

A Guide to the Canadian Human Rights Act

All individuals should have an opportunity equal with other individuals to make for themselves the lives that they are able and wish to have and to have their needs accommodated, consistent with their duties and obligations as members of society.

- ' sexual orientation
- ' marital status
- ' family status
- ' mental or physical disability (including previous or present drug or alcohol dependence)
- ' pardoned conviction.

Section 2 of the Act

You are protected

What is discrimination?

Discrimination means treating people differently, negatively or adversely without a good reason.

As used in human rights laws, discrimination means making a distinction between certain individuals or groups based on a prohibited ground.

Grounds for action

Under the *Canadian Human Rights Act*, it is against the law for any employer, employee organization or service provider that falls within federal jurisdiction to make unlawful distinctions based on the following prohibited grounds:

- ' race
- ' national or ethnic origin
- ' colour
- ' religion
- ' age
- ' sex (including pregnancy and childbirth)

Everyone is protected by the *Canadian Human Rights Act* in dealings with the following employers and service providers:

- ' federal departments, agencies and Crown corporations
- ' Canada Post
- ' chartered banks
- ' national airlines
- ' interprovincial communications and telephone companies
- ' interprovincial transportation companies and other federally regulated industries, such as certain mining operations
- ' First Nations employers (for employment and service issues that are not exempt under section 67 of the Act).

All provinces and territories have similar laws forbidding discrimination in their areas of jurisdiction.

Discriminatory acts

The *Canadian Human Rights Act* deals with discriminatory behaviour in its various forms:

- ' differential treatment of an individual or a group of individuals based on a prohibited ground
- ' all forms of harassment
- ' systemic discrimination—a seemingly neutral policy or practice which in fact is discriminatory
- ' retaliation.

The following are examples:

Employment

- ' A person cannot be denied a job because of a disability that does not affect job performance or that can be accommodated.

Employment applications and advertisements

- ' Federally regulated employers cannot include requirements that are not clearly related to the job, such as previous Canadian experience.

Equal pay

- ' A job performed mostly by women cannot be paid less than a job of equal value done mostly by men. Examples of jobs that might be of equal value are nursing assistants and electricians, or secretaries and maintenance staff.

Employee organizations

- ' Due to provisions in certain collective agreements, some unions enjoy a monopoly on referring job applicants to employers. It is a discriminatory act for such unions to exclude designated group candidates as referrals.

Provision of goods and services

- ' A bank cannot ask a married woman for her spouse's signature when applying for a loan.

Accommodation

- ' An individual unable to work certain days for religious reasons may not be denied employment unless the employer can demonstrate that it would cause undue hardship.

Discriminatory notices

- ' A poster that encourages discrimination is illegal.

Hate messages

- ' Internet and pre-recorded telephone hate messages are forbidden.

Harassment

- ' Making demeaning comments because of the person's colour, ethnic origin, age, disability, sex or any of the grounds in an employment or service situation is prohibited under the Act.

Retaliation

- ' An employer cannot fire an employee because he or she has filed a human rights complaint.

Exceptions

The Act provides for exceptions such as:

Bona fide occupational requirement

- ' A job may be refused to a person who cannot perform it safely, efficiently and reliably.

Bona fide justification

- ' A service may be refused to a person when it cannot be offered without undue costs.

Equal pay guidelines

- ' A difference in wages between men and women performing work of equal value in an establishment may be justified by different performance ratings, seniority, red-circling, training and rehabilitation assignments, internal labour shortages and surpluses and regional wage rates.

Maternity and child care

- ' An employer can grant workers special leave or benefits in connection with pregnancy or childbirth, or for the care of their children.

Mandatory retirement

- ' A worker can be retired at the age that is "normal" for the kind of work involved.

Age guidelines

- ' Lower transportation fares are permitted for children and senior citizens.

Access for all

Special programs

- ' The *Canadian Human Rights Act*, like the *Canadian Charter of Rights and Freedoms*, makes provisions for special programs designed to end long-standing disadvantages and to prevent them from happening again. A special program can be something as simple as a training program for workers from a disadvantaged group, or a comprehensive employment equity plan.

Accessibility

- ' The *Canadian Human Rights Act* recognizes that persons with disabilities must have access to premises, services and facilities.

Accommodation plans

- ' Employers and those who offer goods, services, facilities and accommodations are encouraged to draw up plans for adapting to the needs of persons with disabilities.

Such a plan could include wheelchair accessibility. If a plan has been approved by the Canadian Human Rights Commission, and if it is being followed, the plan provides employers with a defence against complaints.

The Canadian Human Rights Commission

The Canadian Human Rights Commission administers the *Canadian Human Rights Act*, and ensures that the principles of equal opportunity and non-discrimination are followed in all areas of federal jurisdiction.

The Commission, composed of up to two full-time and up to six part-time commissioners, meets regularly to decide on individual complaints and approve Commission policies.

The mandate of the Commission includes:

- ' helping parties to resolve complaints of discrimination in employment and in provision of services based on the grounds enumerated in the Act;
- ' investigating complaints of discrimination, including complaints alleging inequities in pay between men and women who are performing work of equal value;
- ' auditing and, when necessary, taking action to ensure employers' compliance with the *Employment Equity Act*, which applies to the

federal public service, as well as federal Crown corporations and federally regulated companies employing 100 or more people;

- ' monitoring programs, policies and legislation affecting designated groups (women, Aboriginal peoples, visible minorities and persons with disabilities) to ensure that their human rights are protected; and
- ' developing and conducting information programs to promote public understanding of the Act and of the role and activities of the Commission.

Complaints

When a complaint is filed with the Canadian Human Rights Commission, it follows the process described below.

- ' Is the Commission the right agency to handle your complaint? If no, it is referred to another agency that might help. If yes, the complaint is accepted.
- ' The mediation process is proposed to the parties. If accepted, a mediator helps parties reach a fair settlement. If successful, the Commissioners review the settlement. If the mediation fails, an investigator can be assigned.
- ' The Commission can also appoint a conciliator to help the parties resolve the complaint.
- ' An investigation begins. The

Commission acts in the public interest by impartially investigating the allegation of discrimination.

- ' After reviewing an investigation report, the Commission can send the complaint to a Human Rights Tribunal, or dismiss the complaint, usually because there is not enough evidence to support the allegation.
- ' The Tribunal conducts hearings into the complaint and makes a decision. It will either dismiss the complaint or order a remedy. That decision can be appealed to a Review Tribunal or the Federal Court of Canada.
- ' The Review Tribunal or Federal Court hears the appeal and makes a decision. The decision can be further appealed by either party up to the Supreme Court of Canada.

Remedies

In mediation and conciliation, the parties are free to craft resolutions which they feel are appropriate in the particular circumstances of the complaint. If the complaint raises policy issues, the Commission will expect them to be addressed a written agreement (called "Minutes of Settlement"). Agreements can include monetary and non-monetary elements, such things as apologies, training, lost wages, reinstatement in a position and financial compensation for pain and suffering.

Right to protection

The *Canadian Human Rights Act* provides for fines of up to \$50,000 for threatening, intimidating or discriminating against an individual who has filed a complaint, or for hampering an investigation. The Commission can also investigate and deal with complaints of retaliation against persons who file a complaint.

For further information or assistance, please contact one of our offices:

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