

**IN THE SUPREME COURT OF CANADA**

**(ON APPEAL FROM THE COURT OF APPEAL OF ALBERTA)**

**BETWEEN:**

**DELWIN VRIEND and GALA-GAY AND LESBIAN AWARENESS SOCIETY  
OF EDMONTON and GAY AND LESBIAN COMMUNITY CENTRE OF  
EDMONTON SOCIETY and DIGNITY CANADA DIGNITÉ FOR  
GAY CATHOLICS AND SUPPORTERS**

**Appellants  
(Applicants)  
(Respondents by Cross-Appeal)**

**- and -**

**HER MAJESTY THE QUEEN IN RIGHT OF ALBERTA and  
HER MAJESTY'S ATTORNEY GENERAL IN AND FOR  
THE PROVINCE OF ALBERTA**

**Respondents  
(Respondents)  
(Appellants by Cross-Appeal)**

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**FACTUM OF THE INTERVENER THE ATTORNEY GENERAL OF CANADA**

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**PART I**  
**STATEMENT OF FACTS**

1. The facts for the purposes of this appeal are stated at paragraphs 1 to 6 of the Appellants' Factum.

**PART II**  
**POINTS IN ISSUE**

2. By order of the Chief Justice dated February 10, 1997, the following constitutional questions have been stated:

**QUESTION 1** Do (a) decisions not to include sexual orientation or (b) the non-inclusion of sexual orientation, as a prohibited ground of discrimination in the Preamble and ss. 2(1), 3, 4, 7(1), 8(1), 10, and 16(1) of the *Individual's Rights Protection Act*, R.S.A. 1980, c. I-2, as am., now called the *Human Rights, Citizenship and Multiculturalism Act*, R.S.A. 1980, c. H-11.7, infringe or deny the rights guaranteed by s. 15(1) of the *Canadian Charter of Rights and Freedoms*?

**QUESTION 2** If the answer to Question 1 is "yes", is the infringement or denial demonstrably justified as a reasonable limit pursuant to s. 1 of the *Canadian Charter of Rights and Freedoms*?

3. The Attorney General of Canada submits that:
- a) Question 1 should be answered in the affirmative in respect of s. 7(1) only of the *Individual's Rights Protection Act*, R.S.A. 1980 c. I-2, as am., now called the *Human Rights, Citizenship and Multiculturalism Act*, R.S.A. 1980, c. H-11.7 (hereinafter the "*IRPA*");
  - b) Question 2 should be answered in the negative with respect to s. 7(1) of the *IRPA*.

PART III  
ARGUMENT

QUESTION 1 Do (a) decisions not to include sexual orientation or (b) the non-inclusion of sexual orientation, as a prohibited ground of discrimination in the Preamble and ss. 2(1), 3, 4, 7(1), 8(1), 10, and 16(1) of the *Individual's Rights Protection Act*, R.S.A. 1980, c. I-2, as am., now called the *Human Rights, Citizenship and Multiculturalism Act*, R.S.A. 1980, c. H-11.7, infringe or deny the rights guaranteed by s. 15(1) of the *Canadian Charter of Rights and Freedoms*?

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4. Human rights legislation, like all legislation, is subject to the *Charter*.

*McKinney v. University of Guelph*, [1990] 3 S.C.R. 229, at 290 per La Forest J.

5. On constitutional review, courts should not go beyond the underlying circumstances of the case before them. The evidence in this case is that the Respondent Delwin Vriend was fired from his job because of his homosexuality. The only provision of the *IRPA* engaged in these circumstances is s. 7(1) which addresses discrimination in employment practices.

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Vriend Affidavit, *Case on Appeal*, Vol. I, pp. 33, 34, 73.

Reasons of Hunt J.A., *Case on Appeal*, Vol. II, p. 286.

*Canadian Broadcasting Corporation v. New Brunswick (Attorney General)*, [1996] 3 S.C.R. 480, at p. 492 per LaForest J.

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6. As has been stated by this Court on a number of occasions, the fundamental purpose of s. 15(1) of the *Charter* is to prevent the violation of essential human dignity and freedom through discrimination. Section 15(1) promotes a society in which all can be secure in the knowledge that the law recognizes them as human beings equally deserving of concern, respect and consideration.



*Egan v. Canada*, [1995] 2 S.C.R. 513, at p. 583 per Cory and Iacobucci JJ.

*Eaton v. Brant County Board of Education*, [1996] S.C.J. No. 98, at para. 66 per Sopinka J.

7. While the judgments of this Court have not been unanimous with respect to all the principles governing the application of s. 15(1) of the *Charter*, it is submitted that the first constitutional question can be disposed of on the basis of principles which are generally accepted. In *Benner v. Canada (Secretary of State)*, No. 23811, 27 February 1997, Iacobucci J., at paragraph 69, expressed these principles as follows:

"A s. 15 applicant, then, must show a denial of one of what have been termed the "four equalities", namely, equality before the law, equality under the law, equal protection of the law, and equal benefit of the law. The applicant must also show that the denial is "discriminatory". Where the denial is based on a ground expressly enumerated in s. 15(1), or one analogous to them, it will generally be found to be discriminatory, although there may, of course, be exceptions: see, e.g. *Weatherall v. Canada (Attorney General)*, [1993] 2 S.C.R. 872."

#### **Denial of Equality Right**

8. In determining whether there is a denial of an equality right, consideration must be given to the content of the law, to its purpose, and to its impact upon those to whom it applies and upon those whom it excludes from its application.

*Andrews v. Law Society of British Columbia*, [1989] 1 S.C.R. 143, at p. 168 per McIntyre J.

9. As s. 15(1) of the *Charter* protects against both direct and adverse effect discrimination, a class of individuals need not be expressly excluded from legislation in order to be able to claim that their lack of access to the legislation's benefit or protection denies their equality

rights. The effect of an exclusion of access to the benefit or protection of the law is sufficient to found a claim under s. 15(1).

*Egan v. Canada, supra*, at pp. 586, 587 per Cory and Iacobucci JJ.

10. The purpose of human rights legislation is the recognition and protection of human dignity by the prevention of discrimination based upon personal characteristics which historically have led to individuals suffering serious social, political and economic disadvantage. The *IRPA* contains a statement of purpose in its Preamble which at the relevant time read:

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WHEREAS recognition of the inherent dignity and the equal and inalienable rights of all persons is the foundation of freedom, justice and peace in the world; and

WHEREAS it is recognized in Alberta as a fundamental principle and as a matter of public policy that all persons are equal in dignity and rights without regard to race, religious beliefs, colour, gender, physical disability, mental disability, age, ancestry or place of origin; and

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WHEREAS it is fitting that this principle be affirmed by the Legislature of Alberta in an enactment whereby those rights of the individual may be protected:

11. Human rights legislation achieves its purpose by, amongst other things, giving rise to individual rights capable of enforcement, in the final analysis, in a court of law.

*Canadian National Railway v. Canada*, [1987] 1 S.C.R. 1114, at p. 1134 per Dickson C.J.C.

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12. Individuals to whom section 7(1) of the *IRPA* provides protection from discrimination have not only the benefit of access to the complaint procedure in the *IRPA* to remedy the discrimination suffered but also the acknowledgement in legislation that has been described

by this Court as expressing the fundamental values of our society that they are considered worthy of protection from discrimination.

*IRPA*, ss. 19 to 36.

*Battlefords and District Co-operative Ltd. v. Gibbs*,  
[1996] 3 S.C.R. 566, at pp. 577, 578 per Sopinka J.

10      13.      The Respondent Delwin Vriend was precluded from invoking the complaint procedure of the *IRPA* because the termination of his employment was based on his homosexuality and not on one of the grounds already protected. The same would be true of anyone else terminated from their employment because of their homosexuality.

14.      It is submitted that by recognizing the inherent dignity of all persons and by affording protection against discrimination to vulnerable groups, while denying that recognition and protection to those who are vulnerable because they are homosexual, the *IRPA* denies the equal benefit and protection of the law to homosexual individuals, based on their sexual orientation.

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*Haig v. Canada* (1992), 94 D.L.R. (4th) 1 (Ont. C.A.),  
at p. 9 per Krever J.A.

### **Discrimination**

15.      In determining whether the distinction created by law results in discrimination, the first point to consider is whether the equality right was denied on grounds relating to personal characteristics which are either enumerated in s. 15(1) or are analogous to those enumerated.

16.      In *Egan v. Canada*, [1995] 2 S.C.R. 513, this Court held that sexual orientation, the basis of the distinction in this case, is a ground that is analogous to the enumerated grounds in s. 15(1) of the *Charter*. The Court reached this conclusion as it recognized that homosexual

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persons had suffered and continue to suffer discrimination solely because of their sexual orientation, which this Court accepted is a deeply personal characteristic.

*Egan v. Canada, supra*, at p. 528 per LaForest J.; at pp. 599 to 603 per Cory and Iacobucci JJ.

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17. The existence of discrimination is determined by assessing the prejudicial effect of the distinction drawn by the impugned legislation against the fundamental purpose of s. 15(1) of the *Charter* to prevent the violation of essential human dignity.

*Egan v. Canada, supra*, at p. 603 per Cory and Iacobucci JJ.

18. Though the grounds commonly listed in human rights legislation do not all have discrimination motivated by the same factors, discrimination on the ground of sexual orientation has much in common with a number of the commonly listed grounds. In *McKinney v. University of Guelph*, [1990] 3 S.C.R. 229, LaForest J. at p. 297 noted that: "Racial and religious discrimination and the like are generally based on feelings of hostility or intolerance."

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19. In *Egan v. Canada, supra*, Cory and Iacobucci JJ. discussed the nature of the discrimination suffered by homosexual persons in Canadian society. At pp. 600, 601, they wrote:

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"The historic disadvantage suffered by homosexual persons has been widely recognized and documented. Public harassment and verbal abuse of homosexual individuals is not uncommon. Homosexual women and men have been victims of crimes of violence directed at them specifically because of their sexual orientation...They have been discriminated against in their employment and their access to services. They have been excluded from some aspects of public life solely because of their sexual orientation...The stigmatization of homosexual persons and the hatred which some members of the public have expressed towards them has forced many homosexuals

to conceal their orientation. This imposes its own associated costs in the workplace, the community and in private life."

20. It is submitted that it is discriminatory to protect some individuals from discrimination suffered because of enmity and attitudes based on their personal characteristics but not to protect homosexual persons who experience discrimination motivated by the same type of enmity and attitudes based on their sexual orientation. This infringes the human dignity of homosexual persons as well as their right to be recognized as equally deserving of concern, respect and consideration as those who are already protected from discriminatory acts and attitudes.

21. It is submitted therefore that by failing to provide an avenue for the redress of the prejudicial treatment suffered by homosexual persons, which omission entails the possible inference that such treatment is acceptable, s. 7(1) of the *IRPA* creates the effect of discrimination.

*Haig v. Canada, supra*, at p. 10 per Krever J.A.

22. This is not to say that the prohibited grounds of discrimination under human rights legislation must invariably mirror the enumerated and analogous grounds in s. 15(1) of the *Charter*. In each case, the exclusion or under-inclusion will have to be subjected to an analysis under ss. 15(1) and 1 of the *Charter*. As is submitted above, it will be relevant in the s. 15(1) analysis to consider whether individuals suffer discrimination of the same nature and motivated by the same reasons as that suffered by individuals who are protected. If they do, then the failure of human rights legislation to protect them against discrimination will point to a finding of discrimination.

23. To the extent that a finding of discrimination also requires a finding that the legislative distinction in issue is based on irrelevant personal characteristics, it is submitted that this requirement is met here. The distinction here is inimical to the *IRPA*'s express goal of protecting human dignity and preventing discrimination.

*Egan v. Canada, supra*, at p. 532 per LaForest J.

*Benner v. Canada (Secretary of State), supra*, at p. 29 per Iacobucci J.

**QUESTION 2** If the answer to Question 1 is "yes", is the infringement or denial demonstrably justified as a reasonable limit pursuant to s. 1 of the *Canadian Charter of Rights and Freedoms*?

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24. The general principles governing s. 1 analysis have been set out many times by this Court since the leading case of *R. v. Oakes*, [1986] 1 S.C.R. 103, and were recently re-stated in *Egan v. Canada, supra*, by Cory and Iacobucci JJ. at p. 605:

"A limitation to a constitutional guarantee will be sustained once two conditions are met. First, the objective of the legislation must be pressing and substantial. Second, the means chosen to attain this legislative end must be reasonable and demonstrably justifiable in a free and democratic society. In order to satisfy the second requirement, three criteria must be satisfied: (1) the rights violation must be rationally connected to the aim of the legislation; (2) the impugned provision must minimally impair the Charter guarantee; and (3) there must be a proportionality between the effect of the measure and its objective so that the attainment of the legislative goal is not outweighed by the abridgement of the right. In all s. 1 cases the burden of proof is with the government to show on a balance of probabilities that the violation is justifiable."

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### **Objective**

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25. Where a law is found to infringe s. 15(1) of the *Charter* due to under-inclusion, especially where the under-inclusion is not expressly made in the legislation, this Court has looked at the objective of the impugned legislative measure as a whole, and not simply that of the under-inclusion itself without its legislative context. The under-inclusion and its reasonableness in relation to the goal of the legislative measure in issue are matters that are properly considered in the proportionality stage of the *Oakes* test.

*Egan v. Canada, supra*, at p. 574 per LaForest J.; at pp. 605 to 607, per Cory and Iacobucci JJ.

*Miron v. Trudel*, [1995] 2 S.C.R. 418, at p. 503 per McLachlin J.

*McKinney v. University of Guelph, supra*, at pp. 299, 300 per LaForest J.

- 10      26.      As stated above, the objective of the *IRPA* is the recognition and promotion of human dignity through the elimination of discriminatory practices. Section 7(1) of the *IRPA* seeks to achieve this goal in the area of employment practices. It is submitted that the objective of the *IRPA*, and more specifically s. 7(1), is one of pressing and substantial importance sufficient to proceed to the issue of proportionality.

*Newfoundland (Human Rights Commission) v. Newfoundland (Minister of Employment and Labour Relations)* (1995), 127 D.L.R. (4th) 694 (Nfld. S.C.), at p. 715 per Barry J.

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### **Proportionality**

27.      It is submitted that despite the impugned under-inclusion, s. 7(1) of the *IRPA* advances and is relevant to the objective of eliminating discrimination in employment practices and is therefore rationally connected to that objective.

*Egan v. Canada, supra*, at p. 575 per Sopinka J.

28.      It is submitted that the non-inclusion of sexual orientation as a ground in s. 7(1) of the *IRPA* fails the minimal impairment requirement of the *Oakes* test.
- 30
29.      In providing protection from discrimination for individuals in need of it, the *IRPA* provides no protection for individuals who are victims of discrimination based on their homosexuality.

These individuals have the same need for protection as those who are already protected. Accordingly, it cannot be said that by leaving this group out, the *IRPA* achieves its goal of protecting the most vulnerable groups in society in a manner that impairs the right to equality without discrimination on the basis of sexual orientation as little as possible.

- 10      30.      As for the concern expressed by the Attorney General of Alberta over the balancing of conflicting interests, it is submitted that the *IRPA* itself provides a mechanism for balancing the interests of protected groups in being free from discrimination and any conflicting human rights values of others. For example, human rights tribunals and the courts have in the past mediated conflicts between human rights principles and the needs of religious organizations under the *bona fide* occupational requirement provisions of human rights legislation. The *IRPA* contains such a balancing mechanism in s. 7(3).

*Caldwell v. Stuart*, [1984] 2 S.C.R. 603.

31.      As s. 7(1) of the *IRPA* fails the minimal impairment requirement, it is unnecessary to consider the final step in the *Oakes* test.



**PART IV**  
**ORDER SOUGHT**

32. The Attorney General submits that Question 1 should be answered in the affirmative in respect of s. 7(1) only of the *IRPA*, and that Question 2 should be answered in the negative for the same provision.

ALL OF WHICH is respectfully submitted.

10 DATED at OTTAWA, this 23 day of May, 1997.



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PART V  
LIST OF AUTHORITIES

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	1. <i>Andrews v. Law Society of British Columbia</i> , [1989] 1 S.C.R. 143.	4
10	2. <i>Battlefords and District Co-operative Ltd. v. Gibbs</i> , [1996] 3 S.C.R. 566.	6
	3. <i>Benner v. Canada (Secretary of State)</i> , No. 23811, 27 February 1997.	4, 9
	4. <i>Caldwell v. Stuart</i> , [1984] 2 S.C.R. 603.	11
	5. <i>Canadian Broadcasting Corporation v. New Brunswick</i> <i>(Attorney General)</i> , [1996] 3 S.C.R. 480.	3
20	6. <i>Canadian National Railway v. Canada</i> , [1987] 1 S.C.R. 1114.	5
	7. <i>Eaton v. Brant County Board of Education</i> , [1996] S.C.J. No. 98.	4
	8. <i>Egan v. Canada</i> , [1995] 2 S.C.R. 513.	4, 5, 6, 7, 9, 10
	9. <i>Haig v. Canada</i> (1992), 94 D.L.R. (4th) 1 (Ont. C.A.).	6, 8
30	10. <i>McKinney v. University of Guelph</i> , [1990] 3 S.C.R. 229.	3, 7, 10
	11. <i>Miron v. Trudel</i> , [1995] 2 S.C.R. 418.	10
	12. <i>Newfoundland (Human Rights Commission) v.</i> <i>Newfoundland (Minister of Employment and Labour Relations)</i> (1995), 127 D.L.R. (4th) 694 (Nfld. S.C.).	10
	13. <i>R v. Oakes</i> , [1986] 1 S.C.R. 103.	9, 10, 11

**APPENDIX "A"**

*Individual Rights Protection Act*, R.S.A. 1980, c. 1-2 as. am., now called the *Human Rights, Citizenship and Multiculturalism Act*, R.S.A. 1980, c. H-11.7

# HUMAN RIGHTS, CITIZENSHIP AND MULTICULTURALISM ACT

## CHAPTER H-11.7

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## Preamble

WHEREAS recognition of the inherent dignity and the equal and inalienable rights of all persons is the foundation of freedom, justice and peace in the world;

WHEREAS it is recognized in Alberta as a fundamental principle and as a matter of public policy that all persons are equal in: dignity, rights and responsibilities without regard to race, religious beliefs, colour, gender, physical disability, mental disability, age, ancestry, place of origin, marital status, source of income or family status;

WHEREAS multiculturalism describes the diverse racial and cultural composition of Alberta society and its importance is recognized in Alberta as a fundamental principle and a matter of public policy;

WHEREAS it is recognized in Alberta as a fundamental principle and as a matter of public policy that all Albertans should share in an awareness and appreciation of the diverse racial and cultural composition of society and that the richness of life in Alberta is enhanced by sharing that diversity;

WHEREAS it is fitting that these principles be affirmed by the Legislature of Alberta in an enactment whereby those equality rights and that diversity may be protected:

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

Effect of Act  
on provincial  
laws

1(1) Unless it is expressly declared by an Act of the Legislature that it operates notwithstanding this Act, every law of Alberta is inoperative to the extent that it authorizes or requires the doing of anything prohibited by this Act.

(2) In this Act, "law of Alberta" means an Act of the Legislature of Alberta enacted before or after the commencement of this Act, any order, rule or regulation made thereunder, and any law in force in Alberta on January 1, 1973 that is subject to be repealed, abolished or altered by the Legislature of Alberta.

RSA 1980 cI-2 s1;1990 c23 ss2,3

Alberta  
Heritage Day

**1.1** In recognition of the cultural heritage of Alberta, the first Monday in August each year shall be observed as a day of public celebration and known as "Alberta Heritage Day".

1996 c25 s4

### Code of Conduct

Discrimination  
re  
publications,  
notices

**2(1)** No person shall publish, issue or display or cause to be published, issued or displayed before the public any statement, publication, notice, sign, symbol, emblem or other representation that

(a) indicates discrimination or an intention to discriminate against a person or a class of persons, or

(b) is likely to expose a person or a class of persons to hatred or contempt

because of the race, religious beliefs, colour, gender, physical disability, mental disability, age, ancestry, place of origin, marital status, source of income or family status of that person or class of persons.

**(2)** Nothing in this section shall be deemed to interfere with the free expression of opinion on any subject.

**(3)** Subsection (1) does not apply to

(a) the display of a notice, sign, symbol, emblem or other representation displayed to identify facilities customarily used by one gender,

(b) the display or publication by or on behalf of an organization that

(i) is composed exclusively or primarily of persons having the same political or religious beliefs, ancestry or place of origin, and

(ii) is not operated for private profit,

of a statement, publication, notice, sign, symbol, emblem or other representation indicating a purpose or membership qualification of the organization, or

- (c) the display or publication of a form of application or an advertisement that may be used, circulated or published pursuant to section 8(2),

if the statement, publication, notice, sign, symbol, emblem or other representation is not derogatory, offensive or otherwise improper.  
RSA 1980 c1-2 s2;1985 c33 s2;1990 c23 ss2,3;1996 c25 s5

Discrimination  
re goods,  
services,  
accommoda-  
tion, facilities

### 3 No person shall

- (a) deny to any person or class of persons any goods, services, accommodation or facilities that are customarily available to the public, or
- (b) discriminate against any person or class of persons with respect to any goods, services, accommodation or facilities that are customarily available to the public,

because of the race, religious beliefs, colour, gender, physical disability, mental disability, ancestry, place of origin, marital status, source of income or family status of that person or class of persons or of any other person or class of persons.

RSA 1980 c1-2 s3;1985 c33 s2;1990 c23 ss2,3;1996 c25 s6

Discrimination  
re tenancy

### 4 No person shall

- (a) deny to any person or class of persons the right to occupy as a tenant any commercial unit or self-contained dwelling unit that is advertised or otherwise in any way represented as being available for occupancy by a tenant, or
- (b) discriminate against any person or class of persons with respect to any term or condition of the tenancy of any commercial unit or self-contained dwelling units,

because of the race, religious beliefs, colour, gender, physical disability, mental disability, ancestry, place of origin, marital status, source of income or family status of that person or class of persons or of any other person or class of persons.

RSA 1980 c1-2 s4;1985 c33 s2;1990 c23 ss2,3;1996 c25 s6

### 5 Repealed 1996 c25 s7.

## Equal pay

6(1) Where employees of both sexes perform the same or substantially similar work for an employer in an establishment the employer shall pay the employees at the same rate of pay.

(2) to (4) Repealed 1996 c25 s8.

(5) No employer shall reduce the rate of pay of an employee in order to comply with this section.

(6) When an employee is paid less than the rate of pay to which the employee is entitled under this section, the employee is entitled to recover from the employer by action the difference between the amount paid and the amount to which the employee was entitled, together with costs, but

(a) the action must be commenced within 12 months from the date on which the cause of action arose and not afterward,

(b) the action applies only to the wages of an employee during the 12-month period immediately preceding the termination of the employee's services or the commencement of the action, whichever occurs first,

(c) the action may not be commenced or proceeded with when the employee has made a complaint to the Commission in respect of the contravention of this section, and

(d) no complaint by the employee in respect of the contravention shall be acted on by the Commission when an action has been commenced by the employee under this section.

RSA 1980 c1-2 s6;1990 c23 s2;1996 c25 s8

Discrimination  
re employment  
practices

7(1) No employer shall

(a) refuse to employ or refuse to continue to employ any person, or

(b) discriminate against any person with regard to employment or any term or condition of employment,

because of the race, religious beliefs, colour, gender, physical disability, mental disability, marital status, age, ancestry, place of origin, family status or source of income of that person or of any other person.

(1.1), (1.2) Repealed 1990 c23 s4.

(2) Subsection (1) as it relates to age and marital status does not affect the operation of any bona fide retirement or pension plan or



the terms or conditions of any bona fide group or employee insurance plan.

(3) Subsection (1) does not apply with respect to a refusal, limitation, specification or preference based on a bona fide occupational requirement.

RSA 1980 cI-2 s7;1985 c33 ss2,3;1988 cE-10.2 s125;  
1990 c23 s4;1996 c25 s9

Applications  
and advertise-  
ments re  
employment

**8(1)** No person shall use or circulate any form of application for employment or publish any advertisement in connection with employment or prospective employment or make any written or oral inquiry of an applicant

- (a) that expresses either directly or indirectly any limitation, specification or preference indicating discrimination on the basis of the race, religious beliefs, colour, gender, physical disability, mental disability, marital status, age, ancestry, place of origin, family status or source of income of any person, or
- (b) that requires an applicant to furnish any information concerning race, religious beliefs, colour, gender, physical disability, mental disability, marital status, age, ancestry, place of origin, family status or source of income.

(2) Subsection (1) does not apply with respect to a refusal, limitation, specification or preference based on a bona fide occupational requirement.

RSA 1980 cI-2 s8;1985 c33 s4;1990 c23 s5;1996 c25 s10

**9** Repealed 1996 c25 s11.

Membership in  
trade union,  
etc.

**10** No trade union, employers' organization or occupational association shall

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

because of the race, religious beliefs, colour, gender, physical disability, mental disability, marital status, age, ancestry, place of origin, family status or source of income of that person or member.

RSA 1980 cI-2 s10;1985 c33 s2;1990 c23 ss2,3;1996 c25 s12

Prohibitions  
regarding  
complaints

**11(1)** No person shall retaliate against a person because that person

(a) has made or attempted to make a complaint under this Act,

(b) has given evidence or otherwise participated in or may give evidence or otherwise participate in a proceeding under this Act,

(c) has made or is about to make a disclosure that that person may be required to make in a proceeding under this Act, or

(d) has assisted in any way in

(i) making or attempting to make a complaint under this Act, or

(ii) the investigation, settlement or prosecution of a complaint under this Act.

**(2)** No person shall, with malicious intent, make a complaint under this Act that is frivolous or vexatious.

RSA 1980 c1-2 s11;1990 c23 s7;1996 c25 s13

Reasonable  
and justifiable  
contravention

**11.1** A contravention of this Act shall be deemed not to have occurred if the person who is alleged to have contravened the Act shows that the alleged contravention was reasonable and justifiable in the circumstances.

1985 c33 s5

Crown is  
bound

**12** The prohibitions contained in this Act apply to and bind the Crown in right of Alberta and every agency and servant of the Crown in right of Alberta.

RSA 1980 c1-2 s12

Fund  
continued

**13(1)** The Multiculturalism Fund established under the *Alberta Multiculturalism Act* is continued as the Human Rights, Citizenship and Multiculturalism Education Fund.

**(2)** The following money shall be deposited into the Fund:

(a) money voted by the Legislature for the purpose of the Fund;

(b) money received by the Government pursuant to agreements with the Government of Canada or with a province or any agency of the Government of Canada or of a province, pertaining to matters related to the purposes of this Act;

(c) money from fees for programs or services provided pursuant to this Act.

(3) The Provincial Treasurer

(a) shall hold and administer the Fund, and

(b) may, on behalf of the Fund, be a depositor in the Consolidated Cash Investment Trust Fund under the *Financial Administration Act*.

(4) The income of the Fund accrues to and forms part of the Fund.

(5) The Minister may pay money from the Fund

(a) for educational programs and services related to the purposes of this Act, and

(b) to make grants pursuant to section 13.1.

RSA 1980 cI-2 s13;1985 c33 s6;1996 c25 s14

Grants

**13.1(1)** The Minister may make grants if

(a) he is authorized to do so by regulations under this section, and

(b) there is money available in the Fund.

(2) The Lieutenant Governor in Council may make regulations authorizing the Minister to make grants and, for that purpose, section 13(2), (3) and (4) of the *Government Organization Act* apply.

1996 c25 s14

**Alberta Human Rights and Citizenship Commission**

Commission  
continued

**14(1)** The Alberta Human Rights Commission is continued under the name "Alberta Human Rights and Citizenship Commission", consisting of the number of members appointed by the Lieutenant Governor in Council.

(2) The Lieutenant Governor in Council may designate one of the members as chief commissioner of the Commission.

(2.1) The Minister may designate one of the members of the Commission as acting chief commissioner of the Commission, and the acting chief commissioner so designated has, during the absence of the chief commissioner, the powers and duties of the chief commissioner.

(3) The chief commissioner and other members of the Commission shall receive remuneration and expenses for their services as prescribed by the Minister.

RSA 1980 cl-2 s14;1985 c33 s7;1990 c23 s8;1996 c25 s16

**15** Repealed 1996 c25 s17.

Functions of  
Commission

**16(1)** It is the function of the Commission

- (a) to forward the principle that all persons are equal in: dignity, rights and responsibilities without regard to race, religious beliefs, colour, gender, physical disability, mental disability, age, ancestry, place of origin, marital status, source of income or family status,
- (b) to promote awareness and appreciation of and respect for the multicultural heritage of Alberta society,
- (c) to promote an environment in which all Albertans can participate in and contribute to the cultural, social, economic and political life of Alberta,
- (d) to encourage all sectors of Alberta society to provide equality of opportunity,
- (e) to research, develop and conduct educational programs designed to eliminate discriminatory practices related to race, religious beliefs, colour, gender, physical disability, mental disability, age, ancestry, place of origin, marital status, source of income or family status,
- (f) to promote an understanding of, acceptance of and compliance with this Act,
- (g) to encourage and co-ordinate both public and private human rights programs and activities, and
- (h) to advise the Minister on matters related to this Act.

(2) The Commission may delegate in writing to a member or to a person referred to in section 17 any of its functions, powers or duties.

RSA 1980 cl-2 s16;1985 c33 s2;1990 c23 ss2,3;1996 c25 s18

By-laws

**16.1(1)** The Commission may make by-laws respecting

- (a) the carrying out of its powers, duties and functions under this Act, and

- (b) procedural matters related to the handling of complaints under this Act, including procedural matters related to the proceedings before human rights panels.

(2) The *Regulations Act* does not apply to by-laws of the Commission.

(3) By-laws of the Commission are not effective until they have been approved by the Minister.

1996 c25 s19

Staff

**17** There may be appointed a Director and any other employees required for the purpose of the administration of this Act.

RSA 1980 cl-2 s17;1996 c25 s20

Annual report

**18(1)** The Commission shall after the end of each year prepare and submit to the Minister a report of its activities during that year, including a summary of the disposition of complaints under this Act and any other information that the Minister may require.

(2) Repealed 1996 c25 s21.

RSA 1980 cl-2 s18;1996 c25 s21

Who may  
make  
complaint

**19(1)** Any person, except the Commission, a member of the Commission and a person referred to in section 17, who has reasonable grounds for believing that a person has contravened this Act may make a complaint to the Commission.

(2) A complaint made pursuant to subsection (1) must

(a) be in a form acceptable to the Commission, and

(b) be made within one year after the alleged contravention of the Act occurs.

RSA 1980 cl-2 s19;1985 c33 s8;1996 c25 s22

Settlement of  
complaint

**19.1(1)** Where the Commission receives a complaint, the Director shall, as soon as is reasonably possible, attempt to effect a settlement of the complaint by means of a conciliator or through the appointment of a person to investigate the complaint.

(2) Where a conciliator is unable to effect a settlement of the complaint, the Director may appoint a person to investigate the complaint.

(3) The Director shall forthwith serve notice of any action taken under subsection (1) or (2) on the complainant and the person against whom the complaint was made.

1996 c25 s22

Director's  
powers re  
complaint

**20(1)** Notwithstanding section 19.1, the Director may at any time

- (a) dismiss a complaint if the Director considers that the complaint is without merit,
- (b) discontinue the proceedings if the Director is of the opinion that the complainant has refused to accept a proposed settlement that is fair and reasonable, or
- (c) report to the chief commissioner that the parties are unable to settle the complaint.

**(2)** The Director shall forthwith serve notice of a decision under subsection (1) on the complainant and the person against whom the complaint was made.

RSA 1980 c1-2 s20;1985 c33 s9;1996 c25 s22

Investigator's  
powers

**20.1(1)** For the purposes of an investigation under section 19.1, an investigator may do any or all of the following:

- (a) subject to subsection (2), enter any place at any reasonable time and examine it;
- (b) make inquiries orally or in writing of any person who has or may have information relevant to the subject-matter of the investigation;
- (c) demand the production for examination of records and documents, including electronic records and documents, that are or may be relevant to the subject-matter of the investigation;
- (d) on giving a receipt for them, remove any of the things referred to in clause (c) for the purpose of making copies of or extracts from them.

**(2)** An investigator may enter and examine a room or place actually used as a dwelling only if

- (a) the owner or person in possession of it consents to the entry and examination, or
- (b) the entry and examination is authorized by a judge under section 21.

1996 c25 s22

Judge's order

**21(1)** Where a provincial court judge is satisfied on an investigator's evidence under oath that there are reasonable grounds

for an investigator to exercise a power under section 20.1(1) and that

- (a) in the case of a room or place actually used as a dwelling, the investigator cannot obtain the consent under section 20.1(2) or, having obtained the consent, has been obstructed or interfered with,
- (b) the investigator has been refused entry to a place other than a dwelling,
- (c) a person refuses or fails to answer inquiries under section 20.1(1)(b), or
- (d) a person on whom a demand is made under section 20.1(1)(c) refuses or fails to comply with the demand or to permit the removal of a thing under section 20.1(1)(d),

the judge may make any order the judge considers necessary to enable the investigator to exercise the powers under section 20.1(1).

(2) An application under subsection (1) may be made with or without notice.

RSA 1980 cI-2 s21;1996 c25 s22

Copies of  
documents

**21.1** If an investigator removes anything referred to in section 20.1(1)(c), the investigator may make copies of or extracts from the thing that was removed and shall return the thing to the place from which it was removed within 48 hours after removing it.

1996 c25 s22

Appeal to chief  
commissioner

**22(1)** The complainant may, not later than 30 days after receiving notice of dismissal of the complaint or notice of discontinuance under section 20, by notice in writing to the Commission request a review of the Director's decision by the chief commissioner.

(2) The Commission shall serve a copy of a notice referred to in subsection (1) on the person against whom the complaint was made.

(3) The chief commissioner shall

(a) review the Director's decision and decide whether

(i) the complaint should have been dismissed, or

(ii) the proposed settlement was fair and reasonable

as the case may be, and

- (b) forthwith serve notice of the chief commissioner's decision on the complainant and the person against whom the complaint was made.

RSA 1980 c1-2 s22;1996 c25 s22

Referral to  
human rights  
panel

**23(1)** The chief commissioner shall appoint a human rights panel to deal with a complaint in the following circumstances:

- (a) where the chief commissioner receives a report from the Director that the parties are unable to settle the complaint;
  - (b) where the chief commissioner decides under section 22(3) that the complaint should not have been dismissed or that the proposed settlement was not fair and reasonable.
- (2) A human rights panel shall consist of one or more members of the Commission, one of whom may be the chief commissioner.
- (3) Where the chief commissioner has conducted a review under section 22 in respect of a complaint, the chief commissioner is not eligible to sit on a human rights panel dealing with that complaint.
- (4) A human rights panel and each member have all the powers of a commissioner under the *Public Inquiries Act*.
- (5) If a human rights panel consists of more than one person, the decision of the majority is the decision of the panel.

RSA 1980 c1-2 s23;1996 c25 s22

Parties

**24** The following persons are parties to a proceeding before a human rights panel:

- (a) the Director;
- (b) the person named in the complaint as the complainant;
- (c) any person named in the complaint who is alleged to have been dealt with contrary to this Act;
- (d) any person named in the complaint who is alleged to have contravened this Act;
- (e) any other person specified by the panel, on any notice that the panel determines, and after that person has been given an opportunity to be heard against being made a party.

RSA 1980 c1-2 s24;1996 c25 s22



Carriage of  
proceeding

**25** The Director has carriage of a proceeding before a human rights panel except where the chief commissioner has made a decision under section 22(3) that the complaint should not have been dismissed or that the proposed settlement was not fair and reasonable, and in such a case the complainant has carriage of the proceeding.

RSA 1980 cI-2 s25;1996 c25 s22

Procedural  
rules

**26(1)** The parties to a proceeding before a human rights panel are entitled to appear and be represented by counsel at a hearing held by the panel.

(2) Evidence may be given before a human rights panel in any manner that the panel considers appropriate, and the panel is not bound by the rules of law respecting evidence in judicial proceedings.

(3) A human rights panel, on proof of service of notice of a hearing in accordance with this Act on the person against whom a complaint was made, may proceed with the hearing in the absence of that person and decide on the matter being heard in the same way as though that person were in attendance.

(4) A hearing before a human rights panel shall be open to the public unless, on the application of any party, the human rights panel decides that it would be advisable to hold the hearing in private

(a) because of the confidential nature of the matter to be heard, or

(b) because of the potential adverse effect on any of the parties, other than the person against whom the complaint was made.

RSA 1980 cI-2 s26;1996 c25 s22

Question of  
law

**27** A human rights panel may, at any stage of the proceedings before it, state in the form of a special case for the opinion of the Court of Queen's Bench any question of law arising in the course of the proceedings, and may adjourn the proceedings for the purpose.

RSA 1980 cI-2 s27;1990 c23 s9;1996 c25 s22

Powers of  
panel

**28(1)** A human rights panel

(a) shall, if it finds that a complaint is without merit, order that the complaint be dismissed, and

(b) may, if it finds that a complaint has merit in whole or in part, order the person against whom the finding was made to do any or all of the following:

- (i) to cease the contravention complained of;
- (ii) to refrain in the future from committing the same or any similar contravention;
- (iii) to make available to the person dealt with contrary to this Act the rights, opportunities or privileges that that person was denied contrary to this Act;
- (iv) to compensate the person dealt with contrary to this Act for all or any part of any wages or income lost or expenses incurred by reason of the contravention of this Act;
- (v) to take any other action the panel considers proper to place the person dealt with contrary to this Act in the position the person would have been in but for the contravention of this Act.

(2) A human rights panel may make any order as to costs that it considers appropriate.

(3) A human rights panel shall serve a copy of its decision, including the findings of fact on which the decision was based and the reasons for the decision, on the parties to the proceeding.

RSA 1980 c1-2 s28;1996 c25 s22

Reconsider-  
ation

**29(1)** If there is new evidence available that was not available or that for good reason was not presented before the human rights panel in the first instance, the panel may, on the application of any of the parties or on its own motion, reconsider any matter considered by it and for that purpose has the same power and authority and is subject to the same duties as it had and was subject to in the first instance.

(2) A human rights panel may not reconsider a matter under subsection (1) more than 30 days after the date of the decision on the matter in the first instance.

RSA 1980 c1-2 s29;1990 c23 s10;1996 c25 s22

**29.1** Repealed 1996 c25 s22.

Retroactive  
compensation  
limit

**30** No settlement effected under this Act and no order made by a human rights panel may compensate a person for wages or income lost or expenses incurred prior to 2 years before the date of the complaint under section 19.

RSA 1980 c1-2 s30;1996 c25 s22

Effect of  
decision

**31** A decision of the chief commissioner under section 22(3)(a) is final and binding on the parties, subject to a party's right to judicial review of the decision.

RSA 1980 c1-2 s31;1990 c23 s12;1996 c25 s22

**31.1** Repealed 1996 c25 s22.

Entry of order

**32** An order made by a human rights panel may be filed with the clerk of the Court of Queen's Bench in the judicial district in which the proceeding was held, and on being entered it is enforceable in the same manner as an order of the Court of Queen's Bench.

RSA 1980 c1-2 s32;1996 c25 s22

Appeal

**33(1)** A party to a proceeding before a human rights panel may appeal an order of the panel to the Court of Queen's Bench by originating notice filed with the clerk of the Court of the judicial district in which the proceeding was held.

(2) The originating notice under subsection (1) shall be filed with the clerk and served on the Commission and the other parties within 30 days of the date the appellant receives a copy of the order of the human rights panel.

(3) Forthwith after being served with an originating notice under subsection (2) the Commission shall file the following with the clerk of the Court:

(a) the order of the human rights panel, together with reasons;

(b) the complaint;

(c) the evidence taken at the hearing and all exhibits filed.

(4) The Court may

(a) confirm, reverse or vary the order of the human rights panel and make any order that the panel may make under section 28, or

(b) remit the matter back to the panel with directions.

(5) Commencement of an appeal under this section does not operate as a stay of proceedings under the order of the human rights panel unless the Court so orders.

RSA 1980 cl-2 s33;1990 c23 s14;1996 c25 s22

Order after  
inquiry

**34(1)** If the order of a human rights panel under section 28 or the Court of Queen's Bench under section 33 did not direct a person to cease the contravention complained of, the Minister of Justice and Attorney General may apply to the Court of Queen's Bench for an order enjoining the person from continuing the contravention.

(2) The Court, in its discretion, may make the order, and the order may be enforced in the same manner as any other order of the Court of Queen's Bench.

RSA 1980 cl-2 s34;1994 cG-8.5 s89;1996 c25 s23

Proceedings  
against trade  
unions, etc.

**35(1)** Any proceedings under this Act may be instituted against a trade union or employers' organization or occupational association in its name.

(2) Any act or thing done or omitted by an officer, official, or agent of a trade union or employers' organization or occupational association within the scope of his authority to act on its behalf shall be deemed to be an act or thing done or omitted by the trade union or employers' organization or occupational association, as the case may be.

RSA 1980 cl-2 s35

Protection  
from giving  
evidence

**36(1)** No member of the Commission, nor the Director of the Commission or any other employee mentioned in section 17, shall be required by any court to give evidence relative to information obtained for the purpose of this Act.

(2) No proceeding under this Act shall be deemed invalid by reason of any defect in form or any technical irregularity.

RSA 1980 cl-2 s36

Protection  
from liability

**36.1** No action lies against a member of the Commission or any person referred to in section 17 for anything done or not done by that person in good faith while purporting to act under this Act.

1996 c25 s24

Offence

**36.2(1)** No person shall hinder, obstruct or interfere with the Commission or any person referred to in section 17 in the exercise of a power or the carrying out of a duty under this Act.

(2) A person who contravenes subsection (1) is guilty of an offence and is liable to a fine of not more than \$10 000.

## (3) Where

- (a) a corporation, or
- (b) an employment agency, employers' organization, occupational association or trade union that is not a corporation

contravenes subsection (1), any director, officer or agent of the corporation or other body who directed, authorized, assented to, acquiesced in or participated in the contravention is guilty of the offence and is liable to the penalty provided for the offence, whether or not the corporation or other body has been prosecuted for or convicted of the offence.

1996 c25 s24

Service of  
documents

**36.3(1)** A notice or other document required by this Act or the by-laws to be filed with the Commission is deemed to be properly filed if it is

- (a) left in person with the Commission at one of its offices, or
- (b) sent to any office of the Commission by registered or certified mail.

(2) A notice or other document required by this Act or the by-laws to be served on any person is deemed to be properly served if it is

- (a) served personally on that person, or
- (b) sent by registered or certified mail to the last address for that person known to the Commission.

(3) Where it is necessary to prove filing or service of any notice or document,

- (a) if filing or service is effected personally, the actual date on which it is filed or served is the date of filing or service, and
- (b) if filing or service is effected by registered or certified mail, filing or service shall be conclusively presumed to have been effected on the date of receipt or 7 days after the date of mailing, whichever first occurs.

1996 c25 s24

**37** Repealed 1996 c25 s25.

## Definitions

**38(1)** In this Act,

- (a) "age" means 18 years of age or older;
- (b) "commercial unit" means a building or other structure or part thereof that is used or occupied or is intended, arranged or designed to be used or occupied for the manufacture, sale, resale, processing, reprocessing, displaying, storing, handling, garaging or distribution of personal property, or a space that is used or occupied or is intended, arranged or designed to be used or occupied as a separate business or professional unit or office in a building or other structure or in a part thereof;
- (c) "Commission" means the Alberta Human Rights and Citizenship Commission;
- (d) "employers' organization" means an organization of employers formed for purposes that include the regulation of relations between employers and employees;
- (e) "employment agency" includes a person who undertakes with or without compensation to procure employees for employers and a person who undertakes with or without compensation to procure employment for persons;
- (e.01) "family status" means the status of being related to another person by blood, marriage or adoption;
- (e.02) "marital status" means the status of being married, single, widowed, divorced, separated or living with a person of the opposite sex in a conjugal relationship outside marriage;
- (e.1) "mental disability" means any mental disorder, developmental disorder or learning disorder, regardless of the cause or duration of the disorder;
- (f) "Minister" means the member of the Executive Council charged by the Lieutenant Governor in Council with the administration of this Act;
- (g) "occupational association" means an organization other than a trade union or employers' organization in which membership is a prerequisite to carrying on any trade, occupation or profession;
- (h) "person", in addition to the extended meaning given it by the *Interpretation Act*, includes an employment agency, an employers' organization, an occupational association and a trade union;

- (i) "physical disability" means any degree of physical disability, infirmity, malformation or disfigurement that is caused by bodily injury, birth defect or illness and, without limiting the generality of the foregoing, includes epilepsy, paralysis, amputation, lack of physical co-ordination, blindness or visual impediment, deafness or hearing impediment, muteness or speech impediment, and physical reliance on a guide dog, wheelchair or other remedial appliance or device;
  - (i.1) "religious beliefs" includes native spirituality;
  - (i.2) "source of income" means lawful source of income;
  - (j) "trade union" means an organization of employees formed for purposes that include the regulation of relations between employees and employers.
- (2) Whenever this Act protects a person from being adversely dealt with on the basis of gender, the protection includes, without limitation, protection of a female from being adversely dealt with on the basis of pregnancy.

RSA 1980 c1-2 s38;1985 c15 s14;1985 c33 s2;  
1990 c23 s15;1996 c25 s26