



News from the

# B.C. Human Rights Coalition

[www.bchrcoalition.org](http://www.bchrcoalition.org)

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## New Program Announcement

### *Towards Bias-Free Security: Balancing Public Safety with Equal Access and Respectful Treatment*

The Coalition is pleased to announce that the Law Foundation of British Columbia has approved funding for a one-time project that aims to extend the spirit and intent of the *Radek* decision.

In the summer of 2005, the BC Human Rights Tribunal found that the owners of International Village (better known as Tinseltown) and the security company that patrolled the mall had systematically discriminated against Ms. Radek, aboriginals, and people with disabilities when they attempted to enter and access the mall. The decision demonstrated that members of disadvantaged groups were regularly followed by security, physically removed from the mall, or placed on banned lists because of their race, their disability and their appearance. It was in fact, a form of profiling that violated the human dignity of those affected and denied them access to services available in their community. As part of the remedy, the Tribunal ordered human rights training and education for both the management company and security staff and directed the respondents to design an appropriate complaint's procedure.

The decision clearly set the standard for human rights in the security officer industry and informed the general public of their rights in the public arena where security officers are utilized. With project funding in place, we are able to embark on a two-pronged educational program that will implement a human rights training standard for security personnel in BC as well as increase public knowledge of rights and responsibilities when interacting with security officers. The project also aims to encourage legislators, licensing structures, and policy makers to mandate human rights training and other accountability mechanisms where identified.

An Advisory Committee that includes expertise from a rights perspective, an industry perspective, an educational and training perspective, and a licensing perspective will oversee and guide the project. Representatives from the Affiliation of Multicultural Societies and Service Agencies of BC, BC Civil Liberties Association, BC Coalition of People with Disabilities, Community Legal Assistance Society, Concord Security Corporation, Justice Institute of British Columbia, Ministry of Public Safety and Solicitor General, Pivot Legal Society and United Native Nations Society recently gathered to confirm their support and begin work on the project.

The Coalition welcomes Terre Flower as Project Coordinator for the

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## Recent Decisions

### *Bob Brown v. National Capital Commission and Public Works and Government Services Canada June 6, 2006, CHRT*

A recent decision by the Canadian Human Rights Tribunal found that the government respondents had failed to provide adequate accessibility for persons with disabilities in the creation and construction of a public infrastructure in Ottawa during the late 1990's.

At issue in this case was the design and reconstruction of the York Street Steps (the Steps) in downtown Ottawa which permit a public thoroughfare between the Parliament Buildings, a park in front of the Parliament Buildings, and By-Ward Market. The original design of the Steps did not permit accessibility for persons who depend on mobility aids for movement so providing accessibility became a secondary consideration during the design process. As one witness exclaimed, "it became a mere diversion of the problem at hand".

Those involved in the design and planning of the project identified and considered a number of accessibility options during the design phase, but most were rejected internally for reasons relating to technical issues, historical and cultural concerns, aesthetic and cost factors, and safety and security clearance

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## New Program Announcement ... continued from page 1

program and we will update you as results roll out. Should you wish more information on the project, please feel free to contact our office.

### Update on Law Reform

In August, our law reform committee made a written submission to the Premier's Council on Aging and Senior's Issues. This Council is charged with making recommendations to the Premier on a variety of issues in relation to seniors, including mandatory retirement by November 30, 2006. In our submission, we point out that our human rights legislation needs better protections in a number of areas in order to more adequately reflect the needs of older British Columbians. We recommend that the upper age cap of 64 be removed from the *Code* and that age protections should extend across areas that cover

### Recent Decisions ... continued from page 1

concerns. By the time the parties got around to consulting with the public and the disability community they had narrowed the options to two alternatives and presented them as *fait accompli* and non-negotiable.

In the end, those who couldn't access the Steps were required to use one of two alternative routes to get to their destination as opposed to having on-site accessibility. Both alternatives were physically separate from the Steps and required an excessively long period of time to maneuver. This had the affect of excluding disabled people, calling attention to their disability and placing a burden on those who were already denied access at the site. This 'separate but equal' rationale is the same rationale that was used years ago to justify racial segregation and in this case, was central to the argument of discrimination. Mr. Brown argued that the design of the Steps was discriminatory and the accommodation process was inadequate and flawed resulting in discriminatory solutions. This he argued was a direct contravention of the principles of equality including his right to access public infrastructure in as dignified a manner as an able-bodied person. The Tribunal agreed.

The Tribunal and all parties to this complaint agreed to utilize the framework of universal design standards to determine the appropriate form and process of accommodation in this case. In doing so, Member

accommodations, services and facilities, and tenancy and residence situations. We also urged Council to take a comprehensive approach on addressing mandatory retirement as a changing retirement landscape should not infringe upon the foundation or the adequacy of our social security system. The full submission is available online.

Our committee also worked with the UBC's ProBono Law Students Program over the summer months. One project compares Ontario's changing human rights structure against our own enforcement structure and a second project provides background and analysis on the continued efficacy of a section in the *Code* that provides a blanket exemption to bona fide group and employee insurance plans. This UBC Program is volunteer based and provides a great benefit to our law reform committee. We thank the students who worked with us on these projects.

Groarke draws the following parallel ... "the principles of universal design derive from the same notion of equality that lies at the heart of the *Canadian Human Rights Act* ... the principles can be seen as a natural elaboration of the notion of equality, outside the law, in the field of architecture and planning."

Working within this framework, the Tribunal determined the Steps did not meet one of the basic tenets of universal design - that of providing equitable access to people with diverse abilities - and as such, the Steps were found to be discriminatory. The Tribunal also found that the respondents had failed in their duty to properly consult with stakeholders on providing a reasonable accommodation. While there is a duty to consult in an honest and good faith manner in accommodation processes, an open and participatory consultation process is considered a fundamental aspect of universal design as well. The Tribunal also found that the respondents had failed to give sufficient and proper consideration to all alternatives that existed. Some of the alternatives presented would have provided accommodation much closer to the Steps, but were rejected for impressionistic reasons, while others simply didn't undergo the degree of consideration required to constitute a proper and thorough investigation of alternatives under duty to accommodate law. While universal standards articulate that proximity of the

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## Recent Decisions ... continued from page 2

solution to the problem is paramount, equality rights law dictates the right to access services and infrastructure must be achieved in a manner that fully respects the dignity and self-worth of those affected.

Universal design standards are used as guidelines in terms of achieving barrier free physical environments. While more widely accepted today, there is a continued need to incorporate these standards into our current building codes and planning processes in order to truly minimize the lack of physical access that continues to be a common form of discrimination for those with physical disabilities today. This decision clearly suggests that universal design standards are the standard we should be using in order to achieve substantive equality for those with physical disabilities.

### ***\$20,000 Injury to Dignity Award Marks a New High Toivanen v. Electronic Arts (Canada) August 15, 2006, BCHRT, 396***

In February of 2004, we announced a new high of \$10,000 had been achieved in relation to inquiry to dignity awards ordered by the BC Human Rights Tribunal. Since then, awards of this category have gradually increased with the recent \$20,000 ordered in Toivanen, now standing as a new high.

Injury to dignity awards are meant to compensate victims for the injury to their feelings, dignity, and self respect that result from experiencing discrimination. They are but one class of remedy that is available and they are assessed and determined by tribunal members on a case by case basis. There exists no legislative ceiling in terms of the amount a tribunal member may award, but within the context of the remedial nature of human rights legislation, their dollar value has historically remained quiet low. This we suggest may be changing.

Over the past few years we've seen other courts, those with authority to order punitive damages, sending some strong messages to employers in regards to the way in which they deal with their employees who suffer from disabilities or other forms of discriminatory treatment. One such example is the Keyes versus Honda Canada case where a long time employee who suffered from chronic fatigue syndrome was fired after refusing to see a company doctor, and the judge awarded \$500,000 in punitive damages. The judge referred to Honda's conduct in dealing with Mr. Keyes disability and the accommodation process as a "protracted corporate conspiracy" of harassment, discrimination, and bad faith.

The injury to dignity award ordered in Toivanen is reflective of the message sent in the Keyes case. The Tribunal took issue with the company's conduct in dealing with an employee who suffered from a disability when it fired the employee after she had requested a leave of absence. Instead of investigating or inquiring into the reasons for the leave, or supporting her in any other manner, it chose to dismiss her. Ms. Toivanen had worked with the company since 1996 and was a hard-working dedicated employee who had consistently met and exceeded

corporate goals and expectations. The Tribunal described the company's conduct as 'most disturbing' and a contributing factor that "undoubtedly exacerbated" her illness. The Tribunal also took into consideration other factors in determining the appropriate injury to dignity award including the complainant's vulnerability as a result of her illness, the impersonal manner in which her employment was terminated and the heightened impact of the termination as a result of having to move back in with her parents in order to cope at age 47. In Member Junker's words, "this is not a case where Ms. Toivanen found herself "worked to death" by EA, but it is about the fact that EA did nothing to investigate why she needed a leave of absence and did nothing to accommodate her. It was a situation where she required time off, requested it of EA, and it fired her at a most vulnerable time." The Tribunal ordered \$20,000 to compensate for injury to dignity.

The gradual increase in dollar values ordered for injury to dignity by the Tribunal coupled with large punitive awards coming out of other courts is significantly raising the ante in terms of an employer's interest and understanding in complying with human rights legislation. While the \$500,000 award ordered in Honda was reduced to \$100,000 on Appeal, the reality is that these large awards are influencing the remedial approach in the context of general and injury to dignity damages. Everyone should have a heightened interest in understanding and complying with the equality rights regime and the current model of accommodation.

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## Other Announcements

### Annual General Meeting and Annual Report:

The Coalition's Annual General Meeting was held at People's Law School on September 27, 2006. The Honourable Wally Oppal, Attorney General and Minister Responsible for Multiculturalism, gave a special address to the audience. He spoke of the valuable contribution that our clinic program provides to British Columbians and he updated us on a number of programs, projects and initiatives that his Ministry is involved with in relation to fighting discrimination and harassment.

The Coalition's Annual Report for the fiscal period ending March 31, 2006 is now available and will be mailed out shortly to our membership. Should you wish to obtain copy, the report is available online [www.bchrcoalition.org](http://www.bchrcoalition.org) under the "About Us section.

Annual memberships can be renewed by calling our office, or filling in the form below.

## The B.C. Human Rights Coalition

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Office Hours: Monday to Friday  
9 am to 5 pm

### December 10<sup>th</sup> is International Human Rights Day!

Come celebrate this important day at our annual event held in partnership with the United Nations Association. The event will take place on Wednesday, December 6, 2006 and the United Nations Association will be selecting this year's recipient of the Renate Shearer Award. More details will be available soon.

## Membership

The Coalition is a membership based organization. We currently have approximately 100 individual and group members, and we always welcome new members to our ranks. In addition to supporting the advancement of human rights, other benefits of membership include: opportunities for networking, collaboration and training; opportunities to remain informed on current issues and concerns relating to Canada's domestic human rights law and policy; opportunities to host or sponsor educational workshops and training sessions in your community; opportunities to promote your own events; and the opportunity to be part of a great organization!

Annual membership fees are \$20.00 for both organizations and individuals. In the case of need, we will consider waiving this fee. Tax receipts are available for all donations. If you wish to join, complete the application below and return it, with a cheque to the Coalition. If you would like further information on becoming a member, or to check the status of your membership, please call or email us [info@bchrcoalition.org](mailto:info@bchrcoalition.org).

## Membership Information (please fill out and remit, with cheque, to the BC Human Rights Coalition)

Individual or Contact Name \_\_\_\_\_

Company/Business \_\_\_\_\_

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City \_\_\_\_\_ Postal \_\_\_\_\_

Phone (\_\_\_\_) \_\_\_\_\_ Fax (\_\_\_\_) \_\_\_\_\_

Email \_\_\_\_\_

Membership: \_\_\_\_\_

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