

Human Rights Law:

An Overview (provided for informational purposes)

B.C. Human Rights Clinic

Overview

Human rights legislation works in the public arena and provides protection, procedures and remedies for those who have experienced discrimination. The protections afforded to us in human rights law flow from the *Charter of Rights and Freedoms*. Because of this human rights legislation is considered quasi-constitutional and takes precedence over, and often influences, other pieces of legislation.

The Protections

When we say that human rights legislation works in the public arena, we mean that the legislation prohibits discrimination in the public, versus the private, areas of our lives. The legislation protects us from discrimination in the areas of:

- Employment (including recruitment, hiring, job assignment, termination, pay rates, conditions of work and termination);
- Membership in trade unions and occupational, or professional associations;
- Services and facilities that are customarily available to the public;
- Purchase of property;
- Tenancy; and
- Hate Propaganda (including any publication or display of any notice, sign, symbol, emblem or other representation **that is not private communication** and is likely to expose a person or group of persons to hatred or contempt).

The legislation also provides protection against retaliation for those who file, or are otherwise involved in human rights complaints. In addition, all human rights legislation includes provisions for employment equity, although only in the *Canadian Human Rights Act* is employment equity mandatory. And finally, all human rights legislation provides exemptions and or exceptions in certain circumstances. Those relating to the *BC Human Rights Code* are detailed near the end of this document.

Jurisdiction

In Canada, our domestic human rights laws operate in two jurisdictions: the federal and the provincial. At the federal level, the *Canadian Human Rights Act* is administered and enforced by the Canadian Human Rights Commission and Tribunal. At the provincial level, the *British Columbia Human Rights Code* is administered and enforced by the BC Human Rights Tribunal. Both pieces of legislation are similar in the protections they provide although variations do exist. Neither the federal nor the provincial legislation trumps or supercedes the other. Rather, the appropriate legislation is determined according to which level of government regulates a specific area.

Examples of areas regulated by the federal government and governed by the *Canadian Human Rights Act* would include employment and services of:

- the federal government and all its ministries;
- all arms of the federal government such as the R.C.M.P., the Employment Insurance Commission or Canada Post;
- telecommunications, which are regulated by the CRTC, all inter-provincial transportation such as Air Canada and Via Rail;
- chartered banks, but not credit unions; and
- all unions attached to any of the above.

The provincial *Code* applies to employers, service providers and all other provincially regulated businesses and agencies. Our provincial legislation also applies to the purchase of property and rental accommodations. Examples of provincially regulated areas include:

- all provincial, local and municipal government departments, services and programs;
- schools and universities;
- hospitals and medical clinics;
- all private businesses and services such as stores, restaurants, and movie theatres that serve the public;

Human Rights Law: An Overview (for informational purposes) .../2

- credit unions;
- non-profit organizations and some of the services they provide;
- rental accommodations including hotels and rental property; and
- the purchase of either residential or commercial property.

To help determine which law applies, ask yourself where the action took place and which level of government regulates that area.

What is Discrimination?

When an individual, or a group of individuals, have been singled out and treated adversely or differently than others due to group characteristics such as race, colour, religious belief or sexual orientation, then discrimination has likely occurred.

Discrimination can take the form of harassment, unequal pay for the same or substantially similar work, discriminatory publications or hate propaganda, or simply, differential treatment.

When we ask whether something constitutes legal discrimination we must show three factors:

- Adverse differential treatment;
- A causal relationship, or a connection, between the differential treatment and a ground protected in the legislation; and
- That the incident occurred in the public arena of employment; services to the public; tenancy, or the purchase of property; or in the form of hate propaganda.

Adverse Differential Treatment:

Being singled out and treated in an adverse manner that is different than how others are treated.

At work, where one person is singled out as a South Asian for instance, or if a group of South Asians are singled out, and told that only they will not be able to qualify for overtime work, then this is adverse differential treatment.

Sometimes differential treatment is not so easy to spot. For example, an experienced bus driver, who happens to be female, applies for a job as a city bus driver and is refused an interview because she

failed to meet a minimum height requirement of 5'10". This female (and all females and males under 5'10") has experienced adverse differential treatment because the height requirement imposed by the employer limits who can interview for the job, and is likely not satisfied.

Not all bad or questionable treatment constitutes differential treatment. For instance, if there is a situation at work where a manager treats everyone equally badly, this is not differential treatment. It may be a violation of the collective agreement, or there may be some other right that has been infringed upon, but it does not constitute differential treatment because nobody in any of the protected groups has been singled out for this treatment.

Unlike the above bus driver example where the employer's height requirement has no valid connection to the job of driving a bus, many job requirements are valid and are considered bona fide (or real) in nature. A bona fide occupational requirement for a city bus driver would be that applicants are required to see.

The causal relationship:

*Being treated in an adverse manner different than others, **due to** a group characteristic such as race, colour, religious belief or sexual orientation.*

If we see differential treatment, we must show we have reason to believe that it occurred **because of** our group characteristic.

For example, we cannot say "I'm a Muslim, and I didn't get the job." We have to be able to say, "I believe I didn't get the job **because** I'm a Muslim". Or, we cannot say "I'm South Asian and am not given overtime shifts." We have to be able to say, "**Because** I'm South Asian, I am not given overtime shifts."

In the situation regarding the female bus driver, she could not simply say, "I'm a female, and didn't get the job." She would have to be able to say, "As an experienced bus driver, I believe I didn't get the job **because** as a woman, I cannot meet the height requirement imposed by the employer." This type of discrimination is known as "adverse effect" discrimination.

Human Rights Law: An Overview (for informational purposes) .../3

Who are the Protected Groups?

Under the *Canadian Human Rights Act*, the grounds, or the group characteristics, protected from discrimination are:

race, national or ethnic origin, colour, religion, age, sex (includes protection for males and females, sexual harassment, pregnancy discrimination, and transgendered discrimination),

sexual orientation (includes protection for heterosexual, bi-sexual, gay men and lesbian women), **marital status and family status** (includes protection if you are married, single, widowed, divorced, separated, or living common law), **disability, conviction for an offence for which a pardon has been granted**

In BC, our legislation is different than other jurisdictions, as not all protected grounds, or group characteristics, apply to each area of protection. The chart below summarizes this.

Protected Grounds	Protected Areas			
	Employment	Public Services & Accommodation	Purchase of Property	Tenancy
Race	✓	✓	✓	✓
Colour	✓	✓	✓	✓
Ancestry	✓	✓	✓	✓
Place of Origin	✓	✓	✓	✓
Political Belief (as long as it does not cause harm to others)	✓	✗	✗	✗
Religion	✓	✓	✓	✓
Marital Status (includes protection for those married, single, widowed, divorced, separated, or living common law)	✓	✓	✓	✓
Family Status (includes having children or not having children)	✓	✓	✗	✓
Physical or Mental Disability	✓	✓	✓	✓
Sex (includes protection for males & females, sexual harassment, pregnancy discrimination & transgendered discrimination)	✓	✓	✓	✓
Sexual Orientation (includes protection for heterosexual, bi-sexual, gay men & lesbian women)	✓	✓	✓	✓
Age (between 19 & over)	✓	✓	✗	✓
Criminal or summary conviction	✓	✗	✗	✗
Source of Income	✗	✗	✗	✓

As you see from the above chart, protection on the grounds of family status is available in employment, public services and tenancy, but there is no family status protection in the purchase of property. Protection on the grounds of age is limited to those 19 years of age and over and there is no age protection in the provision in the area of purchase of property. Protection of the grounds of criminal or summary conviction is only available in employment, and is not available in the provision of public services, or in either the purchase of property or tenancy.

Human Rights Law: An Overview (for informational purposes) .../4

Summing it Up – Three Factors to Consider

In Canada, human rights legislation ensures people the right to live free from discrimination and harassment. The scope of the legislation protects people from discrimination and harassment in employment, in the provision of services to the public, in housing, and from the promotion of hate. Human rights legislation also provides protection against any form of retaliation for those involved with formal complaints.

If all the following factors can be shown, a human rights complaint will normally be accepted by the relevant authority:

- Is adverse differential treatment taking place?
- Is there a connection between this treatment and protected ground of discrimination?
- Is the discrimination occurring in the public arena of employment, services to the public, tenancy or the purchase of property; or in the form of hate propaganda?

Exemptions, Exceptions and Special Programs

All human rights legislation allows for certain exemptions. The *BC Code* exempts organizations that provide housing, employment, and services to an identified group (such as women only) where those services are meant to address past disadvantage. In these cases, preference can be given to members of the particular group served. For example, it would be possible for a group to form a housing co-op that gives preference to people with disabilities, or for a Chinese service organization to give preference in hiring to Chinese people.

This exemption does not give special interest organizations the absolute right to discriminate. People within the group could still complain if they faced discrimination on other grounds. Alternatively, if someone from outside the group were denied an opportunity that was unrelated to promoting the interests of the group, they too could complain.

In BC, the BC Human Rights Tribunal can approve special programs that are designed to benefit

groups who have been historically disadvantaged. For example, education programs can be aimed specifically at First Nations people.

Exemptions under Accommodations and Services

The *Code* exempts the category of sex when the maintenance of public decency is involved. For example, men cannot use women's change rooms.

The *Code* also exempts sex, and physical or mental disabilities when it relates to determining premiums and benefits for life or health insurance. However, insurance schemes must have sound financial reasons and/or objective scientific evidence for refusing coverage.

Exceptions under Tenancy

The *Code* does not cover you if you are applying to rent a place where sleeping, bathroom or cooking facilities are shared. However, if you have already moved in, you may be covered under the *Code*.

Apartment buildings that house only people aged 55 years or older, and housing designed for people with disabilities, are allowed to show preference for people in these categories. After someone has moved in, the provisions of the *Code* may apply.

Although source of income is a protected ground in tenancy, a landlord can ask that you show proof of your ability to pay the rent, however, the landlord cannot treat you adversely due to your lawful source of income.

Issues specific to landlord-tenant relations such as damage deposits and rent increases fall under the *Residential Tenancy Act* and you can contact the Residential Tenancy Office, or the Tenants Rights Action Coalition (TRAC) for further information.