

CHAPTER 53

An Act to revise and extend Protection of Human Rights in Ontario

Assented to December 11th, 1981

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

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

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

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

PART I

FREEDOM FROM DISCRIMINATION

1. Every person has a right to equal treatment with respect to services, goods and facilities, without discrimination because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, age, marital status, family status or handicap.

2.—(1) Every person has a right to equal treatment with respect to the occupancy of accommodation, without discrimination because of race, ancestry, place of origin, colour, ethnic

origin, citizenship, creed, sex, age, marital status, family status, handicap or the receipt of public assistance.

**Harassment
in accom-
modation**

(2) Every person who occupies accommodation has a right to freedom from harassment by the landlord or agent of the landlord or by an occupant of the same building because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, age, marital status, family status, handicap or the receipt of public assistance.

Contracts

3. Every person having legal capacity has a right to contract on equal terms without discrimination because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, age, marital status, family status or handicap.

Employment

4.—(1) Every person has a right to equal treatment with respect to employment without discrimination because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, age, record of offences, marital status, family status or handicap.

**Harassment
in
employment**

(2) Every person who is an employee has a right to freedom from harassment in the workplace by the employer or agent of the employer or by another employee because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, age, record of offences, marital status, family status or handicap.

**Vocational
associations**

5. Every person has a right to equal treatment with respect to membership in any trade union, trade or occupational association or self-governing profession without discrimination because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, age, marital status, family status or handicap.

**Harassment
because of
sex in
accommodation**

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

**Harassment
because of
sex in
workplaces**

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

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

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

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

(b) a reprisal or a threat of reprisal for the rejection of a sexual solicitation or advance where the reprisal is

made or threatened by a person in a position to confer, grant or deny a benefit or advancement to the person.

7. Every person has a right to claim and enforce his or her rights under his Act, to institute and participate in proceedings under this Act and to refuse to infringe a right of another person under this Act, without reprisal or threat of reprisal for so doing. Reprisals

8. No person shall infringe or do, directly or indirectly, anything that infringes a right under this Part. Infringe-
ment
prohibited

PART II

INTERPRETATION AND APPLICATION

9. In Part I and in this Part,

Interpretation

(a) "age" means an age that is eighteen years or more, except in subsection 4 (1) where "age" means an age that is eighteen years or more and less than sixty-five years;

(b) "because of handicap" means for the reason that the person has or has had, or is believed to have or have had,

- (i) any degree of physical disability, infirmity, malformation or disfigurement that is caused by bodily injury, birth defect or illness and, without limiting the generality of the foregoing, including diabetes mellitus, epilepsy, any degree of paralysis, amputation, lack of physical co-ordination, blindness or visual impediment, deafness or hearing impediment, muteness or speech impediment, or physical reliance on a dog guide or on a wheelchair or other remedial appliance or device,

- (ii) a condition of mental retardation or impairment,

- (iii) a learning disability, or a dysfunction in one or more of the processes involved in understanding or using symbols or spoken language, or

- (iv) a mental disorder;

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

- (d) "family status" means the status of being in a parent and child relationship;
- (e) "group insurance" means insurance whereby the lives or well-being or the lives and well-being of a number of persons are insured severally under a single contract between an insurer and an association or an employer or other person;
- (f) "harassment" means engaging in a course of vexatious comment or conduct that is known or ought reasonably to be known to be unwelcome;
- (g) "marital status" means the status of being married, single, widowed, divorced or separated and includes the status of living with a person of the opposite sex in a conjugal relationship outside marriage;
- (h) "record of offences" means a conviction for,
 - (i) an offence in respect of which a pardon has been granted under the *Criminal Records Act* (Canada) and has not been revoked, or
 - (ii) an offence in respect of any provincial enactment;
- (i) "services" does not include a levy, fee, tax or periodic payment imposed by law;
- (j) "spouse" means the person to whom a person of the opposite sex is married or with whom the person is living in a conjugal relationship outside marriage.

Constructive
discrimina-
tion

10. A right of a person under Part I is infringed where a requirement, qualification or consideration is imposed that is not discrimination on a prohibited ground but that would result in the exclusion, qualification or preference of a group of persons who are identified by a prohibited ground of discrimination and of whom the person is a member, except where,

- (a) the requirement, qualification or consideration is a reasonable and *bona fide* one in the circumstances; or
- (b) it is declared in this Act that to discriminate because of such ground is not an infringement of a right.

Discrimin-
ation
because of
association

11. A right under Part I is infringed where the discrimination is because of relationship, association or dealings with a person or persons identified by a prohibited ground of discrimination.

R.S.C. 1970,
c. 12
(1st Supp.)

12.—(1) A right under Part I is infringed by a person who publishes or displays before the public or causes the publication or display before the public of any notice, sign, symbol, emblem, or other similar representation that indicates the intention of the person to infringe a right under Part I or that is intended by the person to incite the infringement of a right under Part I.

(2) Subsection (1) shall not interfere with freedom of expression of opinion.

13.—(1) A right under Part I is not infringed by the implementation of a special program designed to relieve hardship or economic disadvantage or to assist disadvantaged persons or groups to achieve or attempt to achieve equal opportunity or that is likely to contribute to the elimination of the infringement of rights under Part I.

(2) The Commission may,

Review by
Commission

(a) upon its own initiative;

(b) upon application by a person seeking to implement a special program under the protection of subsection (1); or

(c) upon a complaint in respect of which the protection of subsection (1) is claimed,

inquire into the special program and, in the discretion of the Commission, may by order declare,

(d) that the special program, as defined in the order, does not satisfy the requirements of subsection (1); or

(e) that the special program as defined in the order, with such modifications, if any, as the Commission considers advisable, satisfies the requirements of subsection (1).

(3) A person aggrieved by the making of an order under subsection (2) may request the Commission to reconsider its order and section 36, with necessary modifications, applies.

(4) Subsection (1) does not apply to a special program where an order is made under clause (2) (d) or where an order is made under clause (2) (e) with modifications of the special program that are not implemented.

(5) Subsection (2) does not apply to a special program implemented by the Crown or an agency of the Crown.

Subs. (2) does
not apply
to Crown

Age
sixty-five
or over

14. A right under Part I to non-discrimination because of age is not infringed where an age of sixty-five years or over is a requirement, qualification or consideration for preferential treatment.

Canadian
Citizen-
ship

15.—(1) A right under Part I to non-discrimination because of citizenship is not infringed where Canadian citizenship is a requirement, qualification or consideration imposed or authorized by law.

Idem

(2) A right under Part I to non-discrimination because of citizenship is not infringed where Canadian citizenship or lawful admission to Canada for permanent residence is a requirement, qualification or consideration adopted for the purpose of fostering and developing participation in cultural, educational, trade union or athletic activities by Canadian citizens or persons lawfully admitted to Canada for permanent residence.

Idem

(3) A right under Part I to non-discrimination because of citizenship is not infringed where Canadian citizenship or domicile in Canada with the intention to obtain Canadian citizenship is a requirement, qualification or consideration adopted by an organization or enterprise for the holder of chief or senior executive positions.

Handicap

16.—(1) A right of a person under this Act is not infringed for the reason only,

- (a) that the person does not have access to premises, services, goods, facilities or accommodation because of handicap, or that the premises, services, goods, facilities or accommodation lack the amenities that are appropriate for the person because of handicap; or
- (b) that the person is incapable of performing or fulfilling the essential duties or requirements attending the exercise of the right because of handicap.

Powers of
Commission

(2) Where, after the investigation of a complaint, the Commission determines that the evidence does not warrant the appointment of a board of inquiry because of the application of subsection (1), the Commission may nevertheless use its best endeavours to effect a settlement as to the provision of access or amenities or as to the duties or requirements.

Special
interest
organiza-
tions

17. The rights under Part I to equal treatment with respect to services and facilities, with or without accommodation, is not infringed where membership or participation in a religious, philanthropic, educational, fraternal or social institution or organization that is primarily engaged in serving the interests of persons identified by a prohibited ground of discrimination is restricted to persons who are similarly identified.

18.—(1) This Act shall not be construed to adversely affect any right or privilege respecting separate schools enjoyed by separate school boards or their supporters under *The British North America Act, 1867* and the *Education Act*. Separate school rights preserved 1867, c. 3 R.S.O. 1980, c. 129

(2) This Act does not apply to affect the application of the *Education Act* with respect to the duties of teachers. Duties of teachers

19.—(1) The right under section 1 to equal treatment with respect to services and facilities without discrimination because of sex is not infringed where the use of the services or facilities is restricted to persons of the same sex on the ground of public decency. Restriction of facilities by sex

(2) The right under section 1 to equal treatment with respect to services and facilities is not infringed where membership in an athletic organization or participation in an athletic activity is restricted to persons of the same sex. Athletic activities

(3) The right under section 1 to equal treatment with respect to services and facilities is not infringed where a recreational club restricts or qualifies access to its services or facilities or gives preferences with respect to membership dues and other fees because of age, sex, marital status or family status. Recreational clubs

20.—(1) The right under section 2 to equal treatment with respect to the occupancy of residential accommodation without discrimination is not infringed by discrimination where the residential accommodation is in a dwelling in which the owner or his or her family reside if the occupant or occupants of the residential accommodation are required to share a bathroom or kitchen facility with the owner or family of the owner. Shared accommodation

(2) The right under section 2 to equal treatment with respect to the occupancy of residential accommodation without discrimination because of sex is not infringed by discrimination on that ground where the occupancy of all the residential accommodation in the building, other than the accommodation, if any, of the owner or family of the owner, is restricted to persons who are of the same sex. Restrictions on accommodation, sex

(3) The right under section 2 to equal treatment with respect to the occupancy of residential accommodation without discrimination because of marital status is not infringed by discrimination on that ground where the occupancy is in a building that contains not more than four dwelling units, one of which is occupied by the owner or family of the owner. Idem: marital status

(4) The right under section 2 to equal treatment with respect to the occupancy of residential accommodation without discrimination because of family status is not infringed by discrimination on that ground where the residential accommodation is in Idem: family status

a building, or designated part of the building, that contains more than one dwelling unit served by a common entrance and the occupancy of all the residential accommodation in the building or in the designated part of the building is restricted because of family status.

**Restrictions
for insurance
contracts, etc.**

21. The right under sections 1 and 3 to equal treatment with respect to services and to contract on equal terms, without discrimination because of age, sex, marital status, family status or handicap, is not infringed where a contract of automobile, life, accident or sickness or disability insurance or a contract of group insurance between an insurer and an association or person other than an employer, or a life annuity, differentiates or makes a distinction, exclusion or preference on reasonable and *bona fide* grounds because of age, sex, marital status, family status or handicap.

**Discriminatory
employment
advertising**

22.—(1) The right under section 4 to equal treatment with respect to employment is infringed where an invitation to apply for employment or an advertisement in connection with employment is published or displayed that directly or indirectly classifies or indicates qualifications by a prohibited ground of discrimination.

**Application
for
employment**

(2) The right under section 4 to equal treatment with respect to employment is infringed where a form of application for employment is used or a written or oral inquiry is made of an applicant that directly or indirectly classifies or indicates qualifications by a prohibited ground of discrimination.

**Questions at
interview**

(3) Nothing in subsection (2) precludes the asking of questions at a personal employment interview concerning a prohibited ground of discrimination where discrimination on such ground is permitted under this Act.

**Employment
agencies**

(4) The right under section 4 to equal treatment with respect to employment is infringed where an employment agency discriminates against a person because of a prohibited ground of discrimination in receiving, classifying, disposing of or otherwise acting upon applications for its services or in referring an applicant or applicants to an employer or agent of an employer.

**Special
employment**

23. The right under section 4 to equal treatment with respect to employment is not infringed where,

(a) a religious, philanthropic, educational, fraternal or social institution or organization that is primarily engaged in serving the interests of persons identified by their race, ancestry, place of origin, colour, ethnic origin, creed, sex, age, marital status or handicap employs only, or gives preference in employment to, persons similarly identified if the qualification is a

- reasonable and *bona fide* qualification because of the nature of the employment;
- (b) the discrimination in employment is for reasons of age, sex, record of offences or marital status if the age, sex, record of offences or marital status of the applicant is a reasonable and *bona fide* qualification because of the nature of the employment;
 - (c) an individual person refuses to employ another for reasons of any prohibited ground of discrimination in section 4, where the primary duty of the employment is attending to the medical or personal needs of the person or of an ill child or an aged, infirm or ill spouse or other relative of the person; or
 - (d) an employer grants or withholds employment or advancement in employment to a person who is the spouse, child or parent of the employer or an employee.

24.—(1) The right under section 4 to equal treatment with respect to employment is infringed where employment is denied or made conditional because a term or condition of employment requires enrolment in an employee benefit, pension or superannuation plan or fund or a contract of group insurance between an insurer and an employer, that makes a distinction, preference or exclusion on a prohibited ground of discrimination. Employment conditional on membership in pension plan

(2) The right under section 4 to equal treatment with respect to employment without discrimination because of age, sex, marital status or family status is not infringed by an employee superannuation or pension plan or fund or a contract of group insurance between an insurer and an employer that complies with the *Employment Standards Act* and the regulations thereunder. Pension or disability plan under R.S.O. 1980, c. 137

(3) The right under section 4 to equal treatment with respect to employment without discrimination because of handicap is not infringed, Employee disability and pension plans: handicap

- (a) where a reasonable and *bona fide* distinction, exclusion or preference is made in an employee disability or life insurance plan or benefit because of a pre-existing handicap that substantially increases the risk;
- (b) where a reasonable and *bona fide* distinction, exclusion or preference is made on the ground of a pre-existing handicap in respect of an employee-pay-all or participant-pay-all benefit in an employee benefit, pension or superannuation plan or fund or a contract of group insurance between an insurer and an employer or in respect of a plan, fund or policy that is offered by an

employer to his employees if they are fewer than twenty-five in number.

Compensation (4) An employer shall pay to an employee who is excluded because of a handicap from an employee benefit, pension or superannuation plan or fund or a contract of group insurance between an insurer and the employer compensation equivalent to the contribution that the employer would make thereto on behalf of an employee who does not have a handicap.

**Discrimina-
tion in
employment
under
government
contracts**

25.—(1) It shall be deemed to be a condition of every contract entered into by or on behalf of the Crown or any agency thereof and of every subcontract entered into in the performance thereof that no right under section 4 will be infringed in the course of performing the contract.

**Idem
government
grants
and loans**

(2) It shall be deemed to be a condition of every grant, contribution, loan or guarantee made by or on behalf of the Crown or any agency thereof that no right under section 4 will be infringed in the course of carrying out the purposes for which the grant, contribution, loan or guarantee was made.

Sanction

(3) Where an infringement of a right under section 4 is found by a board of inquiry upon a complaint and constitutes a breach of a condition under this section, the breach of condition is sufficient grounds for cancellation of the contract, grant, contribution, loan or guarantee and refusal to enter into any further contract with or make any further grant, contribution, loan or guarantee to the same person.

PART III

THE ONTARIO HUMAN RIGHTS COMMISSION

**Commission
(continued)**

26.—(1) The Ontario Human Rights Commission is continued and shall be composed of such persons, being not fewer than seven, as are appointed by the Lieutenant Governor in Council.

**Responsible
to Minister**

(2) The Commission is responsible to the Minister for the administration of this Act.

Chairman

(3) The Lieutenant Governor in Council shall designate a member of the Commission as chairman, and a member as vice-chairman.

**Remunera-
tion**

(4) The Lieutenant Governor in Council may fix the remuneration and allowance for expenses of the chairman, vice-chairman and members of the Commission.

**Staff
R.S.O. 1990
c. 41B**

(5) The employees of the Commission shall be appointed under the *Public Service Act*.

(6) The Commission may authorize any function of the Commission to be performed by a division of the Commission composed of at least three members of the Commission.

27.—(1) The Lieutenant Governor in Council shall designate at least three members of the Commission to constitute a race relations division of the Commission and shall designate one member of the race relations division as Commissioner for Race Relations.

(2) It is the function of the race relations division of the Commission to perform any of the functions of the Commission under clause 28 (f), (g) or (h) relating to race, ancestry, place of origin, colour, ethnic origin or creed that are referred to it by the Commission and any other function referred to it by the Commission.

28. It is the function of the Commission,

Function of
Commission

(a) to forward the policy that the dignity and worth of every person be recognized and that equal rights and opportunities be provided without discrimination that is contrary to law;

(b) to promote an understanding and acceptance of and compliance with this Act;

(c) to recommend for consideration a special plan or program designed to meet the requirements of subsection 13 (1), subject to the right of a person aggrieved by the implementation of the plan or program to request the Commission to reconsider its recommendation and section 36 applies with necessary modifications;

(d) to develop and conduct programs of public information and education and undertake, direct and encourage research designed to eliminate discriminatory practices that infringe rights under this Act;

(e) to examine and review any statute or regulation, and any program or policy made by or under a statute and make recommendations on any provision, program or policy, that in its opinion is inconsistent with the intent of this Act;

(f) to inquire into incidents of and conditions leading or tending to lead to tension or conflict based upon identification by a prohibited ground of discrimination and take appropriate action to eliminate the source of tension or conflict;

- (g) to initiate investigations into problems based upon identification by a prohibited ground of discrimination that may arise in a community, and encourage and co-ordinate plans, programs and activities to reduce or prevent such problems;
- (h) to promote, assist and encourage public, municipal or private agencies, organizations, groups or persons to engage in programs to alleviate tensions and conflicts based upon identification by a prohibited ground of discrimination;
- (i) to enforce this Act and orders of boards of inquiry; and
- (j) to perform the functions assigned to it by this or any other Act.

Evidence obtained in course of investigation

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

Idem

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

Annual report

30.—(1) The Commission shall make a report to the Minister not later than the 30th day of June in each year upon the affairs of the Commission during the year ending on the 31st day of March of that year.

Idem

(2) The Minister shall submit the report to the Lieutenant Governor in Council who shall cause the report to be laid before the Assembly if it is in session, or, if not, at the next ensuing session.

PART IV

ENFORCEMENT

Complaints

31.—(1) Where a person believes that a right of his under this Act has been infringed, the person may file with the Commission a complaint in a form approved by the Commission.

Idem

(2) The Commission may initiate a complaint by itself or at the request of any person.

(3) Where two or more complaints,

Combining
of complaints

- (a) bring into question a practice of infringement engaged in by the same person; or
- (b) have questions of law or fact in common,

the Commission may combine the complaints and deal with them in the same proceeding.

32.—(1) Subject to section 33, the Commission shall investigate a complaint and endeavour to effect a settlement. Investigation of complaints

(2) An investigation by the Commission may be made by a member or employee of the Commission who is authorized by the Commission for the purpose.

(3) A person authorized to investigate a complaint may,

Powers on
investigation

- (a) enter any place, other than a place that is being used as a dwelling, at any reasonable time, for the purpose of investigating the complaint;
- (b) request the production for inspection and examination of documents or things that are or may be relevant to the investigation;
- (c) upon giving a receipt therefor, remove from a place documents produced in response to a request under clause (b) for the purpose of making copies thereof or extracts therefrom and shall promptly return them to the person who produced or furnished them; and
- (d) question a person on matters that are or may be relevant to the complaint subject to the person's right to have counsel or a personal representative present during such questioning, and may exclude from the questioning any person who may be adverse in interest to the complainant.

(4) A person investigating a complaint shall not enter a place that is being used as a dwelling without the consent of the occupier except under the authority of a warrant issued under subsection (8). Entry into dwellings

(5) Subject to subsection (4), if a person who is or may be a party to a complaint denies entry to any place, or instructs the person investigating to leave the place, or impedes or prevents an investigation therein, the Commission may request the Minister to appoint a board of inquiry or may authorize an employee or member to apply to a justice of the peace for a warrant to enter under subsection (8). Denial of entry

Refusal to produce

(6) If a person refuses to comply with a request for production of documents or things, the Commission may request the Minister to appoint a board of inquiry, or may authorize an employee or member to apply to a justice of the peace for a search warrant under subsection (7).

Warrant for search

(7) Where a justice of the peace is satisfied on evidence upon oath that there are in a place documents that there is reasonable ground to believe will afford evidence relevant to the complaint, he may issue a warrant in the prescribed form authorizing a person named in the warrant to search a place for any such documents, and to remove them for the purposes of making copies thereof or extracts therefrom, and the documents shall be returned promptly to the place from which they were removed.

Warrant for entry

(8) Where a justice of the peace is satisfied by evidence upon oath that there is reasonable ground to believe it is necessary that a place being used as a dwelling or to which entry has been denied be entered to investigate a complaint, he may issue a warrant in the prescribed form authorizing such entry by a person named in the warrant.

Execution of warrant

(9) A warrant issued under subsection (7) or (8) shall be executed at reasonable times as specified in the warrant.

Expiration of warrant

(10) Every warrant shall name a date on which it expires, which shall be a date not later than fifteen days after it is issued.

Obstruction

(11) No person shall hinder, obstruct or interfere with a person in the execution of a warrant or otherwise impede an investigation under this Act.

Idem

(12) Subsection (11) is not contravened by a refusal to comply with a request for the production of documents or things made under clause (3) (b).

Admissibility of copies

(13) Copies of, or extracts from, documents removed from premises under clause (3) (c) or subsection (7) certified as being true copies of the originals by the person who made them, are admissible in evidence to the same extent as, and have the same evidentiary value as, the documents of which they are copies or extracts.

Decision to not deal with complaint

33.—(1) Where it appears to the Commission that,

(a) the complaint is one that could or should be more appropriately dealt with under an Act other than this Act;

- (b) the subject-matter of the complaint is trivial, frivolous, vexatious or made in bad faith;
- (c) the complaint is not within the jurisdiction of the Commission; or
- (d) the facts upon which the complaint is based occurred more than six months before the complaint was filed, unless the Commission is satisfied that the delay was incurred in good faith and no substantial prejudice will result to any person affected by the delay,

the Commission may, in its discretion, decide to not deal with the complaint.

(2) Where the Commission decides to not deal with a complaint, it shall advise the complainant in writing of the decision and the reasons therefor and of the procedure under section 36 for having the decision reconsidered.

34.—(1) The Minister shall appoint a panel of persons to act as members of boards of inquiry.

Panel of
members
for boards
of inquiry

(2) The members of boards of inquiry shall be paid such allowances and expenses as are fixed by the Lieutenant Governor in Council.

Remuner-
ation

35.—(1) Where the Commission fails to effect a settlement of the complaint and it appears to the Commission that the procedure is appropriate and the evidence warrants an inquiry, the Commission may request the Minister to appoint a board of inquiry and refer the subject-matter of the complaint to the board.

Referred
to board
of inquiry

(2) Where the Commission decides to not request the Minister to appoint a board of inquiry, it shall advise the complainant and the person complained against in writing of the decision and the reasons therefor and inform the complainant of the procedure under section 36 for having the decision reconsidered.

Notice of
decision
not to
appoint
inquiry

36.—(1) Within a period of fifteen days of the date of mailing the decision and reasons therefor mentioned in subsection 33 (2) or subsection 35 (2), or such longer period as the Commission may for special reasons allow, a complainant may request the Commission to reconsider its decision by filing an application for reconsideration containing a concise statement of the material facts upon which the application is based.

Reconsidera-
tion

(2) Upon receipt of an application for reconsideration the Commission shall as soon as is practicable notify the person

Notice of
application

complained against of the application and afford the person an opportunity to make written submissions with respect thereto within such time as the Commission specifies.

Decision

(3) Every decision of the Commission on reconsideration together with the reasons therefor shall be recorded in writing and promptly communicated to the complainant and the person complained against and the decision shall be final.

Appointment
of board

37.—(1) Where the Commission requests the Minister to appoint a board of inquiry, the Minister shall appoint from the panel one or more persons to form the board of inquiry and the Minister shall communicate the names of the persons forming the board to the parties to the inquiry.

Members at
hearing not
to have
taken part
in investi-
gation, etc.

(2) A member of the board hearing a complaint must not have taken part in any investigation or consideration of the subject-matter of the inquiry before the hearing and shall not communicate directly or indirectly in relation to the subject-matter of the inquiry with any person or with any party or his representative except upon notice to and opportunity for all parties to participate, but the board may seek legal advice from an adviser independent of the parties and in such case the nature of the advice shall be made known to the parties in order that they may make submissions as to the law.

Hearing

38.—(1) The board of inquiry shall hold a hearing,

- (a) to determine whether a right of the complainant under this Act has been infringed;
- (b) to determine who infringed the right, and
- (c) to decide upon an appropriate order under section 40,

and the hearing shall be commenced within thirty days after the date on which the members were appointed.

Parties

(2) The parties to a proceeding before a board of inquiry are,

- (a) the Commission, which shall have the carriage of the complaint;
- (b) the complainant;
- (c) any person who the Commission alleges has infringed the right;
- (d) any person appearing to the board of inquiry to have infringed the right;

(e) where the complaint is of alleged conduct constituting harassment under subsection 2 (2) or subsection 4 (2) or of alleged conduct under section 6, any person who, in the opinion of the board, knew or was in possession of facts from which he or she ought reasonably to have known of the conduct and who had authority to penalize or prevent the conduct.

(3) A party may be added by the board of inquiry under clause (2) (d) or clause (2) (e) at any stage of the proceeding upon such terms as the board considers proper. ^{Adding parties}

(4) Where a board exercises its power under clause 12 (1) (b) of the *Statutory Powers Procedure Act* to issue a summons requiring the production in evidence of documents or things, it may, upon the production of the documents or things before it, adjourn the proceedings to permit the parties to examine the documents or things. <sup>Adjournment on production
R.S.O. 1980,
c. 484</sup>

(5) The board may, where it appears to be in the interests of justice, direct that the board and the parties and their counsel or representatives shall have a view of any place or thing, and may adjourn the proceedings for that purpose. ^{Adjournment for view}

39. The oral evidence taken before a board at a hearing shall be recorded, and copies of a transcript thereof shall be furnished upon request upon the same terms as in the Supreme Court. ^{Recording of evidence}

40.—(1) Where the board of inquiry, after a hearing, finds that a right of the complainant under Part I has been infringed and that the infringement is a contravention of section 8 by a party to the proceeding, the board may, by order, ^{Orders of boards of inquiry}

(a) direct the party to do anything that, in the opinion of the board, the party ought to do to achieve compliance with this Act, both in respect of the complaint and in respect of future practices; and

(b) direct the party to make restitution, including monetary compensation, for loss arising out of the infringement, and, where the infringement has been engaged in wilfully or recklessly, monetary compensation may include an award, not exceeding \$10,000, for mental anguish.

(2) Where the board of inquiry at the conclusion of the hearing finds that a right of a person under Part I has been infringed by discrimination because of handicap, the board may then proceed to inquire whether, ^{Idem}

- (a) the person does not have access to premises, services, goods, facilities or accommodation of the party who is found to be a contravener, because of handicap; or
- (b) the premises, services, goods, facilities or accommodation of the party who is found to be a contravener lack amenities that are appropriate to persons because of the handicap,

and after making a finding thereon, the board may, unless the costs occasioned thereby would cause undue hardship and subject to the regulations, order that the party take such measures as will make such provision for access or amenities or as are set out in the order.

Idem

(3) In addition to the powers conferred by subsection (2), where the board of inquiry at the conclusion of the hearing under subsection (1) finds that a right of a person under Part I has been infringed by discrimination because of handicap, the board may then proceed to inquire and make a finding as to whether the equipment or essential duties attending the exercise of the right could be adapted to meet the needs of the person whose right is infringed and, after making a finding thereon, the board may, unless the costs occasioned thereby would cause undue hardship and subject to the regulations, order that the party take such measures to adapt the equipment or duties as will meet such needs and as are set out in the order.

Order to prevent harassment

(4) Where a board makes a finding under subsection (1) that a right is infringed on the ground of harassment under subsection 2 (2) or subsection 4 (2) or conduct under section 6, and the board finds that a person who is a party to the proceeding,

- (a) knew or was in possession of knowledge from which he ought to have known of the infringement; and
- (b) had the authority by reasonably available means to penalize or prevent the conduct and failed to use it,

the board shall remain seized of the matter and upon complaint of a continuation or repetition of the infringement of the right the Commission may investigate the complaint and, subject to subsection 35 (2), request the board to re-convene and if the board finds that a person who is a party to the proceeding,

- (c) knew or was in possession of knowledge from which he or she ought to have known of the repetition of infringement; and
- (d) had the authority by reasonably available means to penalize or prevent the continuation or repetition of the conduct and failed to use it,

the board may make an order requiring the person to take whatever sanctions or steps are reasonably available to prevent any further continuation or repetition of the infringement of the right.

(5) Where a board of inquiry for any reason is unable to exercise its powers under this section or section 38, the Commission may request the Minister to appoint a new board of inquiry in its place. Re-appointment of board

(6) Where, upon dismissing a complaint, the board of inquiry finds that, Costs

- (a) the complaint was trivial, frivolous, vexatious or made in bad faith; or
- (b) in the particular circumstances undue hardship was caused to the person complained against,

the board of inquiry may order the Commission to pay to the person complained against such costs as are fixed by the board.

(7) The board of inquiry shall make its finding and decision within thirty days after the conclusion of its hearing. Decision within 30 days

41.—(1) Any party to a proceeding before a board of inquiry may appeal from a decision or order of the board to the Divisional Court in accordance with the rules of court. Appeal from decision of board of inquiry

(2) Where notice of an appeal is served under this section, the board of inquiry shall forthwith file in the Divisional Court the record of the proceedings before it in which the decision or order appealed from was made and the record, together with a transcript of the oral evidence taken before the board if it is not part of the record of the board, shall constitute the record in the appeal. Record to be filed in court

(3) An appeal under this section may be made on questions of law or fact or both and the court may affirm or reverse the decision or order of the board of inquiry or direct the board to make any decision or order that the board is authorized to make under this Act and the court may substitute its opinion for that of the board. Powers of court

42. Where a settlement of a complaint is agreed to in writing, signed by the parties and approved by the Commission, the settlement is binding upon the parties, and a breach of the settlement is grounds for a complaint under section 31, and this Part applies to the complaint in the same manner as if the breach of the settlement were an infringement of a right under this Act. Settlements

Penalty

43.—(1) Every person who contravenes section 8, subsection 32 (11), or an order of a board of inquiry, is guilty of an offence and on conviction is liable to a fine of not more than \$25,000.

Consent to prosecution

(2) No prosecution for an offence under this Act shall be instituted except with the consent in writing of the Attorney General.

Acts of officers, etc.

44.—(1) For the purposes of this Act, except subsection 2 (2), subsection 4 (2), section 6 and subsection 43 (1), any act or thing done or omitted to be done in the course of his or her employment by an officer, official, employee or agent of a corporation, trade union, trade or occupational association, unincorporated association or employers' organization shall be deemed to be an act or thing done or omitted to be done by the corporation, trade union, trade or occupational association, unincorporated association or employers' organization.

Opinion re authority or acquiescence

(2) At the request of a corporation, trade union, trade or occupational association, unincorporated association or employers' organization, a board of inquiry in its decision shall make known whether or not, in its opinion, an act or thing done or omitted to be done by an officer, official, employee or agent was done or omitted to be done with or without the authority or acquiescence of the corporation, trade union, trade or occupational association, unincorporated association or employers' organization, and the opinion does not affect the application of subsection (1).

PART V

GENERAL

Interpretation

45. In this Act,

- (a) "Commission" means the Ontario Human Rights Commission;
- (b) "Minister" means the member of the Executive Council to whom the powers and duties of the Minister under this Act are assigned by the Lieutenant Governor in Council;
- (c) "person", in addition to the extended meaning given it by the *Interpretation Act*, includes an employment agency, an employers' organization, an unincorporated association, a trade or occupational association, a trade union, a partnership, a municipality and a board of police commissioners established under the *Police Act*.

46.—(1) This Act binds the Crown and every agency of the <sup>Act binds
Crown</sup>

(2) Where a provision in an Act or regulation purports to <sup>Act has
primacy
over other
Acts</sup> require or authorize conduct that is a contravention of Part I, this Act applies and prevails unless the Act or regulation specifically provides that it is to apply notwithstanding this Act.

(3) Subsection (2) does not apply to an Act or regulation ^{Application} heretofore enacted or made until two years after this Act comes into force.

47. The Lieutenant Governor in Council may make regula- ^{Regulations} tions,

- (a) prescribing criteria or guidelines for boards of inquiry in the making of findings under subsections 40 (2) and (3);
- (b) prescribing forms and notices and providing for their use.

48. The *Ontario Human Rights Code*, being chapter 340 of ^{Repeal} the Revised Statutes of Ontario, 1980, is repealed.

49. This Act comes into force on a day to be named by pro- ^{Commencement} clamation of the Lieutenant Governor.

50. The short title of this Act is the *Human Rights Code*, ^{Short title} 1981.