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LOCAL GOVERNMENT SERVICES AND THE HUMAN RIGHTS CODE

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I. INTRODUCTION

This paper is an update to the 2011 seminar paper "Local Government Services – Striking the Accommodation Balance". Local governments provide various services to members of the public and those services must be provided in a non-discriminatory manner in accordance with Section 8 of the *Human Rights Code* (the "Code"):

> Discrimination in accommodation, service and facility
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> 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 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.

"Accommodation", "service" and "facility" are not defined in the Code and generally there is little distinction made between these three terms. The Human Rights Tribunal has interpreted these terms broadly and therefore, a wide range of activities fall within the scope of section 8, including bylaw enforcement and approval of development permits.

We will review the cases that have been decided by the Human Rights Tribunal since 2011. These cases generally fall into three categories:

1. Zoning, Development Permits and Accessibility

2. Recreation

3. Bylaw Enforcement and Policing

These cases illustrate the range of local government services being challenged by members of the public.

II. ZONING, DEVELOPMENT PERMITS AND ACCESSIBILITY

Local government zoning bylaws and development permits have been challenged in human rights complaints. These complaints often result from the enforcement of the zoning bylaw against the complainants. In the cases discussed below, the local governments applied to have the complaints dismissed prior to a hearing, and were mostly successful.

In *Penrose obo others v. City of Kelowna and others*, 2016 BCHRT 191, Penrose filed a complaint on behalf of her husband, Mr. Penrose, alleging that the Respondents had discriminated on the bases of physical disability. The Penroses argued that the City failed in its duty to accommodate Mr. Penrose, a paraplegic, by refusing to provide an exemption to the City of Kelowna's Zoning Bylaw which prohibited parking vehicles in the front yard setback of a residential property. Mr. Penrose gave evidence that he needed to be able to park his vehicle close to his front door. In response to this complaint, the City argued that the Penroses should have applied for a Development Variance Permit ("DVP"), which they refused to do, and that Mr. Penrose was able to park close to his front door in his drive way.

Mr. Penrose's wife and daughter also complained to the Tribunal citing the City's failure to accommodate in relation to their parking needs in front of their house, which included asthma, vertigo, and various types of pain. However, the Tribunal noted that there was no evidence that they applied for accommodation from the City or that they suffered an adverse impact from the enforcement of the City's Zoning Bylaw.

The City's application to dismiss was successful as the Tribunal found that there was no reasonable prospect that it would succeed. There was no indication that applying for a DVP would have been discriminatory. Further, any negative impact on Mr. Penrose arose not from the Zoning Bylaw, but from the number of vehicles that the Penroses chose to park at their property. The Tribunal concluded that the Penroses could have, without violating the Zoning Bylaw, parked two vehicles in their garage, plus two vehicles in front of their garage, plus a vehicle on the side of the house opposite to their front yard setback. The Penroses had multiple ways of parking their vehicles that would not have violated the Zoning Bylaw and would not have resulted in hardship for Mr. Penrose.

In *Gill obo Gill v. Delta and Others,* 2014 BCHRT 28, Gill, who had been in a car accident that left her physically disabled and in a wheelchair, complained that Delta violated s. 8 of the *Code* by enforcing its bylaw concerning the amount of pavement allowable on residential properties in a manner that was discriminatory. At Gill's home, her family had undertaken renovations to their yard in order for her to be able to access transportation, such as Handi-Dart. Due to the property being uneven, Gill needed pavement to get to the front of the house safely.

Delta had a Zoning Bylaw that restricted the total amount of impermeable surface permitted on a residential lot to not more than 60% of the lot. Delta also had a Boulevard Maintenance Bylaw requiring land owners to maintain the boulevard fronting their land. A bylaw inspector saw an unlicensed business operating out of Gill's home and observed that it appeared that in excess of 60% of the uncovered area of the property was being paved, in violation of Delta's Zoning Bylaw. This bylaw inspector then requested that another bylaw officer attend the property to help with measurements.

The two bylaw inspectors attended the house, measured the paved surface, and then spoke with Gill's brother, informing him that the property was in violation of both the Zoning Bylaw and the Boulevard Maintenance Bylaw, as it was in excess of the maximum allowance and partly covered City property. Gill was advised of the area of pavement that would need to be removed to bring the property into compliance with the bylaws. Gill eventually obtained an extension of time in which to remove the pavement, but never removed it.

In its application to dismiss the complaint, Delta argued that the property remained in violation of the Zoning Bylaw, but noted that they had taken no further enforcement action against Gill. They also argued that Gill's disability was not a factor in their decision to require the property to be in compliance with the bylaws.

The Tribunal denied Delta's application as it could not conclude that Gill had no reasonable prospect of establishing *prima facie* discrimination. Gill had suffered adverse consequences as a result of the threat of bylaw prosecution. Further, there was a legitimate dispute about whether or not Delta had reasonably accommodated Gill. Therefore, the Tribunal concluded that these issues must be decided at a full hearing.

The Tribunal came to the opposite conclusion in *Iler v. Delta*, 2015 BCHRT 47, which also involved the enforcement of Delta's Zoning Bylaw and dismissed the complaint against Delta as having no reasonable prospect of success. This case involved a representative complaint that the Tribunal described as persons with a disability (addiction) participating in the VisionQuest program and formerly residing at the North Delta Inn.

VisionQuest was a long-term treatment centre for those with addictions. The representative complainants were individuals who had been incarcerated and released from that incarceration on the express condition that they attend and successfully complete a drug rehabilitation program provided by VisionQuest. Prior to this complaint, VisionQuest was planning to operate a recovery house at the North Delta Inn. When the Delta Police learned of this, they advised Delta.

Delta determined that this use of the North Delta Inn was not in compliance with its Zoning Bylaw because the applicable zoning did not permit the operation of a recovery facility. Delta assigned a bylaw inspector to investigate and the bylaw inspector determined VisionQuest was operating a recovery house at the North Delta Inn in contravention of the Zoning Bylaw.

In the application to dismiss this complaint, Delta argued that VisionQuest could have carried out its operations in Delta either by applying for an amendment to the Zoning Bylaw or by locating a suitable alternative premise which was properly zoned. Furthermore, Delta argued that there was no nexus between the enforcement of its bylaw and the Complainants' disability. The Tribunal ultimately concluded that Delta's conduct was because the Zoning Bylaw was being violated, not the fact that the representative complainants had addiction issues.

In *Riddle v. Town of Gibsons*, 2017 BCHRT 148, Riddle filed a complaint against Gibsons, alleging discrimination on the basis of physical disability in relation to a development permit that was issued for a large development that included a hotel and condominiums (the "Development"). Part of the Development involved the closure of a road that led to the waterfront of the Town's harbour (the "Road"). Riddle alleged that the issuance of this development permit and the resulting construction of the Development would negatively affect her access to a portion of the Town's waterfront that she accessed by car via the Road. Gibsons applied to dismiss the complaint as having no reasonable prospect of success.

Riddle is a resident of Gibsons with a disability that limited her ability to walk far distances before being affected by severe pain. She gave evidence that she would often drive to the waterfront and park her car to "enjoy peaceful contemplation of the natural beauty of Gibsons Harbour and the panoramic views". Riddle claimed that the Development would render it impossible for her to access the waterfront at her preferred location by car.

Gibsons argued that the Development would improve accessibility to the waterfront for Riddle and all members of the public, including those with disabilities, given various features of the Development such as a smooth, accessibly graded, pedestrian seawall, accessible parking spots, seating and viewing options. Further, Gibsons noted that there were other access points that Riddle could use to access the waterfront.

The complaint was dismissed by the Tribunal as having no reasonable prospect of success. The Tribunal considered the extent to which Riddle's concerns were personal nature rather than related to her disability and the evidence provided by Gibsons regarding improved access to the

waterfront access at the Development. The Tribunal concluded that the approval of the Development and closure of the Road would not adversely affect Riddle in such a significant way as to trigger the protections of the Code.

The Tribunal also concluded that, if Riddle had established discrimination, Gibsons had reasonably accommodated Riddle, both through its process of ensuring accessibility to people with disabilities and because Gibsons is entitled to prioritize greater accessibility to a service for a greater number of people.

Riddle has filed a judicial review of this decision, which is expected to be heard by the BC Supreme Court in 2018.

In *Basic v. City of Vancouver and another*, 2015, BCHRT 155, Basic filed a complaint alleging that the City discriminated against him based on physical disability. Basic was a public advocate who regularly attended the Vancouver Law Courts. He was concerned that the wheelchair ramp at the corner of Howe and Smithe Streets required him to move his mobile device into oncoming traffic in order to gain access. Basic contacted the City about this issue and was advised that a request had already been received to modify the ramp, and that work would be beginning in early 2014.

The work on this corner was delayed due to road work issues and the City decided to include this work as part of the Howe Street reconstruction project in 2015. The ramp modification was completed in May 2015. Prior to these modifications, the ramp had been constructed to previous design standards.

The City applied to dismiss the complaint as having no reasonable prospect of success, arguing that a reasonable accommodation was available to Basic at all times before the ramp modifications were completed. The City also provided evidence of the number of corners in the City that required upgrades, which in June 2015 was approximately 8,000.

The complaint was dismissed by the Tribunal as the City had reasonably accommodated Basic. Prior to the modification of the ramp at issue, Basic was able to use a detour to cross the intersection and the City prioritized the ramp modifications requested by Basic.

III. RECREATION

Municipal recreation services are frequently met with challenges under the Code. The below decisions deal with preliminary applications for dismissal, based either on the fact that the complaint has no reasonable prospect of success or that it has been filed out of time. The Tribunal has taken a strict approach to disallowing late-filed claims, applying a stringent standard to arguments about continuing contraventions.

In *Teneyck v. City of Vancouver and another,* 2016 BCHRT 86, Teneyck filed a complaint alleging discrimination on the basis of sex. He had been denied the use of a weight training room at Ray-Cam Co-operative Centre ("the Centre") between the hours of 1:00 and 3:00 pm, because this

timeslot was reserved for women. Teneyck argued that he needed to work out in that timeslot because another patron who had verbally abused and threatened him worked out in that facility between 9:30 and 1:00 pm.

The City applied to dismiss the complaint on the basis that it had no reasonable prospect of success. The City argued that male persons had access to the Ray-Cam Fitness Centre during the vast majority of the fitness centre's operating hours, seven days per week, and that there were other reasonably proximate fitness facilities available for male use. The City also argued that the reservation of a women's-only time block constituted an effort to balance the interests of all of its patrons appropriately, given that the population served by Ray-Cam was particularly vulnerable to negative male/female interactions.

The Tribunal dismissed the complaint, finding that although denial of access to the weight room during that time slot was based upon gender and that it could be considered an adverse effect, the City's decision was based upon a bona fide and reasonable justification, being the goal of providing vulnerable women with a safe environment in which to exercise as part of ongoing efforts to improve the health of these women. The women-only workout time was part of a partnership with the Women's Hospital in developing health programs for vulnerable women in the Downtown Eastside of Vancouver, including fitness programs.

Furthermore, the Tribunal found that the true issue appeared to be with the other abusive patron and the morning time slot, and not the women-only times. The alleged abuse or bullying was unfortunate, but did not appear linked to any protected ground under the Code.

In *Roblin v. City of Surrey,* 2016 BCHRT 131, Roblin filed a complaint under s. 8 of the *Code*, alleging discrimination on the basis of physical disability. Roblin accompanied his son to swimming lessons at a City pool, but refused to remove his shoes while walking on the pool deck, contrary to the pool's hygiene policy. Several occurrences of this behaviour took place, culminating in an incident in February where he informed a lifeguard that he had a severe toe infection that would be aggravated by any contact with pool water. At that point, the City Manager issued a decision letter banning Roblin from its facilities for one month for a breach of the City's Code of Conduct for Facilities. The City alleged that Roblin was banned for his hostile and aggressive behaviour.

The complaint was filed outside the six-month limitation period, so the Tribunal sought submissions from the parties concerning the complaint's timeliness. Whether it is in the public interest to accept a late-filed complaint is a fact and context specific enquiry, wherein the Tribunal considers a non-exhaustive list of factors, including the length of the delay, the reasons for the delay, and the public interest in the complaint itself.

Roblin argued that he failed to file the complaint within the limitation period because he was afraid of recourse from the City. The Tribunal found that Roblin had not provided any evidence to suggest that his fear of retaliation would be justified, and absent exceptional circumstances, the fear of a potential retaliation cannot generally provide public interest grounds to accept a

late-filed complaint, especially when balanced against the concern that allowing a complaint such as this to proceed would encourage other potential complainants to file late. The Tribunal ultimately declined to accept the complaint for filing, on the basis that it was not particularly unique, and disclosed no public interest reason for allowing a late filing.

In *Rafieyan v. City of Coquitlam and another*, 2012 BCHRT 310, the complaintant alleged that the City and a City employee discriminated against him on the basis of age, sex and physical disability, contrary to s. 8 of the *Code.* Rafieyan's complaint centred on the recreational volleyball games that he attended at the City's community centres. The basis for the discrimination complaint was Rafieyan's allegation that, on one occasion, another male player swore at him and became aggressive, and that the City employee took no action; and also, this employee was unfairly confining Rafieyan to the recreational courts rather than permitting him to play in the competitive games, culminating with a request that Rafieyan not attend the Wednesday night games which were intended to be competitive only, in contrast to the Tuesday and Thursday games which were for all skill levels .

The City's evidence was that as volleyball supervisor, the employee's duties included organizing the players so that persons of similar ability play on the same court, and that the purpose of doing so was to ensure players enjoy the game and avoid injury; as a result, the employee routinely moved players from one court to another based on skill level. The employee did advise Rafieyan on two occasions not to attend the competitive volleyball sessions because he did not believe that Rafieyan had the requisite skill level; but the employee also provided Rafieyan with tips and advice on volleyball skills, including recommending that he not kick the ball, to help improve his skills and reduce the risk of injury to himself or other players.

The employee had also spoken to his supervisor about the incident of aggression between Rafieyan and the other player, and the manager followed with an investigation that determined the employee had in fact intervened and separated the two, with the result that the other player left. The manager also met with the player accused of swearing and acting aggressively and advised him not to use profanities while playing. The manager also met with Rafieyan after he complained to the City about the employee. Rafieyan requested that the employee be fired and suggested that an independent expert be brought in to assess Rafieyan's volleyball skills; the City declined, but did add an extra beginner volleyball program and changed the Wednesday session from competitive to all-level.

The complaint was dismissed based on having no reasonable prospect of success, since there was no factual foundation upon which a reasonable inference could be made that discrimination had occurred on the basis of a prohibited ground. The City confirmed that Rafieyan was not precluded from attending any particular session and had provided a reasonable, non-discriminatory explanation for the assignment of players, both male and female, to different courts based on skill level.

Peeters v. City of Vernon and another, 2011 BCHRT 246, also addressed the issue of whether or not to accept a complaint for filing outside of the limitation period. Peeters filed a complaint against the City of Vernon and the North Okanagan Regional District, alleging discrimination on the basis of physical disability.

Peeters, a cancer survivor, had been advised by his doctor not to use the sauna at the Vernon Aquatic Centre because the sealant used by the City could produce "cancer causing gases". Peeters advised the City of his issues with the sauna, and the City responded by engaging an environmental consulting firm to conduct a "total volatile organic compound" assessment of the sauna. The consultant found that the gas concentrations measured well within the recommended levels set out in provincial and federal regulations. When these results were communicated to Peeters, he responded by saying that the provincial and federal regulations were irrelevant to his cancer and not acceptable with the Cancer Society.

Peeters claimed that this was a continuing contravention, because the sauna was, in his submission, still toxic. The Tribunal wrote that this argument did not support a finding of a continuing contravention, which requires a "succession or repetition of separate acts of discrimination of the same character". There must be a timely act of discrimination which could be considered a separate contravention of the *Code*, and not merely one act of discrimination with continuing consequences.

No reasonable explanation for the almost nine-month delay was provided, and the Tribunal concluded it was not in the public interest to accept the complaint in these circumstances. Peeters had not provided sufficient support for his allegation that there were on-going safety concerns, nor provided sufficient reasons why proceeding with his complaint raised a unique issue that may advance the purposes of the Code.

Complainant P v. Vancouver Board of Parks and Recreation and another, 2015 BCHRT 72, involved an application to dismiss a complaint alleging discrimination in the provision of services on the basis of physical disability. Specifically, P alleged that he was discriminated against in relation to his access to and use of the Respondents' Aquatic Centre and its facilities.

P required the use of a mechanical lift chair and staff assistance to enter and exit a swimming pool, and to utilize the centre's dressing rooms and showers. He claimed that from time to time, he had been refused necessary staff assistance at the Aquatic Centre.

The Respondents responded that although P could partially bear his own weight when he first began to use the facility, his condition had progressed to the point of being non-weight bearing and he required significantly more assistance in transferring from his mobility device to the lift chair, an operation which now needs up to three people to help him transfer to the lift chair and at least two persons to reverse the process, and that this put Aquatic Centre staff at risk of injury. The Respondents remained willing to have staff help P with the lift chair but explained that he needed to bring his own assistance for the transfer. Alternate venues with pool ramps were also identified.

The application to dismiss was brought on the basis of both having no reasonable cause of action and being filed out of time. Given that several discrete incidents of staff refusal had occurred, the Tribunal accepted the complaint as an instance of a continuing contravention.

The Respondents argued that P was not denied access to the service of a public swimming pool, since he was offered access to alternative pool venues which were fully equipped to accommodate his disability. He rejected these, insisting on using the pool at the Aquatic Centre and demanding that it meet his needs. The Respondents also argued that P was not denied access to the pool in question, but only denied the specific assistance of staff lifting him because he was unable to bear his own weight, which was not a service customarily available to the public. Finally, the Respondents argued that refusal of the service of lifting P was justified on legitimate staff safety concerns, which must be balanced against P's preferred accommodation, and pointed to the fact that similar "no lift" policies are applied in hospitals and other facilities. The Respondents submitted that staff are not required, under the *Code*, to put themselves at serious risk of personal injury in order to accommodate a disability.

P submitted conflicting evidence about the degree to which he could bear his own weight and the level of staff assistance he needed to enter and exit the pool, and claimed the complaint was not about the access to public swimming pools generally, but rather about access specifically to the Aquatic Centre.

The Tribunal noted that the phrase "service customarily available to the public" must be interpreted in a broad, liberal, and purposive manner, and that while it was possible that the existence of accessible services at another facility might result in a conclusion that there is no discrimination at a particular facility, that conclusion would depend on the Respondents establishing that accommodating P at the facility of his choice would constitute undue hardship.

The Tribunal also refused to conclude that "lifting" was appropriately defined as the service at issue, since if the accommodation sought is characterized as the service, this would relieve service-providers of providing meaningful access to persons with disabilities who require accommodation.

Given the conflict of the evidence in the level of help the Complainant required, no decision could be made since this factual dispute was of defining importance to this complaint. This was because it went to the core of the Respondents' defence that P was accommodated to the point of undue hardship on the basis of legitimate and serious staff safety concerns. The resolution with respect to this central issue in dispute required findings of fact at a hearing.

IV. BYLAW ENFORCEMENT AND POLICING

Another frequent area of human rights challenges to municipal action comes as a response to bylaw enforcement efforts. In some cases these challenges appear to be collateral attacks against the bylaw enforcement process, especially where enforcement is ongoing. Where there is another reasonable explanation, these complaints have not generally proceeded, although the Tribunal has shown a recent potential willingness to expand the "place of origin" grounds in a novel manner.

In *Joan William v. City of Kelowna and another*, 2012 BCHRT 8, William filed a complaint with the Tribunal, alleging that the City and its employee discriminated against her on the grounds of ancestry, colour, and race, contrary to ss. 8 and 13 of the *Code.*

William, a woman of Aboriginal ancestry, had applied for a job as a Community Care Worker with Interior Health. When she completed her interview, she was given a conditional offer of employment subject to a satisfactory criminal record check. The check disclosed a domestic incident which resulted in an arrest but no charges. The City employee provided this information to William's prospective employer, who decided that she was not a suitable candidate for the position. The employee thought he had advised William of the information before sending it to her prospective employer, which was required as part of the process. William alleged that she received no notification and believed that the employee did not contact her to disclose the information before sending it to Interior Health because he was a racist and wanted to thwart her chances of getting a job.

The City did not dispute that Ms. William was of Aboriginal origin and that she experienced adverse treatment in not obtaining the job, but submitted that there was no nexus between a prohibited ground of discrimination and the negative treatment alleged. The evidence was that the employee's detachment processed approximately 6,000 criminal record checks per year and it was unlikely that he would have any memory of a particular applicant, as well as being entirely possible he could have made an inadvertent error.

The Tribunal dismissed the complaint as having no reasonable prospect of success, finding that even if the employee could be presumed to have known about William's Aboriginal status when conducting a criminal record check, there was no reasonable prospect of establishing a nexus between her race, colour, or ancestry and the treatment by the employee.

In *Chen v. Surrey (City),* 2015 BCCA 57, the appellants, directors and employees of a recycling business in Surrey, who were of Chinese ancestry, complained that two City bylaw inspectors discriminated against them on the basis of race and place of origin. This appeal dealt with the issue of the legal test to be applied by the Tribunal in assessing whether a complaint discloses a continuing contravention such that untimely allegations of *Code* contraventions can be considered a part of a timely allegation of a *Code* contravention.

The complaint alleged the discrimination commenced in May 2007, but it only listed details of specific alleged incidents occurring between October 2010 and June 21, 2011. The alleged incidents included using City vehicles to block the public entrance to the appellants' scrapyard, yelling at the appellants, ticketing them "for every possible bylaw infraction", making no effort to explain the bylaws in question or to assist the appellants in complying with them, conducting illegal searches and threatening to close the scrapyard.

The Tribunal decision in 2012 BCHRT 284 concluded that the complainants did not allege facts which, if proven, would establish that the bylaw officers' conduct was based on their race or place of origin, since the single timely allegation certainly did not set out such facts and the other allegations likely did not either. The Tribunal also reviewed the test for continuing contraventions, which require a succession or repetition of separate acts of discrimination of the same character, rather than one act of discrimination which may have continuing consequences, and concluded that this complaint did not disclose such a continuing contravention.

On judicial review (2014 BCSC 539), the appellants argued that the Tribunal should have considered only the timeliness argument, not the merits, and also applied the continuing contravention test improperly. The Court found that the legal test had been articulated correctly, and that the Tribunal's decision was not patently unreasonable and thus entitled to deference. The appellants further challenged these findings to the Court of Appeal.

On appeal, the appellants argued that all that is required for a complaint to be timely is that the complainant *allege* a continuing contravention, the last incidence of which occurred within six months of the complaint; in other words, the Tribunal had no discretion to determine whether the alleged contravention was a continuing contravention or not at that stage.

The Court of Appeal upheld the Tribunal and Supreme Court decision that the Tribunal had applied the arguable contravention test correctly: namely, there must be present acts of discrimination which could be considered as separate contraventions of the *Code*, not merely one act which may have continuing effects or consequences. Any other interpretation would render the gatekeeping power set out in s. 22 essentially meaningless.

Further, the Court of Appeal found that the Tribunal did not impermissibly weigh the likelihood that the appellants would be able to prove their case, but appropriately considered whether the alleged facts could arguably constitute a contravention *if they were proven.* The Tribunal's approach does not set an impossibly high standard, but requires the allegation of facts that could establish a nexus.

In *Freeman v. The City of Victoria and others,* 2015 BCHRT 107, Freeman filed a complaint against the City of Victoria and the Victoria Police Department ("VPD"), alleging discrimination due to place of origin and physical disability. The complaint arose from an incident in which the police stopped the vehicle owned by Freeman. The car bore Alabama license plates.

The police officer stated that this was a "routine traffic stop", conducted because he reasonably believed that the vehicle had been in British Columbia continuously for more than two years, but had not been registered in British Columbia and did not appear to be validly insured as required by the *Motor Vehicle Act.* The police officer issued tickets to the Complainant, called for a tow truck for the car, removed the license plates, called a taxi for Freeman and explained what Freeman was required to do to register his car in British Columbia.

The City applied to dismiss a part of the complaint on the basis that the protected grounds of "place of origin" had not been made out. The City argued that there was no evidence of a nexus between the alleged ground of place of origin and the conduct of the officers in stopping Mr. Freeman's vehicle. It was accepted for the purposes of the application to dismiss that the conduct of a police officer stopping a vehicle is a service, and that Freeman experienced an adverse effect.

The Tribunal considered the definition of "place of origin" and noted that it is not equivalent to "place of residence". The interpretation of this ground is contextually based and must be linked to some element of an immutable characteristic such as ethnicity or ancestry. However, the Tribunal held that given the geographical remoteness of Alabama from Victoria, there was some possibility that the police officers may have perceived that persons from Alabama are, or may be sufficiently distinct as a group to engage the ground of place of origin. Given the relative lack of law on this issue, the Tribunal declined the application to dismiss the complaint on this basis.

In *Kombo v. New Westminster*, 2012 BCHRT 386, Kombo filed a complaint against the City of New Westminster alleging discrimination on the basis of colour and place of origin. Kombo parked his vehicle on a street and, upon returning to it, encountered a parking patrol officer who was in the process of issuing him a ticket. He alleged that when he asked the office about whether tickets were issued on Sundays she responded, "You black people, you don't understand the law, this is Canada".

The patrol officer claimed that Kombo had threatened her and contacted the police. Later that day Kombo was called to the New Westminster Police Station and arrested for uttering threats. He was later released with no charges being laid.

The City filed an application to dismiss this complaint on the basis that it had no reasonable prospect of success, based on evidence that the patrol officer did not make the alleged racist comments and that during the above encounter, Kombo became verbally abusive, explicitly stating that he was threatening the officer. The evidence was also that the patrol officer gave Kombo the option to insert money into the meter and receive only a warning; the officer proceeded to issue a ticket only after Kombo refused to put money in the meter.

The City argued that Kombo's complaint disclosed no nexus between his treatment and his colour or place of origin, as he failed to assert facts to support allegations that he was treated differently on the basis of a protected ground. The Tribunal ultimately dismissed the complaint under as having no reasonable prospect of success.

V. Conclusion

The above cases illustrate the range of services that have been challenged by members of the public and we expect that this will only continue. While local governments have been successful in applications to dismiss many services complaints, it is clear that the Tribunal will carefully consider the service being offered by the local government and the impact on the complainant. Even where applicable bylaws or policies appear neutral (i.e,, zoning bylaws), local governments need to consider whether there is an adverse impact on an individual because of a ground set out in section 8 of the Code. If so, local governments will need to consider potential accommodations.

NOTES