

*E v. An Institution and others*, 2010 BCHRT 212

On behalf of one of our clients, we represented a member who was individually named in a human rights complaint. The allegations were that she (as well as her institutional employer, who we did not represent) had discriminated against the complainant with respect to a service customarily available to the public on the basis of mental disability, contrary to Section 8 of the *Human Rights Code*. We successfully secured two significant victories with respect to this matter: a partial publication ban and a dismissal of the complaint in its entirety as against our client.

First, pursuant to Rule 6(5) of the *Rules of Practice and Procedure*, we applied to limit public disclosure of the identity (or any identifying characteristics) of the member, taking the position that her identity should be protected unless the Tribunal rejected our application to dismiss, thereby determining that the complaint should proceed as against her individually. The Tribunal granted the application largely on the basis that the member was a professional, so her reputation may have been harmed by the nature of the allegations made against her if they became public knowledge.

Second, and more significantly, we were successful in having the entire complaint dismissed as against the member at a preliminary stage, thus avoiding what was scheduled to be a two week hearing. We primarily argued that the allegations ought to be dismissed for failing to further the purposes of the *Code* under Section 27 (1)(d)(ii) as at all material times the member was acting within the scope of her employment duties, and her employer was already named as a separate respondent. The Tribunal agreed and dismissed the complaint, finding that as an employer is responsible for any acts or omissions committed by an employee in the course of their employment, it would not further the purposes of the *Code* to proceed.