

# Human Rights Tribunal

## A Guiding Document



# What Is The Human Rights Tribunal?

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## **British Columbia Human Rights Tribunal**

**We deal with human rights complaints in BC**

The BC Human Rights Tribunal is responsible for accepting, screening, mediating, and adjudicating human rights complaints.

# What Are Human Rights Decisions?

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What are human rights decisions? They are **cases that have been heard and decided about complaints under human rights legislation**. Tribunals decide human rights complaints, and courts review tribunal decisions. The BC Human Rights Tribunal must follow decisions of the BC Supreme Court and Court of Appeal and the Supreme Court of Canada

# Complaint Process

## Make a complaint

The complaint process starts when someone makes a complaint. A person must fill out a complaint form and deliver it to the Tribunal within the time limit. More than 1,100 complaints are made each year. [Learn more about making a complaint](#)

## Screening

The Tribunal reviews the complaint and decides whether or not to proceed with it. The Tribunal will check if the complaint was [filed within the time limit](#). The Tribunal only processes complaints that contain a possible act of [discrimination](#). Each year over 300 new complaints are rejected because they do not have this required information.

## Notice

If the Tribunal decides to proceed with a complaint, it notifies the respondent.

## Deferral

The Tribunal may defer a complaint if another proceeding can appropriately address the complaint. An example is a union grievance about the same situation. [Learn more on how to defer a complaint](#)

## Mediation

The Tribunal provides a mediator to help the parties try to resolve the complaint themselves. More than 500 complaints are resolved by settlement each year. [Learn more about mediation](#)

## Response

The respondent responds to the complaint in writing. [Learn more about responding to a complaint](#)

## Disclosure

The parties exchange documents. [Learn more about disclosure](#)

## Application to dismiss the complaint

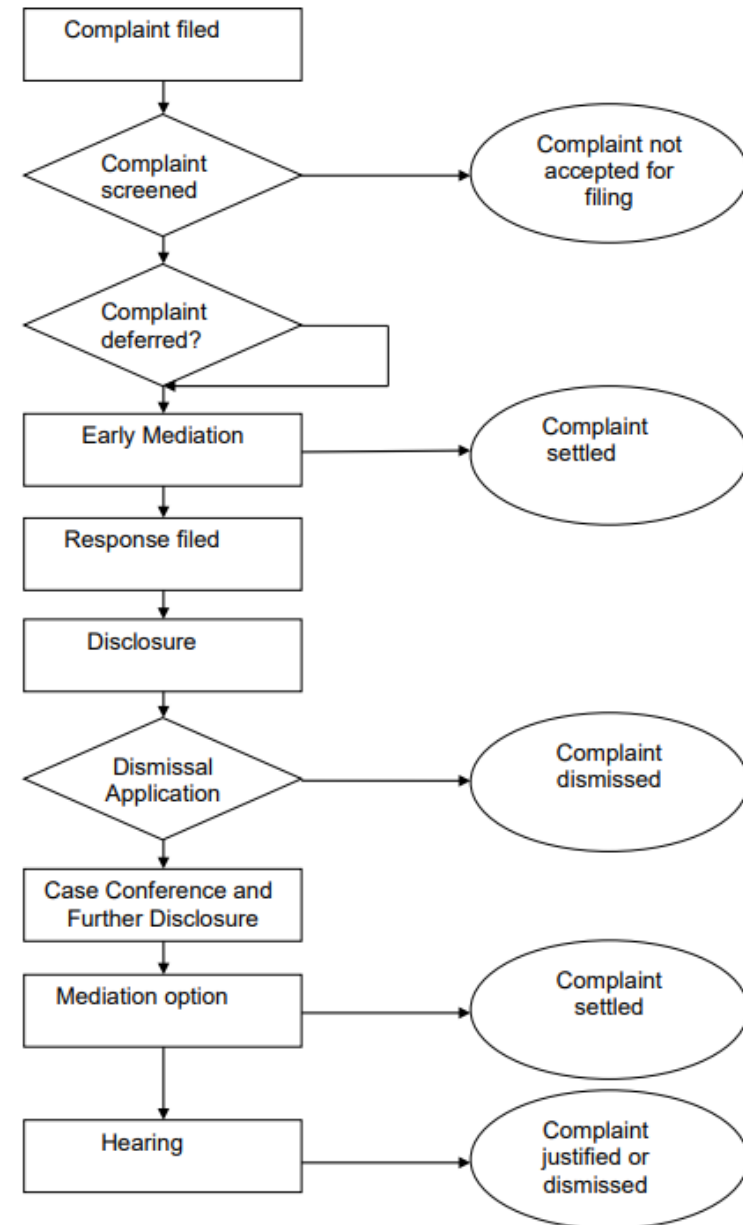
[Read the Case Path Pilot](#) before you apply to dismiss a complaint. It sets new requirements.

The respondent may apply to dismiss the complaint without a hearing. [Learn more about applying to dismiss a complaint](#). The Tribunal deals with more than 200 applications to dismiss each year. It dismisses more than 100 complaints without a hearing each year.

## Hearing

The Tribunal holds a hearing. Very few complaints go to a hearing. In the last few years, an average of 40 complaints were resolved after a hearing each year. [Learn about getting ready for a hearing](#)

## BC Human Rights Tribunal Process Flow Chart



# Research

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## Why would I want to research human rights decisions?

Decisions explain how the Human Rights Code applies in different situations. For example, decisions may explain:

- why the Tribunal has dismissed a complaint without a hearing (or not)
- why the Tribunal has adjourned a hearing (or not)
- why a situation amounts to discrimination (or not)
- why a respondent's conduct is a defence to discrimination (or not)
- what remedy the Tribunal awarded in a certain situation

A decision that involves a similar situation can help you understand your chances of success on an application or on the complaint. It can help you persuade the other side how to settle the complaint. You may need to give the Tribunal decisions to explain why you should succeed on an application, or on a complaint or in responding to a complaint at a hearing.

# Research

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## How can I find human rights decisions?

### On the internet:

- [B.C. Human Rights Tribunal decisions](#)
- B.C. court decisions are at on the [provincial judiciary](#) website
- [Supreme Court of Canada](#) website
- You can also search for decisions on the [CanLII](#) website

**From the Tribunal:** If you do not have access to the internet, you can phone the Tribunal to request a copy of a particular decision, including BC human rights decisions from before 1997.

**From courthouse and law school libraries:** Courthouse and law school libraries have tribunal and court decisions, text books and other materials, including the Canadian Human Rights Reporter (CHRR). The CHRR index can help you to find decisions similar to your situation. You can call Enquiry B.C. at 1-800-663-7867 for the address of a courthouse library near you.

# Time Limitations

## The one year time limit

For each respondent, a complaint is filed on time if:

- All the conduct happened in the one year before you filed the complaint. For example, you file your complaint on January 15, 2014. All the conduct happened on or after January 15, 2013.
- Some conduct happened in the one year before you filed the complaint and is part of a “continuing contravention” with earlier conduct.

A “continuing contravention” is about conduct that is related or similar, so long as there are not significant gaps of time between events. For example, you file your complaint on January 15, 2014. Some conduct happened on or after January 15, 2013. Similar or related conduct happened in November and December 2012.

You must give information in the complaint form about when the conduct happened and whether you believe your complaint is filed in time.

# Complaints After The Time Limitation

## Complaints after the time limit

If all or part of your complaint was filed after the one year time limit, you must persuade the Tribunal that:

1. It is in the public interest to accept your complaint.

For example, the Tribunal may consider

- Your reasons for the delay and length of the delay
- Whether the complaint raises an issue that the Tribunal has not had a chance to address

2. No one will be substantially prejudiced by the delay in filing.

For example, the Tribunal may consider

- The length of the delay
- Whether the delay may result in a serious unfairness to the respondent

The complaint form asks for information to show why the Tribunal should accept a late-filed complaint.



# Personal Characteristics

## Leading cases: Protected characteristics

- [Age](#)
- [Criminal conviction](#)
- [Family and marital status](#)
  - [Identity of family members](#)
  - [Make up of family](#)
  - [Caregiving obligations](#)
- [Disability](#)
- [Gender expression and identity](#)
- [Indigenous identity](#)
- [Race, colour, ancestry and place of origin](#)
- [Political belief](#)
- [Religion](#)
- [Sex](#)
- [Sexual orientation](#)
- [Source of income](#)

# Negative Effect

## 2. Negative effect

The respondent's conduct must have a negative effect on the complainant's access to or use of the service, facility, or accommodation. This is also called an "adverse impact".

For example: Refusing to serve someone or removing someone from a program.

The Code prohibits [harassment](#) based on a personal characteristic that negatively affects the complainant's access to or use of the service, facility or accommodation.

A negative effect can arise where a person is treated the same as others, but this has a negative effect on them.

For example: A child with a disability does not receive meaningful access to educational services.

Note: You should tell the service provider if you need them to take action to avoid the negative effect. There is a [duty to accommodate](#) to avoid a negative effect based on a personal characteristic.

If the service provider does not know you need accommodation, they may have a defence to a complaint of discrimination.

# Connection

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## 3. Connection between negative effect and personal characteristic

A negative effect is discrimination only if it is connected to a personal characteristic. This means that a personal characteristic must be at least a factor in the negative effect. It does not need to be the only factor or the most important factor.

A complaint may show a connection in different ways. For example:

- Information showing the respondent considered the personal characteristic. However, a **complainant** does **not** need to show that the **respondent** meant to discriminate or was motivated by discrimination.
- Information showing a rule or standard affected the complainant based on their personal characteristic.
- Information showing a rule or standard affects a group of service users more than others based on their personal characteristic.

A person may believe that a personal characteristic was a factor, but a complaint must set out facts supporting the belief. Examples:

- A service provider uses insults based on a personal characteristic, or gives the characteristic as a reason for the poor treatment.
- A person who uses a wheelchair due to a disability cannot access a service because the only access is by stairs.
- An innkeeper denies someone accommodation after learning they are gay.
- A recreation program places conditions on someone's participation that are not placed on others who do not share the same characteristic.

# Service Provider

## Who can be named as a respondent in a services complaint?

**The service provider.** The service provider is responsible for the service and is usually the respondent in a services complaint.

For example, a School District is the respondent in a complaint about discrimination in a school.

**A person who is responsible for the discrimination.**

For example, a complaint may name a person who made the decision to deny the complainant a service based on a personal characteristic, or who influenced a decision.

A complaint would not name a person who applied a discriminatory policy as part of their job, or who delivered a letter denying the service.

# Standard or Conduct

## **3. The respondent's standard or conduct is reasonably necessary to its service-related purpose, such that the respondent could not accommodate the complainant (or others sharing their characteristics) without undue hardship**

This means that the respondent fulfilled its duty to accommodate. To do so, the respondent must prove that it took all reasonable and practical steps to avoid the negative effect. This includes proving:

- What the respondent did to explore options to find a reasonable result
- Why further steps were not reasonable or practical (would result in [undue hardship](#))
- The respondent's basis for concluding that it could not accommodate the complainant without giving up the legitimate service-related purpose or incurring undue hardship

Proof that a respondent reasonably accommodated a complainant's disability may also require the respondent to show that it took any necessary steps to inform itself of the nature of the complainant's medical condition, prognosis, and capabilities (including limitations or restrictions) for work.

It is not enough to point to some hardship and say no more could be done. A respondent must prove undue hardship by giving [evidence](#) about the effect that the accommodation would have on the respondent.

For example, if a respondent relies on excessive cost, it must prove both the costs of the requested accommodation, and how this cost would result in undue hardship to it given its financial situation. It is not enough to rely on the high cost of accommodation without showing the respondent cannot reasonably afford it.

# Duty to Accommodate

Factors a respondent may rely on to establish undue hardship include financial cost and the size of the respondent's operation.

A complainant must participate in the search for accommodation.

The respondent may succeed if it proves that the complainant did not request accommodation and it did not reasonably know that the complainant may need accommodation.

Note: When a service provider is aware, or reasonably ought to be aware, that there may be a relationship between a negative effect and a personal characteristic, they have a duty to inquire about whether the person needs accommodation.

The respondent may also succeed if it proves that it was taking all reasonable and practical steps, but the process failed because the complainant did not reasonably participate or rejected a reasonable offer of accommodation.

# Test for discrimination

*Moore v. BC (Education)*, 2012 SCC 61 [↗](#). To prove discrimination, a complainant has to prove that:

1. they have a characteristic protected by the *Human Rights Code* [**Code**];
2. they experienced an adverse impact with respect to an area protected by the *Code*; and
3. the protected characteristic was a factor in the adverse impact.

Once a complainant proves these three things, the respondent can defend itself by proving its conduct was justified. If the respondent proves its conduct was justified, then there is no discrimination. If the respondent's conduct is not justified, discrimination will be found to occur (para. 33).

The leading cases about the justification defence are found under the areas of discrimination: [employment](#), [tenancy](#), [services customarily available to the public](#) and [unions or occupational associations](#).

*Quebec (Commission des droits de la personne et des droits de la jeunesse) v. Bombardier Inc. (Bombardier Aerospace Training Center)*, 2015 SCC 39 [↗](#) [**Bombardier**]. Discrimination can take many forms, including “adverse effect” or “indirect” discrimination (para. 32). It is not necessary to prove a “causal” connection between a protected characteristic and the adverse treatment. Rather, there must be a “connection”, or the protected characteristic must be a “factor” in the adverse treatment (para. 49).

*Stewart v. Elk Valley Coal Corp.*, 2017 SCC 30 [↗](#). The test set out in *Moore* is confirmed. The principles set out in *Bombardier* are confirmed. Discrimination can take many forms, including ‘indirect’ discrimination, where an otherwise neutral policy may have an adverse effect on certain groups. There is no requirement to provide discriminatory intent (para. 44). There is no requirement to prove stereotypical or arbitrary decision-making, since this would improperly focus on whether there is a discriminatory attitude. The focus is on whether there is a discriminatory impact (para. 45). There must be a link or connection between the protected characteristic and the adverse treatment. The protected characteristic need only be “a factor” in the adverse treatment, not a “significant” factor or a “material” factor (para. 46).

# Discrimination in accommodation, -service and facility-

## Section 8

Section 8 of the *Human Rights Code* prohibits discrimination in accommodations, services, and facilities. It says:

### **Discrimination in accommodation, service and facility**

8 (1)A person must not, without a bona fide and reasonable justification,

- (a)deny to a person or class of persons any accommodation, service or facility customarily available to the public, or
- (b)discriminate against a person or class of persons regarding any accommodation, service or facility customarily available to the public

because of the Indigenous identity, race, colour, ancestry, place of origin, religion, marital status, family status, physical or mental disability, sex, sexual orientation, gender identity or expression, or age of that person or class of persons.

(2)A person does not contravene this section by discriminating

- (a)on the basis of sex, if the discrimination relates to the maintenance of public decency or to the determination of premiums or benefits under contracts of life or health insurance, or
- (b)on the basis of physical or mental disability or age, if the discrimination relates to the determination of premiums or benefits under contracts of life or health insurance.



# How do you define a service

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## How do you define a service

*Moore v. BC (Ministry of Education)*, 2012 SCC 61 [↗](#). Services should not be defined too narrowly. In this case, a student had disabilities that required accommodation. The service that the student was entitled to was an education. Defining the service as “special education” was too narrow. Special education is not the service. It is the way that students with disabilities receive meaningful access to education.

# What is the test for a “*bona fide* and reasonable justification”

## What is the test for a “*bona fide* and reasonable justification”

*British Columbia (Superintendent of Motor Vehicles) v. British Columbia (Council of Human Rights)*, [1999] 3 SCR 868 [↗](#) at para. 20. Once a complainant proves that a protected characteristic was a factor in adverse treatment regarding a service, the respondent can defend itself by proving that it had a “*bona fide* and reasonable justification” for its behaviour. It has to show:

1. its behaviour was for a purpose or goal that is rationally connected to the function being performed;
2. it behaved in good faith; and
3. its behaviour was reasonably necessary to accomplish its purpose or goal, in the sense it cannot accommodate the complainant without undue hardship.

# Making a Human Rights Complaint in BC (Recorded Webinar)

## Making a Human Rights Complaint

Q&A with **Katherine Hardie**  
and **Cayleigh Shiff**

February 27, 2024 @ 12:00 noon PT



**The organizations listed below may be able to help**

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**BC Human Rights Tribunal**

[Website List of Organizations that can help by area](#)

# Frequently asked questions

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## BC Human Rights Tribunal

[Frequently Asked Questions Weblink](#)

# Forms

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## BC Human Rights Tribunal

[Weblink to all applications and forms from the BC HRT](#)

# BC Human Rights Clinic

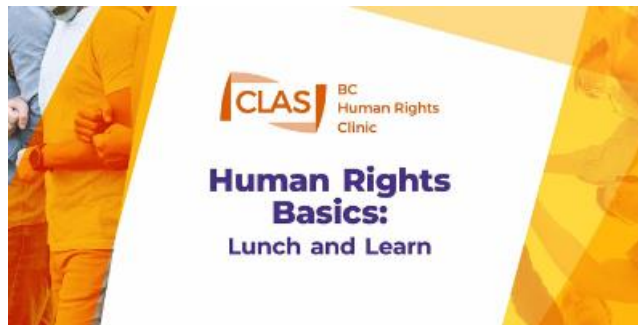


**We provide free legal services to people who  
need help with a provincial human rights  
complaint**

[Weblink to the BC Human Rights Clinic](#)

# BC Human Rights Clinic Free Workshops

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**Information and training on the basics of human rights law: Public legal education on new, timely and developing human rights issues. For example:**

- What are human rights?
- How are human rights protected?
- What can I do if my human rights are violated?
- What can I expect if I file a human rights complaint?
- COVID-19 and human rights
- Accommodating students with special needs
- New case developments and changes in the law

[Weblink to Free Upcoming Workshops for the BC Human Rights Clinic](#)

**Upcoming Events**



# Recent Case Decision

## **B.C. school district fined \$5K for failing to address student's anxiety**

The province's human rights tribunal has ordered the district to pay student \$5,000

An unnamed school district in British Columbia has been ordered by the province's human rights tribunal to pay \$5,000 to a student for failing to accommodate her anxiety disorder.

Tribunal vice-chair Devyn Cousineau said in a decision released last month that the school district "failed to take reasonable steps" to investigate and address the female student's anxiety over her transition to high school in fall 2018.

The family had filed the human rights complaint in 2020 accusing the school district of discrimination based on her placement into a language class that "exacerbated her disabilities and impaired her ability to access her education."

While Cousineau rejected part of the complaint, she found the school district failed "to reasonably respond" when the student's family brought their concerns to the district in April 2019.

[Weblink to Article on this Decision](#)

# Rights In Focus Report

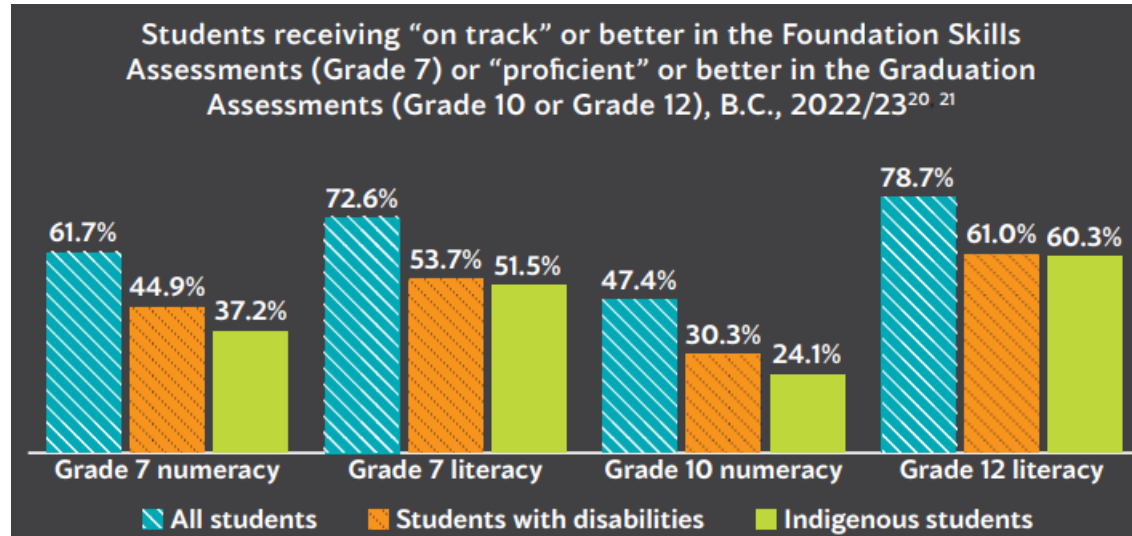


## Inequities in education

The right to education entitles students to fair treatment in a safe, inclusive and accessible learning environment. In B.C., however, there are large differences between groups in educational outcomes. Evidence shows that groups with worse outcomes face exclusion, racism and discrimination in schools. For example, 92 per cent of all students complete secondary school in six years, but only 78 per cent of students with disabilities and 75 per cent of Indigenous students do the same. In addition, there are gaps in human-rights related education, and teaching social justice content is increasingly controversial. In the [education section](#), we spotlight the experiences of LGBTQ2SAI+ children and youth in schools and controversy around SOGI 1 2 3, a supplementary education resource designed to create inclusive educational spaces. SOGI 1 2 3 has attracted considerable misunderstanding and in 2023 was the subject of large-scale political action.

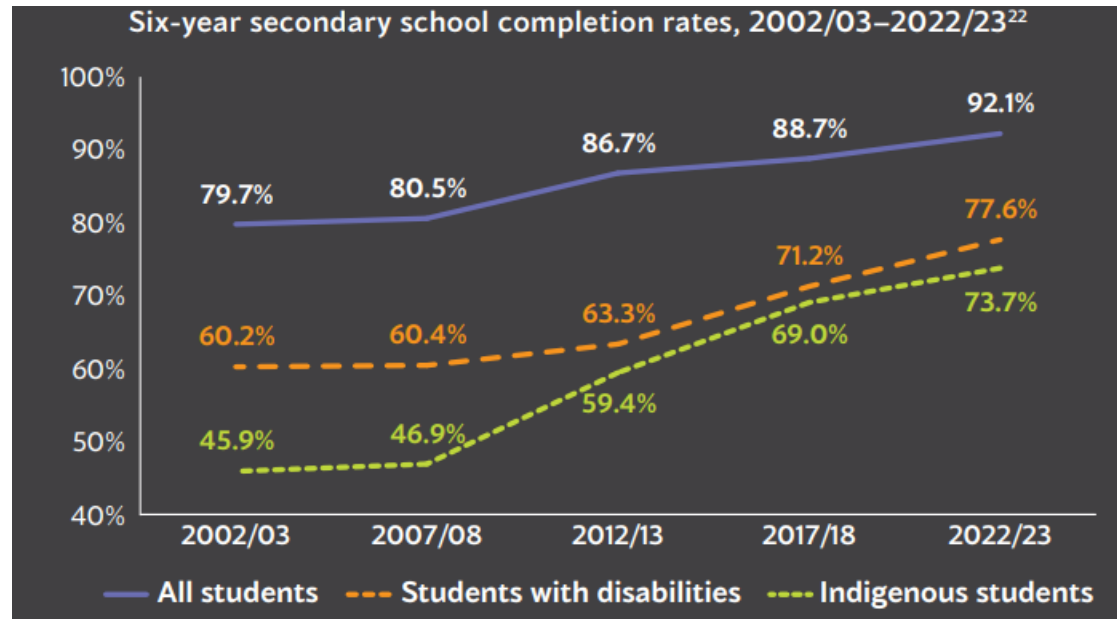
[Weblink to PDF of the Full Report \(Education – Page 30\)](#)

# Rights In Focus Report



[Weblink to PDF of the Full Report  
\(Education – Page 30\)](#)

# Rights In Focus Report



[Weblink to PDF of the Full Report  
\(Education – Page 30\)](#)

# Speaking Up BLOG – by Kim Block

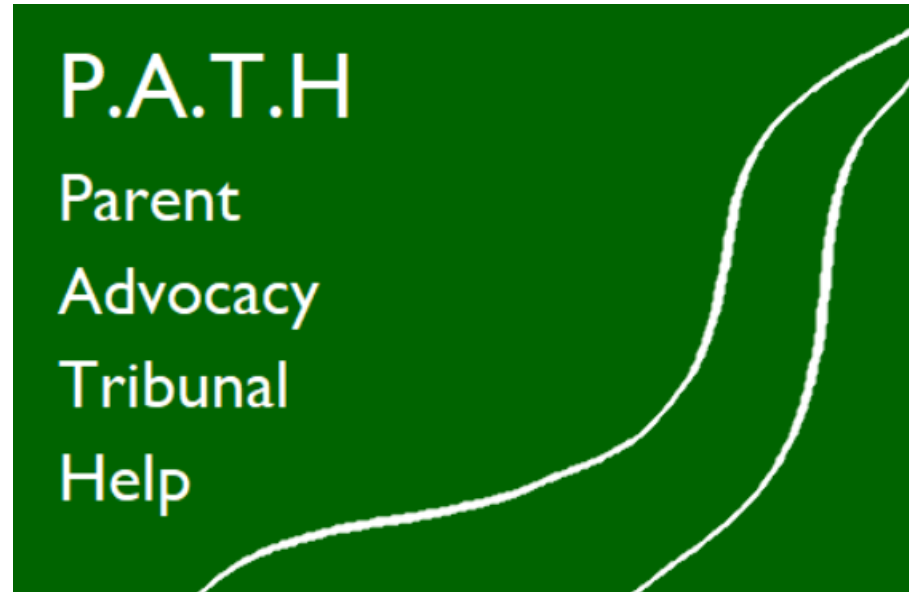
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Speaking Up



[Weblink to Advocate Kim Block's Blog – Speaking Up](#)

# Parent Advocacy Tribunal Help



P.A.T.H — Parent. Advocacy. Tribunal. Help

[Weblink to P.A.T.H – Upcoming Workshops](#)

# Inclusion BC Advocates

**inclusion BC**

**inclusion BC**

**CALL US**

604.777.9100

Toll-free: 1.800.618.1119

227 6th St.

New Westminster, BC

V3L 3A5

**EMAIL**

info@inclusionbc.org

**On Inclusive  
Education, UDL,  
Human Rights  
Tribunal, and  
Resources**

[Inclusion BC Website](http://www.inclusionbc.org)



If you have any questions or concerns, please reach out and connect with us at



[inclusion@northvanpac.org](mailto:inclusion@northvanpac.org)