

SECTION: Procedure

Effective date: December 18, 2002

REVISED DATE: October 8, 2014

SUBJECT: JURISDICTION – CONCURRENT JURISDICTION

Purpose:

This policy sets out the Commission's considerations when advised that the substance of a complaint has been determined by another administrative body with concurrent jurisdiction to apply *The Human Rights Code* ("The Code"). The purpose of this policy is to avoid inconsistent decisions and relitigation. Where there is any conflict between this policy and *The Code*, *The Code* will be followed.

Context:

The Supreme Court of Canada recognized in *Tranchemontagne v. Ontario (Director, Disability Support Program)*, [2006] 1 S.C.R. 513 that a variety of administrative bodies have the jurisdiction to deal with human rights matters or have concurrent jurisdiction over human rights matters.

The Commission follows *Dick v. The Pepsi Bottling Group (Canada), Co.*, 2014 CanLII 16055 (MB HRC) ("*Dick*") when considering whether it should proceed (or, alternatively, stop its process) where another administrative body has already made a decision about the human rights issues.

The *Dick* decision confirms that the legal doctrines of issue estoppel and/or abuse of process apply in these circumstances.

Issue estoppel means that the issue is stopped, or cannot proceed, because it has previously been litigated and determined in another legal proceeding. The purpose of this doctrine is to ensure consistency and finality by preventing relitigation of the same issue(s).

The requirements for issue estoppel are:

- (a) the same question has been decided – i.e.: the issue(s) of discrimination;
- (b) the prior decision is final (any appeal options are completed or not pursued);
- and
- (c) the parties to the other proceeding or their privies are the same persons/entities as the parties to the human rights proceeding.

The term "privy" in this last requirement means that if the people in both administrative

processes are not identical, they must have a common interest. In *Dick*, the adjudicator found that the complainant and his union were privies. This will not always be true and must be considered on a case by case basis.

Even where the requirements for issue estoppel are met, the Commission may still continue where it would be unfair to terminate its involvement. It may consider the purpose and wording of the law authorizing the prior decision, whether an appeal process was available, safeguards available to the parties in the prior proceeding, expertise of that decision maker, circumstances giving rise to the prior proceeding, and any potential injustice.

The Commission may also apply the legal doctrine of abuse of process, which is about fair process including the interests of finality, consistency, and efficiency. This means that where there is a final decision regarding the issues in the human rights complaint but the requirements of issue estoppel are not met, the Commission may still choose not proceed. In making this decision the Commission will consider whether it would be unfair to terminate its process due to new evidence that conclusively impeaches the original decision, fraud or dishonesty in the first proceeding, or other reasons.

Upon considering the above doctrines, the Commission may terminate or dismiss the complaint under 29(1)(a) of *The Code* or otherwise. Where only a portion of the complaint has been decided, the Commission may proceed regarding the unresolved issues. Where the complaint has systemic issues, the Commission may be less likely to terminate involvement.

If the Commission is advised that the substance of a complaint **is currently being considered** by another administrative body, the Commission may also consider the above factors and may seek consent from the parties to put the complaint on hold. The Commission may also on its own initiative put the complaint on hold to await the other administrative decision.

The Commission will consider each situation in which concurrent jurisdiction arises on a fact-specific basis and will proceed cautiously with regard to the above considerations.

APPROVED BY:

“Yvonne Peters”
Chairperson

October 8, 2014
Date