



# 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.

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# 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”.<sup>1</sup>

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:

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

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<sup>1</sup> *Human Rights Code*, RSBC 1996, c. 210, s. 3 [BC HRC].

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- gender identity or expression; and
  - age.<sup>2</sup>

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 any other ground of discrimination listed above, this might be discrimination.

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<sup>2</sup> *BC HRC*, s. 8.

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**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.

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### 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.

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## 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; and
- Details of what happened.

Keep all documents related to your complaint. This could include Special Request forms, BC Corrections decisions, submitted complaint forms 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 correctional centre 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, the first step is to submit a health care complaint form to the Health Service Manager. If it is not resolved, you should make a complaint to the PHSA's Patient Care Quality Office (PCQO). Prisoners' Legal Services can help you with this. If your health care complaint is still not resolved, you can make a complaint to the BC Human Rights Tribunal.

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**If your concern is about something else, speak to prison staff.** Section 4 of the *Correction Act Regulation* requires that staff, “if circumstances allow, make reasonable attempts to address a concern raised by an inmate.”

The next step is to **make a formal request** for a solution to your concern. For example, you may request a visit from the Indigenous Cultural 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 seven days to investigate your complaint and must provide you with a written response without undue delay.<sup>3</sup>**

If you are not happy with the warden’s response, or if you have not received a response in a reasonable amount of time, you can **make a complaint to the Investigation and Standards Office (ISO)**. Staff should forward your written complaint to the Investigation and Standards Office. You can also call the ISO directly at 1-250-387-5948.

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<sup>3</sup> *Correction Act Regulation*, BC Reg. 58/2005, s. 37(2) [CAR].

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The ISO can make a recommendation to the warden about your complaint, but the warden is not obligated to follow the recommendation.

The ISO 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. Discrimination that took place more than a year ago, but which was related to or similar to an incident that happened in the year before you file your complaint may be considered as 'ongoing' conduct.<sup>4</sup>

If your complaint concerns an event that took place more than one year ago and is not ongoing, you will need to explain why you did not file a complaint sooner. The Tribunal might accept the complaint if it determines that it is in the public interest and would not be unfair to anyone to proceed with your complaint.<sup>5</sup>

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<sup>4</sup> *BC HRC*, s. 22.

<sup>5</sup> *BC HRC*, s. 22.

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## Complaint process

The process under the *BC 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 1270-605 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 filed within the one-year time limit and contains an act that could be discrimination, the Tribunal may accept all or part of the complaint and send a copy of it to the respondent (BC Corrections or PHSA). The Tribunal will also send you a Notice of Complaint Proceeding.

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. Depending on the Tribunal's workload, it may take between one and several months for the Tribunal to decide whether they will accept your complaint.

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, and both sides have to agree to settle. If you don't agree with what the other side is offering, you do not have to settle.

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4. If no settlement is reached, the respondent writes a response to your complaint.
  5. The respondent might apply for your complaint to be dismissed because it has no chance of success. If there is no application to dismiss your complaint, or if the Tribunal denies the application to dismiss, then a hearing will be scheduled.
  6. If you are successful at the hearing, the Tribunal will order that the discrimination must stop and that similar discrimination must not take place in the future. In addition, the Tribunal may:
    - make a declaratory order that the conduct is discriminatory under the *Code*;
    - order that the respondent take steps to resolve the effects of the discrimination;
    - order that you be given something you were denied because of the discrimination; or
    - order that you be given money to compensate for expenses, as well as for injury to your dignity, feelings and self-respect caused by the discrimination.<sup>6</sup>

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.

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<sup>6</sup> *BC HRC*, s. 37.

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## **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 604-622-1100 or toll free at 1-855-685-6222.

## **Prisoners' Legal Services**

If you are a prisoner in British Columbia, you can contact Prisoners' Legal Services for advice or assistance with issues that affect your liberty, human rights, or healthcare.

Prisoners' Legal Services' phones are open Monday to Friday from 9:00 am to 11:00 am and from 1:00 pm to 3:00 pm. Our phone lines are closed on Wednesday afternoons. If you are in a provincial correctional centre, you can call Prisoners' Legal Services at 604-636-0464.

**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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