

# HUMAN RIGHTS AMENDMENT ACT, 1995

## CHAPTER 42

*Assented to June 30, 1995*

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of British Columbia, enacts as follows:

1. *The title of the Human Rights Act, S.B.C. 1984, c. 22, is amended by striking out "Act" and substituting "Code".*
2. *Section 1 is amended*
  - (a) *by renumbering the section as subsection (1),*
  - (b) *by striking out "In this Act" and substituting "In this Code",*
  - (c) *by repealing the definition of "council",*
  - (d) *in the definition of "discrimination" by striking out "or 9 (a) or (b);" and substituting ", 9 (a) or (b) or 39;,"*
  - (e) *by adding the following definitions:*
    - "advisory council" means the Human Rights Advisory Council established under section 15;*
    - "chief commissioner" means the chief commissioner appointed under section 10;*
    - "collective agreement" means a collective agreement as defined in the Labour Relations Code;*
    - "commission" means the British Columbia Human Rights Commission established under section 10;*
    - "commissioner of investigation and mediation" means the commissioner of investigation and mediation appointed under section 10;*
    - "complainant" means a person or group of persons that files a complaint under section 16;*
    - "complaint" means a complaint filed under section 16;*
    - "deputy chief commissioner" means the deputy chief commissioner appointed under section 10;*

“**human rights officer**” means a person designated as a human rights officer under section 18 (1);

“**party**”, with respect to a complaint, means the complainant and the person against whom the complaint is made and includes the deputy chief commissioner, if that commissioner is added as a party under section 16 (3) or 32 (1);

“**tribunal**” means the British Columbia Human Rights Tribunal established under section 27. , *and*

(f) *by adding the following subsection:*

(2) Discrimination in contravention of this Code does not require an intention to contravene this Code.

3. *The following sections are added before Part 1:*

## **Purposes**

1.1 The purposes of this Code are

- (a) to foster a society in British Columbia in which there are no impediments to full and free participation in the economic, social, political and cultural life of British Columbia,
- (b) to promote a climate of understanding and mutual respect where all are equal in dignity and rights,
- (c) to prevent discrimination prohibited by this Code,
- (d) to identify and eliminate persistent patterns of inequality associated with discrimination prohibited by this Code,
- (e) to provide a means of redress for those persons who are discriminated against contrary to this Code,
- (f) to monitor progress in achieving equality in British Columbia, and
- (g) to create mechanisms for providing the information, education and advice necessary to achieve the purposes set out in paragraphs (a) to (f).

## **Code prevails**

1.2 If there is a conflict between this Code and any other enactment, this Code prevails.

### Education and information programs

- 1.3 The chief commissioner is responsible for developing and conducting a program of public education and information designed to promote an understanding and acceptance of this Code.

### Research and public consultations

- 1.4 (1) The chief commissioner or the deputy chief commissioner may conduct or encourage research into matters relevant to this Code.
- (2) The chief commissioner or the deputy chief commissioner may hold public hearings and consultations regarding matters relevant to this Code.

4. *Parts 2, 3 and 4 are repealed and the following substituted:*

## PART 2

### HUMAN RIGHTS COMMISSION AND ADVISORY COUNCIL

#### Human Rights Commission

10. (1) The British Columbia Human Rights Commission is established consisting of the following members appointed by the Lieutenant Governor in Council:
- (a) a chief commissioner;
  - (b) a deputy chief commissioner;
  - (c) a commissioner of investigation and mediation.
- (2) Subject to subsection (3), the members appointed under subsection (1) hold office for a term of 5 years.
- (3) The first appointment of
- (a) the deputy chief commissioner is to be for a term of 3 years, and
  - (b) the commissioner of investigation and mediation is to be for a term of 4 years.
- (4) The chief commissioner is eligible to be reappointed for one additional term of 5 years.
- (5) The deputy chief commissioner and the commissioner of investigation and mediation are eligible to be reappointed for one or more additional terms of 5 years.

- (6) The chief commissioner is the chief executive officer of the commission and must
  - (a) subject to subsection (8), supervise and direct the work of the commission and its staff, and
  - (b) preside at meetings of the commission.
- (7) If the chief commissioner is absent or incapacitated or if that office is vacant,
  - (a) the deputy chief commissioner may act as the chief commissioner during the absence, incapacity or vacancy, and
  - (b) the deputy chief commissioner may exercise all of the powers and may perform all of the duties and functions of the chief commissioner.
- (8) The chief commissioner and the deputy chief commissioner must not direct or interfere with the exercise of any power granted to or duty imposed on the commissioner of investigation and mediation under this Code.

### **Remuneration and expenses**

11. (1) A member of the commission who is not an employee under the *Public Service Act* may be paid the remuneration set by the Lieutenant Governor in Council.
- (2) A member of the commission is to be reimbursed for reasonable travelling and out of pocket expenses necessarily incurred in discharging the member's duties.

### **Staff of the commission**

12. (1) Employees necessary to carry out the powers and duties of the commission may be appointed under the *Public Service Act*.
- (2) The commission may engage or retain consultants and specialists that the commission considers necessary to carry out the powers and duties of the commission and may determine their remuneration.
- (3) The *Public Service Act* does not apply to the retention, remuneration or engagement of consultants and specialists under subsection (2).

### Annual report

13. (1) As soon as practicable after the end of the fiscal year of the government, the chief commissioner must submit to the minister an annual report on the activities of the commission and the disposition of complaints under this Code during the preceding year.
- (2) The annual report must include information concerning compliance with the regulations made under section 45 (2) (b).
- (3) The minister must promptly lay the report before the Legislative Assembly if it is in session or, if it is not in session when the report is submitted, within 15 days after the beginning of the next session.

### Special reports

14. (1) The chief commissioner may submit a special report to the minister concerning any matter respecting human rights in British Columbia that the chief commissioner considers to be of such urgency or importance that it cannot be deferred until the next annual report under section 13.
- (2) The minister must promptly lay the special report before the Legislative Assembly if it is in session or, if it is not in session when the report is submitted, within 15 days after the beginning of the next session.

### Human Rights Advisory Council

15. (1) The Human Rights Advisory Council is established consisting of at least 7 and not more than 11 members appointed by the Lieutenant Governor in Council for a term set by the Lieutenant Governor in Council.
- (2) The Lieutenant Governor in Council must designate one of the members as chair of the advisory council to preside at meetings of the council.
- (3) The role of the advisory council is to
- (a) inform the public about the work of the commission,
  - (b) ensure that the concerns of the public are brought to the attention of the commission, and
  - (c) advise the commission and the minister on matters relevant to the administration of this Code.
- (4) The advisory council must not provide advice under subsection (3) (b) or (c) with respect to a specific complaint before the commission or tribunal.

- (5) A member of the advisory council may be paid the remuneration set by the Lieutenant Governor in Council.
- (6) A member of the advisory council is to be reimbursed for reasonable travelling and out of pocket expenses necessarily incurred in discharging the member's duties.

### **PART 3**

### **COMPLAINTS**

#### **Complaints**

16. (1) Any person or group of persons that alleges that a person has contravened this Code may file a complaint with the commissioner of investigation and mediation in a form satisfactory to that commissioner.
- (2) If the deputy chief commissioner believes that a person has contravened this Code, the deputy chief commissioner may file a complaint against that person under subsection (1).
- (3) The deputy chief commissioner may require the commissioner of investigation and mediation to add the deputy chief commissioner as a party to a complaint.
- (4) Subject to subsection (5), a complaint under subsection (1) may be filed on behalf of
  - (a) another person, or
  - (b) a group or class of persons whether or not the person filing the complaint is a member of that group or class.
- (5) The commissioner of investigation and mediation may refuse to accept, for filing under subsection (1), a complaint made on behalf of another person or a group or class of persons if that commissioner is satisfied that
  - (a) the person alleged to have been discriminated against does not wish to proceed with the complaint, or
  - (b) proceeding with the complaint is not in the interest of the group or class on behalf of which the complaint is made.
- (6) The commissioner of investigation and mediation may proceed with 2 or more complaints together if that commissioner is satisfied that it is fair and reasonable in the circumstances to do so.

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**Time limit for filing a complaint**

17. (1) A complaint must be filed within one year of the alleged contravention.
- (2) If a continuing contravention is alleged in a complaint, the complaint must be filed within one year of the last alleged instance of the contravention.
- (3) The commissioner of investigation and mediation may accept a complaint filed after the expiration of the time limit referred to in subsection (1) or (2) if that commissioner determines that
- (a) the delay in filing the complaint was incurred in good faith, and
  - (b) no substantial prejudice will result to any person because of the delay.

**Investigation**

18. (1) The commissioner of investigation and mediation may designate an employee appointed under section 12 (1), or any other person, as a human rights officer for the purpose of conducting investigations of complaints.
- (2) The commissioner of investigation and mediation must assign a human rights officer to investigate a complaint unless that commissioner determines that the complaint can be disposed of under section 21 without an investigation.
- (3) A human rights officer must submit to the commissioner of investigation and mediation a report of the findings of an investigation.

**Powers of investigation**

19. (1) For the purpose of investigating a complaint, the commissioner of investigation and mediation or a human rights officer may
- (a) require the production of books, documents, correspondence or other records that relate or may relate to the complaint, and
  - (b) make any inquiry relating to the complaint of any person, in writing or orally.
- (2) If a person refuses to
- (a) comply with a demand under subsection (1) (a) for the production of books, documents, correspondence or other records, or
  - (b) respond to an inquiry made under subsection (1) (b),

the commissioner of investigation and mediation or a human rights officer may apply to the Supreme Court for an order requiring the person to comply with the demand or respond to the inquiry.

- (3) A judge of the Supreme Court, on application under subsection (2), may
  - (a) make an order requiring a person to
    - (i) produce a book, document, correspondence or other record to the commissioner of investigation and mediation or a human rights officer under subsection (1) (a), or
    - (ii) respond to an inquiry made under subsection (1) (b), and
  - (b) make any other order that the judge considers necessary to enforce the demand or inquiry under subsection (1).
- (4) For the purpose of investigating a complaint, the commissioner of investigation and mediation or a human rights officer may, with the consent of the owner or occupier, enter and inspect any premises that in the opinion of that commissioner or the human rights officer may provide information relating to the complaint.
- (5) A person exercising a power of entry under subsection (4) must, on request, produce identification and give reasons for requiring entry to the premises.
- (6) If consent to enter any premises is withheld by the owner or occupier under subsection (4), the commissioner of investigation and mediation or a human rights officer must not enter the premises unless authorized by a warrant under subsection (7).
- (7) A justice, if satisfied by information on oath or affirmation that access to any premises is necessary for the purposes of an investigation under section 18, may issue a warrant authorizing a person named in the warrant to enter and inspect those premises.
- (8) If a justice is satisfied by information, on oath or affirmation, that there are in a place books, documents, correspondence or other records that there are reasonable and probable grounds to believe will afford evidence relevant to a complaint, the justice may issue a warrant authorizing a person named in the warrant to
  - (a) search the place for those books, documents, correspondence or records, and
  - (b) remove those books, documents, correspondence or records for the purpose of making copies of them.

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- (9) If books, documents, correspondence or other records are produced under subsection (1) (a) or removed under subsection (8) (b), the commissioner of investigation and mediation or a human rights officer must
- (a) copy the books, documents, correspondence or records as quickly as possible, and
  - (b) promptly return the books, documents, correspondence or records to the person who produced them or to the place from which they were removed.

### **Deferral of a complaint**

20. (1) In this section and in section 22, “**proceeding**” includes a proceeding authorized by another Act and a grievance under a collective agreement.
- (2) If the commissioner of investigation and mediation determines that another proceeding is capable of appropriately dealing with the substance of a complaint, the commissioner may, at any time before the complaint is referred to the tribunal for a hearing, defer further consideration of the complaint pending the outcome of the other proceeding.
- (3) In making a determination under subsection (2), the commissioner of investigation and mediation must consider all relevant factors including
- (a) the subject matter and nature of the other proceeding, and
  - (b) the adequacy of the remedies available in the other proceeding in the circumstances.

### **Disposition of a complaint**

21. (1) After
- (a) determining, under section 18 (2), that a complaint can be disposed of without an investigation, or
  - (b) receiving the report of a human rights officer under section 18 (3),
- the commissioner of investigation and mediation must
- (c) refer all or part of the complaint to the tribunal for a hearing, or
  - (d) dismiss all or part of the complaint under section 22.
- (2) If, after determining under section 18 (2), that a complaint can be disposed of without an investigation, the commissioner of investigation and mediation determines that an investigation is necessary before action can

be taken under subsection (1) (c) or (d), that commissioner may investigate the complaint or may assign a human rights officer to investigate the complaint.

- (3) If, after receiving the report of a human rights officer under section 18 (3), the commissioner of investigation and mediation determines that further investigation of the complaint is necessary before action can be taken under subsection (1) (c) or (d), that commissioner may continue with the investigation or assign a human rights officer to continue with the investigation.
- (4) The commissioner of investigation and mediation must provide the parties with a copy of any investigation report submitted under section 18 (3) and of any results of an investigation under subsection (2) or (3) of this section.
- (5) If the commissioner of investigation and mediation refers all or part of the complaint to the tribunal for a hearing under subsection (1) (c), that commissioner must inform the following persons of that decision in writing:
  - (a) the parties;
  - (b) the deputy chief commissioner, if that commissioner is not already a party.

### **Dismissal of a complaint**

22. (1) The commissioner of investigation and mediation may, at any time after a complaint is filed, dismiss all or part of the complaint if that commissioner determines that
  - (a) the complaint or that part of the complaint is not within the jurisdiction of the commissioner of investigation and mediation,
  - (b) the acts or omissions alleged in the complaint or that part of the complaint do not contravene this Code,
  - (c) there is no reasonable basis to warrant referring the complaint or that part of the complaint to the tribunal for a hearing,
  - (d) proceeding with the complaint or that part of the complaint would not
    - (i) benefit the person, group or class alleged to have been discriminated against, or
    - (ii) further the purposes of this Code,
  - (e) the complaint or that part of the complaint was filed for improper motives or made in bad faith,

- (f) the substance of the complaint or that part of the complaint has been appropriately dealt with in another proceeding, or
  - (g) the contravention alleged in the complaint or that part of the complaint occurred more than one year before the complaint was filed unless the complaint or that part of the complaint was accepted under section 17 (3).
- (2) In making a determination under subsection (1) (f), the commissioner of investigation and mediation must consider the factors referred to in section 20 (3).
- (3) If the commissioner of investigation and mediation dismisses a complaint or part of a complaint under subsection (1), that commissioner must inform the following persons of the decision in writing and give reasons for the decision:
- (a) the complainant;
  - (b) the person against whom the complaint was made, if that person had been given notice of the complaint;
  - (c) the deputy chief commissioner, if that commissioner is not already a party.

#### **Decision to dismiss is final**

23. A decision to dismiss all or part of a complaint under section 22 (1) is final and no further proceedings may be taken under this Code, other than a review under section 24, in relation to
- (a) the complaint or that part of the complaint, or
  - (b) the subject matter of the complaint or that part of the complaint,
- dismissed under section 22 (1).

#### **Review**

24. (1) The deputy chief commissioner or any party aggrieved by the dismissal of all or part of a complaint under section 22 (1) may, within 60 days of being notified of the dismissal, apply to the chair of the tribunal for a review of that dismissal.
- (2) The review is to be conducted by a member of the tribunal designated by the chair and is to be based only on the information which was before the commissioner of investigation and mediation under section 22 (1).

- (3) If the member of the tribunal conducting the review determines that a complaint or part of a complaint should not have been dismissed under section 22 (1), the member may
  - (a) refer the complaint or that part of the complaint to the tribunal for a hearing, or
  - (b) refer the complaint or that part of the complaint back to the commissioner of investigation and mediation to be dealt with by that commissioner on the terms that the member directs.
- (4) The deputy chief commissioner must be notified of the review and must be given an opportunity to make submissions at the review, whether or not that commissioner is a party to the complaint.

### **Mediation and settlement**

25. (1) The commissioner of investigation and mediation, a human rights officer or any person appointed, engaged or retained under section 12 may assist the parties to a complaint, through mediation and other means, to achieve a settlement.
- (2) The terms of each settlement agreement entered into in respect of a complaint must be provided to the commission.
- (3) Subject to section 36, a member of the commission, a human rights officer or any person appointed, engaged or retained under section 12 must not disclose any information respecting the terms of a settlement agreement provided to the commission under subsection (2) that would identify a party to the agreement unless that party consents to the release.

### **Enforcement of settlement agreements**

26. (1) If the terms of a settlement agreement have been provided to the commission under section 25, a party to the agreement who alleges that there has been a breach of the settlement agreement may file the agreement with the chair of the tribunal.
- (2) A settlement agreement filed under subsection (1) may be enforced in the same manner as an order of the tribunal under this Code but only to the extent that the terms of the agreement are within the powers of the tribunal to make an order under this Code.
- (3) The right to file a settlement agreement under subsection (1) cannot be waived.
- (4) A provision of a settlement agreement that purports to waive the right to file the agreement under subsection (1) is void.

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**PART 4**  
**HUMAN RIGHTS TRIBUNAL**

**Human Rights Tribunal**

27. (1) The British Columbia Human Rights Tribunal is established consisting of at least 3 full time members and not more than 6 part time members appointed by the Lieutenant Governor in Council.
- (2) The Lieutenant Governor in Council must designate one of the full time members as chair of the tribunal.
- (3) Subject to subsection (4), members appointed under subsection (1) hold office for a term of 5 years.
- (4) On the first appointment of full time members of the tribunal under this section
- (a) one member is to be appointed for a term of 3 years, and
- (b) one member is to be appointed for a term of 4 years.
- (5) A member of the tribunal is eligible to be reappointed for one additional term of 5 years.

**Remuneration and expenses**

28. (1) A member of the tribunal who is not an employee under the *Public Service Act* may be paid the remuneration set by the Lieutenant Governor in Council.
- (2) A member of the tribunal is to be reimbursed for reasonable travelling and out of pocket expenses necessarily incurred in discharging the member's duties.

**Staff of the tribunal**

29. (1) Employees necessary to carry out the powers and duties of the tribunal may be appointed under the *Public Service Act*.
- (2) The tribunal may engage or retain consultants or specialists that the tribunal considers necessary to carry out the powers and duties of the tribunal and may determine their remuneration.
- (3) The *Public Service Act* does not apply to the retention, remuneration or engagement of consultants or specialists under subsection (2).

### Complaints referred to the tribunal

30. (1) A complaint referred to the tribunal under section 21 (1) (c) or 24 (3) (a) is to be heard by
- (a) a single member of the tribunal designated by the chair, or
  - (b) a panel of 3 members of the tribunal designated by the chair.
- (2) If a panel is designated under subsection (1) (b), the chair must designate one of the members of the panel to preside.
- (3) A member or panel designated to hear a complaint has, for the purposes of the hearing,
- (a) the protection and privileges of a commissioner under section 12 of the *Inquiry Act*, and
  - (b) the powers of a commissioner under sections 15 and 16 of that Act.
- (4) If a member of the tribunal resigns or if a member's appointment to the tribunal terminates, the member may continue to act as a member of the tribunal in relation to a hearing that has begun until an order is made under section 33 with respect to the complaint.

### Hearings

31. (1) Subject to this Code and the regulations, the tribunal may determine the practice and procedure for the conduct of hearings before the tribunal.
- (2) The member or panel designated to hear a complaint must give the parties the opportunity to be represented by counsel, to present relevant evidence, to cross examine witnesses and to make submissions.
- (3) The member or panel may receive and accept on oath, by affidavit or otherwise, evidence and information that the member or panel considers necessary and appropriate, whether or not the evidence or information would be admissible in a court of law.
- (4) The member or panel may hear 2 or more complaints together if the member or panel determines that it is fair and reasonable in the circumstances to do so.
- (5) The member or panel may sever 2 or more complaints joined by the commissioner of investigation and mediation under section 16 (6) if the member or panel determines that it is fair and reasonable in the circumstances to do so.

### Other participants

32. (1) The deputy chief commissioner may require the tribunal to add the deputy chief commissioner as a party to a hearing under section 31.
- (2) The member or panel designated to hear a complaint may, on the terms specified by the member or panel, allow any person or group of persons to intervene in the complaint, whether or not the person or group would be affected by an order made by the member or panel under section 33.

### Remedies

33. (1) If the member or panel designated to hear a complaint determines that the complaint is not justified, the member or panel must dismiss the complaint.
- (2) If the member or panel determines that the complaint is justified, the member or panel
- (a) must order the person who contravened this Code to cease the contravention and to refrain from committing the same or a similar contravention,
  - (b) may make a declaratory order that conduct of the type complained of, or similar conduct, is discrimination contrary to this Code,
  - (c) may order the person who contravened this Code to do one or both of the following:
    - (i) take steps, specified in the order, to ameliorate the effects of the discriminatory practice;
    - (ii) adopt and implement an employment equity program or other special program to ameliorate the conditions of disadvantaged individuals or groups if the evidence at the hearing has disclosed that the person engaged in a pattern or practice that contravenes this Code, and
  - (d) if the person discriminated against is a party to the complaint, or is an identifiable member of a group or class on behalf of which a complaint is filed, may order the person who contravened this Code to do one or more of the following:
    - (i) make available to the person discriminated against the right, opportunity or privilege that, in the opinion of the member or panel, the person was denied contrary to this Code;
    - (ii) compensate the person discriminated against for all, or a part the member or panel determines, of any wages or salary lost, or expenses incurred, by the contravention;

- (iii) pay to the person discriminated against an amount that the member or panel considers appropriate to compensate that person for injury to dignity, feelings and self respect or to any of them.
- (3) An order made under subsection (2) may require the person against whom the order is made to provide the deputy chief commissioner or any other person designated in the order with information respecting the implementation of the order.
- (4) The member or panel may award costs against a party to a complaint who, in the opinion of the panel or member, has engaged in improper conduct during the course of the investigation or the hearing of the complaint.
- (5) A decision or order of the member or panel is a decision or order of the tribunal for the purposes of this Code.
- (6) The member or panel must inform the following persons in writing of the decision made under this section and give reasons for the decision:
  - (a) the parties;
  - (b) any intervenor allowed to participate in the hearing under section 32;
  - (c) the deputy chief commissioner, if that commissioner is not already a party.

### **Modification of orders**

- 34.** (1) Until an order made under section 33 (2) (c) or (d) (i) has been fully implemented, any party may apply to the tribunal for a modification of that order on the grounds that the order is no longer appropriate because of unforeseen circumstances.
- (2) An application under subsection (1) is to be considered by a member of the tribunal designated by the chair.
- (3) If the designated member determines that the order
- (a) has not been fully implemented, and
  - (b) is no longer appropriate because of unforeseen circumstances
- the member may vary or rescind the order.
- (4) The designated member may exercise any of the powers under section 33 (2) (a), (c) or (d) in varying an order under subsection (3) of this section.

**Enforcement of remedies**

35. (1) If an order is made under section 33 (2) (a), (c) or (d) or (4), or under section 34 (3), the party in whose favour the order is made, or, subject to subsection (2), the deputy chief commissioner, may file a certified copy of the order with the Supreme Court.
- (2) The deputy chief commissioner may file an order made under section 33 (2) (d) only with the consent of
- (a) the complainant, if the complaint was filed on behalf of a group or class of persons, or
  - (b) the person in whose favour the order is made in any other case.
- (3) An order filed under subsection (1) has the same force and effect, and all proceedings may be taken on it, as if it were a judgment of the Supreme Court.
- (4) If the deputy chief commissioner files an order under subsection (1), that commissioner may take steps to enforce the order under subsection (3).

**PART 5****GENERAL****Disclosure**

36. (1) A member of the commission, a human rights officer or any person appointed, engaged or retained under section 12 must not be required in any proceedings or otherwise, except before the tribunal or in a judicial review respecting a complaint,
- (a) to give evidence, or
  - (b) to produce records
- relating to information obtained or a communication received with respect to a complaint.
- (2) A member of the tribunal or any person appointed, engaged or retained under section 29 must not be required in any proceedings or otherwise, except in a judicial review respecting a complaint,
- (a) to give evidence, or
  - (b) to produce records
- relating to information obtained or a communication received with respect to a complaint.

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- (3) Subsections (1) and (2) apply despite any provision of the *Freedom of Information and Protection of Privacy Act*, other than section 44 (2) and (3) of that Act.
  - (4) Despite subsection (3) but subject to subsection (5), the *Freedom of Information and Protection of Privacy Act* applies to information obtained or a communication received with respect to a complaint but only after the complaint is
    - (a) referred to the tribunal under section 21,
    - (b) dismissed under section 22, or
    - (c) otherwise settled or withdrawn.
  - (5) The *Freedom of Information and Protection of Privacy Act*, other than section 44 (2) and (3), does not apply to information obtained or a communication received while assisting the parties to a complaint to achieve a settlement.
  - (6) Subsections (3) and (5) do not apply to personal information, as defined in the *Freedom of Information and Protection of Privacy Act*, that has been in existence for 100 or more years or to other information that has been in existence for 50 or more years.

### Exemptions

37. If a charitable, philanthropic, educational, fraternal, religious or social organization or corporation that is not operated for profit has as a primary purpose the promotion of the interests and welfare of an identifiable group or class of persons characterized by a physical or mental disability or by a common race, religion, age, sex, marital status, political belief, colour, ancestry or place of origin, that organization or group must not be considered to be contravening this Code because it is granting a preference to members of the identifiable group or class of persons.

### Special programs

38. (1) It is not discrimination or a contravention of this Code to plan, advertise, adopt or implement an employment equity program that
  - (a) has as its objective the amelioration of conditions of disadvantaged individuals or groups who are disadvantaged because of race, colour, ancestry, place of origin, physical or mental disability, or sex, and
  - (b) achieves or is reasonably likely to achieve that objective.
- (2) The chief commissioner or the deputy chief commissioner may

- (a) make general recommendations concerning desirable objectives for, and
  - (b) on application, give advice and assistance with respect to the adoption or carrying out of employment equity programs or other special programs or activities that have as their objective the amelioration of conditions of disadvantaged individuals or groups.
- (3) The chief commissioner or the deputy chief commissioner may approve any program or activity that has as its object the amelioration of conditions of disadvantaged individuals or groups.
- (4) Any program or activity approved under subsection (3) is deemed not to be in contravention of this Code.

### Protection

39. A person must not evict, discharge, suspend, expel, intimidate, coerce, impose any pecuniary or other penalty on, deny a right or benefit to or otherwise discriminate against a person because that person complains or is named in a complaint, gives evidence or otherwise assists in a complaint or other proceeding under this Code.

### Style of cause for proceedings

40. (1) A proceeding under this Code in respect of a trade union, employers' organization or occupational association may be taken in its name.
- (2) An act or thing done or omitted by an employee, officer, director, official or agent of any person within the scope of his or her authority is deemed to be an act or thing done or omitted by that person.

### Technical matters

41. A proceeding under this Code is not invalid because of any defect in form or any technical irregularity.

### Delegation of powers

42. (1) The chief commissioner may, in writing, delegate to the deputy chief commissioner or to a person or class of persons appointed, engaged or retained under section 12 any of the chief commissioner's powers or duties under this Code, except the power to
- (a) submit an annual report under section 13,
  - (b) approve a program or activity under section 38 (3), and
  - (c) delegate under this section

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- (2) The deputy chief commissioner may, in writing, delegate to a person or class of persons appointed, engaged or retained under section 12 any of the deputy chief commissioner's powers or duties under this Code, except the power to
    - (a) approve a program or activity under section 38 (3), and
    - (b) delegate under this section.
  - (3) The commissioner of investigation and mediation may, in writing, delegate any of that commissioner's powers or duties under this Code, except the power to delegate under this section, to a person or class of persons
    - (a) appointed, engaged or retained under section 12 or designated under section 18 (1), and
    - (b) designated in the regulations as a person or class of persons to whom the power or duty may be delegated.
  - (4) The chair of the tribunal may, in writing, delegate to one or more of the members of the tribunal any of the chair's powers or duties under this Code, except the power to delegate under this section.
  - (5) A delegation made under this section may be revoked, and does not prevent the person who delegated the power from exercising that power.
  - (6) A delegation may be made subject to any terms the person delegating considers appropriate.
  - (7) If the person who delegated the power ceases to hold office, the delegation continues in effect so long as the delegate continues in office or until the delegation is revoked by the person who succeeds the person who delegated the power.
  - (8) A person purporting to exercise a power by virtue of a delegation made under this section must, when requested to do so, produce evidence of the person's authority to exercise the power.

### **Time limits**

43. Despite the fact that a period prescribed under section 45 (2) (b) has expired and the period has not been extended in accordance with the regulations, this Code continues to apply to the complaint to which the period relates, and
  - (a) all proceedings taken under this Code with respect to the complaint may continue, and
  - (b) all proceedings available under this Code with respect to the complaint may be taken.

*Offence Act*

44. Section 5 of the *Offence Act* does not apply to this Code or the regulations.

**Power to make regulations**

45. (1) The Lieutenant Governor in Council may make regulations referred to in section 41 of the *Interpretation Act*.
- (2) Without limiting subsection (1), the Lieutenant Governor in Council may make regulations as follows:
- (a) prescribing the standards for the purposes of section 5;
  - (b) prescribing a period
    - (i) within which a human rights officer must be assigned under section 18 (2),
    - (ii) within which a human rights officer must submit a report under section 18 (3),
    - (iii) for which consideration of a complaint may be deferred under section 20 (2),
    - (iv) within which a complaint must be disposed of under section 21 (1),
    - (v) within which a hearing must be begun under section 31, and
    - (vi) within which a decision and reasons must be provided under section 33 (6);
  - (c) authorizing a person to extend a period referred to in paragraph (b) and prescribing the circumstances in which the period may be extended;
  - (d) respecting the procedures to be followed before a period prescribed under paragraph (b) may be extended;
  - (e) providing for the suspension of a period prescribed under paragraph (b) where consideration of a complaint is deferred under section 20 (2);
  - (f) respecting the practice and procedure of members of the commission in the exercise of their powers and duties under this Code;
  - (g) respecting the practice and procedure in hearings before the tribunal;
  - (h) designating a person or class of persons for the purpose of section 42 (3) (b).
- (3) A regulation made under subsection (2) (c) may permit a period to be extended despite the fact that the period has already expired.

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- (4) Without limiting subsection (2) (g), a regulation made under that subsection may include provisions respecting
- (a) the disclosure and inspection of documents by parties to a complaint,
  - (b) the oral examination of parties and witnesses on oath or affirmation,
  - (c) the holding of prehearing conferences, and
  - (d) procedures for formal offers to settle a complaint.

### Transitional

5. (1) In this section:

“**former Act**” means the *Human Rights Act*, S.B.C. 1984, c. 22, as it read immediately before this section comes into force;

“**present Act**” means the *Human Rights Code* as it reads after this section comes into force.

- (2) If, before this section comes into force, a complaint had been made under section 11 of the former Act, and no action had been taken under section 14 of the former Act with respect to the complaint, the complaint is deemed to have been made under section 16 of the present Act.
- (3) A person who had been assigned to investigate a complaint under the former Act on the day immediately preceding the day on which this section comes into force is deemed to have been
- (a) designated as a human rights officer under section 18 (1) of the present Act, and
  - (b) assigned to investigate the complaint under section 18 (2) of the present Act.
- (4) If, before this section comes into force, the chairman of the British Columbia Council of Human Rights had referred a complaint to that council under section 14 (1) (a) of the former Act, the council has the same power to discontinue the complaint that the council had before this section comes into force, and in relation to that complaint, sections 14 and 15 of the former Act remain in force despite their repeal under section 4 of this Act.
- (5) If, in exercising its powers under subsection (4), the British Columbia Council of Human Rights decides that a complaint should not be discontinued, the complaint is deemed to be referred to the Human Rights Tribunal for a hearing under section 21 (1) (c) of the present Act.
- (6) If, before this section comes into force, the chairman of the British Columbia Council of Human Rights had referred a complaint to that council under section 14 (1) (a) of the former Act, and the council determined that the complaint should not be discontinued but no action has been taken by the chairman under

section 14 (1) (d) of that Act, the complaint is deemed to have been referred to the Human Rights Tribunal for a hearing under section 21 (1) (c) of the present Act.

- (7) If, before this section comes into force, the chairman of the British Columbia Council of Human Rights had designated a member of that council to receive submissions, in respect of a complaint, under section 14 (1) (d) of the former Act, and that member
- (a) had not, on the day immediately preceding the day on which this section comes into force, received any submissions in respect of the complaint, the complaint is deemed to have been referred to the Human Rights Tribunal for a hearing under section 21 (1) (c) of the present Act, and
  - (b) had, on the day immediately preceding the day on which this section comes into force, received submissions in respect of the complaint but had not dismissed the complaint or made an order referred to in section 14 (1) (d) of the former Act, that member continues to have the same power to receive submissions, to dismiss the complaint or to make an order in respect of the complaint that the member had before this section comes into force, and in relation to that complaint, sections 14, 15, 16, 17, 18 and 22 of the former Act remain in force despite their repeal under section 4 of this Act.
- (8) Nothing in this Act affects an order made, before this section comes into force, by a member of the British Columbia Council of Human Rights under section 14 (1) (d) of the former Act.

### Consequential Amendments

#### *Freedom of Information and Protection of Privacy Act*

6. *Schedule 2 of the Freedom of Information and Protection of Privacy Act, S.B.C. 1992, c. 61, is amended*
- (a) *by striking out* “British Columbia Council of Human Rights” *from the column headed* “Public Body” *and by striking out* “Minister of Education and Minister Responsible for Multiculturalism and Human Rights” *from the opposite column,*
  - (b) *by adding* “British Columbia Human Rights Commission” *in the column headed* “Public Body” *and by adding* “Chief Commissioner” *in the opposite column,*
  - (c) *by adding* “British Columbia Human Rights Tribunal” *in the column headed* “Public Body” *and by adding* “Chair” *in the opposite column, and*

- (d) *by adding "Human Rights Advisory Council" in the column headed "Public Body" and by adding "Minister of Government Services and Minister Responsible for Multiculturalism, Human Rights, Sports and Immigration" in the opposite column.*

#### *Hydro and Power Authority Act*

7. *Section 52 (6) of the Hydro and Power Authority Act, R.S.B.C. 1979, c. 188, is amended by striking out "the Human Rights Act," and substituting "the Human Rights Code,".*

#### *Labour Relations Code*

8. *Section 31 (b) of the Labour Relations Code, S.B.C. 1992, c. 82, is amended by striking out "the Human Rights Act," and substituting "the Human Rights Code,".*

#### *Liquor Control and Licensing Act*

9. *Section 47 (1) of the Liquor Control and Licensing Act, R.S.B.C. 1979, c. 237, is amended by striking out "the Human Rights Act." and substituting "the Human Rights Code."*

#### *Residential Tenancy Act*

10. *Section 48.1 (2) of the Residential Tenancy Act, S.B.C. 1984, c. 15, is amended*  
*(a) by striking out "section 5 of the Human Rights Act" and substituting "section 5 of the Human Rights Code", and*  
*(b) by striking out "may file a complaint with particulars under section 11 of the Human Rights Act." and substituting "may file a complaint under section 16 of the Human Rights Code."*

#### **Commencement**

11. This Act comes into force by regulation of the Lieutenant Governor in Council.