

IN THE SUPREME COURT OF CANADA

(Appeal from the Court of Appeal for the Province of Ontario)

B E T W E E N:

THE ATTORNEY GENERAL OF ONTARIO

Appellant  
(Intervener)

- and -

M.

Respondent  
(Respondent)

- and -

H.

Respondent  
(Appellant)

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FACTUM OF THE INTERVENER  
ONTARIO HUMAN RIGHTS COMMISSION

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**B E T W E E N:**

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**Appellant  
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**M.**

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**FACTUM OF THE INTERVENER  
ONTARIO HUMAN RIGHTS COMMISSION**

---

**PART I – THE FACTS**

1. The Intervener, the Ontario Human Rights Commission (the “Commission”), accepts the statement of facts as set out at paragraphs 1 to 41 of the Respondent M.’s factum.

**PART II – POINTS IN ISSUE**

2. The Intervener, the Ontario Human Rights Commission, agrees with the Respondent M.’s position in regard to the points in issue in this appeal as set out at paragraph 42 of

the Respondent M.'s factum. The Commission takes no position with respect to the issue of costs in this appeal.

### PART III – STATEMENT OF ARGUMENT

#### A. Interest of the Commission in this appeal

3. The Commission was created in 1962 and was the first human rights commission to be established in Canada. Through its 35 years of experience in the investigation and litigation of claims of discrimination, and its formulation of policy and of programs of public education on human rights issues, the Commission has acquired substantial expertise in the identification, characterization and eradication of myriad forms of discrimination. Central to the anti-discrimination work of the Commission has been the development of the concept of equality.

**Affidavit of Keith C. Norton, Q.C., sworn November 5, 1997, filed in support of Motion for Leave to Intervene, at paragraphs 5-6.**

4. The ground of sexual orientation was added to the *Human Rights Code*, R.S.O. 1990, c.H.19, as amended (the “*Code*”), in 1986. With the exception of the Commission des Droits de la Personne et des Droits de la Jeunesse in Quebec, which has enforced a prohibition against discrimination on the basis of sexual orientation since 1977, the Commission has investigated and litigated a greater number of sexual orientation complaints than any other human rights agency in Canada.

**Affidavit of Keith C. Norton, Q.C., *supra*, at paragraphs 7-8.**

5. Despite its expertise in issues of equality and discrimination, the Commission has rarely sought to participate as an intervenor in the cases of others. This appeal marks only the third occasion in the last 15 years in which the Commission has sought leave to intervene in a case before this Court.

6. The Commission intervenes in this case for three reasons. First, it is the Commission's view that the opposite-sex definition of "spouse" in section 29 of the *Family Law Act*, R.S.O. 1990, c.F.3, constitutes unconstitutional discrimination.

7. Secondly, it is the Commission's view that the kind of discrimination at issue in this appeal extends well beyond the *Family Law Act* and is endemic in Ontario.

*Ontario Human Rights Commission Annual Report 1996-1997* at 20-21, 35-36.

*Leshner v. Ontario (No. 2)* (1992), 16 C.H.R.R. D/184 (Ont. Bd. of Inquiry)

*O'Neill and Coles v. Ontario* (Oct. 13, 1994; Unreported; Ont. Bd. of Inquiry)

*Dwyer v. Toronto (Metro)* (1996), 27 C.H.R.R. D/108 (Ont. Bd. of Inquiry)

*McCallum v. Toronto Transit Commission* (Sept. 16, 1997; Unreported; Ont. Bd. of Inquiry)

*Bewley v. Her Majesty the Queen in right of Ontario* (Nov. 4, 1997; Unreported; Ont. Board of Inquiry)



8. Finally, the issue of discrimination raised by this appeal falls squarely within the purview of the Commission's broad anti-discrimination mandate as set out in section 29 of the *Code*. The Commission therefore intervenes in this appeal in furtherance of its statutory mandate to eliminate discrimination and to forward the policy of dignity and worth embodied in the *Code*.

**B. Section 15(1) of the *Charter***

**(i) *Principles for the interpretation of section 15(1)***

10 9. In the trilogy of equality decisions released by this Honourable Court in May, 1995, three distinct approaches to the interpretation of the rights guaranteed in section 15(1) of the *Charter* emerged. These approaches are summarized at paragraphs 28 to 32 of the Appellant the Attorney General for Ontario's factum. The Commission agrees with this characterization of the three approaches to equality.

*Factum of the Attorney General for Ontario*, paragraphs 28 –32  
at pp.12-14.

*Egan v. Canada*, [1995] 2 S.C.R. 513.

20 *Miron v. Trudel*, [1995] 2 S.C.R. 418.

*Thibaudeau v. Canada*, [1995] 2 S.C.R. 627.

10. Despite the lack of a uniform approach to the interpretation of section 15(1) of the *Charter*, this Court has reached "broad agreement on the general analytical framework" for the consideration of section 15(1) claims. In a series of

unanimous decisions, this Court has posited certain general principles for the interpretation of section 15(1).

*Eldridge v. British Columbia (Attorney General)*, [1997] S.C.J. No. 96 at 24.

*Benner v. Canada (Secretary of State)*, [1997] 1 S.C.R. 358.

*Eaton v. Brant County Board of Education*, [1997] 1 S.C.R. 241 at 270.

10 11. Many of these general principles, which have animated this Court’s “post-trilogy” section 15 decisions, trace their origins to the decision of McIntyre J. in *Andrews v. Law Society of British Columbia*. In this foundational decision, McIntyre J. identified several fundamental tenets for the analysis of claims under section 15(1) of the *Charter*. Included within these tenets is a recognition of the remedial nature of section 15 and an emphasis on the effects, or the impact, of an impugned law on the individual or the group. As well, distinctions in the law that are based on personal characteristics attributed to the individual solely on the basis of that individual’s association with a group – that is, distinctions based on stereotypical attributes -- “will rarely escape the charge of discrimination”.

20 *Andrews v. Law Society of British Columbia*, [1989] 1 S.C.R. 143 at 165 and 174-5.

12. In *Eaton v. Brant County Board of Education*, this Honourable Court relied upon the equality principles enunciated in *Andrews* and emphasized the importance of section 15 as an instrument for the eradication of discrimination based on the attribution of stereotypical characteristics. Similarly, in *Benner v. Canada (Secretary of State)*, this Court noted that stereotypes play a “large role” in determining when legislative distinction constitutes “unconstitutional discrimination”.

*Eaton v. Brant County Board of Education, supra*, at 272.

*Benner v. Canada (Secretary of State), supra*, at 401-3.

13. In *Eldridge v. British Columbia (Attorney General)*, this Court unanimously affirmed a number of fundamental equality principles: the rights in section 15 are to be generously and purposively interpreted; section 15 expresses a deeply ingrained commitment to the equal worth and human dignity of all persons; section 15 instantiates a desire to rectify and to prevent discrimination against disadvantaged groups in our society; and the main consideration in an equality analysis is the impact or effect of an impugned law, rather than the law’s purpose or intent, on the affected individual or group.

*Eldridge v. British Columbia (Attorney General), supra*, at 23-26.

*(ii) Application of the principles to this case*

14. It is submitted that the opposite-sex definition of “spouse” in section 29 of the *Family Law Act*, when analyzed in accordance with the fundamental equality principles outlined above, fails to withstand scrutiny under section 15(1) of the *Charter*.

15. By its very terms, the opposite-sex definition of “spouse” in section 29 applies only to heterosexuals who have formed conjugal relationships. Gay men and lesbians who have formed conjugal relationships are excluded from the application of the support provisions in Part III of the *Family Law Act*.

*Family Law Act*, R.S.O. 1990, c.F.3, section 29.

16. The majority in the court below found that the purpose underlying the support provisions in Part III of the *Family Law Act* was to provide “... for the equitable resolution of economic disputes that arise when intimate relationships between individuals who have been financially interdependent break down”. A second underlying purpose identified by the court was “... to alleviate the burden on the public purse by shifting the obligation to provide support for needy persons to parents and spouses who have the capacity to provide support to these individuals.”

**Reasons for Judgment of the Court of Appeal *per* Charron J.A.**  
at 23-4, **Case on Appeal Volume III**, tab 3, at 480-481.

17. It is submitted that the exclusion of same-sex couples from a statutory regime that is premised upon a recognition of the economic interdependence that characterizes conjugal relationships serves to perpetuate and reinforce egregious stereotypical assumptions about the nature of relationships that are formed by gay men and lesbians:

10 The definition of “spouse” as someone of the opposite sex reinforces the stereotype that homosexuals cannot and do not form lasting, caring, mutually supportive relationships with economic interdependence in the same manner as heterosexual couples.

*Egan v. Canada, supra, per Cory J. at 604.*

18. The Attorney General describes the purpose of the support provisions and, in particular, their application to common law couples, as an attempt to address the exploitation of women in common law relationships by some men, and to reduce demands on the welfare system when men abandon their common law spouses and children.

20 **Factum of the Attorney General for Ontario**, paragraph 21 at p.9.

19. However, as outlined in paragraphs 11 and 13, *supra*, the objective of a legislative distinction is not determinative of the issue of discrimination. Rather, it is the impact of the distinction on those who are excluded that is the “main

consideration” in an equality analysis.

*Andrews v. Law Society of British Columbia, supra*, at 165.

*Eldridge v. British Columbia (Attorney General), supra*, at 25.

*Miron v. Trudel, supra*, at 488.

20. It is submitted that the opposite-sex definition of “spouse” in section 29 reinforces a stereotypical presumption about the relationships formed by gay men and lesbians, regardless of the objective underlying this definition, and thereby has a discriminatory impact on gay men and lesbians.

Whereas there is a presumption of interdependence in heterosexual relationships, there is a presumption against interdependence in same-sex relationships. The latter presumption is not only incorrect, but it is also the fruit of stigmatizing stereotype.

*Egan v. Canada, supra, per* Iacobucci J. at 610.

21. The Respondent H. submits that the support provisions in Part III of the *Family Law Act* are part of a “voluntary regime”. This is alleged to be so because heterosexual couples are not bound by the support provisions. They are entitled to draft their own agreements with respect to support and can thereby choose to “contract-out” of the provisions in the *Act*. H. submits that the regime facing same-sex couples is voluntary, as well, because same-sex couples are not precluded from drafting their own support agreements and, in effect, can “contract-in” to support obligations. Based on this “contract-in/contract-out”

analogy, H. submits that the distinction in section 29 of the *Family Law Act* does not result in a denial of the equal protection or equal benefit of the law because the *Act* "... does not prevent individuals in same-sex or other financially dependent relationships, from arranging their affairs by contract to provide for support obligations..."

**Factum of the Respondent H.**, paragraphs 5, 6, 23, at pp.3-4 and 11.

10 22. The Commission submits that the "contract-in/contract-out" analogy is flawed and is premised upon an artificial or illusory conception of equality. While heterosexual and same-sex couples may "equally" be entitled to draft their own support agreements, it is only same-sex couples who are faced with a positive obligation to do so if they wish to ensure an equitable resolution of economic disputes in the event of a relationship breakdown. In contrast, heterosexual couples enjoy the benefit and protection of a default statutory regime.

20 23. This default regime, it is submitted, confers upon heterosexual couples the opportunity for choice. They may rely upon the "off the rack" support obligations and processes contained in the *Family Law Act* or, instead, they may draft their own customized agreements. In contrast, same-sex couples are deprived of the opportunity for choice. The provision of choice to heterosexual couples, it is

submitted, constitutes a benefit:

A law may well confer a benefit by providing individuals with the opportunity to make a significant choice.

*Egan v. Canada, supra, per* Cory J. at 593.

24. The Commission therefore submits that the opposite-sex definition of “spouse” in Part III of the *Family Law Act*, which deprives same-sex couples of the benefit and protection of a default statutory support regime and of the benefit of choice that is concomitant with the existence of a default regime, constitutes a denial of the equal protection and equal benefit of the law. Further, and for the reasons set out in paragraphs 17 to 20, *supra*, the Commission submits that this denial is discriminatory and in violation of section 15(1) of the *Charter*.

**C. The ground of “sexual orientation” in the *Human Rights Code, R.S.O. 1990, c.H.19***

25. The Respondent Attorney General for Ontario discusses the amendment of the *Human Rights Code* in 1986 to prohibit discrimination on the basis of sexual orientation. It is the Attorney General’s submission that this prohibited ground of discrimination protects individual gay men and lesbians; it does not accord protection to gay and lesbian relationships.

**Factum of the Respondent Attorney General for Ontario,**  
paragraph 25 at p.11.



26. The ground of “sexual orientation” is not defined in the *Code*. However, the Commission has interpreted this ground as extending protection against discrimination to individual gay men and lesbians as well as to the same-sex relationships formed by gay men and lesbians. This interpretation accords with the fundamental principles enunciated in the Preamble to the *Code*, as well as with the principles for the proper interpretation of human rights legislation established by this Honourable Court.

*Human Rights Code*, R.S.O. 1990, c.H.19, as amended, Preamble.

*C.N. v. Canada (Human Rights Commission)*, [1987] 1 S.C.R. 1114 at 1134-1137.

*Ontario Human Rights Commission v. Simpsons-Sears Ltd.*, [1985] 2 S.C.R.536 at 546-7.

27. This Court has recognized that “sexual orientation” includes both “status” and “conduct” and that both should be protected:

It may be correct to say that being in a same-sex relationship is not necessarily the defining characteristic of being homosexual. Yet, only homosexual individuals will form a part of a same-sex common law couple. It is the sexual orientation of the individuals involved which leads to the formation of the homosexual couple. The sexual orientation of the individual members cannot be divorced from the homosexual couple. To find otherwise would be as wrong as saying that being pregnant had nothing to do with being female.

*Egan v. Canada, supra, per* Cory J. at 598. See also 601.

28. The definitions of “marital status” and “spouse” in the *Code* are, as the

Attorney General notes, restricted to persons of the opposite-sex. Prior to this Court's decision in *Cooper v. Canada*, the Commission successfully challenged the constitutionality of these definitions in two cases. It is the Commission's position that these definitions remain constitutionally suspect and are vulnerable to successful challenge before the courts. The Commission submits that the definitions of "marital status" and "spouse" ought not be employed to enfeeble the breadth of protection afforded by the *Code* against discrimination on the basis of sexual orientation.

*Human Rights Code, supra*, section 10(1).

*Cooper v. Canada*, [1996] 3 S.C.R. 854.

*Leshner v. Ontario (No. 2), supra*.

*Dwyer v. Toronto (Metro), supra*

29. Further, the Commission submits that these constitutionally suspect definitions are not of assistance in determining the validity of the definition of "spouse" at issue in this appeal.

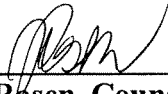
#### **D. Section 1 of the Charter**

30. The Commission agrees with the Respondent M.'s submissions with respect to section 1 of the *Charter* as set out at paragraphs 24 to 111 of the Respondent M.'s factum.

**PART IV – ORDER REQUESTED**

31. The Intervener, the Ontario Human Rights Commission, submits that this Court should dismiss this appeal and rule that the definition of “spouse” in section 29 of the *Family Law Act* infringes or denies section 15(1) of the *Charter* and that this infringement or denial is not demonstrably justified in a free and democratic society pursuant to section 1 of the *Charter*. The Commission further submits that the remedy of reading in should not be subject to suspension.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED.**



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## PART V – TABLE OF AUTHORITIES

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## CHAPTER H.19

## Human Rights Code

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Preamble

WHEREAS recognition of the inherent dignity and the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world and is in accord with the Universal Declaration of Human Rights as proclaimed by the United Nations;

AND WHEREAS it is public policy in Ontario to recognize the dignity and worth of every person and to provide for equal rights and opportunities without discrimination that is contrary to law, and having as its aim the creation of a climate of understanding and mutual respect for the dignity and worth of each person so that each person feels a part of the community and able to contribute fully to the development and well-being of the community and the Province;

AND WHEREAS these principles have been confirmed in Ontario by a number of enactments of the Legislature and it is desirable to revise and extend the protection of human rights in Ontario;

*Therefore, Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:*

**PART I  
FREEDOM FROM DISCRIMINATION**

Services

1. Every person has a right to equal treatment with respect to services, goods and facilities, without discrimination because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, age, marital status, family status or handicap. R.S.O. 1990, c. H.19, s. 1.

## CHAPITRE H.19

## Code des droits de la personne

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Préambule

ATTENDU que la reconnaissance de la dignité inhérente à tous les membres de la famille humaine et de leurs droits égaux et inaliénables constitue le fondement de la liberté, de la justice et de la paix dans le monde et est conforme à la Déclaration universelle des droits de l'homme proclamée par les Nations Unies;

ATTENDU que l'Ontario a pour principe de reconnaître la dignité et la valeur de toute personne et d'assurer à tous les mêmes droits et les mêmes chances, sans discrimination contraire à la loi, et que la province vise à créer un climat de compréhension et de respect mutuel de la dignité et de la valeur de toute personne de façon que chacun se sente partie intégrante de la collectivité et apte à contribuer pleinement à l'avancement et au bien-être de la collectivité et de la province;

ET ATTENDU que ces principes sont confirmés en Ontario par un certain nombre de lois de la Législature et qu'il est opportun de réviser et d'élargir la protection des droits de la personne en Ontario;

*Pour ces motifs, Sa Majesté, sur l'avis et avec le consentement de l'Assemblée législative de la province de l'Ontario, décrète ce qui suit :*

**PARTIE I  
ÉGALITÉ DES DROITS**

1. Toute personne a droit à un traitement égal en matière de services, de biens ou d'installations, sans discrimination fondée sur la race, l'ascendance, le lieu d'origine, la couleur, l'origine ethnique, la citoyenneté, la croyance, le sexe, l'orientation sexuelle, l'âge, l'état matrimonial, l'état familial ou un handicap. L.R.O. 1990, chap. H.19, art. 1.

Service

Accommodation	<p>2. (1) Every person has a right to equal treatment with respect to the occupancy of accommodation, without discrimination because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, age, marital status, family status, handicap or the receipt of public assistance.</p>	<p>2. (1) Toute personne a droit à un traitement égal en matière d'occupation d'un logement, sans discrimination fondée sur la race, l'ascendance, le lieu d'origine, la couleur, l'origine ethnique, la citoyenneté, la croyance, le sexe, l'orientation sexuelle, l'âge, l'état matrimonial, l'état familial, l'état d'assisté social ou un handicap.</p>	Logement
Harassment in accommodation	<p>(2) Every person who occupies accommodation has a right to freedom from harassment by the landlord or agent of the landlord or by an occupant of the same building because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, age, marital status, family status, handicap or the receipt of public assistance. R.S.O. 1990, c. H.19, s. 2.</p>	<p>(2) L'occupant d'un logement a le droit d'y vivre sans être harcelé par le propriétaire ou son mandataire ou un occupant du même immeuble pour des raisons fondées sur la race, l'ascendance, le lieu d'origine, la couleur, l'origine ethnique, la citoyenneté, la croyance, l'âge, l'état matrimonial, l'état familial, l'état d'assisté social ou un handicap. L.R.O. 1990, chap. H.19, art. 2.</p>	Harcèlement chez soi
Contracts	<p>3. Every person having legal capacity has a right to contract on equal terms without discrimination because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, age, marital status, family status or handicap. R.S.O. 1990, c. H.19, s. 3.</p>	<p>3. Toute personne jouissant de la capacité juridique a le droit de conclure des contrats à conditions égales, sans discrimination fondée sur la race, l'ascendance, le lieu d'origine, la couleur, l'origine ethnique, la citoyenneté, la croyance, le sexe, l'orientation sexuelle, l'âge, l'état matrimonial, l'état familial ou un handicap. L.R.O. 1990, chap. H.19, art. 3.</p>	Contrat
Accommodation of person under eighteen	<p>4. (1) Every sixteen or seventeen year old person who has withdrawn from parental control has a right to equal treatment with respect to occupancy of and contracting for accommodation without discrimination because the person is less than eighteen years old.</p>	<p>4. (1) Toute personne de seize ou dix-sept ans qui s'est soustraite à l'autorité parentale a droit à un traitement égal en matière d'occupation d'un logement et de contrats de logement, sans discrimination fondée sur le fait qu'elle a moins de dix-huit ans.</p>	Logement d'une personne de moins de dix-huit ans
Idem	<p>(2) A contract for accommodation entered into by a sixteen or seventeen year old person who has withdrawn from parental control is enforceable against that person as if the person were eighteen years old. R.S.O. 1990, c. H.19, s. 4.</p>	<p>(2) Un contrat de logement conclu par une personne de seize ou dix-sept ans qui s'est soustraite à l'autorité parentale est exécutoire contre cette personne comme si elle avait dix-huit ans. L.R.O. 1990, chap. H.19, art. 4.</p>	Idem
Employment	<p>5. (1) Every person has a right to equal treatment with respect to employment without discrimination because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, age, record of offences, marital status, family status or handicap.</p>	<p>5. (1) Toute personne a droit à un traitement égal en matière d'emploi, sans discrimination fondée sur la race, l'ascendance, le lieu d'origine, la couleur, l'origine ethnique, la citoyenneté, la croyance, le sexe, l'orientation sexuelle, l'âge, l'existence d'un casier judiciaire, l'état matrimonial, l'état familial ou un handicap.</p>	Emploi
Harassment in employment	<p>(2) Every person who is an employee has a right to freedom from harassment in the workplace by the employer or agent of the employer or by another employee because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, age, record of offences, marital status, family status or handicap. R.S.O. 1990, c. H.19, s. 5.</p>	<p>(2) Tout employé a le droit d'être à l'abri de tout harcèlement au travail par son employeur ou le mandataire de celui-ci ou un autre employé pour des raisons fondées sur la race, l'ascendance, le lieu d'origine, la couleur, l'origine ethnique, la citoyenneté, la croyance, l'âge, l'existence d'un casier judiciaire, l'état matrimonial, l'état familial ou un handicap. L.R.O. 1990, chap. H.19, art. 5.</p>	Harcèlement au travail
Vocational associations	<p>6. Every person has a right to equal treatment with respect to membership in any trade union, trade or occupational association or self-governing profession without discrimination because of race, ancestry, place of origin,</p>	<p>6. Toute personne a droit à un traitement égal en matière d'adhésion à un syndicat ou à une association commerciale ou professionnelle ou en matière d'inscription à l'exercice d'une profession autonome, sans discrimina-</p>	Association professionnelle

colour, ethnic origin, citizenship, creed, sex, sexual orientation, age, marital status, family status or handicap. R.S.O. 1990, c. H.19, s. 6.

tion fondée sur la race, l'ascendance, le lieu d'origine, la couleur, l'origine ethnique, la citoyenneté, la croyance, le sexe, l'orientation sexuelle, l'âge, l'état matrimonial, l'état familial ou un handicap. L.R.O. 1990, chap. H.19, art. 6.

Harassment because of sex in accommodation

7. (1) Every person who occupies accommodation has a right to freedom from harassment because of sex by the landlord or agent of the landlord or by an occupant of the same building.

7. (1) L'occupant d'un logement a le droit d'y vivre sans être harcelé par le propriétaire ou son mandataire ou un occupant du même immeuble pour des raisons fondées sur le sexe.

Harcèlement sexuel chez soi

Harassment because of sex in workplaces

(2) Every person who is an employee has a right to freedom from harassment in the workplace because of sex by his or her employer or agent of the employer or by another employee.

(2) Tout employé a le droit d'être à l'abri de tout harcèlement au travail par son employeur ou le mandataire de celui-ci ou un autre employé pour des raisons fondées sur le sexe.

Harcèlement sexuel au travail

Sexual solicitation by a person in position to confer benefit, etc.

(3) Every person has a right to be free from,

(3) Toute personne a le droit d'être à l'abri :

Avances sexuelles par une personne en mesure d'accorder un avantage, etc.

(a) a sexual solicitation or advance made by a person in a position to confer, grant or deny a benefit or advancement to the person where the person making the solicitation or advance knows or ought reasonably to know that it is unwelcome; or

a) de sollicitations ou d'avances sexuelles provenant d'une personne en mesure de lui accorder ou de lui refuser un avantage ou une promotion si l'auteur des sollicitations ou des avances sait ou devrait raisonnablement savoir que celles-ci sont importunes;

(b) a reprisal or a threat of reprisal for the rejection of a sexual solicitation or advance where the reprisal is made or threatened by a person in a position to confer, grant or deny a benefit or advancement to the person. R.S.O. 1990, c. H.19, s. 7.

b) de représailles ou de menaces de représailles pour avoir refusé d'accéder à des sollicitations ou à des avances sexuelles si ces représailles ou menaces proviennent d'une personne en mesure de lui accorder ou de lui refuser un avantage ou une promotion. L.R.O. 1990, chap. H.19, art. 7.

Reprisals

8. Every person has a right to claim and enforce his or her rights under this Act, to institute and participate in proceedings under this Act and to refuse to infringe a right of another person under this Act, without reprisal or threat of reprisal for so doing. R.S.O. 1990, c. H.19, s. 8.

8. Toute personne a le droit de revendiquer et de faire respecter les droits que lui reconnaît la présente loi, d'introduire des instances aux termes de la présente loi et d'y participer, et de refuser de porter atteinte à un droit reconnu à une autre personne par la présente loi, sans représailles ni menaces de représailles. L.R.O. 1990, chap. H.19, art. 8.

Représailles

Infringement prohibited

9. No person shall infringe or do, directly or indirectly, anything that infringes a right under this Part. R.S.O. 1990, c. H.19, s. 9.

9. Nul ne doit porter atteinte à un droit reconnu par la présente partie ni faire, directement ou indirectement, quoi que ce soit qui porte atteinte à un tel droit. L.R.O. 1990, chap. H.19, art. 9.

Interdiction de porter atteinte à un droit

## PART II INTERPRETATION AND APPLICATION

## PARTIE II DÉFINITIONS ET CHAMP D'APPLICATION

Definitions

10. (1) In Part I and in this Part,

10. (1) Les définitions qui suivent s'appliquent à la partie I et à la présente partie.

Définitions

“age” means an age that is eighteen years or more, except in subsection 5 (1) where “age” means an age that is eighteen years or more and less than sixty-five years; (“âge”)

«à cause d'un handicap» En raison de l'existence présumée ou réelle, actuelle ou antérieure, de l'une des affections suivantes :

“because of handicap” means for the reason that the person has or has had, or is believed to have or have had,

a) tout degré d'incapacité physique, d'infirmité, de malformation ou de défigurement dû à une lésion corporelle, une

- (a) any degree of physical disability, infirmity, malformation or disfigurement that is caused by bodily injury, birth defect or illness and, without limiting the generality of the foregoing, including diabetes mellitus, epilepsy, any degree of paralysis, amputation, lack of physical coordination, blindness or visual impediment, deafness or hearing impediment, muteness or speech impediment, or physical reliance on a guide dog or on a wheelchair or other remedial appliance or device,
- (b) a condition of mental retardation or impairment,
- (c) a learning disability, or a dysfunction in one or more of the processes involved in understanding or using symbols or spoken language,
- (d) a mental disorder, or
- (e) an injury or disability for which benefits were claimed or received under the *Workers' Compensation Act*; ("à cause d'un handicap")

"equal" means subject to all requirements, qualifications and considerations that are not a prohibited ground of discrimination; ("égal")

"family status" means the status of being in a parent and child relationship; ("état familial")

"group insurance" means insurance whereby the lives or well-being or the lives and well-being of a number of persons are insured severally under a single contract between an insurer and an association or an employer or other person; ("assurance-groupe")

"harassment" means engaging in a course of vexatious comment or conduct that is known or ought reasonably to be known to be unwelcome; ("harcèlement")

"marital status" means the status of being married, single, widowed, divorced or separated and includes the status of living with a person of the opposite sex in a conjugal relationship outside marriage; ("état matrimonial")

"record of offences" means a conviction for,

- (a) an offence in respect of which a pardon has been granted under the *Criminal Records Act* (Canada) and has not been revoked, or
- (b) an offence in respect of any provincial enactment; ("casier judiciaire")

"services" does not include a levy, fee, tax or periodic payment imposed by law; ("services")

anomalie congénitale ou une maladie, et, notamment, le diabète sucré, l'épilepsie, tout degré de paralysie, une amputation, l'incoordination motrice, la cécité ou une déficience visuelle, la surdité ou une déficience auditive, la mutité ou un trouble de la parole, ou la nécessité de recourir à un chien-guide, à un fauteuil roulant ou à un autre appareil ou dispositif correctif,

- b) un état de déficience ou d'affaiblissement mental,
- c) une difficulté d'apprentissage ou un dysfonctionnement d'un ou de plusieurs des processus de la compréhension ou de l'utilisation de symboles ou de la langue parlée,
- d) un trouble mental,
- e) une lésion ou une incapacité pour laquelle des prestations ont été demandées ou reçues en vertu de la *Loi sur les accidents du travail*. («because of handicap»)

«âge» Dix-huit ans ou plus, sauf au paragraphe 5 (1), où le terme «âge» s'entend de dix-huit ans ou plus et de moins de soixante-cinq ans. («age»)

«assurance-groupe» Assurance visant à assurer collectivement la vie ou le bien-être d'un certain nombre de personnes au moyen d'une seule police d'assurance entre un assureur et une association, un employeur ou une autre personne. («group insurance»)

«casier judiciaire» Relevé d'une condamnation pour :

- a) une infraction qui a fait l'objet d'un pardon en vertu de la *Loi sur le casier judiciaire* (Canada) et qui n'a pas été révoqué,
- b) une infraction à une loi provinciale. («record of offences»)

«conjoint» Personne avec laquelle une personne du sexe opposé est mariée ou avec laquelle elle vit dans une union conjugale hors du mariage. («spouse»)

«égal» Soumis à toutes les exigences, qualités requises et considérations qui ne constituent pas un motif illicite de discrimination. («equal»)

«état familial» Fait de se trouver dans une relation parent-enfant. («family status»)

«état matrimonial» Fait d'être marié, célibataire, veuf, divorcé ou séparé. Est également compris le fait de vivre avec une personne du sexe opposé dans une union conjugale hors du mariage. («marital status»)



“spouse” means the person to whom a person of the opposite sex is married or with whom the person is living in a conjugal relationship outside marriage. (“conjoint”) R.S.O. 1990, c. H.19, s. 10 (1); 1993, c. 27, Sched.

«harcèlement» Fait pour une personne de faire des remarques ou des gestes vexatoires lorsqu'elle sait ou devrait raisonnablement savoir que ces remarques ou ces gestes sont importuns. («harassment»)

«services» Sont exclus les impôts, droits, taxes et paiements périodiques imposés par la loi. («services») L.R.O. 1990, chap. H.19, par. 10 (1); 1993, chap. 27, annexe.

Pregnancy (2) The right to equal treatment without discrimination because of sex includes the right to equal treatment without discrimination because a woman is or may become pregnant. R.S.O. 1990, c. H.19, s. 10 (2).

(2) Le droit à un traitement égal sans discrimination fondée sur le sexe inclut le droit à un traitement égal sans discrimination fondée sur le fait qu'une femme est enceinte ou peut le devenir. L.R.O. 1990, chap. H.19, par. 10 (2).

Grossesse

Constructive discrimination II. (1) A right of a person under Part I is infringed where a requirement, qualification or factor exists that is not discrimination on a prohibited ground but that results in the exclusion, restriction or preference of a group of persons who are identified by a prohibited ground of discrimination and of whom the person is a member, except where,

11. (1) Constitue une atteinte à un droit d'une personne reconnu dans la partie I l'existence d'une exigence, d'une qualité requise ou d'un critère qui ne constitue pas une discrimination fondée sur un motif illicite, mais qui entraîne l'exclusion ou la préférence d'un groupe de personnes identifié par un motif illicite de discrimination et dont la personne est membre, ou l'imposition d'une restriction à ce groupe, sauf dans l'un des cas suivants :

Discrimination indirecte

- (a) the requirement, qualification or factor is reasonable and *bona fide* in the circumstances; or
- (b) it is declared in this Act, other than in section 17, that to discriminate because of such ground is not an infringement of a right. R.S.O. 1990, c. H.19, s. 11 (1).

- a) l'exigence, la qualité requise ou le critère est établi de façon raisonnable et de bonne foi dans les circonstances;
- b) il est prévu dans la présente loi, à l'exclusion de l'article 17, que la discrimination fondée sur un tel motif ne constitue pas une atteinte à un droit. L.R.O. 1990, chap. H.19, par. 11 (1).

Idem (2) The Commission, the board of inquiry or a court shall not find that a requirement, qualification or factor is reasonable and *bona fide* in the circumstances unless it is satisfied that the needs of the group of which the person is a member cannot be accommodated without undue hardship on the person responsible for accommodating those needs, considering the cost, outside sources of funding, if any, and health and safety requirements, if any. R.S.O. 1990, c. H.19, s. 11 (2); 1994, c. 27, s. 65 (1).

(2) La Commission, la commission d'enquête ou un tribunal ne doit pas conclure qu'une exigence, une qualité requise ou un critère est établi de façon raisonnable et de bonne foi dans les circonstances, à moins d'être convaincu que la personne à laquelle il incombe de tenir compte des besoins du groupe dont la personne est membre ne peut le faire sans subir elle-même un préjudice injustifié, compte tenu du coût, des sources extérieures de financement, s'il en est, et des exigences en matière de santé et de sécurité, le cas échéant. L.R.O. 1990, chap. H.19, par. 11 (2); 1994, chap. 27, par. 65 (1).

Idem

Idem (3) The Commission, the board of inquiry or a court shall consider any standards prescribed by the regulations for assessing what is undue hardship. R.S.O. 1990, c. H.19, s. 11 (3); 1994, c. 27, s. 65 (2).

(3) La Commission, la commission d'enquête ou un tribunal tient compte des normes prescrites par les règlements pour évaluer ce qui constitue un préjudice injustifié. L.R.O. 1990, chap. H.19, par. 11 (3); 1994, chap. 27, par. 65 (2).

Idem

Discrimination because of association

12. A right under Part I is infringed where the discrimination is because of relationship, association or dealings with a person or persons identified by a prohibited ground of discrimination. R.S.O. 1990, c. H.19, s. 12.

12. Constitue une atteinte à un droit reconnu dans la partie I le fait d'exercer une discrimination fondée sur des rapports, une association ou des activités avec une personne ou un groupe de personnes identifiées par un motif

Discrimination pour des raisons fondées sur l'association

**PART III  
THE ONTARIO HUMAN RIGHTS  
COMMISSION**

Commission continued	27. (1) The Ontario Human Rights Commission is continued under the name Ontario Human Rights Commission in English and Commission ontarienne des droits de la personne in French and shall be composed of such persons, being not fewer than seven, as are appointed by the Lieutenant Governor in Council.
Responsible to Minister	(2) The Commission is responsible to the Minister for the administration of this Act.
Chair	(3) The Lieutenant Governor in Council shall designate a member of the Commission as chair, and a member as vice-chair.
Remuneration	(4) The Lieutenant Governor in Council may fix the remuneration and allowance for expenses of the chair, vice-chair and members of the Commission.
Employees	(5) The employees of the Commission shall be appointed under the <i>Public Service Act</i> .
Divisions	(6) The Commission may authorize any function of the Commission to be performed by a division of the Commission composed of at least three members of the Commission. R.S.O. 1990, c. H.19, s. 27.
Race relations division	28. (1) The Lieutenant Governor in Council shall designate at least three members of the Commission to constitute a race relations division of the Commission and shall designate one member of the race relations division as Commissioner for Race Relations.
Functions	(2) It is the function of the race relations division of the Commission to perform any of the functions of the Commission under clause 29 (f), (g) or (h) relating to race, ancestry, place of origin, colour, ethnic origin or creed that are referred to it by the Commission and any other function referred to it by the Commission. R.S.O. 1990, c. H.19, s. 28.
Function of Commission	29. It is the function of the Commission,  (a) to forward the policy that the dignity and worth of every person be recognized and that equal rights and opportunities be provided without discrimination that is contrary to law;  (b) to promote an understanding and acceptance of and compliance with this Act;  (c) to recommend for consideration a special plan or program designed to meet the requirements of subsection 14 (1), subject to the right of a person aggrieved by the implementation of the

**PARTIE III  
COMMISSION ONTARIENNE DES  
DROITS DE LA PERSONNE**

	27. (1) La commission appelée Ontario Human Rights Commission est maintenue sous le nom de Commission ontarienne des droits de la personne en français et sous le nom de Ontario Human Rights Commission en anglais, et se compose d'au moins sept personnes nommées par le lieutenant-gouverneur en conseil.	Maintien de la Commission
	(2) La Commission est responsable devant le ministre de l'application de la présente loi.	Responsabilité devant le ministre
	(3) Le lieutenant-gouverneur en conseil désigne un des membres de la Commission à la présidence et un autre à la vice-présidence.	Président
	(4) Le lieutenant-gouverneur en conseil peut fixer la rémunération et les indemnités du président, du vice-président et des membres de la Commission.	Rémunération
	(5) Les employés de la Commission sont nommés en vertu de la <i>Loi sur la fonction publique</i> .	Employés
	(6) La Commission peut autoriser une de ses divisions, composée d'au moins trois membres, à exercer une de ses fonctions. L.R.O. 1990, chap. H.19, art. 27.	Divisions
	28. (1) Le lieutenant-gouverneur en conseil désigne au moins trois membres de la Commission pour constituer, au sein de la Commission, une division des relations interraciales et désigne un de ces membres à titre de commissaire aux relations interraciales.	Division des relations interraciales
	(2) Il incombe à la division des relations interraciales de la Commission de s'acquitter des fonctions que la Commission lui confie, notamment des fonctions relatives à la race, à l'ascendance, au lieu d'origine, à la couleur, à l'origine ethnique ou à la croyance décrites à l'alinéa 29 f), g) ou h). L.R.O. 1990, chap. H.19, art. 28.	Fonctions
	29. La Commission exerce les fonctions suivantes :	Fonctions de la Commission
	a) favoriser la reconnaissance de la dignité et de la valeur de la personne et assurer à tous les mêmes droits et les mêmes chances, sans discrimination contraire à la loi;	
	b) promouvoir la compréhension, l'acceptation et le respect de la présente loi;	
	c) recommander l'étude d'un projet ou d'un programme spécial visant à satisfaire aux exigences du paragraphe 14 (1), sous réserve du droit d'une personne qui se sent lésée par la mise en	

plan or program to request the Commission to reconsider its recommendation and section 37 applies with necessary modifications;

- (d) to develop and conduct programs of public information and education and undertake, direct and encourage research designed to eliminate discriminatory practices that infringe rights under this Act;
- (e) to examine and review any statute or regulation, and any program or policy made by or under a statute and make recommendations on any provision, program or policy, that in its opinion is inconsistent with the intent of this Act;
- (f) to inquire into incidents of and conditions leading or tending to lead to tension or conflict based upon identification by a prohibited ground of discrimination and take appropriate action to eliminate the source of tension or conflict;
- (g) to initiate investigations into problems based upon identification by a prohibited ground of discrimination that may arise in a community, and encourage and co-ordinate plans, programs and activities to reduce or prevent such problems;
- (h) to promote, assist and encourage public, municipal or private agencies, organizations, groups or persons to engage in programs to alleviate tensions and conflicts based upon identification by a prohibited ground of discrimination;
- (i) to enforce this Act and orders of the board of inquiry;
- (j) to perform the functions assigned to it by this or any other Act. R.S.O. 1990, c. H.19, s. 29; 1994, c. 27, s. 65 (6).

Evidence obtained in course of investigation

30. (1) No person who is a member of the Commission shall be required to give testimony in a civil suit or any proceeding as to information obtained in the course of an investigation under this Act.

Idem

(2) No person who is employed in the administration of this Act shall be required to give testimony in a civil suit or any proceeding other than a proceeding under this Act as to information obtained in the course of an

œuvre de ce projet ou programme de demander à la Commission de réexaminer sa recommandation, l'article 37 s'appliquant avec les adaptations nécessaires;

- d) élaborer et mettre en œuvre des programmes d'information et d'éducation du public, et entreprendre, diriger et encourager la recherche visant à éliminer les pratiques discriminatoires qui portent atteinte aux droits reconnus dans la présente loi;
- e) examiner et revoir toute loi ou tout règlement, et tout programme mis en œuvre ou toute ligne de conduite adoptée par une loi ou en application de celle-ci, et faire des recommandations sur une disposition, un programme ou une ligne de conduite qui, à son avis, est incompatible avec l'intention de la présente loi;
- f) enquêter sur des incidents et des circonstances qui suscitent ou tendent à susciter une tension ou un conflit dû à l'identification de personnes par un motif illicite de discrimination, et prendre les mesures appropriées pour éliminer la source de la tension ou du conflit;
- g) enquêter sur des problèmes susceptibles de surgir dans une collectivité et dus à l'identification de personnes par un motif illicite de discrimination, et favoriser et coordonner des projets, des programmes et des activités propres à éviter ou à atténuer de tels problèmes;
- h) promouvoir, aider et encourager la participation de personnes, de groupes ou d'organismes privés, municipaux ou publics à des programmes visant à atténuer les tensions et les conflits dus à l'identification de personnes par un motif illicite de discrimination;
- i) exécuter la présente loi et les ordonnances de la commission d'enquête;
- j) s'acquitter des fonctions que lui assigne la présente loi ou une autre loi. L.R.O. 1990, chap. H.19, art. 29; 1994, chap. 27, par. 65 (6).

Preuves obtenues au cours d'une enquête

30. (1) Aucun membre de la Commission n'est tenu de témoigner dans une cause civile ni dans une instance au sujet de renseignements obtenus au cours d'une enquête menée en vertu de la présente loi.

Idem

(2) Aucune personne participant à l'application de la présente loi n'est tenue de témoigner dans une cause civile ni dans une instance qui ne sont pas introduites aux termes de la présente loi au sujet de renseignements