



HUMAN RIGHTS

in British Columbia provincial prisons

The *British Columbia Human Rights Code* applies to provincial prisoners in BC. This booklet tells you what rights are protected under human rights law and how to try to resolve human rights complaints.

Contents

Human Rights in Prison	4
What discrimination looks like	5
Resolving Human Rights Issues	8
BC Human Rights Tribunal	10
Time for filing	10
Complaint process	11
If I get money, will it affect my social assistance?	13
BC Human Rights Clinic	14
Prisoners' Legal Services	15

Human Rights in Prison

The British Columbia *Human Rights Code* (the “*Code*”) is meant to prevent certain types of discrimination. One of the purposes of the *Code* is “to promote a climate of understanding and mutual respect where all are equal in dignity and rights”.¹

The *Code* prohibits discrimination in accommodations, services and facilities available to the public. Corrections and healthcare officials and policy-makers must comply with the *Code*.

The *Code* prohibits discrimination on the basis of the following protected **grounds** of discrimination:

- race
- colour
- ancestry
- place of origin
- religion
- marital status
- family status
- physical or mental disability
- sex
- sexual orientation

1 *Human Rights Code*, RSBC 1996, c 210, s 3 [*BC Human Rights Code*].

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- gender identity or expression
 - age²

In human rights law, it is **discrimination** to treat a person badly because of one or more of these prohibited grounds of discrimination. You might be experiencing discrimination if you are being treated worse than other people in prison on the basis of one or more of these grounds.

You need to show a **connection** between your negative treatment and a ground of discrimination (such as race or sexual orientation). If a staff member uses insulting words about your race or sexual orientation, that could show a connection between the treatment and the ground of discrimination.

It does not matter if the person meant to treat you unfairly or not. Only the **effect on you** matters.

Being a prisoner is not a ground of discrimination. Being treated differently only because you are in prison is not a violation of the *Code*.

What discrimination looks like

Example 1:

You are being **harassed** by someone who works for BC Corrections. If you are being harassed because of your race, sexual orientation, or other “ground” of discrimination listed above, this might be discrimination.

2 *BC Human Rights Code*, s 8.

Harassment is any physical or verbal action that you did not want and that offends or humiliates you. Some examples of harassment are: threats, intimidation, verbal abuse, comments or jokes, offensive pictures or posters, sexual comments or gestures, physical touching, physical assault and sexual assault.

Example 2:

BC Corrections or the Provincial Health Services Authority (PHSA) is **not accommodating your disability**. This could be a physical disability or a mental disability. Mental health problems, like depression or addiction, are mental disabilities.

BC Corrections has a duty to accommodate your disability. This means that BC Corrections might have to adjust your conditions of confinement or take other steps to meet your needs. You have a right to the same benefits and services as other people without your disability.

For example, if you use a wheelchair, BC Corrections should give you a cell on the ground floor or a chair lift.

If you are deaf, BC Corrections should give you an interpreter.

If you have an opioid addiction, the PHSA should give you treatment, like methadone or Suboxone.

If BC Corrections or the PHSA do not do these things, that might be discrimination.

Example 3:

Something is happening to everyone, but its effect is worse on you because of your disability or another prohibited ground of discrimination.

Negative treatment that is applied equally to all prisoners might be discrimination against you if the effect is harder on you than others because of a ground of discrimination.

For example, not being provided food or water for a long time is not in itself discrimination under the *Code*. But if you have diabetes, not getting food might be discrimination based on your physical disability. This is because not eating for a long time could be worse for your health because you are diabetic.

Another example is segregation. Being in segregation or separate confinement for long periods of time is hard on anyone. But if you have ADHD, depression or anxiety, it might be even worse for you. In that case, you could argue that you are being discriminated against because of your mental disability.

A rule that requires all prisoners to attend programs during certain hours is not discrimination by itself. But if you have to miss religious services to attend programs at a certain time, and the prison will not make an exception for you, that might be discrimination on the basis of religion.

Resolving Human Rights Issues

If you think that you are being discriminated against based on a prohibited ground, you can call Prisoners' Legal Services for help to resolve your complaint at any stage of the process.

Keep detailed notes of what happened. Here are some things to write down:

- Time, date and location of events or incidents
- Names of people involved
- Names of any witnesses
- Details of what happened

Keep all documents related to your complaint. This could include Special Request forms, BC Corrections decisions, grievances or medical records.

It is best to **try to resolve issues at the lowest level**. Your concern might be resolved right away. If it is not resolved at the lowest level, you will be able to show that you tried to deal with the problem. It will also show that the institution was aware of your problem.

Start by raising your concern with staff.

If your concern is a health care concern, speak to health care staff. If it is not resolved, you should make a complaint to the Patient Care Quality Office of the Correctional Health Services, PHSA. Prisoners' Legal Services can help you with this. If your health care concern is still not resolved, you can make a complaint to the BC Human Rights Tribunal.

If your concern is about something else, speak to prison staff.

Section 4 of the *Correction Act Regulation* requires staff to “make reasonable attempts to address a concern raised by an inmate”, if the circumstances allow.

The next step is to *make a formal request* for what you are asking for. For example, you may request a visit from the Aboriginal Liaison to allow you to practice your religion. Keep a copy of the request form. If no duplicates are available, copy the form out twice. Ask the staff person who takes your request to sign and date your copy of the form. Keep this copy for your records.

For prison issues, if your request is not answered in a timely way, or you are not happy with the answer, you can **make a complaint to the warden**. Again, keep a copy of your complaint and ask the staff person who receives your complaint to sign and date your copy. The staff person must give your complaint to the warden without delay.

The warden has 7 days to investigate your complaint and must provide you with a written decision without undue delay.³

If you are not happy with the warden’s decision, or if you have not received a response in a reasonable amount of time, you can **make a written complaint to the Investigation and Standards Office**. Staff must forward your complaint to the Investigation and Standards Office without delay.

3 CAR, s 37(2).

The Investigation and Standards Office can make a recommendation to the warden about your complaint. There is no legal requirement that the warden follow the recommendation.

The Investigation and Standards Office can take a long time to respond to complaints. If your complaint is ongoing or urgent, call Prisoners' Legal Services. We might be able to help you resolve your complaint more quickly.

If your human rights issue is not resolved, you can **make a complaint to the BC Human Rights Tribunal**.

BC Human Rights Tribunal

You can call Prisoners' Legal Services for advice on filing your complaint.

Time for filing

In most cases, you must file your complaint **within one year** of the incident. If the discrimination was ongoing, and the last incident happened within one year, your complaint is in time. You will need to explain how the discrimination was ongoing.

If your complaint concerns an event that took place more than one year ago, you will need to explain why you did not file a complaint sooner. The Tribunal might accept your complaint even if it is late, if it is in the public interest and it would not be unfair to anyone to proceed with your complaint.⁴

4 *BC Human Rights Code, s 22.*

Complaint process

The process under the *Human Rights Code* involves the following steps:

1. You fill out and submit a complaint form. You can call the Tribunal at 1-888-440-8844 or write to them at 1170-605 Robson St, Vancouver, BC V6B 5J3 and ask them to send you a complaint form.

If your complaint is about health care, your complaint should be against the **Provincial Health Services Authority (PHSA)**.

If your complaint is about something other than health care, your complaint should be against **BC Corrections**.

2. If your complaint is accepted (because it is filed within the time limit and contains an act that could be discrimination), the Tribunal sends a copy of it to the respondent (the prison or health care provider).

If your complaint is accepted, you can call the **BC Human Rights Clinic** for help. The phone number is at the end of this booklet.

3. In most cases, a case manager is assigned and the parties can go to a settlement meeting (mediation). Mediation is voluntary. Both sides have to agree to participate. Both sides have to agree to settle – if you don't agree with what the other side is offering you, you do not have to settle.
4. If no settlement is reached, the prison or health care provider writes a response to your complaint.

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5. The respondent might apply for your complaint to be dismissed. If the respondent persuades the Tribunal that your complaint has no chance of success, then it can be dismissed without a hearing.
 6. If there is no application to dismiss your complaint, or if the Tribunal denies the application to dismiss, then a hearing will be scheduled.
 7. If you are successful at the hearing, the Tribunal can order any of the following remedies to your complaint:
 - That the discrimination stop;
 - A declaration that the conduct is discriminatory under the *Code*;
 - That the respondent take steps to resolve the effects of the discrimination;
 - That the respondent make a policy to prevent the same kind of discrimination in the future;
 - That you be given something you were denied because of the discrimination; and
 - That you be given money to compensate for injury to your dignity, feelings and self respect that were caused by the discrimination.⁵

5 BC Human Rights Tribunal, *Steps in the Human Rights Complaint Process* (accessed December 2018), online: <http://www.bchrt.bc.ca/complaint-process/steps.htm>; *BC Human Rights Code*, s 37.

Even in the best case scenario, the human rights complaint process is not very fast. It will likely take at least a year, and often longer, to get a final resolution of your complaint if it goes to a hearing.

If the Tribunal does not accept your complaint, or denies your complaint after a hearing, you might be able to apply to the BC Supreme Court to review the decision. Call Prisoners' Legal Services or a lawyer for advice or help.⁶

If I get money, will it affect my social assistance?

If you apply for income assistance or disability income assistance after you are released, there is a limit on the assets you can have. The money you get from a human rights award will count towards your assets and could prevent you from getting social assistance.

If you are applying for **income assistance**, the **limit on your assets is only \$2,000** if you are a single person, and \$4,000 if you are part of a couple or family. You will normally not be able to get income assistance if you have more than this amount in cash and savings.

If you are applying for **disability income assistance**, you are normally allowed up to \$100,000 in cash/savings (or \$200,000 if two people in your family are applying for disability). So the human rights award will probably not affect your application.

But, if you receive a human rights award and want to apply for welfare, there are things that you can buy that will not count towards the asset limit. These are called “exempt assets”. These include a home you live in, a car up to \$10,000 (if you use it for

6 *Human Rights Code*, s 32(p)-(q).

day-to-day transportation), reasonable household furnishings and effects, clothing, business tools, a Registered Educational Savings Plan, and other things listed in section 11 of the *Employment and Assistance Regulation*.

You can also spend the money you receive on debts that you owe or on reasonable living costs.

If you are applying for disability assistance (or are applying for welfare but have a genuine intention to apply for disability assistance), then in addition to buying these “exempt assets” with your human rights award, you can put funds into the Registered Disability Savings Plan (RDSP). To do this, you would need to apply to the Canada Revenue Agency (CRA) first and be found eligible for the Disability Tax Credit. For more information, see the information sheets available online at <http://disabilityalliancebc.org/hs8/> and <http://disabilityalliancebc.org/hs/15>. If you are in prison and you cannot access these information sheets, you can ask PLS to send you a copy.

If you receive money through a *settlement* (agreed to by you and BC Corrections or the PHSA), the money *might* count towards your asset limit. If you have problems getting welfare or disability assistance because of this, you should contact an advocate. You can find an advocate online at <http://www.povnet.org/find-an-advocate/bc>.

BC Human Rights Clinic

The BC Human Rights Clinic provides free legal assistance to people who have filed complaints with the Human Rights Tribunal. To apply for legal assistance, call 604-673-3128.

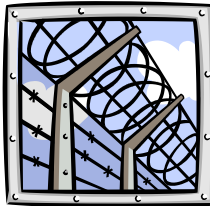
Prisoners' Legal Services

You can contact Prisoners' Legal Services for advice or assistance with issues that affect your liberty (such as segregation, disciplinary charges or parole) or about health care or human rights issues.

For assistance from Prisoners' Legal Services, you must have a referral from the Legal Services Society. Contact their call centre at 604-681-9736. Once you have a referral, you can call Prisoners' Legal Services directly at 604-636-0464.

Prisoners' Legal Services phones are open Monday to Friday from 9:00 a.m. to 11:00 a.m. and from 1:00 p.m. to 3:00 p.m.

This publication contains general information only. Each situation is unique. Law and policy can also change. If you have a legal problem, contact Prisoners' Legal Services or a lawyer.



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