

# **Review of Provincial Funding of Human Rights Agencies**

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October 27, 2014

# Table of Contents

<b>Section One: Overview of Findings and Conclusions .....</b>	<b>1</b>
Introduction .....	1
The Human Rights Tribunal.....	2
The Human Rights Clinic (CLAS and Coalition) .....	3
Conclusions - The Human Rights Clinic.....	4
<b>Section Two: THe Human Rights Tribunal – The Situation Today.....</b>	<b>7</b>
Introduction .....	7
Intake.....	7
Early Settlement Meetings.....	9
Applications to Dismiss (ATD).....	10
Settlement Meetings .....	11
Hearings.....	12
Closure of Cases.....	13
Time to achieve Closure .....	14
Representation of the Parties.....	15
Budget and Staffing.....	16
Appendix A - The Tribunal’s Process Flow Chart .....	18
<b>Section Three: The Human Rights Coalition - The Situation Today .....</b>	<b>19</b>
Introduction .....	19
Human Rights Clinic.....	19
<b>Section Four: The Community Legal Assistance Society-The Situation Today</b>	<b>27</b>
Introduction .....	27
Direct Intake.....	27
Source and Disposition of Full Service Files .....	28
Funding and Staffing.....	31
<b>Section Five: University of Victoria Law Centre - The Situation Today .....</b>	<b>34</b>

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## **SECTION ONE: OVERVIEW OF FINDINGS AND CONCLUSIONS<sup>1</sup>**

### **INTRODUCTION**

- Annual funding by the province of the various Human Rights Agencies has been around \$5 million over the past few years. In 2014/15, total funding available to the organizations has been reduced by \$334,000 – see Exhibit One.<sup>2</sup> Further reductions are expected in the next fiscal year.
- My assignment was to identify ways to achieve cost savings through service rationalization and service transformation. In doing so, I was asked to take a zero base approach. This document summarises my observations and conclusions to date.

### **EXHIBIT ONE: HUMAN RIGHTS FUNDING**

	<b>2012/13</b>	<b>2013/14</b>	<b>2014/15</b>
<b>Tribunal</b>	<b>\$3,028,000</b>	<b>\$3,028,000</b>	<b>\$2,878,000</b>
Contract	\$934,000	\$840,000	\$615,000
Grant Funding		\$94,320	\$225,000
<b>Coalition Total</b>	<b>\$934,000</b>	<b>\$934,320</b>	<b>\$840,000</b>
Contract	\$898,000	\$808,000	\$583,000
Grant Funding		\$89,680	\$225,000
<b>CLAS Total</b>	<b>\$898,000</b>	<b>\$897,680</b>	<b>\$808,000</b>
<b>UVIC Law Centre</b>	<b>\$66,000</b>	<b>\$66,000</b>	<b>\$66,000</b>
<b>Grand Total</b>	<b>\$4,926,000</b>	<b>\$4,926,000</b>	<b>\$4,592,000</b>

<sup>1</sup> Subsequent versions of this paper will include additional Sections on the Situation Today at the Human Rights Tribunal and the UVic Law Centre.

<sup>2</sup> Includes year-end grant funding from the prior fiscal year.

## THE HUMAN RIGHTS TRIBUNAL

- I have not identified any obvious inefficiency in the way the Tribunal is operating, other than a potential opportunity to share space.<sup>3</sup> The Chair and Registrar have already made a number of staffing adjustments in response to funding cutbacks. These adjustments have not compromised service. Further cutbacks probably would.
- The Tribunal already exhibits some of the “Transformation” characteristics favoured by the Ministry: it limits intake by redirecting clients to more appropriate forums; rejects complaints that have no merit (25-30% of complaints); and, encourages early resolution (60% of accepted cases settle and fewer than 5% proceed to a full hearing).<sup>4</sup>
- With existing resources, the Tribunal is able to schedule Early Settlement Meetings within 5-6 months of a complaint being filed. Cases that settle are closed, on average, within a year but it takes much longer to close cases that require a hearing (an average of 29 months). Improvements in these timelines and in the percentage of cases settled may be possible through more active case management by Tribunal members. It is hard to judge the efficiency of the work undertaken by Tribunal members today because their use of time is not recorded.
- Improvements in efficiency may be possible over time through greater use of on-line information and the use of technology to avoid travel.<sup>5</sup> However, the savings would not be substantial and, in the near term, would be exceeded by the cost of the investment required.
- Already, 30% of cases that settle do so without the help of the Tribunal. It is debatable that this figure would be greatly increased through self-help resolution processes.
- I see little possibility, therefore, of substantially reducing the funding of the Tribunal without reducing services and increasing in the time taken to resolve complaints.
- Elimination of the Tribunal would push claimants into an overcrowded and expensive Court system. The annual cost per case closed by the Tribunal is in the order of \$2,700.
- If the Tribunal is maintained, as I think it should, greater emphasis should be placed on performance measures that demonstrate its value compared to the Court system including cost, delay and client satisfaction measures.

<sup>3</sup> The cost of Tribunal space is not included in the funding data presented in Exhibit One. Space costs are budgeted centrally by the provincial government.

<sup>4</sup> The balance are dismissed, withdrawn or abandoned.

<sup>5</sup> For example, the Tribunal's web-site was recently redesigned and updated.

## THE HUMAN RIGHTS CLINIC (CLAS AND COALITION)<sup>6</sup>

- The Clinic provides advice, assistance, advocacy and legal services to complainants. As originally conceived, the Coalition was to be responsible for intake and mediation (by advocates not lawyers) with cases passed on to CLAS when hearings were scheduled. This is still essentially the arrangement today but, in addition, CLAS has developed its own intake stream (from a variety of sources) and a 'duty counsel' arrangement with the Tribunal through which it serves a wider range of clients.
- The Coalition provides educational services to disadvantaged groups and employers as well as Clinic services.
- The Coalition receives a large number of applications for assistance but has a rigorous screening process and accepts fewer than 40% of those applying. In total, 150 new clients are taken on each year – equal to 20% of new claims before the Tribunal. Around 60% of clients settle while represented by the Coalition, and only a small percentage of complaints are passed onto CLAS annually.
- CLAS takes on around 70 **new** clients a year under a retainer agreement. Including cases carried forward, total caseload under retainer is typically closer to 200 files. CLAS tailors its service to the complexity and needs of the case and some of the clients on retainer receive only limited service. More than 50% of its lawyers' time is spent on fewer than 20% of cases but some of these cases include 'systemic' issues of discrimination or law. In addition to those under retainer, around 100 persons per year are provided summary assistance (taking, on average, less than 2 hours of lawyer time each).
- Seventy percent of clients retained by CLAS settle. Only around 5 or 6 cases a year go to a hearing (a small percentage of the 45 hearings that are heard by the Tribunal each year).
- Having two separately funded organizations leads to clear weaknesses in cost-effectiveness:
  - Both organizations have executive staff, central administrative services and common space that have to be funded.
  - Budgets are not easily reallocated among the various functions fulfilled by the two organizations.
  - Lawyers are providing services that can be provided by advocates.
- Financial savings in the order of \$150,000 should be possible if the two organizations are combined. Additional savings would be possible if the Coalition staff were relocated into spare space at CLAS. However, not all of these savings could be realized immediately because of transition costs, severance payments and lease obligations.

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<sup>6</sup> Reference to the UVic Law Centre is not included in this summary.

- If additional savings are expected, they would come at the expense of service to clients. In that situation, the Ministry should specify which services it favours (e.g. mediation) and which services should be limited (e.g. the percentage of legal resources used to support 'systemic' cases rather than 'routine' cases).
- If the two organizations are not combined and substantial cuts are made to funding, the continued viability of the Clinic could be put in jeopardy.
- Service cuts would further reduce the number of Claimants represented at settlement meetings and hearings. Today, 36% of claimants are represented at the Tribunal either through their own lawyers or the Clinic. In contrast, 78% of respondents are represented. Tribunal members and counsel for respondents strongly believe that the assistance provided by the Clinic to claimants increases the probability of settlement, reduces the length of hearings and allows for more effective use of Tribunal member time.
- Transformation of Tribunal services is expected to have only a minor impact on the cost of service provided by the Clinic because the Clinic only represents a relatively small proportion of Tribunal claimants.
- If the Clinic is retained, clearer performance measures are needed to ensure that it is providing overall value for money (e.g. that its clients have better outcomes and a better experience than unrepresented complainants before the Tribunal).

## **CONCLUSIONS - THE HUMAN RIGHTS CLINIC**

1. One agency rather than two should run the Human Rights Clinic. A single integrated Clinic is preferable to the current situation for the following reasons:
  - The government should not fund the management and administrative infrastructure of two different agencies.
  - Budget allocation decisions taken by the Clinic should be consistent with the objectives and priorities of the Clinic and the most cost-effective allocation of staff resources.
  - Intake criteria should be consistent across the Clinic.
  - Reporting should be consistent across the Clinic.
2. A unified Clinic could be accomplished in one of two ways:
  - All services could be merged under one of the existing agencies; or,
  - One of the agencies could be given responsibility for the total Clinic budget and the discretion to contract with the other agency for specialized services. This option may overcome some of the difficulties associated with a merger.

3. Both the Coalition and CLAS should be given an opportunity to demonstrate how they could achieve such a merger and why they should be chosen to run the Clinic. In doing so, each would be expected to show:
  - How they would make maximum use of existing expertise and maintain the quality of service currently provided.
  - How they would ensure the most cost-effective use of resources to deliver services.
  - The level of savings they would expect to achieve without compromising service.
  - How they would address some of the problems associated with a merger (e.g. collective agreement; salary differentials; severance; space costs)
  - The timelines for a merger.
4. To assist the agencies in developing their proposals, the Ministry should provide clear guidelines as to the services it wishes to support. These guidelines would include:
  - A description of the primary target client group for the Clinic (e.g. clients from marginalized groups with limited means and limited capacity to represent themselves but with a complaint that has prospect of success at the Tribunal.)
  - The degree of emphasis that should be put on early settlements.
  - More clarity than today on the extent to which the Ministry wishes the Clinic to support systematic cases of discrimination (e.g. an upper limit on the amount spent on such cases annually).<sup>7</sup>
  - The maximum amount of Ministry funding that should be allocated to Educational activities.
  - The expected level of total Ministry funding in 2015/16 and beyond (should this be less than is needed to sustain current services, the agencies should explain which services would be reduced).
5. The Ministry should not prescribe the details of the intake process or the range of services offered:
  - The agencies should be able to make the case for intake at different points in the life of a complaint's progress at the Tribunal.
  - The agencies should be able to make the case for a variety of styles and levels of service based on clear criteria and resourcing available.
  - The agencies should be given the discretion to design the best service possible with the funds available within the guidelines set by the Ministry.

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<sup>7</sup> The Ministry would not make decisions on individual cases.

6. The Ministry should clearly spell out the most important measures of success that it will use to assess the Clinic's performance (e.g. intake numbers, client characteristics, settlement rates, timelines, success rates at hearings, client satisfaction, cost per client).



## **SECTION TWO: THE HUMAN RIGHTS TRIBUNAL – THE SITUATION TODAY<sup>8</sup>**

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### **INTRODUCTION**

- The Human Rights Tribunal is responsible for adjudicating complaints filed under the BC Human Rights Code. Before doing so, however, it screens out complaints that do not have merit, provides opportunities for resolution through settlement meetings and considers applications from respondents to dismiss the complaint. Therefore, most of the complaints are resolved without a hearing.<sup>9</sup>
- The Tribunal's work begins with inquiries from potential complainants. Inquiry officers provide information about the Code and the issues that are considered by the Tribunal in the complaint process. This information is also available on the Tribunal's web site, which has recently been revamped and updated.
- Inquiry officers redirect people to other, more suitable, agencies if the issue does not appear to be a Human Rights complaint. Inquiry Officers are neutral and do not discuss the merits of a complaint or provide advice on how to frame a complaint. They do, however, refer people to the Human Rights Clinic, the UVic Law Centre and other agencies that provide assistance to potential complainants. In 2013/14, the Tribunal responded to 6,698 telephone and 2,137 email inquiries (an average of around 35 per day). The web site was visited an average of 361 times per day.
- The Tribunal's process flow chart for complaints is reproduced in Appendix A to this Section.

### **INTAKE**

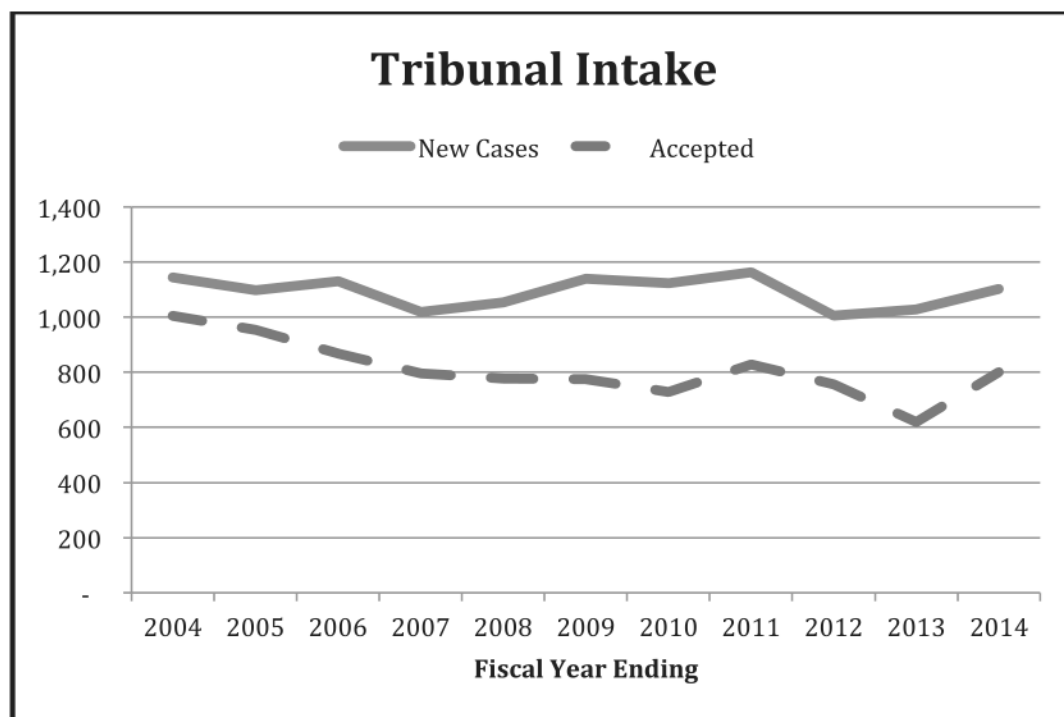
- Once a complaint has been submitted, the intake process begins. Registry staff review all new complaints for completeness and to ensure that the complaint discloses a possible breach of the *Human Rights Code*. Additional information may be requested. The Tribunal rejects cases that do not set out a possible case of discrimination. When a complaint is rejected in whole or in part, the complainant has the opportunity to provide additional information to support the complaint. Based on that new information, acceptance of the complaint may be reconsidered.

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<sup>8</sup> The statistical information in this Section is taken either from public reports of the Tribunal or from special extracts from the Tribunal's database generated for me by the Tribunal.

<sup>9</sup> Throughout this document, the terms complaint, case and file are used interchangeably.

- At the intake stage, registry staff also review the complaint to determine whether it may be filed outside the six-month time limit in the *Human Rights Code*. The *Code* permits a complainant to ask the Tribunal to accept a late-filed complaint. The Tribunal may refuse to accept a late-filed complaint at the intake stage, or it may ask the parties for submissions on this question.
- Following acceptance of the complaint, the Respondent is notified of the complaint and given 35 days to respond. The response time can be extended if the respondents agree to attend an Early Settlement Meeting – see below.
- The Tribunal receives around 1,100 new complaints each year. Both the proportion and number of cases accepted has been falling and, in recent years, the Tribunal has accepted 750 cases on average (an acceptance rate of 67%) – see the following Chart.



- The most common of the alleged grounds of discrimination in complaints are mental and physical disability (43% in 2013/14 and 36% in 2012/13) followed by ethnicity (21% in 2013/14 and 28% in 2012/13).<sup>10</sup>
- The most common area of discrimination is employment (61% in 2013/14 and 58% in 2012/13).

<sup>10</sup> A complaint may include more than one of the statutory grounds of discrimination.

## EARLY SETTLEMENT MEETINGS

- Once a complaint has been accepted, the Complainant and Respondent are offered the opportunity to engage in an Early Settlement Meeting (ESM). These meetings are an opportunity for the parties to resolve the complaint quickly and to avoid a potentially lengthy and expensive process of resolution in a hearing by the Tribunal. However, ESMs are voluntary not mandatory. If the Respondent agrees to participate in an ESM, he/she is not required to file a written response to the complaint until the ESM is completed and a settlement has not been reached.
- If the parties are willing to participate, an ESM can typically be scheduled 3 to 4 months after a case is accepted.
- Exhibit Two shows that 382 ESMs were held over the period July 2013 to June 2014.<sup>11</sup> Hence, only about half of new cases accepted the opportunity to participate in an ESM.
- The settlement meetings are informal and are facilitated by a Tribunal member or contract mediator. The focus is on seeking an outcome that will satisfy both parties. ESMs are held throughout the province. Mediators travel to locations that are convenient for the Complainant and Respondent. Over the past year, 28% of ESMs were held outside Vancouver. A small number of Meetings are held by teleconference from Vancouver.
- Of those cases that did participate in an ESM, 60% were settled. The settlement rate appears to be higher for out of Vancouver cases.

### EXHIBIT TWO: EARLY SETTLEMENT MEETINGS – JULY 2013 TO JUNE 2014

	Settled	Continued	Total	% Settled
<b>In-Town</b>				
Teleconference	3	6	9	
To be determined	1	0	1	
Vancouver	151	114	265	
<b>Total In-Town</b>	155	120	275	56%
<b>Out-of-Town</b>				
Abbotsford	1	0	1	
Campbell River	2	0	2	
Castlegar	0	1	1	
Courtenay	1	1	2	
Cranbrook	2	0	2	

<sup>11</sup> The period July 2013 to June 2014 was used because this is the period of the data provided by the Tribunal.

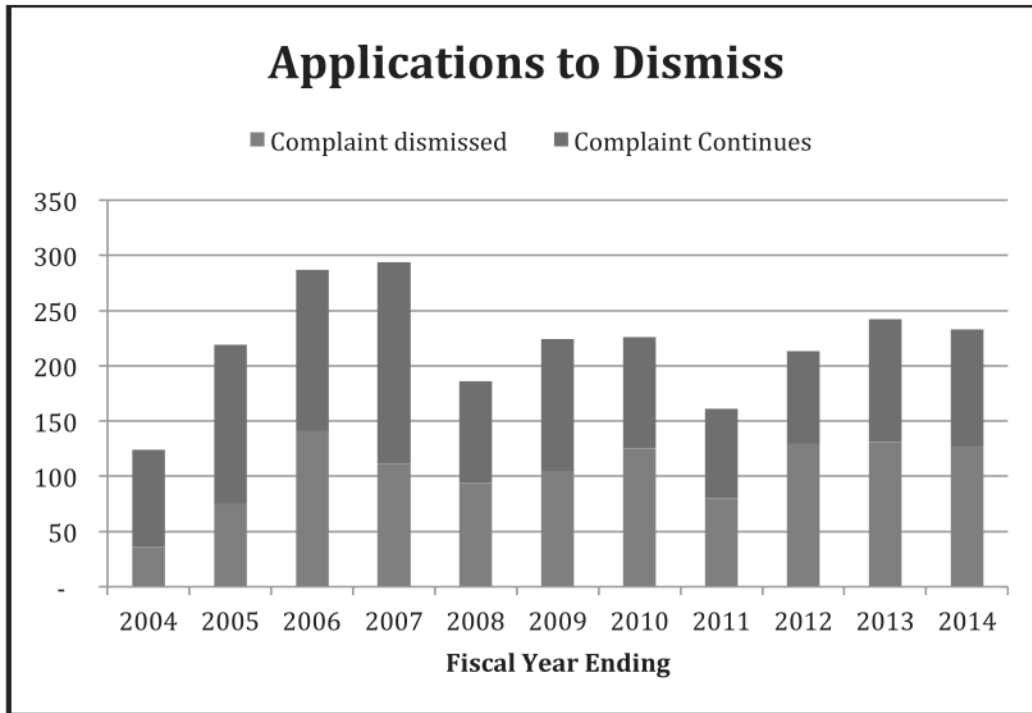
	Settled	Continued	Total	% Settled
Dawson Creek	1	0	1	
Duncan	1	1	2	
Fort St John	2	0	2	
Kamloops	7	2	9	
Kelowna	14	3	17	
Nanaimo	8	8	16	
Nelson	0	0	0	
Penticton	1	0	1	
Prince George	7	1	8	
Quesnel	1	0	1	
Smithers	2	0	2	
Vernon	1	1	2	
Victoria	24	13	37	
Williams Lake	0	1	1	
<b>Total Out-of-Town</b>	75	32	107	70%
<b>Total</b>	<b>230</b>	<b>152</b>	<b>382</b>	<b>60%</b>

% Out-of-Town	33%	21%	28%
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#### APPLICATIONS TO DISMISS (ATD)

- As soon as a response has been filed, the Respondent may make an application to have the Tribunal dismiss the complaint. The Respondent makes a written submission with supporting documentation. The Complainant has the opportunity to submit information and materials in response that support the original complaint. A Tribunal member considers the documents filed and a written decision is rendered. Applications to Dismiss do not involve a hearing.
- The number of ATDs varies from year to year – see following Chart. In recent years, they have averaged around 230 (i.e. around 30% of accepted cases). Just over half the applications are granted and the case is dismissed..
- If an ATD is denied, the complaint is typically scheduled for a Hearing.



## SETTLEMENT MEETINGS

- If the ESM is not successful and/or an ATD is not granted, the Tribunal continues to encourage the parties to explore a negotiated settlement and stands ready to facilitate that process through a Settlement Meeting.
- Even if a case has been set down for a Hearing, the search for a mutually acceptable settlement continues. A settlement is generally considered a preferred outcome to decisions rendered through a hearing. Over the period July 2013 to June 2014, the Tribunal held 122 Settlement Meetings, of which 32 were outside Vancouver – see Exhibit Three. Seventy two per cent of these Meetings resulted in a settlement.

### EXHIBIT THREE: SETTLEMENT MEETINGS – JULY 2013 TO JUNE 2014

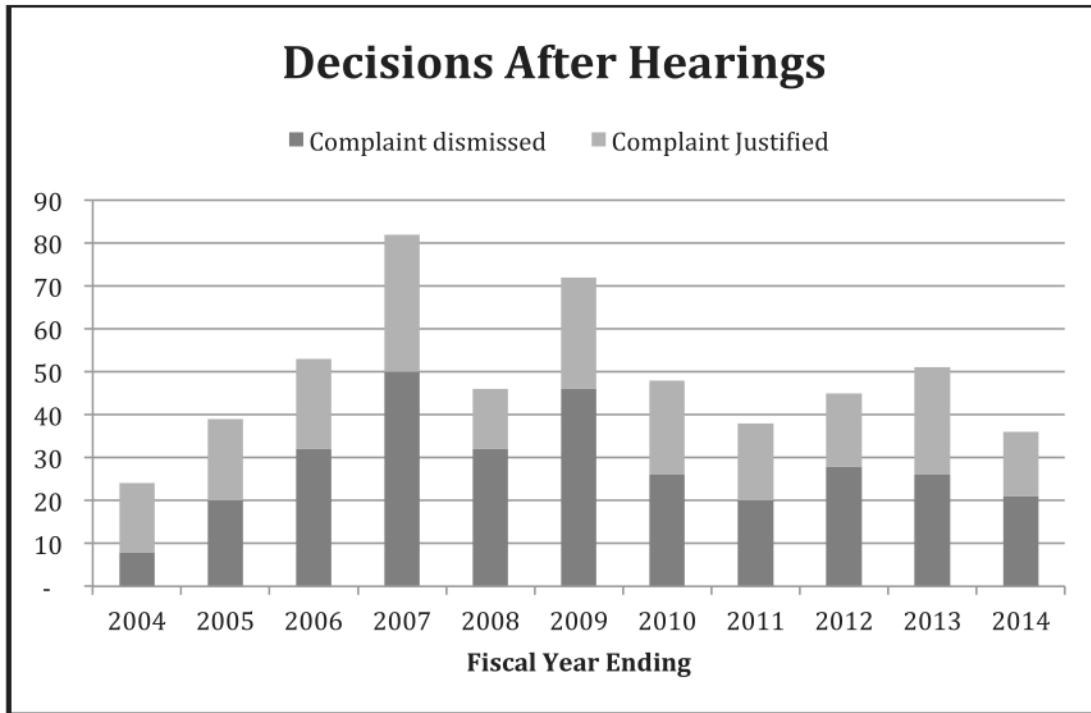
	Settled	Continued	Total	% Settled
<b>In-Town</b>				
Teleconference	7	2	9	
Vancouver	55	26	81	
<b>Total In-Town</b>	62	28	90	69%
<b>Out-of-Town</b>				
Campbell River	2	0	2	
Castlegar	1	0	1	

	Settled	Continued	Total	% Settled
Cranbrook	2	0	2	
Kamloops	2	0	2	
Kelowna	0	3	3	
Nanaimo	3	1	4	
Nelson	0	0	0	
Penticton	1	0	1	
Prince George	3	0	3	
Victoria	11	2	13	
Williams Lake	1	0	1	
<b>Total Out-of-Town</b>	<b>26</b>	<b>6</b>	<b>32</b>	<b>81%</b>
<b>Total</b>	<b>88</b>	<b>34</b>	<b>122</b>	<b>72%</b>

% Out-of-Town	30%	18%	26%
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## HEARINGS

- If a settlement is not possible and the case is not dismissed, withdrawn or abandoned, the complaint is set down for a Hearing before a Tribunal member. Typically, hearings dates are available 6 months from the day the decision to hold a Hearing is made. Before the hearing date arrives, the parties may and often do continue efforts to resolve the complaint through a settlement.
- The number of Hearings held each year varies considerably as the following Chart shows. In recent year the number has averaged around 45, a quarter of which are held outside Vancouver. On average, 41% of complaints that are decided through a Hearing are considered justified.



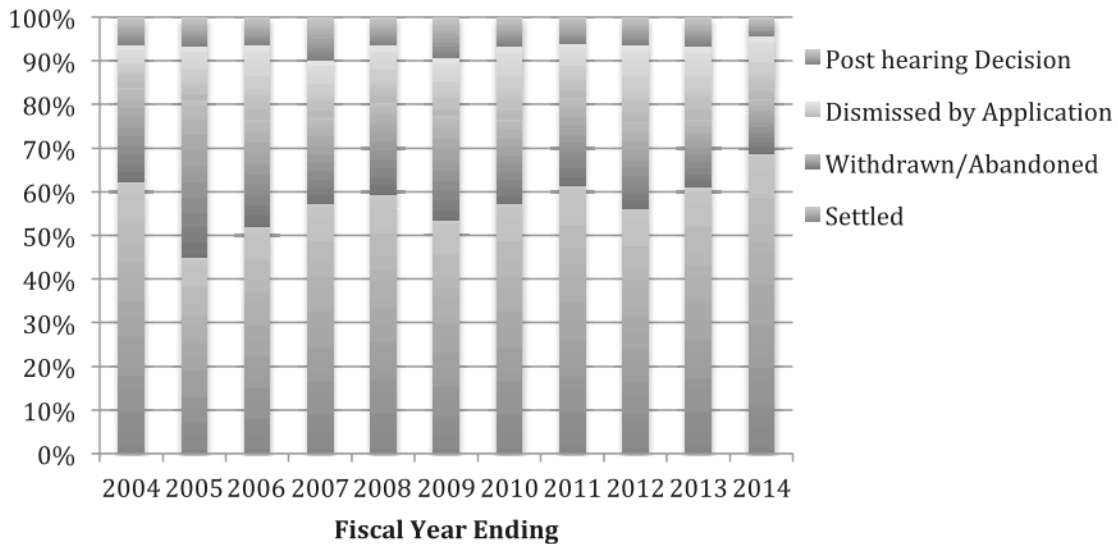
#### CLOSURE OF CASES

- As noted above, accepted cases may be closed at various stages and for various reasons. The disposition of closed cases by fiscal year is shown in the following Chart. (Note: The Chart excludes cases that are not accepted.)
- The majority of cases are closed as a result of a settlement. This could be a settlement facilitated by the Tribunal or arranged privately by the parties. In recent years, the overall settlement rate of closed cases has averaged around 60%, although the rate was closer to 70% in 2013/14.<sup>12</sup> Just under a third of settlements are arranged outside of a Settlement Hearing or ESM.<sup>13</sup>

<sup>12</sup> In its annual report, the Tribunal uses a settlement rate that is calculated the ratio of closed settled cases to accepted cases in the same year. I prefer to use the ratio of closed settled cases to all cases closed in the same year.

<sup>13</sup> These settlements may still have benefitted from participation in an ESM or Settlement Hearing, or from advice and encouragement from the Tribunal.

## Closed Cases - By Disposition (% of total closed)



- Around 6.4% of closed cases were closed following a Hearing in recent years (i.e. less than 4.5% of complaints filed including rejected files).

### TIME TO ACHIEVE CLOSURE

- The average time taken to close a case is shown in Exhibit Four by type of disposition of the case. For example, a file takes 29 months from filing to resolution if it is resolved at a Hearing. Cases that are settled or dismissed are usually closed in a year.

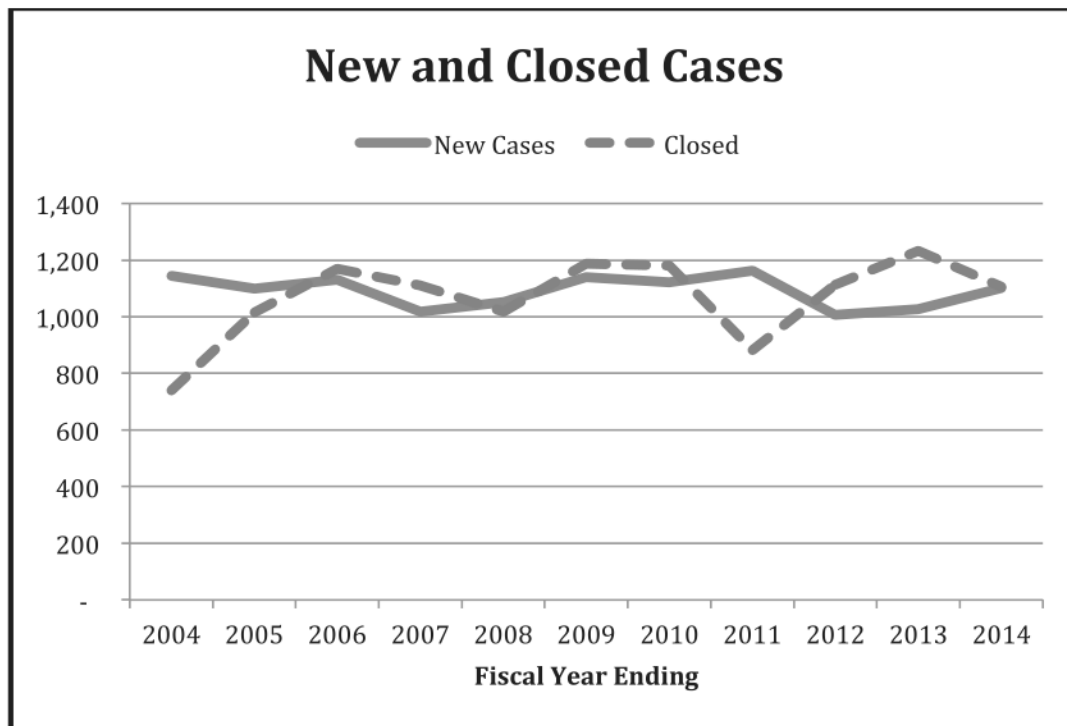
### EXHIBIT FOUR:

#### TIME TO RESOLUTION – CASES CLOSED JULY 2013 TO JUNE 2014

Disposition	# Cases	Ave # Months
Rejected	234	2.5
Late Filed Rejected	45	3.9
Case Settled with Tribunal Assistance	409	11.4
Case Settled without Tribunal Assistance	166	9.8
Application to dismiss granted	134	12.6
Case Withdrawn or Abandoned	112	10.3
Decision Rendered after Hearing	45	29.1
<b>Total</b>	<b>1,145</b>	



- The Tribunal is closing as many cases each year as it accepts – see the following Chart. Hence, the Tribunal's carryover of cases from year to year is not increasing.



#### REPRESENTATION OF THE PARTIES

- Most claimants that appear at an ESM, Settlement Meeting or Hearing are unrepresented by a lawyer or advocate. In contrast, most respondents are represented.
- Exhibit Five summarises the data on representation for the year 2013. It shows that 36% of complainants were represented whereas 78% of respondents were represented.

**EXHIBIT FIVE:  
REPRESENTATION AT ESMs, SETTLEMENT MEETINGS AND HEARINGS -  
2013**

<b>Claimant</b>	<b>Respondent</b>		<b>Total</b>
	<b>With Representative</b>	<b>Without Representative</b>	
With Representative	31%	5%	<b>36%</b>
Without Representative	47%	17%	<b>64%</b>
<b>Total</b>	<b>78%</b>	<b>22%</b>	<b>100%</b>

- The Tribunal reports that, historically, there has been a correlation between representation and success for complainants at a Hearing. However this was not the case in 2013/14.
- At ESMs, the parties are less likely to settle if they are both represented (58% settle) than if they are not (78% settle). There is no data, however, on the nature of the settlement or on the level of satisfaction of the parties in these two circumstances.

**BUDGET AND STAFFING**

- The Tribunal's funding from the Province in 2014/15 is \$2.878 million, down \$150,000 from the level of \$3.028 million in previous years. The vast majority of this funding is spent on salaries and benefits for Tribunal members and Registry staff. Significant non-salary budget items in 2014/15 include: \$73,000 for travel; \$150,000 for professional services (e.g. contract mediators and interpreters); and, \$65,000 for office and business expenses. Average provincial funding per new complaint received is \$2,616 (i.e. \$2.878 million in annual funding/1,100 cases each year).
- This funding provided to the Tribunal does not include funding for costs incurred on the Tribunal's behalf that are budgeted centrally by the Ministry or the Province. These costs include: building occupancy costs; payroll, accounting and auditing costs; and information technology support costs.
- The Tribunal's complement of 25.7 FTEs is summarised in Exhibit Six.

**EXHIBIT SIX:**  
**STAFFING FTES\* – SEPTEMBER 2014**

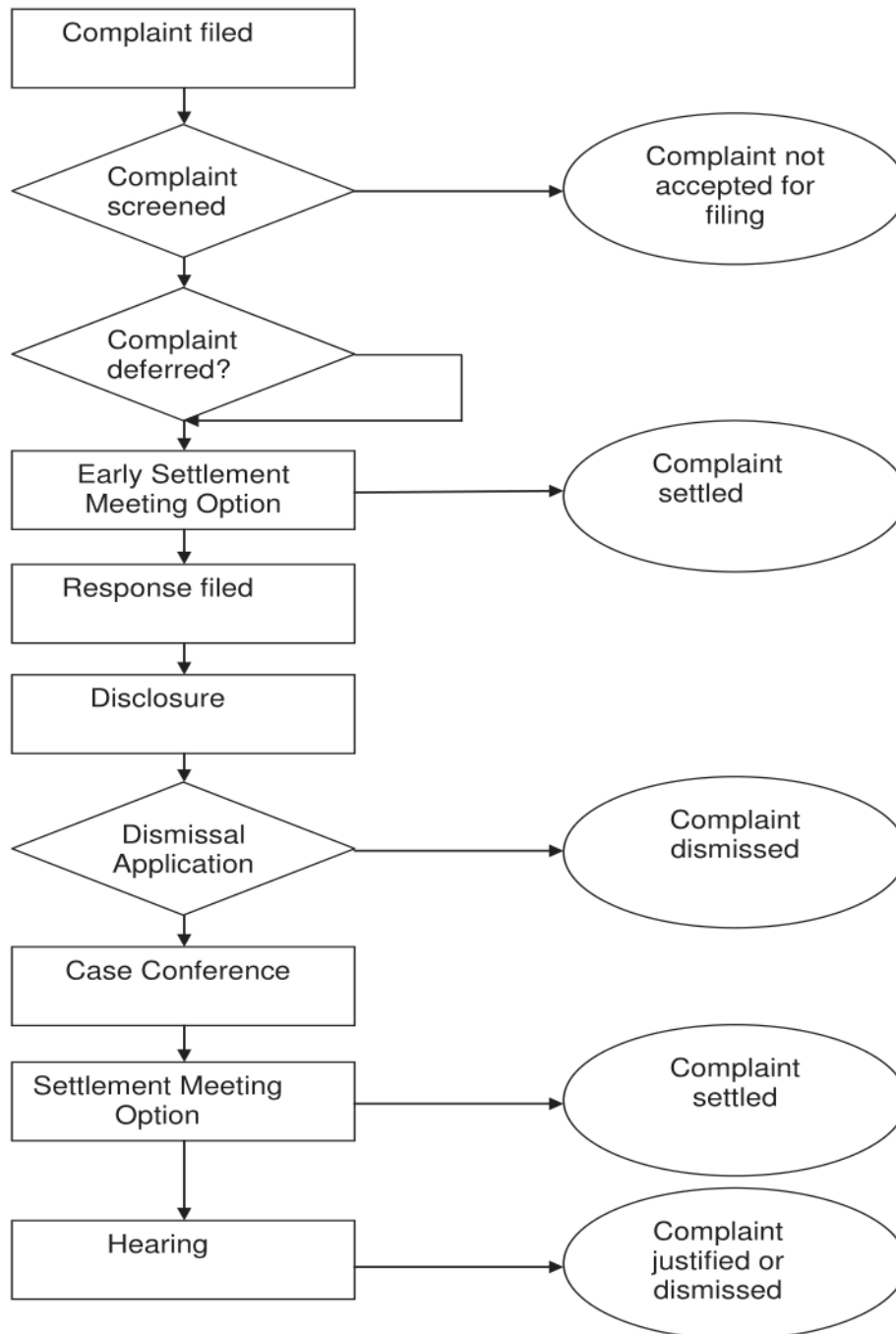
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<b>Position</b>	<b>FTEs</b>
Tribunal Chair	<b>0.9</b>
Tribunal Members	<b>8.0</b>
Legal Counsel	<b>1.8</b>
Legal Counsel Registrar	<b>1.0</b>
Executive Coordinator	<b>1.0</b>
Case Managers	<b>8.0</b>
Inquiry Officers	<b>3.0</b>
Legal Secretary	<b>1.0</b>
Special Projects Coordinator	<b>1.0</b>
<b>Total</b>	<b>25.7</b>

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\*Estimate of Actual FTE usage provided by the Tribunal

## APPENDIX A - THE TRIBUNAL'S PROCESS FLOW CHART



## **SECTION THREE: THE HUMAN RIGHTS COALITION - THE SITUATION TODAY**

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### **INTRODUCTION**

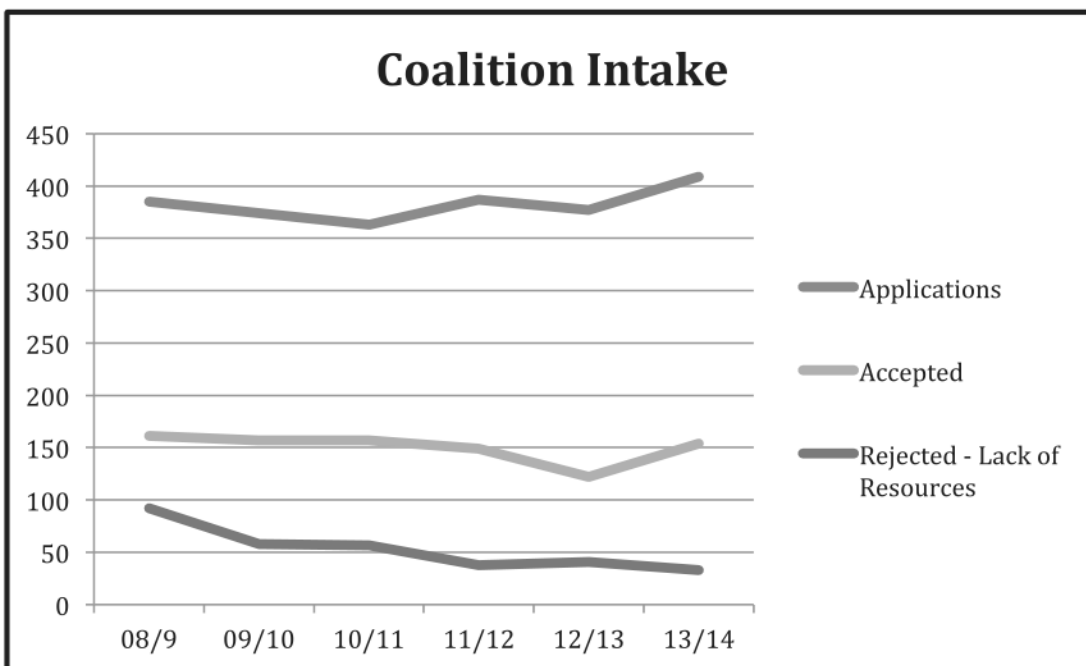
- The British Columbia Human Rights Coalition (the Coalition) is funded by the provincial government to deliver two principal services:
  - Intake and advocacy services for the “Human Rights Clinic”.
  - Education (including general information and advice)
- As originally conceived, the Coalition is the entry point to the “Human Rights Clinic” for claimants who have had their case accepted by the Tribunal. Claimants who are accepted by the Coalition are advised and supported by advocates until their case is set down for a hearing. At that time, the case is passed over to CLAS. This is still the primary role played by the Coalition today. However, the Coalition is not the only entry into the Clinic because CLAS also takes on clients that have not been represented by the Coalition.
- The Clinic does not represent respondents.

### **HUMAN RIGHTS CLINIC**

#### **Intake**

- Applicants have 30 days from acceptance by Tribunal to apply for advocacy assistance. Applications are screened using a variety of criteria including:
  - Are there alternative redress processes available to the Complainant that may reasonably address the issues raised in the Complaint?
  - Can the Complainant reasonably be expected to obtain assistance from other sources such as a law centre, union, community agency, or professional association?
  - What is the Complainant’s financial status?
  - What is the nature of the issues raised by the Complaint?
  - Does the Complaint raise systemic issues or is the resolution of the Complaint likely to benefit more than the Complainant alone?
  - What are the merits of the complaint and what is the likelihood of success before the Human Rights Tribunal?
  - Does the Complaint raise novel issues of law, the answers to which would advance the purposes of the Code?

- A primary focus of the Coalition is to provide help to claimants from marginalized groups that are least able to represent themselves:
  - 65% of accepted client have household income under \$35,000.
  - 18% of clients do not have English as their first language.
  - 12% of clients have 'special needs'.
  - 54% of complaints are on the grounds of physical or mental disability, compared to 43% for all complaints at the Tribunal.
- Clients are taken from all areas of the province. Fifty percent of clients are from the Greater Vancouver area, which is consistent with population distribution in the province.
- The Coalition receives almost 400 applications per year but a large proportion are rejected because they do not satisfy the screening criteria (62% were rejected in 2013/14). Some claimants are rejected because of limited Coalition resources but this percentage has been falling (13% in 2013/14). Rejection can be appealed (within 14 days).

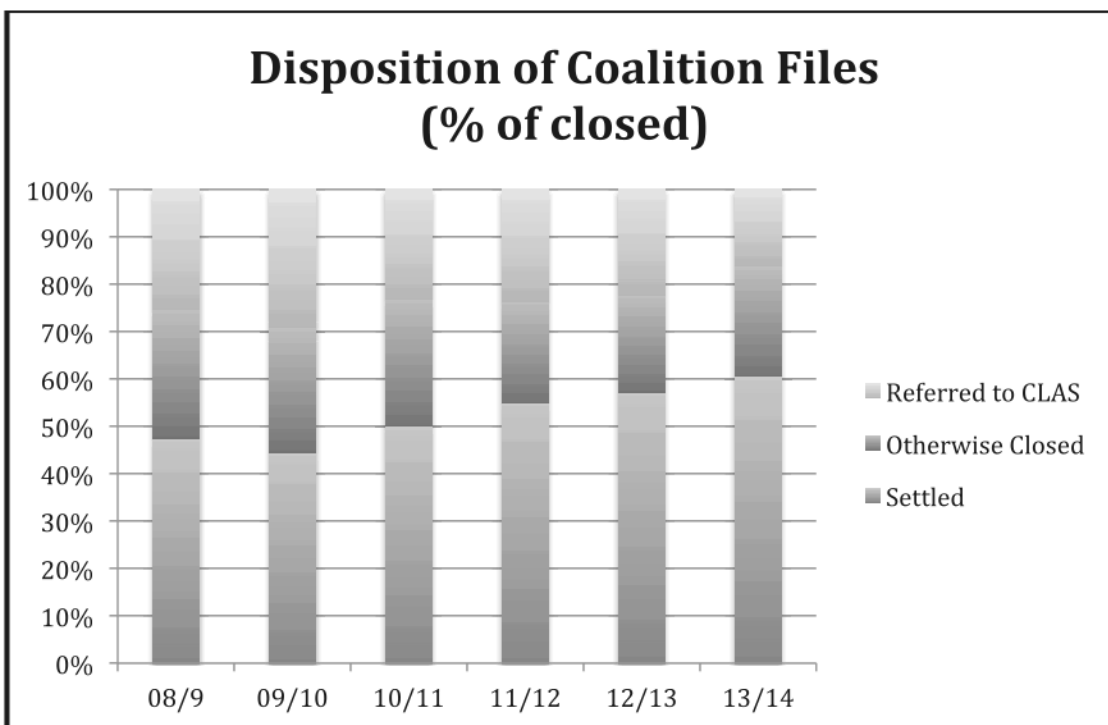


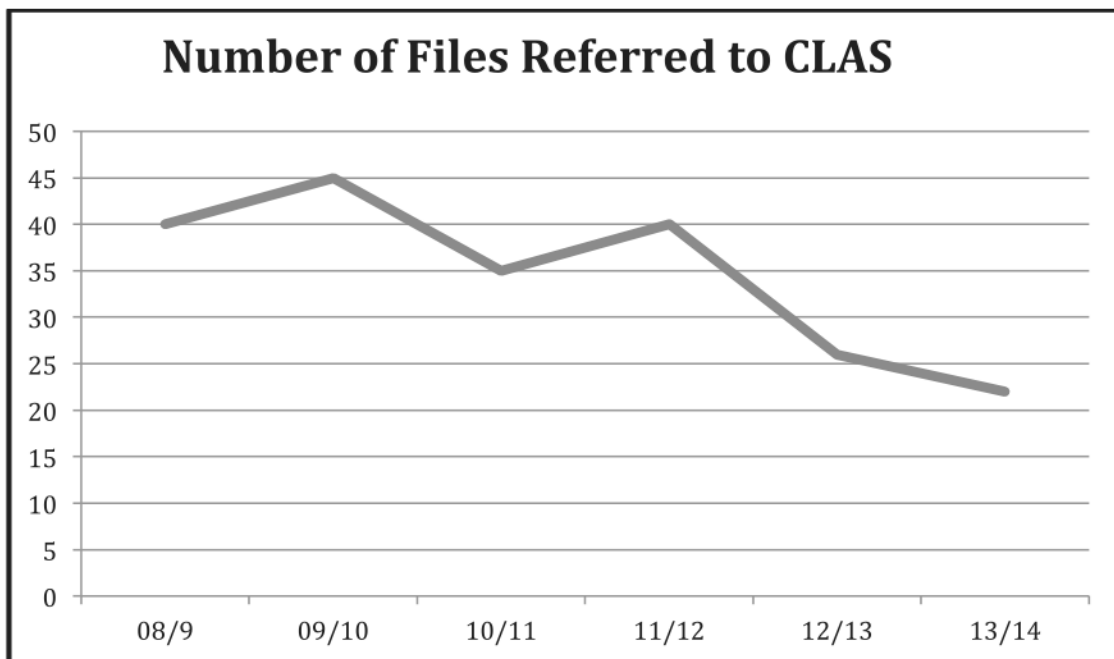
- Around 150 new clients were accepted each year – equivalent to 20% of the new cases accepted annually by the Tribunal.

### Advocacy

- Advocates represent clients at Early Settlement Meetings (ESMs), other Settlement Meetings and by preparing responses to Applications to Dismiss.

- There is a strong desire on the part of Coalition advocates to achieve a settlement because settlements ensure a quicker resolution for claimants and offer a wider range of remedies than is possible through a Hearing. However, not all claimants or respondents are ready for an early settlement. In 2013/14, only 57% of new intake clients attended an ESM. Advocates travel to settlement hearings throughout the province as required.
- If early settlement is not successful most respondents will file an Application to Dismiss (34 ATDs in 2013/14). If, after the ATD is received, the Coalition believes that there is no further prospect of success, support is withdrawn. The Coalition continues to help only where they believe there is merit to the case.
- If a complaint survives an ATD, efforts to reach a settlement continue. Overall, sixty percent of closed files were settled either at an ESM or later in the process in 2013/14.
- If a settlement is not possible and a hearing date is set the file is passed on to CLAS. Before doing so, disclosure and statement of remedy documents are prepared for use by CLAS. The number of files transferred to CLAS has been falling in recent years (22 files were transferred in 2013/14).
- Most of the files passed on to CLAS settle. Therefore, the settlement rate for the Clinic as a whole is around 72%, which compares favourably to the 60% rate for all accepted cases before the Tribunal.





- All Advocates have some legal training but an experienced lawyer on contract to the Coalition supervises their work. The Coalition maintains a handbook of hearing outcomes that provides guidance to advocates on appropriate settlements. It is also available as a resource for other practitioners.
- Although the Coalition collects data on hours spent on individual cases by advocates, the data is not considered reliable. Therefore, we do not know the range of time spent on files.<sup>14</sup>

## Education

- The Education Functions of Coalition are of three types:
  - Information and advice for Potential Clients
  - The Short Service Clinic
  - Workshops and Educational Materials

## Information

- A telephone inquiry line is open to the public three days per week (M/W/F). Around 3,200 general inquiry calls were received in 2013/14 – an average of 21 per day. Prior to funding cutbacks, the service was available every working day. Coalition cutbacks have upped the inquiry calls received by the Tribunal.

<sup>14</sup> This information is available for the lawyers at CLAS.



- In response to public inquiries, information is provided about the Tribunal process and role of Coalition; also, limited help can be given in filling out complaint forms. Callers are redirected to other agencies if their concern is not a human rights complaint.
- The Coalition also provides considerable information on their web site including some videos. Web based video information is available in Punjabi and Mandarin, and audio files available for the visually impaired. The site also has a translation tool. While the web site has considerable traffic, the majority of the persons seeking public advice are more comfortable with the telephone service.<sup>15</sup>

### **Short Service Clinic**

- The Short Service Clinic is a regular session held once per week (Mondays 9:30 to 4) at the Tribunal offices. An advocate and a legal administrative assistant are present. The Clinic allows people based in the Lower Mainland to seek general advice, help with the Tribunal process and assistance with applications. Advocates are able to advise whether or not the attendees have a legitimate human rights complaint. An average of 8 persons are seen at each session. As with telephone inquiries, only a small percentage of persons using the service become clients of the Coalition.
- A similar service in Kelowna was cut out a few years ago because of limited funds.

### **Workshops and Educational Materials**

- The Coalition develops and offers workshops throughout the province on human rights issues. Target audiences include: employers; small business owners; union and community advocates and new immigrants. Around 117 hours of workshop education were delivered in 2013/14 for 681 attendees. Workshop participants are charged fees that recover out of pocket expenses (e.g. facility rentals) associated with the workshops but not the time of Coalition staff.
- Provincial funding supports some of these educational activities but the Coalition relies on other funding sources (e.g. gaming and, occasionally, the Law Foundation) for additional funds. The scope of the Coalition's educational work depends directly on the amount of funding available. For example, a recent grant from the Law Foundation allowed the Coalition to develop a Toolkit for Employers and to fund Toolkit seminars around the province. However, total workshop hours in 2013/14 were considerably lower than they were three or four years ago.
- The Coalition responds to media questions concerning decisions of the Tribunal; publishes a layperson's guide to BC's human rights legislation and complaint process; and, provides a regular newsletter to members.

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<sup>15</sup> Based on my interview with the administrative assistant who answers the phone.

## Funding and Staffing

- Provincial funding in 2013/14 was \$934,000, unchanged from when the Coalition was first contracted to provide Clinic and Education services in 2002/3. In 2014/15, funding has been reduced to \$840,000 - \$225,000 of which comes in the form of a special grant.
- As noted earlier, the Coalition funds its education activities from provincial funding and from other revenue sources including gaming revenue and fees charged for workshops. Exhibit Seven shows actual 2013/14 revenues and expenditures broken divided into three components:
  - Government funded Clinic services including intake and advocacy.
  - Government funded education and information services.
  - Educational activities funded by non-government sources.

### EXHIBIT SEVEN:

#### COALITION REVENUE AND EXPENDITURE BY COMPONENT – 2013/14

	Govt Funded Clinic	Govt Funded Education	Other Education	Total
Revenue	(\$000)	(\$000)	(\$000)	(\$000)
JAG - Human Rights Clinic	771	184	-	955
Community Gaming Grant	-	-	54	54
Human Rights Toolkit Project	-	-	14	14
Fees for Service/Publications	-	-	6	6
Other	3	1	8	13
<b>Total Income</b>	<b>774</b>	<b>185</b>	<b>82</b>	<b>1,041</b>
<b>Expense</b>				
Salaries & Benefits	555	145	40	739
Rent & Utilities	68	17	1	86
Emp Contributions to CPP, EI	30	-	-	30
Equipment Rent & Service	15	4	2	21
Legal Consultation	21	-	-	21
Travel - Outside Lower Mainland	14	0	6	19
Equipment Purchase	13	3	-	16
Client Disbursements	15	-	-	15
Audit, Accounting, Bookkeeping	14	-	1	15
Subscriptions & Publications	3	3	5	11
Printing & Publications	-	3	5	8
Other	28	9	12	49
<b>Total Expenses</b>	<b>774</b>	<b>185</b>	<b>72</b>	<b>1,031</b>

Note: Need to check why JAG total is \$955K

- As the Exhibit shows, \$184K of provincial funding is used for educational purposes (i.e.19% of provincial funding). However, when funding from other sources is included, Educational activities consume one quarter of the Coalition's revenues and expenditures.
- The largest proportion of spending is on salaries and benefits with rent & utilities as the second largest component. Advocates travel to settlement meetings outside the lower mainland and this explains \$14K of the \$19K that was spent on travel. The balance was for educational workshops.
- Exhibit Eight shows Coalition staffing in 2013/4 broken down by position using the same components as in the previous Exhibit. A total of 6.3 FTEs were associated with Clinic activity, of which 1.1 were for intake and 2.3 were advocates. Management positions represent 25% of the FTEs paid from the Clinic budget.

**EXHIBIT EIGHT:**  
**COALITION STAFFING BY POSITION AND COMPONENT – 2013/14**

	Clinic	Education	Education	Total
By Position	(FTEs)	(FTEs)	(FTEs)	(FTEs)
Executive Director	0.8		0.2	1
Manager, Finance & Admin	0.8		0.2	1
Comm Officer/Advocate	0.5	0.5		1
Advocates	1.8	0.2		2
Admin Assistant	0.4	0.6		1
Comm. Assist/Office Coordinator	0.2	0.8		1
Legal Admin Assistants	1.8	0.2		2
Total FTEs	6.3	2.3	0.4	9
By Function				
Advocates	2.3			
Intake	1.1			
Other	2.9			

- The Coalition has responded to cuts in provincial funding by cutting staff and reducing educational and information services. Intake has been maintained despite recent staff cuts.
- The seven non-management positions are unionized. The salaries paid for unionized positions are generally higher than for similar positions at CLAS. In recent years, staff members have received annual salary increases despite frozen funding from the province.
- Provincial funding of Clinic services per closed file was \$5,140 in 2013/14 (i.e. \$771K/150).
- The staffing compensation costs associated with Intake are \$83,000, i.e. around \$208 per application (based on 400 applications).

- The hourly compensation rate for advocates is around \$61/hour based on 1,354 effective hours.<sup>16</sup>
- The average number of files closed each year by an advocate is 65 (i.e.  $150/2.3$ ).<sup>17</sup>

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<sup>16</sup> Including benefits. Effective hours are an estimate of paid hours less hours associated with vacation, sick time, statutory holidays and breaks.

<sup>17</sup> Needs to be discussed with Coalition. The Coalition's statistical report shows an average figure of between 38 and 46. These reports do not seem to allocate any advocate time to education.

## **SECTION FOUR: THE COMMUNITY LEGAL ASSISTANCE SOCIETY - THE SITUATION TODAY**

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### **INTRODUCTION**

- Originally, the role of the Community Legal Assistance Society (CLAS) was to take over a file from the Human Rights Coalition when the services of a lawyer were needed to prepare for and represent the client at a hearing. Today, it still fulfills that role: files are typically transferred from the Coalition 180 days prior to the scheduled hearing date. During the process of hearing preparation, CLAS lawyers continue to discuss the possibility of a settlement and only a small proportion of cases transferred from the Coalition are actually decided through a hearing. The number of files transferred from the Coalition has been declining
- Over time, CLAS has developed a variety of intake sources other than the Coalition. These “direct” intake sources include referrals from the Tribunal, referrals from respondents’ Counsel and telephone inquiries from complainants. Direct intake files now represent half of the workload of CLAS.

### **DIRECT INTAKE**

- In deciding which cases to accept, CLAS has developed a range of criteria including:
  - The merits of the case;
  - The means of the complainant;
  - Capability of the complainant to represent him/herself;
  - Complexity of the case; and,
  - Whether the case raises systematic issues of discrimination.
- In files closed by CLAS in 2013/14 (files from direct intake and the Coalition), 51% of the identified grounds for discrimination related to physical or mental disability. This compares to 43% for all complaints filed with the Tribunal in 2013/14. 66% of CLAS files were associated with employment complaints compared to 61% at the Tribunal.
- Unlike the Coalition, which generally takes on complainants just after their complaint has been accepted, CLAS’s direct intake clients are often at a later stage of the Tribunal. The cases are referred to CLAS because it has become obvious either that the complainant’s case could benefit from representation or because the complainant’s inexperience with the legal process is creating an unnecessary additional workload and delay for the other parties (respondent and Tribunal).
- Like the Coalition, CLAS only represents complainants and only takes on cases that have a reasonable likelihood of success. Most clients are taken on under a full service retainer but in some cases only a limited service retainer

is offered. CLAS can and does withdraw service if information arises during representation that suggests the client has little prospect of success at a hearing.

- Where available resources do not allow for a complainant to be taken on under retainer or when acting as Duty Counsel at the Tribunal, CLAS is able to provide summary advice to complainants. In fact, more complainants are assisted through the provision of summary advice than are taken on as clients but they consume only a small proportion of staff lawyer time – see Exhibit Nine.

**EXHIBIT NINE:  
LAWYER TIME ASSOCIATED WITH CLIENTS OF DIFFERENT TYPE  
SERVICE (FILES CLOSED OVER 2 YEARS)**

Type of Client	Total # of Files	Total # of Lawyer Hours	% of Lawyer Hours	Ave # of Hours per File
Retainer – Full Service	118	8,718	94.5%	74.0
Retainer - Limited Service	22	218	2.4%	9.9
Retainer - Total	140	8,936		
Summary Service	203	288	3.1%	1.4
<b>Total</b>	<b>343</b>	<b>9,224</b>	<b>100%</b>	

- *Note: The data in Exhibit Four, and most of the other Exhibits in this Section, is based on files closed by CLAS over the two-year period April 1, 2012 to March 31, 2014. The data was extracted from the CLAS database for the purposes of this study and has not been published in its Annual Reports. When comparing this data to annual data from other agencies, we have divided the data by two. Hence, we assume that 70 retainer files per year is a good average for CLAS.*

**SOURCE AND DISPOSITION OF FULL SERVICE FILES**

- As Exhibit Ten shows, around half of full service retainer files are transferred from the Coalition; the other half is associated with direct intake clients. No matter what the source of the file, the vast majority are settled (70%). In its statistical reports, CLAS shows a settlement rate closer to 90% but, in doing so, excludes from the calculation files that are withdrawn, abandoned or otherwise closed. CLAS believes this is a better measure of success where settlement was both attempted and an opportunity to settle was afforded. However, the 70% measure is a better comparator to the average 60% rate quoted for the Tribunal in Section Two.

- Many cases settle close to the hearing date. Only 15 of the 317 scheduled hearing days were actually attended in 2013/14.

**EXHIBIT TEN:  
SOURCE AND DISPOSITION OF FULL SERVICE FILES  
(FILES CLOSED OVER 2 YEARS)**

Disposition	Source of Referral			% of Total
	Direct	Coalition	Total	
CLAS Withdrew Services	8	4	12	10%
Complainant withdrew from Clinic Services		2	2	2%
Complaint withdrawn or abandoned		4	4	3%
Complaint Dismissed on Preliminary Application	2	2	4	3%
File Otherwise Closed	2		2	2%
File Settled	39	44	83	70%
Hearing Completed, Decision Rendered	6	5	11	9%
Grand Total	57	61	118	100%
% of Total	48%	52%	100%	

- The average lawyer time expended spent on full time files is shown in Exhibit Eleven. Even though a large proportion of files settle before a hearing occurs, a considerable amount of time has been spent preparing the case for the hearing.

**EXHIBIT ELEVEN:  
AVERAGE LAWYER HOURS PER FILE - (FULL SERVICE FILES CLOSED OVER 2 YEARS)**

Disposition	Ave # of Lawyer Hours
Complaint Dismissed on Preliminary Application	31
File Settled	75
Hearing Completed, Decision Rendered	121

- The averages shown in Exhibit Eleven do not fully illustrate the wide range of effort needed on different files. Exhibit Twelve provides this detail. The Exhibit shows that more than 50% of CLAS lawyer time is spent on 20% of the cases. The most time-consuming case absorbed more than 1,000 hours of lawyer time.
- Since, CLAS takes on cases that may have a systematic impact (i.e. significantly advance human rights law and/or provide an important remedy to

a particular section of the public), it is not surprising these few cases could consume a significant proportion of staff time.

**EXHIBIT TWELVE:**

**DISTRIBUTION OF LAWYER HOURS PER FILE - (FULL SERVICE FILES CLOSED OVER 2 YEARS)**

Lawyer Hours Per File	# Files	# Lawyer Hours	% Files	% Hours	Ave Hours per File
<=10	9	41	8%	0%	5
10-20	16	263	14%	3%	16
20-50	41	1,414	35%	16%	34
50-100	29	2,164	25%	25%	75
100-500	22	3,737	19%	43%	170
>500	1	1,099	1%	13%	1,099
<b>All Files</b>	<b>118</b>	<b>8,718</b>	<b>100%</b>	<b>100%</b>	<b>74</b>

- Exhibit Thirteen shows the average time taken to close a file by type of outcome. For cases that settle, the average is around a year. Once again, however, the average can mask wide variations. Exhibit Fourteen shows the range of time taken to close a file. For 6 files, the time taken to close the file exceeded 3 years. While CLAS can have an influence on the time taken, it does not control the process; other parties can also create and request delays.

**EXHIBIT THIRTEEN:**

**AVERAGE TIME TO CLOSE A FILE - (FULL SERVICE FILES CLOSED OVER 2 YEARS)**

Disposition	Elapsed Time (Months)
Complaint Dismissed on Preliminary Application	8.2
File Settled	12.9
Hearing Completed, Decision Rendered	21.1



**EXHIBIT FOURTEEN:  
RANGE OF ELAPSED TIME - (FULL SERVICE FILES CLOSED OVER 2 YEARS)**

<b>Elapsed Time</b>	<b># Files</b>	<b>% Files</b>	<b>Ave Elapsed Time (Months)</b>
<=6 months	30	25%	3
6-12 months	40	34%	9
12-18 months	27	23%	15
18-24 months	9	8%	21
24-36 months	6	5%	29
>3 years	6	5%	50
Total	118	100%	13

- As well as representing complainants at the Tribunal, CLAS represents a small number of clients at judicial reviews and at the BC Court of Appeal. Two of the files in our sample were Judicial Reviews.
- Of the CLAS files that have proceeded to a hearing at the Tribunal in the past two years, the decision has been rendered in favour of the complainant in two thirds of the cases. This compares to a success rate for complainants of 42% for all hearings before the Tribunal in 2013/14. The Tribunal reports that, historically, there is a correlation between legal representation and success for complainants but this was not the case in 2013/14.

**FUNDING AND STAFFING**

- Provincial funding in 2013/14 was \$898,000; essentially unchanged since CLAS was originally contracted to provide Clinic services in 2002/3. In 2014/15 funding has been reduced to \$808,000. Part of this funding is a special grant of \$225,000.
- Exhibit Fifteen shows actual revenue and expenditure for CLAS's work for the Human Rights Clinic in 2013/14 and the budget for 2014/15. CLAS as an organization provides a range of legal services through four programs, of which the Clinic is one. The total budget for all CLAS services in 2014/15 is \$2.77 million.
- Unsurprisingly, the largest spending items shown in Exhibit Fifteen are for staff wages and benefits. CLAS has relatively low office costs because of a special arrangement with the City that requires them to pay operating costs but not a base rent or property taxes. Travel by lawyers is limited. In 2012/13, travel costs associated with settlement meetings and hearings on 6

files amounted to \$3,000. Disbursements on behalf of clients (e.g. for expert witnesses) are typically within the \$10-15,000 range but occasionally can be larger. The 2014/15 budget carries forward some exceptional disbursement costs that are subtracted from surplus funds carried forward.

**EXHIBIT FIFTEEN:  
CLAS HUMAN RIGHTS CLINIC - REVENUE AND EXPENDITURE BY MAJOR CATEGORY**

	<b>2013/14 Actual</b>	<b>2014/15 Budget</b>
<b>Revenue</b>	(\$000)	(\$000)
JAG - Human Rights Clinic Contract	808	583
Additional	90	225
Deferred (surplus from previous fiscal)	94	28
Adj for Special Approved Disbursements	0	-15
Other	3	5
<b>Total Revenue</b>	<b>995</b>	<b>826</b>
<b>Expenditure</b>		
Client Disbursements/Quicklaw	14	18
Office Sublease Operating Costs	35	29
Professional Dues & Insurance	17	15
Travel - Outside Lower Mainland	3	2
Wages - Lawyers	451	410
Wages - Management & Admin	67	49
Wages - Support Staff	136	116
Employee Benefits	135	116
Other	109	58
<b>Total Expenditure</b>	<b>966</b>	<b>813</b>
<b>Surplus</b>	<b>28</b>	<b>13</b>

- Because CLAS manages more than one program, centrally budgeted staff and operating costs are allocated across the four programs. Central staff costs include those for the Executive Director, Assistant Executive Director, Office Coordinator, receptionists and database administrator. Central operating costs include building operating costs, office equipment and office supplies. A total of \$150,615 in central costs is allocated to the HR Clinic in 2014/15 (i.e. 18.5% of budgeted expenditures for the Clinic).<sup>18</sup>

<sup>18</sup> Central costs are allocated based on the revenue received by each program.

- The Clinic employs four lawyers and two legal administrative assistants. In addition, central staff totalling 1.4 FTEs are allocated to the Clinic – see Exhibit Sixteen. CLAS has responded to the reduction in provincial funding by reducing central staff, the number of hours of legal administrative assistance and by reducing lawyer salaries. The number of staff lawyers has not been reduced.

**EXHIBIT SIXTEEN:**  
**CLINIC STAFFING (FTEs) – CLAS - 2014/15**

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	FTEs
Lawyers	4.2
Legal Admin Assistants	2.0
Sub-Total	6.2
Central Management and Support	1.4
Total	7.6

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- Compensation for lawyers explains 70% of the staff costs allocated to the HR Clinic. The rate of compensation for lawyers is \$89/hour assuming 1,354 'effective' hours for each paid FTE.<sup>19</sup>
- Since the office closes approximately 70 retainer files per year on average, provincial funding per client in 2013/14 was in the order of \$12,500.<sup>20</sup>

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<sup>19</sup> Including benefits. Effective hours are an estimate of paid hours less hours associated with vacation, sick time, statutory holidays and breaks.

<sup>20</sup> While this calculation appears to exclude work on files that are not closed, if the pattern of service is constant over time the 'per closed file' calculation is a good estimate of the amount of funding per client over the period the client's file is open. Three percent of funding was excluded from the calculation – it is assumed to be associated with clients receiving summary advice. If **all** files were included in the calculation (i.e. including non-retainer files), provincial funding per client would be calculated as \$5,100.

## **SECTION FIVE: UNIVERSITY OF VICTORIA LAW CENTRE - THE SITUATION TODAY**

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- The University of Victoria Faculty of Law operates a community Law Centre adjacent to the Courthouse in downtown Victoria. The Centre provides a variety of legal services; support to human rights complainants and respondents is one of those services. Clients receive legal assistance from law students who are supervised by experienced lawyers.
- The Centre is willing to assist complainants from the CRD area and respondents from across the province provided they meet their eligibility tests, including a financial test, and are willing to sign a retainer agreement. The Centre is the only provincially funded organization offering assistance to respondents.
- Over the period Oct 2013 to March 2014, the Centre opened twenty-seven new files, of which twenty-two were for complainants and five for respondents. Over that same period, forty files were closed. Exhibit Seventeen shows the disposition of closed files. As the Exhibit shows, the forty closed files include many where the Centre provided little or no service. Based on written summaries of the files, it seems that between eleven and fourteen clients received substantial assistance from the Centre over this six-month period.

### **EXHIBIT SEVENTEEN: UVIC LAW CENTRE – FILES CLOSED OVER THE PERIOD OCTOBER 2013 TO MARCH 2014**

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<b>Reason for Closure</b>	<b>Number</b>
Settled through Tribunal	5
Dismissed by Tribunal	2
Resolved by Negotiation	7
Complaint Withdrawn	1
Complaint abandoned	1
Initial Consultation Only	5
Extensive advice provided only	7
Client Withdrew	1
Centre withdrew service	1
Settlement by the parties without assistance	1
No grounds or merit	7
Not Financially eligible	2
Total	40

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- The Centre receives an annual grant of \$66,000 from the province, which helps support paid staff and office infrastructure. The student lawyers are not paid; participation in the centre counts toward the law degree at UVic. On the assumption that the Centre closes 25 cases per year where it has had substantial involvement, provincial funding per closed case is around \$2,640. This is considerably lower than the funding per case provided to the Coalition and CLAS.