

IN THE SUPREME COURT OF CANADA

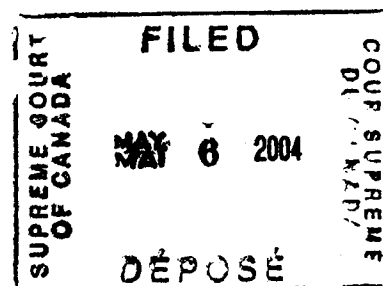
**IN THE MATTER OF SECTION 53 OF THE *SUPREME COURT ACT*,
r.s.c., 1985, C. S-26**

**IN THE MATTER OF A REFERENCE BY THE GOVERNOR IN COUNCIL
CONCERNING THE PROPOSAL FOR AN ACT RESPECTING CERTAIN ASPECTS
OF LEGAL CAPACITY FOR MARRIAGE FOR CIVIL PURPOSES, AS SET OUT IN
ORDER IN COUNCIL P.C. 2003-1055, DATED THE 16TH OF JULY 2003**

**FACTUM OF THE INTERVENER
CANADIAN HUMAN RIGHTS COMMISSION
(s. 37 of the Rules of the Supreme Court of Canada)**

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PART I
STATEMENT OF FACTS

Overview

1. In this Reference, the Canadian Human Rights Commission (“Canadian Commission”) agrees with the Attorney General of Canada (“AGC”) in its affirmation of the validity of part 1 of the proposed federal legislation extending capacity to marry to same-sex couples across the country. The Canadian Commission agrees with the reasoning of the five courts in *EGALE Appeal*, *Halpern* and *Halpern Appeal* and *Hendricks* and *Hendricks Appeal*¹ that only the extension of marriage to same-sex couples will achieve the imperatives of equality.

2. The Canadian Commission agrees that the proposed legislation deals only with marriage for civil purposes and has no effect on the freedom of religious officials to refuse to perform *religious*² marriages that are not in accordance with their beliefs and traditions. A religious marriage ceremony is not reviewable

¹ *EGALE Canada Inc. V. Canada (Attorney General)* (2003), 13 B.C.L.R. (4th) 1 (C.A.) (“*EGALE Appeal*”) in the Book of Authorities of the Attorney General of Canada (“AGC Authorities”) Vol. 1, Tab 8;
Halpern v. Canada (Attorney General) (2002), 60 O.R. (3d) 321 (Div. Ct.) (“*Halpern*”) AGC Supplementary Authorities Tab 2;
Halpern v. Canada (Attorney General), 2003 65 O.R. (3rd), 161 (C.A.) (“*Halpern Appeal*”) AGC Authorities, Vol. 1 Tab 12;
Hendricks et. al. V. Québec (Procureur général) et. al., [2002] R.J.Q. 2506 (Sup. Ct) (“*Hendricks*”) AGC Authorities, Vol. 1, Tab 14;
La Ligue catholique pour les droits de l’homme c. Hendricks et al., [2004] (No. 500-09-012719-027) (Qué. C.A.) (March 19, 2004), (“*Hendricks Appeal*”) AGC Supplementary Authorities Tab 4.

²The Canadian Commission uses the word religious marriage to describe marriages which take place within the doctrine of a faith community. In our view, these marriages are not civil marriages simply because they are licensed by or registered with the state. Civil marriages, by contrast, lack the doctrinal characteristics of religious marriage, and are engaged in by a couple for the purpose of entering a legal rather than a religious institution. The classic distinction would be between a marriage in a church conducted by the couple’s clergy, and a marriage at “city hall” by a justice of the peace.

under either the *Charter* or provincial or federal human rights instruments. In this context part 2 of the proposed legislation is declaratory, but not necessary, to give life to the concept of religious freedom.

3. However, in circumstances where religious officials offer *civil* marriage services to the public in a manner which brings them within the purview of statutory human rights instruments, the proposed legislation precludes those officials from refusing to marry same-sex couples. This interpretation of the legislation is consistent with a secular approach to civil marriage.

4. In its proposed legislation, the federal government has chosen to draw clear lines between civil and religious marriage with respect to capacity. The Canadian Commission supports this distinction as the appropriate balance between sexual orientation and religion. Same-sex couples should feel confident that they will not be refused a civil marriage because of their sexual orientation. Similarly, religious officials, conducting **religious** marriages should feel confident to decline to conduct any religious marriage which conflicts with their beliefs and traditions. Read in this context, part 2 of the legislation is unclear. It could be construed as a religious exemption to discriminatory conduct in the provision of public services which is much broader than a declaration of existing rights in the religious context.

5. The position of the Canadian Commission is that part two of the proposed legislation should be affirmed as declaratory and applying only to religious and not civil marriages. It may be that few religious officials who perform civil marriages will refuse same-sex couples and therefore be captured by the requirement to perform civil marriages for all couples. However, the general principle, which has implications for much larger numbers of people, is important to preserve: public services are to be delivered to citizens without discrimination and any balancing of rights required in the context of these disputes is driven by the facts and rights at stake in each case.

Summary of Facts

6. The Canadian Commission agrees, in general, with the facts as alleged by the AGC in both their factum and supplementary factum.

7. The proposed legislation, which expands civil marriage to include same-sex couples, is part of an evolution in human rights protections for gay, lesbian and bisexual citizens who have worked to eradicate discrimination on the basis of sexual orientation in some of the most basic elements of civic life.

Historically, same-sex equality litigation has focused on achieving equality in some of the most basic elements of civic life, such as bereavement leave, health care benefits, pensions benefits, spousal support, name changes and adoption. The question at the heart of this appeal is whether excluding same-sex couples from another of the most basic elements of civic life - marriage - infringes human dignity and violates the Canadian Constitution.³

8. In addition to the *Charter*⁴, the government of Canada has expressed its commitment to equality through statutory human rights instruments such as the *Canadian Human Rights Act*⁵. The *CHRA*, like its provincial counterparts, recognizes the rights of all Canadian citizens to equality in the civil context in areas such as employment and the provision of public services. To the extent that the performance of civil marriage ceremonies fall within the purview of statutory human rights instruments, it will be relevant to this Reference how conflicts between religion and other prohibited grounds, including sexual orientation, have historically been resolved in the provision of public services.

³*Halpern Appeal* at paragraph 8, AGC Authorities Vol. 1 Tab 12.

⁴*Canadian Charter of Rights and Freedoms, Part 1 of the Constitution Act, 1982, being Schedule B to the Canada Act, 1982 (U.K.), 1982, c. 11, ("Charter")* AGC Authorities, Vol. 111 Tab 40.

⁵*Canadian Human Rights Act*, R.S., 1985, c. H-6 ("CHRA"), sections 2-24, Canadian Commission Factum, Tab 1

PART II
QUESTIONS IN ISSUE

9. The Canadian Commission agrees that the questions have been accurately stated by the AGC.

PART III
ARGUMENT

10. The Canadian Commission adopts the submissions of the Attorney General of Canada with respect to part 1 of the proposed legislation and seeks to add the following submissions:

Question 1: The Proposed Legislation is within the Exclusive Constitutional Legislative Authority of Parliament

11. The Canadian Commission agrees with the submissions of the AGC that part 1 of the proposed legislation, dealing as it does with capacity to marry, is within the exclusive constitutional legislative authority of Parliament. The Canadian Commission further agrees that if part 2 of the legislation is purely declaratory, as is indicated at paragraph 40 of Factum of the AGC, this section of the proposed legislation also within the legislative authority of Parliament.

12. In addition, the Ontario Court of Appeal in *Halpern Appeal* rejected the argument that allowing same-sex couples to marry would require a constitutional amendment, on the basis of two principles: first, the question is one of capacity which is clearly within the exclusive constitutional legislative authority of Parliament; and second, "...to freeze the definition of marriage to whatever meaning it had in 1867 is contrary to this country's jurisprudence of

progressive constitutional interpretation”.⁶

13. One of the relevant factors occurring since Confederation is the equality rights evolution which has brought about the existence of federal and provincial statutory human rights instruments as well as the *Charter*. All of these instruments have been used to remedy discrimination and change social attitudes toward same-sex couples. As was accepted by the Ontario Court of Appeal in *Halpern Appeal*, that equality litigation has involved some of the most basic elements of civic life.⁷

14. The proposed legislation represents a progressive constitutional interpretation of Parliament’s authority, and brings the issue of capacity to marry in line with other human rights protections already entrenched in Canada.

Question 2: The Proposed Legislation is Consistent with the *Charter*

15. The Canadian Commission agrees with the assertion, at paragraph 44 of Factum of the AGC, that the proposed legislation must be considered against the backdrop of the court decisions in British Columbia, Ontario and Quebec. These cases clearly establish that it is a constitutional imperative to extend capacity to marry to same-sex couples. The proposed legislation meets the highest ideals of the *Charter* and could not be interpreted as violating the *Charter* in any respect. The proposed legislation is also consistent with the values embodied in statutory human rights instruments including the *CHRA*, and the movement in human rights jurisprudence toward inclusiveness and diversity. In *Halpern Appeal*, for example, the Ontario Court of Appeal addressed the impact of exclusion:

⁶*Halpern Appeal* at paragraphs 41 and 42, AGC Authorities, Vol. 1, Tab 12.

⁷*Halpern Appeal* at paragraph 8, AGC Authorities, Vol. 1, Tab 12.

In this case, same-sex couples are excluded from a fundamental societal institution - marriage. The societal significance of marriage, and the corresponding benefits that are available only to married persons, cannot be overlooked. Indeed, all parties are in agreement that marriage is an important and fundamental institution in Canadian society. It is for that reason that the claimants wish to have access to the institution. Exclusion perpetuates the view that same-sex relationships are less worthy of recognition than opposite-sex relationships. In doing so, it offends the dignity of persons in same-sex relationships.⁸

And this Court in *Meiorin*:

Accommodation does not go to the heart of the equality question, to the goal of transformation, to an examination of the way institutions and relations must be changed in order to make them available, accessible, meaningful and rewarding for the many diverse groups of which our society is composed. Accommodation seems to mean that we do not change procedures or services, we simply "accommodate" those who do not quite fit. We make some concessions to those who are "different", rather than abandoning the idea of "normal" and working for genuine inclusiveness.⁹

Question 3: The *Charter* Protects Religious Officials from Being Compelled to Perform a Marriage which is Contrary to their Religious Beliefs

16. The Canadian Commission supports the proposed legislation and agrees that religious officials cannot be compelled to conduct religious marriages which are contrary to their beliefs and traditions. Catholic officials, for example, cannot be compelled to marry divorced persons who do not meet the doctrinal requirements for re-marriage. Similarly, a religious official could

⁸*Halpern Appeal*, paragraph 107, AGC Authorities Vol.1, Tab 12.

⁹*British Columbia (Public Service Employee Relations Committee) v. British Columbia Government and Service Employee's Union (B.C.G.S.E.U.) (Meiorin Grievance)* [1999] 3 S.C.R. 3, in the Book of Authorities of the Canadian Commission ("Canadian Commission Authorities) Tab 1 adopting the observations of *Day and Brodsky*, "The Duty To Accommodate: Who Will Benefit?" (1996), 75 Can. Bar Rev. 433.

refuse to perform the same-sex marriage of a member of his or her congregation if such a marriage conflicts with the official's religious beliefs. If this is what is meant by the declaratory language in the proposed legislation, then the Canadian Commission is in agreement with the AGC.

17. It is the position of the Canadian Commission that there is no recourse available under statutory human rights instruments or the *Charter* in circumstances where a religious official refuses to conduct a marriage within the doctrine of a faith community. Religious marriages are neither government action nor are they services generally available to the public.¹⁰

18. The other possible interpretation of the proposed legislation is that it protects religious officials from conducting same-sex marriages in both the religious and civil context. It is this interpretation that the Canadian Commission is concerned with. In circumstances where a religious official makes marriage services generally available to the public, part 2 of the proposed legislation is no longer simply declaratory. The language actually constitutes an exemption for the purpose of assessing whether the conduct of that official violates provincial or federal statutory human rights instruments.

19. The Commission's concern is two-fold: first, having decided to legislate in favour of allowing same-sex couples to marry, all same-sex couples should have confidence in their ability to secure a civil marriage; and secondly, to establish a civil exemption could establish a precedent which elevates religious belief and practice above other prohibited grounds in the delivery of civil services.

20. The proposed legislation, governing as it does, civil and not religious marriage, must be

¹⁰*Charter*, Section 32, Factum of AGC, Tab 2; See for example the reference to services in section 5 of the *CHRA*, section 5 (“*It is a discriminatory practice in the provision of goods, services, facilities or accommodation customarily available to the general public...*”), Canadian Commission Factum Tab 1;

construed in a manner which is consistent with the *Charter* but also with provincial and federal statutory human rights instruments. The Court in the *Halpern Appeal* endorsed the principle that once the state provides a benefit, it must do so in a non-discriminatory manner:

Second, Canadian governments chose to give legal recognition to marriage. Parliament and the provincial legislatures have built a myriad of rights and obligations around the institution of marriage. The provincial legislatures provide licensing and registration regimes so that the marriages of opposite-sex couples can be formally recognized by law. Same-sex couples are denied access to those licensing and registration regimes. That denial constitutes a formal distinction between opposite-sex and same-sex couples. The words of La Forest J. in *Eldridge v. British Columbia (Attorney General)*, [1997] 3 S.C.R. 624 at 678 are instructive:

This Court has repeatedly held that once the state does provide a benefit, it is obliged to do so in a non-discriminatory manner. ... In many circumstances, this will require governments to take positive action, for example by extending the scope of a benefit to a previously excluded class of persons.¹¹

21. Even if this Court were prepared to affirm a religious exemption to the conduct of civil marriages, construing that exemption as narrowly as marriage ceremonies only, still leaves questions unanswered. Who, for example, can claim to be a “religious official” in the civil context? Does the exemption extend to a Justice of the Peace who officiates at civil marriages but whose religious convictions prevent them from conducting a same-sex marriage? If so, how do we support such an exemption without recognizing other claims by people of strong religious belief such as those opposed to issuing marriage licenses, or registering same-sex marriages, or registering the adoptions of children of same-sex parents, or giving municipal proclamations for gay, lesbian and bisexual organizations, or providing other basic public services such as access to public facilities or photocopying?

22. In addition, since an exemption would fall within the exclusive legislative purview of the Provinces and not Parliament, the language must be construed as declaratory if it is to remain in

¹¹*Halpern Appeal* at paragraph 69, AGC Authorities Vol. 1, Tab 12

the legislation. The declaration recognizes the right, which exists independent of the legislation itself, of religious officials to refuse to conduct religious marriage ceremonies which are inconsistent with their beliefs.

23. The Canadian Commission's concern about extending an exemption to religious officials conducting marriages in a purely civil context, arises in part from the the history of litigation in the statutory human rights context where religious freedoms and other rights have collided. The balancing in those cases has consistently been conducted in favour of ensuring that religious beliefs to not translate into discriminatory practices in the public sphere.¹² It is not at all obvious that religious freedom would protect a public service provider from the consequences of engaging in a discriminatory practice.

24. In two human rights cases, for example, Tribunals have determined that public officials have an obligation to provide civic proclamations which endorse "gay pride" celebrations or the activities of gay, lesbian, bisexual and transgendered community groups. In those cases, freedom of speech and religion were asserted as defences to the requirement to issue the proclamations. After a careful analysis of the rights engaged by the cases, the Tribunals decided in favour of

¹²The only exception to this appears to be *Brillinger*. The case was originally decided by the Ontario Board of Inquiry (as it was then). A private service-provider was ordered to provide printing services to "lesbians and gays and to organizations in existence for their benefit", despite the fact that the respondent felt that his religious beliefs precluded him from providing such a service. The respondent was also required to pay the complainant \$5000.00. The decision was appealed to the Ontario Court of Justice, Divisional Court. The Divisional Court found that there were conflicting rights engaged by the case and that the original order of the Board was so broad as to extend beyond what was reasonably necessary to ensure the rights of the complainant to be free of discrimination on the basis of sexual orientation. The Court upheld the Board's finding of discrimination as well as the monetary award. The Court then altered the Board's order as it related to the provision of the service and built in an exception for printed material which could reasonably be considered to be in direct conflict with the core elements of the respondent's religious beliefs. In making this order, the Court contradicted its own assertion, earlier in the decision, that it had no power to "read in" a religious exemption which the Ontario legislature had chosen not to include in the *Ontario Human Rights Code*. The decision remains an anomaly in statutory human rights jurisprudence. *Ontario (Human Rights Commission) v. Brillinger*, [2002] O.J. No. 2375 (Div. Ct.), Canadian Commission Authorities Tab 6.

ordering the public officials to make the proclamations despite the honestly-held belief of the respondents that they were being coerced to take action which was inconsistent with their religious beliefs.¹³

25. Statutory human rights instruments do not prevent individuals from manifesting their religious beliefs, rather, they attach consequences to imposing religious beliefs on others through the denial of public services.

26. In *Ross*, for example, this Court upheld the finding that Ross's continued employment as a teacher constituted discrimination with respect to educational services available to the public. This Court emphasized that public school teachers assume a position of influence and trust over their students and must be seen to be impartial and tolerant. By their conduct, teachers, as "medium" of the educational message (the values, beliefs and knowledge sought to be transmitted by the school system), must be perceived as upholding that message.¹⁴

27. This Court also found that the order against Ross violated his freedom to hold and manifest his beliefs without state interference. This Court balanced the competing rights by considering Ross's freedom to make discriminatory statements against the right of the children in the School Board to be educated in a school system that is free from bias, prejudice and intolerance.¹⁵

¹³*Hill v. Woodside* (1998), 33 C.H.R.R. D/349 (N. B. Bd. Inq.); *Hudler v. London (City)*(1997), 31 C.H.R.R. D/500 (Ont. Bd. Inq.) Canadian Commission Authorities Tabs 3 and 4. In *Hudler*, the Mayor of the City of London asserted that issuing the proclamation violated her rights under section 2(b) of the *Charter*. However her desire not to "speak" the proclamation in question was based on her Evangelical Christian beliefs.

¹⁴*Ross v. New Brunswick School District No. 15* [1996] 1 S.C.R. 825, Canadian Commission Authorities ("Ross"), Tab 7

¹⁵*Ross*, Canadian Commission Authorities, Tab 7

28. In conducting this balancing exercise, this court referred to the following passage from Dickson J's reasons in *R. v. Big M Drug Mart Ltd.*, [1985] 1 S.C.R. 295, at p. 336:

A truly free society is one which can accommodate a wide variety of beliefs, diversity of tastes and pursuits, customs and codes of conduct. A free society is one which aims at equality with respect to the enjoyment of fundamental freedoms and I say this without any reliance upon s. 15 of the Charter. Freedom must surely be founded in respect for the inherent dignity and the inviolable rights of the human person. The essence of the concept of freedom of religion is the right to entertain such religious beliefs as a person chooses, the right to declare religious beliefs openly and without fear of hindrance or reprisal, and the right to manifest religious belief by worship and practice or by teaching and dissemination.

This Court then went on to say:

Indeed, this Court has affirmed that freedom of religion ensures that every individual must be free to hold and to manifest without State interference those beliefs and opinions dictated by one's conscience. This freedom is not unlimited, however, and is restricted by the right of others to hold and to manifest beliefs and opinions of their own, and to be free from injury from the exercise of the freedom of religion of others. Freedom of religion is subject to such limitations as are necessary to protect public safety, order, health or morals and the fundamental rights and freedoms of others.¹⁶

29. As is indicated in *Ross* conflicts between rights are resolved on the basis of a complex analysis of the facts and rights at stake at the section 1 stage of the analysis.

30. In the civil marriage context there may be cases, for example, in a larger City, where multiple alternatives exist. In those cases the remedy may simply be monetary. In other smaller

¹⁶*Ross*, at paragraph 72, Canadian Commission Authorities, Tab 7

communities it could pose a significant hardship for same-sex couples to find an alternative official to conduct their marriage ceremonies. In those cases the remedy may be to impose upon the religious official the obligation to perform the ceremony. There may be cases where the religious official is employed in a context where the employer is required to accommodate the religious beliefs of their employees. A human rights Commission or Tribunal will be required to take into consideration the full context, the nature of the rights infringements alleged and the consequences for all parties.¹⁷

31. In *Chamberlain*, on the issue of the use, in schools, of materials which positively depicted same-sex families, there existed a statutory obligation on the school board to apply secular values in conducting its decision-making. At paragraph 25 of the *Chamberlain* decision, this Court stated that:

In summary, the Act's requirement of strict secularism means that the Board must conduct its deliberations on all matters, including the approval of supplementary resources, in a manner that respects the views of all members of the school community. It cannot prefer the religious views of some people in its district to the views of other segments of the community. Nor can it appeal to views that deny the equal validity of the lawful lifestyles of some in the school community. The Board must act in a way that promotes respect and tolerance for all the diverse groups that it represents and serves.¹⁸

These principles are equally applicable to the interpretation and application of statutory human rights instruments.

32. The *Trinity* case, involved a private institution which was exempt in part from the *British Columbia Human Rights Act* as well as from the *Charter*. This Court, however, determined that

¹⁷Ross at paragraph 88, Canadian Commission Authorities, Tab 7

¹⁸*Chamberlain vs. Surrey School District No. 36* [2002] 4 S.C.R. 710, (“Chamberlain”) at paragraph 25, Canadian Commission Authorities, Tab 2.

discrimination was an operative issue in the case and that freedom of religion, conscience and association coexist with the right to be free of discrimination based on sexual orientation. This Court further stated that “the proper place to draw the line in cases like the one at bar is generally between belief and conduct. The freedom to hold beliefs is broader than the freedom to act on them.” This Court also referred to Iacobucci and Major JJ. in *B. (R.) v. Children's Aid Society of Metropolitan Toronto*, [1995] 1 S.C.R. 315, at para. 226, that:

Just as there are limits to the ambit of freedom of expression (e.g. s. 2(b) does not protect violent acts: *R. v. Zundel*, [1992] 2 S.C.R. 731, at pp. 753 and 801; *R. v. Keegstra*, [1990] 3 S.C.R. 697, at pp. 732 and 830), so are there limits to the scope of s. 2(a), especially so when this provision is called upon to protect activity that threatens the physical or psychological well-being of others. In other words, although the freedom of belief may be broad, the freedom to act upon those beliefs is considerably narrower, and it is the latter freedom at issue in this case.¹⁹

¹⁹*Trinity Western University vs. British Columbia College of Teachers* [2001] 1 S.C.R. 772 (“Trinity”) at paragraphs 30 and 36, Canadian Commission Authorities, Tab 8

33. Again, these examples, arise not in the context of private, religious activity, but in a context where the person or organization has a responsibility to deliver public services. When a person offers their services to the public, they must do so in a manner which is consistent with their obligations under statutory human rights instruments. They cannot manifest their religious beliefs through the exercise of their public, civil responsibilities, if to do so, would undermine the rights of others on the basis of a prohibited ground of discrimination

34. The Canadian Commission's hope is that through time and education, few incidents will arise where same-sex couples are refused civil marriage ceremonies in circumstances where their limited options compel them to file a human rights complaint. In those limited cases, Commissions across the country will play an important role in resolving those disputes quickly and preventing them from escalating into Tribunal decisions and competing *Charter* claims.

Question 4: The opposite-sex requirement for marriage is inconsistent with the *Charter*

35. The Canadian Commission acted as an intervenor in *Hendricks Appeal* and *Halpern Appeal* and agrees with the reasoning contained in those decisions as well as the decision of the British Columbia Court of Appeal in *EGALE* and the two lower court decisions in *Hendricks and Halpern*. These cases clearly establish that the opposite-sex requirement for marriage was inconsistent with the *Charter*.

36. Each court came to the right conclusion in the section 15 analysis by focusing on the contextual experience of gay, lesbian and bisexual Canadians rather than on the context of marriage and the defense of marriage as a heterosexual institution. This approach, which maintains a clear analytical distinction between section 15 and section 1, reveals the impact of the exclusion *on the claimants* and gives the Court the ability to measure that impact against the purpose of section

15(1).²⁰

37. It is now accepted that arguments related to the “inherent” heterosexual nature of marriage amount to “circular reasoning” and “sidestep the entire s. 15(1) analysis”.²¹

38. It is also now accepted that extending marriage to same-sex couples is the only remedy which meets the imperatives of equality. All other options fall within the long discredited “separate but equal doctrine”. As the Court in *Halpern* indicated, same-sex couples must be free to make the same choice as heterosexual couples to marry or not to marry. Each of those choices comes with a different bundle of rights and responsibilities.

39. The purpose of all human rights legislation, most of which predates the *Charter* in Canada, is to transform relations between individuals, and between individuals and their government, to fulfill the state’s responsibility to eliminate discrimination. To suggest that these principles apply to all fundamental social institutions, except marriage, is to deny the promise of equality and to expressly violate Canada’s commitment to the values which underlie both the *Charter* and the *Canadian Human Rights Act*.

The quest for equality expresses some of humanity's highest ideals and aspirations, which are by their nature abstract and subject to differing articulations. The challenge for the judiciary in interpreting and applying s. 15(1) of the Charter is to transform these ideals and aspirations into practice in a manner which is meaningful to Canadians and which accords with the purpose of the provision.²²

²⁰*Halpern Appeal*, at paragraph 91, AGC Authorities, Vol. 1 Tab 12

²¹*Halpern Appeal* at paragraph 71, AGC Authorities, Vol. 1 Tab 12.

²²*Law v. Canada (Minister of Employment and Immigration)*, [1999] 1 S.C.R. 497, (“Law”) at paragraph 2, Canadian Commission Authorities, Tab 5

D. Conclusion

40. In *Vriend*, this Court reminded us that all Canadians benefit from the rigorous application of the principles of equality:

It is easy to say that everyone who is just like "us" is entitled to equality. Everyone finds it more difficult to say that those who are "different" from us in some way should have the same equality rights that we enjoy. Yet so soon as we say any enumerated or analogous group is less deserving and unworthy of equal protection and benefit of the law all minorities and all of Canadian society are demeaned. It is so deceptively simple and so devastatingly injurious to say that those who are handicapped or of a different race, or religion, or colour or sexual orientation are less worthy. **Yet, if any enumerated or analogous group is denied the equality provided by s. 15(1) then the equality of every other minority group is threatened.** That equality is guaranteed by our constitution. If equality rights for minorities had been recognized, the all too frequent tragedies of history might have been avoided. It can never be forgotten that discrimination is the antithesis of equality and that it is the recognition of equality which will foster the dignity of every individual.²³

41. In the Canadian Commission's respectful submission, the AGC has proposed legislation which expresses the promise of equality which Canadian citizens have made to one another. The appropriate balance to be struck between religion and sexual orientation is the drawing of clear lines between religious and civil marriage. In this way the legislation fosters the dignity of every individual and leaves same-sex couples, as well as religious officials, to choose the course of action which best accords with their personal beliefs and aspirations as Canadian citizens.

²³*Vriend v. Alberta*, [1998] 1 S.C.R. 493 ("Vriend") at paragraph 69, Canadian Commission Authorities, Tab 9

PART IV

SUBMISSIONS CONCERNING COSTS

42. The Canadian Commission makes no submission concerning costs except to reiterate its previous submission that the couples who initiated the original cases in British Columbia, Ontario and Quebec, should have their costs of the Reference.

PART V

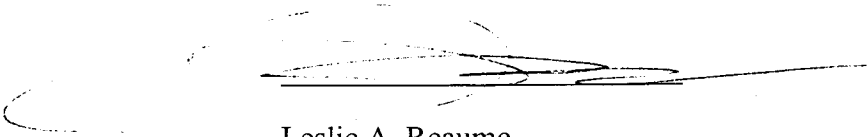
ORDER REQUESTED

43. For all of the above reasons, it is respectfully submitted that this Court should

1. Affirm Question 1;
2. Affirm Question 2;
3. Affirm Question 3 and clarify that part 2 of the proposed legislation is declaratory of the rights of religious officials to refuse to conduct religious marriages but that it does not a religious exemption in the context of civil marriages.
4. Answer Question 4 in the negative and affirm that marriage is the only remedy which achieves the imperatives of equality under the *Charter*

ALL OF WHICH IS RESPECTFULLY SUBMITTED

Dated at OTTAWA, May 4, 2004


Leslie A. Reaume
Counsel for the Intervener
Canadian Human Rights Commission

PART VI

TABLE OF AUTHORITIES

1. *British Columbian (Public Service Employee Relations Committee) v. British Columbia Government and Service Employee's Union (B.C.G.S.E.U.) (Meiorin Grievance)*, [1999] S.C.R. 3 **at paragraph 15**
2. *Chamberlain vs. Surrey School District No. 36*, [2002] 4 S.C.R. 710 **at paragraphs 32**
3. *EGALE Canada Inc. V. Canada (Attorney General)* (2003), 13 B.C.L.R. (4th) 1 (C.A.) **at paragraphs: 1,**
4. *Halpern v. Canada (Attorney General)* (2002), 60 O.R. (3d) 321 (Div. Ct.) **at paragraphs 1,**
5. *Halpern v. Canada (Attorney General)*, 2003 65 O.R. (3rd), 161 (C.A.) **at paragraphs 1, 7, 12, 13, 15, 20, 37, 38**
6. *Hendricks et. al. V. Québec (Procureur général) et. al.*, [2002] R.J.Q. 2506 (Sup. Crt) **at paragraphs 1,**
7. *Hill and Woodside* (1998), 33 C.H.R.R. D/349 (N.B." Bd. Inq.) **at paragraph 24**
8. *Hudler v. London (City)* (1997), 31 C.H.R.R. D/500 (Ont. Bd. Inq.) **at paragraph 24**
9. *La Ligue catholique pour les droits de l'homme c. Hendricks et al.*, [2004] (No. 500-09-012719-027) (Qué. C.A.) (March 19, 2004) **at paragraphs 1,**
10. *Law v. Canada (Minister of Employment and Immigration)*, [1999] 1 S.C.R. 497 **at paragraph 40**
11. *Ontario (Human Rights Commission) v. Brillinger*, [2002] O.J. No. 2375 (Div. Ct.) **at paragraph 23**
12. *Ross v. New Brunswick School District No. 15*, [1996] 1 S.C.R. 825 **at paragraphs 27, 28, 29, 31**
13. *Trinity Western University vs. British Columbia College of Teachers*, [2001] 1 S.C.R. 772 **at paragraphs 33**

14. *Vriend v. Alberta*, [1998] 1 S.C.R. 493 at paragraphs 43

PART VII

STATUTES

Canadian Human Rights Act, R.S.C. 1985, c. H-6, ss. 2-25



CANADA

OFFICE CONSOLIDATION

CODIFICATION ADMINISTRATIVE

Canadian Human Rights Act

Loi canadienne sur les droits de la personne

R.S., 1985, c. H-6

L.R. (1985), ch. H-6

March, 2002

Mars 2002



CHAPTER H-6

An Act to extend the laws in Canada that
proscribe discrimination

SHORT TITLE

Short title

1. This Act may be cited as the *Canadian
Human Rights Act*.
1976-77, c. 33, s. 1.

PURPOSE OF ACT

Purpose

2. The purpose of this Act is to extend the laws in Canada to give effect, within the purview of matters coming within the legislative authority of Parliament, to the principle that all individuals should have an opportunity equal with other individuals to make for themselves the lives that they are able and wish to have and to have their needs accommodated, consistent with their duties and obligations as members of society, without being hindered in or prevented from doing so by discriminatory practices based on race, national or ethnic origin, colour, religion, age, sex, sexual orientation, marital status, family status, disability or conviction for an offence for which a pardon has been granted. R.S., 1985, c. H-6, s. 2; 1996, c. 14, s. 1; 1998, c. 9, s. 9.

PART I

PROSCRIBED DISCRIMINATION

General

Prohibited grounds of discrimination

3. (1) For all purposes of this Act, the prohibited grounds of discrimination are race, national or ethnic origin, colour, religion, age, sex, sexual orientation, marital status, family status, disability and conviction for which a pardon has been granted.

CHAPITRE H-6

Loi visant à compléter la législation canadienne
en matière de discrimination

TITRE ABRÉGÉ

Titre abrégé

1. *Loi canadienne sur les droits de la
personne*.
1976-77, ch. 33, art. 1.

OBJET

Objet

2. La présente loi a pour objet de compléter la législation canadienne en donnant effet, dans le champ de compétence du Parlement du Canada, au principe suivant : le droit de tous les individus, dans la mesure compatible avec leurs devoirs et obligations au sein de la société, à l'égalité des chances d'épanouissement et à la prise de mesures visant à la satisfaction de leurs besoins, indépendamment des considérations fondées sur la race, l'origine nationale ou ethnique, la couleur, la religion, l'âge, le sexe, l'orientation sexuelle, l'état matrimonial, la situation de famille, la déficience ou l'état de personne graciée.

L.R. (1985), ch. H-6, art. 2; 1996, ch. 14, art. 1; 1998, ch. 9, art. 9.

PARTIE I

MOTIFS DE DISTINCTION ILLICITE

Dispositions générales

Motifs de distinction illicite

3. (1) Pour l'application de la présente loi, les motifs de distinction illicite sont ceux qui sont fondés sur la race, l'origine nationale ou ethnique, la couleur, la religion, l'âge, le sexe, l'orientation sexuelle, l'état matrimonial, la situation de famille, l'état de personne graciée ou la déficience.

Idem	<p>(2) Where the ground of discrimination is pregnancy or child-birth, the discrimination shall be deemed to be on the ground of sex.</p> <p>R.S., 1985, c. H-6, s. 3; 1996, c. 14, s. 2.</p>	<p>(2) Une distinction fondée sur la grossesse ou l'accouchement est réputée être fondée sur le sexe.</p> <p>L.R. (1985), ch. H-6, art. 3; 1996, ch. 14, art. 2.</p>	Idem
Multiple grounds of discrimination	<p>3.1 For greater certainty, a discriminatory practice includes a practice based on one or more prohibited grounds of discrimination or on the effect of a combination of prohibited grounds.</p> <p>1998, c. 9, s. 11.</p>	<p>3.1 Il est entendu que les actes discriminatoires comprennent les actes fondés sur un ou plusieurs motifs de distinction illicite ou l'effet combiné de plusieurs motifs.</p> <p>1998, ch. 9, art. 11.</p>	Multiplicité des motifs
Orders regarding discriminatory practices	<p>4. A discriminatory practice, as described in sections 5 to 14.1, may be the subject of a complaint under Part III and anyone found to be engaging or to have engaged in a discriminatory practice may be made subject to an order as provided in sections 53 and 54.</p> <p>R.S., 1985, c. H-6, s. 4; 1998, c. 9, s. 11.</p>	<p>4. Les actes discriminatoires prévus aux articles 5 à 14.1 peuvent faire l'objet d'une plainte en vertu de la partie III et toute personne reconnue coupable de ces actes peut faire l'objet des ordonnances prévues aux articles 53 et 54.</p> <p>L.R. (1985), ch. H-6, art. 4; 1998, ch. 9, art. 11.</p>	Ordonnances relatives aux actes discriminatoires
<i>Discriminatory Practices</i>		<i>Actes discriminatoires</i>	
Denial of good, service, facility or accommodation	<p>5. It is a discriminatory practice in the provision of goods, services, facilities or accommodation customarily available to the general public</p> <p>(a) to deny, or to deny access to, any such good, service, facility or accommodation to any individual, or</p> <p>(b) to differentiate adversely in relation to any individual,</p> <p>on a prohibited ground of discrimination.</p> <p>1976-77, c. 33, s. 5.</p>	<p>5. Constitue un acte discriminatoire, s'il est fondé sur un motif de distinction illicite, le fait, pour le fournisseur de biens, de services, d'installations ou de moyens d'hébergement destinés au public :</p> <p>a) d'en priver un individu;</p> <p>b) de le défavoriser à l'occasion de leur fourniture.</p> <p>1976-77, ch. 33, art. 5.</p>	Refus de biens, de services, d'installations ou d'hébergement
Denial of commercial premises or residential accommodation	<p>6. It is a discriminatory practice in the provision of commercial premises or residential accommodation</p> <p>(a) to deny occupancy of such premises or accommodation to any individual, or</p> <p>(b) to differentiate adversely in relation to any individual,</p> <p>on a prohibited ground of discrimination.</p> <p>1976-77, c. 33, s. 6.</p>	<p>6. Constitue un acte discriminatoire, s'il est fondé sur un motif de distinction illicite, le fait, pour le fournisseur de locaux commerciaux ou de logements :</p> <p>a) de priver un individu de leur occupation;</p> <p>b) de le défavoriser à l'occasion de leur fourniture.</p> <p>1976-77, ch. 33, art. 6.</p>	Refus de locaux commerciaux ou de logements
Employment	<p>7. It is a discriminatory practice, directly or indirectly,</p> <p>(a) to refuse to employ or continue to employ any individual, or</p> <p>(b) in the course of employment, to differentiate adversely in relation to an employee,</p> <p>on a prohibited ground of discrimination.</p> <p>1976-77, c. 33, s. 7.</p>	<p>7. Constitue un acte discriminatoire, s'il est fondé sur un motif de distinction illicite, le fait, par des moyens directs ou indirects :</p> <p>a) de refuser d'employer ou de continuer d'employer un individu;</p> <p>b) de le défavoriser en cours d'emploi.</p> <p>1976-77, ch. 33, art. 7; 1980-81-82-83, ch. 143, art. 3.</p>	Emploi

Employment applications, advertisements

8. It is a discriminatory practice

(a) to use or circulate any form of application for employment, or

(b) in connection with employment or prospective employment, to publish any advertisement or to make any written or oral inquiry

that expresses or implies any limitation, specification or preference based on a prohibited ground of discrimination.

1976-77, c. 33, s. 8.

Employee organizations

9. (1) It is a discriminatory practice for an employee organization on a prohibited ground of discrimination

(a) to exclude an individual from full membership in the organization;

(b) to expel or suspend a member of the organization; or

(c) to limit, segregate, classify or otherwise act in relation to an individual in a way that would deprive the individual of employment opportunities, or limit employment opportunities or otherwise adversely affect the status of the individual, where the individual is a member of the organization or where any of the obligations of the organization pursuant to a collective agreement relate to the individual.

Exception

(2) Notwithstanding subsection (1), it is not a discriminatory practice for an employee organization to exclude, expel or suspend an individual from membership in the organization because that individual has reached the normal age of retirement for individuals working in positions similar to the position of that individual.

(3) [Repealed, 1998, c. 9, s. 12]

R.S., 1985, c. H-6, s. 9; 1998, c. 9, s. 12.

Discriminatory policy or practice

10. It is a discriminatory practice for an employer, employee organization or employer organization

(a) to establish or pursue a policy or practice, or

(b) to enter into an agreement affecting recruitment, referral, hiring, promotion, training, apprenticeship, transfer or any other matter relating to employment or prospective employment,

that deprives or tends to deprive an individual or class of individuals of any employment opportunities on a prohibited ground of discrimination.

R.S., 1985, c. H-6, s. 10; 1998, c. 9, s. 13(E).

8. Constitue un acte discriminatoire, quand y sont exprimées ou suggérées des restrictions, conditions ou préférences fondées sur un motif de distinction illicite :

a) l'utilisation ou la diffusion d'un formulaire de demande d'emploi;

b) la publication d'une annonce ou la tenue d'une enquête, oralement ou par écrit, au sujet d'un emploi présent ou éventuel.

1976-77, ch. 33, art. 8.

Demandes d'emploi, publicité

9. (1) Constitue un acte discriminatoire, s'il est fondé sur un motif de distinction illicite, le fait, pour une organisation syndicale :

a) d'empêcher l'adhésion pleine et entière d'un individu;

b) d'expulser ou de suspendre un adhérent;

c) d'établir, à l'endroit d'un adhérent ou d'un individu à l'égard de qui elle a des obligations aux termes d'une convention collective, que celui-ci fasse ou non partie de l'organisation, des restrictions, des différences ou des catégories ou de prendre toutes autres mesures susceptibles soit de le priver de ses chances d'emploi ou d'avancement, soit de limiter ses chances d'emploi ou d'avancement, ou, d'une façon générale, de nuire à sa situation.

Organisations syndicales

(2) Ne constitue pas un acte discriminatoire au sens du paragraphe (1) le fait pour une organisation syndicale d'empêcher une adhésion ou d'expulser ou de suspendre un adhérent en appliquant la règle de l'âge normal de la retraite en vigueur pour le genre de poste occupé par l'individu concerné.

(3) [Abrogé, 1998, ch. 9, art. 12]

L.R. (1985), ch. H-6, art. 9; 1998, ch. 9, art. 12.

Exception

10. Constitue un acte discriminatoire, s'il est fondé sur un motif de distinction illicite et s'il est susceptible d'annihiler les chances d'emploi ou d'avancement d'un individu ou d'une catégorie d'individus, le fait, pour l'employeur, l'association patronale ou l'organisation syndicale :

a) de fixer ou d'appliquer des lignes de conduite;

b) de conclure des ententes touchant le recrutement, les mises en rapport, l'engagement, les promotions, la formation, l'apprentissage, les mutations ou tout autre aspect d'un emploi présent ou éventuel.

L.R. (1985), ch. H-6, art. 10; 1998, ch. 9, art. 13(A).

Lignes de conduite discriminatoires

Equal wages	11. (1) It is a discriminatory practice for an employer to establish or maintain differences in wages between male and female employees employed in the same establishment who are performing work of equal value.	11. (1) Constitue un acte discriminatoire le fait pour l'employeur d'instaurer ou de pratiquer la disparité salariale entre les hommes et les femmes qui exécutent, dans le même établissement, des fonctions équivalentes.	Disparité salariale discriminatoire
Assessment of value of work	(2) In assessing the value of work performed by employees employed in the same establishment, the criterion to be applied is the composite of the skill, effort and responsibility required in the performance of the work and the conditions under which the work is performed.	(2) Le critère permettant d'établir l'équivalence des fonctions exécutées par des salariés dans le même établissement est le dosage de qualifications, d'efforts et de responsabilités nécessaire pour leur exécution, compte tenu des conditions de travail.	Critère
Separate establishments	(3) Separate establishments established or maintained by an employer solely or principally for the purpose of establishing or maintaining differences in wages between male and female employees shall be deemed for the purposes of this section to be the same establishment.	(3) Les établissements distincts qu'un employeur aménage ou maintient dans le but principal de justifier une disparité salariale entre hommes et femmes sont réputés, pour l'application du présent article, ne constituer qu'un seul et même établissement.	Établissements distincts
Different wages based on prescribed reasonable factors	(4) Notwithstanding subsection (1), it is not a discriminatory practice to pay to male and female employees different wages if the difference is based on a factor prescribed by guidelines, issued by the Canadian Human Rights Commission pursuant to subsection 27(2), to be a reasonable factor that justifies the difference.	(4) Ne constitue pas un acte discriminatoire au sens du paragraphe (1) la disparité salariale entre hommes et femmes fondée sur un facteur reconnu comme raisonnable par une ordonnance de la Commission canadienne des droits de la personne en vertu du paragraphe 27(2).	Disparité salariale non discriminatoire
Idem	(5) For greater certainty, sex does not constitute a reasonable factor justifying a difference in wages.	(5) Des considérations fondées sur le sexe ne sauraient motiver la disparité salariale.	Idem
No reduction of wages	(6) An employer shall not reduce wages in order to eliminate a discriminatory practice described in this section.	(6) Il est interdit à l'employeur de procéder à des diminutions salariales pour mettre fin aux actes discriminatoires visés au présent article.	Diminutions de salaire interdites
Definition of "wages"	(7) For the purposes of this section, "wages" means any form of remuneration payable for work performed by an individual and includes (a) salaries, commissions, vacation pay, dismissal wages and bonuses; (b) reasonable value for board, rent, housing and lodging; (c) payments in kind; (d) employer contributions to pension funds or plans, long-term disability plans and all forms of health insurance plans; and (e) any other advantage received directly or indirectly from the individual's employer. 1976-77, c. 33, s. 11.	(7) Pour l'application du présent article, «salaire» s'entend de toute forme de rémunération payable à un individu en contrepartie de son travail et, notamment : a) des traitements, commissions, indemnités de vacances ou de licenciement et des primes; b) de la juste valeur des prestations en repas, loyers, logement et hébergement; c) des rétributions en nature; d) des cotisations de l'employeur aux caisses ou régimes de pension, aux régimes d'assurance contre l'invalidité prolongée et aux régimes d'assurance-maladie de toute nature; e) des autres avantages reçus directement ou indirectement de l'employeur. 1976-77, ch. 33, art. 11.	Définition de «salaire»

Publication of discriminatory notices, etc.

12. It is a discriminatory practice to publish or display before the public or to cause to be published or displayed before the public any notice, sign, symbol, emblem or other representation that

(a) expresses or implies discrimination or an intention to discriminate, or

(b) incites or is calculated to incite others to discriminate

if the discrimination expressed or implied, intended to be expressed or implied or incited or calculated to be incited would otherwise, if engaged in, be a discriminatory practice described in any of sections 5 to 11 or in section 14.

1976-77, c. 33, s. 12; 1980-81-82-83, c. 143, s. 6.

12. Constitue un acte discriminatoire le fait de publier ou d'exposer en public, ou de faire publier ou exposer en public des affiches, des écriteaux, des insignes, des emblèmes, des symboles ou autres représentations qui, selon le cas :

a) expriment ou suggèrent des actes discriminatoires au sens des articles 5 à 11 ou de l'article 14 ou des intentions de commettre de tels actes;

b) en encouragent ou visent à en encourager l'accomplissement.

1976-77, ch. 33, art. 12; 1980-81-82-83, ch. 143, art. 6.

Divulgateion de faits discriminatoires, etc.

Hate messages

13. (1) It is a discriminatory practice for a person or a group of persons acting in concert to communicate telephonically or to cause to be so communicated, repeatedly, in whole or in part by means of the facilities of a telecommunication undertaking within the legislative authority of Parliament, any matter that is likely to expose a person or persons to hatred or contempt by reason of the fact that that person or those persons are identifiable on the basis of a prohibited ground of discrimination.

13. (1) Constitue un acte discriminatoire le fait, pour une personne ou un groupe de personnes agissant d'un commun accord, d'utiliser ou de faire utiliser un téléphone de façon répétée en recourant ou en faisant recourir aux services d'une entreprise de télécommunication relevant de la compétence du Parlement pour aborder ou faire aborder des questions susceptibles d'exposer à la haine ou au mépris des personnes appartenant à un groupe identifiable sur la base des critères énoncés à l'article 3.

Propagande haineuse

Interpretation

(2) For greater certainty, subsection (1) applies in respect of a matter that is communicated by means of a computer or a group of interconnected or related computers, including the Internet, or any similar means of communication, but does not apply in respect of a matter that is communicated in whole or in part by means of the facilities of a broadcasting undertaking.

(2) Il demeure entendu que le paragraphe (1) s'applique à l'utilisation d'un ordinateur, d'un ensemble d'ordinateurs connectés ou reliés les uns aux autres, notamment d'Internet, ou de tout autre moyen de communication semblable mais qu'il ne s'applique pas dans les cas où les services d'une entreprise de radiodiffusion sont utilisés.

Interprétation

Interpretation

(3) For the purposes of this section, no owner or operator of a telecommunication undertaking communicates or causes to be communicated any matter described in subsection (1) by reason only that the facilities of a telecommunication undertaking owned or operated by that person are used by other persons for the transmission of that matter.

(3) Pour l'application du présent article, le propriétaire ou exploitant d'une entreprise de télécommunication ne commet pas un acte discriminatoire du seul fait que des tiers ont utilisé ses installations pour aborder des questions visées au paragraphe (1).

L.R. (1985), ch. H-6, art. 13; 2001, ch. 41, art. 88.

Interprétation

R.S., 1985, c. H-6, s. 13; 2001, c. 41, s. 88.

Harassment

14. (1) It is a discriminatory practice,
(a) in the provision of goods, services, facilities or accommodation customarily available to the general public,

14. (1) Constitue un acte discriminatoire, s'il est fondé sur un motif de distinction illicite, le fait de harceler un individu :

a) lors de la fourniture de biens, de services, d'installations ou de moyens d'hébergement destinés au public;

Harcèlement

(b) in the provision of commercial premises or residential accommodation, or

(c) in matters related to employment,

to harass an individual on a prohibited ground of discrimination.

b) lors de la fourniture de locaux commerciaux ou de logements;

c) en matière d'emploi.

Sexual harassment

(2) Without limiting the generality of subsection (1), sexual harassment shall, for the purposes of that subsection, be deemed to be harassment on a prohibited ground of discrimination.

1980-81-82-83, c. 143, s. 7.

(2) Pour l'application du paragraphe (1) et sans qu'en soit limitée la portée générale, le harcèlement sexuel est réputé être un harcèlement fondé sur un motif de distinction illicite.

1980-81-82-83, ch. 143, art. 7.

Harcèlement sexuel

Retaliation

14.1 It is a discriminatory practice for a person against whom a complaint has been filed under Part III, or any person acting on their behalf, to retaliate or threaten retaliation against the individual who filed the complaint or the alleged victim.

1998, c. 9, s. 14.

14.1 Constitue un acte discriminatoire le fait, pour la personne visée par une plainte déposée au titre de la partie III, ou pour celle qui agit en son nom, d'exercer ou de menacer d'exercer des représailles contre le plaignant ou la victime présumée.

1998, ch. 9, art. 14.

Représailles

Exceptions

15. (1) It is not a discriminatory practice if

(a) any refusal, exclusion, expulsion, suspension, limitation, specification or preference in relation to any employment is established by an employer to be based on a *bona fide* occupational requirement;

(b) employment of an individual is refused or terminated because that individual has not reached the minimum age, or has reached the maximum age, that applies to that employment by law or under regulations, which may be made by the Governor in Council for the purposes of this paragraph;

(c) an individual's employment is terminated because that individual has reached the normal age of retirement for employees working in positions similar to the position of that individual;

(d) the terms and conditions of any pension fund or plan established by an employer, employee organization or employer organization provide for the compulsory vesting or locking-in of pension contributions at a fixed or determinable age in accordance with sections 17 and 18 of the *Pension Benefits Standards Act, 1985*;

(e) an individual is discriminated against on a prohibited ground of discrimination in a manner that is prescribed by guidelines, issued by the Canadian Human Rights Commission pursuant to subsection 27(2), to be reasonable;

15. (1) Ne constituent pas des actes discriminatoires :

a) les refus, exclusions, expulsions, suspensions, restrictions, conditions ou préférences de l'employeur qui démontre qu'ils découlent d'exigences professionnelles justifiées;

b) le fait de refuser ou de cesser d'employer un individu qui n'a pas atteint l'âge minimal ou qui a atteint l'âge maximal prévu, dans l'un ou l'autre cas, pour l'emploi en question par la loi ou les règlements que peut prendre le gouverneur en conseil pour l'application du présent alinéa;

c) le fait de mettre fin à l'emploi d'une personne en appliquant la règle de l'âge de la retraite en vigueur pour ce genre d'emploi;

d) le fait que les conditions et modalités d'une caisse ou d'un régime de retraite constitués par l'employeur, l'organisation patronale ou l'organisation syndicale prévoient la dévolution ou le blocage obligatoires des cotisations à des âges déterminés ou déterminables conformément aux articles 17 et 18 de la *Loi de 1985 sur les normes de prestation de pension*;

e) le fait qu'un individu soit l'objet d'une distinction fondée sur un motif illicite, si celle-ci est reconnue comme raisonnable par une ordonnance de la Commission canadienne des droits de la personne rendue en vertu du paragraphe 27(2);

Exceptions

	<p>(f) an employer, employee organization or employer organization grants a female employee special leave or benefits in connection with pregnancy or child-birth or grants employees special leave or benefits to assist them in the care of their children; or</p> <p>(g) in the circumstances described in section 5 or 6, an individual is denied any goods, services, facilities or accommodation or access thereto or occupancy of any commercial premises or residential accommodation or is a victim of any adverse differentiation and there is <i>bona fide</i> justification for that denial or differentiation.</p>	<p>f) le fait pour un employeur, une organisation patronale ou une organisation syndicale d'accorder à une employée un congé ou des avantages spéciaux liés à sa grossesse ou à son accouchement, ou d'accorder à ses employés un congé ou des avantages spéciaux leur permettant de prendre soin de leurs enfants;</p> <p>g) le fait qu'un fournisseur de biens, de services, d'installations ou de moyens d'hébergement destinés au public, ou de locaux commerciaux ou de logements en prive un individu ou le défavorise lors de leur fourniture pour un motif de distinction illicite, s'il a un motif justifiable de le faire.</p>	
Accommodation of needs	(2) For any practice mentioned in paragraph (1)(a) to be considered to be based on a <i>bona fide</i> occupational requirement and for any practice mentioned in paragraph (1)(g) to be considered to have a <i>bona fide</i> justification, it must be established that accommodation of the needs of an individual or a class of individuals affected would impose undue hardship on the person who would have to accommodate those needs, considering health, safety and cost.	(2) Les faits prévus à l'alinéa (1)a) sont des exigences professionnelles justifiées ou un motif justifiable, au sens de l'alinéa (1)g), s'il est démontré que les mesures destinées à répondre aux besoins d'une personne ou d'une catégorie de personnes visées constituent, pour la personne qui doit les prendre, une contrainte excessive en matière de coûts, de santé et de sécurité.	Besoins des individus
Regulations	(3) The Governor in Council may make regulations prescribing standards for assessing undue hardship.	(3) Le gouverneur en conseil peut, par règlement, déterminer les critères d'évaluation d'une contrainte excessive.	Règlement
Publication of proposed regulations	(4) Each regulation that the Governor in Council proposes to make under subsection (3) shall be published in the <i>Canada Gazette</i> and a reasonable opportunity shall be given to interested persons to make representations in respect of it.	(4) Les projets de règlement d'application du paragraphe (3) sont publiés dans la <i>Gazette du Canada</i> , les intéressés se voyant accorder la possibilité de présenter leurs observations à cet égard.	Prépublication
Consultations	(5) The Canadian Human Rights Commission shall conduct public consultations concerning any regulation proposed to be made by the Governor in Council under subsection (3) and shall file a report of the results of the consultations with the Minister within a reasonable time after the publication of the proposed regulation in the <i>Canada Gazette</i> .	(5) La Commission des droits de la personne tient des consultations publiques concernant tout projet de règlement publié au titre du paragraphe (4) et fait rapport au gouverneur en conseil dans les meilleurs délais.	Consultations
Exception	(6) A proposed regulation need not be published more than once, whether or not it has been amended as a result of any representations.	(6) La modification du projet de règlement n'entraîne pas une nouvelle publication.	Modification
Making of regulations	(7) The Governor in Council may proceed to make regulations under subsection (3) after six months have elapsed since the publication of the proposed regulations in the <i>Canada Gazette</i> ,	(7) Faute par la Commission de lui remettre son rapport dans les six mois qui suivent la publication du projet de règlement, le gouverneur en conseil peut procéder à la prise du règlement.	Prise du règlement

whether or not a report described in subsection (5) is filed.

Application

(8) This section applies in respect of a practice regardless of whether it results in direct discrimination or adverse effect discrimination.

(8) Le présent article s'applique à tout fait, qu'il ait pour résultat la discrimination directe ou la discrimination par suite d'un effet préjudiciable.

Application

Universality of service for Canadian Forces

(9) Subsection (2) is subject to the principle of universality of service under which members of the Canadian Forces must at all times and under any circumstances perform any functions that they may be required to perform.

(9) Le paragraphe (2) s'applique sous réserve de l'obligation de service imposée aux membres des Forces canadiennes, c'est-à-dire celle d'accomplir en permanence et en toutes circonstances les fonctions auxquelles ils peuvent être tenus.

Universalité du service au sein des Forces canadiennes

R.S., 1985, c. H-6, s. 15; R.S., 1985, c. 32 (2nd Supp.), s. 41; 1998, c. 9, ss. 10, 15.

L.R. (1985), ch. H-6, art. 15; L.R. (1985), ch. 32 (2^e suppl.), art. 41; 1998, ch. 9, art. 10 et 15.

Special programs

16. (1) It is not a discriminatory practice for a person to adopt or carry out a special program, plan or arrangement designed to prevent disadvantages that are likely to be suffered by, or to eliminate or reduce disadvantages that are suffered by, any group of individuals when those disadvantages would be based on or related to the prohibited grounds of discrimination, by improving opportunities respecting goods, services, facilities, accommodation or employment in relation to that group.

16. (1) Ne constitue pas un acte discriminatoire le fait d'adopter ou de mettre en œuvre des programmes, des plans ou des arrangements spéciaux destinés à supprimer, diminuer ou prévenir les désavantages que subit ou peut vraisemblablement subir un groupe d'individus pour des motifs fondés, directement ou indirectement, sur un motif de distinction illicite en améliorant leurs chances d'emploi ou d'avancement ou en leur facilitant l'accès à des biens, à des services, à des installations ou à des moyens d'hébergement.

Programmes de promotion sociale

Advice and assistance

(2) The Canadian Human Rights Commission, may

(2) La Commission canadienne des droits de la personne peut :

Concours

(a) make general recommendations concerning desirable objectives for special programs, plans or arrangements referred to in subsection (1); and

a) faire des recommandations d'ordre général, relatives aux objectifs souhaitables pour les programmes, biens ou arrangements visés au paragraphe (1);

(b) on application, give such advice and assistance with respect to the adoption or carrying out of a special program, plan or arrangement referred to in subsection (1) as will serve to aid in the achievement of the objectives the program, plan or arrangement was designed to achieve.

b) sur demande, prêter son concours à l'adoption ou à la mise en œuvre des programmes, plans ou arrangements visés au paragraphe (1).

Collection of information relating to prohibited grounds

(3) It is not a discriminatory practice to collect information relating to a prohibited ground of discrimination if the information is intended to be used in adopting or carrying out a special program, plan or arrangement under subsection (1).

(3) Ne constitue pas un acte discriminatoire le fait de recueillir des renseignements relatifs à un motif de distinction illicite s'ils sont destinés à servir lors de l'adoption ou de la mise en œuvre des programmes, plans ou arrangements visés au paragraphe (1).

Renseignements relatifs à un motif de distinction illicite

R.S., 1985, c. H-6, s. 16; 1998, c. 9, s. 16.

L.R. (1985), ch. H-6, art. 16; 1998, ch. 9, art. 16.

Plans to meet the needs of disabled persons

17. (1) A person who proposes to implement a plan for adapting any services, facilities, premises, equipment or operations to meet the needs of persons arising from a disability may

17. (1) La personne qui entend mettre en œuvre un programme prévoyant l'adaptation de services, d'installations, de locaux, d'activités ou de matériel aux besoins particuliers des person-

Programme d'adaptation

apply to the Canadian Human Rights Commission for approval of the plan.

nes atteintes d'une déficience peut en demander l'approbation à la Commission canadienne des droits de la personne.

Approval of plan

(2) The Commission may, by written notice to a person making an application pursuant to subsection (1), approve the plan if the Commission is satisfied that the plan is appropriate for meeting the needs of persons arising from a disability.

(2) La Commission peut, par avis écrit à l'auteur de la demande visée au paragraphe (1), approuver le programme si elle estime que celui-ci convient aux besoins particuliers des personnes atteintes d'une déficience.

Approbation du programme

Effect of approval of accommodation plan

(3) Where any services, facilities, premises, equipment or operations are adapted in accordance with a plan approved under subsection (2), matters for which the plan provides do not constitute any basis for a complaint under Part III regarding discrimination based on any disability in respect of which the plan was approved.

(3) Dans le cas où des services, des installations, des locaux, des activités ou du matériel ont été adaptés conformément à un programme approuvé en vertu du paragraphe (2), les questions auxquelles celui-ci pourvoit ne peuvent servir de fondement à une plainte déposée en vertu de la partie III portant sur une déficience visée par le programme.

Conséquence de l'approbation

Notice when application not granted

(4) When the Commission decides not to grant an application made pursuant to subsection (1), it shall send a written notice of its decision to the applicant setting out the reasons for its decision.

(4) Dans le cas où elle décide de refuser la demande présentée en vertu du paragraphe (1), la Commission envoie à son auteur un avis exposant les motifs du refus.

Avis de refus

1980-81-82-83, c. 143, s. 9.

1980-81-82-83, ch. 143, art. 9.

Rescinding approval of plan

18. (1) If the Canadian Human Rights Commission is satisfied that, by reason of any change in circumstances, a plan approved under subsection 17(2) has ceased to be appropriate for meeting the needs of persons arising from a disability, the Commission may, by written notice to the person who proposes to carry out or maintains the adaptation contemplated by the plan or any part thereof, rescind its approval of the plan to the extent required by the change in circumstances.

18. (1) La Commission canadienne des droits de la personne peut, par avis écrit à la personne qui entend adapter les services, les installations, les locaux, les activités ou le matériel conformément à un programme approuvé en vertu du paragraphe 17(2), en annuler l'approbation, en tout ou en partie, si elle estime que, vu les circonstances nouvelles, celui-ci ne convient plus aux besoins particuliers des personnes atteintes d'une déficience.

Annulation de l'approbation

Effect where approval rescinded

(2) To the extent to which approval of a plan is rescinded under subsection (1), subsection 17(3) does not apply to the plan if the discriminatory practice to which the complaint relates is subsequent to the rescission of the approval.

(2) Le paragraphe 17(3) ne s'applique pas à un programme, dans la mesure où celui-ci est annulé en vertu du paragraphe (1), si l'acte discriminatoire dénoncé par la plainte est postérieur à l'annulation.

Conséquence de l'annulation

Statement of reasons for rescinding approval

(3) Where the Commission rescinds approval of a plan pursuant to subsection (1), it shall include in the notice referred to therein a statement of its reasons therefor.

(3) Dans le cas où elle annule l'approbation d'un programme en vertu du paragraphe (1), la Commission indique dans l'avis y mentionné les motifs de l'annulation.

Motifs de l'annulation

1980-81-82-83, c. 143, s. 9.

1980-81-82-83, ch. 143, art. 9.

Opportunity to make representations

19. (1) Before making its decision on an application or rescinding approval of a plan pursuant to section 17 or 18, the Canadian Human Rights Commission shall afford each

19. (1) Avant de rendre une décision en vertu des paragraphes 17(2) ou 18(1), la Commission canadienne des droits de la personne donne aux

Possibilité de présenter des observations

person directly concerned with the matter an opportunity to make representations with respect thereto.

intéressés la possibilité de présenter des observations à son sujet.

Restriction on
deeming plan
inappropriate

(2) For the purposes of sections 17 and 18, a plan shall not, by reason only that it does not conform to any standards prescribed pursuant to section 24, be deemed to be inappropriate for meeting the needs of persons arising from disability.

1980-81-82-83, c. 143, s. 9.

(2) Pour l'application des articles 17 et 18, un programme n'est pas inadapté aux besoins particuliers des personnes atteintes d'une déficience du seul fait qu'il est incompatible avec les normes établies en vertu de l'article 24.

1980-81-82-83, ch. 143, art. 9.

Réserve

Certain provi-
sions not
discriminatory

20. A provision of a pension or insurance fund or plan that preserves rights acquired before March 1, 1978 or that preserves pension or other benefits accrued before that day does not constitute the basis for a complaint under Part III that an employer, employee organization or employer organization is engaging or has engaged in a discriminatory practice.

R.S., 1985, c. H-6, s. 20; 1998, c. 9, s. 17.

20. Les dispositions des caisses ou régimes de pension et des régimes ou fonds d'assurance protégeant les droits acquis avant le 1^{er} mars 1978 ou maintenant le droit aux prestations de pension ou autres accumulées avant cette date ne peuvent servir de fondement à une plainte déposée au titre de la partie III pour actes discriminatoires commis par l'employeur, l'organisation patronale ou l'organisation syndicale.

L.R. (1985), ch. H-6, art. 20; 1998, ch. 9, art. 17.

Dispositions non
discriminatoires

Funds and plans

21. The establishment of separate pension funds or plans for different groups of employees does not constitute the basis for a complaint under Part III that an employer, employee organization or employer organization is engaging or has engaged in a discriminatory practice if the employees are not grouped in those funds or plans according to a prohibited ground of discrimination.

R.S., 1985, c. H-6, s. 21; 1998, c. 9, s. 17.

21. La constitution de caisses ou de régimes de pension distincts pour différents groupes d'employés ne peut servir de fondement à une plainte déposée au titre de la partie III pour actes discriminatoires commis par l'employeur, l'organisation patronale ou l'organisation syndicale, lorsque ces groupes ne sont pas établis par suite de distinctions illicites.

L.R. (1985), ch. H-6, art. 21; 1998, ch. 9, art. 17.

Caisses ou
régimes

Regulations

22. The Governor in Council may, by regulation, prescribe the provisions of any pension or insurance fund or plan, in addition to the provisions described in sections 20 and 21, that do not constitute the basis for a complaint under Part III that an employer, employee organization or employer organization is engaging or has engaged in a discriminatory practice.

R.S., 1985, c. H-6, s. 22; 1998, c. 9, s. 17.

22. Outre les cas prévus aux articles 20 et 21, le gouverneur en conseil peut, par règlement, déterminer quelles dispositions des caisses ou régimes de pension et des régimes ou fonds d'assurance ne peuvent servir de fondement à une plainte déposée au titre de la partie III pour actes discriminatoires commis par l'employeur, l'organisation patronale ou l'organisation syndicale.

L.R. (1985), ch. H-6, art. 22; 1998, ch. 9, art. 17.

Règlements

Regulations

23. The Governor in Council may make regulations respecting the terms and conditions to be included in or applicable to any contract, licence or grant made or granted by Her Majesty in right of Canada providing for

(a) the prohibition of discriminatory practices described in sections 5 to 14.1; and

(b) the resolution, by the procedure set out in Part III, of complaints of discriminatory

23. Le gouverneur en conseil peut, par règlement, assortir les contrats, permis, licences ou subventions accordés par Sa Majesté du chef du Canada, de conditions et modalités prévoyant :

a) l'interdiction des actes discriminatoires visés aux articles 5 à 14.1;

Règlements

	practices contrary to such terms and conditions. R.S., 1985, c. H-6, s. 23; 1998, c. 9, s. 18.	b) le règlement, conformément à la procédure de la partie III, des plaintes relatives aux actes discriminatoires ainsi interdits. L.R. (1985), ch. H-6, art. 23; 1998, ch. 9, art. 18.	
Accessibility standards	24. (1) The Governor in Council may, for the benefit of persons having any disability, make regulations prescribing standards of accessibility to services, facilities or premises.	24. (1) Le gouverneur en conseil peut, par règlement, établir au profit des personnes atteintes d'une déficience des normes d'accès aux services, aux installations ou aux locaux.	Établissement de normes d'accès
Effect of meeting accessibility standards	(2) Where standards prescribed pursuant to subsection (1) are met in providing access to any services, facilities or premises, a matter of access thereto does not constitute any basis for a complaint under Part III regarding discrimination based on any disability in respect of which the standards are prescribed.	(2) Dans le cas où l'accès aux services, aux installations ou aux locaux est assuré conformément aux normes établies en vertu du paragraphe (1), l'accès à ceux-ci ne peut servir de fondement à une plainte déposée en vertu de la partie III portant sur une déficience visée par les normes.	Conséquence du respect des normes
Publication of proposed regulations	(3) Subject to subsection (4), a copy of each regulation that the Governor in Council proposes to make pursuant to this section shall be published in the <i>Canada Gazette</i> and a reasonable opportunity shall be afforded to interested persons to make representations with respect thereto.	(3) Sous réserve du paragraphe (4), les projets de règlements d'application du présent article sont publiés dans la <i>Gazette du Canada</i> , les intéressés se voyant accorder la possibilité de présenter leurs observations à cet égard.	Publication des projets de règlements
Exception	(4) Subsection (3) does not apply in respect of a proposed regulation that has been published pursuant to that subsection, whether or not it has been amended as a result of representations made pursuant to that subsection.	(4) Ne sont pas visés les projets de règlement déjà publiés dans les conditions prévues au paragraphe (3), qu'ils aient été modifiés ou non à la suite d'observations présentées conformément à ce paragraphe.	Exception
Discriminatory practice not constituted by variance from standards	(5) Nothing shall, by virtue only of its being at variance with any standards prescribed pursuant to subsection (1), be deemed to constitute a discriminatory practice. 1980-81-82-83, c. 143, s. 11.	(5) L'incompatibilité avec les normes établies en vertu du paragraphe (1) ne peut être assimilée à un acte discriminatoire. 1980-81-82-83, ch. 143, art. 11.	Incompatibilité
Definitions	25. In this Act,	25. Les définitions qui suivent s'appliquent à la présente loi.	Définitions
"conviction for which a pardon has been granted" « état de personne graciée »	"conviction for which a pardon has been granted" means a conviction of an individual for an offence in respect of which a pardon has been granted by any authority under law and, if granted or issued under the <i>Criminal Records Act</i> , has not been revoked or ceased to have effect;	«déficience» Déficience physique ou mentale, qu'elle soit présente ou passée, y compris le défigurement ainsi que la dépendance, présente ou passée, envers l'alcool ou la drogue.	«déficience» "disability"
"disability" «déficience»	"disability" means any previous or existing mental or physical disability and includes disfigurement and previous or existing dependence on alcohol or a drug;	« emploi » Y est assimilé le contrat conclu avec un particulier pour la fourniture de services par celui-ci.	« emploi » "employment"
"employee organization" « organisation syndicale »	"employee organization" includes a trade union or other organization of employees or a local, the purposes of which include the negotiation of terms and conditions of employment on behalf of employees;	« état de personne graciée » État d'une personne physique qui a légalement obtenu une réhabilitation qui, si elle a été octroyée ou délivrée en vertu de la <i>Loi sur le casier judiciaire</i> , n'a pas été révoquée ou annulée.	« état de personne graciée » "conviction for which a pardon has been granted"
		« organisation patronale » Groupement d'employeurs ayant notamment pour objet de	« organisation patronale » "employer organization"