

# The Newfoundland Human Rights Commission

## The Newfoundland Human Rights Code

- H.R. Anti-Dx. - 1979  
- Emergency Powers

The Newfoundland Human Rights Code was passed by the Newfoundland Legislature in 1969. The Code, which is part of the law of Newfoundland, was proclaimed fully in force on September 1, 1971. It has been amended several times since to improve procedures and protections offered to the residents of this province.

### Why is there a Human Rights Code?

UNDHR The Legislature of Newfoundland believes implicitly in the Universal Declaration of Human Rights as proclaimed by the United Nations. To reaffirm the Legislature's faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women, the Code was made law. The provisions of the Code allow for the regulation of all matters concerning human rights that fall within the competence of the Legislature.

### View the Human Rights Code online (English / French)

Follow this link to a consolidated copy of the Human Rights Code. Please note that this is not an official copy of the Code. If you require an official copy, please contact the Queen's Printer.

Check Smallwood papers on H.R. 11 or N.H.R.C.

### View the Annotated Human Rights Code online.

Follow this link to a annotated copy of the Human Rights Code. This document contains the text of each section of the Code accompanied with a synopsis and annotations which summarize legal decisions that comment upon the section.

### Overview of the Human Rights Code:

#### Prohibited Grounds

The Code lists the following grounds on which discrimination is prohibited:

- ✖ Race
- ✖ Religion
- ✖ Religious Creed
- ✖ Political Opinion
- ✖ Colour or Ethnic Origin
- ✖ National or Social Origin
- ✖ Sex
- ✖ Marital Status
- ✖ Physical or Mental Disability
- ✖ Age 19-65 (Employment)
- ✖ Sexual Orientation

### **Areas**

The Code prohibits discrimination in the areas of:

- ✖ accommodation, services or facilities (except for good faith limitations for persons with mental disabilities)
- ✖ Occupancy of commercial or self-contained dwelling units
- ✖ Employment (between ages of 19-65 except for good faith occupational qualifications)
- ✖ Publications

### **Harassment is Prohibited**

- ✖ Persons who are occupants of commercial or self-contained dwelling units
- ✖ Persons in the workplace

### **Other Provisions/Protection in The Code**

- ✖ Equal pay for same or similar work
- ✖ Protection against sexual solicitation
- ✖ Protection against retaliation for having filed a complaint
- ✖ Special Programs

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RSN 1990 CHAPTER H-14

**HUMAN RIGHTS CODE**

Amended:

1992 c48 s13; 1997 c18; 1998 c6 s13; 1999 c25

# CHAPTER H-14

## AN ACT RESPECTING THE PROTECTION OF HUMAN RIGHTS

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#### **Short title**

- 1.** This Act may be cited as the *Human Rights Code*.

1988 c62 s1

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**Definitions****2. In this Act**

- (a) "commercial unit" means a building or other structure or part of a building or structure 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 of a building or structure;
- (b) "commission" means the Human Rights Commission referred to in section 16;
- (c) "employers' organization" means an organization of employers formed for purposes that include the regulation of relations between employers and employees;
- (d) "employment agency" includes a person who undertakes with or without compensation to obtain employees for employers and a person who undertakes with or without compensation to obtain employment for persons;
- (e) "establishment" means a place of business or the place where an undertaking or a part of an undertaking is carried on;
- (f) "executive director" means the executive director referred to in section 17;
- (g) "harass" means to engage in a course of vexatious comment or conduct that is known or ought reasonably to be known to be unwelcome;
- (h) "mental disability" means
- (i) a condition of mental retardation or impairment,
  - (ii) a learning disability, or a dysfunction in 1 or more of the processes involved in understanding or using symbols or spoken language, or
  - (iii) a mental disorder;
- (i) "minister" means the Minister of Justice;
- (j) "pay" means remuneration in any form;
- (k) "person", in addition to its meaning in the *Interpretation Act*, includes an employment agency, a trade union and an employers' organization;
- (l) "physical disability" means any degree of infirmity, malformation or disfigurement of the body suffered by a person as a result of injury, illness or birth defect, and includes a handicap resulting from epilepsy, paralysis, lack of co-ordination, amputation, blindness, deafness, muteness or reliance upon a dog guide, a wheelchair, a cane or crutch or other remedial appliance or device;
- (m) "self-contained dwelling unit" means a dwelling house, apartment or other similar place of residence that is used or occupied or is intended, arranged or designed to be used or occupied as separate accommodation for sleeping and eating; and
- (n) "trade union" means an organization of employees formed for purposes that include the regulation of relations between employees and employers.

1988 c62 s2

[Back to Top](#)**Crown bound**

3. The prohibitions contained in this Act apply to and bind the Crown and every agency of the Crown.

1988 c62 s3

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4. (1) The purpose and intent of this Act is to regulate matters within the competence of the Legislature of the province and nothing in this Act shall be construed to affect or regulate a matter which is not subject to the legislative authority of the Legislature.

(2) This Act shall be construed and interpreted so as to ensure that the provisions of it shall not prejudicially affect a right or privilege with respect to denominational schools, common or amalgamated schools, or denominational colleges, that a class of persons had by law in the province at the date of Union of Newfoundland with Canada, or rights or privileges afterward by law acquired by the Pentecostal Assemblies of Newfoundland.

(3) A statute or law or agreement now or afterward enacted or made by which preference is given, or agreed to be given, to

(a) workers whose place of residence or usual place of residence, or ordinary place of residence, is the province; and

(b) material, equipment or other thing produced, originating, manufactured or distributed and serviced in the province

shall have full effect notwithstanding this Act, and nothing in this Act shall be construed as

(c) restricting the effect of a statute or law or agreement now or afterward enacted or made; or

(d) preventing the enactment or making afterward of a statute or law or agreement

respecting the giving of that preference.

1988 c62 s4

[Back to Top](#)**Application of Act**

5. This Act shall take precedence over other statutes where other statutes conflict with this Act whether enacted before or after October 1, 1988.

1989 c12 s15

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*Income tax*

**5.1** A provision of this Act shall not apply to the expression of a limitation, specification, exclusion, denial or preference based on a prohibited ground of discrimination in a pension plan where that discrimination is the result of compliance with a requirement for registration of that plan under the *Income Tax Act* (Canada).

1997 c18 s1

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### Right of the public to services

*disability & good faith qualification*

**6.** (1) A person shall not deny to or discriminate against a person or class of persons with respect to accommodation, services, facilities or goods to which members of the public customarily have access or which are customarily offered to the public because of the race, religion, religious creed, political opinion, colour or ethnic, national or social origin, sex, sexual orientation, marital status, physical disability or mental disability of that person or class of persons.

(2) Notwithstanding subsection (1), a limitation, specification, exclusion, denial or preference because of physical disability or mental disability shall be permitted if that limitation, specification, exclusion, denial or preference is based upon a good faith qualification.

(3) Subsection (1) does not apply

(a) to accommodation in a private residence,

(b) to the exclusion of a person because of that person's sex from accommodation, services or facilities upon the ground of public decency;

(c) to accommodation where sex is a reasonable criterion for admission to the accommodation;

(d) to a restriction on membership on the basis of a prohibited ground of discrimination, in a religious, philanthropic, educational, fraternal, sororal or social organization that is primarily engaged in serving the interests of a group of persons identified by that prohibited ground of discrimination; or

(e) to other situations where a good faith reason exists for the denial of or discrimination with respect to accommodation, services, facilities or goods.

(4) Notwithstanding paragraph (3)(a), subsection (1) shall apply to a private residence that offers a bed and breakfast accommodation for pay.

(5) For the purposes of this section "accommodation, services, facilities or goods to which members of the public customarily have access or which are customarily offered to the public" shall include accommodation, services, facilities or goods which are restricted to a certain segment of the public.

1988 c62 s7; 1990 c59 s1; 1992 c48 s13; 1997 c18 s2

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### Right to occupy commercial and dwelling units

**7.** (1) A person, directly or indirectly, alone or with another, by himself or herself or by the interposition of another, shall not

(a) deny to a person or class of persons occupancy of a commercial unit or a self-contained dwelling unit; or

(b) discriminate against a person or class of persons with respect to a term or condition of occupancy of a commercial unit or a self-contained dwelling unit

by reason only of the race, religion, religious creed, political opinion, colour or ethnic, national or social origin, sex, sexual orientation, marital status, physical disability or mental disability of that person or class of persons.

(2) Notwithstanding subsection (1), a limitation, specification, exclusion, denial or preference because of physical or mental disability shall be permitted if that limitation, specification, exclusion, denial or preference is based upon a good faith qualification as determined by the commission.

1988 c62 s8; 1997 c18 s2

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#### Harassment of occupant prohibited

8. A person, directly or indirectly, alone or with another, by himself or herself only or by the interposition of another, shall not harass a person or class of persons who is an occupant of a commercial unit or a self-contained dwelling unit because of the race, religion, religious creed, political opinion, colour or ethnic, national or social origin, sex, sexual orientation, marital status, physical disability or mental disability of that person or class of persons.

1988 c62 s9; 1997 c18 s2

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#### Discrimination in employment

9. (1) An employer, or a person acting on behalf of an employer, shall not refuse to employ or to continue to employ or otherwise discriminate against a person in regard to employment or a term or condition of employment because of

(a) that person's race, religion, religious creed, political opinion, colour or ethnic, national or social origin, sex, sexual orientation, marital status, physical disability or mental disability; or

(b) that person's age, if that person has reached the age of 19 years and has not reached the age of 65 years,

but this subsection does not apply to the expression of a limitation, specification or preference based on a good faith occupational qualification.

(2) An employer, or a person acting on behalf of an employer, shall not use, in the hiring or recruitment of persons for employment, an employment agency that discriminates against persons seeking employment because of their race, religion, religious creed, political opinion, colour or ethnic, national or social origin, sex, sexual orientation, marital status, physical disability or mental disability.

(3) A trade union shall not exclude a person from full membership or expel or suspend or otherwise discriminate against 1 of its members or discriminate against a person in regard to his or her employment by an employer, because of

(a) that person's race, religion, religious creed, political opinion, colour or ethnic, national or social origin, sex, sexual orientation, marital status, physical disability or mental disability; or

(b) that person's age, if that person has reached the age of 19 years and has not reached the age of 65 years.

(4) A person shall not use or circulate a form of application for employment or publish an advertisement in



connection with employment or prospective employment or make a written or oral inquiry in connection with employment that expresses either directly or indirectly

(a) a limitation, specification or preference as to race, religion, religious creed, political opinion, colour or ethnic, national or social origin, sex, sexual orientation, marital status, physical disability or mental disability; or

(b) an intent to

(i) dismiss from employment,

(ii) refuse to employ or rehire, or

(iii) discriminate against

a person because of age, if that person has reached the age of 19 years and has not reached the age of 65 years,

*5 Feb* but this subsection does not apply to the expression of a limitation, specification or preference based on a good faith occupational qualification.

(5) Notwithstanding subsection 19(1), the provisions of subsections (1), (3) and (4) as to age shall not apply to

(a) termination of employment because of the terms or conditions of a good faith retirement or pension plan;

(b) operation of the terms or conditions of a good faith retirement or pension plan which have the effect of a minimum service requirement; or

(c) operation of the terms or conditions of a good faith group or employee insurance plan.

(6) This section does not apply to an employer

*exception* (a) which is an exclusively religious, fraternal or sororal organization that is not operated for private profit; or

(b) in respect of the employment of a domestic employed and living in a single-family home.

1988 c62 s10; 1997 c18 s2

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#### **Discrimination re: attachment of wages, etc.**

**10.** (1) An employer, or a person acting on behalf of an employer, shall not refuse to employ or to continue to employ or otherwise discriminate against a person in regard to employment or a term or condition of employment because of that person's pay *pay*

(a) from another or previous employer having been; or

(b) from him or her or another employer being or becoming

subject to

(c) attachment or seizure in satisfaction of a claim against; or

(d) alienation, assignment or transfer by

865 that person, but discrimination based on a good faith occupational qualification with respect to persons whose duties include the collecting, receiving or depositing of money belonging to the employer does not constitute a failure to comply with this subsection.

(2) An employer, or a person acting on behalf of an employer, shall not use, in the hiring or recruitment of persons for employment, an employment agency that discriminates against persons seeking employment for a reason that would be, in regard to an employer or person acting on behalf of an employer, discrimination under subsection (1).

(3) A trade union shall not exclude a person from full membership or expel or suspend or otherwise discriminate against a member or discriminate against a person in regard to his or her employment by an employer for a reason that would be, in regard to an employer or a person acting on behalf of an employer, discrimination under subsection (1).

(4) A person shall not use or circulate a form of application for employment or publish an advertisement in connection with employment or prospective employment or make a written or oral inquiry in connection with employment that expresses either directly or indirectly

(a) a limitation, specification or preference as to a person; or

(b) an intent to

(i) dismiss from employment,

(ii) refuse to employ or retire, or

(iii) discriminate against

a person

for a reason that would be, in regard to an employer or a person acting on behalf of an employer, discrimination under subsection (1).

domestic home exception  
(5) This section does not apply to an employer in respect of the employment of a domestic employed and living in a single-family home.

1988 c62 s11

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### **Equal pay for same or similar work**

11. (1) An employer, or a person acting on behalf of an employer, shall not establish or maintain differences in wages between male and female employees employed in the same establishment who are performing, under the same or similar working conditions, the same or similar work on jobs requiring the same or similar skill, effort and responsibility, except where that payment is made under

(a) a seniority system; or

(b) a merit system.

(2) A female employee employed in the same establishment as a male and who is performing under the same or similar working conditions, the same or similar work on jobs requiring the same or similar skill, effort and responsibility shall have

(a) opportunities for training and advancement; and

(b) pension rights and insurance benefits

equal to those applicable to the male.

*Gender*  
*Gender* (3) An employer shall not reduce the wages of a male or female employee in order to comply with subsection (1).

1988 c62 s12

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#### **Harassment in establishment prohibited**

**12.** A person in an establishment shall not harass another person in the establishment because of the race, religion, religious creed, sex, sexual orientation, marital status, physical disability, mental disability, political opinion, colour or ethnic, national or social origin of that person.

1988 c62 s13; 1997 c18 s2

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#### **Sexual solicitation prohibited**

**13. (1)** A person who is in a position to confer, grant or deny a benefit or advancement to another person shall not engage in sexual solicitation or make a sexual advance to that person where the person making the solicitation or advance knows or ought reasonably to know that it is unwelcome.

(2) A person who is in a position to confer or deny a benefit or advancement to another person shall not penalize, punish or threaten reprisal against that person for the rejection of a sexual solicitation or advance.

1988 c62 s14

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#### **Discriminatory publications**

**14. (1)** A person shall not

(a) publish or display, or

(b) permit to be published or displayed on lands or premises or in a newspaper, through a radio or television broadcasting station or by means of another medium which he or she runs or controls

a notice, sign, symbol, emblem or other representation indicating discrimination or an intention to discriminate against a person or a class of persons because of the race, religion, religious creed, political opinion, colour or ethnic, national or social origin, sex, sexual orientation, marital status, physical disability or mental disability of that person or class of persons.

*Free Speech* (2) Nothing in this section interferes with the free expression of opinions upon a subject by speech or in writing.

1988 c62 s15; 1997 c18 s2

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**Protection of complainants and others**

15. A person, employer or trade union shall not evict, discharge, suspend, expel or otherwise discriminate against a person because he or she has made a complaint or given evidence or helped in any way in respect of the initiation or prosecution of a complaint or other proceeding under this Act.

1988 c62 s16

[Back to Top](#)**Commission**

16. (1) The Human Rights Commission is continued.

(2) The commission shall be composed of 3 or more members appointed by the Lieutenant-Governor in Council.

(3) The Lieutenant-Governor in Council shall designate 1 member as chairperson and another as vice-chairperson.

(4) Each member shall be appointed for a term of 5 years and shall hold office until his or her successor is appointed and may be reappointed for further terms of 5 years.

(5) The Lieutenant-Governor in Council may fill a vacancy in the membership of the commission and that person shall be appointed to hold office for the remainder of the term of office of the member being replaced.

(6) The Lieutenant-Governor in Council may determine the remuneration for services and allowances for travelling and other expenses that shall be paid to members.

(7) A quorum of the commission is a majority of the commissioners or 3 commissioners, whichever is the lesser.

(8) A decision of a quorum of the commission is the decision of the commission and in the event of an equality of votes on a matter, the chairperson or, in the absence of the chairperson, the vice-chairperson has a deciding vote.

1988 c62 s17

[Back to Top](#)**Executive director**

17. (1) An executive director of the commission and those officers and employees that are necessary for the purpose of administering this Act may be appointed in the manner established by law.

(2) The executive director of the commission shall

(a) act as a registrar of complaints received and ensure that complaints are dealt with in accordance with this Act;

(b) be the chief executive officer and secretary to the commission; and

(c) perform the duties and functions prescribed for him or her by this Act, by the commission or by the regulations.

(3) The Lieutenant-Governor in Council may determine the remuneration for services and allowances for

travelling and other expenses that shall be paid to the executive director and other officers and employees employed under subsection (1).

1988 c62 s18

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### **Functions of commission**

#### **18. The commission shall**

- (a) forward the principle that every person is equal in dignity and rights without regard to race, religion, religious creed, political opinion, colour or ethnic, national or social origin, sex, sexual orientation, marital status, physical disability or mental disability;
- (b) promote an understanding of, acceptance of and compliance with this Act;
- (c) distribute information and develop and conduct educational programs and research designed to eliminate discriminatory practices related to race, religion, religious creed, political opinion, colour or ethnic, national or social origin, sex, sexual orientation, marital status, physical disability or mental disability;
- (d) advise and help government departments and agencies of the government and co-ordinate their activities where these activities concern human rights;
- (e) advise the government on suggestions, recommendations and requests made by private organizations, groups and individuals where these suggestions, recommendations and requests concern human rights;
- (f) co-operate with and help a person, an organization or a group concerned with human rights, whether within or outside the province;
- (g) report as required by the minister on the business and activities of the commission; and
- (h) consider, investigate or administer a matter or activity referred to the commission by the Lieutenant-Governor in Council or the minister.

1988 c62 s19; 1997 c18 s2

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### **Special programs**

**19. (1)** On the application of a person the commission may approve programs designed to prevent, reduce or eliminate disadvantages respecting services, facilities, accommodation or employment that may be or are suffered by a group of individuals where those disadvantages would be, or are based on or related to the race, religion, religious creed, political opinion, colour or ethnic, national or social origin, sex, sexual orientation, marital status, physical disability or mental disability of members of that group or the age of that group.

**(2)** Before or after the commission approves a program, the commission may

- (a) make inquiries concerning the program;
- (b) vary the program;
- (c) impose conditions on the program; or
- (d) withdraw approval of the program

as it thinks appropriate.

(3) Nothing done in accordance with a program approved under this section is a violation of this Act.

1988 c62 s20; 1997 c18 s2

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### **Complaints**

**20.** (1) A person who has reasonable grounds for believing that a person has contravened this Act may file with the executive director a complaint in a form acceptable to the commission.

(2) A complaint made under subsection (1) shall be made within 6 months after the alleged contravention occurs or, in the case of a continuing contravention, within 6 months after the last incidence of the alleged contravention.

(3) Where a complaint is made by a person other than the person who it is alleged was dealt with contrary to this Act, the executive director may refuse to act on the complaint unless the person alleged to be offended against consents.

1988 c62 s21

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### **Investigation**

**21.** (1) Where a complaint is filed with the executive director, the executive director or a person designated by the executive director shall investigate the complaint and try to settle the matter.

(2) Before an investigation is started under subsection (1), the executive director shall give notice of the complaint and of the start of an investigation of the complaint to the person against whom the complaint is made.

(3) Following an investigation, the executive director shall make a report to the commission and the commission may determine whether or not to refer the matter to a board of inquiry.

(4) Where the commission declines to refer a complaint to a board of inquiry, the complainant may apply to the Trial Division for an order that the commission refer the complaint to a board of inquiry.

(5) An application for an order under subsection (4) shall be made by way of originating application within 30 days of the receipt by the complainant of notice that the commission has declined to refer the complaint.

1988 c62 s22; 1999 c25 s1

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### **Powers of investigation**

**22.** (1) The executive director and a person appointed or designated by the executive director may, at all reasonable times, so long as it is reasonably necessary to determine compliance with this Act, enter a building, factory, workshop or other premises or place in the province

(a) to inspect, audit and examine books of account, records and documents; or

(b) to inspect and view a work, material, machinery, an appliance or article found there,

and the persons occupying or in charge of that building, factory, workshop, premises or place shall

(c) answer all questions concerning those matters put to them; and

(d) produce for inspection the books of account, records, documents, material, machinery, appliance or article requested

by the executive director or a person appointed or designated by the executive director.

(2) Where the executive director or a person appointed or designated by the executive director believes on reasonable grounds that a person has contravened this Act or the regulations, the executive director or a person appointed or designated by the executive director may with a warrant issued under subsection (3) at a reasonable time enter the building, factory, workshop, premises or place and may investigate, inquire into and examine the affairs of the person in respect of whom the investigation is being made and into books of account, records or documents in relation to that person. *warrant*

(3) A Provincial Court judge or justice of the peace who is satisfied by information upon oath or affirmation that there are reasonable grounds for believing that there is in a building, factory, workshop, premises or place anything that there are reasonable grounds to believe will give evidence with respect to an offence under this Act may issue a warrant authorizing the executive director or a person appointed or designated by the executive director to enter and search those premises and to make those inquiries and copies of books of account, records or documents, that are necessary, subject to those conditions that may be specified in the warrant.

(4) The owner or person in charge of the premises referred to in this section and persons found there shall give the executive director or a person appointed or designated by the executive director and named in the warrant reasonable help to enable that person to carry out his or her duties and functions under this section and shall provide the information that that person may reasonably require.

1988 c62 s23

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### **Settlement**

**23.** (1) Where the executive director, or a person designated by the executive director, effects a settlement of a complaint he or she shall report the settlement to the commission.

(2) Where the report referred to in subsection (1) is approved by the commission, the executive director shall notify the parties that no further action will be taken with regard to the complaint unless the terms of a settlement are not complied with.

(3) Where the terms of a settlement referred to in subsection (1) or (4) are not complied with, the commission may reopen the complaint and proceed as if a settlement had not been effected.

(4) A complaint shall be considered settled for the purpose of this Act only if the commission approves the settlement and agrees to its terms.

1988 c62 s24

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### **Reference to board of inquiry**

**24.** Where the commission refers a matter to a board of inquiry under subsection 21(3) or where a judge of the Trial Division orders the commission to refer a matter to a board of inquiry under subsection 21(4), the chairperson of the commission shall refer the matter to the chief adjudicator of the panel appointed under section 25 who shall hear the matter or refer it to another panel member.

1988 c62 s25

[Back to Top](#)**Boards of inquiry**

*app + inquiry*  
*outside*  
*HRC members*

**25.** (1) The Lieutenant-Governor in Council shall appoint a panel of persons to act as members of boards of inquiry.

(2) A panel appointed under subsection (1) shall consist of at least 6 persons, 1 of whom shall be appointed by the Lieutenant-Governor in Council as chief adjudicator.

(3) The members of a panel appointed under this section shall not be members of the commission.

(4) Members of the panel shall be appointed for a term of 3 years and are eligible for reappointment.

(5) The Lieutenant-Governor in Council may terminate the appointment of a member of the panel for cause.

(6) Members of a panel shall be paid at rates fixed by the Lieutenant-Governor in Council.

1988 c62 s26; 1999 c25 s2

[Back to Top](#)**Parties to proceeding**

**26.** (1) The parties to a proceeding before a board of inquiry with respect to a complaint are

(a) the commission, which shall have the carriage of the complaint;

(b) the person named in the complaint as the complainant;

(c) a person named in the complaint who is alleged to have been dealt with contrary to this Act;

(d) a person named in the complaint who is alleged to have contravened this Act; and

(e) a person specified by the board, upon notice, and after that person has been given an opportunity to be heard against his or her joinder as a party.

(2) A copy of the complaint shall be annexed to the notice of the hearing that is given to a party other than the commission.

1988 c62 s27

[Back to Top](#)**Procedure and powers of board**

**27.** (1) A board of inquiry has the powers of a commissioner appointed under the Public Inquiries Act.

(2) A board of inquiry shall inquire into the matters referred to it and give full opportunity to all parties to present evidence and make representations, through counsel or otherwise.

(3) A board of inquiry shall hear a complaint referred to it without undue delay.

*P.I.A.*



1988 c62 s28

[Back to Top](#)**Orders of board****28. (1) A board of inquiry**

(a) shall, where it finds that a complaint is not justified, order that the complaint be dismissed; and

(b) may, where it finds that a complaint is justified in whole or in part, order the person against whom the finding was made to do 1 or more of the following:

(i) to stop the contravention complained of,

(ii) to refrain in future from committing the same or a similar contravention,

(iii) to make available to the person discriminated against the rights, opportunities or privileges he or she was denied contrary to this Act,

(iv) to provide compensation to the person discriminated against, including compensation for all or a part of wages or income lost or expenses incurred because of the discriminatory action, and

(v) to take whatever other action the board considers appropriate.

(2) A board of inquiry may make whatever order as to costs that it considers appropriate.

(3) An order of a board of inquiry shall be binding on all parties.

(4) An order or decision of a board of inquiry shall be made in writing, together with a written statement of the reasons for the order or decision and copies of them shall be provided to the parties.

1988 c62 s29

[Back to Top](#)**Appointment continued**

**28.1** (1) Where a board of inquiry has begun to consider, review, hear and decide upon a matter that has been referred to it, and appointment of a member expires before he or she gives a decision, the appointment of that member shall, for the purpose of deciding upon that matter, be considered to have been extended and the member continues to have all the power conferred by this Act to consider, review, hear and decide upon that matter.

(2) Subsection (1) applies to extend the appointment of a member of a board of inquiry whose appointment may have expired before this section comes into force as well as to the extension of the appointment of a member whose appointment expires after this section comes into force.

1998 c6 s13

[Back to Top](#)**Entry of order**

**29.** An order made by a board of inquiry may be filed with the Registrar of the Supreme Court and is enforceable in the same manner as an order or a judgment of the Trial Division.

1988 c62 s30

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### **Appeal of board decision**

**30.** (1) A party to a proceeding before a board of inquiry may appeal an order or decision of the board by way of application to the Trial Division.

(2) Where the grounds of the appeal consist wholly or partly of a question of fact or of mixed fact and law, an appeal shall not be made without leave of a judge of the Trial Division.

(3) An application for leave to appeal made under subsection (2) shall be made by way of originating application, without giving notice to other interested parties, within 30 days of the receipt by the appellant of the order of the board of inquiry.

(4) A judge may, after taking into consideration those matters that he or she considers appropriate, grant leave to appeal.

(5) An application made under subsection (1) shall be filed with the court within

(a) 30 days of the date leave to appeal was granted, where the appeal is one to which subsection (2) applies; or

(b) 30 days of the date the appellant receives a copy of the order of the board of inquiry, where the appeal is not one to which subsection (2) applies.

(6) An application made under subsection (1) shall be served, together with all affidavits in support, on the board of inquiry and each party to the proceeding before the board at least 5 days before the return date and the application shall be returnable not later than 15 days after filing with the court.

(7) The court may confirm, reverse or vary the order of the board and may make an order that the board may make under section 28.

(8) Commencement of an appeal under this section does not operate as a stay of proceedings of the order of a board of inquiry unless the court orders otherwise.

(9) The commission shall provide to a judge on the hearing of an appeal all papers and documents in its possession which may affect the matter being appealed.

1988 c62 s31

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### **Privileged information and protection from prosecution**

**31.** (1) A member of the commission or a person employed in the administration of this Act shall not be required to give evidence or produce records obtained in the course of an investigation under this Act in a proceeding, except

(a) to a board of inquiry appointed under this Act to deal with a matter to which that information is relevant; or

(b) in an appeal under section 30 of this Act.

(2) The minister, the commission, a member of the commission, the executive director, a person designated by the executive director to inquire into a complaint or a member of a board of inquiry constituted under this Act is not liable for loss or damage suffered by a person because of anything done or omitted to be done in good faith pursuant to or in the exercise or supposed exercise of the powers conferred by this Act.

1988 c62 s32

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### **Publication of order**

**32.** The commission may publish an order of a board of inquiry and the reasons and recommendations of the board of inquiry in whatever manner it considers advisable.

1988 c62 s33

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### **Offence**

**33.** (1) A person who

- (a) does anything prohibited by or refuses or neglects to do anything required under this Act;
- (b) deprives, abridges or attempts to deprive, abridge or restrict a person or class of persons in the enjoyment of a right under this Act;
- (c) makes a false statement or answer to a question put to him or her under this Act;
- (d) hinders, obstructs, molests or interferes with or attempts to hinder, obstruct, molest or interfere with the commission, a person acting under the authority of the commission, the executive director, a board of inquiry or any one else acting under the authority of this Act in the exercise of their duties or powers under this Act; or
- (e) fails, refuses or neglects to comply with an order of a board of inquiry or a part of an order,

is guilty of an offence and liable on summary conviction

- (f) if a natural person, to a fine not exceeding \$100; and
- (g) if a trade union, employers' organization, employment agency or a person other than a natural person, to a fine not exceeding \$500.

(2) Where an employer is convicted of an offence under this Act because of his or her having suspended, transferred, laid off or discharged an employee contrary to this Act, a Provincial Court judge may, after consideration has been given by the judge to all circumstances of the case, including wages, salary or remuneration earned with another employer by the employee, in addition to imposing a fine under subsection (1), order the employer

- (a) to pay compensation for loss of employment to the employee, not exceeding the sum that in the opinion of the judge is equivalent to the wages, salary or remuneration that would have accrued to the employee up to the date of conviction but for the suspension, transfer or discharge, and the provision of the order shall be enforceable against the employer in the same manner as a judgment of a Provincial Court judge in a civil action; and
- (b) to reinstate the employee in his or her employment, at the date that in the opinion of the judge

is just and proper under the circumstances, in the position the employee would have held but for the suspension, transfer, layoff or discharge.

(3) Where an employer is convicted of an offence under this Act, because of his or her having underpaid an employee contrary to this Act, a Provincial Court judge shall in addition to imposing a fine under subsection (1) order the employer to pay to the employee the outstanding difference between the wages actually paid to the employee and the wages which are in the opinion of the Provincial Court judge payable according to this Act.

(4) An order under subsection (3) shall be enforceable against the employer in the same manner as a judgment of the judge in a civil action, but the right of an employee to take another proceeding for recovery of the amount of wages to which he or she is entitled according to this Act is not barred except by satisfaction of that amount and section 737 of the Criminal Code shall not be applied in disposing of a prosecution for an offence referred to in subsection (3).

(5) For the purposes of subsection (2) or (3), a Provincial Court judge has jurisdiction to make an order referred to in that subsection, notwithstanding the amount of money involved.

(6) A conviction in accordance with subsection (1) does not operate as a bar to further prosecution for the continued contravention or failure to comply in accordance with subsection (1) and, where there is a continuing contravention or failure to comply, each day's continuance constitutes a separate offence.

1988 c62 s34

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#### **Complaint to Provincial Court**

**34.** Nothing in this Act restricts the right of an aggrieved person to initiate proceedings or to lay a complaint before a court of summary jurisdiction for an alleged contravention of or failure to comply with this Act, but, if a complaint is laid, then sections 20 to 28 shall not be applied in respect of that complaint.

1988 c62 s35

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#### **Injunction**

**35.** (1) Where a person has been convicted of an offence under this Act, the commission may apply to a judge of the Trial Division for an order enjoining the person so convicted from continuing the offence.

(2) The judge may make whatever order he or she considers appropriate, and the order may be entered and enforced in the same manner as other orders or judgments of the Trial Division.

1988 c62 s36

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#### **Prosecution**

**36.** A prosecution for an offence under this Act may be brought against an employers' organization or a trade union in the name of that organization or trade union, and an act or thing done or omitted by an officer, official or agent of an employers' organization or trade union within the scope of his or her authority to act on behalf of the employers' organization or trade union shall be considered to be an act or thing done or omitted by the employers' organization or trade union as well as being the personal act or omission of that officer, official or agent.

1988 c62 s37

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#### **Technical defect**

**37.** A proceeding under this Act shall not be considered invalid because of a defect in form or a technical irregularity.

1988 c62 s38

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#### **Regulations**

**38.** (1) The Lieutenant-Governor in Council may make regulations

(a) prescribing forms, returns, statements and other documents to be used, made or provided by employers and other persons, the information to be given in those forms, returns, statements and other documents, and by whom and in what language and manner and at what time they shall be made or provided;

(b) prescribing books, accounts and records to be kept and maintained by employees and other persons, the language and manner in which those books, accounts and records are to be kept and prescribing periods of preservation of those books, accounts and records;

(c) prescribing the duties of inspectors, officers and other persons appointed or designated under this Act; and

(d) generally, to give effect to the purpose of this Act.

(2) A regulation made under this section may be limited as to time or place or both.

1988 c62 s39

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#### **Act continued**

**39.** The provisions of *The Newfoundland Human Rights Code* continue to apply with respect to a complaint made under that Act and not concluded, notwithstanding the coming into force of this Act.

1988 c62 s40

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