

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

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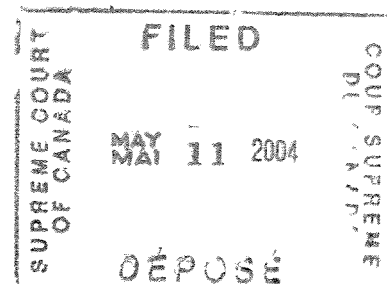
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PART I

STATEMENT OF FACTS

1. The Intervener, the Manitoba Human Rights Commission (the "Commission") does not take issue with the facts as set out by the Attorney General of Canada.
2. The Commission is the statutory agency created by the Manitoba *Human Rights Code* (the "Code"), which is vested with responsibility for the administration and enforcement of that *Code*.

PART II**QUESTIONS IN ISSUE**

3. Subject to one clarifying proviso, the Commission concurs with both the answers provided by the Attorney General of Canada (the "AGC") to the four questions referred to this Court, and with the reasoning advanced by the AGC for those answers. (With respect to question three, the Commission assumes the reference is to "religious officials" who at the operative time are functioning in an official religious capacity.)
4. The Commission is of the view that the Reference questions have been more than adequately addressed by the AGC's submissions in terms of the relevant Canadian law (and will likely be addressed in further detail by many other interveners who support the position of the Canadian government). Rather than risk unhelpful repetition of these arguments, therefore, the Commission wishes to address certain developments in international human rights jurisprudence which cast into doubt the common law definition of 'marriage', as it existed in this country before the Ontario, British Columbia and Quebec appellate court decisions which precipitated this Reference.
5. It is the Commission's position that the developing international human rights jurisprudence is helpful in addressing the evolving principles at play in this Reference; and that this Reference and the proposed federal legislation provide Canada with the opportunity to play a leading role internationally in furthering greater equality for people involved in same sex relationships.
6. The Commission will also make a brief submission concerning the difficult issues that may arise if the proposed federal legislation is not enacted, and the current situation continues wherein same sex marriages are legal in British Columbia, Ontario and Quebec, but are apparently not recognized by the common law as applied in other jurisdictions, including Manitoba.

PART III
STATEMENT OF ARGUMENT

Introduction

7. As the preamble to *The Human Rights Code*, S.M. 1987-88 c. 45-Cap.H175 (the "Code") indicates, human rights principles in Manitoba are significantly informed by developments on the international human rights stage. The preamble to the *Code* states in part:

WHEREAS Manitobans recognize the individual worth and dignity of every member of the human family, and this principle underlies the *Universal Declaration of Human Rights*, the *Canadian Charter of Rights and Freedoms*, and other solemn undertakings, international and domestic, that Canadians honour;

AND WHEREAS Manitobans recognize that

- (a) implicit in the above principle is the right of all individuals to be treated in all matters solely on the basis of their personal merits, and to be accorded equality of opportunity with all other individuals;
- (b) to protect this right it is necessary to restrict unreasonable discrimination against individuals, including discrimination based on stereotypes or generalizations about groups with whom they are or are thought to be associated, and to ensure that reasonable accommodation is made for those with special needs;
- ...
- (e) these various protections for the human rights of Manitobans are of such fundamental importance that they merit paramount status over all other laws of the province;¹

8. Sexual orientation is one of the applicable characteristics attracting human rights protections under the *Code*.²

¹ *The Human Rights Code* C.C.S.M. c. H175

² *Ibid* s. 9(2)(h)

9. The Commission is constituted under the *Code* as the provincial regulatory agency responsible for the enforcement of human rights and the prevention of discriminatory practices in the province of Manitoba. It discharges its statutory mandate through a process of receiving complaints of discrimination alleged to have occurred within its jurisdiction, investigating and endeavouring to resolve such complaints and, where necessary, having carriage of any complaints which have been sent to adjudication. In addition to its specific enforcement obligations relating to complaints, the Commission is charged with an array of significant, albeit more general, proactive functions pursuant to s. 4 of the *Code*. These functions include the promotion of the equality and dignity interests referenced in the Preamble; the provision of public education with respect to such; and the promotion of understanding, acceptance, and compliance with the principles set out in the *Code*. The Commission promotes awareness that human rights are not a static concept, and that the nature and content of protected human rights is in a state of evolution.
10. As part of this educational/advocacy function the Commission sought the opportunity to make submissions before this Court on the present Reference, both with respect to the implications within its jurisdiction that could flow from the Reference, and more broadly with respect to the evolving understanding of equality principles in international human rights law, as they apply to gays and lesbians.
11. The Commission has not been in a position to engage its complaint mechanism on the subject of gay marriage, for obvious constitutional reasons. [See the discussion regarding the *North* decision, *infra*]. However, it has been actively involved in the reform of the wide range of provincial laws and policies which impact on the relationships formed by gays and lesbians that has taken place in Manitoba following this Court's decision in *M. v. H.*³ Manitoba embarked on a two stage reappraisal of its laws relating to same sex relationships, ultimately

³ *M. v. H.* [1999] 2 S.C.R. 3 [AGC's Authorities Vol II, TAB 20]

resulting in *An Act to comply with the Supreme Court Decision in M. v. H* and *The Common Law Partners' Property and Related Amendments Act*.⁴ The Commission appeared before the Committee of the Manitoba Legislature that reviewed each of these significant pieces of legislation, and endorsed these bills. However, the Commission maintained that the best and most appropriate method of addressing equality issues generated by same sex partnerships is to afford same sex partners the legal right to marry. The Commission also made similar submissions in an appearance before the House of Commons Standing Committee on Justice and Human Rights on the Issue of Marriage and the Legal Recognition of Same-Sex Unions, when that Committee held public hearings in Steinbach, Manitoba on April 4, 2003.

12. It remains the Commission's position that this is the only method of fully addressing current inequalities relating to spousal relationships. As has been canvassed in the background material generated by *Halpern* and the other appellate decisions on same sex marriage, an ostensibly parallel system of registered domestic partnerships (by various names) still generates (or maintains) systemic discrimination in many areas. Marriage is frequently referred to as a basic, fundamental institution in our society. Anything short of opening the doors of that institution to same sex partners is contrary to the *Charter* equality requirements, as has already been determined by the appellate courts in B.C. and Ontario and now by the Quebec Court of Appeal in *Ligue catholique pour les droits de l'homme c. Hendricks*.⁵

⁴ *An Act to comply with the Supreme Court Decision in M. v. H.*, S.M. 2001 c. 37 and *The Common Law Partners' Property and Related Amendments Act* S.M. 2002 c. 48.

⁵ *Halpern v. Canada (Attorney General)* (2003) 225 D.L.R. (4th) 529 (Ont.CA) [AGC's Authorities, Vol I, TAB 12], *EGALE Canada Inc. v. Canada (Attorney General)* (2003) 225 D.L.R. (4th) 475 (B.C.CA) [AGC's Authorities, Vol I, TAB 8] and *Ligue catholique pour les droits de l'homme c. Hendricks* [2004] J.Q. No. 5293 [AGC's Supplementary Authorities, TAB 4], (referred to collectively as the "appellate decisions")

Same Sex Marriage in Manitoba: The *North* Decision

13. One of the earliest judicial forays into the issue of same sex marriage was a Manitoba decision, *North v. Manitoba (Recorder of Vital Statistics)*⁶, wherein a gay couple were unsuccessful in their attempts to register their marriage. Philp C.J. found that although “marriage” had not been defined by Parliament or by the Legislature of Manitoba, it had nonetheless been judicially defined; under the common law, marriage had to be the union of one man and one woman. The Court cited two authorities for this, *Hyde v. Hyde*⁷, and a more recent British decision, *Corbett v. Corbett*⁸.

14. *Corbett* dealt with an attempted marriage involving a person who had been born male but had undergone gender reassignment surgery, was living as a woman, and wanted to marry a man. The Court, acknowledging the common law rule from *Hyde*, found that the definitions of ‘man’ and ‘woman’ implicit in the common law definition of marriage were determined at birth by chromosome structure. Once a man, always a man!

15. Philp C.J. quoted *Corbett*:

The fundamental purpose of law is the regulation of the relations between persons, and between persons and the State or community. For the limited purposes of this case, legal relations can be classified into those in which the sex of the individuals concerned is either irrelevant, relevant or an essential determinant of the nature of their relationship....Sex is clearly an essential determinant of the relationship called marriage, because it is and always has been recognized as the union of man and woman. It is the institution on which the family is built, and in which the capacity for natural heterosexual intercourse is an essential element. It has, of course, many

⁶ *North v. Manitoba (Recorder of Vital Statistics)* [1974] M.J. No. 269 [Manitoba Commission's Authorities, TAB 1]

⁷ *Hyde v. Hyde* (1866), All E.R.Rep. 175 [AGC's Supplementary Authorities, TAB 3]

⁸ *Corbett v. Corbett* [1970] 2 All E.R. 33 [Manitoba Commission's Authorities, TAB 2]

other characteristics, of which companionship and mutual support is an important one, but the characteristics which distinguish it from all rather relationships can only be met by two persons of the opposite sex⁹

16. The limits imposed on the common law definition of marriage by *Hyde* and *Corbett* were quite properly rejected by appellate courts in Ontario, British Columbia and Quebec, which recognized that the term could not have a “constitutionally fixed meaning”, and that there was a need for “the constitutional flexibility necessary to meet changing realities of Canadian society ...”¹⁰
17. It is worth noting as well that *Corbett* has recently, and successfully, been challenged by a citizen of the United Kingdom, under international human rights principles.

The Goodwin decision

18. *Christine Goodwin v. The United Kingdom*¹¹, a decision of the European Court of Human Rights, is a recent example of the continuing (and by international law standards, rapid) evolution in international human rights principles. Ms. Goodwin alleged that the United Kingdom violated the *European Convention on Human Rights*¹² by determining that ‘sex’ (for the purposes of a variety of laws and enactments) was fixed by ‘birth’ or ‘chromosomal’ criteria, without regard to an individual’s ‘mental’ or ‘brain’ sex, or to any treatment or procedures undergone to acquire characteristics of another sex. Amongst other things, this approach meant that the applicant, a post-operative male-to-female transsexual, could not marry a man, and although she had lived her life fully as a woman for many years, was treated as still being a man for determination of contribution requirements, and eligibility to retire, with respect to the state pension. (United

⁹ *Ibid* at page 48 [Manitoba Commission’s Authorities, TAB 2]

¹⁰ *supra* note 5, *Halpern* at para 46 [AGC’s Authorities Vol 1, TAB 12]

¹¹ *Christine Goodwin v. The United Kingdom* (Application no. 28957/95, Judgement dated July 11, 2002) [Manitoba Commission’s Authorities, TAB 3]

¹² See *The European Convention on Human Rights* [Manitoba Commission’s Authorities TAB 7]

Kingdom allows women to commence receipt of state pension at the age of 60, but men must be 65).

19. A few years earlier, in a similar case, the same Court had upheld Britain's position that sex should be determined based on chromosomal characteristics (i.e. the "once a man, always a man" principle enunciated in *Corbett*).
20. In *Goodwin*, however, the European Court came to a different conclusion:

While the Court is not formally bound to follow its previous judgments, it is in the interests of legal certainty, foreseeability and equality before the law that it should not depart, without good reason, from precedents laid down in previous cases...However, since the Convention is first and foremost a system for the protection of human rights, the Court must have regard to the changing conditions within the respondent's State and within Contracting States generally and respond, for example, to any evolving convergence as to the standards to be achieved...It is of crucial importance that the Convention is interpreted and applied in a manner which renders its rights practical and effective, not theoretical and illusory. A failure by the Court to maintain a dynamic and evolutive approach would indeed risk rendering it a bar to reform or improvement.... [emphasis added]¹³

21. The applicant alleged a breach of a number of provisions of *The European Convention*, including Article 8 ("everyone has the right to respect for his private...life..."), Article 12 ("men and women of marriageable age have the right to marry and to found a family, according to the national laws governing the exercise of this right"), Article 14 ("the enjoyment of the rights and freedoms set out in this Convention shall be secured without discrimination on any grounds such as...sex..."), etc.
22. The Court ruled that the impugned legislation was a serious interference with private life, and therefore violated Article 8. It was "struck by the fact that...gender re-assignment, which is lawfully provided is not met with full recognition in law, which might be regarded as the final and culminating step in

¹³ *Ibid* at para 74 [Manitoba Commission's Authorities, TAB 3]

the long and difficult process of transformation which the transsexual has undergone" [emphasis added].¹⁴

23. It also found a violation of Article 12, the right to marry, noting:

The exercise of the right to marry gives rise to social, personal and legal consequences...

It is true that the first sentence [of the Article] refers in express terms to the right of man and woman to marry. The Court is not persuaded that at the date of this case, it can still be assumed that these terms must refer to a determination of gender by purely biological criteria (as held...in *Corbett v. Corbett*...). There have been major social changes in the institution of marriage since the adoption of the Convention...the Court would also note that Article 9 of the recently adopted *Charter of Fundamental Rights of the European Union* departs, no doubt deliberately, from the wording of Article 12 of the *Convention* in removing the reference to men and women.¹⁵

24. Because of its findings with respect to Article 8 and 12, the Court did not consider it necessary to rule on Article 14.
25. Canada is not a signatory of *The European Convention on Human Rights*, but the approach of this international Court is compelling; and it is worthy of note that the Family Court of Australia recently cited the *Goodwin* decision with approval.¹⁶

¹⁴ *supra* note 11 at para 78 [Manitoba Commission's Authorities, TAB 3]

¹⁵ *supra* note 11 at paras 99 and 100 [Manitoba Commission's Authorities, TAB 3]

¹⁶ *The Attorney-General for the Commonwealth & "Kevin and Jennifer" & Human Rights and Equal Opportunity Commission* [2003] FamCa 94 (21 February 2003) at para 298 et seq [Manitoba Commission's Authorities, TAB 4]

Other Signs of Evolution in International Human Rights Law

26. International human rights conventional law is a relatively recent (i.e. post World War II) development. The numerous international conventions under the United Nations umbrella, while addressing the rights of minorities in a wide range of areas, did not include express protections based on sexual orientation. However, subsequent jurisprudence has evolved to recognize gay and lesbians as a protected group in certain circumstances. For example in the case of *Toonen v. Australia*¹⁷, the Human Rights Committee ruled that Articles 2 (para 1) and 26 of the *International Covenant on Civil and Political Rights* (ICCPR)¹⁸ precluded the criminalization of homosexual practices between consenting adults, in private. The Committee stated that “the reference to ‘sex’ in Articles 2(1) and 26 [of the ICCPR] is to be taken as including sexual orientation”.¹⁹ This is a fundamentally important decision that confirms that the prohibition against ‘sex discrimination’ in these many instruments protects gays and lesbians.
27. Nonetheless, international human rights law in this area, [other than in the context of the aforementioned *European Convention on Human Rights*] has quite frankly, not kept pace with *Charter* equality analysis as reflected in the “appellate decisions”. Indeed, in *Joslin et al v. New Zealand*²⁰ the UN’s Human Rights Committee refused to interpret Article 23, para 2 of the *International Covenant on Civil and Political Rights* as applying to same sex marriage. Article 23 provides:
1. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

¹⁷ *Toonen v. Australia* (1994) (Communication No. 488/1992 [Manitoba Commission’s Authorities TAB 5])

¹⁸ See *International Covenant on Civil and Political Rights* (ICCPR) [Manitoba Commission’s Authorities TAB 8]

¹⁹ *Toonen, supra* at para 8.7

²⁰ *Joslin et al. v. New Zealand* (2002) (Communication No. 902/1999) [Manitoba Commission’s Authorities TAB 6]

2. The right of men and women of marriageable age to marry and to found a family shall be recognized...²¹
28. It is submitted that this interpretation is far too narrow, and that the purposive interpretation given by the European Court in *Goodwin*, to a largely identical Article, is both correct and desirable.
29. The Commission has followed international human rights developments with considerable interest. The promotion and development of human rights in this country has often been informed by international developments, in a positive way. Now may be the time for a reversal of roles. The Commission sees this Reference as an opportunity for Canada to play a leadership role in the evolution of an enhanced international understanding of the human rights principles at play in this area. This Court's decision in this Reference, and the enactment of the proposed federal legislation, will create a helpful precedent for future developments in the international human rights sphere, and may assist international treaty bodies in progressively interpreting equality principles in light of changing conditions and societal attitudes.

The Need for a National Resolution of the Issue

30. The Commission supports the proposed federal legislative initiative because it is necessary in order to secure equal treatment for gays and lesbians, in their personal conjugal relationships. However, should it not be enacted for any reason, the Commission recognizes that troubling questions are likely to arise unless the issue of the constitutional validity of the common law definition of marriage is resolved, on a national basis. If question four is not answered [and the Commission submits that for all the reasons proffered by the Attorney General of Canada it must be answered in the negative], same sex marriages will be lawful in Ontario, British Columbia and Quebec because the common law has

²¹ supra note 18

been altered by the appellate decisions in those jurisdictions. However, it would appear that the traditional common law rule on marriage, reflected in *North* may well continue to apply in Manitoba, at least until a Court in this jurisdiction rules otherwise. Although much has been done to treat same sex relationships like opposite sex common law relationships, all gay and lesbian couples would still face the waiting periods required before common law relationships are recognized in law, before acquiring many of the 'spousal' rights, benefits and liabilities that are generated automatically upon marriage for those (in Manitoba currently, exclusively opposite sex) couples who chose to marry. Other interesting questions may also arise. For example, marriages in one province have hitherto been given legal effect in other provinces. If a gay marriage solemnized in Ontario is given such recognition in Manitoba, but local couples' relationships are not similarly recognized, there would be different tiers of rights applicable to gay and lesbian couples residing in Manitoba. If the Ontario ceremony is not given effect in Manitoba, the Ontario same sex couple has in fact not been given equal benefit of the law with heterosexual couples from that province, whose marriages would be "transportable".

31. The Quebec Court of Appeal has recently considered this exact issue in *Ligue catholique pour les droits de l'homme c. Hendricks*. In that case the Quebec court took the unprecedented step of clearly stating that it is "judicially unacceptable" that federal laws could be in force in some provinces but not in others. The Court stated at para 28:

If it's true that generally judgements from provincial tribunals don't have an extraterritorial effect, it remains that it is judicially unacceptable that in a constitutional matter involving the Attorney General of Canada regarding a matter within the authority of the federal parliament, a provision be inapplicable in one province and in force in all the others. (*translation*)²²

²² *Hendricks*, supra note 5 at para 28 [AGC's Supplementary Authorities, TAB 4]

32. Presumably, this is an (entirely understandable) expression of apprehension, and not a declaration of binding legal principle. The Commission, however, agrees with the sentiment.

33. The Commission submits that the proposed federal legislation will complement Manitoba's new legal regime, which currently puts same sex common law relationships on the same footing as heterosexual common law relationships in all areas of provincial jurisdiction. That is, same sex couples would then have the same options that heterosexual couples have: to marry, or to be content with a common law relationship.

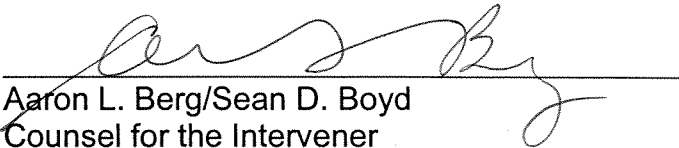
PART IV - SUBMISSIONS CONCERNING COSTS

34. The Commission is not seeking costs and takes the position that no costs should be awarded against it.

PART V – ORDER REQUESTED

35. The Commission respectfully submits that the original Reference questions and the additional Reference question be answered as follows:
- (a) The proposed Act is within the exclusive legislative authority of the Parliament of Canada.
 - (b) Section 1 of the proposed legislation, which extends capacity to marry to persons of the same sex, is consistent with the *Charter* and is constitutionally valid.
 - (c) The freedom of religion guaranteed in s. 2(a) of the *Charter* does protect religious officials [performing their official religious functions] from being compelled to perform a marriage between two persons of the same sex that is contrary to their religious beliefs.
 - (d) The traditional opposite sex requirement for marriage for civil purposes is not consistent with s. 15(1) of the *Charter*, and cannot be justified under s. 1 of the *Charter*.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 10th DAY OF MAY, 2004.



Aaron L. Berg/Sean D. Boyd
Counsel for the Intervener
Manitoba Human Rights Commission

PART VI - TABLE OF AUTHORITIES

Cases	Cited at Paragraph No.(s)
1. <i>M. v. H.</i> [1999] 2 S.C.R. 3 Attorney General of Canada's Book of Authorities, Vol II, TAB 20	11
2. <i>Halpern v. Canada (Attorney General)</i> (2003) 225 D.L.R. (4 th) 529 (Ont.CA) Attorney General of Canada's Book of Authorities, Vol I, TAB 12	12, 16, 27
3. <i>EGALE Canada Inc. v. Canada (Attorney General)</i> (2003) 225 D.L.R. (4 th) 475 (B.C.CA) Attorney General of Canada's Book of Authorities Vol I, TAB 8	12, 16, 27
4. <i>Ligue catholique pour les droits de l'homme c. Hendricks</i> [2004] J.Q. No. 5293 Attorney General of Canada's Supplementary Book of Authorities, TAB 4	12, 16, 27 31, 32
5. <i>North v. Manitoba (Recorder of Vital Statistics)</i> [1974] M.J. No. 269 Manitoba Commission's Book of Authorities, TAB 1	13, 30
6. <i>Hyde v. Hyde</i> (1866), All E.R.Rep. 175 Attorney General of Canada's Supplementary Book of Authorities, TAB 3	13, 14, 16
7. <i>Corbett v. Corbett</i> [1970] 2 All E.R. 33 Manitoba Commission's Book of Authorities, TAB 2	13, 14, 15 16, 17, 19
8. <i>Christine Goodwin v. The United Kingdom</i> (Application no. 28957/95, Judgement dated July 11, 2002) Manitoba Commission's Book of Authorities, TAB 3	18, 20, 21, 22, 23, 24, 25, 28

9. *The Attorney-General for the Commonwealth & "Kevin and Jennifer" & Human Rights and Equal Opportunity Commission* [2003] FamCa 94 (21 February 2003) at para 298 et seq 25
Manitoba Commission's Book of Authorities, TAB 4
10. *Toonen v. Australia* (1994) (Communication No. 488/1992) 26
Manitoba Commission's Book of Authorities, TAB 5
11. *Joslin et al. v. New Zealand* (2002) (Communication No. 902/1999) 27
Manitoba Commission's Book of Authorities, TAB 6

International Instruments

12. *The European Convention on Human Rights* 20, 21, 22
Manitoba Commission's Book of Authorities, TAB 7 23, 24, 25, 27
13. *International Covenant on Civil and Political Rights (ICCPR)* 26, 27
Manitoba Commission's Book of Authorities, TAB 8

PART VII – LEGISLATIVE PROVISIONS

Cited at
Paragraph
No.(s)

1. *The Human Rights Code*, S.M. 1987-88 c. 45-Cap.H175
[excerpts only]

7, 8, 9

CHAPTER H175

THE HUMAN RIGHTS CODE

(Assented to July 17, 1987)

WHEREAS Manitobans recognize the individual worth and dignity of every member of the human family, and this principle underlies the *Universal Declaration of Human Rights*, the *Canadian Charter of Rights and Freedoms*, and other solemn undertakings, international and domestic, that Canadians honour;

AND WHEREAS Manitobans recognize that

(a) implicit in the above principle is the right of all individuals to be treated in all matters solely on the basis of their personal merits, and to be accorded equality of opportunity with all other individuals;

(b) to protect this right it is necessary to restrict unreasonable discrimination against individuals, including discrimination based on stereotypes or generalizations about groups with whom they are or are thought to be associated, and to ensure that reasonable accommodation is made for those with special needs;

CHAPITRE H175

CODE DES DROITS DE LA PERSONNE

(Sanctionnée le 17 juillet 1987)

ATTENDU QUE les Manitobains reconnaissent la valeur et la dignité individuelles de tous les membres de la famille humaine et que ce principe constitue le fondement de la *Déclaration universelle des droits de l'homme*, de la *Charte canadienne des droits et libertés* et d'autres engagements nationaux et internationaux, que les Canadiens respectent;

ET ATTENDU QUE les Manitobains reconnaissent ce qui suit :

a) il découle du principe énoncé ci-dessus que tous les particuliers ont le droit d'être traités, en toutes choses, selon leurs mérites personnels et de bénéficier de chances égales;

b) pour que ce droit soit respecté, il faut d'une part éviter que les particuliers subissent une discrimination injustifiée, y compris la discrimination fondée sur des stéréotypes ou sur des généralisations attribués aux groupes avec lesquels ils s'associent ou sont présumés s'associer et il faut d'autre part s'assurer que des mesures suffisantes soient prises pour répondre aux besoins spéciaux de certains particuliers;

(c) in view of the fact that past discrimination against certain groups has resulted in serious disadvantage to members of those groups, and therefore it is important to provide for affirmative action programs and other special programs designed to overcome this historic disadvantage;

(d) much discrimination is rooted in ignorance and education is essential to its eradication, and therefore it is important that human rights educational programs assist Manitobans to understand all their fundamental rights and freedoms, as well as their corresponding duties and responsibilities to others; and

(e) these various protections for the human rights of Manitobans are of such fundamental importance that they merit paramount status over all other laws of the province;

NOW THEREFORE HER MAJESTY, by and with the advice and consent of the Legislative Assembly of Manitoba, enacts as follows:

Definitions

1 In this Code

"**adjudication panel**" means the adjudication panel established under section 8; (« tribunal d'arbitrage »)

"**adjudicator**" means the member of the adjudication panel who has been designated under this Code to adjudicate a complaint; (« arbitre »)

"**Commission**" means the Manitoba Human Rights Commission; (« Commission »)

"**complainant**" means a person who files a complaint, but does not include the Commission or the executive director in respect of a complaint filed under subsection 22(3); (« plaignant »)

c) par le passé, certains groupes ont été victimes de gestes discriminatoires qui ont causé un tort considérable aux membres de ces groupes et il importe donc d'adopter des programmes de promotion sociale et d'autres programmes particuliers qui permettront de réparer ces torts;

d) puisque la discrimination est souvent enracinée dans l'ignorance et que l'éducation constitue un outil essentiel à son abolition, il est important que des programmes d'information sur les droits de la personne soient mis à la disposition des Manitobains afin de les renseigner sur leurs droits et leurs libertés fondamentales et sur les devoirs et les responsabilités qui leur incombent;

e) la protection des droits de la personne au Manitoba est d'une importance telle qu'elle devrait primer sur les autres lois de la province;

PAR CONSÉQUENT SA MAJESTÉ, sur l'avis et du consentement de l'Assemblée législative du Manitoba, édicte :

Définitions

1 Les définitions qui suivent s'appliquent au présent code.

« **arbitre** » Membre du tribunal d'arbitrage qui a été désigné en vertu du présent code afin de statuer sur une plainte. ("adjudicator")

« **association d'employeurs** » Association d'employeurs formée notamment pour régir les rapports entre employeurs et employés. ("employers' organization")

« **association professionnelle** » Organisation, autre qu'un syndicat ouvrier ou une association d'employeurs, dont il faut être membre ou dont il faut détenir un permis ou un certificat de compétence pour exercer sa profession ou son emploi. ("occupational association")

« **audience** » Audience que tient un arbitre afin de décider d'une plainte. ("hearing")

Vacancies

2(7) Where a member of the Commission except the chairperson ceases to be a member before the normal expiry of his or her term, the Lieutenant Governor in Council may fill the vacancy by appointing a person who shall serve for the unexpired portion of the term and thereafter until appointed to a full term under subsection (4) or replaced.

Transitional

2(8) Notwithstanding anything in this section, those persons who are members of the Commission on the coming into force of this section shall continue to hold office for the duration of their appointments and thereafter until re-appointed or replaced.

S.M. 1997, c. 20, s. 2.

Quorum

3 Notwithstanding subsection 2(2), the Commission has full authority to exercise its responsibilities under this Code when it has fewer than 10 members, and for purposes of exercising those responsibilities or otherwise conducting Commission business, a quorum of the Commission consists of a majority of the members holding office at the time.

S.M. 1997, c. 20, s. 3.

Responsibilities of Commission

4 In addition to discharging its other responsibilities under this Code, the Commission shall

- (a) promote the principle that all members of the human family are free and equal in dignity and rights and entitled to be treated on the basis of their personal merits, regardless of their actual or presumed association with any group;
- (b) further the principle of equality of opportunity and equality in the exercise of civil and legal rights regardless of status;

Vacance

2(7) Si un membre de la Commission, à l'exception du président, cesse de faire partie de celle-ci avant la fin de son mandat, le lieutenant-gouverneur en conseil peut remplir la vacance en nommant une personne pour la durée non écoulée du mandat. Cette personne reste en fonction jusqu'à ce qu'elle soit nommée pour remplir un mandat complet aux termes du paragraphe (4) ou jusqu'à son remplacement.

Disposition transitoire

2(8) Par dérogation aux autres dispositions du présent article, les personnes qui sont membres de la Commission à l'entrée en vigueur du présent article continuent d'exercer leurs fonctions pour la durée de leur mandat et par la suite, jusqu'au renouvellement de leur mandat ou leur remplacement.

L.M. 1997, c. 20, art. 2.

Quorum

3 Par dérogation au paragraphe 2(2), la Commission a pleins pouvoirs pour exercer ses fonctions en vertu du présent code lorsqu'elle comprend moins de 10 membres. De plus, pour les besoins de l'exercice de ces fonctions ou de la conduite des affaires de la Commission, le quorum est constitué par la majorité des membres de la Commission qui sont en fonction à ce moment.

L.M. 1997, c. 20, art. 3.

Fonctions de la Commission

4 En plus de l'exercice de ses autres fonctions en vertu du présent code, la Commission doit :

- a) défendre le principe selon lequel les membres de la famille humaine sont libres et égaux en dignité et en droit et doivent être traités en fonction de leurs mérites individuels, sans qu'il soit tenu compte de leur association actuelle ou présumée avec un groupe quelconque;
- b) favoriser le principe de l'égalité des chances et de l'égalité dans l'exercice des droits civils et juridiques ainsi que son application à l'égard de tous;

(c) disseminate knowledge and promote understanding of the civil and legal rights of residents of Manitoba and develop, promote and conduct educational programs for that purpose;

(d) develop, promote and conduct educational programs designed to eliminate all forms of discrimination prohibited by this Code; and

(e) promote understanding and acceptance of, and compliance with, this Code and the regulations.

c) favoriser la connaissance et la compréhension des droits civils et juridiques des résidents du Manitoba et mettre sur pied et diriger des programmes d'éducation en ce sens et en favoriser l'essor;

d) mettre sur pied et diriger des programmes d'éducation destinés à supprimer toute forme de discrimination interdite par le présent code et favoriser l'essor de ces programmes;

e) favoriser la compréhension, l'acceptation et l'observation du présent code et des règlements.

Act continues on page 7.

Suite à la page 7.

HUMAN RIGHTS

Commission members ineligible

8(2) No member of the Commission shall be appointed to the adjudication panel.

Length of appointment

8(3) Every person appointed to the adjudication panel shall hold membership on the panel for three years from the date of being appointed and thereafter until re-appointed or replaced.

Termination for cause

8(4) No appointment of a member of the adjudication panel shall be terminated except for cause.

Oath of impartiality

8(5) Upon being appointed to the adjudication panel, a member shall make an oath or affirmation in the following form:

"I do solemnly swear (or affirm) that I will faithfully, truly, impartially and to the best of my knowledge, skill and ability, adjudicate complaints under *The Human Rights Code of Manitoba*. So help me God." (Omit last four words where the member affirms.)

Incapacité des membres de la Commission

8(2) Aucun membre de la Commission ne peut faire partie du tribunal d'arbitrage.

Durée du mandat

8(3) Le mandat des personnes appelées à faire partie du tribunal d'arbitrage est d'une durée de trois ans à compter de la date de leur nomination et par la suite, celles-ci exercent leurs fonctions jusqu'au renouvellement de leur mandat ou leur remplacement.

Fin du mandat

8(4) Il ne peut être mis fin au mandat d'un membre du tribunal d'arbitrage sans motif valable.

Serment portant sur l'impartialité des membres

8(5) Suite à sa nomination au tribunal d'arbitrage, un membre doit prêter serment ou faire une affirmation solennelle, selon la formule suivante :

« Je jure solennellement (ou j'affirme solennellement) que je statuerai sur les plaintes présentées en vertu du *Code manitobain des droits de la personne*, fidèlement et impartialement, et au mieux de mes connaissances, de mes capacités et de mon habileté. Que Dieu me soit en aide. » (Omettre les six derniers mots dans le cas d'une affirmation solennelle.)

**PART II
PROHIBITED CONDUCT
AND SPECIAL PROGRAMS**

**PARTIE II
CONDUITE PROHIBÉE
ET PROGRAMMES SPÉCIAUX**

"Discrimination" defined

9(1) In this Code, "discrimination" means

(a) differential treatment of an individual on the basis of the individual's actual or presumed membership in or association with some class or group of persons, rather than on the basis of personal merit; or

(b) differential treatment of an individual or group on the basis of any characteristic referred to in subsection (2); or

Définition du terme « discrimination »

9(1) Dans le présent code, le terme « discrimination » désigne, selon le cas :

a) un traitement différent que reçoit un particulier, en raison de son adhésion réelle ou présumée à une catégorie ou à un groupe de personnes ou de son association réelle ou présumée avec cette catégorie ou ce groupe, plutôt qu'en fonction de ses mérites personnels;

b) un traitement différent que reçoit un particulier ou un groupe, en raison de caractéristiques mentionnées au paragraphe (2);

- (c) differential treatment of an individual or group on the basis of the individual's or group's actual or presumed association with another individual or group whose identity or membership is determined by any characteristic referred to in subsection (2); or
- (d) failure to make reasonable accommodation for the special needs of any individual or group, if those special needs are based upon any characteristic referred to in subsection (2).

Applicable characteristics

9(2) The applicable characteristics for the purposes of clauses (1)(b) to (d) are

- (a) ancestry, including colour and perceived race;
- (b) nationality or national origin;
- (c) ethnic background or origin;
- (d) religion or creed, or religious belief, religious association or religious activity;
- (e) age;
- (f) sex, including pregnancy, the possibility of pregnancy, or circumstances related to pregnancy;
- (g) gender-determined characteristics or circumstances other than those included in clause (f);
- (h) sexual orientation;
- (i) marital or family status;
- (j) source of income;
- (k) political belief, political association or political activity;
- (l) physical or mental disability or related characteristics or circumstances, including reliance on a dog guide or other animal assistant, a wheelchair, or any other remedial appliance or device.

Systemic discrimination

9(3) In this Code, "discrimination" includes any act or omission that results in discrimination within the meaning of subsection (1), regardless of the form that the act or omission takes and regardless of whether the person responsible for the act or omission intended to discriminate.

- c) un traitement différent que reçoit un particulier ou un groupe en raison de son association réelle ou présumée avec un autre particulier ou un autre groupe dont les traits distinctifs sont déterminés par les caractéristiques mentionnées au paragraphe (2) ou dont l'adhésion découle de ces caractéristiques;
- d) un manquement qui consiste à ne pas répondre de façon raisonnable aux besoins spéciaux de particuliers ou de groupes, fondés sur les caractéristiques mentionnées au paragraphe (2).

Caractéristiques appropriées

9(2) Les caractéristiques appropriées aux fins des alinéas (1)b) à d) sont les suivantes :

- a) l'ascendance, y compris la couleur et les races identifiables;
- b) la nationalité ou l'origine nationale;
- c) le milieu ou l'origine ethnique;
- d) la religion ou la croyance ou les croyances religieuses, les associations religieuses ou les activités religieuses;
- e) l'âge;
- f) le sexe, y compris la grossesse, la possibilité de grossesse ou les circonstances se rapportant à la grossesse;
- g) les caractéristiques fondées sur le sexe ou les circonstances autres que celles visées à l'alinéa f);
- h) l'orientation sexuelle;
- i) l'état matrimonial ou le statut familial;
- j) la source de revenu;
- k) les convictions politiques, associations politiques ou activités politiques;
- l) les incapacités physiques ou mentales ou les caractéristiques ou les situations connexes, y compris le besoin d'un chien guide ou d'un autre animal, une chaise roulante ou tout autre appareil, orthèse ou prothèse.

Discrimination systémique

9(3) Dans le cadre du présent code, le terme « discrimination » s'entend en outre de tout acte ou omission qui entraîne une discrimination au sens du paragraphe (1). La présente définition vise tous les actes et toutes les omissions entraînant de la discrimination, quelle que soit leur forme et quelle que soit l'intention de la personne qui les commet.