based on sex. The Tribunal awarded damages for lost wages, expenses and \$25,000 for injury to Ms. Basic’s dignity, feelings and self-respect.

The Sales Associate v. Aurora Biomed Inc. and others (No. 3), 2021 BCHRT 5

The Sales Associate worked for Aurora Biomed Inc. as an account manager. The company’s CEO, Dr. Liang made comments to the Sales Associate about her appearance, calling her “beautiful girl” and “beautiful lady” and commenting that she should smile more. The Sales Associate raised concerns about these comments in a meeting with her supervisor (Dr. Liang’s daughter). Soon after, the Sales Associate’s employment was terminated for “poor performance.” The Tribunal found that Dr. Liang’s comments and the termination were discrimination based on sex. It also found that the termination was retaliation under s. 43 of the *Human Rights Code*.



The Tribunal ordered the respondents to develop and implement an anti-discrimination and harassment policy and to provide all employees with a copy. It also awarded compensation for lost wages and expenses. The Tribunal awarded \$20,000 for injury to the Sales Associate's dignity, feelings and self-respect, taking into account the Sales Associate's vulnerability as a woman in her 20's who was working at her first professional job, and who had been a victim of sexual assault in the past. The Tribunal also ordered the respondents to pay the Sales Associate \$1,000 as costs for the improper conduct of failing to comply with disclosure orders.

LL v. DM and another, 2020 BCHRT 129

LL worked for DM's roofing company. Eventually, LL and DM entered into a consensual personal relationship. However, the lines between their working relationship and personal relationship were often blurred. When difficulties arose in the personal relationship, DM would punish LL by withholding work. The employment relationship was project based so if DM did not assign LL to a job, she would not earn money. The personal relationship was not sexual harassment because it was consensual. However, the Tribunal found that DM withheld jobs from LL because work was one place where he had power over LL when his feelings were hurt in their personal relationship. This was discrimination based on sex. The Tribunal further found that after DM became aware of the human rights complaint, he sent several people a link to an old pornographic video that LL had appeared in. This was retaliation contrary to s. 43 of the *Human Rights Code*. The Tribunal awarded \$15,000 for injury to LL's dignity, feelings and self-respect arising from the discrimination and a further \$7,500 for injury to LL's dignity arising from the retaliation.

Loiselle v. Windward Software Inc. (No. 2), 2021 BCHRT 7

Ms. Loiselle worked for Windward as an account manager. Windward is a male dominated workplace. Ms. Loiselle was discriminated against on the basis of sex and marital status (single woman) when the CEO slapped her hand, her supervisor gave her a "love languages" questionnaire, and a male co-worker hit her on the buttocks with a ring of keys, put her in a headlock and struck her head with his hand. A hearing on remedy will be scheduled for a future date.

Discrimination in Employment – Disability

Falconer v. Yard Hard Logging and another, 2021 BCHRT 38

Mr. Falconer worked for Yard Hard Logging as a machine operator. Mr. Falconer has a prosthetic leg. His crew was working in steep terrain and a logger was injured. All crew members except Mr. Falconer went down the hill to assist with the difficult rescue. The company's owner, Mr. Watson told Mr. Falconer to stay put and relay information to the office and helicopter pilot. The rescue took four hours and the injured logger was eventually airlifted out. When Mr. Falconer received his next pay cheque, he noticed he was not paid for all the hours he worked the day of the injury. When he spoke to the owner about this, Mr. Watson replied that his workday ended when the logger was injured. He said the others got paid because they went down the hill and "worked hard". This was discrimination based on disability. Mr. Falconer did not value the work Mr. Falconer did that day because it was not physical work. The Tribunal ordered a nominal award of \$1,000 for injury to Mr. Falconer's dignity, feelings and self-respect because that is all he asked for. The Tribunal noted that had Mr. Falconer asked for a higher award of damages, it would have considered making such an order.

Chidley v. BC Housing Management Commission (No. 2), 2021 BCHRT 10

Mr. Chidley is a building manager for BC Housing who normally works a flex schedule where he works 34 minutes extra each day and gets every third Friday off. He was injured and went on medical leave. When he returned from leave, he required light duties to accommodate his restrictions and limitations. In order to provide those light duties, BC Housing assigned Mr. Chidley to a regular schedule working 7.5 hours per day Monday to Friday. Mr. Chidley alleged the removal of his flex schedule was discrimination based on disability. BC Housing said its decision was justified because duties were redistributed among the four person team to accommodate Mr. Chidley. In this scenario, it would be operationally more difficult for BC Housing to lose the work Mr. Chidley was doing for an entire day every three weeks. The Tribunal agreed and found this was reasonable accommodation. The complaint was dismissed.

Racial Discrimination in Employment – Remedy

Francis v. BC Ministry of Justice (No. 5), 2021 BCHRT 16


Mr. Francis is Black. He worked as a correctional officer. In *Francis v. BC Ministry of Justice (No. 3)*, 2019 BCHRT 136, Mr. Francis’ complaint succeeded. He experienced racialized stereotyping, and “everyday behaviour” in the form of racialized comments and slurs. His employer singled him out for criticism and heightened scrutiny, required him to attend muster when this wasn’t common practice, ordered him to breach protocols and reprimanded him for doing so. Mr. Francis frequently raised issues of racism with management. He was perceived as too sensitive, overreacting, having a chip on his shoulder, playing the “race card”, and a troublemaker for advocating for human rights in the workplace. The cumulative effect on Mr. Francis was profound. The Tribunal also found the employer retaliated against Mr. Francis for filing his human rights complaint. Mr. Francis was subject to a poisoned work environment when he left the workplace and did not return.

In *Francis (No. 5)*, the Tribunal determined remedy and ordered damages as follows: \$695,661 for past and future loss of earnings; \$65,881 for pension loss; \$1,140 for expenses; \$25,515 for disbursements; and \$176,000 for injury to Mr. Francis’ dignity, feelings and self-respect. This is the highest injury to dignity award issued by the Tribunal to date. The Tribunal explained that effect of the discrimination on Mr. Francis was extreme. He lost his employment and his ability to work as he is not medically able to return to work. The discrimination caused Mr. Francis’ mental illness which included Major Depressive Disorder and Generalized Anxiety Disorder. He remains seriously ill and his symptoms have worsened over time. Mr. Francis also experienced severe financial stress which resulted in the loss of the family home. His family life was also negatively affected as his personality has changed such that he is now prone to rages. The respondents have not applied for judicial review.

Judicial Reviews and Appeals

The *Human Rights Code* does not provide for appeals of Tribunal decisions. Instead, a party may apply for judicial review in BC Supreme Court, under the *Judicial Review Procedure Act*.

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. The court applies standards of review in s. 59 of the *Administrative Tribunals Act [ATA]* to determine



whether the Tribunal’s decision should be set aside. 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 that Court agrees to hear it.

There is a 60-day time limit for judicial review of final decisions set out in the *ATA*. Due to the state of emergency related to the COVID-19 pandemic, limitation periods in court proceedings were suspended March 26, 2020 to March 25, 2021.

Despite this, the Tribunal received 18 petitions for judicial review filed in the BC Supreme Court in respect of Tribunal decisions. There was one appeal filed with the BC Court of Appeal, and no leave applications filed with the Supreme Court of Canada.

Court proceedings were also disrupted because of the pandemic and, as a result, fewer petitions were heard.

The BC Supreme Court issued five judgments on the merits of judicial review applications regarding Tribunal decisions, and one judgment addressing an interim application. The BC Court of Appeal issued three judgments on appeals and one judgment addressing costs. There were no decisions from the Supreme Court of Canada this fiscal year.


The courts upheld seven Tribunal decisions. The BC Supreme Court remitted one decision to the Tribunal for reconsideration and the BC Court of Appeal upheld an order remitting a decision for reconsideration.

Judgments on the Merits of Petitions and Appeals

Refusal to proceed with complaint after filing

Gichuru v. Vancouver Swing Society, 2021 BCCA 103

The Court of Appeal held that the Tribunal has authority, at the time of filing, to consider whether a complaint sets out facts that, if proved, could contravene the *Human Rights Code*. This process is set out in rule 12(2) of the Tribunal’s Rules and is authorized under s. 27(1)(b) of the *Code*. The Tribunal also has authority to consider a respondent’s application, filed later in the process, to dismiss a complaint under s. 27(1)(b). (The Tribunal has since amended its Rules to reflect that its screening decision under rule 12(2) does not “refuse to accept the complaint for filing”.) In this case, there was no procedural unfairness as the Tribunal had explained what



it required of the complainant. The decision not to proceed with the complaint was not patently unreasonable. Similarly, the decision not to proceed with the complaint on reconsideration based on new evidence was not patently unreasonable.

Smith v. British Columbia (Human Rights Tribunal), 2021 BCSC 331

The BC Supreme Court upheld a decision under rule 12(2) that the complaint did not set out facts that, if proved, could contravene the *Human Rights Code*. The complainant identifies as a Pastafarian and member of the Church of the Flying Spaghetti Monster. He alleged that he was not issued a driver's license wearing a pirate's tricorn hat. The Tribunal said the *Code's* protection in services does not require accommodation of a practice satirizing religious practices. The court rejected the argument that the Tribunal's decision raised a reasonable apprehension of bias based on its statements about the church. Further, while the complainant argued that there was insufficient evidence of the church's satirical purposes, a decision based on insufficient evidence is not patently unreasonable.


Section 22 of the Human Rights Code – Time limit for filing a complaint

Safaei v. Vancouver Island Health Authority, 2020 BCSC 1410

The BC Supreme Court set aside a decision refusing to accept a complaint of discrimination as late-filed, but upheld another decision refusing to accept a complaint of retaliation as late-filed. In the discrimination complaint, the Tribunal found that alleged comments were made outside of the time limit and did not accept the late-filed complaint under s. 22(3) of the *Human Rights Code*. The Court found the Tribunal erred in finding the complaint was late-filed. The Tribunal did not deal with a statement in the complainant's submissions on timeliness that "Jennifer hurt me too much every day and on May 26, 2016, and she also told that 'you came and got their jobs.'" The Court said this statement was similar to earlier alleged comments and, together, the alleged comments would comprise a timely continuing contravention under s. 22(2) of the *Code*. The Court found no error in the Tribunal's conclusion that it was not in the public interest to accept the retaliation complaint under s. 22(3) of the *Code*.

Parmar v. Translink Security Management Limited, 2020 BCSC 1625

The Supreme Court found that a decision not to accept a late-filed complaint was not patently unreasonable. The complainant was initially unaware that he had PTSD and then delayed filing his complaint because he was waiting for further medical evidence to establish that he had PTSD while working at the respondent. The Tribunal accepted that the complainant was



unaware of his PTSD but was not persuaded by the reasons for the subsequent four-month delay in filing the complaint. There was evidence to support the Tribunal's conclusion that the complainant had enough information to file his complaint earlier. While the Tribunal did not refer to emails that helped explain the subsequent delay, it was obvious that the Tribunal understood the reasons given.

The Parent obo the Child v. The School District, 2020 BCCA 333

The Court of Appeal upheld an order remitting a decision not to accept a late-filed complaint to the Tribunal. The Court found the Tribunal erred in law by requiring a complainant relying on legal advice error as a reason for delay to (1) identify the lawyer, (2) confirm the erroneous nature of the legal advice, and (3) explain how the error occurred. None of these are mandatory requirements. For example, the approach would exclude cases where legal advice was not wrong, but the complainant honestly but mistakenly believed something different. Rather, the Tribunal's case law requires that (1) the complainant obtain legal advice in a timely way, (2) provide some evidence about the nature of the advice and their detrimental reliance thereon, and (3) demonstrate diligence in filing despite that advice. It would be prudent for a complainant to provide as much information as possible about the advice received including the identify of the lawyer and how the advice factored into the timing of the complaint.


Section 27(1)(c) – Dismissal for no reasonable prospect of success

The Employee v. British Columbia (Human Rights Tribunal), 2020 BCSC 1706

The Court found that a decision dismissing a complaint under s. 27(1)(c) was not patently unreasonable. The Tribunal may dismiss a complaint where there is conflicting evidence raising credibility issues. In any event, the Tribunal gave the benefit of conflicting evidence to the complainant. The Tribunal concluded the allegation of differential treatment to male counterparts had no reasonable prospect of success because the other staff were women. This conclusion was not unreasonable because the respondent gave evidence that there were no male counterparts and there was no evidence to contradict or call that evidence into question.

Gardezi v. The Positive Living Society of British Columbia, 2020 BCCA 321

The Court of Appeal dismissed an appeal from an order dismissing part of a petition. The chambers judge had found the Tribunal did not err in dismissing the appellant's retaliation complaint, but had remitted the part of the decision dismissing her discrimination complaint. The Court found no error or procedural unfairness in the petition proceeding, and found the



chambers judge did not err in interpreting the time limit for judicial review in s. 57 of the *Administrative Tribunals Act*, denying an anonymization order, remitting the discrimination complaint without specifying that the matter must be determined by a different member, or in making the costs order.

Section 27.5 – Dismissal for failure to pursue a complaint

Bihari v. Deltec Electric Ltd., 2020 BCSC 1450

The Court found that a decision dismissing a complaint under s. 27.5 of the *Human Rights Code* was not patently unreasonable. The Tribunal had put the complainant on notice that she must comply with a disclosure order or face dismissal of her complaint. The court said that a party subject to a lawful order is expected to comply with it absent a proper and timely application to set it aside. They cannot refuse to comply because they disagree with the order or think it is unnecessary.

Judgments on other matters

Njoroje v. British Columbia (Human Rights Tribunal), 2020 BCSC 1723

The Supreme Court denied a petitioner’s application to stay the Tribunal’s process and for advance costs. An appeal has been filed.

Envirocon Environmental Services, ULC v. Suen, 2020 BCCA 201

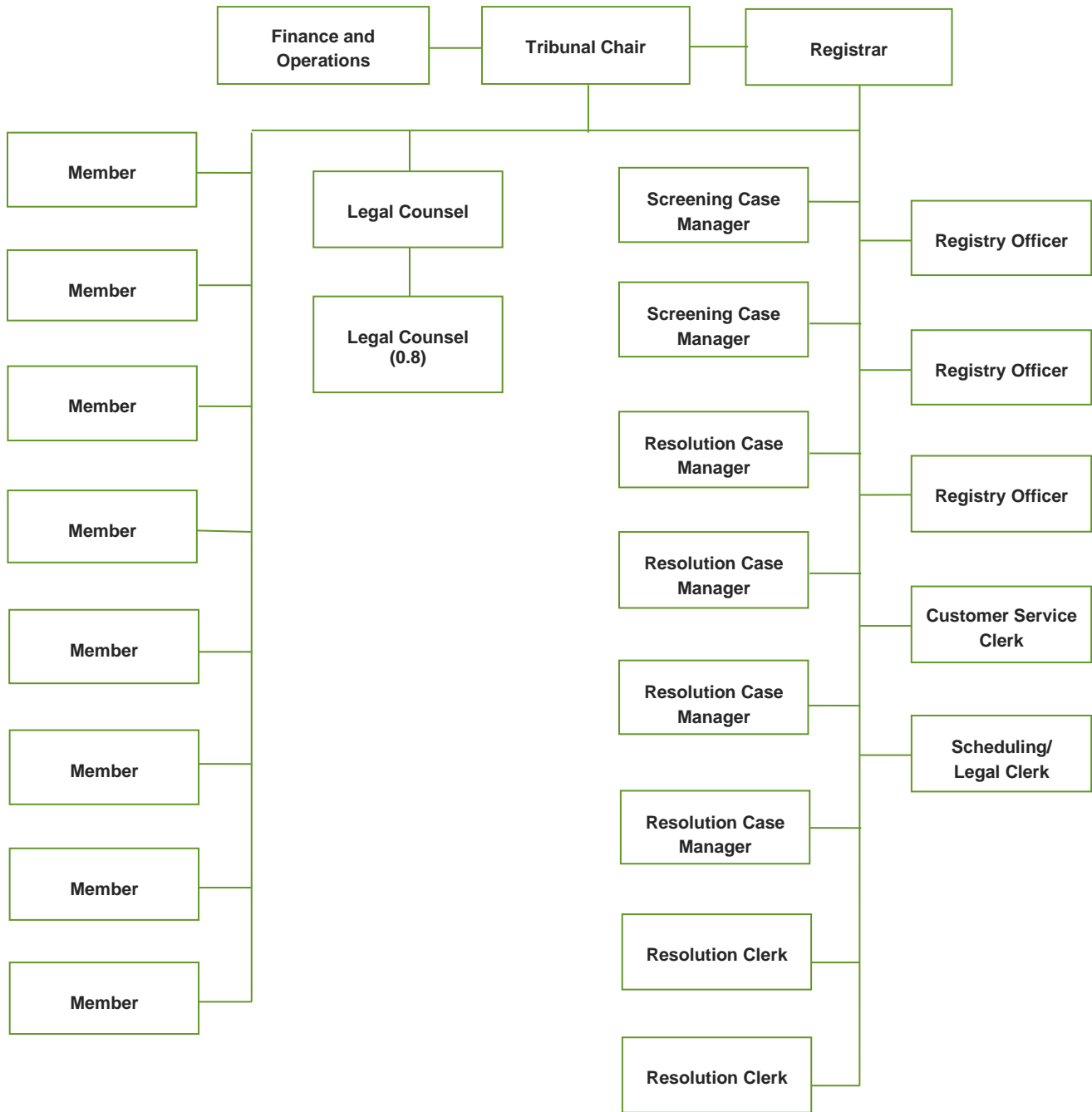
The Court of Appeal had previously allowed an appeal. The order entered awarded the appellant the costs of the appeal but was silent regarding Supreme Court costs. The Court of Appeal re-opened the appeal to address the appellant’s request for Supreme Court costs. It held that the parties should bear their own costs in the Supreme Court and in connection with the appellant’s application to re-open.

Financial Disclosure: Tribunal Operating Costs

DESCRIPTION	EXPENDITURES	DELEGATED BUDGET	VARIANCE
Salaries	2,554,816	2,347,000	(207,816)
Employee Benefits	645,249	596,000	(49,249)
Fees for Temporary Members	60,750	20,000	(40,750)
Travel*	18,832	5,000	(13,832)
Professional Services	143,476	130,000	(13,476)
Information Services	93,452	0	(93,452)
Office and Business Expenses	40,513	50,000	9,487
Other Expenses	0	0	0
TOTAL COST	\$ 3,557,088	\$ 3,148,000	\$ (409,088)

*The Tribunal did not incur expenses for travel relating to proceedings. The Tribunal implemented virtual proceedings in April 2021. The expenditure amount reported is a Ministry shared cost initiative.

Tribunal Organization Chart



Tribunal Team

Tribunal members are administrative law judges who mediate, case manage, adjudicate, and make decisions on human rights complaints. Our staff are an integral part of our professional team. They support our adjudicators and serve our public to the highest standards of integrity and professionalism.

STAFF

Registrar

Steven Adamson

Manager of Finance and Operations

Andrea Nash

Legal Counsel

Katherine Hardie

Barbara Korenkiewicz

Registry Staff

Lea Betsworth (partial year)

Cheryl Bigelow

Priscilia Bolanos (partial year)

Kerry Jervelund (partial year)

Mattie Kalicharan

Ainsley Kelly

Carla Kennedy

Anne-Marie Kloss

Lorne MacDonald

Nikki Mann

Sarah Muench

Kate O'Brien

Meagan Stangl

Britt Stevens

Sandy Tse

Daniel Varnals

Danyka Wadley (partial year)

MEMBERS

Chair

Diana Juricevic (partial year)

Paul Singh (partial year)

Tribunal Members

Steven Adamson (Registrar and Member)

Grace Chen

Devyn Cousineau

Beverly Froese

Laura Matthews (partial year)

Emily Ohler

Sonya Pighin (partial year)

Amber Prince (partial year)

Kathleen Smith

Karen Snowshoe

Paul Singh

Norman Trerise (partial year)

For further information about the Tribunal team, contact us: [website](#)