

CHAPTER 33

An Act to prevent Discrimination in Employment because of Sex or Marital Status

*Assented to June 26th, 1970
Session Prorogued November 13th, 1970*

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

1. In this Act,

Interpre-
tation

- (a) "board" means a board of inquiry appointed under this Act;
- (b) "Director" means the Director of the Ontario Women's Bureau;
- (c) "employers' organization" means an organization of employers formed for purposes that include the regulation of relations between employers and employees;
- (d) "Minister" means the Minister of Labour or such other member of the Executive Council as this Act is assigned to by the Lieutenant Governor in Council;
- (e) "person", in addition to the extended meaning given it by *The Interpretation Act*, includes an employment agency, an employers' organization and a trade union; R.S.O. 1960,
c. 191
- (f) "regulations" means the regulations made under this Act;
- (g) "trade union" means an organization of employees formed for purposes that include the regulation of relations between employees and employers.

2. Except as specifically exempted by this Act or the regulations, this Act applies in respect of the employment of all persons, whether male or female. Application
of Act

3.—(1) Sections 4, 5, 6, 7, 8, 9 and 10 bind the Crown.

Application
of sections
4 to 10

Idem (2) Sections 4, 5, 6, 7, 8, 9 and 10 apply notwithstanding any agreement or waiver to the contrary.

Application of sections 4, 6, 7, 8 (3) Sections 4, 6, 7 and 8 do not apply in respect of an employer who employs fewer than six employees.

Discrimination in employment

4. No person shall,

(a) refuse to refer or to recruit any person for employment;

(b) dismiss or refuse to employ or to continue to employ any person;

(c) refuse to train, promote or transfer an employee; or

(d) subject an employee to probation or apprenticeship or enlarge a period of probation or apprenticeship,

because of sex or marital status unless the work or the position cannot reasonably be performed by that person or employee because of sex or marital status.

Discrimination by employment agencies

5. No employment agency shall discriminate against any person because of sex or marital status in receiving, classifying, disposing of or otherwise acting upon applications for its service or in referring an applicant or applicants to an employer or anyone acting on his behalf.

Discrimination in employment classifications

6. No person shall establish or maintain any employment classification or category that, by its description or operation, excludes any person from employment or continued employment on the grounds of sex or marital status unless the work or the position cannot be reasonably performed by persons of that sex or marital status.

Discrimination in advancement

7. No person shall maintain separate lines of progression for advancement in employment or separate seniority lists that are based on sex or marital status where the maintenance will adversely affect any employee unless sex or marital status is a reasonable occupational qualification for the work.

Discriminatory advertising

8. No person shall publish or display or cause to be published or displayed or permit to be published or displayed any notice, sign, advertisement or publication that expressly limits a position to applicants of a particular sex or marital status.

Pregnancy leave

9.—(1) An employer shall not terminate the employment of an employee because of her pregnancy, but the employer, before or after the commencement of the period referred to in sub-

section 2, may require the employee to commence a leave of absence at such time as the duties of her position cannot reasonably be performed by a pregnant woman or the performance of the employee's work is materially affected by the pregnancy.

(2) Every employer shall, upon the request of an employee ^{Idem} and receipt of a certificate by a legally qualified medical practitioner stating that the employee named therein is pregnant and specifying the date upon which delivery will occur in his opinion, grant or cause to be granted to the employee a leave of absence at any time during a period of six weeks immediately preceding the specified date and until the date of actual delivery.

(3) The employee shall not work and the employer shall not ^{Post-natal leave} cause or permit her to work for at least six weeks after the date of delivery or for such shorter period as, in the written opinion of a legally qualified medical practitioner, is sufficient.

(4) Where the employee reports for work upon the expiration of the period referred to in subsection 3, the employer ^{Preservation of seniority, etc.} shall permit her to resume work with no loss of seniority or benefits accrued to the commencement of the maternity leave.

(5) For the purposes of subsection 1, an employee shall ^{Production of certificate} produce, when so requested by the employer, the certificate referred to in subsection 2.

(6) This section does not apply in respect of an employer ^{Application of section: employers} unless he employs twenty-five or more employees.

(7) This section does not apply in respect of an employer ^{employees} unless the employee has worked continuously for her employer for at least one year prior to the commencement of the period of six weeks referred to in subsection 2.

10. No person shall,

Reprisals

- (a) refuse to employ or to continue to employ any person;
- (b) threaten to dismiss or threaten to penalize in any other way any person in regard to such person's employment or any term or condition thereof;
- (c) discriminate against any person in regard to such person's employment or any term or condition thereof; or

(d)

(*d*) intimidate or coerce or impose any pecuniary or other penalty upon any person,

on the ground that such person,

(*e*) has made or may make a complaint under this Act;

(*f*) has made or may make a disclosure concerning the matter complained of;

(*g*) has testified or may testify in a proceeding under this Act; or

(*h*) has participated or may participate in any other way in a proceeding under this Act.

Ontario
Women's
Bureau
established'

11.—(1) There shall be a branch of the Department of Labour, to be known as the Ontario Women's Bureau, which shall consist of a Director and such other officers and employees as are considered necessary.

Functions

(2) The Bureau shall, subject to the direction and control of the Minister,

(*a*) conduct research and educational programs for the purpose of improving the status and qualifications of women employees;

(*b*) promote the expansion of training and employment opportunities for women;

(*c*) inform and advise women in respect of training and employment;

(*d*) receive and investigate complaints of conduct in contravention of legislation providing for equal employment opportunity for women;

(*e*) enforce legislation providing for equal employment opportunity for women;

(*f*) perform any other duties given to it by any Act.

Director
responsible
to Minister

(3) The Director is responsible to the Minister for the administration of the Bureau.

Complaint

12.—(1) Any person who has reasonable grounds for believing that any person has contravened a provision of sections 4 to 9 may file with the Director a complaint in the form prescribed by the regulations.

(2) Where a complaint is made in respect of an alleged contravention of section 4 or 9 by a person other than the person whom it is alleged was dealt with contrary to section 4 or 9, the Director may refuse to file the complaint unless the person alleged to be offended against consents thereto.

13.—(1) Where a complaint is filed, the Director or a person designated by the Director shall inquire into the complaint and endeavour to effect a settlement of the matter complained of.

(2) A settlement incorporating agreement in respect of any matter that a board would be authorized to include in an order under section 22 may be entered into,

(a) in respect of a complaint involving a contravention of section 4 or 9 between the Director, the person who it is alleged has contravened section 4 or 9 and the person who it is alleged was dealt with contrary to section 4 or 9;

(b) in respect of a complaint involving a contravention of section 5, 6, 7 or 8 between the Director and the person who it is alleged has contravened such section,

and shall be in writing signed by the parties entering into it.

(3) A settlement is binding on the parties entering into it and may be enforced in a court of competent jurisdiction.

(4) A settlement may be entered into while the matter is the subject of a proceeding before a board, but such a settlement is not binding until it is approved by the board and the board may incorporate the settlement into its order, and the consideration by the board of a settlement does not affect the competence of the board to continue its proceedings where it fails to approve the settlement.

(5) Where, in the opinion of the Director, a party to a settlement does not comply with its terms, the Director may file a complaint of the contravention and the matter may be disposed of in the same manner as other complaints.

(6) Where, after a settlement is entered into, an order of a board is made in respect of the same matter under subsection 4 or as a result of a complaint filed under subsection 5, the settlement is superseded by the order and no longer binding.

14.—(1) Where it appears to the Director that a complaint will not be settled, the Director shall make a recommendation to the Minister as to whether or not a board should be

appointed

appointed, and the Minister may, in his discretion, appoint a board of inquiry, consisting of one or more persons, to hear and decide the complaint.

Notice of
appointment

(2) Forthwith after the appointment of a board of inquiry, the Minister shall communicate the names of the members of the board to,

(a) the Director; and

(b) any person, other than the Director, who is required by subsection 1 of section 15 to be a party to the proceedings,

and thereupon it shall be presumed conclusively that the board was appointed in accordance with this Act.

Adminis-
tration of
oaths

(3) A member of a board has power to administer oaths and affirmations for the purpose of any of its proceedings.

Remuner-
ation of
board

(4) The Lieutenant Governor in Council may determine the rate of remuneration of the chairmen and members of the boards of inquiry appointed under this section.

Parties

15.—(1) The parties to a proceeding before a board of inquiry with respect to any complaint shall be,

(a) the Director, who shall have the carriage of the complaint;

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

(c) any person named in the complaint and alleged to have contravened this Act;

(d) any person, other than the person mentioned in clause *b*, named in the complaint and alleged to have been dealt with contrary to section 4 or 9 of this Act; and

(e) any other person specified by the board upon such notice as the board may determine and after being given an opportunity to be heard against his joinder as a party.

Notice of
hearing

(2) The board shall fix a date for the hearing and shall serve notice of the hearing on the parties at least ten days before the day fixed.

(3) The notice of hearing shall contain,

Contents
of notice
of hearing

- (a) a statement of the time and place of the hearing;
- (b) a statement of the statutory power under which the hearing is being held;
- (c) a statement as to where and how further information about the proceedings may be obtained;
- (d) a concise statement of the issues; and
- (e) a statement that, if a party who has been duly notified does not attend at the hearing, the board may proceed in his absence and he is not entitled to notice of any further proceedings.

(4) A true copy of the complaint shall be annexed to the notice of the hearing that is served upon any party except the Director.

Service of
complaint

(5) If a person who has been duly notified of a hearing does not attend, the board may proceed in his absence.

Effect of
non-
attendance

16.—(1) A hearing may be adjourned from time to time by the board on reasonable grounds,

Adjourn-
ments

- (a) on its own motion; or
- (b) on the motion of any party to the hearing.

(2) The board may, in the form prescribed by the regulations, command the attendance before it of any person as a witness.

Summonses

(3) The board may require any person,

Evidence

- (a) to give evidence on oath at a hearing; and
- (b) to produce such documents and things as the board may require.

(4) A witness at a hearing shall be deemed to have objected to answer any question asked him upon the ground that his answer may tend to criminate him or may tend to establish his liability to civil proceedings at the instance of the Crown, or of any person, and no answer given by a witness at a hearing shall be used or be receivable in evidence against him in any trial or other proceedings against him thereafter taking place, other than a prosecution for perjury in giving such evidence.

Protection
for
witnesses

Unsworn
evidence

(5) The board may admit evidence not given under oath.

Contempt
proceedings

(6) Any person who, without lawful excuse,

(a) on being duly summoned as a witness before the board, makes default in attending; or

(b) being in attendance as a witness before the board refuses to take an oath legally required by the board to be taken, or to produce any document or thing in his power or control legally required by the board to be produced by him, or to answer any question to which the board may legally require an answer; or

(c) does any other thing that would, if the board had been a court of law having power to commit for contempt, have been contempt of that court,

is guilty of an offence punishable under subsection 7.

Offence

(7) The board may certify an offence under subsection 6 to the High Court and that court may thereupon inquire into the offence and after hearing any witnesses who may be produced against or on behalf of the person charged with the offence, and after hearing any statement that may be offered in defence, punish or take steps for the punishment of that person in like manner as if he had been guilty of contempt of court.

Rights of
parties
to counsel,
to examine
witnesses,
etc., at
hearings**17.** A party to a proceeding may at a hearing,

(a) be represented by counsel or an agent;

(b) call and examine witnesses and present his arguments and submissions;

(c) conduct cross-examinations of witnesses reasonably required for a full and fair disclosure of the facts in relation to which they have given evidence.

Rights of
witnesses
to counsel**18.**—(1) A witness at a hearing is entitled to be advised by his counsel or agent as to his rights, but such counsel or agent may take no other part in the hearing without leave of the board.

Idem

(2) Where a hearing is *in camera*, a counsel or agent for a witness is not entitled to be present except when that witness is giving evidence.

19. All hearings shall be open to the public except where the board finds that intimate financial or personal matters or other matters may be disclosed at the hearing of such a nature, having regard to the circumstances, that the desirability of avoiding disclosure thereof in the interests of any person affected or in the public interest outweighs the desirability of adhering to the principle that hearings be open to the public in which case the board may hold the hearing concerning any such matters *in camera*.

Hearings
open to
public

20. Documents and things put in evidence at a hearing shall, upon the request of the person who produced them, be released to him by the board within a reasonable time after the matter in issue has been finally determined.

Release of
documents

21. All oral evidence received by the board shall be taken down in writing and together with,

Record

- (a) the notice of hearing;
- (b) the complaint;
- (c) any rulings or orders made in the course of the proceedings of the board;
- (d) any written submissions received by the board; and
- (e) the decision and the reasons therefor,

form the record.

22.—(1) The board after hearing a complaint,

Order of
board

- (a) shall decide whether or not any party has contravened this Act; and
- (b) may make an order under subsection 2.

(2) Where the board decides that any party has contravened any provision of sections 4 to 9, the board may order,

Idem

- (a) such party to do any act or thing that, in the opinion of the board, constitutes full compliance with such provision; and
- (b) where a person has been dealt with contrary to a provision of section 4 or 9, the board may order such party to rectify any injury caused such person or to make compensation therefor.

(3)

- Majority decision** (3) Where a board of inquiry is composed of more than one person, the decision of the majority is the decision of the board.
- Decision** **23.**—(1) The board shall give its final decision in writing and shall give reasons in writing therefor if requested by a party.
- Reasons** (2) The reasons for the decision shall contain,
- (a) the findings of fact on the evidence and any information or knowledge used in reaching the decision;
 - (b) any agreed findings of facts; and
 - (c) the conclusions of law based on the findings mentioned in clauses *a* and *b*.
- Service** (3) The board shall cause to be served on the parties a copy of its order, including the reasons therefor, if any, and a notice stating the rights of appeal.
- Appeal** **24.**—(1) Any party to the hearing before a board may appeal from the order of the board to the Court of Appeal and the practice and procedure as to the appeal and proceedings incidental thereto are the same *mutatis mutandis* as upon an appeal from the High Court.
- Record** (2) The record in the Court of Appeal shall include all of the documents and things specified in section 21.
- Counsel** (3) The Minister may designate counsel to assist the court upon the hearing of an appeal under this section.
- Jurisdiction of Court of Appeal** (4) An appeal under this section may be made on questions of law or fact or both and the court may confirm or alter the decision of the board or direct the board to make any decision or order that the board is authorized to make under this Act and as the court considers proper, and the court may substitute its opinion for that of the board and may exercise the same powers as it exercises on an appeal from a judge of the High Court sitting without a jury.
- Appeal final** (5) The decision of the Court of Appeal is final.
- Enforcement of decisions** **25.** A copy of the final order of the board, exclusive of the reasons therefor, certified under section 32 may be filed in the office of the Registrar of the Supreme Court whereupon it shall be entered in the same way as a judgment or order of that court and is enforceable as such.

26. The Director may require any employer to post such notices respecting the administration and content of this Act as the Director may direct, and the employer shall post and keep posted such notices in a conspicuous place frequented by his employees.

Posting
notices

27.—(1) Every employer shall,

Production
of records

- (a) in respect of an employee, produce the records required by this Act or the regulations or by section 31 of *The Employment Standards Act, 1968* for inspection by the Director or any person authorized by the Minister, and shall for this purpose provide access to his premises for the Director or such person at all reasonable times and at any time his employees are engaged in their work; and
- (b) furnish such information from the records at such time and place as the Director may require.

1968, c. 35

(2) The Director or any person designated to inquire into a complaint under subsection 1 of section 13 has the same powers to inspect and examine books, payrolls and other records in respect of an employee and to take extracts or copies thereof, and to enter premises and to question employees as are possessed by the Director of Employment Standards under section 33 of *The Employment Standards Act, 1968*.

Inspection

28.—(1) Where the Director is authorized under this Act or the regulations to require a person to furnish information, the Director may require the information to be furnished by a notice to that effect served personally or sent by registered mail addressed to the last known place of abode of the person for whom the notice is intended, and such person shall furnish the information within such reasonable time as is specified in the notice.

Notice to
furnish
information

(2) A certificate of the Director certifying that the notice was sent by registered mail to the person to whom it was addressed, accompanied by and identifying the post office certificate of the registration and a true copy of the notice is admissible in evidence as *prima facie* proof of the mailing and receipt of the notice.

Proof of
service

(3) Where the Director is authorized to require a person to furnish information under this Act, a certificate of the Director certifying that the information has not been furnished is admissible in evidence as *prima facie* proof that in such case the person did not furnish the information.

Proof of
failure
to comply

Proof of documents

(4) A certificate of the Director certifying that a document annexed thereto is a document or true copy of a document made by or on behalf of the Director is admissible in evidence as *prima facie* proof of the nature and contents of the document and shall be received in evidence in the place and stead of the original and has the same force and effect as the original document would have had if produced and proved.

Proof of authority

(5) A certificate under this section signed or purporting to be signed by the Director is admissible in evidence as *prima facie* proof of the facts stated therein and of the authority of the person giving or making the certificate without any proof of appointment or signature.

Service

29. Subject to the Rules of the Supreme Court respecting an appeal to the Court of Appeal, the service of any notice or document required for any of the purposes of this Act shall be effected by prepaid post or by personal service in the manner prescribed for the service of summonses by section 6 of *The Summary Convictions Act*, which applies *mutatis mutandis*.

R.S.O. 1980,
c. 387

Penalty

30.—(1) Every person who,

(a) contravenes any provision of this Act or the regulations; or

(b) fails to comply with any order of a board under this Act,

is guilty of an offence and on summary conviction is liable,

(c) if an individual, to a fine of not more than \$800; or

(d) if a corporation, trade union, employers' organization or employment agency, to a fine of not more than \$3,000.

Consent of Minister

(2) No prosecution for an offence under subsection 1 shall be instituted except with the consent in writing of the Minister.

Prosecution of trade union, etc.

(3) A prosecution for an offence under subsection 1 may be instituted against a trade union or employers' organization in the name of the union or organization, and any act or thing done or omitted by an officer, official or agent of a trade union or employers' organization within the scope of his authority to act on behalf of the trade union or employers' organization shall be deemed to be an act or thing done or omitted by the trade union or employers' organization.

(4) In any prosecution for a contravention of any provision of this Act or the regulations, it shall be a sufficient defence if the defendant shows that the contravention occurred in the course of compliance with any provision for the protection or welfare of women and young girls contained in *The Industrial Safety Act, 1964* or *The Employment Standards Act, 1968*.

Defence

1964, c. 45

1968, c. 35

31.—(1) Where a person has been convicted of an offence under section 30, the Minister may apply by way of originating notice to a judge of the Supreme Court for an order prohibiting such person from continuing the conduct constituting the offence.

Restraining order

(2) The judge in his discretion may make such order and the order may be entered and enforced in the same manner as any other order or judgment of the Supreme Court.

Enforcement

32. A certificate purporting to be signed by a member of a board certifying that a document annexed thereto is a true copy of an order of the board is admissible in evidence in any proceeding as *prima facie* proof of the contents of the order without proof of the signature or the official position of the person appearing to have signed the certificate.

Certified copies of orders

33.—(1) The Lieutenant Governor in Council may make regulations,

Regulations

- (a) exempting any class of employers or employees from the application of this Act or the regulations or any provision thereof;
- (b) prescribing the records that shall be kept and the returns that shall be made by employers;
- (c) governing the production and inspection of records required to be kept by employers;
- (d) requiring employers to notify employees of the provisions of this Act and the regulations by the publication of such notices in such manner as may be prescribed;
- (e) providing for the establishment of a consultative or advisory committee to advise the Minister on any matters arising in relation to the administration of this Act;
- (f) prescribing forms and providing for their use.

Idem

(2) A regulation made under subsection 1 or any provision thereof may be confined in its application to any class of employer or employee defined in the regulation.

Moneys

34. The moneys necessary for the purposes of this Act shall, until the end of March, 1971, be paid out of the Consolidated Revenue Fund and thereafter shall be paid out of the moneys appropriated therefor by the Legislature.

**Commence-
ment**

35. This Act comes into force on a day to be named by the Lieutenant Governor by his proclamation.

Short title

36. This Act may be cited as *The Women's Equal Employment Opportunity Act, 1970*.