



# Canadian Human Rights Tribunal

## Annual Report 2020





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# TABLE OF CONTENTS

Chairperson’s Message ..... 2

What We Do ..... 4

How the Tribunal Works Under the *Canadian Human Rights Act* ..... 6

Parties Before the Tribunal and Avenues of Judicial Review and Appeal..... 8

Tribunal Inquiry Process and Judicial Review ..... 9

Tribunal Caseload from 2016 to 2020 ..... 10

Significant Tribunal Decisions ..... 15

Tribunal Activities ..... 18

Members of the Tribunal ..... 21

For Further Information ..... 22

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## **About the cover**

The images on the cover of this Annual Report reflect some of the lived realities of 2020: the wearing of masks and increased use of hand sanitizer; the use of videoconferencing, such as in this image of CHRT members and Secretariat staff; and the empty streets of downtown cores, with millions of Canadians working from home.

## **Image credits**

The stylized bird and hand symbol at the centre of the cover is an award-winning international Human Rights logo created by Predrag Stakić in 2011 (<http://humanrightslogo.net>), copyrighted for free use. Arrayed along the oval line to the right of that symbol are a series of four images of the pandemic. The first, second and fourth images were downloaded from Unsplash (<https://unsplash.com/>). Credits: Anshu A (hand sanitizer and mask), Laura Makaltses (masked youth across the world) and Robbie Palmer (deserted downtown streetscape) respectively. The Zoom meeting photo in the third image was taken by the Canadian Human Rights Tribunal (Crown copyright, 2021).

# CHAIRPERSON'S MESSAGE



As the Chairperson of the Canadian Human Rights Tribunal, I have the honour to present our 2020 Annual Report to Parliament and to all Canadians. This is the seventh and final Annual Report that I will submit to Parliament as the Chairperson of the

CHRT. As I write this message, there are less than six months remaining in my seven-year appointment.

The Canadian Human Rights Tribunal is an adjudicative body that hears complaints of discrimination under the *Canadian Human Rights Act* (CHRA). We are governed by the laws enacted by Parliament and subject to interpretations of those laws by superior courts. Administrative tribunals, like the CHRT, were created to provide access to justice that is expedient, timely, accessible, and administered by subject matter experts.

In my first report to Parliament in 2014, I noted the criticism that human rights tribunals sometimes receive in the broader population. I stressed that our ongoing preservation and commitment to human rights depends on us making decisions that are always transparent, justifiable and intelligible, and that reflect the values of a broad cross-section of Canadians. I declared that enhancing the credibility and the reputation of the CHRT would be one of my highest goals in the years ahead. As I look back on my term in office, I feel a sense of satisfaction that we have made great strides in this direction.

In 2015, we published a comprehensive online guide to assist parties before us. It includes sample documents to assist self-represented parties and even legal counsel.

In 2016, the CHRT began the long-overdue process of bringing our Rules of Procedure into Regulation. It was a cumbersome project, but the new Rules are now just a matter of weeks away from their final publication in the *Canada Gazette*.

In 2016, I created the National Human Rights Tribunals' Forum by inviting our provincial and territorial counterparts to Ottawa for two days to exchange best practices, templates and training materials and to give general support to smaller tribunals doing similar work. The initial Forum was such a success that the parties agreed to come to Ottawa every two years. The NHRTF met again in 2018, but unfortunately the plans for 2020 needed to be postponed like almost everything else.

In 2017, we also moved from three to five full-time members based in Ottawa. As new members of the Tribunal were appointed, we greatly expanded and enhanced our on-boarding and training.

In 2018, we completed a project to upload four instructional videos to our website to de-mystify our work and the mediation and inquiry processes. In 2019, we began the preparatory work for our new mandates under the *Accessible Canada Act* and the *Pay Equity Act*. In 2020, we began work on a new case management system for the CHRT, which will be built by the IT department of the Administrative Tribunals Support Service of Canada. There were many other initiatives carried out at the CHRT over the last several years that have moved our institution towards more accountability and transparency, and always with the view that we are here to serve the parties before us.

Of course, 2020 will be the year that no one will forget quickly. In early March, there were signs that we might be

impacted by a new virus. The CHRT Secretariat quickly made work-at-home arrangements and social distancing protocols were put in place.

At first, we thought the call to “flatten the curve” might mean working from home for two to three weeks. We cancelled all in-person hearings and mediations that were scheduled in the weeks ahead. Initially, we were hopeful that everything would go back to normal and that missed events could be rescheduled. After a couple of months, it seemed clear that the lockdowns would be in place for some time. Like many other tribunals and courts, we considered the idea of online videoconferencing and found the Zoom platform quite suitable for our purposes. It facilitates break-out rooms for mediations and hearings, and for participants, there is no software to download and most of the functions are quite intuitive. The Tribunal’s goal has been to ensure that our virtual processes are easy to use, as parties may have uneven access to technology and online tools.

We started by conducting a few mediations online. We quickly shared our experiences and developed online training with members about holding hearings online. Our first videoconference hearing was held last July, and since then, the CHRT has conducted 10 hearings involving 54 days and 63 mediations online. This is not a full substitute for in-person adjudication. There are shortcomings and almost invariably technical glitches. However, for the most part, we have managed to maintain access to justice and keep files moving. Moreover, our online proceedings have managed to respect the principles of natural justice and remain fair. So far, there is no discernable backlog due to the COVID-19 disruption.

We are now approaching our one-year anniversary of “working from home” and if there is one upside to all of this, the pandemic has given the justice system an opportunity to collectively experiment with these new technologies. Their role in providing access to justice is undoubtedly here to stay. Notwithstanding our new experience, we remain cognizant that in-person mediations and hearings are the preferred forum for conflict resolution in most human rights matters.

Despite the disruption caused by COVID-19, the Tribunal was still productive in 2020 and managed to bring to a conclusion a large number of files. The Tribunal held 208 case management conferences to support parties to move forward to the hearing stage. We also held 22 in-person and 63 on-line mediation sessions (in respect of 110 complaints, of which 56 were settled, reflecting a 51% success rate). We sat for 62 hearing days, and we released 7 decisions based on the merits and 33 interim rulings. In total, the CHRT resolved 91 complaints in 2020. The Canadian Human Rights Commission referred 167 new complaints to us in 2020 (compared to 102 in 2019), increasing our year-end inventory of cases from 269 in 2019 to 345 in 2020.

Later this year, I will return to Vancouver. As I reflect on the last seven years of service, I feel a deep sense of pride in the work of this Tribunal. It has truly been an honour and a privilege to serve my country in this way and to play a small but important role in the administration of justice and support for human rights.

Of course, all this good work at the CHRT was not achieved alone. I have been supported by a fantastic team of dedicated public servants and members. While I thank all of them, three people deserve special recognition: **Greg Miller**, the long-serving head of the Legal Services Team, who shared his corporate knowledge and gave me straight advice every time I asked; **Judy Dubois**, from the Registry section, who always had the data ready and kept me well-informed; and our Executive Director and Registrar, **Amal Picard**, whose vast knowledge of the public service guided me through my steep learning curve. I remain thankful for her solid, candid advice over the years.

I am confident the CHRT will continue to do good work in the years ahead and that everyone can rely on the Tribunal to meet the expectations of Parliament and all Canadians.

**David L. Thomas**  
Chairperson

# WHAT WE DO

The Canadian Human Rights Tribunal (CHRT or “the Tribunal”) is a quasi-judicial body that serves several functions. It inquires into complaints of discrimination referred to it by the Canadian Human Rights Commission and decides whether the conduct alleged in the complaint is a discriminatory practice within the meaning of the *Canadian Human Rights Act*. The Tribunal can also review directions and assessments made under the *Employment Equity Act*. Moreover, the Tribunal will soon be empowered to hear certain appeals and referrals pursuant to the *Pay Equity Act* and certain appeals pursuant to the *Accessible Canada Act*.

## **CANADIAN HUMAN RIGHTS ACT INQUIRIES**

The *Canadian Human Rights Act* (CHRA) aims to give effect to the principle that all individuals should have an equal opportunity to live their lives unhindered by discriminatory practices based on race, national or ethnic origin, colour, religion, age, sex, sexual orientation, gender identity or expression, marital status, family status, genetic characteristics, disability or conviction for an offence for which a pardon has been granted or a record suspension has been ordered. It prohibits certain discriminatory practices to protect individuals in employment, in the provision of goods, services, facilities and public accommodations, and in the occupancy of commercial or residential premises.

Like a court, the Tribunal must be — and must be seen to be — impartial. It renders decisions that are subject to review by the Federal Court at the request of any of the parties. However, the Tribunal provides a less formal setting than a court, where parties can present their case without strictly adhering to complex rules of evidence and procedure. The Tribunal also offers mediation services where parties have the opportunity to settle their dispute with the assistance of a Tribunal member acting as a mediator.

The CHRA applies to federally regulated employers and service providers, including federal government departments and agencies, federal Crown corporations, chartered banks, airlines, shipping and interprovincial trucking companies, broadcasting and telecommunications organizations and First Nations governments.

## **EMPLOYMENT EQUITY ACT PROCEEDINGS**

The CHRT is also mandated to review directions and assessments made under the *Employment Equity Act* (EEA). The EEA requires employers under federal jurisdiction to engage in proactive employment practices to correct any underrepresentation in their workforce of four designated groups: women, people with disabilities, Indigenous peoples and members of visible minorities. When hearing a case under the EEA, members of the CHRT are constituted as an Employment Equity Review Tribunal. However, the Tribunal has not received a case under the EEA since 2002.

## **PAY EQUITY ACT APPEALS AND REFERRALS**

In 2018, Parliament granted a new mandate to the Tribunal under the *Pay Equity Act* (PEA). Under this legislation, most federally regulated employers will be required to establish pay equity plans that will identify and redress any gender-based discrimination in compensation practices experienced by employees in predominantly female job classes. The administration and enforcement of the PEA are the responsibility of the Pay Equity Commissioner, who is part of the Canadian Human Rights Commission. The Commissioner's decisions are appealable to the Tribunal. Furthermore, the Commissioner may refer any important question of law or question of jurisdiction to the Tribunal. The Tribunal will not receive any complaints under the PEA directly. The PEA is expected to come into force in 2021, with the first referrals or appeals to the Tribunal expected in 2022.

## **ACCESSIBLE CANADA ACT APPEALS**

In 2019, Parliament granted a new mandate to the Tribunal under the *Accessible Canada Act* (ACA). This legislation aims to ensure that everyone in Canada can participate fully in society. To do so, it requires federally regulated organizations to proactively identify, remove, and prevent barriers to accessibility for persons with disabilities. It targets barriers in employment, the built environment, information and communication technologies, other aspects of communication, the procurement of goods, services and facilities, the design and delivery of programs and services, and transportation. Under the ACA, organizations will be required to create and publish accessibility plans and to meet standards that will provide guidance on accessibility requirements.

Anyone who is negatively affected by a contravention of the new standards will have the right to file a complaint. The ACA establishes new structures and roles to deal with compliance and enforcement, including a new Accessibility Commissioner who will be part of the Canadian Human Rights Commission. The ACA provides a new mandate to the CHRT to decide appeals when either the complainant or the regulated organization disagrees with certain decisions made by the Accessibility Commissioner.

Other federal organizations, namely the [Canadian Transportation Agency](#), the [Canadian Radio-television and Telecommunications Commission](#), the [Canadian Human Rights Commission](#) and the [Federal Public Sector Labour Relations and Employment Board](#), will have distinct enforcement powers under the ACA.

The Tribunal will not receive any complaints under the ACA directly. The first appeals are expected at the Tribunal in 2023.



# HOW THE TRIBUNAL WORKS UNDER THE *CANADIAN HUMAN RIGHTS ACT*

Under the CHRA, Tribunal members conduct mediations, engage in case management, preside over hearings (alone or as a panel of three), issue rulings and render decisions. Parties to a proceeding include the complainant (an individual or group of individuals who filed the complaint), the respondent (the organization or person alleged to have engaged in a discriminatory practice), the Canadian Human Rights Commission and, at the discretion of the Tribunal, any other interested parties.

## **MEDIATION**

Parties to proceedings before the Tribunal have the option of trying to resolve the complaint through voluntary and confidential mediation. The goal of the mediation is to try to reach a solution to the dispute between the complainant and the respondent in an informal environment. If an agreement is reached at mediation there will be no hearing, and once a settlement is confirmed, the file is closed.

The mediator is a neutral and impartial member of the Tribunal with expertise in human rights matters, whose role is to assist the parties in resolving the complaint through the negotiation of a settlement agreement. The mediator facilitates discussions between the parties and ensures that they occur in an atmosphere of good faith, courtesy and respect. The mediator has no power to impose a solution or agreement. If no solution or agreement is reached at mediation, the complaint moves to case management.

## **CASE MANAGEMENT**

Before proceeding to a hearing, Tribunal members engage in case management to resolve a variety of preliminary issues. Case management conference calls with all parties are often used to explain the Tribunal's process to parties, to narrow the issues in dispute, to resolve disclosure issues, to explore agreed statements of facts and to settle any other preliminary matters, such as hearing dates and venue. If necessary, the Tribunal will rule on procedural disputes. Case management aims to ensure an efficient and fair inquiry process, and to engage the parties to address any issues collaboratively, as they prepare for their hearing.



*“The goal of the mediation is to try to reach a solution to the dispute between the complainant and the respondent in an informal environment.”*



## **HEARING**

At the hearing, the parties to the complaint are given the opportunity to present their witnesses' testimony, other evidence and argument to the Tribunal. The objective of the hearing is to allow the Tribunal to hear and weigh competing evidence and arguments directly, so it can determine, on a balance of probabilities, whether or not discrimination has occurred. At the hearing, the parties may also present evidence and submissions on the appropriate remedy to be ordered by the Tribunal, in the event the complaint is substantiated. The length of the hearing depends on factors such as the complexity of the case, the number of witnesses and the volume of documentary evidence.

## **RULINGS**

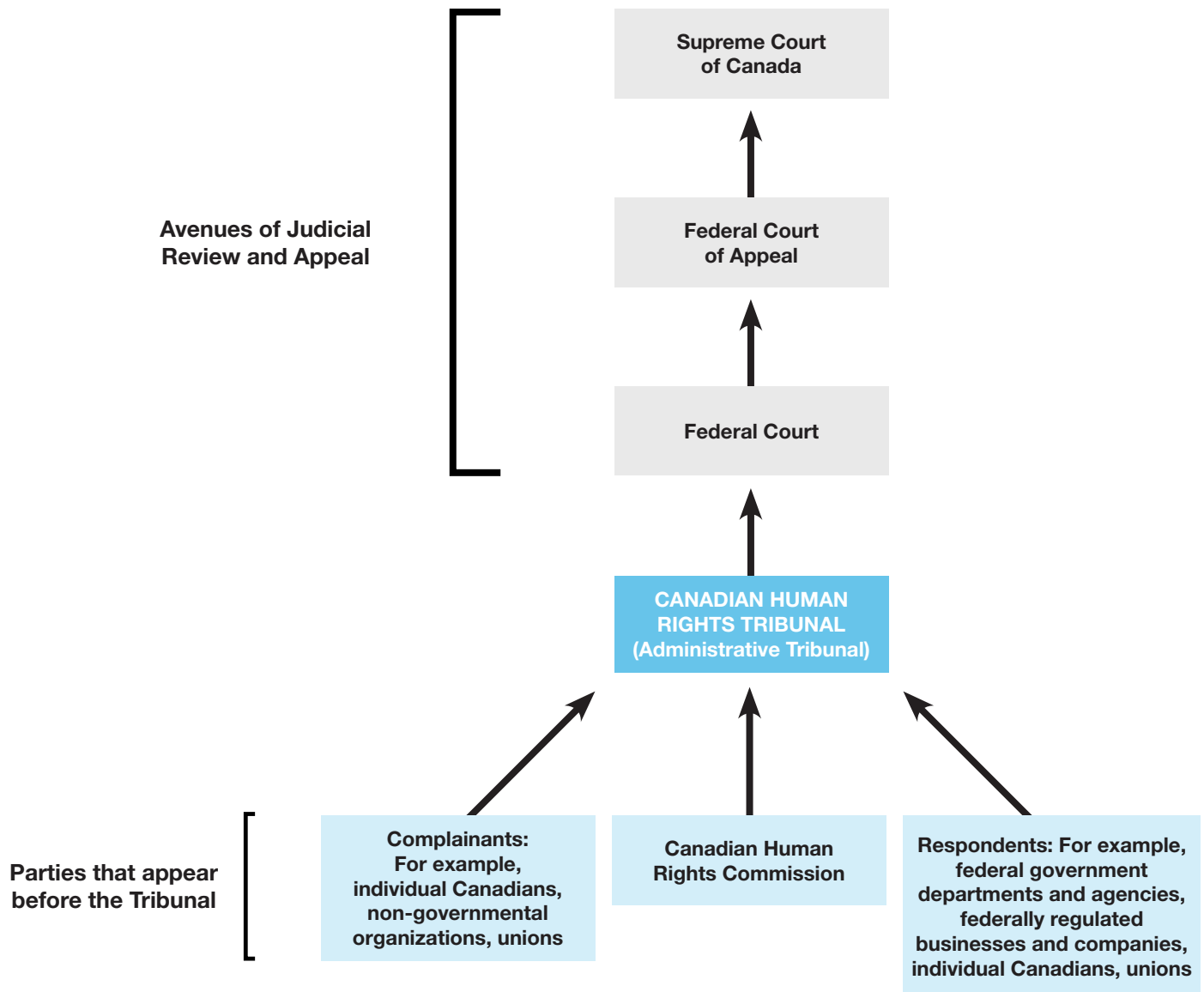
All sets of adjudicative reasons issued by the Tribunal that do not qualify as "decisions" (i.e., they do not answer the question of whether a discriminatory practice occurred) are classified as rulings. Rulings are usually issued in response to a preliminary motion raised by one of the parties during pre-hearing case management, but they can occur at any stage of the process.

For example, a ruling would be issued when a motion is brought seeking dismissal of the complaint for lack of jurisdiction, abuse of process, delay, or irreparable breach of fairness. Rulings are also issued in response to motions for some type of procedural or evidentiary order, such as orders for disclosure of documents, amendment of the allegations, or confidentiality measures.

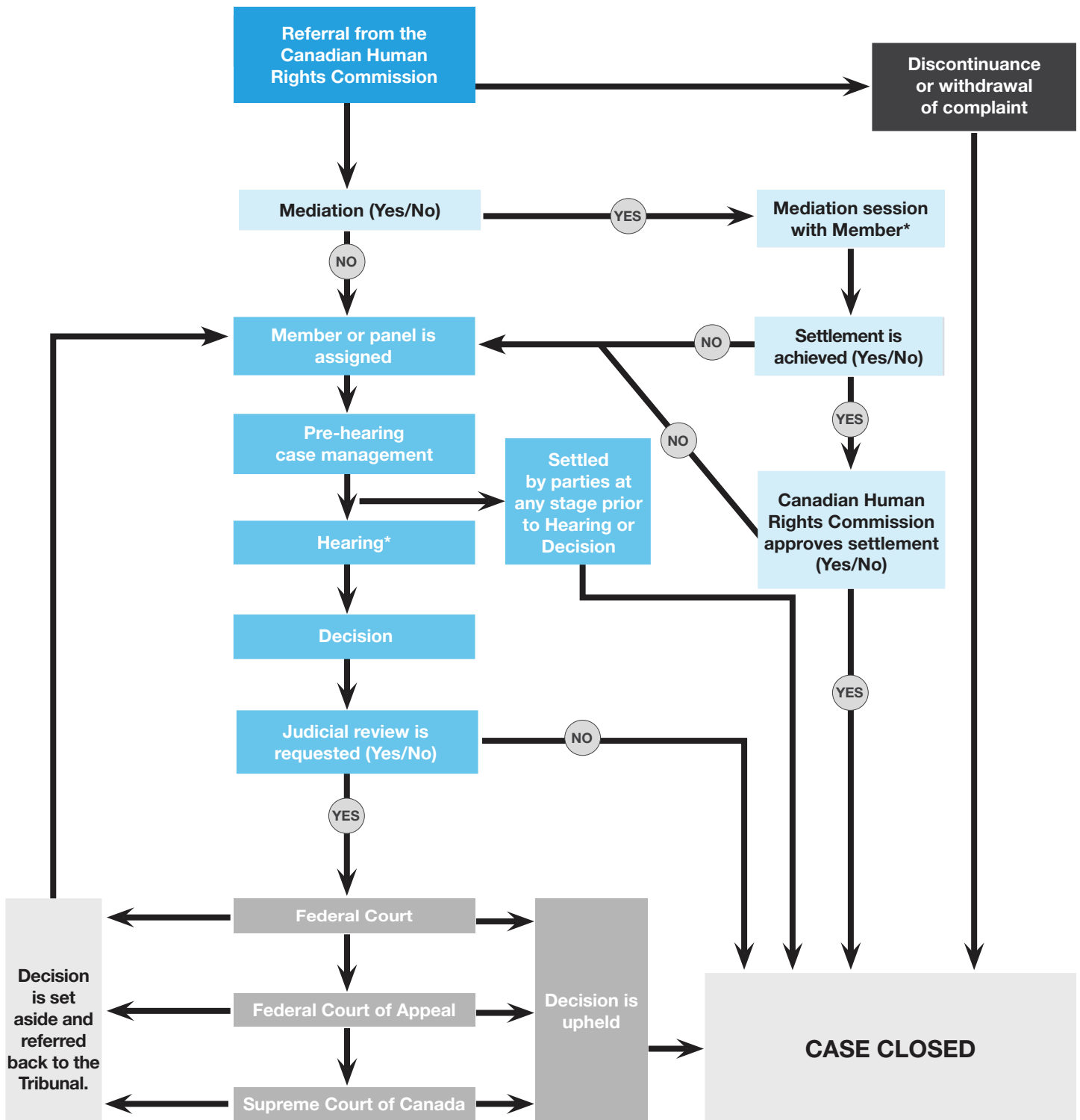
## **DECISIONS**

For the purpose of this report, a decision is defined as a set of adjudicative reasons issued by a member or panel of the Tribunal following a hearing, which ultimately answers the question of whether a discriminatory practice occurred in a given case. If a complaint is substantiated, the decision may also include an order for compensation, restitution and a remedy to rectify the discrimination. Sometimes a hearing may be split up to hear submissions on remedies after the liability decision has been made.

# PARTIES BEFORE THE TRIBUNAL AND AVENUES OF JUDICIAL REVIEW AND APPEAL



# TRIBUNAL INQUIRY PROCESS AND JUDICIAL REVIEW



\* May be held in person or by videoconference.

# TRIBUNAL CASELOAD

## *from 2016 to 2020*

This section of the *2020 Annual Report* presents detailed statistical information about the complaints handled by the Tribunal in 2020.

### CASELOAD

For the Tribunal, caseload is a way of looking at the volume of its active complaints at any given time or over a given reporting period. For the purposes of this annual report, caseload is calculated as the number of active cases carried over from the previous year, as well as all new active complaints referred by the Canadian Human Rights Commission (CHRC) during the current year, minus any complaints that were closed in the current year. As of December 31, 2020, the Tribunal's caseload stood at **345** active complaints.

The Tribunal started the year 2020 with **269** active complaints. After closing **91** complaints and receiving a total of **167** new complaints referred to it by the CHRC, the Tribunal ended the year 2020 with **345** active complaints.

Case Load and Complaints Carried Over (From January 1, 2016 to December 31, 2020)					
Description	2016	2017	2018	2019	2020
Complaints at start of the year	330	315	225	266	269
Complaints received from the CHRC	52	67	96	102	167
Complaints closed	67	157	55	99	91
Complaints at end of the year	315	225	266	269	345
<b>Variance (From January 1<sup>st</sup> to December 31<sup>st</sup>)</b>	<b>-15</b>	<b>-90</b>	<b>41</b>	<b>3</b>	<b>76</b>

It should be noted that the CHRC referred a group of **51** related complaints in 2020. All of these files are currently being held in abeyance pending a review process relating to security considerations that could lead to their dismissal by the Commission.

The active complaints carried over to 2021 are shown in their current status in the chart below, and are further explained as follows: **58** complaints were in case management; **78** complaints (including a group of 24 related complaints and another of 14 related complaints) were in mediation; **5** complaints were at the hearing stage; **6** complaints are active following a decision on the merits (2 to determine remedy and 4 in implementation of the remedy); and **32** were awaiting rulings or decisions. An additional **10** complaints are at the initial intake stage, **59** complaints are awaiting a response in other matters or information from the parties, and **2** complaints are awaiting CHRC approval of the mediated settlement. There are **95** complaints awaiting a decision from higher courts (including one concerning 86 related complaints) on rulings or decisions rendered by the Tribunal.

Breakdown of Active Complaints Carried Over to the Next Reporting Year (As of December 31, 2020)	
Description	2020
Initial intake	10
Files awaiting parties' response or outcomes in other matters	59
Mediation	78
Awaiting CHRC approval of a mediated settlement	2
Case management	58
Hearings and post-decision activity	11
Rulings/decisions pending	32
Tribunal decisions or rulings under judicial review	95
<b>Total</b>	<b>345</b>

For the **91** complaints closed in 2020, the chart below sets out how they were closed and is explained as follows: **1** was resolved by way of a ruling on a motion; **56** were resolved by way of settlement through mediation; **16** were resolved by way of settlement between the parties involved, without relying on the Tribunal’s mediation processes; **7** complaints were withdrawn; **5** were resolved by a decision of the Tribunal; **3** were resolved by a decision of a higher court; and **3** complaints were abandoned.

Breakdown of Closed Complaints (From January 1 to December 31, 2020)	
Description	2020
Settled at mediation	56
Settled between the parties	16
Complaint withdrawn	7
Decision rendered	5
Decision upheld by higher courts	3
Complaint abandoned	3
Ruling rendered	1
<b>Total</b>	<b>91</b>

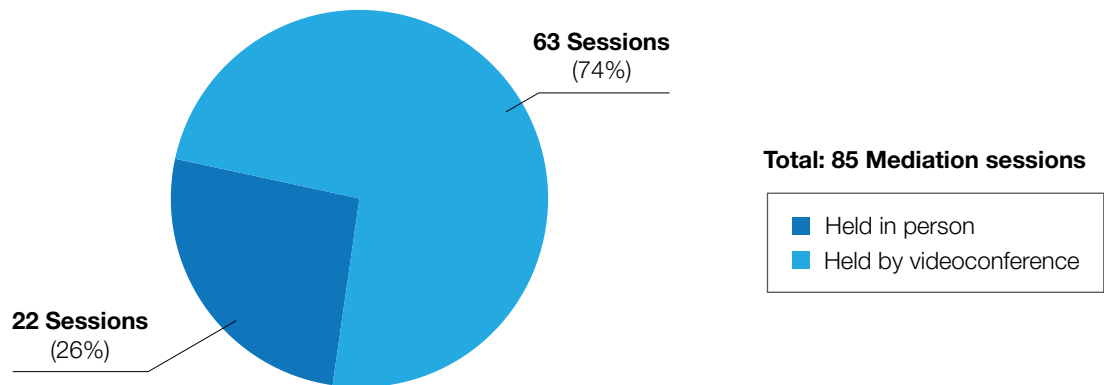
## VOLUNTARY MEDIATION

In 2020, the Tribunal continued to offer voluntary mediation. The Tribunal held **85** mediation sessions pertaining to 110 complaints. **Fifty-six** complaints (or 51%) were settled in this manner. Some complaints required more than one mediation session and some sessions involved more than one complaint. For example, a series of mediation sessions involved 15 complaints, and another involved 14 complaints.

The Tribunal held **70** pre-mediation conference calls with the parties to clarify issues and ensure a shared understanding of the logistics. This was particularly important because of the need to test the videoconference platforms and ensure that all parties could access the tools and be comfortable with them.

## Mediation Sessions

(From January 1 to December 31, 2020)



Given the COVID-19 pandemic restrictions, all mediations after March 6, 2020 were held by videoconference. Of the **23** complaints that were the subject of in-person mediation, **20** successful

settlement agreements were reached. There was a successful settlement reached in **36** of the 63 complaints that were mediated by videoconference.

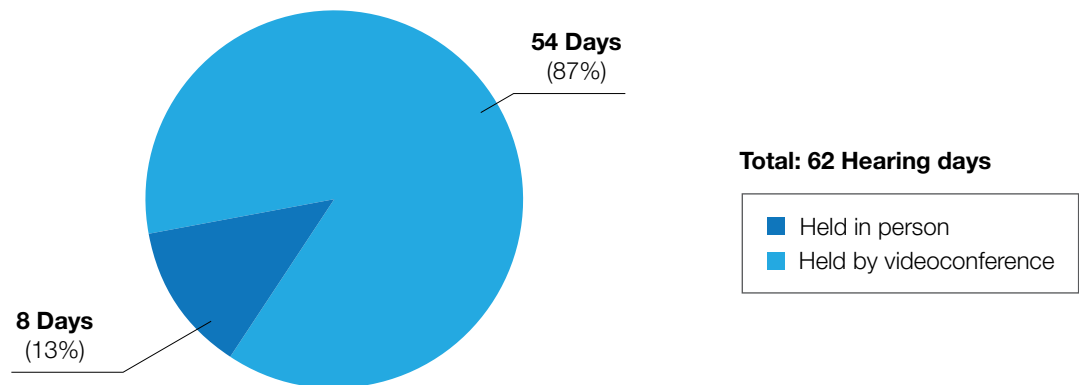
## ADJUDICATION

Notwithstanding the pandemic interruption, the Tribunal continued advancing and resolving complaints through its quasi-judicial adjudication processes. The CHRT had to adapt many of these activities because all staff and members were working remotely from home. The Tribunal

held **208** case management conferences, comprised of 194 teleconferences and 14 videoconferences. The Tribunal sat for **62** hearing days, **8** of which were held in person prior to the pandemic restrictions and **54** subsequently by videoconference. The number of hearing days and case management conferences decreased slightly in 2020 compared to other years.

### Hearing Days

(From January 1 to December 31, 2020)



## COMPLAINTS BY CATEGORY OF DISCRIMINATION

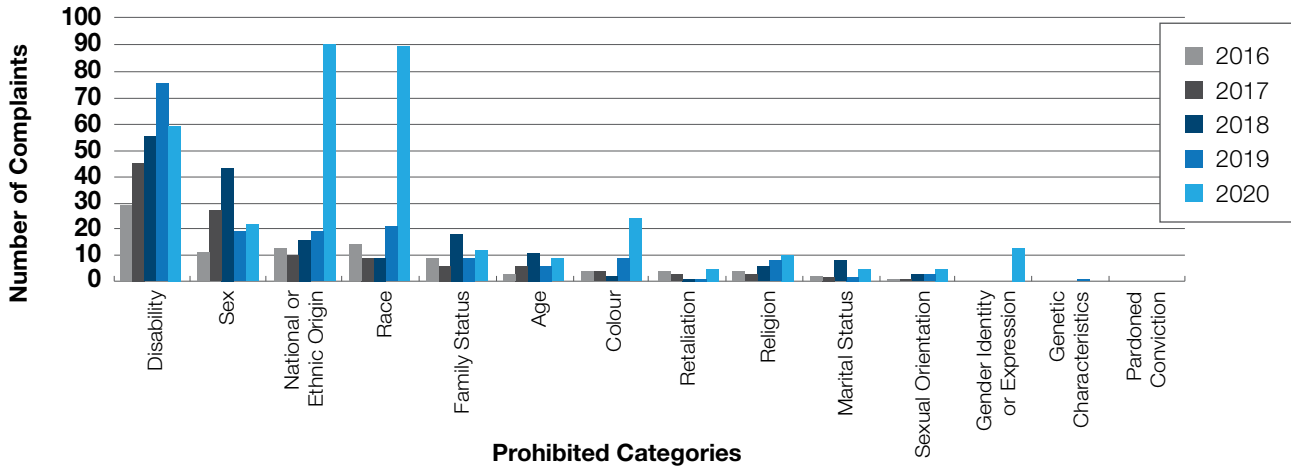
In every year over the last decade, the prohibited ground of discrimination which gave rise to the highest number of complaints was *disability*, usually by a large margin over the second highest. In 2020, there was an unusually high number of referrals based on *national or ethnic origin* (**90** complaints) and *race* (**89** complaints.) This is mainly explained by the fact that the CHRC referred a group of 51 related complaints based on both *race* and *national or ethnic origin* and that contain similar allegations. All of these files are currently being held in abeyance pending a review process relating to security considerations that could lead to their dismissal by the Commission.

There was a decrease in the number of complaints based on *disability* from **75** to **59** complaints. There were **24** complaints based on *colour* and **13** complaints based on *gender identity or expression*. Other grounds saw slight increases: complaints based on sex from 19 to **22**; *family status* from 9 to **12**; *religion* from 8 to **10**; *age* from 6 to **9**; *retaliation* from 1 to **5**; *marital status* from 2 to **5**; and *sexual orientation* from 3 to **5**. No complaints based on *genetic characteristics* or *pardoned convictions* were referred to the Tribunal in 2020.

A discriminatory practice is a practice based on one or more prohibited grounds or on the effect of a combination of prohibited grounds. That said, the discriminatory practice of retaliation, provided for at s. 14.1 of the CHRA, does not require a connection with a prohibited ground of discrimination.

## New Complaints by Prohibited Categories of Discrimination Per Year

(From January 1, 2016 to December 31, 2020)



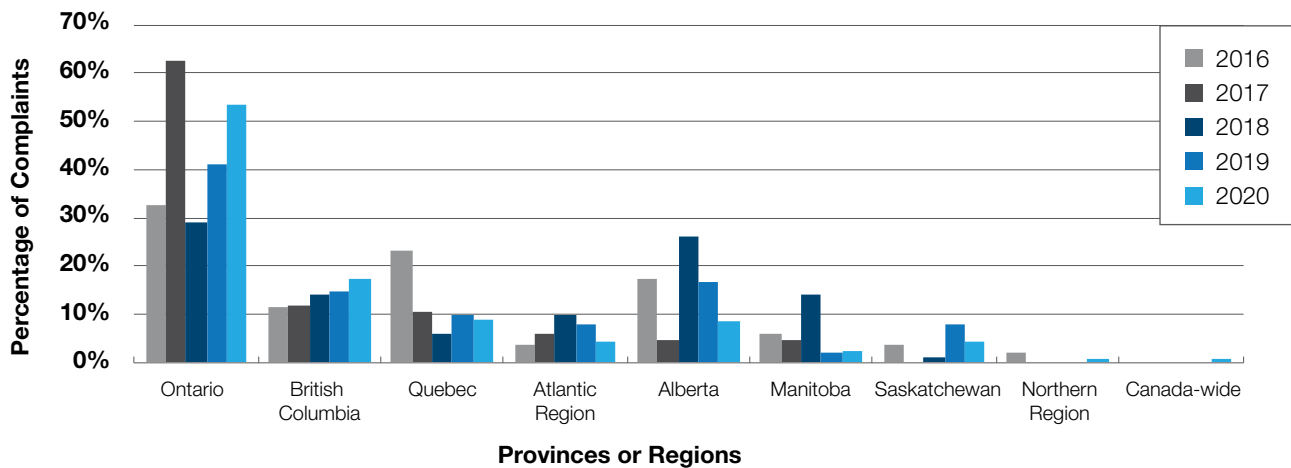
## COMPLAINTS BY PROVINCE OR REGION OF CANADA

Ontario accounted for **53%** of the total number of complaints in 2020 or 89 complaints; **17%** or 29 complaints were from British Columbia; **9%** or 15 complaints from Quebec; **8%** or 14 complaints from Alberta; **2%** or 4 complaints from Manitoba; **4%** or 7 complaints from Saskatchewan; **4%** or 7 complaints

from the Atlantic region (New Brunswick, Newfoundland and Labrador, Nova Scotia and Prince Edward Island); **1%** or 1 complaint from the Northern region of Canada (Yukon, Northwest Territories and Nunavut). The remaining **1%** or 1 complaint was considered Canada-wide because it dealt with matters that affected multiple regions.

## Complaints (%) by Province or Region Per Year

(From January 1, 2016 to December 31, 2020)





## COMPLAINTS BY TYPE OF RESPONDENT

The following table shows the number of complaints received by type of respondent, from 2016 to 2020.

Complaints Received by Respondent Type Per Year (From January 1, 2016 to December 31, 2020)					
	2016	2017	2018	2019	2020
Federal Government	14	25	32	34	96
Road and Marine Transportation	6	5	10	19	14
Financial Industry	1	5	3	6	11
First Nations Government	12	8	8	13	9
Air Transportation	2	5	6	8	8
Telecommunications	5	6	3	9	5
Rail Transportation	5	5	6	2	5
Federal Crown Corporation	2	3	4	1	5
Union/Association/Group of Individuals	1	0	11	2	4
Individual	0	1	10	1	4
Courier Services	0	2	0	3	1
Small Business	2	0	0	0	0
Other*	2	2	3	4	5
<b>Total by year</b>	<b>52</b>	<b>67</b>	<b>96</b>	<b>102</b>	<b>167</b>

\* "Other" in 2020 includes Food and Agriculture (1), Aerospace maintenance (1), Broadcasting (1), Towing (1), and Mining (1).

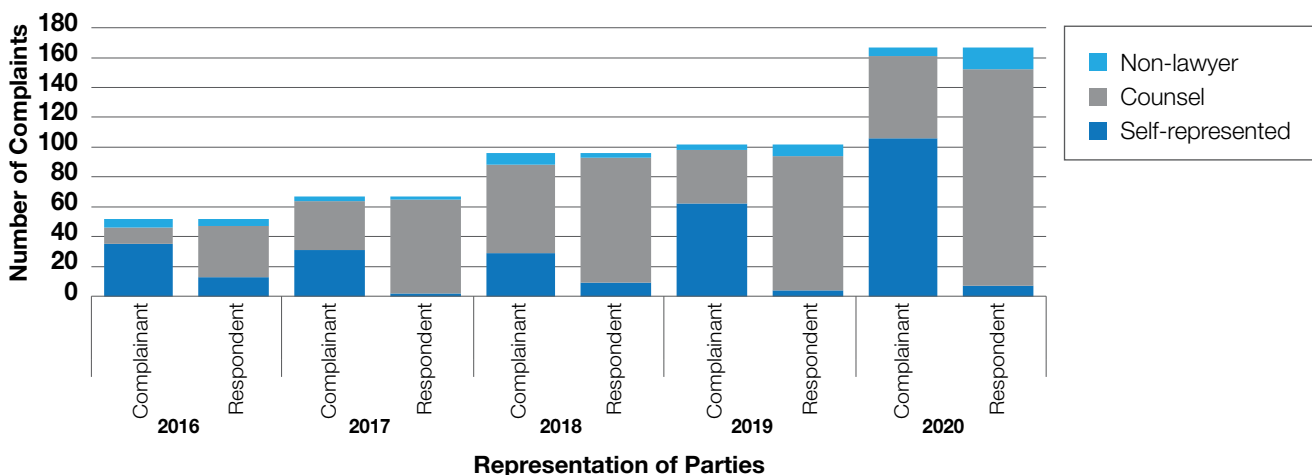
## REPRESENTATION OF PARTIES – COMPLAINTS RECEIVED

While **63%** of complainants represented themselves in 2020 (an increase of 2% from 2019), most of the respondents were represented by legal counsel.

Respondents retained legal counsel in **86%** of cases (a decrease of 2% from 2019). Non-lawyers represented parties in only a small percentage of cases: **4%** of complainants were assisted by a non-lawyer representative while **9%** of respondents were represented by a non-lawyer.

### Representation of Parties Per Year

(From January 1, 2016 to December 31, 2020)



# SIGNIFICANT TRIBUNAL DECISIONS

The following cases are illustrative of the variety of matters and complexity of issues our Tribunal members decide.

## ***Dulce-Crowchild v. Tsuut'ina Nation, 2020 CHRT 6***

<https://decisions.chrt-tcdp.gc.ca/chrt-tcdp/decisions/en/item/479528/index.do>

- Protected Grounds: Colour, National or Ethnic Origin, Race
- Discriminatory Practice: Employment – Termination of Employment

Ms. Dulce-Crowchild is originally from the Philippines. She lives with her family in the Tsuut'ina Nation's territory. Her husband and children are members of the Nation.

Ms. Dulce-Crowchild worked as a health care aide. She was a caregiver for an Elder in the Nation. The Nation paid her salary.

The parties agreed there was a discussion between Ms. Dulce-Crowchild's family and the Elder's grandson. The grandson said he felt threatened, feeling that Ms. Dulce-Crowchild's family was coming after him. The Tribunal found that Ms. Dulce-Crowchild's race and national origin were not factors in this interaction. After the discussion, the Elder told the Nation she did not want Ms. Dulce-Crowchild to work for her anymore. The Nation ended Ms. Dulce-Crowchild's employment.

Ms. Dulce-Crowchild believed the only reason she was dismissed was because she was not a member of the Nation. She felt like an outsider in the community. She said the Nation did not do a proper investigation before ending her employment.

The Tribunal noted that the *Canadian Human Rights Act* does not generally require an employer to investigate before terminating the services of an employee. The Act prevents discrimination in the employment relationship. Ms. Dulce-Crowchild had to prove her race or national origin played a role in the Nation's decision to end her employment. The Tribunal found that the Nation's decision to terminate her services without conducting an investigation had nothing to do with Ms. Dulce-Crowchild's race or the fact that she was not a member of the Nation.

Ms. Dulce-Crowchild said that an investigation would have supported her version of events because the Nation would not have believed the Elder's grandson. The Tribunal decided that an investigation would not have changed anything. The Nation ended Ms. Dulce-Crowchild's employment because the Elder did not want her services anymore. At the time, the Nation did not know why the Elder did not want Ms. Dulce-Crowchild's care. Furthermore, the Tribunal found the complainant's race and ethnic origin were not a factor in the Elder's decision. The Nation viewed the Elder as Ms. Dulce-Crowchild's employer and it did not have another job for Ms. Dulce-Crowchild when the Elder no longer wanted her care.

The Tribunal decided that Tsuut'ina Nation did not discriminate against Ms. Dulce-Crowchild.

***Taylor (on behalf of Taylor) v. Aboriginal Affairs and Northern Development Canada and Health Canada, 2020 CHRT 10***

<https://decisions.chrt-tcdp.gc.ca/chrt-tcdp/decisions/en/item/481123/index.do>

- Protected Grounds: Disability, Race, National or Ethnic Origin
- Discriminatory Practices: Adverse Differential Treatment, Denial of Service, Discriminatory Policy or Practice

The Tribunal decided that this case should continue. It should not be adjourned indefinitely.

Ms. Taylor and her adult son are members of the St. Theresa Point First Nation in Manitoba. Ms. Taylor cares for her adult son, who lives with his parents. He has cerebral palsy. In 2010, Ms. Taylor filed a complaint because she said Indigenous Services Canada and Health Canada were not giving her son the support he needs for his disabilities. She also said that the barriers her son faces are part of broader systemic problems with the way the government delivers services to First Nations adults with disabilities living on Manitoba reserves.

For over 5 years, the parties worked with a mediator from the Tribunal to try to resolve this case. They did not reach an agreement. Finally, the Tribunal told them the case had to move ahead to a hearing. It set deadlines for the parties to file their materials. The parties continued asking for more time because they were still trying to settle the case. They were granted several extensions but eventually the Tribunal Member told them the case could not keep being delayed. They then told the Tribunal that Indigenous Services Canada and Health Canada had agreed to settle all the financial claims with the Taylor family, but only if the Tribunal also agreed to adjourn the case indefinitely. If the Tribunal did as the parties asked, the government would also agree to fund a research project to help improve services for First Nations adults with disabilities in Manitoba.

The Tribunal refused the parties' request to put the case on hold indefinitely. It stated that the Tribunal process is not a bargaining chip in the parties' negotiations.

It is true that the Tribunal encourages parties to settle and to agree, but it is not true that the Taylor family's payments and the research projects depend on the Tribunal putting its process on hold indefinitely. The parties had more than 5 years to resolve the complaint and they were free to come up with a solution that was not tied to an indefinite adjournment. Only in very rare circumstances should the Tribunal suspend its deadlines with no end date. The Tribunal must advance cases promptly and fairly.

The parties reached a final agreement less than a month after this decision.

***Hugie v. T-Lane Transportation and Logistics, 2020 CHRT 25***

<https://decisions.chrt-tcdp.gc.ca/chrt-tcdp/decisions/en/item/483834/index.do>

- Protected Grounds: Age, Disability
- Discriminatory Practice: Employment – Termination of Employment

In this motion, Ms. Hugie requested to have the hearing conducted by videoconference. The Tribunal granted the request.

Ms. Hugie filed a complaint against her former employer, T-Lane Transportation and Logistics. She said that she was discriminated against in employment because of her age and physical disability.

The parties were ready to proceed to the hearing. However, the hearing dates had already been delayed twice and were finally set for August 31 to September 4, 2020. Due to the COVID-19 pandemic, Tribunal members could no longer travel, arrange for a hearing room or access their offices. The Tribunal and the parties explored various options

including using videoconference. The respondent, T-Lane Transportation and Logistics, objected to proceeding by videoconference. Accordingly, Ms. Hugie filed a motion to request that the hearing proceed this way.

After assessing the interest of the parties and the public as well as the prejudice that might result, the Tribunal granted the request. The Tribunal observed that the use of videoconferencing is an entirely appropriate alternative to an in-person hearing. It is an alternative that is fair and equitable, and one that protects the principles of natural justice and procedural fairness. A videoconference hearing still allows the Tribunal to assess and determine whether witnesses are credible. Furthermore, in the current context of the global pandemic, the Tribunal found that it is impracticable, if not impossible, to adjourn all hearings until they can be held in person. This would cause significant delays in the processing of cases before the Tribunal. Finally, the Tribunal noted that it is particularly important to proceed expeditiously in this matter because of Ms. Hugie's fragile health. T-Lane Transportation and Logistics did not demonstrate that a hearing by videoconference would cause it prejudice.

The hearing successfully took place by videoconference on the scheduled dates of August 31 to September 4, 2020. The Tribunal added two additional videoconference dates on September 23 and October 20, to complete the hearing.

### **Christoforou v. John Grant Haulage Ltd., 2020 CHRT 33**

<https://decisions.chrt-tcdp.gc.ca/chrt-tcdp/decisions/en/item/490471/index.do>

- Protected Grounds: Age, Disability
- Discriminatory Practices: Employment – Termination of Employment, Adverse Differential Treatment, Discriminatory Policy or Practice

For 33 years, Mr. Christoforou drove cement trucks for John Grant Haulage Limited. The job was dangerous and required a lot of skill, concentration, and alertness. Drivers were expected to work 45 hours per week.

In 2010, Mr. Christoforou called in sick to work. He was told he would be fired if he did not show up. He did not go in, and the company suspended him. Afterwards, his doctor wrote a medical note for him. It said that he could not work more than 40 hours per week due to stress and fatigue. He was later dismissed.

Mr. Christoforou said that the company discriminated against him based on disability and age.

The Tribunal found that the key issue was whether the company could have safely accommodated Mr. Christoforou. Instead of trying to figure out what he could do, the company took an “all or nothing” approach. Either he could drive with no restrictions or he could not work at all. They did not seek more information. They did not explore alternate arrangements. They did not ask to test him.

The company said that they simply could not consider accommodations for a driver with any medical restrictions. They claimed this was because of safety concerns. The Tribunal did not accept the company's argument. If an employer could cite safety as a reason not to engage in any efforts to accommodate, many other workers in “safety sensitive” jobs could be suspended or fired without any investigation into their actual abilities. To comply with human rights law, efforts to accommodate must be meaningful.

The Tribunal decided that John Grant Haulage Limited discriminated against Mr. Christoforou based on disability.

## **ADDITIONAL DECISIONS AND RULINGS**

Additional reasons for decisions and rulings are published in the [Decisions](#) section of the Tribunal's website.

# TRIBUNAL ACTIVITIES



This photo is a screenshot of a typical meeting held with CHRT Secretariat and full-time Members. Videoconferencing is a vital element in the CHRT's technological response to the COVID-19 pandemic, ensuring both effective internal operations and continuity of services to the Canadian public.

Given the impact of COVID-19 on its operations, the CHRT adapted its procedures and relied more on technology. The CHRT held its first virtual hearing in July 2020 by videoconference. The Tribunal also had to adapt some of its practices to respond to the new adjudication environment. For example, parties are now asked to submit all proposed hearing documents electronically, 45 days in advance, as opposed to providing paper copies on the first day of the hearing.

While the Tribunal had previously held remote mediations in particular circumstances, since March 2020, it has only held mediations by videoconference. Despite the changes in procedures, both Tribunal members and Secretariat

personnel ensured that proceedings remained accessible and fair. Assistance was provided to the parties, both through newly drafted guidelines and through hands-on orientation. These measures ensured that parties were equipped to participate virtually, and provided them with the opportunity to raise questions or concerns in advance of the videoconference proceedings.

## **ANNUAL MEMBERS' MEETING – DECEMBER 2020**

The Tribunal held its annual Members' Meeting on December 10 and 11, 2020. Given the restrictions imposed by the pandemic, this meeting proceeded, for



the first time, by virtual means. Members from across the country participated by videoconference to discuss issues of substantive law, effective management of document-heavy case files, as well as matters reflecting the current reality of adjudicating during a pandemic. Members were also provided with an update on changes to the Tribunal's internal operations.

## **OUTREACH**

In light of the current pandemic, the CHRT postponed or cancelled most of its outreach activities. However, in early 2020, while travelling on other business, the Chairperson had the opportunity to address the Allard School of Law of the University of British Columbia, the Law School of the University of Victoria, and the *Université du Québec à Montréal* (UQAM) to discuss the work of the Tribunal and to provide an overview of human rights in Canada.

The CHRT usually hosts the National Human Rights Tribunals' Forum, on a biennial basis, to offer an opportunity for representatives from federal, provincial, and territorial jurisdictions to discuss issues of common interest pertaining to human rights adjudication. This event was scheduled to take place again in June of 2020, but was eventually cancelled. It is now scheduled to be held again in 2022.

Vice-chairperson Jennifer Khurana has been the Chair of the Council of Canadian Administrative Tribunals (CCAT) since 2019. CCAT has developed a webinar series to help support the administrative justice community's response to COVID-19 and has also developed a repository of related resources for administrative tribunals. Throughout the year, Vice-chairperson Khurana also spoke on a variety of topics at virtual events, including reasons writing, online dispute resolution and tribunal responses to the challenges of COVID-19, as well as diversity, inclusion and decision making.

In recognition of the International Day of Persons with Disabilities (December 3rd), the CHRT and the Canada Transportation Agency (CTA) held joint lunch-and-learn sessions focusing on accessibility. For these sessions, the CHRT and CTA welcomed two guest speakers:

Kelly J. Serbu, Q.C., a practicing lawyer in criminal defence, personal injury and human rights cases, as well as Captain of the National Canadian Blind Hockey Team and President of Canadian Blind Hockey; and Gilles Ouellet, who provides assistance to students with disabilities at UQAM. Not only is Mr. Ouellet president of a Montréal field hockey club, but he is also a member of the first Canadian sound field hockey team. Both speakers graciously offered a glimpse of their personal experiences and views on accessibility to both CHRT and CTA members and personnel.

## **CANADIAN HUMAN RIGHTS ACT RULES OF PROCEDURE, PRACTICE DIRECTIONS AND CASE SUMMARIES**

For roughly 20 years, the Tribunal has been using a set of informally adopted rules published on its website. In 2020, the CHRT was finally able to complete key stages of the approval process leading to the enactment of official Rules. The official Rules were pre-published in the *Canada Gazette* and posted on the Tribunal website so that Canadians could comment on them. Feedback was received from various stakeholders and adjustments were made to the text. The official Rules of Procedure will introduce a number of changes to the informal rules in order to reflect new practices and provide additional guidance to parties. For instance, they allow for electronic service and filing, they require pre-filing of proposed exhibits, and they establish time limits for the issuance of decisions. The official Rules of Procedure are expected to be finalized and come into force in the first half of 2021.

### **Practice Directions**

In order to provide additional procedural guidance to parties, the Tribunal decided in early 2020 to create new Practice Directions dealing with four subjects:

- Adjournments
- Summoning Witnesses to Appear at the Hearing
- Withdrawing Complaints
- Requests by Non-Parties to Intervene at the Hearing

When the pandemic shut-downs began, the Tribunal also issued a special Practice Direction informing parties of how we were adapting our operations. Practice Directions are a useful tool to supplement Rules of Procedure. Unlike Rules, however, Practice Directions can include explanations that accompany the procedural requirements. In addition, Practice Directions can be made and amended quickly by the Tribunal itself, without the involvement of other government bodies.

The four Practice Directions listed above are currently being revised for plain and accessible language. We expect them to be publicly released alongside the new official Rules of Procedure.

### **Case Summaries**

In the ongoing effort to increase access to justice, in 2020 the CHRT began providing short, plain language summaries of all its merits decisions and for its significant rulings. The summaries are included at the top of each decision or ruling posted on the Tribunal's website.

### **PREPARING FOR THE PAY EQUITY ACT AND THE ACCESSIBLE CANADA ACT**

The implementation of both the *Pay Equity Act* (PEA) and the *Accessible Canada Act* (ACA) was delayed by the COVID-19 pandemic. Nevertheless, the CHRT's *Pay Equity Act* and *Accessible Canada Act* Steering Committee continued to meet on a regular basis to oversee preparatory work for both mandates.

To implement these mandates, the CHRT is reviewing and adjusting its resources to address the increased workload and the new demands. The CHRT Secretariat also increased its complement of personnel through the staffing of additional positions in its Registry; Legal Services; and Research, Renewal and Infrastructure teams.

Throughout the year, the Tribunal Chairperson and CHRT representatives participated in the *Accessible Canada Act* Council of Heads of Agencies and the *Accessible Canada Act* Collaboration Working Group, which were designed to make collaboration easier among the numerous agencies that share adjudicative duties under the ACA. This collaborative effort aims to ensure that claimants who contact any one of the agencies will be referred seamlessly to the organization that has jurisdiction over their particular claim.

In early 2020, the CHRT also began preparing new rules of procedure under the PEA. The aim of these rules is to provide guidance to parties, Tribunal members and staff on how to deal with appeals and referrals. A discussion paper seeking input was published on the CHRT website and circulated to stakeholders. Drawing on their feedback, the CHRT's Legal Services team began working with drafters from the Department of Justice, and it is expected that the proposed PEA Rules of Procedure will be published in the *Canada Gazette*, Part I, in the fall of 2021.



# MEMBERS OF THE TRIBUNAL

The CHRA specifies that a maximum of 15 members, including a Chairperson and a Vice-chairperson, may be appointed by the Governor in Council. By the end of 2020, the Tribunal had a total of ten members. Four full-time members, including the Chairperson and the Vice-chairperson, were based in the National Capital Region, and six part-time members were located elsewhere across Canada. Furthermore, there were five members whose appointments had expired but who were concluding inquiries, as is permitted under the legislation.

## FULL-TIME MEMBERS

	Name (Title)	Appointment Date	End of Term
1.	David L. Thomas (Chairperson)	2013-06-13*	2021-09-01
2.	Jennifer Khurana (Vice-chairperson)	2019-04-08	2026-04-07
3.	Gabriel Gaudreault	2017-01-30	2022-12-29
4.	Colleen Harrington	2018-01-29	2022-01-28

\* Note: David L. Thomas was appointed as a part-time member of the CHRT on June 13, 2013. Subsequently, he was appointed as Chairperson of the CHRT on September 2, 2014, for a seven-year term.

## PART-TIME MEMBERS

	Name	Province of Residence	Appointment Date	End of Term
5.	Marie Langlois	Quebec	2018-06-21	2023-06-20
6.	Edward Lustig	Ontario	2008-02-17	2023-06-20
7.	Kirsten Mercer	Ontario	2017-01-30	2021-12-29
8.	Alex G. Pannu	British Columbia	2015-06-18	2021-01-14
9.	Anie Perrault	Quebec	2015-04-30	2021-05-12
10.	Kathryn Raymond	Nova Scotia	2019-07-01	2024-06-30

## Members whose appointment has expired but who are concluding an inquiry that they have begun, with the approval of the Chairperson, as provided by section 48.2 (2) of the *Canadian Human Rights Act*.

	Name	Province of Residence	Appointment Date	End of Term
1.	Lisa Gallivan	Nova Scotia	2014-05-09	2017-05-08
2.	Matthew D. Garfield	Ontario	2006-09-15	2016-09-14
3.	Olga Luftig	Ontario	2012-12-13	2020-12-13
4.	Sophie Marchildon	Ontario	2010-05-31	2017-12-30
5.	George Ulyatt	Manitoba	2012-12-13	2020-12-13

# FOR FURTHER INFORMATION

**Executive Director and Registrar**

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