



# **British Columbia Human Rights Tribunal**

## **Review of Policies and Procedures**

November 23, 2011

*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.*

## PURPOSE

In August 2011, the Deputy Attorney General directed that the Chair of the British Columbia Human Rights Tribunal (the “Tribunal”) undertake a review of the Tribunal’s operations, policies, and procedures with a view to improving its services to the public and, at the same time, realizing operational efficiencies.

The Deputy Attorney General requested that, within 90 days, the Chair produce a plan outlining comprehensive strategies for reform. This document sets out the plan.

**In preparing the plan, the Chair held preliminary discussions with Tribunal members and staff and also invited external stakeholders to identify issues, and provide comments and recommendations. This plan reflects aspects of those discussions as well as broader issues, and sets out strategies intended to achieve the reform objectives requested by the Deputy Attorney General.**

## BACKGROUND

**Following a major review of the administrative institutions responsible for the promotion, protection and adjudication of Human Rights in 2001, the Provincial Government:**

- affirmed the core functions of the Ministry of Attorney General in promoting understanding of the purposes of the *Human Rights Code* (the “Code”) through public education, information and research;
- implemented a direct access model for the adjudication and resolution of human rights complaints through the Tribunal and wound up the former Human Rights Commission; and
- established and funded a specialized Human Rights Clinic (through the B.C. Human Rights Coalition and in partnership with the Community Legal Assistance Society) to assist individuals in pursuing complaints filed with the Tribunal.

## CURRENT PRESSURES

The past decade has given rise to both external and internal environmental challenges. The Tribunal, like many other provincial public agencies and programs, faces systemic and fiscal pressures to reduce costs and improve efficiencies.

Since beginning its operations, roles, responsibilities, and priorities within the Tribunal have continued to evolve. In the past 18 months, the Tribunal has lost the leadership of its founding Chair as well as several long-serving members and senior staff.

These critical resources have yet to be fully replaced, which, in turn, magnifies workload pressures, as evidenced by delays in the processing of complaints and rendering decisions.

Some current challenges, without acknowledging their validity or priority, include:

- The timeliness of the Tribunal's initial responses to, and resolution of, complaints;
- The volume of ongoing and new complaints is straining the capacities of the Tribunal's case managers and adjudicators;
- The increasing length and complexity of judicial review proceedings places pressures on the Tribunal's already limited fiscal and human resources.

**These pressures suggest that it is both timely and appropriate to reconsider and reassess the Tribunal's operations in relation to:**

- Its relationships with the parties who appear before it, and its stakeholders;
- The responsiveness, effectiveness and efficiency of its practices and procedures, including a renewed commitment to ongoing improvement of its dispute resolution and adjudicative functions;

- Its role within the context of other agencies or strategic partnerships, in the promotion, protection and adjudication of human rights.

## **KEY PRINCIPLES**

In operationalizing its mandate and functions, the Tribunal is a component of the broader justice system. It is also responsible for implementing the public policy goals set out in its governing statute. In this respect, the Tribunal is expected to be, and must be seen to be, impartial and fair.

The Tribunal must be a more accessible and more economical alternative to the Courts. It should provide decisions in a more timely, efficient and less formal manner than the Courts.

**This review will be informed and guided by the principles of fairness, impartiality, accessibility, informality, timeliness and efficiency.**

## STRATEGIC OBJECTIVES

As directed by the Deputy Attorney General, the strategic objectives of this review are to:

- 1) Streamline and simplify operational procedures in the Tribunal's registry and case management functions;
- 2) Enhance decision-making and adjudicative processes by identifying innovative options for early settlement, earlier and less formal hearings, summary proceedings and a more inquisitorial approach to adjudication;
- 3) Address, to the extent possible, the number and complexity of judicial reviews;
- 4) Identify opportunities for structural reorganization of the Tribunal in a manner which supports procedural reforms and promotes a more service-oriented culture;
- 5) Consider opportunities for joint resource management through shared administrative services and possibly co-location;
- 6) Implement performance standards and reviews;
- 7) Prepare, adopt and maintain policy and procedural manuals to promote consistency and transparency.

As a corollary to these objectives, whatever steps the Tribunal takes to improve its performance and effectiveness, the Tribunal must also communicate these improvements to the public and ensure that the public has access to relevant and necessary information and educational material.

## **PROJECT ORGANIZATION**

The planning, policy development and implementation of change processes will be carried out under the direction of the Chair with the support of Tribunal members and staff, stakeholders and contracted resources, as required.

The review work will be carried out by task-specific teams accountable to a project secretariat and the Chair.

# THE PLAN: KEY AREAS AND STRATEGIES FOR REFORM

## STRATEGIC AREA 1: CASE MANAGEMENT

### 1.1 POLICY AND PROCEDURES

#### Issues

The Tribunal's information officers and case managers require clearly articulated policies, procedures, and resources to ensure consistent case related decision-making and the appropriate exercise of discretion.

The guiding principles of the Tribunal's and the Courts' jurisprudence should inform case management and decision-making.

#### Strategies

To expedite case management decisions and as an essential resource for both the Tribunal and the public, the broad policies of the Tribunal will be revised and updated in the form of a comprehensive case management policies and procedures manual which articulates essential steps in the progress of a complaint. Outdated and unrelated material will be deleted.

Policy guidelines will be reviewed and developed to assist parties to clearly understand such issues as the prohibited areas of discrimination and the factors the Tribunal takes into account in determining whether the narrative of a complaint or response meets the requirements of the *Code*.

Key principles of Tribunal and judicial decisions will be systematically documented in the form of readily accessible practice guidelines to enhance the public's understanding of the Tribunal's work and to promote consistency of decision-making by Tribunal Staff.

Materials will also be reviewed and revised as necessary to provide clear information on issues including grounds for deferral or dismissal and on fundamental principles such as the duty to accommodate.

Tools will be developed and implemented to track, report on, and monitor the time for processing complaints, to identify the causes and sources of delay and to articulate clear criteria in relation to timeline decisions.

Consideration may be given to appropriate, proportionate sanctions where parties fail to meet expected time frames.

As practicable, materials will be provided in electronic format to facilitate access, links and cross-references.

An ongoing committee or working group will ensure that the materials remain current and reflect best practices.

## **1.2 FORMS AND LETTERS**

### **Issues**

Existing Tribunal forms and correspondence can be lengthy and complex. These should be reviewed for clarity and to determine essential content, eliminating unnecessary commentary supported by useful information links and cross-references in order to promote consistency, accessibility and timeliness.

### **Strategies**

Standard forms and letters/templates will be brief, directive, restricted to essential information and supplemented with information sheets and references.

Use of electronic forms will be encouraged to facilitate effective links to current policies and other aids to case management.

The Tribunal will explore opportunities for electronic filing and document exchange.

## **1.3 INTAKE, SCREENING AND RESPONSE**

### **Issues**

Procedures for filing, amending and responding to complaints are complex and time consuming. The initial screening of complaints is time consuming and involves the application of complex legal principles which may, in turn, give rise to concerns about consistency.

### **Strategies**

The Tribunal will engage in discussions with agencies such as the B.C. Human Rights Coalition and the Community Legal Assistance Society to develop appropriate procedures, materials and resources to provide advice and to assist parties to complete and file clear documents with the Tribunal, so that screening, case management and administrative decisions are efficient and consistent.

Registry functions will be reviewed to refocus staff expertise and competencies on effective screening and case management decision-making. Consideration may be given to appointing a Registrar who is also a Tribunal member; appointing a Deputy Registrar or Vice-Chair with hands-on screening and case management responsibilities; or assigning screening oversight to Tribunal members on a rotating basis.

The concept of distinct case management “streams” will be re-examined and evaluated against a more fluid, case-specific approach, including assignment to members at any juncture in the resolution of a complaint on an as-needed basis.

The Tribunal will explore options with other agencies, such as the Justice Access Centre or government agents, to ensure that information about the Tribunal is widely available throughout the community.

The Tribunal will consider establishing standard timeline expectations and measures with respect to the screening of complaints.

## **STRATEGIC AREA 2: DISPUTE RESOLUTION AND ADJUDICATION**

### **2.1 EARLY SETTLEMENT AND MEDIATION**

#### **Issues**

The use of mediation has been welcomed by the Tribunal's parties and is considered by most as a highly effective technique for complaint resolution. However, the scheduling of early settlement meetings is, partly due to workload pressures, prone to delays which are further compounded when a complaint does not settle and the parties eventually elect to proceed to a full hearing.

The Tribunal has not fully implemented procedures for summary or expedited proceedings as alternative techniques for achieving early resolution.

#### **Strategies**

The Tribunal will review its current complaint resolution practices from acceptance through to hearings.

The Tribunal will continue to identify and encourage early resolution processes. Additional procedural strategies such as mandatory early mediation and evaluative mediation will be further explored.

The Tribunal will seek to have settlement processes available within standard timelines after the acceptance of a complaint.

The effectiveness of contracted mediators and the need to augment these resources to manage workloads will be considered.

The Tribunal will assess the efficiency and cost effectiveness of using video and teleconferencing technology for mediations in appropriate cases.

## **2.2 HEARINGS**

### **Issues**

The hearing process has at times been perceived as overly formal, lengthy, party-driven and court-like.

### **Strategies**

Though the majority of its hearings last less than two days, the Tribunal will assess its current rules and practices to identify and implement strategies which encourage flexibility in procedural matters without compromising fairness and support a more directive or inquisitorial approach.

The Tribunal will consider strategies to address the length of hearings where appropriate.

Where complaints do not settle, the Tribunal will explore the use of summary or expedited proceedings as an alternative to full hearings.

## **2.3 DECISIONS**

### **Issues**

Tribunal decisions can, at times, be lengthy and legally complex. The time required to produce decisions can be a source of criticism and concern.

### **Strategies**

The Tribunal will explore strategies for streamlining decisions and reducing their length and complexity without compromising legal correctness. It has been suggested that hearings should be recorded or that members have dedicated decision-writing weeks. These strategies will be tested and evaluated to determine whether they can enhance timeliness and efficiency.

The Tribunal will also articulate standards and guidelines for the production of timely decisions and will monitor its adherence to these.

To the extent that the timeliness of its decision-making is directly affected by the availability of experienced adjudicative members, the Tribunal has submitted requests for the appointment of its full complement of members on an urgent basis.

## **STRATEGIC AREA 3: THE LEGISLATIVE AND REGULATORY FRAMEWORK**

### **3.1 RULES OF PRACTICE AND PROCEDURE**

#### **Issues**

Though they did not attract undue criticism from stakeholders, the Tribunal's rules appear formal and legalistic. Some rules address issues of a policy nature or paraphrase provisions from the *Code*. Such issues need to be addressed in rules.

#### **Strategies**

As many parties to proceedings before the Tribunal are unrepresented, rules should be written in plain language and be narrowly focused on the obligations of the parties in pursuing their claims through the Tribunal. As an alternative approach, non-essential matters may be addressed in other ways, through links, cross-references, policy manuals or public information materials accessible and readily available to the parties and the public.

Once other reforms have been approved for implementation, the rules should be revised, where necessary, to:

- reflect new, more streamlined procedural requirements;
- focus on the Tribunal's expectations for the conduct of the parties and the processing of a complaint; and
- incorporate, through appropriate annotations, links and cross-references, key points and jurisprudence or commentary from the Tribunal and the Courts.

Again, as practicable, all materials should be provided in electronic format to facilitate access.

An ongoing committee or working group will ensure that the materials remain current and reflect best practices.

## 3.2 LEGISLATIVE ISSUES

### Issues

Several areas of potential legislative reform have been identified. These include statutory provisions with respect to judicial reviews, preliminary applications, and requirements for reasons.

In recent years, applications for judicial review from decisions of the Tribunal have become increasingly complex. At times, parties seek to reargue found facts, preliminary decisions or even the merits of a complaint on judicial review.

Judicial processes are costly and time-consuming. As an adjunct to the proceedings of an administrative tribunal, they also have the effect of prolonging, significantly, the time from initial filing to final resolution thereby perpetuating uncertainty of outcome for complainants, respondents and the Tribunal itself. Applications for judicial review are absorbing a disproportionate and increasing share of Tribunal resources.

### Strategies

The Tribunal will explore and make appropriate recommendations for legislative reform to address key review findings and support strategic initiatives.

The Tribunal will identify and assess legislative options to bring a higher degree of certainty and finality to the proceedings of the Tribunal, in a manner that does not demand more formality, complexity or lengthy Tribunal decisions. These options may include recommendations for amendments to the *Code*, including the possibility of a privative clause, as well as to the *Administrative Tribunals Act* ('ATA').

Section 59 of the *ATA* sets out for the Courts the standard of review (or degree of deference) the Courts are required to consider on applications for the judicial review of Tribunal decisions. The application of s. 59 to Tribunal decisions has given rise to more complex judicial reviews as well as to renewed efforts on the part of the parties to rehear and determine the substantive aspects of the complaint. The Tribunal has been asked to consider strategies that have the potential to limit the number of applications to reopen or rehear the merits of a human rights complaint on judicial review.

Under s. 25 of the *Code*, a human rights complaint may be the subject of a proceeding in another forum. Duplicate proceedings with similar remedies or outcomes are costly and time consuming. The Tribunal will review the Legislation as well as its forms and procedures to determine how to best limit duplication in proceedings and further the purposes of the *Code*.

The language in s. 27(1) of the *Code* gives rise to questions about whether decisions under this section are strictly discretionary. This creates opportunities for further arguments and issues on judicial review. Clarifying that decisions under s. 27(1) are purely discretionary will be considered; section 27(1) will be reviewed in its entirety to determine whether the full array of grounds for dismissal are necessary and effective.

Under s. 27(2) of the *Code*, the requirement for reasons is not clear where the Tribunal decides not to dismiss a complaint. In these circumstances, reasons may not be required. Section 27(2) should be clarified to address this issue.

## **STRATEGIC AREA 4: ORGANIZATIONAL DEVELOPMENT AND INTER-AGENCY AGREEMENTS**

### **4.1 TRIBUNAL ORGANIZATION**

#### **Issues**

Changes in policy, case management practices or the Tribunal's rules give rise to questions about the most appropriate organizational structure for giving effect to the Tribunal's strategic reforms and objectives.

#### **Strategies**

A number of initiatives may be undertaken to strengthen the organizational structure of the Tribunal's registry. Some initiatives identified include:

- operational options to enhance the level of expertise applied at the initial stage when complaints are assessed and accepted for processing. For example, appointing a member as registrar, appointing a Vice-Chair with responsibility for initial screening or rotating members through a screening function for specific periods of time;
- the scope of staff job descriptions and possible amendments to enhance operational efficiencies;
- options for organizing of registry staff to determine whether more integration could lead to more effective information sharing and case management decision-making.

## **4.2 Staff Development, Training and Performance Reviews**

### **Issues**

The Tribunal does not carry out regular performance reviews for either its staff or its members. It has not formally articulated performance expectations or performance standards. These activities are essential if the Tribunal is to identify and support appropriate staff development initiatives and to ensure that the Tribunal's human resources are being deployed in the most effective ways.

### **Strategies**

Through the consultative process, at least three areas for improvement and enhancement have been identified:

- providing specific and targeted training and cross-training for administrative staff and case managers to ensure consistent policy and procedure development and application;
- delegating discretion so as to encourage and promote the prudent use of more flexible and innovative procedures;
- supporting more formal and informal exchanges among members and case managers on topical issues.

## **4.3 Public Information and Assistance**

### **Issues**

The Tribunal's public information materials require review. Once new policies and procedures have been approved for implementation, the Tribunal should address its opportunities for enhanced public information and assistance, either directly or through related agencies.

### **Strategies**

In developing new public information materials, the Tribunal should focus on:

- improving public information, through concise explanations and specific examples, to assist complainants and respondents in completing their own forms;
- providing simplified explanations of key policies, jurisprudence, procedural steps and timeframes;
- ensuring information is readily accessible and available both online and at strategic locations throughout the province.

## **4.4 Information Systems and Technology**

### **Issues**

There are clear opportunities for enhancing the content and accessibility of the Tribunal's online forms and materials.

### **Strategies**

Through better use of online links, forms can be streamlined and enhanced with access to simplified user guides, concise examples and other descriptive source material. Opportunities for enhancements to the Tribunal's existing, but aging, systems will be identified as the review moves forward.

## **4.5 Resource Management**

### **Issues**

At the present time, the Tribunal is engaged in active discussions with other administrative agencies about the possibilities of resource sharing or co-location. The Tribunal is alive to these possibilities through, for example, the sharing of financial and administrative services or the sharing of under-utilized hearing room and meeting space.

### **Strategies**

There are long lead times associated with initiatives to share resources or implement co-location strategies. However, the Chair has, in co-operation with the Ministry of Attorney General, developed options to realign the operations of the Tribunal and the BC Review Board so as to reduce their real estate footprint, reduce administrative costs and identify opportunities for integration and collaboration, including the potential to attract other administrative justice entities in future.

## **4.6 Inter-Agency Collaboration**

### **Issues**

Several other agencies are engaged in the promotion and protection of human rights in British Columbia. The Tribunal's operating relationships with these agencies have not been formalized through Memoranda of Understanding.

### **Strategies**

Strengthening the links with other agencies will enhance the effectiveness of the services provided by each agency and should result in more effective and streamlined processes.

- BC Human Rights Coalition – develop MOU respecting roles and responsibilities for assisting complainants in submitting initial documents; consider whether shared resources would enhance services;
- Ministry of Attorney General – develop MOU with respect to responsibilities for providing informational material at government websites and agencies throughout the province;
- Justice Services Centre – consider whether a formal MOU or other arrangement would facilitate co-ordination and communication with the Justice Services Centre.

## **TIME FRAMES AND REPORTING**

It is estimated that a review of the scope proposed in this document will extend over a period of 18 months. The Tribunal proposes to report out to the Deputy Attorney General on a quarterly basis as work progresses or more frequently if there are issues requiring decisions by government.

The timelines for the various components of the work are set out in Appendix 1.

**Appendix 1 - British Columbia Human Rights Tribunal  
Strategic Review – Work Plan Timelines**

	2011						2012					2013						
	N	D	J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A
<b>Strategic Priority 1: Case Management</b>																		
Policies and Procedures																		
Forms and Letters																		
Intake, Screening and Response																		
<b>Strategic Priority 2: Dispute Resolution and Adjudication</b>																		
Early Settlement and Mediation																		
Hearings																		
Decisions																		
<b>Strategic Priority 3: Legislative and Regulatory Framework</b>																		
Judicial Reviews																		
Rules of Practice																		
Legislative Issues																		
<b>Strategic Priority 4: Organizational Development and Inter-Agency Agreements</b>																		
Tribunal Organization																		
Staff Development, Training and Performance Reviews																		
Public Information and Assistance																		
Information Systems and Technology																		
Resource Management																		
Inter-Agency Agreements																		

	Estimated Timeline for Completing Review Initiative
	Indicates Ongoing Updates and Revisions Required after Initial Work Complete