

Please Note

The information in this guide is an overview of the hearing process under the Human Rights Code and to assist in preparing for a hearing. This guide is not intended as a substitute for the Human Rights Code or the tribunal's Rules of Practice and Procedure. This guide is not legal advice. If you have legal questions, you should see a lawyer.

For further information, please see the section of this guide called “Where to Get More Help” (page 7).

Inside

page 1	— The Purpose of a Hearing
page 1	— Legal Representation
page 1	— Confidentiality of Hearings
page 1	— Preparing for a Hearing
page 5	— What Happens at a Hearing
page 6	— When to Expect a Decision
page 7	— Where to Get More Help

The Purpose of a Hearing

If you are a party to a complaint before the BC Human Rights Tribunal (the **tribunal**), and your case has not settled, the tribunal will set dates for the hearing of the complaint.

The purpose of the hearing is:

- to give the complainant a chance to prove their complaint and the remedy they want
- to give the respondent(s) a chance to defend themselves against the complaint
- to allow the tribunal member to listen to both sides and to decide whether the complaint is justified and, if it is, to decide upon an appropriate remedy

Legal Representation

Parties may have a lawyer or agent represent them at a hearing. If you don't, you will represent yourself. The tribunal member who hears the complaint will explain the hearing process, but cannot give legal advice or help you present your side of the complaint.

Confidentiality of Hearings

Hearings are normally open to the public. This means that the public can go to the hearing room to listen to the witnesses and can look at the documents provided to the tribunal as evidence.

This also means that you are welcome to attend other hearings to watch and learn about the hearing process in

preparation for your hearing. You can phone the tribunal to find the location of current hearings, or access the weekly hearing schedule posted on the tribunal's Web site on the Friday before each week. (See contact information at the end of this guide.)

Upon the request of a party, a tribunal member may decide to hear some evidence in private or to order that some documents be kept confidential. This will only happen if the tribunal member is convinced that the privacy interests are more important than conducting the hearing in public.

Even if the tribunal hears some evidence in private, it cannot guarantee that the information will remain confidential. This is because the Freedom of Information and Protection of Privacy Act applies to documents held by the tribunal.

Preparing for a Hearing

The most important part of preparing for the hearing is planning what evidence you will need to prove your case.

What is evidence?

Evidence can be:

- **oral testimony:** a witness comes to the hearing and answers questions or participates at the hearing over a speaker phone
- **documents:** documents, such as pay stubs or letters, are given to the tribunal member by a witness and are marked as an exhibit at the hearing

- **things:** sometimes witnesses give the tribunal member other things such as photographs - just about any thing that helps prove your case - these things may also be marked as an exhibit at the hearing
- **affidavits or other statements:** a witness's evidence can be given to the tribunal in writing - this can be a statement such as a letter, or statement made under oath or solemn affirmation called an affidavit
- **expert evidence:** evidence from an expert that may be oral testimony, an affidavit, or a written expert report

What evidence will the tribunal accept?

The tribunal can accept almost any evidence that is **relevant**, which means that it relates to the complaint or to the response to the complaint.

Whether you are a complainant or a respondent, there are several steps that you should follow to prepare your case for hearing. Each step is explained more fully below. The complainant and respondent should:

- Prepare an outline
- Prepare your story
- Identify your witnesses
- Prepare your witnesses
- Summons your witnesses, if necessary
- Prepare your documents
- Consider whether you need expert evidence
- Prepare your opening statement
- Do legal research

(a) Prepare an outline

The best way to plan what evidence you need is to make an outline.

Start by reviewing:

- the Complaint Form
- the Response to Complaint Form
- the complainant's details of the remedy they want
- the respondent's response to the remedy sought by the complainant

If you are a **complainant**:

There are two parts to your case:

1. you must prove that the respondent violated the Human Rights Code (the **Code**);
2. you must prove the remedy you want. It is not enough to prove that the respondent discriminated against you. You must prove what happened to you as a result of the discrimination.

List the facts you need to prove.

Did the respondent agree with any of the facts you need to prove? Make a list of the agreed facts.

Then make a list of the evidence you have to prove each fact.

Suppose your complaint says that the ABC Company fired you because you are pregnant, and you are asking for money for wages you lost and for injury to your dignity, feelings and self-respect.

You would prepare an outline like this:

FACT #1: ABC company fired me because I was pregnant.

EVIDENCE:

- I will say that on July 10, 2001, I told my manager I was pregnant.
- ABC company agrees that they fired me on July 11, 2001.
- My record of employment says "pregnant" as the reason I lost my job.
- My co-worker Jana Stevens will say that my manager told her that he had safety concerns about me working while I was pregnant.

FACT #2: I lost \$5,000 wages because of the discrimination (and I "mitigated my losses" by looking for another job).

EVIDENCE:

- My pay stubs show I earned \$2,500 per month
- I tried to find other work - I have photocopies of all the applications for work I sent, and notes of all the places I called looking for work. It took me two months to find other work.

FACT #3: I suffered injury to my dignity, feelings and self-respect.

EVIDENCE:

- I will say that I was really upset that ABC company didn't think I could do my job because I was pregnant.
 - My husband saw how upset I was.
-

If you are a **respondent**:

At the hearing, you will get to challenge the complainant's version of what happened. List the parts of the complainant's case that you want to challenge. Then list the evidence you have to challenge each part.

If you have a defence to the complaint, you will need to prove it at the hearing. List the facts you need to prove and the evidence you have to prove those facts.

Suppose you are responding to a complaint that you discriminated against an employee on the ground of disability. The complainant says that you would not change a job duty (requiring that he type orders) after he was diagnosed with carpal tunnel syndrome. He says you fired him when he couldn't do the job.

Suppose you have agreed that the complainant had carpal tunnel syndrome, but you say that he quit. You also say that you have a defence of "bona fide occupational requirement" for requiring him to type orders.

You would prepare an outline like this:

CHALLENGE to complainant's case: I didn't fire Peter. He quit.

EVIDENCE:

- I will say that it is true that I said I couldn't change Peter's job duties. I was trying to talk to him about taking time off, and he got really angry. He shouted at me and left.
- Gerry who works next door will say that he heard the argument.

DEFENCE: I have a "bona fide occupational requirement".

FACTS: I required Peter to type in the orders because to run a delivery business efficiently, the orders need to be tracked on the computer system. I run a small company and there was no one else who could do the typing. I did everything I could reasonably do for Peter to keep his job.

EVIDENCE:

- I only have one employee, and typing is half the job. I think Peter would agree with this. Also, my sister, Susan, will say that she does the job when Peter is on holiday, and she knows about the job.
- I will say that I suggested Peter take a leave until he could work again.
- I will say that I couldn't think of any other option that would work, and then Peter quit.

(b) Prepare your story

You will likely be the main witness for your case. That means you will need to tell your story. You should prepare what you will say.

Usually the best way to prepare to tell your story is by organizing it in the order the events actually happened. Think about how you would explain the case to another person who doesn't know you or the other people involved. Make a list of all the points you want to cover.

(c) Identify your witnesses

You need to decide who you want to call as a witness. Review your outline. Are there people who saw the event? Are there people who can confirm your version of the events? Are there people who wrote letters or notes that support your point of view? These are the people who you should call as your witnesses.

Try to think of people who have personal knowledge of the facts you want the tribunal member to know. Evidence from people with personal knowledge is more reliable and will help your case more than evidence from people who can only tell the tribunal something they heard from someone else.

Suppose John heard the respondent say, "I won't hire people over 50", and that John told Sally what he heard. You want John rather than Sally as your witness.

(d) Prepare your witnesses

At the hearing, you will ask your witness the questions you want them to answer to prove your case. This is called **direct examination**.

Think carefully about the questions you will ask your witnesses to get the evidence you need. Write the questions down.

Don't ask questions that suggest the "right" answer. These are called "leading questions" and can be objected to in direct examination. Instead, you should ask "open questions" that allow the witness to put their evidence in their own words.

Do not ask your witness, "Did you hear the complainant Sarah Chan tell me that she wouldn't agree to any solutions I suggested to deal with her concerns?" Instead, you can ask, "Did you hear Sarah Chan say anything to me on her last day of work?" If the answer is "yes", you can ask, "What did she say?"

Don't hesitate to review the questions you plan to ask your witness with them prior to the hearing. It is alright for you to discuss the case with them. What you are not to do is tell your witness what to say.

Note

If you wish to have your witness testify by phone, tell the other parties and the tribunal. If the other parties object, the tribunal will decide whether or not to hear the evidence by speaker phone.

Note

Witnesses are asked to make a solemn promise to tell the truth. If your witness wants to swear an oath using a religious text, you must arrange to bring the text to the hearing. If you want to see a copy of the solemn promise in advance of the hearing, please contact the tribunal.

Review with your witnesses what happens at a hearing beginning on page 13 of this guide.

(e) Summons your witnesses if necessary

If you have witnesses, they probably will agree to come to the hearing to testify on your behalf voluntarily. However, if you have any doubt about a witness's willingness to attend or if a witness would prefer to be summonsed (for example, to show it to their employer to get time off work), you must deliver a summons to them.

Note

The tribunal cannot summons a person outside British Columbia.

You can get a summons by writing to the tribunal. Tell the tribunal:

- the name and address of the person you want to attend your hearing as a witness
- if you want that person to bring documents or other things (list what you want them to bring to the hearing)

The tribunal will send you a summons for each witness you have named. You are responsible for "serving" the summons on the witness. This means that you must hand the summons directly to the witness or leave it at their home, or have another person serve the summons on the witness.

There is no requirement under the Code to pay witnesses for coming to give evidence. Some collective agreements and employment policies say that an employee's wages will be paid if they are summonsed to give evidence.

(f) Prepare your documents

You need to decide what documents you want the tribunal member to consider. You should consider who is the best person to tell the tribunal member about the document.

The best person to tell the member about, for example a letter, is the person who wrote the letter or the person who received it. That person can identify the document for the tribunal member by saying they wrote it, or signed it, or received it.

You must bring several copies of each document to the hearing:

- one for the tribunal member
- one for your witness
- one for each of the other parties
- one for you

(g) Expert Evidence

In some cases, the parties want to call an expert witness to give evidence on a particular topic.

You may want an expert to testify about the physical limitations or impact of a particular disability on an individual.

The tribunal member may accept a witness as an expert if they have specialized knowledge because of their education or experience.

If you intend to call an expert witness, you should advise the tribunal and the other parties at the pre-hearing conference, or as soon as possible. Rule 33 of the tribunal's Rules of Practice and Procedure set out specific time limits for when you must deliver either the summary of your expert's evidence or the actual expert report. The tribunal's rules regarding expert evidence are briefly set out here. Contact the tribunal if you would like a copy of Rule 33.

If you intend to have the expert appear at your hearing you must deliver a summary of what the expert's

evidence will be to the other parties at least 60 days before to the hearing.

If you intend to give the tribunal member a written report and not have the expert appear at the hearing you must provide the other parties with a copy of the expert's report at least 60 days prior to the hearing. Note that a party who receives an expert report can require that the expert appear at the hearing for the purpose of cross-examination.

A party who receives an expert report or summary has 30 days to deliver their own expert report or summary. There is also a chance to reply to a response report or summary. A party who wants to deliver a reply report or summary must contact the tribunal.

(h) Prepare your opening statement

Before hearing any evidence, the tribunal member will give the parties an opportunity to make an opening statement. You should prepare your **opening statement**, outlining what witnesses you will call and what facts you intend to prove. You can use your outline to prepare your opening statement.

An example of an opening statement by the complainant in the example on page 4 of this guide, might be:

Madam Chair, my human rights complaint is that the Respondent, ABC Company violated section 13 of the Code when the boss fired me on July 11 because I was pregnant.

I will give evidence about my employment with ABC Co, my discussion with my boss about my pregnancy and my firing. I will also give evidence about my response to losing my job, the impact it had on me and my efforts to find another job.

I will be calling two witnesses, my co-worker Jana Stevens and my husband.

I will be submitting documentary evidence which will include my Record of Employment, my pay stubs and proof of my efforts to find work. I have already provided all of my documents to the respondent.

I am seeking a remedy of wage loss in the amount of \$5,000 and an award of damages for injury to dignity and self-respect.

An example of an opening statement by the respondent in the example on page 6 of this guide might be:

Mr. Chair, I did not fire the complainant, Peter Jefferson. I also have a bona fide occupational requirement defence for requiring Mr. Jefferson to type in the orders.

I will give evidence about the requirement to type the orders, about what happened when Mr. Jefferson told me he couldn't type the orders, and about what happened the day that Mr. Jefferson quit.

I will be calling two witnesses, my sister Susan Ozaki, who did Mr. Jefferson's job when he was on holiday, and Gerry MacDonald, who works next door to my delivery business.

My evidence will show that I did everything I could reasonably do for Peter to keep his job, but he got angry and quit before we could work anything out. I am asking for the complaint to be dismissed.

(i) Legal research

If any party wishes to do legal research the following sources are recommended.

Human rights decisions and discussion of human rights law can be found in the Canadian Human Rights Reporter, and other texts, available at court house libraries in Victoria, Vancouver, Prince George, Kamloops, Kelowna, Nanaimo, New Westminster, the Vancouver Public Library, and the University of BC and University of Victoria Law Libraries.

You can find copies of all B.C. human rights decisions at the Vancouver Courthouse Library and at the tribunal. Tribunal decisions are published on the tribunal Web site: www.bchrt.bc.ca

What happens at a hearing

A tribunal hearing is held in a room that has a table, or tables set up in a "U" shape. The tribunal member usually sits at the head of the table with the complainant on one side and the respondent on the other side. You may call the tribunal member Mr. Chair or Madam Chair.

In most cases, one tribunal member will hear the complaint. In some cases, a panel of three members will hear the complaint.

The hearings take place at the tribunal offices in Vancouver for Greater Vancouver complaints. For complaints outside Vancouver, the hearings will take place in rooms arranged by the tribunal, generally in the community where the complaint arose. You will receive a notice from the tribunal that tells you the time, date and place of the hearing. Hearings usually start at 9:30 a.m. and finish at 4:30 p.m. with a morning and afternoon break, and a lunch hour. If you have a special request about the hours of hearing or the number of breaks, you should advise the other parties and the tribunal in advance.

The tribunal member will start by outlining the process to be followed at the hearing. Usually, the process is as follows:

Introductions

The tribunal member will ask the parties to introduce themselves.

Preliminary matters

The tribunal member will deal with any preliminary matters that the parties raise.

A party might tell the member that one of their witnesses had a family emergency and would like to give their evidence by telephone instead of coming to the hearing in person.

Opening statements

The tribunal member will invite the parties to make their opening statements. The complainant makes the first opening statement. The respondent may go next, or may want to wait until the complainant's evidence is finished.

The evidence

The tribunal member will start by introducing the Complaint Form and the Response to Complaint Form as the first **exhibits** (documents accepted as evidence) in the hearing.

The tribunal member will invite the complainant to start their case. The complainant will usually be the main witness for their case and may call other witnesses.

When the complainant has finished presenting their case, the tribunal member will invite the respondent to start their case. The respondent will usually be the main witness for their case and may call other witnesses.

If the respondent has raised something new in their case, the tribunal member may give the complainant a chance to have a witness respond or put in another relevant document (called **rebuttal evidence**).

Witnesses wait outside

Except for the complainant and respondent, witnesses wait outside the hearing room before giving their evidence.

Solemn promise

The tribunal member will ask the witness to sit in the witness chair and to solemnly promise to tell the truth.

If a witness wants to swear an oath using a religious text, the party calling the witness is responsible for bringing the religious text.

The witnesses' evidence

If you are the witness, you must sit in the witness chair and solemnly promise to tell the truth. If you are unrepresented, you give evidence by telling the tribunal member your story. If you have called a witness, they give evidence by answering the questions you have prepared. This is the **direct examination**.

Documents

When you are the witness, you must give the tribunal member the documents that are relevant to your case.

If you decided that another witness is the best person to tell the tribunal member about a document, you will hand out the document (to the tribunal member, the witness and the other parties) when the witness is giving their evidence. You can ask the witness to identify the document for the member and then ask your questions about the document.

Keep a list of the documents (or other things) that the tribunal member accepts as evidence. This is because the member or parties may refer to the document by its **exhibit number**.

Cross-examination

After a witness has told their story, the tribunal member will ask them to answer questions asked by the opposing party or their lawyer or agent. This is called **cross-examination**. Leading questions that suggest the right answer are allowed in cross examination.

Question: "You couldn't actually hear what Mr. Singh said because of the noise from the factory, correct?"

Reply

The tribunal member will invite you to ask a few more questions if the cross-examination has raised a new issue you want to address. These questions are called the **reply**. If you are the witness, you can make a few more comments.

Tribunal member's questions

The tribunal member may also ask the witness some questions to make sure the tribunal member has understood the witness' evidence. After the tribunal member's questions, the parties will be given a chance to ask any questions that are connected to the tribunal member's questions.

Objections

If a party believes that the tribunal should not accept certain evidence, they will object. You can tell the tribunal member you object to certain evidence by interrupting the proceedings by saying, "I object". The tribunal member will ask you on what grounds you object. The most common reason for an objection is that the information does not relate (is not **relevant**) to a question the tribunal member has to decide.

After you have had a chance to say why you do not think the information should be allowed by the tribunal member, the other party will be invited to explain why the information should be accepted. You will be given a chance to respond to what the other party has said.

After listening to what the parties have to say, the tribunal member will "rule" on the objection — that is — decide whether to accept or exclude the evidence.

What if a witness doesn't come to the hearing?

If a witness does not come to the hearing, you will need to prove that you served the summons on the witness before the tribunal can take any steps to deal with their non-appearance. If you served the witness you will be able to say so under solemn promise. You should be able to say the date and place that you gave the witness the summons. If you do not personally know the witness, you must be able to say how you identified them. (For example, you looked at their driver's licence.) If

someone else served the witness the usual practice is for that person to provide "an affidavit of service."

Closing argument

After all the witnesses are finished, the tribunal member will invite the parties to make a closing argument.

A **closing argument** briefly summarizes the evidence that the tribunal member has heard at the hearing that supports your case. It usually includes references to other human rights cases, which are similar to the current case and support your point of view.

A closing argument can be written out and read or handed to the tribunal member.

If you are representing yourself at a hearing, the tribunal member will understand that you can't be expected to present a legal argument that would be presented by a lawyer. The tribunal member will consider the law relevant to your case whether or not you specifically refer to it. If you want to refer to an earlier decision of the tribunal, another human rights tribunal decision or a court decision, you should have a copy of the decision to give to the other parties and the tribunal member.

There are a number of decisions that you do not need to photocopy and provide to the tribunal member. You can contact the tribunal for that list of decisions.

If you are a complainant, you should tell the tribunal member why you think there has been a violation of the Code and how you think your evidence supports your case. You should conclude by stating what remedy you think is appropriate in your circumstances.

If you are a respondent, you should tell the tribunal member why you think the complainant has not proved a violation of the Code and/or that you have proved a defence to the complaint of discrimination. You should conclude by stating your position on the complainant's request for a remedy.

Both parties may need to say why the tribunal member should believe their witnesses and why the opposing party's witnesses should not be believed.

When to Expect a Decision

Following final submissions, the tribunal member may give an oral decision or may adjourn to prepare a written decision.

The tribunal member will dismiss the complaint if he or she finds that it is not justified. If the tribunal member finds that the complaint is justified, they will order a remedy for the complainant.

The tribunal gives the parties copies of the decision before the decision is made public.

Depending on the complexity of the case, parties should be prepared to wait several months for written decisions.

Tribunal decisions are published on the tribunal's Web site and are frequently reported by legal reporters, such as QuickLaw and the Canadian Human Rights Reporter, including on their Web site.

Where to Get More Help

If you need help or legal advice you should contact a lawyer or other expert advisor. Assistance may be available at:

BC Human Rights Clinic

Vancouver Region
Suite 1202-510 West Hastings St.
Vancouver, BC V6B 1L8
Phone: (604) 689-8474
Fax: (604) 689-7511
Toll Free: 1-877-689-8474

BC Human Rights Coalition

Vancouver Island Region
418-620 View St.
Victoria, BC
Phone: (250) 382-3012
E-mail: vihrc@telus.net

The Law Centre

Third Floor-1221 Broad St.
Victoria, BC V8W 2A4
Phone: (250) 385-1221
Fax: (250) 385-1226

UBC Law Students' Legal Advice Program

Room 158, 1822 East Mall
Faculty of Law
University of British Columbia
Vancouver, BC V6T 1Z1
Phone: (604) 822-5791

Western Canada Society to Access Justice

Phone: (604) 878-7400
Fax: (604) 324-1515
Web site: www.accessjustice.ca

You can also find legal information about human rights on the following Web sites:

BC Human Rights Tribunal
including links on the Web site
www.bchrt.bc.ca

B.C. government Web site
www.ag.gov.bc.ca/programs/hrc/index.htm

Canadian Human Rights Reporter
www.cdn-hr-reporter.ca

This guide is one in a series of guides available from the tribunal or your local Government Agent's office. The titles are:

- 1 The BC Human Rights Code and Tribunal
- 2 Making a Complaint
- 3 Responding to a Complaint
- 4 The Settlement Meeting
- 5 Getting Ready for a Hearing

The tribunal also has a series of information sheets available from the tribunal or your local Government Agent's office. (See contact information below.)

BC Human Rights Tribunal

1170 – 605 Robson Street

Vancouver, BC, V6B 5J3

Phone: (604) 775-2000

Fax: (604) 775-2020

TTY: (604) 775-2021

Toll free: 1-888-440-8844

Web site: www.bchrt.bc.ca

To find the British Columbia Government Agent's office nearest you, call the tribunal at one of the numbers listed above, or contact Enquiry BC for assistance, toll free, at: 1-800-663-7867. You can also check the Government Agents' Web site at: www.governmentagents.gov.bc.ca