



# BC Human Rights Tribunal: The Direct Access Experience

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Presentation to the Canadian Association of  
Statutory Human Rights Agencies  
North West Territories  
June 17-19, 2007  
Heather M. MacNaughton, Chair



# Introduction

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- Brief history - where BC was in 2003
- Differences in BC system
- Why reform
- Current BC system
- Lessons learned



# History

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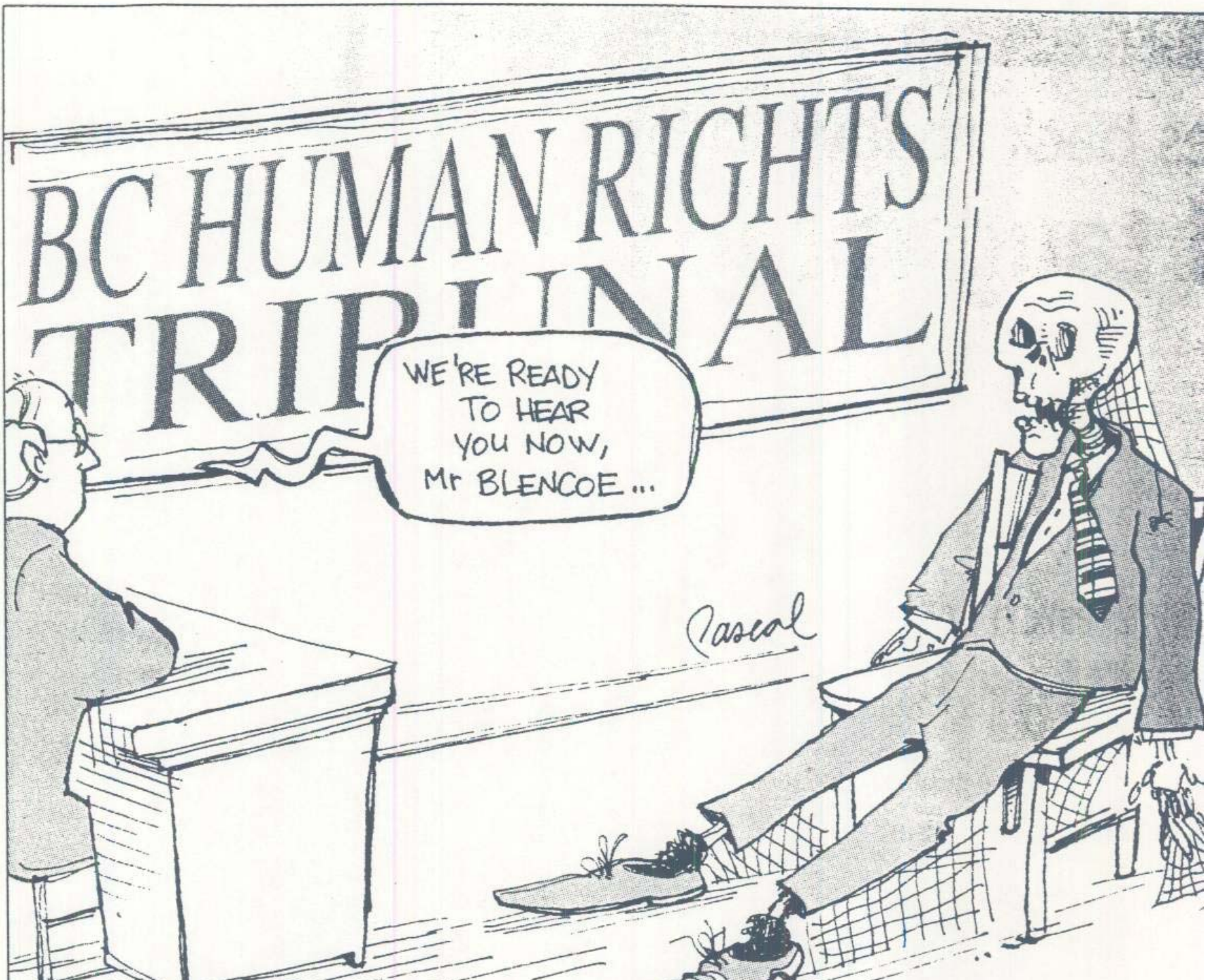
- 1953 - 1<sup>st</sup> protection for human rights in BC
- 1973 - comprehensive human rights statute enacted
  - Commission established
  - complaints adjudicated by Boards of Inquiry appointed by Minister
- 1984 considerable controversy – time of restraint
  - 5 person Human Rights Council established - accepted, screened, investigated, mediated and adjudicated
- 1993 Black Report looked at Council internal procedures
- 1994 Black Report recommended extensive statutory and administrative reform



# The System before reform

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- *Code* into force Jan. 1, 1997 - largely product of 1994 Black Report
- Created Commission, Tribunal and Advisory Council
- Separate adjudication from administration and education
- Model unique in Canada



# BC HUMAN RIGHTS TRIPTINIAL

WE'RE READY  
TO HEAR  
YOU NOW,  
MR BLENCOE...

*Pascal*



# How did BC differ from other Canadian Jurisdictions

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- BC commission did not “prosecute” case before Tribunal
- More “private system”
- Commission funded legal representation for complainants/some respondents at Tribunal
- Public interest function assigned to Deputy Chief Commissioner who “intervened” in cases of public interest – could, but never did, file systemic case
- Highest rate of referral to tribunal



# Differences continued

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- while delay a concern, primary reform driver was ideological – complainants and respondents unhappy with process
- Reforms part of August 2001 Administrative Justice Project – Core Services Review
- Human Rights Review published
- limited public consultation and debate about reforms
- General consensus - change was necessary
- Some cost saving generated



# BCHRT Direct Access Model

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- Amendments to Code proclaimed March 31, 2003
  - Commission eliminated
  - 6 month limitation period
  - Education function split – Ministry, Tribunal, Clinic
  - No investigation
  - No “gate-keeping” function – Tribunal dismissal power





# Staff at Tribunal

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- 8 f/t members and 1 f/t chair
- Registrar
- 2 fte legal counsel
- 7 fte case managers
- 1.6 fte inquiry officers
- Special projects coordinator
- Legal secretary
- Executive Coordinator assistant to Chair
- Receptionist



# Appointments Process

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- Members appointed after merit based Process
  - Application expressing interest –explain how work experience fits job
  - Written test – draft decision
  - Oral situational interview
  - Reference checks
  - “fit” interview with chair
  - Recommendation to AG
  - Appointment by LGIC – 5 year term



# Tribunal's Role

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- Transfer of some functions from the Commission
- Tribunal responsible for complaint processing
- Broad rule making power
- S. 27 dismissal power
- Dispute resolution services ADR/adjudication
- Approval of ameliorative programs
- Annual reports



# Complaints Process

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- Inquiry Officers
- The Clinics
- Government Agent's Offices
- Tribunal Website
- Detailed guides, information sheets



# Tribunal Guides

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- Tribunal and Code
- Filing a Complaint
- Responding to a Complaint
- The Settlement Meeting
- Preparing for Hearing
- Information Sheets –as needed



# Steps in Complaint Process

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- Complaint filed
- Screening
- Notification
- Time limit decision
- Response
- Application
- Streaming
- Settlement meeting
- Hearing



# Complaint filed

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- Complaint form received
- Time limit application form
- Request for early settlement meeting
- Clinic referral



# Screening

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- Screening for:
  - Completeness of form
  - Time limits
  - Possible jurisdictional issues
  - Sufficient facts to establish human rights complaint
- Complainant responds to any notices





# Screening Function of Tribunal

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- Grounds for dismissal:
  - Not within Tribunal's jurisdiction
  - Acts or omissions do not contravene *Code*
  - No reasonable prospect of success
  - Proceeding would not
    - Benefit the person, group or class
    - Further the purposes of the *Code*



# Screening cont.

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- Filed for improper motives/made in bad faith
- Appropriately dealt with in another proceeding
- Complaint out of time (unless accepted late by Tribunal)
- s. 27.5 – complainant fails to diligently pursue



# Notice of Complaint

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- Tribunal delivers Complaint form and accompanying forms to Respondent
- Advises of interest in early settlement meeting



# Time Limit Applications (complaint filed after 6 months)

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- Submission on time limit application
- Tribunal decision to accept complaint
- Notification of decision



# Responses

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- Response to complaint form filed
- Request for early settlement meeting



# Applications

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- Option of settlement meeting prior to filing response
- Complaint
  - Accepted for filing
  - Rejected under s. 22
  - Deferred under s. 25
  - Dismissed under s. 27



# Pre-hearing Application

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- Attempt to resolve prior to application
- Complete application form
- Schedule for submissions
- Affidavits may be required
- Applications: amend complaint or response, defer/dismiss complaint, add parties, intervenors, disclosure, adjournments, costs ...



# Streaming

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- Standard Stream
- Case-managed Stream
- Expedited Hearing Option
- Priority Scheduling Option
- Cases can move between streams





# Settlement Meetings

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- General rule all parties attend settlement meetings
- Options:
  - Mediation
  - Early neutral evaluation
  - Structured negotiations
  - Med/arb all or part of complaint
  - Other...



# Profile of Cases filed

	2004/05	2005/06	2006/07
Most common areas	<ul style="list-style-type: none"> <li>▪Employment 45%</li> <li>▪Services 24%</li> <li>▪Tenancy 9%</li> </ul>	<ul style="list-style-type: none"> <li>▪Employment 60%</li> <li>▪Services 19%</li> <li>▪Tenancy 6%</li> </ul>	<ul style="list-style-type: none"> <li>▪Employment 67%</li> <li>▪Services 26%</li> <li>▪Unions 6%</li> <li>▪Tenancy 5%</li> </ul>
Most commonly cited grounds	<ul style="list-style-type: none"> <li>▪Physical disability 16%</li> <li>▪Sex 13%</li> <li>▪Race 11%</li> <li>▪Mental disability 11%</li> </ul>	<ul style="list-style-type: none"> <li>▪Physical disability 24%</li> <li>▪Sex 15%</li> <li>▪Mental disability 14%</li> <li>▪Race 8%</li> </ul>	<ul style="list-style-type: none"> <li>▪Physical disability 41%</li> <li>▪Mental disability 23%</li> <li>▪Sex 17%</li> <li>▪Place of Origin 12%</li> </ul>



# 1st Year - 2003/04

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- 100 cases at Tribunal on March 31, 2003
- $\approx$  300 cases inherited from Commission
- 1,145 new cases
- Tribunal closed 600 cases – settlement, dismissal, order



## 2nd Year - 2004/05

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- 1,114 new complaints
- 1,039 complaints closed – settlement, dismissal, order
- Released 454 preliminary or final decisions
- More than 1/3 of hearings scheduled were complaints filed less than a year before



## 3rd Year - 2005/06

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- 1,131 new complaints
- 1,220 complaints closed – settlement, dismissal, order
- Released 620 preliminary or final decisions
- More than 1/3 of hearings scheduled were complaints filed less than year before (contrast unrepresented/represented)



## 4<sup>th</sup> Year - 2006/07

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- 1,018 new complaints
- 886 complaints closed – settlement, dismissal, order
- Released 606 preliminary or final decisions
- More than 1/3 of hearings scheduled were complaints filed less than a year before (contrast unrepresented/represented)



# Comparative Statistics

	01/02	03/04	04/05	05/06	06/07
Complaints filed	814 BCHRC	1,145	1,099	1,131	1,018
Complaints accepted	~ 125 referred to Tribunal	947	822	781	796



# Comparative Statistics

	02	03/04	04/05	05/06	06/07
# of hearings	32	25	39	53	76
% complaints upheld	63	68	49	40	36





# Comparative Statistics

	Commission 01/02	03/04	04/05	05/06
Staff	47	24	25	26
Cost (actual)	4.75 (Tribunal 1.20) (Total 5.95)	2.76 (Clinic 1.9) (Total 4.66)	2.9 (Clinic 1.93) (Total 4.83)	3.10 (Clinic 2.03) (Total 5.13)
	2002/2003 5.76 total			



# Comparative Statistics

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- 2004/05 - 508 decisions released, 469 (92%) preliminary applications
- 2005/06 – 620 decisions released, 567 (91%) preliminary applications
- 2006/07 – 606 decisions released, 524 (86%) preliminary applications



# Lessons Learned – benefits of direct access

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- Faster, elimination of investigation speeds process
- Complainants control the process
- Commission screening decisions formerly made privately, between parties now accessible and transparent
- Some cases that go to hearing would not have under commission system



# What is essential to make it work

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- Legal assistance necessary for complainants preferably before complaint filed
- Some complainants and respondents appear unrepresented – clear, accessible materials apart from rules
- Avoid unnecessary rule making keep process flexible
- Parties want member mediator – evaluative assistance



## Essentials cont.

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- Disclosure must take the place of investigation, powers needed including power to order disclosure from strangers to dispute
- Mediate early and often
- Efficiency, flexibility and speed
- Annual reporting



# Lessons Learned: what to watch for

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- Some complainants disappear – positive obligation to keep in touch, power to close
- Vexatious litigant power – “frequent filers”
- Knowing what documents exist/seeking disclosure difficult
- Cost and delay associated with self-representation
- Despite efforts to achieve mediated resolution early, many cases settle eve of hearing



# What to watch for cont.

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- Tribunal's scheduling ability tied to legal clinic's availability
- Tribunals in Commission system live in rarified environment – issues “refined” current adjudication more rough and ready
- Judicial review of Tribunal decisions forcing more judicialized approach constant battle between practicality, efficiency and reviewing courts



# What to watch for cont.

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- Risk that delay will creep in to new system
- Some cases heard - unrealistic expectations about outcome or unreasonable approaches
- Some cases go to hearing that would not have under Commission system
- Significant increase in number of complaints against government





## What to watch for cont.

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- Significant human rights issues settle confidentially, more resources absorbed dealing with less significant public interest issues – advancement
- Public access to process vs. privacy concerns
- Skill set and training of members of tribunal essential – careful recruiting



# This Year and Next

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- Implementation of recommendations from literacy audit
- Appointments
- Statutory reform
- End of mandatory retirement