

***Human Rights Code, R.S.B.C. 1996, c. 210***  
**and applicable sections of the *Administrative Tribunals Act, S.B.C. 2004, c. 45***

**Unofficial Consolidation\***

**Contents**

***Human Rights Code***

Section

- 1 Definitions
- 2 Discrimination and intent
- 3 Purposes
- 4 Code prevails
- 5 Education and information programs
- 6 Research and public consultations
- 7 Discriminatory publication
- 8 Discrimination in accommodation, service and facility
- 9 Discrimination in purchase of property
- 10 Discrimination in tenancy premises
- 11 Discrimination in employment advertisements
- 12 Discrimination in wages
- 13 Discrimination in employment
- 14 Discrimination by unions and associations
- 21 Complaints
- 22 Time limit for filing a complaint
  - 22.1 Intervenors
- 25 Deferral of a complaint
- 27 Dismissal of a complaint
  - 27.1 Assignment of complaints
  - 27.2 Evidence
  - 27.3 Powers to make rules and orders respecting practice and procedure
  - 27.5 Dismissal for failure to pursue complaint
  - 27.6 Assisting parties to settle
- 30 Enforcement of settlement agreements
- 31 Human Rights Tribunal
- 32 Application of *Administrative Tribunals Act*
- 33 Staff of the tribunal
- 37 Remedies
- 38 Modification of orders
- 39 Enforcement of remedies
  - 39.1 Annual report
- 40 Disclosure
- 41 Exemptions
- 42 Special programs
- 43 Protection
- 44 Style of cause for proceedings
- 45 Technical defects

- 46 Delegation of powers
- 47 Time limits
- 48 *Offence Act*
- 49 Power to make regulations

***Administrative Tribunals Act***

Section

- 1 Definitions
- 4 Appointment of acting chair
- 5 Member's absence or incapacitation
- 6 Temporary, non-renewable appointments
- 7 Powers after resignation or expiry of term
- 8 Termination for cause
- 9 Responsibilities of the chair
- 10 Remuneration and benefits for members
- 17 Withdrawal or settlement of application
- 29 Disclosure protection
- 30 Tribunal duties
- 34 Power to compel witnesses and order disclosure
- 45 Tribunal without jurisdiction over Canadian Charter of Rights and Freedoms Issues
- 46 Notice to Attorney General if constitutional question raised in application
- 46.1 Notice to Attorney General if conflict between Code and other enactment (unofficial heading)
- 48 Maintenance of order at hearings
- 49 Contempt proceeding for uncooperative witness or other person
- 50 Decisions
- 55 Compulsion protection
- 56 Immunity protection for tribunal and members
- 57 Time limit for judicial review
- 59 Standard of review if tribunal's enabling Act has no privative clause
- 61 Application of Freedom of Information and Protection of Privacy Act

*\*This is not an official version of the Human Rights Code. This version consolidates amendments to the Code which were contained in other statutes. They are: Miscellaneous Statutes Amendment Act (No. 3), 1999, S.B.C. 1999, c. 39, ss. 24-30, effective September 30, 1999; Human Rights Code Amendment Act, 2002, S.B.C. 2002, c. 62, ss. 1 to 26, effective March 31, 2003; Residential Tenancy Act, S.B.C. 2002, c.78, s. 108, effective January 1, 2004; Administrative Tribunals Appointment and Administration Act, S.B.C. 2003, c. 47, ss. 33-34, effective February 13, 2004; Administrative Tribunals Act, S.B.C. 2004, c. 45, ss. 104-106, effective October 15, 2004; Attorney General Statutes Amendment Act, 2007, S.B.C. 2007, c. 14, s. 35, effective October 18, 2007 and Human Rights Code (Mandatory Retirement Elimination) Amendment Act, 2007, S.B.C. 2007, c. 21, effective January 1, 2008. The applicable sections of the Administrative Tribunals Act have been amended by Attorney General Statutes Amendment Act, 2004, S.B.C. 2004, c. 57, ss. 1 and 5, effective October 21, 2004; and Attorney General Statutes Amendment Act, 2007, S.B.C. 2007, c. 14, ss. 1 - 3, effective October 18, 2007.*

## Human Rights Code

### Definitions

1 In this Code:

“**age**” means an age of 19 years or more;

“**chair**” means the member designated under section 31 (1) (a) as the chair of the tribunal;

“**collective agreement**” means a collective agreement as defined in the *Labour Relations Code*;

“**complainant**” means a person or group of persons that files a complaint under section 21;

“**complaint**” means a complaint filed under section 21;

“**discrimination**” includes the conduct described in section 7, 8 (1) (a), 9 (a) or (b), 10 (1) (a), 11, 13 (1) (a) or (2), 14 (a) or (b) or 43;

“**employers’ organization**” means an organization of employers formed for purposes that include the regulation of relations between employers and employees;

“**employment**” includes the relationship of master and servant, master and apprentice and principal and agent, if a substantial part of the agent’s services relate to the affairs of one principal, and “**employ**” has a corresponding meaning;

“**employment agency**” includes a person who undertakes, with or without compensation, to procure employees for employers or to procure employment for persons;

“**intervenor**” means a person allowed under section 22.1 to intervene in a complaint;

“**member**” means a person appointed under section 31 (1) (b) as a member of the tribunal;

“**occupational association**” means an organization, other than a trade union or employers’ organization, in which membership is a prerequisite to carrying on a trade, occupation or profession;

“**panel**” means a panel designated under section 27.1 (1) (b);

“**party**”, with respect to a complaint, means the complainant and the person against whom the complaint is made and any person that the tribunal adds as a party;

“**person**” includes an employer, an employment agency, an employers’ organization, an occupational association and a trade union;

“**trade union**” means an organization of employees formed for purposes that include the regulation of relations between employees and employers;

“**tribunal**” means the British Columbia Human Rights Tribunal continued under section 31.

### **Discrimination and intent**

- 2 Discrimination in contravention of this Code does not require an intention to contravene this Code.

### **Purposes**

- 3 The purposes of this Code are as follows:
  - (a) to foster a society in British Columbia in which there are no impediments to full and free participation in the economic, social, political and cultural life of British Columbia;
  - (b) to promote a climate of understanding and mutual respect where all are equal in dignity and rights;
  - (c) to prevent discrimination prohibited by this Code;
  - (d) to identify and eliminate persistent patterns of inequality associated with discrimination prohibited by this Code;
  - (e) to provide a means of redress for those persons who are discriminated against contrary to this Code.

### **Code prevails**

- 4 If there is a conflict between this Code and any other enactment, this Code prevails.

### **Education and information programs**

- 5 The minister is responsible for developing and conducting a program of public education and information designed to promote an understanding of this Code.

### **Research and public consultations**

- 6 The minister may
  - (a) conduct or encourage research into matters relevant to this Code, and
  - (b) carry out consultations relevant to this Code.

### **Discriminatory publication**

- 7 (1) A person must not publish, issue or display, or cause to be published, issued or displayed, any statement, publication, notice, sign, symbol, emblem or other representation that
  - (a) indicates discrimination or an intention to discriminate against a person or a group or class of persons, or
  - (b) is likely to expose a person or a group or class of persons to hatred or contemptbecause of the race, colour, ancestry, place of origin, religion, marital status, family status, physical or mental disability, sex, sexual orientation or age of that person or that group or class of persons.
- (2) Subsection (1) does not apply to a private communication, a communication intended to be private or a communication related to an activity otherwise

permitted by this Code.

#### **Discrimination in accommodation, service and facility**

- 8** (1) A person must not, without a bona fide and reasonable justification,
- (a) deny to a person or class of persons any accommodation, service or facility customarily available to the public, or
  - (b) discriminate against a person or class of persons regarding any accommodation, service or facility customarily available to the public
- because of the race, colour, ancestry, place of origin, religion, marital status, family status, physical or mental disability, sex, sexual orientation or age of that person or class of persons.
- (2) A person does not contravene this section by discriminating
- (a) on the basis of sex, if the discrimination relates to the maintenance of public decency or to the determination of premiums or benefits under contracts of life or health insurance, or
  - (b) on the basis of physical or mental disability or age, if the discrimination relates to the determination of premiums or benefits under contracts of life or health insurance.

#### **Discrimination in purchase of property**

- 9** A person must not
- (a) deny to a person or class of persons the opportunity to purchase a commercial unit or dwelling unit that is in any way represented as being available for sale,
  - (b) deny to a person or class of persons the opportunity to acquire land or an interest in land, or
  - (c) discriminate against a person or class of persons regarding a term or condition of the purchase or other acquisition of a commercial unit, dwelling unit, land or interest in land
- because of the race, colour, ancestry, place of origin, religion, marital status, physical or mental disability, sexual orientation or sex of that person or class of persons.

#### **Discrimination in tenancy premises**

- 10** (1) A person must not
- (a) deny to a person or class of persons the right to occupy, as a tenant, space that is represented as being available for occupancy by a tenant, or
  - (b) discriminate against a person or class of persons regarding a term or condition of the tenancy of the space,
- because of the race, colour, ancestry, place of origin, religion, marital status, family status, physical or mental disability, sex, sexual orientation, age or lawful source of income of that person or class of persons, or of any other person or class of persons.

- (2) Subsection (1) does not apply in the following circumstances:
- (a) if the space is to be occupied by another person who is to share, with the person making the representation, the use of any sleeping, bathroom or cooking facilities in the space;
  - (b) as it relates to family status or age,
    - (i) if the space is a rental unit in residential premises in which every rental unit is reserved for rental to a person who has reached 55 years of age or to 2 or more persons, at least one of whom has reached 55 years of age, or
    - (ii) a rental unit in a prescribed class of residential premises;
  - (c) as it relates to physical or mental disability, if
    - (i) the space is a rental unit in residential premises,
    - (ii) the rental unit and the residential premises of which the rental unit forms part,
      - (A) are designed to accommodate persons with disabilities, and
      - (B) conform to the prescribed standards, and
    - (iii) the rental unit is offered for rent exclusively to a person with a disability or to 2 or more persons, at least one of whom has a physical or mental disability.

#### **Discrimination in employment advertisements**

- 11** A person must not publish or cause to be published an advertisement in connection with employment or prospective employment that expresses a limitation, specification or preference as to race, colour, ancestry, place of origin, political belief, religion, marital status, family status, physical or mental disability, sex, sexual orientation or age unless the limitation, specification or preference is based on a bona fide occupational requirement.

#### **Discrimination in wages**

- 12** (1) An employer must not discriminate between employees by employing an employee of one sex for work at a rate of pay that is less than the rate of pay at which an employee of the other sex is employed by that employer for similar or substantially similar work.
- (2) For the purposes of subsection (1), the concept of skill, effort and responsibility must, subject to factors in respect of pay rates such as seniority systems, merit systems and systems that measure earnings by quantity or quality of production, be used to determine what is similar or substantially similar work.
- (3) A difference in the rate of pay between employees of different sexes based on a factor other than sex does not constitute a failure to comply with this section if the factor on which the difference is based would reasonably justify the difference.
- (4) An employer must not reduce the rate of pay of an employee in order to comply

with this section.

- (5) If an employee is paid less than the rate of pay to which the employee is entitled under this section, the employee is entitled to recover from the employer, by action, the difference between the amount paid and the amount to which the employee is entitled, together with the costs, but
  - (a) the action must be commenced no later than 12 months from the termination of the employee's services, and
  - (b) the action applies only to wages of an employee during the 12 month period immediately before the earlier of the date of the employee's termination or the commencement of the action.

### **Discrimination in employment**

**13** (1) A person must not

- (a) refuse to employ or refuse to continue to employ a person, or
- (b) discriminate against a person regarding employment or any term or condition of employment

because of the race, colour, ancestry, place of origin, political belief, religion, marital status, family status, physical or mental disability, sex, sexual orientation or age of that person or because that person has been convicted of a criminal or summary conviction offence that is unrelated to the employment or to the intended employment of that person.

- (2) An employment agency must not refuse to refer a person for employment for any reason mentioned in subsection (1).
- (3) Subsection (1) does not apply
  - (a) as it relates to age, to a bona fide scheme based on seniority, or
  - (b) as it relates to marital status, physical or mental disability, sex or age, to the operation of a bona fide retirement, superannuation or pension plan or to a bona fide group or employee insurance plan, whether or not the plan is the subject of a contract of insurance between an insurer and an employer.
- (4) Subsections (1) and (2) do not apply with respect to a refusal, limitation, specification or preference based on a bona fide occupational requirement.

### **Discrimination by unions and associations**

**14** A trade union, employers' organization or occupational association must not

- (a) exclude any person from membership,
- (b) expel or suspend any member, or
- (c) discriminate against any person or member

because of the race, colour, ancestry, place of origin, political belief, religion, marital status, family status, physical or mental disability, sex, sexual orientation or age of that person or member, or because that person or member has been convicted of a criminal or summary conviction offence that is unrelated to the membership or

intended membership.

### **Complaints**

- 21** (1) Any person or group of persons that alleges that a person has contravened this Code may file a complaint with the tribunal in a form satisfactory to the tribunal.
- (2) and (3) [repealed]
- (4) Subject to subsection (5), a complaint under subsection (1) may be filed on behalf of
- (a) another person, or
  - (b) a group or class of persons whether or not the person filing the complaint is a member of that group or class.
- (5) A member or panel may refuse to accept, for filing under subsection (1), a complaint made on behalf of another person or a group or class of persons if that member or panel is satisfied that
- (a) the person alleged to have been discriminated against does not wish to proceed with the complaint, or
  - (b) proceeding with the complaint is not in the interest of the group or class on behalf of which the complaint is made.
- (6) A member or panel may proceed with 2 or more complaints together if a member or panel is satisfied that it is fair and reasonable in the circumstances to do so.

### **Time limit for filing a complaint**

- 22** (1) A complaint must be filed within 6 months of the alleged contravention.
- (2) If a continuing contravention is alleged in a complaint, the complaint must be filed within 6 months of the last alleged instance of the contravention.
- (3) If a complaint is filed after the expiration of the time limit referred to in subsection (1) or (2), a member or panel may accept all or part of the complaint if the member or panel determines that
- (a) it is in the public interest to accept the complaint, and
  - (b) no substantial prejudice will result to any person because of the delay.



## **Intervenors**

- 22.1** A member or panel may, at any time after the complaint is filed and on the terms specified by the member or panel, allow any person or group of persons to intervene in the complaint, whether or not that person or group would be affected by an order made by the member or panel under section 37.

## **Deferral of a complaint**

- 25** (1) In this section and in section 27, “**proceeding**” includes a proceeding authorized by another Act and a grievance under a collective agreement.
- (2) If at any time after a complaint is filed a member or panel determines that another proceeding is capable of appropriately dealing with the substance of a complaint, the member or panel may defer further consideration of the complaint until the outcome of the other proceeding.

## **Dismissal of a complaint**

- 27** (1) A member or panel may, at any time after a complaint is filed and with or without a hearing, dismiss all or part of the complaint if that member or panel determines that any of the following apply:
- (a) the complaint or that part of the complaint is not within the jurisdiction of the tribunal;
  - (b) the acts or omissions alleged in the complaint or that part of the complaint do not contravene this Code;
  - (c) there is no reasonable prospect that the complaint will succeed;
  - (d) proceeding with the complaint or that part of the complaint would not
    - (i) benefit the person, group or class alleged to have been discriminated against, or
    - (ii) further the purposes of this Code;
  - (e) the complaint or that part of the complaint was filed for improper motives or made in bad faith;
  - (f) the substance of the complaint or that part of the complaint has been appropriately dealt with in another proceeding;
  - (g) the contravention alleged in the complaint or that part of the complaint occurred more than 6 months before the complaint was filed unless the complaint or that part of the complaint was accepted under section 22 (3).
- (2) If a member or panel dismisses a complaint or part of a complaint under subsection (1), that member or panel must inform the following persons of the decision in writing and give reasons for the decision:
- (a) the complainant;
  - (b) the person against whom the complaint was made, if that person had been given notice of the complaint;
  - (c) any other party;
  - (d) an intervenor.

### **Assignment of complaints**

- 27.1** (1) For the purposes of making a decision or order in respect of a complaint, the chair may assign the complaint to
- (a) a single member designated by the chair, or
  - (b) a panel of 3 members designated by the chair.
- (2) If a panel is designated under subsection (1) (b), the chair must designate one of the members of the panel to preside.

### **Evidence**

- 27.2** (1) A member or panel may receive and accept on oath, by affidavit or otherwise, evidence and information that the member or panel considers necessary and appropriate, whether or not the evidence or information would be admissible in a court of law.
- (2) Nothing is admissible in evidence before a member or panel that is inadmissible in a court because of a privilege under the law of evidence.
- (3) Despite section 4, subsection (1) of this section does not override an Act expressly limiting the extent to which or purposes for which evidence may be admitted or used in any proceeding.
- (4) A member or panel may direct that all or part of the evidence of a witness be heard in private.

### **Powers to make rules and orders respecting practice and procedure**

- 27.3** (1) The tribunal may make rules respecting practice and procedure to facilitate just and timely resolution of complaints.
- (2) Without limiting subsection (1), the tribunal may make rules as follows:
- (a) respecting the holding of prehearing conferences and requiring the parties to attend a prehearing conference in order to discuss issues relating to a complaint and the possibility of simplifying or disposing of issues;
  - (b) respecting disclosure of evidence, including but not limited to prehearing disclosure and prehearing examination of a party on oath or solemn affirmation or by affidavit;
  - (c) specifying the form of notice to be given to a party by another party or by the tribunal requiring a party to diligently pursue a complaint and specifying the time within which and the manner in which the party must respond to the notice;
  - (d) respecting service of notices and orders, including substituted service;
  - (e) requiring a party or an intervenor to provide an address for service or delivery of notices and orders;
  - (f) providing that a party's or an intervenor's address of record is to be treated as an address for service;
  - (g) respecting procedures for matters under sections 22, 25 and 27;

- (h) respecting mediation and other dispute resolution processes, including, without limitation, rules that would permit or require mediation of a complaint, whether the mediation is provided by a member or by a person appointed, engaged or retained under section 33;
  - (i) respecting procedures for formal offers to settle a complaint;
  - (j) respecting the amendment of a complaint or a response to a complaint;
  - (k) respecting the addition of parties to a complaint;
  - (l) respecting applications under section 42 (3).
- (3) In order to facilitate the just and timely resolution of a complaint, a member or panel, on their own initiative or on application of a party or an intervenor, may make any order for which a rule could be made under subsection (1) or (2).

#### **Dismissal for failure to pursue complaint**

**27.5** If, under the rules, a party has been given notice requiring the party to diligently pursue a complaint and the party fails to act on the notice within the time allowed, then on the request of another party or on its own initiative, a member or panel may dismiss the complaint.

#### **Assisting parties to settle**

**27.6** A member or a person appointed, engaged or retained under section 33 may assist the parties to a complaint, through mediation or any other dispute resolution process, to achieve a settlement.

#### **Enforcement of settlement agreements**

- 30**
- (1) If there has been a breach of the terms of a settlement agreement, a party to the settlement agreement may apply to the Supreme Court to enforce the settlement agreement to the extent that the terms of the settlement agreement could have been ordered by the tribunal.
  - (2) The right to enforce a settlement agreement under subsection (1) cannot be waived.
  - (3) A provision of a settlement agreement that purports to waive the right to enforce the agreement under subsection (1) is void.

#### **Human Rights Tribunal**

- 31**
- (1) The British Columbia Human Rights Tribunal is continued consisting of the following individuals appointed by the Lieutenant Governor in Council after a merit based process:
    - (a) a member designated as the chair;
    - (b) other members appointed after consultation with the chair.
  - (2) All members hold office for an initial term of 5 years and may be reappointed for additional terms of 5 years.

### **Application of *Administrative Tribunals Act***

- 32** Sections 1, 4 to 10, 17, 29, 30, 34 (3) and (4), 45, 46, 46.1(3) to (9), 48 to 50, 55 to 57, 59 and 61 of the *Administrative Tribunals Act* apply to the tribunal.

### **Staff of the tribunal**

- 33** (1) Employees necessary to carry out the powers and duties of the tribunal may be appointed under the *Public Service Act*.
- (2) The tribunal may engage or retain consultants or specialists that the tribunal considers necessary to carry out the powers and duties of the tribunal and may determine their remuneration.
- (3) The *Public Service Act* does not apply to the retention, remuneration or engagement of consultants or specialists under subsection (2).

### **Remedies**

- 37** (1) If the member or panel designated to hear a complaint determines that the complaint is not justified, the member or panel must dismiss the complaint.
- (2) If the member or panel determines that the complaint is justified, the member or panel
- (a) must order the person that contravened this Code to cease the contravention and to refrain from committing the same or a similar contravention,
  - (b) may make a declaratory order that the conduct complained of, or similar conduct, is discrimination contrary to this Code,
  - (c) may order the person that contravened this Code to do one or both of the following:
    - (i) take steps, specified in the order, to ameliorate the effects of the discriminatory practice;
    - (ii) adopt and implement an employment equity program or other special program to ameliorate the conditions of disadvantaged individuals or groups if the evidence at the hearing indicates the person has engaged in a pattern or practice that contravenes this Code, and
  - (d) if the person discriminated against is a party to the complaint, or is an identifiable member of a group or class on behalf of which a complaint is filed, may order the person that contravened this Code to do one or more of the following:
    - (i) make available to the person discriminated against the right, opportunity or privilege that, in the opinion of the member or panel, the person was denied contrary to this Code;
    - (ii) compensate the person discriminated against for all, or a part the member or panel determines, of any wages or salary lost, or expenses incurred, by the contravention;

- (iii) pay to the person discriminated against an amount that the member or panel considers appropriate to compensate that person for injury to dignity, feelings and self respect or to any of them.
- (3) An order made under subsection (2) may require the person against whom the order is made to provide any person designated in the order with information respecting the implementation of the order.
- (4) The member or panel may award costs
  - (a) against a party to a complaint who has engaged in improper conduct during the course of the complaint, and
  - (b) without limiting paragraph (a), against a party who contravenes a rule under section 27.3 (2) or an order under section 27.3 (3).
- (5) A decision or order of a member or panel is a decision or order of the tribunal for the purposes of this Code.
- (6) The member or panel must inform the parties and any intervenor in writing of the decision made under this section and give reasons for the decision.

#### **Modification of orders**

- 38** (1) Until an order made under section 37 (2) (c) or (d) (i) has been fully implemented, any party or a person designated in the order may apply to the member or panel that made the order, or to a member or panel designated by the chair, for a modification of that order on the grounds that the order is no longer appropriate because of unforeseen circumstances.
- (2) The member or panel may vary or rescind the order after determining that the order
  - (a) has not been fully implemented, and
  - (b) is no longer appropriate because of unforeseen circumstances.
- (3) In varying an order under subsection (2), the member or panel may exercise any of the powers under section 37 (2) (a), (c) or (d).

#### **Enforcement of remedies**

- 39** (1) If an order is made under section 37 (2) (a), (c) or (d) or (4) or 38 (2), the party in whose favour the order is made or a person designated in the order may file a certified copy of the order with the Supreme Court.
- (2) An order filed under subsection (1) has the same force and effect, and all proceedings may be taken on it, as if it were a judgment of the Supreme Court.

#### **Annual report**

- 39.1** (1) As soon as practicable after the end of the fiscal year of the government, the tribunal must submit to the minister an annual report on the activities of the tribunal.
- (2) The minister must promptly lay the report before the Legislative Assembly if it is in session or, if it is not in session when the report is submitted, within

15 days after the beginning of the next session.

#### **Disclosure**

- 40** (1) [repealed]
- (2) Any information received by any person in the course of attempting to reach a settlement of a complaint is confidential and may not be disclosed or admitted in evidence except with the consent of the person who gave the information.

#### **Exemptions**

- 41** (1) If a charitable, philanthropic, educational, fraternal, religious or social organization or corporation that is not operated for profit has as a primary purpose the promotion of the interests and welfare of an identifiable group or class of persons characterized by a physical or mental disability or by a common race, religion, age, sex, marital status, political belief, colour, ancestry or place of origin, that organization or corporation must not be considered to be contravening this Code because it is granting a preference to members of the identifiable group or class of persons.
- (2) Nothing in this Code prohibits a distinction on the basis of age if that distinction is permitted or required by any Act or regulation.

#### **Special programs**

- 42** (1) It is not discrimination or a contravention of this Code to plan, advertise, adopt or implement an employment equity program that
- (a) has as its objective the amelioration of conditions of disadvantaged individuals or groups who are disadvantaged because of race, colour, ancestry, place of origin, physical or mental disability, or sex, and
  - (b) achieves or is reasonably likely to achieve that objective.
- (2) [repealed]
- (3) On application by any person, with or without notice to any other person, the chair, or a member or panel designated by the chair, may approve any program or activity that has as its objective the amelioration of conditions of disadvantaged individuals or groups.
- (4) Any program or activity approved under subsection (3) is deemed not to be in contravention of this Code.

#### **Protection**

- 43** A person must not evict, discharge, suspend, expel, intimidate, coerce, impose any pecuniary or other penalty on, deny a right or benefit to or otherwise discriminate against a person because that person complains or is named in a complaint, gives evidence or otherwise assists in a complaint or other proceeding under this Code.

#### **Style of cause for proceedings**

- 44** (1) A proceeding under this Code in respect of a trade union, employers' organi-

zation or occupational association may be taken in its name.

- (2) An act or thing done or omitted by an employee, officer, director, official or agent of any person within the scope of his or her authority is deemed to be an act or thing done or omitted by that person.

#### **Technical defects**

- 45** A proceeding under this Code is not invalid because of any defect in form or any technical irregularity.

#### **Delegation of powers**

- 46** (1) to (3) [repealed]
- (4) The chair may, in writing, delegate to one or more of the members any of the chair's powers or duties under this Code, except the power to delegate under this section.
- (5) A delegation made under this section may be revoked, and does not prevent the person who delegated the power from exercising that power.
- (6) A delegation may be made subject to any terms the person delegating considers appropriate.
- (7) If the person who delegated the power ceases to hold office, the delegation continues in effect so long as the delegate continues in office or until the delegation is revoked by the person who succeeds the person who delegated the power.
- (8) A person purporting to exercise a power because of a delegation made under this section must, when requested to do so, produce evidence of the person's authority to exercise the power.

#### **Time limits**

- 47** Despite the fact that a period prescribed under section 49 (2) (b) has expired and the period has not been extended in accordance with the regulations, this Code continues to apply to the complaint to which the period relates, and
  - (a) all proceedings taken under this Code with respect to the complaint may continue, and
  - (b) all proceedings available under this Code with respect to the complaint may be taken.

#### **Offence Act**

- 48** Section 5 of the *Offence Act* does not apply to this Code or the regulations.

#### **Power to make regulations**

- 49** (1) The Lieutenant Governor in Council may make regulations referred to in section 41 of the *Interpretation Act*.
- (2) Without limiting subsection (1), the Lieutenant Governor in Council may make

regulations as follows:

- (a) prescribing the standards for the purposes of section 10;
  - (b) prescribing a period
    - (i) to (iv) [repealed]
    - (v) within which a hearing must be begun, and
    - (vi) within which a decision and reasons must be provided under section 37 (6);
  - (c) authorizing a person to extend a period referred to in paragraph (b) and prescribing the circumstances in which the period may be extended;
  - (d) respecting the procedures to be followed before a period prescribed under paragraph (b) may be extended;
  - (e) providing for the suspension of a period prescribed under paragraph (b) where consideration of a complaint is deferred under section 25 (2);
  - (f) [repealed]
  - (g) respecting the practice and procedure in hearings before the tribunal.
  - (h) [repealed]
- (3) A regulation made under subsection (2) (c) may permit a period to be extended despite the fact that the period has already expired.
- (4) Without limiting subsection (2) (g), a regulation made under that subsection may include provisions respecting
- (a) the disclosure and inspection of documents by parties to a complaint,
  - (b) the oral examination of parties and witnesses on oath or affirmation,
  - (c) the holding of prehearing conferences, and
  - (d) procedures for formal offers to settle a complaint.

#### **Transitional**

- (1) Unless it has been dismissed or otherwise settled or withdrawn, a complaint that is filed with the commissioner of investigation and mediation under section 21 of the *Human Rights Code* on or before the date on which section 8 of this Act comes into force is continued as if it were a complaint filed with the tribunal within the time limit under that Code.
- (2) A decision of the commissioner of investigation and mediation under section 21(5) or (6), 22(3) or 25(2) of the *Human Rights Code* is deemed to be a decision of the tribunal under that Code.



## Administrative Tribunals Act

### Definitions

**1** In this Act:

**"applicant"** includes an appellant, a claimant or a complainant;

**"application"** includes an appeal, a review or a complaint but excludes any interim or preliminary matter or an application to the court;

**"appointing authority"** means the person or the Lieutenant Governor in Council who, under another Act, has the power to appoint the chair, vice chair and members, or any of them, to the tribunal;

**"constitutional question"** means any question that requires notice to be given under section 8 of the *Constitutional Question Act*;

**"court"** means the Supreme Court;

**"decision"** includes a determination, an order or other decision;

**"dispute resolution process"** means a confidential and without prejudice process established by the tribunal to facilitate the settlement of one or more issues in dispute;

**"intervener"** means a person who is permitted by the tribunal to participate as an intervener in an application;

**"member"** means a person appointed to the tribunal to which a provision of this Act applies;

**"privative clause"** means provisions in the tribunal's enabling Act that give the tribunal exclusive and final jurisdiction to inquire into, hear and decide certain matters and questions and provide that a decision of the tribunal in respect of the matters within its jurisdiction is final and binding and not open to review in any court;

**"tribunal"** means a tribunal to which some or all of the provisions of this Act are made applicable under the tribunal's enabling Act;

**"tribunal's enabling Act"** means the Act under which the tribunal is established or continued.

### Appointment of acting chair

**4** (1) If the chair expects to be absent or is absent, the chair may designate a vice chair as the acting chair for the period that the chair is absent.

(2) If the chair expects to be absent or is absent and there is no vice chair or if there is a vice chair and the vice chair is not willing or able to act as chair, the chair may designate a member as the acting chair for the period that the chair is absent.

(3) Despite subsections (1) and (2), if the chair is absent or incapacitated for an extended period of time, the appointing authority may designate a vice chair as the acting chair for the period that the chair is absent or incapacitated.

(4) Despite subsections (1) and (2), if the chair is absent or incapacitated for an extended period of time and there is no vice chair or if there is a vice chair and the vice chair is not willing or able to act as chair, the appointing authority may designate a member, or appoint an individual who would otherwise be qualified for appointment as a member or as the chair, as the acting chair for the period that the chair is absent or incapacitated.

(5) If the tribunal has no chair, the appointing authority may appoint an individual, who is a member, or appoint an individual who would otherwise be qualified for appointment as a member or as the chair, as the acting chair for a term of up to 6 months.

(6) In exceptional circumstances an individual may be appointed as the acting chair under subsection (5) for an additional term of up to 6 months.

(7) Subsections (3), (4) and (5) apply whether or not an individual is designated, under the Act under which the chair is appointed, to act on behalf of the chair.

(8) An individual designated or appointed under any of subsections (1) to (5) has all the powers and may perform all the duties of the chair.

#### **Member's absence or incapacitation**

**5** (1) If a member is absent or incapacitated for an extended period of time or expects to be absent for an extended period of time, the appointing authority, after consultation with the chair, may appoint another person, who would otherwise be qualified for appointment as a member, to replace the member until the member returns to full duty or the member's term expires, whichever comes first.

(2) The appointment of a person to replace a member under subsection (1) is not affected by the member returning to less than full duty.

#### **Temporary, non-renewable appointments**

**6** (1) If the tribunal requires additional members, the chair, after consultation with the minister responsible for the Act under which the tribunal is established, may appoint an individual, who would otherwise be qualified for appointment as a member, to be a member for up to 6 months.

(2) Under subsection (1), an individual may be appointed to the tribunal only twice in any 2 year period.

(3) An appointing authority may establish conditions and qualifications for appointments under subsection (1).

#### **Powers after resignation or expiry of term**

**7** (1) If a member resigns or their appointment expires, the chair may authorize that individual to continue to exercise powers as a member of the tribunal in any proceeding over which that individual had jurisdiction immediately before the end of their term.

(2) An authorization under subsection (1) continues until a final decision in that proceeding is made.

(3) If an individual performs duties under subsection (1), section 10 applies.

#### **Termination for cause**

**8** The appointing authority may terminate the appointment of the chair, a vice chair or a member for cause.

#### **Responsibilities of the chair**

**9** The chair is responsible for the effective management and operation of the tribunal and the organization and allocation of work among its members.

#### **Remuneration and benefits for members**

**10** (1) In accordance with general directives of the Treasury Board, members must be reimbursed for reasonable travelling and out of pocket expenses necessarily incurred in carrying out their duties.

(2) In accordance with general directives of the Treasury Board, the minister responsible for the tribunal's enabling Act must set the remuneration for those members who are to receive remuneration.

#### **Withdrawal or settlement of application**

**17** (1) If an applicant withdraws all or part of an application or the parties advise the tribunal that they have reached a settlement of all or part of an application, the tribunal must order that the application or the part of it is dismissed.

(2) If the parties reach a settlement in respect of all or part of the subject matter of an application, on the request of the parties, the tribunal may make an order that includes the terms of settlement if it is satisfied that the order is consistent with its enabling Act.

(3) If the tribunal declines to make an order under subsection (2), it must provide the parties with reasons.

#### **Disclosure protection**

**29** (1) In a proceeding, other than a criminal proceeding, unless the parties to an application consent, a person must not disclose or be compelled to disclose

(a) a document or other record created by a party specifically for the purposes of achieving a settlement of one or more issues through a dispute resolution process, or

(b) a statement made by a party in a dispute resolution process specifically for the purpose of achieving a settlement of one or more issues in dispute.

(2) Subsection (1) does not apply to a settlement agreement.

### **Tribunal duties**

**30** Tribunal members must faithfully, honestly and impartially perform their duties and must not, except in the proper performance of those duties, disclose to any person any information obtained as a member.

### **Power to compel witnesses and order disclosure**

**34** (3) Subject to section 29, at any time before or during a hearing, but before its decision, the tribunal may make an order requiring a person

(a) to attend an oral or electronic hearing to give evidence on oath or affirmation or in any other manner that is admissible and relevant to an issue in an application, or

(b) to produce for the tribunal or a party a document or other thing in the person's possession or control, as specified by the tribunal, that is admissible and relevant to an issue in an application.

(4) The tribunal may apply to the court for an order

(a) directing a person to comply with an order made by the tribunal under subsection (3), or

(b) directing any directors and officers of a person to cause the person to comply with an order made by the tribunal under subsection (3).

### **Tribunal without jurisdiction over Canadian Charter of Rights and Freedoms issues**

**45** (1) The tribunal does not have jurisdiction over constitutional questions relating to the *Canadian Charter of Rights and Freedoms*.

(1.1) Subsection (1) applies to all applications made before, on or after the date that the subsection applies to a tribunal.

(2) If a constitutional question, other than one relating to the *Canadian Charter of Rights and Freedoms*, is raised by a party in a tribunal proceeding

(a) on the request of a party or on its own initiative, at any stage of an application the tribunal may refer that question to the court in the form of a stated case, or

(b) on the request of the Attorney General, the tribunal must refer that question to the court in the form of a stated case.

(3) The stated case must

(a) be prepared by the tribunal,

(b) be in writing,

(c) be filed with the court registry, and

(d) include a statement of the facts and relevant evidence.

(4) Subject to the direction of the court, the tribunal must

- (a) to the extent that it is practicable in light of the stated case, proceed to hear and decide all questions except the questions raised in the stated case,
  - (b) suspend the application as it relates to the stated case and reserve its decision until the opinion of the court has been given, and
  - (c) decide the application in accordance with the opinion.
- (5) A stated case must be brought on for hearing as soon as practicable.
- (6) Subject to subsection (7), the court must hear and determine the stated case and give its decision as soon as practicable.
- (7) The court may refer the stated case back to the tribunal for amendment or clarification, and the tribunal must promptly amend and return the stated case for the opinion of the court.

**Notice to Attorney General if constitutional question raised in application**

**46** If a constitutional question over which the tribunal has jurisdiction is raised in a tribunal proceeding, the party who raises the question must give notice in compliance with section 8 of the *Constitutional Question Act*.

**Notice to Attorney General if conflict between Code and other enactment (unofficial heading)**

**46.1(3)** If, in an application before the tribunal, a party or an intervener raises the question of whether there is a conflict between the *Human Rights Code* and any other enactment, the party or intervener must serve notice on the Attorney General in accordance with this section.

- (4) The notice must contain the following information:
- (a) the names and addresses for delivery of the parties and interveners to the application;
  - (b) the name of the tribunal and address of the tribunal's registry;
  - (c) any identification numbers assigned by the tribunal to the application;
  - (d) the section of the enactment and the section of the *Human Rights Code* that may conflict and the basis on which the question of a conflict arises;
  - (e) the date, time and location of any hearing scheduled by the tribunal to consider the question.
- (5) The notice must be served on the Attorney General at least 14 days before the date of any hearing scheduled by the tribunal to consider the question, unless the Attorney General, in writing, waives this requirement.
- (6) The tribunal may not hear the question of whether there is a conflict between the *Human Rights Code* and any other enactment until after the Attorney General has been served with notice in accordance with this section.
- (7) If the party or intervener required to serve notice on the Attorney General does not provide proof of service satisfactory to the tribunal, the tribunal may

(a) adjourn the hearing of the question until the party or intervener provides proof of service satisfactory to the tribunal, or

(b) decline to consider the question and proceed to hear the remainder of the application.

(8) If the Attorney General has been served with notice in accordance with this section and intends to appear at the hearing scheduled to consider the question, the Attorney General

(a) must give notice to the tribunal and the parties and interveners to the application at least 3 days before the date of the hearing, and

(b) has the same rights as any other party to the hearing.

(9) Subsections (3) to (8) do not apply if the Attorney General is representing a party or intervener in the application before the tribunal.

### **Maintenance of order at hearings**

**48** (1) At an oral hearing, the tribunal may make orders or give directions that it considers necessary for the maintenance of order at the hearing, and, if any person disobeys or fails to comply with any order or direction, the tribunal may call on the assistance of any peace officer to enforce the order or direction.

(2) A peace officer called on under subsection (1) may take any action that is necessary to enforce the order or direction and may use such force as is reasonably required for that purpose.

(3) Without limiting subsection (1), the tribunal, by order, may

(a) impose restrictions on a person's continued participation in or attendance at a proceeding, and

(b) exclude a person from further participation in or attendance at a proceeding until the tribunal orders otherwise.

### **Contempt proceeding for uncooperative witness or other person**

**49** (1) The failure or refusal of a person summoned as a witness to do any of the following makes the person, on application to the court by the tribunal, liable to be committed for contempt as if in breach of an order or judgment of the court:

(a) attend a hearing;

(b) take an oath or affirmation;

(c) answer questions;

(d) produce the records or things in their custody or possession.

(2) The failure or refusal of a person to comply with an order or direction under section 48 makes the person, on application to the court by the tribunal, liable to be committed for contempt as if in breach of an order or judgment of the court.

(3) Subsections (1) and (2) do not limit the conduct for which a finding of contempt may be made by the court in respect of conduct by a person in a proceeding before the tribunal.

### **Decisions**

**50** (1) If the tribunal makes an order for the payment of money as part of its decision, it must set out in the order the principal sum, and if the tribunal has power to award interest and interest is payable, the rate of interest and the date from which it is to be calculated.

(2) The tribunal may attach terms or conditions to a decision.

(3) The tribunal's decision is effective on the date on which it is issued, unless otherwise specified by the tribunal.

(4) The tribunal must make its decisions accessible to the public.

### **Compulsion protection**

**55** (1) A tribunal member, a person acting on behalf of or under the direction of a tribunal member or a person who conducts a dispute resolution process on behalf of or under the direction of the tribunal must not be required to testify or produce evidence in any proceeding, other than a criminal proceeding, about records or information obtained in the discharge of duties under the tribunal's enabling Act or this Act.

(2) Despite subsection (1), the court may require the tribunal to produce the record of a proceeding that is the subject of an application for judicial review under the *Judicial Review Procedure Act*.

### **Immunity protection for tribunal and members**

**56** (1) In this section, "**decision maker**" includes a tribunal member, adjudicator, registrar or other officer who makes a decision in an application or an interim or preliminary matter, or a person who conducts a dispute resolution process.

(2) Subject to subsection (3), no legal proceeding for damages lies or may be commenced or maintained against a decision maker, the tribunal or the government because of anything done or omitted

(a) in the performance or intended performance of any duty under this Act or the tribunal's enabling Act, or

(b) in the exercise or intended exercise of any power under this Act or the tribunal's enabling Act.

(3) Subsection (2) does not apply to a person referred to in that subsection in relation to anything done or omitted by that person in bad faith.

### **Time limit for judicial review**

**57** (1) Unless this Act or the tribunal's enabling Act provides otherwise, an application for judicial review of a final decision of the tribunal must be commenced within 60 days of the date the decision is issued.

(2) Despite subsection (1), either before or after expiration of the time, the court may extend the time for making the application on terms the court considers proper, if it is satisfied that there are serious grounds for relief, there is a reasonable explanation for the delay and no substantial prejudice or hardship will result to a person affected by the delay.

#### **Standard of review if tribunal's enabling Act has no privative clause**

**59** (1) In a judicial review proceeding, the standard of review to be applied to a decision of the tribunal is correctness for all questions except those respecting the exercise of discretion, findings of fact and the application of the common law rules of natural justice and procedural fairness.

(2) A court must not set aside a finding of fact by the tribunal unless there is no evidence to support it or if, in light of all the evidence, the finding is otherwise unreasonable.

(3) A court must not set aside a discretionary decision of the tribunal unless it is patently unreasonable.

(4) For the purposes of subsection (3), a discretionary decision is patently unreasonable if the discretion

- (a) is exercised arbitrarily or in bad faith,
- (b) is exercised for an improper purpose,
- (c) is based entirely or predominantly on irrelevant factors, or
- (d) fails to take statutory requirements into account.

(5) Questions about the application of common law rules of natural justice and procedural fairness must be decided having regard to whether, in all of the circumstances, the tribunal acted fairly.

#### **Application of Freedom of Information and Protection of Privacy Act**

**61** (1) In this section, "**decision maker**" includes a tribunal member, adjudicator, registrar or other officer who makes a decision in an application or an interim or preliminary matter, or a person who conducts a dispute resolution process.

(2) The *Freedom of Information and Protection of Privacy Act*, other than section 44 (2), (2.1) and (3), does not apply to any of the following:

- (a) a personal note, communication or draft decision of a decision maker;
- (b) notes or records kept by a person appointed by the tribunal to conduct a dispute resolution process in relation to an application;
- (c) any information received by the tribunal in a hearing or part of a hearing from which the public, a party or an intervener was excluded;
- (d) a transcription or tape recording of a tribunal proceeding;



(e) a document submitted in a hearing for which public access is provided by the tribunal;

(f) a decision of the tribunal for which public access is provided by the tribunal.

(3) Subsection (2) does not apply to personal information, as defined in the *Freedom of Information and Protection of Privacy Act*, that has been in existence for 100 or more years or to other information that has been in existence for 50 or more years.