



# Anti-discrimination policies and addressing complaints

This infosheet is part of a broader toolkit created by BC's Office of the Human Rights Commissioner (BCOHRC) to help employers learn how to improve employment equity within their businesses and organizations. It looks at policies and processes organizations can use to prevent and respond to incidents of discrimination in the workplace—a necessary part of employment equity. It covers:

- What workplace discrimination is
- Legal considerations for addressing discrimination in the workplace
- Developing workplace anti-discrimination policies
- Promising practices for addressing workplace discrimination complaints



In 2022, BCOHRC conducted research on employment equity in B.C. through:

- Hosting focus groups on employment equity with employers from diverse sectors<sup>1</sup>
- Conducting a poll of a representative sample of over 1,000 employed adults in the province

Findings from this research help to inform our employment equity toolkit.

## What is discrimination in the workplace?

Employers have a legal responsibility to ensure work environments are:

Respectful

Discrimination-free

Employers are not alone in this responsibility—supervisors, colleagues, contractors and others must all work together to ensure discrimination-free workplaces. However, employers control the work environment and so they are the primary responsibility-holders. Employers are liable for the conduct of their employees, including for not acting in response to an issue..<sup>2</sup>

- ▶ Visit the [BC Human Rights Tribunal](#) for more information on human rights and duties in employment.

## Understanding discrimination vs. conflict

Workplace conflict is natural and inevitable. When handled appropriately, it can foster change and improve relationships.<sup>3</sup> However, workplace discrimination is categorically different and never acceptable.

**Discrimination occurs when a worker experiences an unjustifiable adverse impact in their employment based on a characteristic or characteristics protected by B.C.'s *Human Rights Code*.<sup>4</sup>**

For example, sexual harassment is discrimination on the basis of sex or gender.<sup>5</sup>

Allowing a toxic work environment to grow and persist for racialized workers is discrimination on the basis of race.<sup>6</sup>

As an employer, your efforts to advance employment equity must include responding promptly to incidents of discrimination in all its forms.

## Addressing both interpersonal and systemic discrimination

Some people equate discrimination only with interpersonal discrimination, which results from one person's conscious or unconscious actions or inactions toward another. Employers are equally required to prevent and address systemic discrimination, which results from policies or practices that create and maintain a state of disadvantage for a particular group.

While this infosheet focuses on interpersonal discrimination, anti-discrimination policies and complaint processes should address both interpersonal and systemic discrimination.

### Some additional resources to help you learn about and address discrimination

- ▶ See our [introduction to employment equity](#) to learn more about various forms of discrimination.
- ▶ Other parts of [this toolkit](#) can help you identify and address systemic discrimination across your organization.

## Legal responsibilities for addressing discrimination

As an employer, you are legally responsible under B.C.'s *Human Rights Code* to **prevent and stop** discrimination in your workplace. If you engage in discriminatory conduct or don't stop others from engaging in discriminatory conduct in the workplace, you will be liable under the *Code*. It is not enough to say you didn't know something was happening or that you didn't know that what was happening was discriminatory.

To ensure a discrimination-free workplace, begin by:

- Having and enforcing an anti-discrimination policy
- Providing training for managers and workers about human rights in the workplace
- Providing reasonable accommodation
- Having ways for workers to report discrimination in the workplace
- Responding to reports of discrimination reasonably and appropriately
- Taking steps to stop the discrimination and to prevent it from happening again

## Employers have a duty to investigate complaints

A reasonable and appropriate response to workplace discrimination complaints includes the duty to investigate the complaints. A failure to do so appropriately can result in a breach of the *Code*, even if the conduct complained of is found not to be discriminatory.

If you don't meet your legal responsibilities as an employer under the *Code*, you are breaking the law.

## How complaints can be brought against employers

A worker (or group of workers) can bring a complaint against you to the BC Human Rights Tribunal.<sup>7</sup> The person alleging discrimination becomes the “complainant” and the person about whom they are complaining becomes the “respondent.”

Unionized workers can choose to enforce their human rights via the grievance procedure in their collective agreement or by filing a complaint with the Tribunal. All collective agreements in B.C. incorporate the substantive rights and obligations enshrined in the *Code*.<sup>8</sup>

- It's against the law to retaliate against someone for making a human rights complaint. You should not try and prevent workers from filing a human rights complaint or otherwise punish, coerce or intimidate workers who do.<sup>9</sup>



## How complaints are considered by third parties

If a complaint is filed against you as an employer, decision-makers like the Tribunal and labour arbitrators will consider things like how it was investigated and addressed. They will look at, for example:

- If the employer took the allegations seriously
- If the employer acted sensitively
- If the complaint was resolved in a way that ensured a healthy work environment going forward<sup>10</sup>

### Workplace bullying and harassment

Workers may also experience harm that is not connected to a part of their identity protected by the *Code*. This may happen if they are bullied or harassed at work. In these cases, employers have other legal responsibilities under the *Workers Compensation Act*.

- ▶ WorkSafeBC **offers resources** to support you in this.

## Developing workplace anti-discrimination policies

An anti-discrimination policy or human rights policy is an important part of setting clear expectations regarding a discrimination-free workplace. It demonstrates that human rights will be respected, and discrimination will not be tolerated. This is different from a respectful workplace policy (although they may be related).



### A lack of anti-discrimination policies in B.C. workplaces

BCOHRC's 2022 focus groups revealed that many organizations lack an anti-discrimination policy and associated resolution processes. Troublingly, employers in two different sectors raised concerns that individuals alleging discrimination are often silenced to avoid potential damage to an organization's public image.

In the education sector, where employers do tend to have these policies, participants noted that investigations are costly and rarely result in a satisfactory resolution. Participants shared that:

“The harm that the person felt doesn't always align with the outcome of the investigation, or the consequences.”

“My team is always in tears over this stuff because ... nothing resolves well, and everyone hates you at the end of it.”

## What your anti-discrimination policy should include

- A statement of the organization's commitment to human rights, equity and inclusion and why these are important
- Express reference to the employer's commitment to respecting the rights set out in B.C.'s *Human Rights Code*
- A statement of objectives such as promoting human rights, preventing discrimination and establishing expectations for behaviour in the workplace
- When, where and to whom the policy applies

For example, in addition to offering protection from discrimination to regular workers, it should do so for temporary, casual and contract staff as well as volunteers. It should also apply to the actions of others who interact with workers in their jobs such as suppliers or customers. Finally, it should apply to all conduct in the course of employment, regardless of whether that occurs outside of the regular workplace or normal working hours.

- An explanation of the protections against discrimination in employment contained in B.C.'s *Human Rights Code*
  - Note that employers can extend protections beyond what is in the *Code*. Your policy may prohibit, for example, any form of discrimination based on body size.
- A description of the behaviours that qualify as discrimination—this should include definitions of key concepts and examples of how discrimination shows up at work

## Consider having different policies for different discrimination types

Some organizations choose to have different policies for different types of discrimination or different aspects of non-discrimination. This is because forms of discrimination often show up differently.

Having multiple policies is also helpful for clarity and accessibility, and it also helps clarify to whom the policies apply.

A separate policy on sexual harassment is a common example, as is a policy on accommodating workers with disabilities.

In all cases you should be clear that these specific policies are part of your broader discrimination-free workplace policy and not the only examples of discrimination in the workplace that you must prevent and address.

### Some resources to assist with developing your anti-discrimination policy or policies

- ▶ For more on the policy development process, including ideas for the structure and language consult section 5 of the Ontario Human Rights Commission's [Guide to Developing Human Rights Policies and Procedures](#).<sup>11</sup>
- ▶ WorkSafeBC offers a [template policy statement on bullying and harassment](#) that can help clarify how these concepts overlap with, and can be separate from, discrimination under the *Code*.
- ▶ If you want your policy to express your commitment to international human rights standards, consider [this guidance](#) from the UN Office of the High Commissioner for Human Rights.



## Promising practices for addressing workplace discrimination complaints

While anti-discrimination policies set out expectations and standards, complaint procedures set out how potential violations of these policies will be addressed. Many organizations choose to combine these into one policy. This section begins by outlining principles that should inform your overall approach followed by deeper dives into specific procedural elements.

Here are some things to keep in mind as you review these and build your own process:

- There is no one perfect complaints process
- Think through how you will receive and respond to complaints in partnership with your staff so that your procedures are clear and effective
- Take into account factors such as your organization's size, resources and culture

### Principles to inform your overall approach

#### Co-develop policies and procedures with your workers

Where possible, include your workers in the development and regular reviews of your anti-discrimination policy/policies. These are opportunities to:

- Build a culture grounded in respectful relationships
- Centre voices that are often silenced
- Make sure everyone sees themselves as part of addressing discrimination in the workplace

Pay special attention to setting up and conducting development and/or review processes in trauma-informed and inclusive ways.

When your policy materials are near completion, have a lawyer knowledgeable about human rights law review them.

- Note that co-developing a policy with your workers is not an automatic defense if a human rights complaint is made against you. You cannot avoid your responsibilities under the *Code*.<sup>12</sup>

#### Make sure the process is both fair and perceived as fair

A complaint resolution process can only serve its purpose if the people it is intended to serve know about it and trust it. To be viewed as legitimate, the process must:

- Treat everyone with respect and sensitivity
  - Offer all parties an opportunity to be heard
  - Result in consistent and effective remedies when rights are violated
- The Office of the Ombudsperson offers guidance and resources on administrative fairness, including a [guide on handling complaints](#) (note that these are developed to support public sector organizations).

## Learn about how workers perceive your complaints process



Although it's your responsibility as an employer to promptly address instances of workplace discrimination, studies of workplace dispute resolution have found that the speed at which a complaint is resolved is not the main factor in satisfaction with and attitudes towards complaint procedures.

The neutral administration of policies, quality of treatment by the organization, and adequate communication by decision-makers are more important.<sup>13</sup>

Some workplaces use satisfaction surveys to help understand worker perceptions of fairness in the complaints process.

### Be mindful of differences in power and privilege

Instances of discrimination are deeply linked to broader systems of inequality. It's not unusual that the complainant will tend to have less power than the respondent, and certainly less power than their employer. This makes the process susceptible to conscious or unconscious bias or influence. If we don't acknowledge differences in power and privilege, subtle forms of discrimination are harder to recognize.<sup>14</sup>

### Be mindful of pervasive structures and cultures that enable discrimination

While it's easy to reduce an allegation of discrimination to an issue arising between individuals, it's often harder for people to see the structures and cultures within our workplaces and society that allow discrimination to take place and continue. It's even more difficult to address them.

### Remember that everyone has the right to pursue their complaint through a neutral body

As noted above, it's against the law to pressure someone to not file a human rights complaint. Your organization should proactively offer information on filing complaints with the Tribunal, including the applicable time limits.

### Don't wait for a complaint before acting

If you observe or are made aware of a case of discrimination in the workplace, you must not ignore it. Even if no complaint has been made, be proactive in addressing inappropriate behaviour.



## Offer your staff conflict management training

Provide training in human rights and conflict management for those involved in the resolution process, including all decision-makers. To the extent possible, those who administer the complaints process and those who make determinations about complaints should have lived experience of discrimination in addition to specific training and expertise.

### Language you may encounter in conflict situations

People who try to enforce their right to a discrimination-free workplace can sometimes be negatively characterized by others in the workplace. For example, they may be called “troublemakers,” “whiners,” or “rats.” They may be seen as being “unable to take a joke,” “overly sensitive,” or “angry.”

These kinds of sometimes subtle reactions from those involved in the complaint process interfere with and undermine its fairness.<sup>15</sup>

## Be transparent and show that the organization is committed to continual improvement

Complaints can help prevent ongoing discrimination.

For example, if a worker complains of discrimination in the application of forced overtime, this may point to the need to improve your overtime policies to prevent similar incidents in the future.

Continual improvement inspires confidence in the process and says more about your commitment to anti-discrimination than any policy statement.

Similarly, providing transparency to your organization about the overall performance of your complaint resolution process can help maintain its legitimacy.

- ! Don't be afraid to apologize to your workers when someone has complained of discrimination.
- Apologies are not an admission of fault or liability.<sup>16</sup>
- ▶ For more detailed advice on mediation, documentation, the appointment of an investigator, and more, as well as sample language for your procedure, consult section 6 of the Ontario Human Rights Commission's [Guide to Developing Human Rights Policies and Procedures](#).<sup>17</sup>

## Principles to inform the complaint-making process

The complaints process should be:

Easily accessible

Safe to use

## Make sure staff know about the complaints process

Provide all staff with information and, ideally, training on anti-discrimination that includes details on how complaints are handled.

## Give the complainant flexibility

Give the complainant maximum flexibility to decide the form of the complaint—verbal or written—and how they will file the complaint. Verbal complaints should be written down by the receiver and shared back with the complainant to review and confirm their accuracy.

## Be open to receiving and investigating anonymous complaints

A complainant may wish to remain completely anonymous, they may wish to disclose a situation and seek support short of an investigation, or they may not want their identity shared with the respondent as part of an investigation.

Anonymous complaints can create challenges for investigating the complaint and maintaining a fair process, and you may need to handle these differently depending on the circumstances.



A participant in our focus groups shared that their organization has an anonymous hotline where people can report discrimination and harassment they have experienced or witnessed, and that this triggers an investigation.

## Don't require interpersonal resolution

Parties to a complaint may be encouraged to attempt to resolve the matter themselves in certain circumstances. It is best to avoid requiring this as a step in your complaints process either before or after a complaint has been filed, as it can lead to re-traumatizing the complainant.

## Make it easy to file a complaint

Simple tools can make a big difference.

For example, offering a template for filing a written complaint makes the process easier to navigate and ensures the organization is getting the information it needs to conduct an investigation.

- Note that discrimination can take many forms, some of which are hard to summarize. Because of this, it's better to avoid using checklists and to allow people enough space to write what happened to them in their own words.

## Ensure there are no reprisals for making complaints

Do everything you can to ensure that there will be no reprisals for making a complaint. Your organization may have to take steps to safeguard the work environment for the complainant. These steps must in no way penalize the complainant or people who are supporting them in the process, such as witnesses.

## Principles to inform the complaint resolution process

Your resolution process should be:

Flexible

Predictable

Sufficiently  
resourced

### Offer different investigation options

Try to offer a mix of formal and informal, interest-based and rights-based options to choose from (see the options on the following page). Allow the parties to move back and forth between these as necessary during the process. Ideally the options will include clear procedures with a time frame for each stage as well as clarity on the available outcomes.



### Match the process to the situation

BCOHRC's 2022 focus group participants highlighted the importance of matching the process to the situation and cautioned that adversarial approaches can escalate the dispute and do more harm than good depending on the situation. They also noted that some dispute resolution processes keep complainants from coming forward for fear of "ruining someone's career."

### Make sure the process is fair and respectful

All parties should be able to engage in the process on fair, informed and respectful terms.

- Allow and encourage the complainant to have a representative or support person with them throughout the resolution process—this can help alleviate fears of reprisal or avoid re-traumatizing someone
- Make sure the respondent is informed of the complaint and has an opportunity to respond.
- Keep all parties informed about the progress of the investigation—make sure to communicate clear timelines for the process in advance and notify parties of any delays along the way
- If resources allow, designate one or more people internal or external to the organization as neutral parties (for example, an ombudsperson in larger organizations) to provide independent information and advice to anyone who needs it

## Common approaches to resolving complaints

There are two types of approaches for investigating and resolving discrimination complaints.

### Rights-based approaches

These seek a formal resolution similar to what would be decided in a legal setting. This often takes the form of an independent investigation, legal conclusion and sanctions.

Some things to consider with these approaches are:

- Necessary when the parties are unable to resolve the issues without a neutral third-party decision maker
- Can be more stressful, costly and time consuming
- Less likely to be influenced by power imbalances between the parties
- Cannot mandate an apology or the rebuilding of a damaged relationship
- The unsuccessful party often feels resentment rather than resolution or remorse<sup>18</sup>

### Interest-based approaches

These focus on reconciling the underlying interests of parties involved rather than determining who is right and who is wrong. This often takes the form of mediation and negotiation between the parties.

Some things to consider with these approaches are:

- Effective only where the relationship has not broken down completely and the respondent is open to self-reflection<sup>19</sup>
- Can be perceived as not taking discrimination in the workplace sufficiently seriously
- Can result in personal remedies (for example, an apology) which have been linked to increased perceptions of organizational justice<sup>20</sup>
- Presents an opportunity to heal the whole community, such as in many restorative justice traditions

### Pay special attention to matters of confidentiality

Respect confidentiality and privacy, but don't use the complaint resolution process to pressure those involved into silence.

#### Be clear about confidentiality requirements

An employer may require that the complainant and respondent keep information about an ongoing investigation temporarily confidential if this is necessary to maintain the integrity of the process. Be sure your complaints policy includes a rationale and clear timelines for any confidentiality requirements.



## Don't prevent complainants from speaking about their experience

Complainants should not be barred from sharing their experience of discrimination with uninvolved third parties so long as it doesn't undermine an ongoing investigation.

For example, it should be made clear to complainants that if they require mental health support they can and should share their experience of discrimination with health care providers or other sources of this support in their lives. If available, make sure your workers know how to access extended health benefits that may provide this support.

## Make sure confidentiality and privacy are respected

Complainants and respondents have the right to expect that everyone else involved in a complaint will maintain strict, ongoing confidentiality except for in the following situations:

- Where required for procedural fairness
  - If needed for furthering the investigation
  - As required by law
- ▶ The Human Rights Tribunal offers free mediation services as part of its complaint process. We encourage you to consult the [Tribunal's website](#) for information about its mediation process as well as information about parties settling complaints on their own.

## Principles for making and communicating decisions

When a decision is made on if the complaint is justified or not:

Give reasons for the decision

Communicate openly with all parties

## Make sure the final decision-maker is clear from the start

Depending on the organization, a decision regarding the resolution of a complaint can be made by any number of people or groups. These include a senior leader, an internal committee, an external advisor and so on.

Regardless of these options, the final decision-maker or decision-making body should be clear from the start of the process.

For example, if the resolution approach includes an investigation, it should be clear in advance what the person investigating the complaint can and cannot do. You should tell the parties if the investigator's role includes determining what did or did not happen (findings of fact), making conclusions as to whether your policies or the *Code* have been breached, and recommending discipline if the complaint is justified.

## Be cautious using non-disclosure agreements

Sometimes the parties to a complaint will agree to a settlement. In such cases, an employer may feel the need to include a confidentiality clause into the settlement agreement. This is also known as a non-disclosure agreement—a binding contract that prevents the terms of the settlement, the existence of the settlement or the underlying facts of the situation from being shared with others.

Non-disclosure agreements can serve to silence victims to the point of being exploitative, and they have been likened to a form of bribery.<sup>21</sup> While there may be legitimate reasons for employers to ask complainants to keep the terms of a settlement confidential, requiring them to keep what happened to them (or why they left a job, for example) confidential can:

- Prevent complainants from healing from the trauma they experienced
- Enable respondents to continue harming others in the workplace because colleagues and new employers are not aware of their history

## Clearly communicate the decision to all parties

The employer should clearly communicate the decision and its rationale to all parties. A written closing letter is a good practice as are the following:

- You may decide that the complainant and respondent are not necessarily entitled to every detail of an investigation, but you should decide and communicate in advance what you will share so everyone knows what to expect<sup>22</sup>
- Consider whether disclosing an investigation report, for example, will build trust in the process and in your good faith efforts to maintain a discrimination-free workplace
- Include information about appeals if you have such a process

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Please note that this infosheet provides general information. It is not legal advice. We hope you find it useful but encourage you to seek legal advice about how to implement our guidance in your workplace, including how collective agreement terms or other legal obligations must inform your efforts.

There is no one size fits all approach to employment equity. As an employer, your organization's size, maturity, composition, challenges and needs will inform the strategies that will help advance equity in your workplace.

# Notes

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<sup>1</sup> BCOHRC's focus groups consisted of employers from five sectors—construction, retail and wholesale, education, health and social services, and scientific, professional and technical services. Participants were senior leadership as well as human resources and employment equity focused staff. For each focus group we invited a mix of large and small organizations as well as employers from different parts of the province. We also tried to invite both leaders in employment equity as well as those at earlier stages of the employment equity journey.

<sup>2</sup> See, for example, *Curken v. Gastronome Enterprises*, 2023 BCHRT 2 at paras. 55-59.

<sup>3</sup> Mary Lou Coates, Gary T. Furlong and Bryan M. Downie, *Conflict Management and Dispute Resolution Systems in Canadian Nonunionized Organizations*, Current Issues Series (Kingston, Ontario: IRC Press, 1997).

<sup>4</sup> See, for example, *Francis v BC Ministry of Justice (No 3)*, 2019 BCHRT 136 at paras. 278–282, *Nelson v. Goodberry Restaurant Group Ltd.*, 2021 BCHRT at paras. 4 and 79, *Kalyn v. Vancouver Island Health Authority*, 2022 BCHRT 41 at paras. 8–9, *K. v RMC Ready Mix Ltd. and another (No. 4)*, 2022 BCHRT 108, 2022 BCHRT 98 at paras. 133–134. For more information about discrimination in the workplace see [British Columbia Human Rights Tribunal's website](#).

<sup>5</sup> See, for example, *Ms. K. v Deep Creek Store and another*, 2021 BCHRT 158 and *Billow v Hardy Yardcare and another*, 2022 BCHRT 98.

<sup>6</sup> See, for example, *Francis v BC Ministry of Justice (No 3)*, 2019 BCHRT 136 at para. 373.

<sup>7</sup> The BC Human Rights Tribunal has jurisdiction over provincially regulated employers. Federally regulated employers are under the jurisdiction of the [Canadian Human Rights Tribunal](#).

<sup>8</sup> *Parry Sound (District) Social Services Administration Board v O.P.S.E.U, Local 324*, 2003 SCC 42.

<sup>9</sup> Human Rights Code, s. 43, *Anson v BC Association of Aboriginal Friendship Centres*, 2016 BCHRT 109 at para. 45 and *Kalyn v Vancouver Island Health Authority*, 2022 BCHRT 41 at paras. 106–107.

<sup>10</sup> See, for example, *Nelson v Goodberry Restaurant Group Ltd.*, 2021 BCHRT at para. 90, *Jamal v TransLink Security management and others (No. 2)*, 2020 BCHRT 146 at para. 106 and *Algor v Alcan Inc.*, 2006 BCHRT 200 at paras. 185–188.

<sup>11</sup> There are some differences between the law in B.C. and Ontario because human rights legislation is provincial. For example, in Ontario the legislation distinguishes between discrimination and harassment whereas in B.C. harassment based on a protected characteristic is simply considered a form of discrimination. The prohibited grounds also differ slightly between B.C. and Ontario. For example, “Indigenous identity” is protected in B.C. but not in Ontario, and “citizenship” is not protected in B.C. but is in Ontario. We suggest you get legal advice if you rely on materials from other provinces.

<sup>12</sup> See, for example, *Moutal v School District No. 38*, 2013 BCHRT 132 at para. 156.

<sup>13</sup> John W. Budd and Alexander J. S. Colvin, “[Improved Metrics for Workplace Dispute Resolution Procedures: Efficiency, Equity, and Voice](#),” *Industrial Relations* 47, no. 3 (July 2008): 460–79.

<sup>14</sup> Meg A. Bond and Michelle C. Haynes, “[Workplace Diversity: A Social-Ecological Framework and Policy Implications: Workplace Diversity](#),” *Social Issues and Policy Review* 8, no. 1 (January 2014): 167–201.

<sup>15</sup> See, for example, *Francis v BC Ministry of Justice (No. 3)*, at paras. 330-335, 339, and 343.

<sup>16</sup> *Apology Act*, S.B.C. 2006, c. 19, s.2.

<sup>17</sup> See endnote 11.

<sup>18</sup> Deborah L. Kidder, “[Restorative Justice: Not ‘Rights’, but the Right Way to Heal Relationships at Work](#),” *International Journal of Conflict Management* 18, no. 1 (July 13, 2007): 4–22.


<sup>19</sup> Valerie Braithwaite and Eliza Ahmed, “[Looking beneath the Iceberg: Can Shame and Pride Be Handled Restoratively in Cases of Workplace Bullying](#),” *The International Journal of Restorative Justice* 2, no. 2 (September 2019): 209–34.

<sup>20</sup> Jochen Reb, Barry M. Goldman, Laura J. Kray and Russell Cropanzano, “[Different Wrongs, Different Remedies? Reactions to organizational remedies after procedural and interactional injustice](#),” *Personnel Psychology* 59, no. 1 (March 2006): 31–64.

<sup>21</sup> Ahmed, Sara. *Complaint!* (Durham: Duke University Press, 2021), 99.

<sup>22</sup> Deborah Hudson, “[Workplace Harassment After #MeToo](#),” Queen’s University Industrial Relations Centre, 2018.

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536 - 999 Canada Place

Vancouver, B.C. V6C 3E1

1-844-922-6472 | [info@bchumanrights.ca](mailto:info@bchumanrights.ca)



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