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**HUMAN RIGHTS CODE AMENDMENT ACT, 2002****CHAPTER 62***Assented to October 31, 2002*

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of British Columbia, enacts as follows:

**1 Section 1 of the Human Rights Code, R.S.B.C. 1996, c. 210, is amended**

**(a) by repealing the definitions of “advisory council”, “chief commissioner”, “commission”, “commissioner of investigation and mediation”, “deputy chief commissioner” and “human rights officer”,**

**(b) by adding the following definitions:**

“**chair**” means the member designated under section 31 (2) as the chair of the tribunal;

“**intervenor**” means a person allowed under section 22.1 to intervene in a complaint;

“**member**” means a person appointed under section 31 (1) as a member of the tribunal;

“**panel**” means a panel designated under section 27.1 (1) (b);, **and**

**(c) by repealing the definition of “party” and substituting the following:**

“**party**”, with respect to a complaint, means the complainant and the person against whom the complaint is made and any person that the tribunal adds as a party; .

**2 Section 3 is amended by repealing paragraphs (f) and (g).**

**3 Sections 5 and 6 are repealed and the following substituted:**

**Education and information programs**

**5** The minister is responsible for developing and conducting a program of public education and information designed to promote an understanding of this Code.

**Research and public consultations**

**6** The minister may

(a) conduct or encourage research into matters relevant to this Code, and

(b) carry out consultations relevant to this Code.

**4 The heading to Part 1 is repealed.**

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5 *Part 2 is repealed.*

6 *The heading to Part 3 is repealed.*

7 *Section 21 is amended*

(a) *in subsection (1) by striking out “the commissioner of investigation and mediation” and substituting “the tribunal” and by striking out “that commissioner.” and substituting “the tribunal.”,*

(b) *by repealing subsections (2) and (3),*

(c) *in subsection (5) by striking out “The commissioner of investigation and mediation” and substituting “A member or panel” and by striking out “that commissioner” and substituting “that member or panel”, and*

(d) *in subsection (6) by striking out “The commissioner of investigation and mediation” and substituting “A member or panel” and by striking out “that commissioner” and substituting “a member or panel”.*

8 *Section 22 is amended*

(a) *in subsections (1) and (2) by striking out “one year” and substituting “6 months”, and*

(b) *by repealing subsection (3) and substituting the following:*

(3) *If a complaint is filed after the expiration of the time limit referred to in subsection (1) or (2), a member or panel may accept all or part of the complaint if the member or panel determines that*

(a) *it is in the public interest to accept the complaint, and*

(b) *no substantial prejudice will result to any person because of the delay.*

9 *The following section is added:*

**Intervenors**

22.1 *A member or panel may, at any time after the complaint is filed and on the terms specified by the member or panel, allow any person or group of persons to intervene in the complaint, whether or not that person or group would be affected by an order made by the member or panel under section 37.*

10 *Sections 23 and 24 are repealed.*

11 *Section 25 (2) and (3) is repealed and the following substituted:*

(2) *If at any time after a complaint is filed a member or panel determines that another proceeding is capable of appropriately dealing with the substance of a complaint, the member or panel may defer further consideration of the complaint until the outcome of the other proceeding.*

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*12 Sections 26 to 30 are repealed and the following substituted:*

**Dismissal of a complaint**

- 27** (1) A member or panel may, at any time after a complaint is filed and with or without a hearing, dismiss all or part of the complaint if that member or panel determines that any of the following apply:
- (a) the complaint or that part of the complaint is not within the jurisdiction of the tribunal;
  - (b) the acts or omissions alleged in the complaint or that part of the complaint do not contravene this Code;
  - (c) there is no reasonable prospect that the complaint will succeed;
  - (d) proceeding with the complaint or that part of the complaint would not
    - (i) benefit the person, group or class alleged to have been discriminated against, or
    - (ii) further the purposes of this Code;
  - (e) the complaint or that part of the complaint was filed for improper motives or made in bad faith;
  - (f) the substance of the complaint or that part of the complaint has been appropriately dealt with in another proceeding;
  - (g) the contravention alleged in the complaint or that part of the complaint occurred more than 6 months before the complaint was filed unless the complaint or that part of the complaint was accepted under section 22 (3).
- (2) If a member or panel dismisses a complaint or part of a complaint under subsection (1), that member or panel must inform the following persons of the decision in writing and give reasons for the decision:
- (a) the complainant;
  - (b) the person against whom the complaint was made, if that person had been given notice of the complaint;
  - (c) any other party;
  - (d) an intervenor.

**Assignment of complaints**

- 27.1** (1) For the purposes of making a decision or order in respect of a complaint, the chair may assign the complaint to
- (a) a single member designated by the chair, or
  - (b) a panel of 3 members designated by the chair.
- (2) If a panel is designated under subsection (1) (b), the chair must designate one of the members of the panel to preside.

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- (3) A member who resigns or whose appointment to the tribunal terminates may continue to act as a member in a hearing that has begun until an order is made under section 37 regarding the complaint.

**Evidence**

- 27.2**
- (1) A member or panel may receive and accept on oath, by affidavit or otherwise, evidence and information that the member or panel considers necessary and appropriate, whether or not the evidence or information would be admissible in a court of law.
  - (2) Nothing is admissible in evidence before a member or panel that is inadmissible in a court because of a privilege under the law of evidence.
  - (3) Despite section 4, subsection (1) of this section does not override an Act expressly limiting the extent to which or purposes for which evidence may be admitted or used in any proceeding.
  - (4) A member or panel may direct that all or part of the evidence of a witness be heard in private.

**Powers to make rules and orders respecting practice and procedure**

- 27.3**
- (1) The tribunal may make rules respecting practice and procedure to facilitate just and timely resolution of complaints.
  - (2) Without limiting subsection (1), the tribunal may make rules as follows:
    - (a) respecting the holding of prehearing conferences and requiring the parties to attend a prehearing conference in order to discuss issues relating to a complaint and the possibility of simplifying or disposing of issues;
    - (b) respecting disclosure of evidence, including but not limited to prehearing disclosure and prehearing examination of a party on oath or solemn affirmation or by affidavit;
    - (c) specifying the form of notice to be given to a party by another party or by the tribunal requiring a party to diligently pursue a complaint and specifying the time within which and the manner in which the party must respond to the notice;
    - (d) respecting service of notices and orders, including substituted service;
    - (e) requiring a party or an intervenor to provide an address for service or delivery of notices and orders;
    - (f) providing that a party's or an intervenor's address of record is to be treated as an address for service;
    - (g) respecting procedures for matters under sections 22, 25 and 27;
    - (h) respecting mediation and other dispute resolution processes, including, without limitation, rules that would permit or require mediation of a complaint, whether the mediation is provided by a member or by a person appointed, engaged or retained under section 33;

- (i) respecting procedures for formal offers to settle a complaint;
  - (j) respecting the amendment of a complaint or a response to a complaint;
  - (k) respecting the addition of parties to a complaint;
  - (l) respecting applications under section 42 (3).
- (3) In order to facilitate the just and timely resolution of a complaint, a member or panel, on their own initiative or on application of a party or an intervenor, may make any order for which a rule could be made under subsection (1) or (2).

#### **Discontinuance on withdrawal or settlement of complaint**

- 27.4** If a complainant withdraws their complaint or a member or panel is informed by the parties that they have settled a complaint, the member or panel must order that the complaint is discontinued.

#### **Dismissal for failure to pursue complaint**

- 27.5** If, under the rules, a party has been given notice requiring the party to diligently pursue a complaint and the party fails to act on the notice within the time allowed, then on the request of another party or on its own initiative, a member or panel may dismiss the complaint.

#### **Assisting parties to settle**

- 27.6** A member or a person appointed, engaged or retained under section 33 may assist the parties to a complaint, through mediation or any other dispute resolution process, to achieve a settlement.

#### **Enforcement of settlement agreements**

- 30**
- (1) If there has been a breach of the terms of a settlement agreement, a party to the settlement agreement may apply to the Supreme Court to enforce the settlement agreement to the extent that the terms of the settlement agreement could have been ordered by the tribunal.
  - (2) The right to enforce a settlement agreement under subsection (1) cannot be waived.
  - (3) A provision of a settlement agreement that purports to waive the right to enforce the agreement under subsection (1) is void.

**13** *The heading to Part 4 is repealed.*

**14** *Section 31 is amended*

- (a) *in subsection (1) by striking out “at least 3 full time members and not more than 6 part time” and substituting “the”, and*
- (b) *by repealing subsections (2) to (5) and substituting the following:*

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- (2) The Lieutenant Governor in Council must designate one of the members as chair of the tribunal.
- (3) Subject to subsection (4), members appointed under subsection (1) hold office for a term of up to 5 years.
- (4) If a member is absent or incapacitated the Lieutenant Governor in Council may appoint a temporary substitute member to act during the absence or incapacity.

**15 The following section is added:****Responsibilities of chair**

- 31.1** The chair is responsible for the management of the tribunal and the direction of its work, including the allocation of work among the members.

**16 Section 32 (1) and (2) is amended by striking out “of the tribunal”.****17 Sections 34 to 36 are repealed.****18 The following section is added:****Powers and protections**

- 34.1** A member or panel has, for the purposes of this Code,
- (a) the protection and privileges of a commissioner under section 12 of the *Inquiry Act*, and
  - (b) the powers of a commissioner under sections 15 and 16 of that Act.

**19 Section 37 is amended by repealing subsections (3) to (6) and substituting the following:**

- (3) An order made under subsection (2) may require the person against whom the order is made to provide any person designated in the order with information respecting the implementation of the order.
- (4) The member or panel may award costs
  - (a) against a party to a complaint who has engaged in improper conduct during the course of the complaint, and
  - (b) without limiting paragraph (a), against a party who contravenes a rule under section 27.3 (2) or an order under section 27.3 (3).
- (5) A decision or order of a member or panel is a decision or order of the tribunal for the purposes of this Code.
- (6) The member or panel must inform the parties and any intervenor in writing of the decision made under this section and give reasons for the decision.

**20 Sections 38, 38.1 and 39 are repealed and the following substituted:**

**Modification of orders**

- 38** (1) Until an order made under section 37 (2) (c) or (d) (i) has been fully implemented, any party or a person designated in the order may apply to the member or panel that made the order, or to a member or panel designated by the chair, for a modification of that order on the grounds that the order is no longer appropriate because of unforeseen circumstances.
- (2) The member or panel may vary or rescind the order after determining that the order
- (a) has not been fully implemented, and
  - (b) is no longer appropriate because of unforeseen circumstances.
- (3) In varying an order under subsection (2), the member or panel may exercise any of the powers under section 37 (2) (a), (c) or (d).

**Enforcement of remedies**

- 39** (1) If an order is made under section 37 (2) (a), (c) or (d) or (4) or 38 (2), the party in whose favour the order is made or a person designated in the order may file a certified copy of the order with the Supreme Court.
- (2) An order filed under subsection (1) has the same force and effect, and all proceedings may be taken on it, as if it were a judgment of the Supreme Court.

**Annual report**

- 39.1** (1) As soon as practicable after the end of the fiscal year of the government, the tribunal must submit to the minister an annual report on the activities of the tribunal.
- (2) The minister must promptly lay the report before the Legislative Assembly if it is in session or, if it is not in session when the report is submitted, within 15 days after the beginning of the next session.

**21** *The heading to Part 5 is repealed.*

**22** *Section 40 is repealed and the following substituted:*

**Disclosure**

- 40** (1) A member or any person appointed, engaged or retained under section 33 must not be required in any proceedings or otherwise, except in a judicial review concerning a complaint,
- (a) to give evidence, or
  - (b) to produce records
- relating to information obtained or a communication received concerning a complaint.

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- (2) Any information received by any person in the course of attempting to reach a settlement of a complaint is confidential and may not be disclosed or admitted in evidence except with the consent of the person who gave the information.
- (3) The *Freedom of Information and Protection of Privacy Act*, other than section 44 (2) and (3), does not apply to information referred to in subsection (2).
- (4) Subsection (3) does not apply to personal information, as defined in the *Freedom of Information and Protection of Privacy Act*, that has been in existence for 100 or more years or to other information that has been in existence for 50 or more years.

**23 Section 42 (2) and (3) is repealed and the following substituted:**

- (3) On application by any person, with or without notice to any other person, the chair, or a member or panel designated by the chair, may approve any program or activity that has as its objective the amelioration of conditions of disadvantaged individuals or groups.

**24 Section 46 is amended**

- (a) by repealing subsections (1) to (3), and
- (b) in subsection (4) by striking out "of the tribunal" in both places.

**25 Section 49 (2) is amended**

- (a) in paragraph (b) by repealing subparagraphs (i) to (v) and substituting the following:
  - (v) within which a hearing must be begun, and, and
- (b) by repealing paragraphs (f) and (h).

**26 Section 50 is repealed.****27 The Supplement to the Human Rights Code is repealed.****Transitional**

- 28** (1) Unless it has been dismissed or otherwise settled or withdrawn, a complaint that is filed with the commissioner of investigation and mediation under section 21 of the *Human Rights Code* on or before the date on which section 8 of this Act comes into force is continued as if it were a complaint filed with the tribunal within the time limit under that Code.
- (2) A decision of the commissioner of investigation and mediation under section 21 (5) or (6), 22 (3) or 25 (2) of the *Human Rights Code* is deemed to be a decision of the tribunal under that Code.



**Consequential Amendment*****Freedom of Information and Protection of Privacy Act***

**29** *Schedule 2 of the Freedom of Information and Protection of Privacy Act, R.S.B.C. 1996, c. 165, is amended by striking out the following:*

Public Body:     British Columbia Human Rights Commission  
Head:             Chief Commissioner.

**Commencement**

**30** This Act comes into force by regulation of the Lieutenant Governor in Council.