Court File No. 26789

IN THE SUPREME COURT OF CANADA
(Appeal from the Court of Appeal for the Province of British Columbia)

BETWEEN:

BRITISH COLUMBIA HUMAN RIGHTS COMMISSION,
COMMISSIONER OF INVESTIGATION AND MEDIATION,
THE BRITISH COLUMBIA HUMAN RIGHTS TRIBUNAL
and ANDREA WILLIS

Appellants
(Respondents)

AND:

ROBIN BLENCOE

Respondent
(Petitioner)

AND:

IRENE SCHELL

Intervener
(Respondent)

FACTUM of the INTERVENER IRENE SCHELL

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INDEX

PART I

STATEMENT OF FACTS

General Facts

1. This is an appeal from the decision of the British Columbia Court of Appeal staying the adjudication of two sexual harassment complaints by Irene Schell and Andrea Willis against Robin Blencoe (the "Respondent Blencoe") by the British Columbia Human Rights Tribunal (the "Tribunal") on the ground that the time taken to process the two human rights complaints by the British Columbia Council of Human Rights (the "Council"), infringed section 7 of the *Canadian Charter of Human Rights and Freedoms* (the "*Charter*").

2. The appeal raises issues both relating to the application of section 7 of the *Charter* to administrative proceedings in general, and in human rights proceedings in particular.

Chronology of Events Relating to the Schell Complaint

3. In March 1995, allegations of sexual misconduct were made against the Respondent Blencoe, then a Cabinet Minister in the Provincial Government of British Columbia, by a Ms. Fran Yanor, an assistant in his office. Several more women came forward with allegations of sexual misconduct against the Respondent Blencoe. In April, 1995, amidst those allegations, the Respondent Blencoe was removed from Cabinet and later removed from the New Democrat Party caucus. These events attracted media scrutiny towards the Respondent Blencoe.

4. On April 6, 1995, the Respondent Blencoe, in public statement, challenged the complainants to come forward. The Respondent Blencoe stated:

> I have serious doubts that anyone will bring any complaint to the Human Rights Council which means that I am without any process by which to demonstrate my innocence.
>
> AR, Vol. I, p. 82

5. On July 17, 1995, the British Columbia Council of Human Rights (the"Council") received a complaint from Mrs. Irene Schell ("Schell") pursuan to the *Human Rights Act,* SCBC 1994, c. 22 (the "Act") alleging that she had been sexually harassed on various occasions by the Respondent Blencoe between March 11, 1993 and July 7, 1994.

AR. Vol. II, p. 184

6. On July 20, 1995, Patty Steele ("Steele"), the Human Rights Officer assigned to Schell's file, wrote a letter to the Respondent Blencoe and advised him of the complaint filed by Schell (the "Complaint"). Steele requested that the Respondent Blencoe make submissions regarding the issue of timeliness under Section 13 of the Act (the "Timeliness Submissions") as more than six months had elapsed since the alleged incident of discrimination had occurred and the complaint being made to Council. The Respondent Blencoe was given 21 days to provide his Timeliness Submissions to the Council.

AR, Vol. II, p. 184

7. On July 24, 1995, Schell went public with details of her complaint against the Respondent Blencoe.

AR, Vol. I, p. 121, 122, 123

8. On July 28, 1995, the Respondent Blencoe spoke to the newspaper media, and commented that the human rights process normally takes "three, four or five years".

AR, Vol. I, p. 128

9. In August 1995, Ms. Andrea Willis ("Willis") filed a complaint under the Act alleging that she had also been sexually harassed by the Respondent Blencoe.

AR. Vol. I. p. 54; AR. Vol. II. p. 175

10. On August 2, 1995, the Respondent Blencoe was provided with Schell's Complaint Information Form with attached Particulars of Allegation.

AR, Vol. II, pp. 189-194

11. On August 21, 1995, Marshall advised the Respondent Blencoe that he had 15 days to provide his Timeliness Submissions to the Council.

AR, Vol. II, p. 196

12. On August 31, 1995, the Respondent Blencoe wrote to Noreen Marshall ("Marshall"), Manager of Inquiries and Mediation for the Council, and stated that Schell had not discharged her onus of establishing that the delay in submitting her complaint to the Council was incurred in good faith. The Respondent Blencoe further stated that he would not provide detailed Timeliness Submissions until Schell could prove that her Complaint was filed in good faith. The Respondent Blencoe further requested that the information which provided the basis of the Complaint and Particulars be produced.

AR, Vol. II, p. 198

13. Initially, both the Schell and Willis complaints (collectively the "Complaints") were investigated by the Council under the *Act*. On January 1, 1997, the Act was replaced by the *Human Rights Code*, RSBC 1996, c.210 (the "Code") and responsibility for the investigation of the Complaints was given to one of three Commissioners of the newly-created British Columbia Human Rights Commission (the "Commission").

14. On September 1, 1995 the Respondent Blencoe was quoted as saying "there's only one that has gone forward and I can assure you that I shall be fighting that tooth and nail."

AR, Vol. I, p. 119

15. On September 7, 1995, the Respondent Blencoe asked for an extension to September 22, 1995 to provide Council with his Timeliness Submissions.

AR, Vol. II, p. 203

16. On September 8, 1995, the Respondent Blencoe made several statements to the newspaper media regarding the allegations made by Schell and Willis. Regarding the Schell complaint, the Respondent Blencoe vowed to fight vigorously should the

complaint proceed. He was quoted as saying: "We're going to deal with it in a tough, hard-handed manner. And we will prevail".

AR, Vol. I, p. 120

17. On September 20, 1995, the Respondent Blencoe again advised the newspaper media that he would fight Schell's complaint "tooth and nail and try to get Schell's suit thrown out before it gets to a full hearing."

AR, Vol. III, p. 426

18. On September 22, 1995, the Respondent Blencoe submitted his Timeliness Submissions to the Council.

AR, Vol. II, p. 204

19. On October 11, 1995, Schell provided her Timeliness Submissions to the Council.

AR, Vol. II, p.214

20. On February 21, 1996, Steele advised the Respondent Blencoe that Council had decided to proceed with an investigation of Schell's Complaint. A 'Respondent Reply Form' was provided to the Respondent Blencoe. Steele advised the Respondent Blencoe that a failure to provide a response within 30 days may result in the investigation proceeding without the benefit of the Respondent Blencoe's submissions.

AR, Vol. II, p. 226

21. On March 1, 1996, the Respondent Blencoe again asked Marshall for production of the initial correspondence Schell provided to the Council which provided the basis for the Complaint and Particulars.

AR, Vol. II, p. 228

22. On March 27, 1996, the Respondent Blencoe wrote to Steele and advised that he would not provide a response to the Complaint and Particulars until he received

production of all of Schell's original submissions to the Council which provided the basis for the Complaint and Particulars.

AR, Vol. II, p. 231

23. On April 1, 1996, Steele expressed concern regarding the Respondent Blencoe's unwillingness to cooperate, and advised that she would not disclose production of the original notes pertaining to Schell's Complaint.

AR, Vol. II, p. 232

24. On April 10, 1996, the Respondent Blencoe advised Steele that he was not prepared to provide a detailed response to Schell's Complaint as he was not afforded procedural fairness in the handling of this complaint. The Respondent Blencoe therefore provided a general denial to the Schell Complaint.

AR, Vol. II, p. 233

25. On November 8, 1996, Steele provided the Respondent Blencoe with the results of her investigation, and invited the Respondent Blencoe to respond to the preliminary investigation report by November 22, 1996.

AR, Vol. II, p. 237

26. On December 23, 1996, the Respondent Blencoe provided Steele with his response to the preliminary investigation report.

AR, Vol. II, p. 241

27. On March 4, 1997, Steele released her investigation report (the "Report"), and recommended that the Complaints against the Respondent Blencoe be referred to the Tribunal for a hearing.

AR, Vol. II, p. 245 – 250

28. On March 27, 1997, in response to the Report, the Respondent Blencoe reiterated his general denial to the Schell Complaint.

AR, Vol. II, p. 251

29. On April 8, 1997, Schell provided the Commission her comments and clarification regarding the Report.

AR, Vol. II, p. 259

30. On May 14, 1997, the Respondent Blencoe provided the Commission with a response to Schell's comments regarding the Report.

AR, Vol. II, p. 266

31. On July 3, 1997, the Commissioner referred the Schell and Willis Complaints to the Tribunal for a hearing.

AR, Vol. II, p. 268

32. On September 10, 1997, the Tribunal gave notice to the parties that the two Complaints would be heard in March 1998, and that a pre-hearing telephone conference was scheduled for November 7, 1997

AR, Vol. II, p. 269

Judgments Below

a) British Columbia Supreme Court

33. On November 27, 1998, the Respondent filed a Petition in the Supreme Court of British Columbia seeking to quash the decision of the Commissioner of Investigation and Mediation to refer the two Complaints to the Tribunal, and prohibiting the hearing of the Complaints for loss of jurisdiction due to administrative delay.

34. The Petition was heard by Mr. Justice Lowry of the British Columbia Supreme Court from January 27 to January 29, 1998. At the commencement of the hearing, the

Respondent Blencoe filed an amended Petition, adding the Tribunal as a party and pleading further that the administrative delay had infringed his constitutional rights under section 7 of the *Charter*. The Respondent Blencoe reserved his argument on the section 7 issue for the Court of Appeal and his argument did not deal with the *Charter*. Counsel for both Schell and Willis appeared and participated in the argument before Lowry, J.

AR, Vol. IV, p. 637, para. 24

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35. In dismissing the Petition, Lowry J., after considering the nature of the Complaints, the process involved with any complaint, and the delay in the processing of these two Complaints, concluded:

> In my view, it cannot be said that either the Commission or the Tribunal have acted unfairly toward Mr. Blencoe. The have caused neither an unacceptable delay in the process nor a prejudice to him whereby the fairness of the hearings scheduled to be conducted next month have been
20 compromised. There has been no denial of natural justice and, accordingly, Mr. Blencoe's petition for judicial review cannot succeed.
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> AR, Vol. IV, p. 650, para. 49

b) British Columbia Court of Appeal

36. The Court of Appeal set down the appeal to be heard on March 3, 1998 and ordered
30 factums be filed by the parties on an expedited basis. Because of conflicting commitments, counsel for Schell could not prepare and file her factum within the required time.

37. Counsel for Schell appeared before the Court of Appeal and participated in the argument notwithstanding that Schell had not filed a factum. On the style of cause, the Court of Appeal referred to Schell as an 'Interested Party' rather than as a respondent.

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38. As Schell was not a respondent in the Court of Appeal, she applied to the Supreme Court of Canada for status either as a party or as an intervener. On February 1, 1999, Cory, J. granted Schell leave to intervene in these proceedings.

39. On May 11, 1998, the majority of the Court of Appeal allowed the appeal and stayed the adjudication of the Complaints. The majority of the Court of Appeal based its decision upon the application of section 7 of the *Charter*.

AR, Vol. IV, p. 656 – 708

40. Chief Justice McEachern, speaking for the majority stated:

> As there seem to be no binding authorities governing this decision, I feel constrained to follow what I regard as the emerging, preferred view in the Supreme Court of Canada that section 7, under the rubric of liberty and security of the person, operates to protect both the privacy and dignity of citizens against the stigma of undue, prolonged humiliation and public degradation of the kind suffered by the Appellant here.
>
> AR, Vol. IV, p. 702, para. 101

41. Chief Justice McEachern concluded that section 7 of the Charter was engaged by the delay in administrative proceedings. He then applied section 7 to the facts, and concluded that the concepts of liberty and security of the person protected the privacy and dignity of citizens against stigma. Chief Justice McEachern found that a delay of 30 months was "far too long" and that the delay created stigma and exacerbated the existing state of affairs so as to negatively impact on the Respondent Blencoe's "security of the person".

AR, Vol. IV, p. 678, para. 47; p. 702-704, paras. 101-105 inclusive

42. Lambert J.A., in dissent, affirmed the conclusion reached by Mr. Justice Lowry. Lambert, J.A. stated that in considering all the circumstances of the case, Lowry, J. made a correct finding of fact when he decided that the delay could not be considered an unacceptable delay for the purposes of an assessment of natural justice.

AR, Vol. IV, p. 664 - 665, para. 21

43. Lambert J.A. further stated that Lowry, J. made a correct finding of law in his assessment of natural justice. Lambert, J.A. stated:

> ... for the purposes of an assessment of natural justice, any prejudice arising through delay must be prejudice which goes to the jurisdiction of the Human Rights Tribunal, that is, to the intrinsic fairness of the hearing

> process and the hearing itself, and not to extrinsic factors such as the suffering of Mr. Blencoe and his family through stigmatization, stress, and other causes. That is a question of law. In my opinion it was answered correctly.
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> AR, Vol. IV, p. 665, para. 22

44. Lambert, J.A. also concluded that there had not been a violation of the principles of fundamental justice. While the Respondent Blencoe had suffered personal hardship, Lambert J.A. found that none of the stigma had been "brought about" or "much exacerbated" by the human rights administrative processes. On that basis, Lambert, J.A. concluded that the Respondent Blencoe was not entitled to relief under the *Charter* and would have therefore dismissed the appeal.

AR, Vol. IV, p. 669, para. 29; p. 671, para. 32

PART II

POINTS IN ISSUE

45. The position of this Intervener is that there are two points in issue in this appeal:

a) What should be the balance between the rights of the Respondent Blencoe and the rights of this Intervener as a complainant about sexual harassment under human rights legislation; and

b) Whether the administrative process in this case amounts to a breach of the Respondent Blencoe's right to fundamental justice contrary to section 7 of the *Charter*.

PART III

ARGUMENT

46. This Intervener agrees with the position of the Appellants' that section 7 of the *Charter* should not be used to regulate the conduct of administrative bodies.

10 47. This Intervener respectfully submits that the delay, which was caused primarily by the Respondent Blencoe, did not interfere with his right to a fair hearing.

48. If this Court finds that section 7 of the *Charter* does apply to regulate the conduct of administrative bodies, the question is to what extent *Charter* provisions apply to private persons.

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Section 7 and Administrative Proceedings

49. It is this Intervener's submission that section 7 of the *Charter* should not apply to delay in administrative proceedings under human rights legislation.

50. In his judgment, Chief Justice McEachern stated:

> The law relating to the application of s.7 in a non-criminal law context
> 30 (the threshold question) is fraught with considerable difficulty. This is because the Supreme Court of Canada has yet to pronounce conclusively on this subject in a majority judgment.
>
> AR, Vol. IV, p. 683, para. 60

51. In his judgment, Chief Justice McEachern expressly declined to establish a general test for the assessment of section 7 violations arising from delay in the processing of
40 sexual harassment human rights complaints.

52. It is submitted that the reasons of the majority decision do not address whether the section 7 assessment is confined solely to sexual harassment proceedings, or if it requires a case-by-case analysis of whether the allegations constitute an intrusion into the dignity,

security and privacy interests of a respondent. As reflected in the subsequent cases before the Tribunal, the decision of the Court of Appeal has created uncertainty in this regard.

Behmardi v. Tsin, [1999] BCHRTD No. 14

Dahl v. True North R.V., [1998] BCHRTD No.46

Jack v. Country Store, [1999] BCHRTD No. 15

MacTavish v. Tennant (c.o.b. "Look Model Talent"), [1998] BCHRTD No. 65

Thomas v. Capilano Golf and Country Club Ltd., [1999] BCHRTD No. 38

53. The Tribunal, applying its interpretation of the Court of Appeal decision, has held that in delay applications section 7 interests may be engaged if the delay is found to be inordinate. In *Dahl v. True North R.V.*, Tribunal Member Iyer stated:

> ... the length of the delay and the severity of the prejudice are interrelated in the sense that less delay is justifiable when the prejudice is known to be unusual and severe than might be justified when the prejudice is less. Section 7 interests in liberty and security of the person may be engaged even absent a demonstration of extraordinary prejudice of the degree found in Blencoe. The s. 7 right will be violated in an "ordinary" sexual harassment complaint where the delay is inordinate. Thus, I read McEachern C.J. as holding that there is some outer bound to the length of time that the Constitution will permit for the processing of any sexual harassment complaint. In cases where the stigma felt by the Respondent is not unusually severe, a greater delay will be constitutionally acceptable than in cases of extraordinary stigma. The acceptable length of delay will also vary depending on factors such as the complexity of the allegations.

Dahl v. True North R.V., *supra*, at para. 38

54. This interpretation has been cited with approval by the British Columbia Supreme Court in *Levitt v. British Columbia (Human Rights Commission)*.

Levitt v. British Columbia (Human Rights Commission), [1998] BCJ No.2540 (QL)

55. The principles utilized by the Court of Appeal and by the British Columbia Supreme Court in *Levitt* do not apply the criminal law approach to delay established in

Morin. In assessing delay in the human rights context, the framework of analysis set out in *Dahl* has been applied by the Tribunal.

Behmardi v. Tsin, supra

MacTavish v. Tennant, supra

Thomas v. Capilano Golf and Country Club Ltd., supra

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56. This Intervener agrees with the submissions made by the Appellant Willis that the principles developed in the criminal law context, such as in the cases of *Askov* and *Morin*, should be modified to balance the rights of a complainant against the rights of a respondent in a human rights matter.

57. Unlike the Crown in criminal proceedings, the Commission does not have the power to initiate or conduct a case. The comparison made by the Appellant Willis that the human rights process is similar to civil litigation proceedings is a valid analogy. In addition to the length of the delay and the prejudice to a respondent as a result of the delay, the Court should also scrutinize the conduct of the party responsible for causing the delay. Further, if the delay has been unreasonably caused by the respondent, the respondent must be held accountable by the Court for his conduct.

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58. At the hearing of the Petition, Mr. Justice Lowry stated:

> ... I do not consider that, as constituted, the Commission is to be criticized for the process employed in respect of the complaints made by Ms. Schell and Ms. Willis. ... Clearly there has been some unexplained delay, particularly with respect to the five-month hiatus when there appears to have been no activity in relation to the complaints. But on balance I do not accept consider that it can be said that there has been an unacceptable delay in the process overall. The time that has elapsed has not been shown to have been attributable to anything other than the time required to process complaints of this kind given the limitations imposed by the resources available.

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AR, Vol. IV, p. 649, para. 47

59. In the Court of Appeal, Lambert, J.A. also noted that both Schell and Willis were found to be little at fault for the delay in the human rights process. Lambert, J.A. stated:

> Mr. Blencoe has chosen not to deal with this matter in the most expeditious way. He has fought every step, as was his right. But a fair amount of time that has passed must be regarded as attributable to the positions that he has taken. And all the publicity and media attention since November, 1997 has been focussed on these proceedings seeking to have the Human Rights process stopped. In short, there has been some delay: some of it attributable to the Human Rights Commission and perhaps to the Human Rights Tribunal; some of it attributable to Mr. Blencoe; very little of it attributable to Ms. Schell or Ms. Willis, the two complainants.
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> AR, Vol. IV, p. 669, para. 29

60. Lambert, J.A. further stated:

> ...it is not a breach of fundamental justice that the work of the Commission could have been done more expeditiously, without sacrificing careful and considerate decision making, if more resources had been allocated.
>
> AR, Vol. IV, p. 670, para. 30

Conduct of the Respondent Blencoe

61. The majority of the Court of Appeal found that section 7 of the *Charter* was triggered by the kind of prejudice caused by the stigma arising from an unresolved human rights complaint.

Thomas v. *Capilano Golf and Country Club Ltd.*, *supra* at para. 66

62. The stigma arguably has two components: (1) the stigma created by the publicity surrounding a complaint; and (2) the stigma arising from the delay in hearing the complaint.

63. In the Tribunal decision in *Dahl*, the stigma was described as having "internal" and "external" dimensions. External dimensions relate to the degree of publicity

surrounding the allegations. Internal dimensions relate to the impact of the unresolved allegations on the individual.

Dahl v. True North R.V., supra, at para. 34

64. However, it is respectfully submitted that this methodology is not an adequate set of principles to apply to human rights complaints, as it fails to take into account whether the conduct of the respondent has unreasonably caused any of the delay.

65. It is further submitted that if the conduct of the Respondent Blencoe is not taken into account in assessing whether the delay has been unreasonable, it will only serve to encourage other respondents to invoke procedural delays in order to undermine the human rights process.

66. Lambert, J.A., addressed the issue of the stigma suffered by the Respondent Blencoe as a result of the delay. He stated:

> None of that stigma was brought about by the processes under the *Human Rights Act* or the *Human Rights Code*. Nor, in my opinion, was it much exacerbated by those processes ... Mr. Blencoe has not chosen to deal with this matter in the most expeditious way. He has fought every step, as was his right. But a fair amount of time that has passed must be regarded as attributable to the positions that he has taken. And all the publicity and media attention since November, 1997 has been focussed on these proceedings seeking to have the Human Rights process stopped.
>
> AR, Vol. IV, p. 669, para. 29

67. Lambert, J.A. noted that the stigma brought about by the human rights process has been aggravated by the Respondent Blencoe himself. The Respondent Blencoe repeatedly made comments to the media which inflamed the public rhetoric surrounding the Complaints and heightened public interest about their outcome.

68. Allegations of sexual harassment against the Respondent Blencoe became a matter of public interest before the Complaints were made by either Schell or Willis. The Respondent Blencoe should not be able to rely upon any arguable external or public

dimensions as the degree of publicity surrounding the Complaints were a function of his position as a minister of the British Columbia government and of the inflammatory statements he made to the media.

The Need to Balance the Rights of Complainants and Respondents

69. It is respectfully submitted that the majority decision of the Court of Appeal focuses only on the rights of the Respondent Blencoe, and fails to balance them with the rights of the Complainants, and in particular, it fails to consider the conduct of the Respondent Blencoe in contributing to the delay in the human rights process.

70. In *MacTavish v. Tennant*, Tribunal Member Iyer noted that Chief Justice McEachern's reasons did not make any allowance for the interests of complainants in his section 7 analysis. She stated:

> The Complainant has submitted that her interests in pursuing the complaint must be weighed against the prejudice to the Respondent in the analysis of an application to dismiss a complaint for infringement of a respondent's rights under s.7 of the Charter. However meritorious that position might be, in my view, it is not open to me to consider it in light of the decision of the Court of Appeal in Blencoe. I cannot find in McEachern C.J.'s reasons any allowance for the interests of complainants in the s. 7 analysis.
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> *MacTavish .v Tennant*, *supra*, at 62

71. In his dissent, Lambert, J.A. alluded to the need for balance in assessing fundamental justice. He stated:

> It should not be forgotten that the question of fundamental justice requires a balancing of Mr. Blencoe's rights and expectations against the rights and expectations of the two complainants, all in the context of the public interest in upholding an effective human rights process.
>
> AR, Vol. IV, p. 670, para. 31

72. Balancing the rights of complainants and respondents must include an assessment of the respondent's conduct, particularly if such conduct has significantly contributed to the delay being unreasonable.

73. At the hearing of the Petition, Lowry, J. recognized that the Respondent Blencoe, being responsible for much of the delay, could not rely on unreasonable delay as a defence. Lowry, J. stated:

> It does not appear to me to be open to him to criticize the Tribunal for not setting the complaints for hearing earlier when he did not press for earlier dates, he did not question the dates that were fixed, and, as indicated, his solicitors cancelled the prehearing conference which may well mean that the complaints may not now be heard as scheduled in March.
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> AR, Vol. IV, p. 646, para. 40

74. Lowry, J. further stated:

> Particulars of the complaints were given to Mr. Blencoe in August 1995, but he declined to provide his response until April 1996. He took the position that he need not respond until the Commission addressed the timeliness of the complaints ... it is not suggested that Mr. Blencoe was not entitled to challenge the complaints, as he did at the outset, but having done so, and having been unsuccessful, it is not in my view open to him now to claim that the events of the eight months elapsed contributed to an unacceptable delay.
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> AR, Vol. IV, p. 646, para. 42

Legislative Purpose of the *Human Rights Code*

75. Chief Justice McEachern found that the Complaints were "relatively simple complaints" and that "these kinds of disputes are quickly resolved by courts and tribunals all the time, and there are no complex legal or factual issues."

AR, Vol. IV, p. 673, para. 37

76. Chief Justice McEachern stated:

> In my view, the delay in this case is so excessive when weighed against the seriousness of the charge and the simplicity of the issues that it could never be viewed as reasonable under any test. An analysis of the precise scope of the test for unreasonableness should be left for a case which is not as clear cut as this one and which requires a more principled approach.

10 AR, Vol. IV, p. 704, para. 105

77. It is submitted that when a complaint is made under human rights legislation, an assessment of the severity of a complaint is not appropriate when considering whether or not a respondent has been prejudiced.

78. The Code was created as a response to societal concerns that certain behavior, 20 while not criminal in nature, should not be tolerated, and the discriminator should be sanctioned. It is respectfully submitted that when assessing whether delay in the processing of a human rights complaint is unreasonable, the severity of a complaint should not be assessed in determining whether the principles of fundamental justice have been impaired.

79. Any finding that delay has been unreasonable in view of the "simplicity of the 30 issues" without assessing the conduct of a respondent in causing any of the delay, undermines the legislative purpose of the Code. This will result in meritorious complaints of discrimination not being heard as the allegations will be viewed as not serious enough to overcome the stigma or prejudice to the potential respondent.

80. It is respectfully submitted that the majority decision of the Court of Appeal 40 should be reversed and a broader set of principles be applied to human rights cases. Otherwise, persons subject to discrimination will not pursue complaints fearing that only the rights of the potential respondent will be taken into account. Consequently, complainants will be less likely to come forward the higher the public profile of the respondent.

81. For these reasons, this Intervener submits that the appeal be allowed, and the Complaints be permitted to proceed to the BC Human Rights Tribunal for disposition.

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PART IV
NATURE OF ORDER SOUGHT

82. This Intervener submits that:

a) the appeal be allowed;

b) the stay of proceedings imposed by the Court of Appeal be set aside;

c) the petition of the Respondent Blencoe be dismissed;

d) the complaint of Irene Schell be remitted to the B.C. Human Rights Tribunal for hearing; and

e) this Intervener be awarded her costs herein and in the Courts below.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

MARK C. STACEY
Counsel for the Intervener, Irene Schell

PART V

TABLE OF AUTHORITIES

CASES **PAGE**

STATUTES