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CASE SUMMARY: HUMAN RIGHTS TRIBUNAL CAN REFUSE TO ACCEPT COMPLAINTS FOR FILING IF FACTS DO NOT ALLEGE, BEYOND THE REALM OF CONJECTURE, A CONTRAVENTION OF THE CODE

BC Human Rights Tribunal's screening decision to refuse to accept a complaint for filing was upheld as reasonable on judicial review and appeal.

Administrative law – Decisions reviewed – Human Rights Tribunal – Judicial review – Jurisdiction – Compliance with legislation – Standard of review – Patent unreasonableness – Human rights complaints – Private clubs – Age – Gender – Race – Harassment

Gichuru v. Vancouver Swing Society, [2021] B.C.J. No. 440, 2021 BCCA 103, British Columbia Court of Appeal, March 9, 2021, G. Dickson, B. Fisher and P.G. Voith JJ.A.

The complainant submitted a complaint to the BC HRT alleging he was harassed and bullied by a member of the Vancouver Swing Society. The Society had found his conduct towards younger female members was problematic and he had been banned from volunteering or attending events. He alleged he had been discriminated against based on his age, sex and race, noting stereotypes of older men. After inviting the complainant to provide more information to ground his complaint, the HRT refused to accept the complaint for filing on the basis that it did not allege facts that, if proven, could constitute a contravention of the Code. A reconsideration of this screening decision was requested and performed, including consideration of new evidence, but the HRT maintained its refusal.

On judicial review, the judge noted the HRT's procedures were unclear in relation to its statutory authority to refuse a complaint for filing, but concluded it had the jurisdiction to do so under s. 27(1) of the Code regarding the dismissal of complaints. The judge found the HRT's application of the legal test at the screening stage (as held in *Shilander v. BC Human Rights Tribunal*) was not patently unreasonable, nor was the reconsideration decision.

On appeal to the Court of Appeal, the complainant argued that the HRT had no jurisdiction to refuse to accept a complaint for filing, the screening process was unfair, and that the decisions were unreasonable. Both parties argued that the judge erred in finding the HRT's jurisdiction to refuse to accept a complaint was grounded under s. 27(1); the complainant said there was no provision in the Code granting jurisdiction and the HRT argued the authority was found under s. 21(1) regarding filing requirements for complaints. The Court agreed with the chambers judge that the HRT's jurisdiction in this regard and in this case was grounded in s. 27(1)(b), and that the other aspects of his decision, and the HRT's underlying decisions, were not patently unreasonable. The complainant's appeal was dismissed.

This case was digested by [Kara Hill](#), and first published in the LexisNexis® Harper Grey Administrative Law Netletter and the Harper Grey Administrative Law Newsletter. If you would like to discuss this case further, please contact Kara Hill at khill@harpergrey.com.