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# Administrative Law Updates - 2025

# Overview

- Active adjudication
- Statutory text and context
- Procedural fairness
- *Charter* considerations for tribunals
- Assessing credibility

# Active Adjudication

NAVIGATING THE  
DUTY TO ASSIST  
SELF-REPRESENTED  
PARTIES AND THE  
ASSOCIATED RISKS

# Balancing active adjudication and impartiality

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- Where there is an imbalance in the ability of parties to navigate a tribunal's processes, courts have found that the adjudicative approach should be more engaged.
- Guidance on implementing active adjudication can be found in the Canadian Judicial Council's "Statement of Principles on Self-Represented Litigants and Accused Persons" (see, *Pintea v. Johns*, 2017 SCC 23).
- Decision-makers must guard against being perceived by either party as not being impartial, advocating for or taking on role of representative for one party, and providing legal advice.



# Balancing active adjudication and impartiality

Failure to fulfill the duty to assist resulted in a procedurally unfair hearing

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## ***Kurvers v. Strathmore Lodge Ltd., 2025 BCSC 74***

- Petitioner challenged a decision of RTB that gave effect to a settlement agreement reached at the RTB hearing.
- Petitioner argued arbitrator breached the duty of procedural fairness by exerting undue pressure to accept settlement proposed by landlord.
- Arbitrator encouraged parties to settle by advising there were “two options” available – arbitrator could make an order or parties could enter a settlement agreement.
- Court observed a third option that was not discussed – arbitrator could have extended the deadline for the petitioner to file an application for dispute resolution.
- Petitioner, in the face of two options only, accepted the settlement offer.

# Balancing active adjudication and impartiality

Failure to fulfill the duty to assist resulted in a procedurally unfair hearing

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## *Kurvers v. Strathmore Lodge Ltd., 2025 BCSC 74*

- Court considered statutory scheme, including RTB rules, and found a high degree of procedural fairness was owed.
- Court recognized that, when serving as a mediator, it can be useful and appropriate for an arbitrator to push parties to encourage settlement **BUT** an arbitrator must be careful to not exert undue influence or provide inaccurate information.
- Court found a breach of procedural fairness based on: (i) arbitrator's incorrect statement about options available; (ii) arbitrator's implicit dismissal of petitioner's unrelated claims, without inviting submissions; and (iii) arbitrator's failure to give petitioner opportunity to explain why she missed filing deadline.

# Balancing active adjudication and impartiality

Failure to maintain demeanor of neutrality can taint the proceeding

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## ***Environmental Appeal Board v. District Director, Metro Vancouver, 2025 BCCA 303***

- District Director, a party before the EAB, alleged a reasonable apprehension of bias had arisen from the conduct of the presiding panel.
- Lower court agreed with District Director and quashed EAB decision. EAB appealed.
- On appeal, EAB argued chambers judge failed to consider the role of the EAB as an investigative tribunal, relying on various sections of legislative scheme that permit the EAB to control its own process, issue summons, and question witnesses.
- Court of Appeal rejected the EAB's characterization and found the EAB exercises a quasi-judicial or adjudicative role - it was permitted to question witnesses but not "cross the line".

# Balancing active adjudication and impartiality

Failure to maintain demeanor of neutrality can taint the proceeding

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## ***Environmental Appeal Board v. District Director, Metro Vancouver, 2025 BCCA 303***

- Court confirmed the “general rule” is that a decision-maker may ask a witness questions of clarification and amplification but should not intervene in the questioning of a witness to such an extent as to give the impression of taking on the role of counsel.
- Court agreed EAB’s questioning was extensive, one-sided, and included interventions, closed questions, and other remarks suggesting EAB was effectively acting as “co-counsel” for one party.
- EAB found to have failed to maintain a demeanour of neutrality.
- Appeal dismissed.

# Statutory Text and Context

FOUNDATIONAL  
CONSIDERATIONS

# Reasonableness and statutory interpretation

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## ***Pepa v. Canada (Citizenship and Immigration)*, 2025 SCC 21**

- Appeal arose in the context of a challenge to a decision of the Immigration Division issuing a removal order against the appellant.
- The Immigration Appeal Division found it did not have authority to hear the appeal of the Immigration Decision under section 63(2) of *IRPA* which provides a right of appeal to “a foreign national who holds a permanent resident visa”.
- When the removal order was issued, the appellant’s visa was already expired.
- IAD did not conduct any form of statutory analysis and instead relied on a decision of the Federal Court that interpreted a predecessor provision and other authorities.

# Reasonableness and statutory interpretation

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## *Pepa v. Canada (Citizenship and Immigration)*, 2025 SCC 21

- Court held it was unreasonable for the IAD to rely on a decision that interpreted a different, predecessor provision without exploring, explaining, and justifying why it had continued currency.
  - IAD bypassed the critical question under the new provision re: “at what point in time a person must hold a visa”.
- Court also found it was unreasonable for IAD to not conduct any form of statutory interpretation of section 63(2) given that the case law it relied on was not sufficiently binding or material.
  - The analysis cannot simply stop without ensuring due consideration has been given to competing interpretations.

# Reasonableness and statutory interpretation

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***Quebec (Commission des droits de la personne et des droits de la jeunesse) v. Directrice de la protection de la jeunesse du CISSS A, 2024 SCC 43***

- On appeal, the Court considered the scope of the corrective powers conferred by the legislature on the Youth Division of the Court of Quebec where persons, bodies, or institutions have encroached upon a child's rights in the course of social intervention.
- The tribunal had found the young person's rights had been encroached and recommended a series of corrective measures.
- The Director of Youth Protection took the position that the corrective measures ordered exceeded the powers conferred on the tribunal by the Legislature.

# Reasonableness and statutory interpretation

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***Quebec (Commission des droits de la personne et des droits de la jeunesse) v. Directrice de la protection de la jeunesse du CISSS A, 2024 SCC 43***

- The appeal turned on an issue of statutory interpretation and the Court recognized the Act:
  - must be given a large and liberal interpretation that will ensure attainment of its objects;
  - must be interpreted in accordance with the *Charter* and the Convention on the Rights of the Child;
  - must be interpreted considering the grammatical and ordinary meaning of the text, the broader statutory context and the legislative history.
- The Court found two of the corrective orders were overly broad, one order exceeded the tribunal's powers, and the fourth order was not anchored in the evidence.

# Reasonableness and statutory interpretation

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## *Telus Communications Inc. v. Federation of Canadian Municipalities, 2025 SCC 15*

- Appeal turned on an issue of statutory interpretation - meaning of “transmission line”.
- Applied modern approach to statutory interpretation and observed that while the task is centred on discerning the intent of the Legislature at the time, courts must also apply statutes to new and evolving circumstances.
- “Dynamic interpretation” is situated firmly within the modern approach – there is no bright line between static statutes and dynamic statutes.
- Degree to which a provision is capable of applying to new circumstances is an interpretive question that must be answered by reading the text, context, and consistent with legislative intent.

# Statutory Text and Context

Foundational considerations for substantive and procedural issues

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## ***Windset Farms (Canada) Ltd. v. BC Farm Industry Review Board, 2025 BCSC 2***

- Petitioners sought judicial review of a decision by BC Farm Industry Review Board.
- BCFIRB exercises supervisory powers over marketing boards and commissions, including BC Vegetable Marketing Commission.
- Petitioners alleged BCFIRB's decision was patently unreasonable because BCFIRB disregarded language of orders established by Commission in favour of its own discretionary framework.
- Petitioners alleged BCFIRB breached duty of procedural fairness by failing to seek submissions about granting a probationary licence.

# Statutory Text and Context

Foundational considerations for substantive and procedural issues

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## ***Windset Farms (Canada) Ltd. v. BC Farm Industry Review Board, 2025 BCSC 2***

- Re: patent unreasonableness, Court found it was “essential” to consider the statutory context, which granted BCFIRB authority to inquire into and determine whether a Commission order accords with sound marketing policy and that any such decision was subject to a strong privative clause.
- Broad grant of authority provided requisite authority to BCFIRB to render its decision, which was founded on coherent and justified reasoning.
- Re: alleged breach of procedural fairness, Court found nothing in the statute or at common-law required BCFIRB to provide parties with opportunity to make submissions regarding probationary licence.

# Statutory Text and Context

Foundational considerations for substantive and procedural issues

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## ***Owners, Strata Plan EPS 3699 v. Siemens 2025 BCSC 227***

- Petition for judicial review of a decision of the Civil Resolution Tribunal (CRT) relating to the allocation of a limited common property parking space.
- CRT ordered the strata to:
  - Make available other permanent parking arrangements for SL90 if the City prohibits relocation of PS133 after the strata has diligently pursued negotiation, including if necessary, a variance application with the City.
- On judicial review, the strata argued the impugned order was patently unreasonable because it was *ultra vires* the *Strata Property Act* and failed to consider statutory requirements, and is otherwise vague, ambiguous, and unenforceable.

# Statutory Text and Context

Foundational considerations for substantive and procedural issues

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## ***Owners, Strata Plan EPS 3699 v. Siemens 2025 BCSC 227***

- Court held CRT decision was patently unreasonable because it:
  - failed to take all relevant statutory requirements into account and provide a remedy consistent with the *Strata Property Act*; and
  - CRT ordered strata to exercise powers it does not have under *Strata Property Act* - compliance with the order would result in the strata breaching the *Act*.
- Remitted for reconsideration with directions regarding considering the context of the statutory powers of and restrictions on a strata corporation under the *Act*.

# Statutory Text and Context

Foundational considerations for substantive and procedural issues

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## ***Mangat v. Dhindsa, 2024 BCSC 2406***

- Petitioner sought judicial review of RTB decision which denied a claim for compensation under section 51 of the *Residential Tenancy Act*.
- Arbitrator found that because the landlord failed to serve a formal eviction notice, in compliance with the *RTA* requirements, tenant was not obligated to vacate the rental unit and therefore was not eligible to receive compensation.
- Court considered the purpose of section 51(2) (to deter landlords from wrongfully evicting tenants) and the purpose of requiring landlords to use approved form (to standardize notice and advise tenants of right to dispute) and held the arbitrator's decision was illogical and contrary to legislative intent.
- Remitted for reconsideration with directions.

# Procedural Fairness



# Notice and curing a breach

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## ***1070259 B.C. Ltd. v. British Columbia (Liquor and Cannabis Regulation Branch), 2024 BCSC 2180***

- Petitioners sought judicial review of decisions of the General Manager of the Liquor and Cannabis Regulation Branch regarding liquor licences held by the petitioners.
- Petitioners were numbered companies who were tenants of buildings owned by the same numbered company (the landlord).
- Landlord was successfully added as a party to the petition proceeding.
- Landlord argued there was a breach of procedural fairness as they were not afforded the opportunity to make submissions on the question of whether the tenants' existing liquor licence and application for a second licence should be cancelled/allowed.

# Notice and curing a breach

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## ***1070259 B.C. Ltd. v. British Columbia (Liquor and Cannabis Regulation Branch), 2024 BCSC 2180***

- On judicial review, the threshold question was whether a duty of procedural fairness was owed to the landlord in relation to the tenants' liquor licences.
- The Court held that while there was no freestanding duty of procedural fairness owed to the landlord, an e-mail sent by an LCRB employee that advised the landlord that they would be given the opportunity to make submissions, established a duty of procedural fairness to the landlord.
- The scope of that duty was limited to the LCRB's representation to the landlord.
- Petition was allowed and the matter remitted for reconsideration with the opportunity for the landlord to provide submissions.

# Notice and curing a breach

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## ***Adlani v. Fraser Health Authority (Medical Health Officer), 2025 BCCA 29***

- Appeal from the dismissal of a petition for judicial review seeking to challenge the cancellation of a licence to operate a daycare facility.
- Prior to cancellation, a licensing officer imposed conditions on the licensee. Under statutory scheme, officer was required to give licensee 30 days' notice of conditions being imposed. Licensee argued adequate notice was not provided but complied anyway.
- Months later licensee sought reconsideration of conditions. On reconsideration, decision-maker found conditions were inadequate and terminated the licence.
- Licensee appealed to Community Care and Assisted Living Appeal Board which dismissed the appeal.

# Notice and curing a breach

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## ***Adlani v. Fraser Health Authority (Medical Health Officer), 2025 BCCA 29***

- On judicial review and appeal, the only issue was whether the alleged breach of procedural fairness that resulted from non-compliance with notice period.
- Court of Appeal found there was no denial of procedural fairness even if notice had been delivered late.
- Any late delivery would only have affected the effective date of the conditions imposed and delayed enforceability of conditions.
- It did not render the impugned decision a nullity.
- Licensee availed herself of a *de novo* hearing before the Board and received a procedurally fair process.

*Charter*  
considerations  
for tribunals

WHICH APPROACH  
APPLIES AND WHEN

# *Charter* considerations

*Charter* values framework vs. *Charter*-compliant interpretation

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## ***Vabuolas v. British Columbia (Information and Privacy Commissioner), 2025 BCCA 83***

- Two individuals applied, pursuant to section 23(1) of *Personal Information Protection Act (PIPA)* for disclosure of their personal information from two Jehovah's Witnesses congregations.
- The congregations withheld certain information on the basis it was privileged and confidential religious communication.
- OIPC adjudicator ordered the information be disclosed to her under s. 38(1)(b) of *PIPA* to determine whether it needed to be provided to the applicants.
- While OIPC proceeding was underway, the congregations filed a notice of civil claim seeking a declaration that *PIPA* violated their s. 2(b) *Charter* rights (and other things).

# *Charter* considerations

*Charter* values framework vs. *Charter*-compliant interpretation

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## ***Vabuolas v. British Columbia (Information and Privacy Commissioner), 2025 BCCA 83***

- The action was stayed pending the outcome of the inquiries.
- Court found the Commissioner was competent to decide the *Charter* issues raised. No party challenged that finding on appeal.
- Adjudicator found ss. 23(1)(a) and 38(1)(b) of *PIPA* infringed s. 2(a) of the *Charter* to the extent they mandated the disclosure of confidential religious records but that the infringement was justified under s. 1.
- Adjudicator ordered the congregations to produce the records to the OIPC to determine what, if any, information should be disclosed to the applicants.

# *Charter* considerations

*Charter* values framework vs. *Charter*-compliant interpretation

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## ***Vabuolas v. British Columbia (Information and Privacy Commissioner), 2025 BCCA 83***

- Chambers judge dismissed the petition filed by congregations, expressing substantial agreement with adjudicator's reasons.
- Court of Appeal dismissed the appeal but found the adjudicator erred in finding the impugned sections of *PIPA* were unconstitutional.
- Court traced development of *Doré/Loyola* framework and observed there were two remaining areas of uncertainty (but found it was unnecessary to address them).
- Court rejected argument that *Doré* required administrative decision-makers to *always* proportionately balance *Charter* rights and values when exercising statutory discretion.

# *Charter* considerations

*Charter* values framework vs. *Charter*-compliant interpretation

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## ***Vabuolas v. British Columbia (Information and Privacy Commissioner), 2025 BCCA 83***

- May be exceptional for legislature to prohibit an administrative decision-maker from considering *Charter* rights but conceivable that a legislature could restrict a *Charter* protected right or freedom to achieve certain statutory objectives.
- In such a case, an administrative decision-maker could not balance the *Charter* rights and values on a case-by-case basis when that would undermine the legislation (any challenge would be to legislation).
- To extent provisions are ambiguous, courts should adopt an interpretation that is compliant with *Charter: Bell ExpressVu* at para. 62.
- Court did not identify any indication of legislative intent to empower OIPC to infringe the *Charter* or prohibit OIPC from considering *Charter* rights and values when exercising discretion under s. 38(1)(b).

# *Charter* considerations

*Charter* values framework vs. *Charter*-compliant interpretation

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## ***Vabuolas v. British Columbia (Information and Privacy Commissioner), 2025 BCCA 83***

- When compelling disclosure, OIPC was required to balance *Charter* protections with statutory objectives and the challenge was to the decision to issue the order.
- Although adjudicator erred in the framing of the analysis, the crux of the issue on appeal was whether the adjudicator failed to give appropriate weight to the *Charter* interests – reasonableness applied.
- Court found the adjudicator rendered a reasonable decision that proportionately balanced the *Charter* rights with statutory objectives in deciding to issue the production order.
- Appeal dismissed.

# *Charter* considerations

Application of a preliminary question in the *Charter* values framework?

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## ***Szezepaniak v. Interior Health Authority, 2025 BCSC 1516***

- Petitioner was a medical doctor who declined to receive COVID-19 vaccine and was subsequently subjected to discipline proceedings for failure to do so before health authority board.
- Hospital Appeal Board agreed with health authority board but found that termination was too harsh and suspension followed by non-renewal of contract was appropriate.
- Petitioner, on judicial review, argued that s. 7 of the *Charter* was engaged because of the impact on her ability to earn an income and support her family and that the *Doré* framework required the Board to conduct the requisite balancing.

# *Charter* considerations

Application of a preliminary question in the *Charter* values framework?

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## ***Szezepaniak v. Interior Health Authority, 2025 BCSC 1516***

- On judicial review, two key issues were addressed: (i) whether the Board was bound by the *Charter*; and (ii) if bound, was s. 7 engaged.
- Applying *Eldridge* and *Stoffman*, the Court found the routine aspects of the hospital's operation were not subject to government control and therefore *Charter* did not apply.
- Alternatively, s. 7 of the *Charter* was not engaged, relying on *Hoogerbrug* (a decision by Coval J.).
- Petition dismissed.

# *Charter* considerations

*Charter* values framework does not apply to laws of general application

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## ***Shrieves v. British Columbia (Attorney General), 2025 BCSC 1792***

- Petition proceeding concerning the validity of s. 5 of the *Disbursements and Expert Evidence Regulation (DEER)*
- Parties agreed that the standard of review to apply in a judicial review of a regulation is reasonableness: *Auer v. Auer*, 2024 SCC 36.
- The question to be determined is whether the impugned regulation can be justified on any reasonable interpretation of the statute, pursuant to which it is authorized.
- Court found the *Doré* framework, which applies to discretionary administrative decisions, had no application to a law of general application.

# *Charter* considerations

*Charter* values framework does not apply to laws of general application

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## ***Shrieves v. British Columbia (Attorney General), 2025 BCSC 1792***

- Court found the impugned regulation to be reasonable:
  - rejected argument that the amendment required plaintiffs to disclose their case in advance to the defendant in a manner that diminishes litigation and solicitor-client privilege; and
  - held that the Lieutenant Governor in Council's interpretation of their authority under the *Evidence Act* to pass the regulation as reasonable and reasonably consistent with the objects and purpose of *Evidence Act*, including to reduce the cost of motor vehicle litigation.
- Petition dismissed.

# Assessing credibility

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# Assessing credibility

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## ***Noble v. British Columbia (Superintendent of Motor Vehicles), 2025 BCSC 1337***

- Petition for judicial review of a decision of Superintendent of Motor Vehicles to confirm a driving prohibition issued at roadside.
- Petitioner argued ASD results were unreliable because he had gum in his mouth immediately prior to providing a sample and had chewing tobacco under his lip while providing a sample.
- Adjudicator rejected petitioner's evidence re: gum in mouth largely because the officer, a trained member of the BC Highway Patrol, did not notice the gum and take appropriate action to ensure a valid sample was obtained and because it was unlikely a person who was unaware of effects of gum would recall exact moment they spit it out.

# Assessing credibility

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## ***Noble v. British Columbia (Superintendent of Motor Vehicles), 2025 BCSC 1337***

- Adjudicator rejected petitioner's evidence regarding chewing tobacco because: (i) "not believable" it would remain in mouth; (ii) evidence was "vague"; (iii) adjudicator was left questioning how it was possible to provide sample with tobacco in mouth and why petitioner did not mention it to officer at roadside after being "surprised" by results.
- Court found adjudicator's reasoning re: chewing gum neither internally coherent nor justified.
- Court found adjudicator's reasoning re: chewing tobacco lacked the requisite justification, intelligibility and transparency.
- Despite errors, Court found second sample was provided more than five minutes after the chewing gum was spit out and so the ultimate conclusion was reasonable.

# Assessing credibility

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## ***Anderson Square Holdings Ltd. (Re), 2025 BCSC 186***

- Appellants argued, among other things, the proposal trustee erred in referring to an adverse credibility finding made against one of the parties' principals in a different proceeding.
- Court acknowledged that relying on a collateral credibility finding in an unrelated proceeding constituted an error of law but found it was not a palpable and overriding error.
- When considered as a whole, proposal trustee was “amply justified in any apparent skepticism” and in placing less weight on the proffered evidence, “even putting aside the errant reference to an adverse credibility finding”.
- Appeal dismissed.

# Assessing credibility

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## ***Vancouver Island Health Authority v. Safaei and British Columbia Human Rights Tribunal,*** **2025 BCSC 340**

- VIHA filed petition for judicial review of decision of BCHRT denying its application to dismiss a complaint of a former pharmacy assistant at a VIHA-operated hospital who had been dismissed during a probationary period for alleged job performance issues.
- Complainant alleged discrimination in employment based on religion and place of origin.
- VIHA sought order for dismissal without a hearing as the substance of complaint had already been dealt with in other proceedings and had no reasonable prospect of success.
- BCHRT dismissed application rejecting VIHA argument that complaint had been dealt with elsewhere and finding that credibility was a central issue requiring full hearing.

# Assessing credibility

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## ***Vancouver Island Health Authority v. Safaei and British Columbia Human Rights Tribunal, 2025 BCSC 340***

- VIHA argued BCHRT erred in not dismissing on basis of complainant's failure to file sworn evidence in response to VIHA affidavits, despite being represented by counsel.
- BCHRT had found that while the response was "lacking" the materials were sufficient to put VIHA's evidence in issue and give rise to foundational credibility issue.
- Court found that recognizing a rule that the tribunal must dismiss a complaint when a complainant, who is represented by counsel, failed to provide sworn evidence would be arbitrary and contrary to the scheme.
- It was within BCHRT's discretion to rely on unsworn statements to find a foundational issue of credibility.

Questions/comments?

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Thank you!

