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# **A GUIDE TO THE LAW IN ALBERTA REGARDING**

## **HUMAN RIGHTS IN CANADA**

**version: 2011**

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Human rights are the minimal rights that each person in Canada has and holds against other members of society. Every person has the right to be treated fairly in certain areas of their daily lives, in a manner no different from other people.

Human rights are protected in Canada under the *Charter of Rights and Freedoms* and human rights legislation that has been made by each province of Canada.

**THE CHARTER OF RIGHTS AND FREEDOMS**

The *Charter of Rights and Freedoms* is a part of the *Constitution of Canada*. The *Charter* lays out the rights of each individual in Canada in relation to government action. This means that laws created by either the federal, provincial or municipal governments may not go against the rights and freedoms guaranteed under the *Charter*. If a law does contradict the *Charter*, the Court may declare it invalid and of no force or effect.

- Some of the rights and freedoms that the *Charter* guarantees are:
- a. Freedom of conscience and religion;
  - b. Freedom of thought, belief, opinion and expression;
  - c. Freedom of peaceful assembly;
  - d. Freedom of association;
  - e. Right to vote;
  - f. Freedom of mobility;
  - g. Right to life, liberty, and security of the person;
  - h. Right to be secure from unreasonable search or seizure;
  - i. Right to not be arbitrarily detained or imprisoned;
  - j. Right to have criminal proceedings occur in a certain way;
  - k. Right to not be subjected to cruel or unusual punishment;
  - l. Right to an interpreter in proceedings;
  - m. Right to be treated equally and not to be discriminated against; and
  - n. Right to be educated in one of either French or English

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The *Charter* only applies to government action and not to interactions between individuals. Furthermore, *Charter* rights are not absolute. This means that the government may violate a right or freedom guaranteed under the *Charter* if it can show that it is justified in doing so in a free and democratic society. For example, while freedom of speech is protected under the *Charter*, there are laws that limit people's freedom to express themselves, such as laws that prohibit hate speech or laws that prohibit some types of pornography. Even though these laws limit an individual's freedom of expression, such limitations are considered reasonable and justified and are therefore allowed.

### ALBERTA HUMAN RIGHTS LEGISLATION

Human rights legislation has been enacted in each province of Canada, and is very similar between provinces. There is also federal human rights legislation, under which federal employees, such as military and postal workers, are given their protected human rights. Legislatures and Parliament have listed specific categories under which people may not be subjected to differential treatment in various areas of their public and private activities.

Every person in Alberta has certain rights guaranteed to him or her under the *Charter* and under Alberta's *Human Rights Act*. This includes the right to be protected from discrimination under the following categories (called "grounds"):

- a. Marital status;
- b. Ancestry;
- c. Family status;
- d. Ethnicity;
- e. Physical disability;
- f. Place of origin;
- g. Colour;
- h. Gender (this includes sexual harassment and maternity);
- i. Mental disability;

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- j. Age (18 years or older);
- k. Source of income;
- l. Race;
- m. Religious beliefs; and
- n. Sexual orientation

Discrimination is defined as an unjust practice or behaviour, whether intentional or not, based on any of the enumerated grounds, which has, or reasonably may have, a negative effect on any individual or group. Freedom from discrimination applies to a number of areas of people's everyday lives. Some of these areas include:

- a. Employment applications and advertisements;
- b. Employment practices;
- c. Goods, services, accommodations, or facilities;
- d. Publications and notices;
- e. Tenancy;
- f. Equal pay; and
- g. Membership in unions and groups

### 1. Exceptions

There are some exceptions under the *Charter*. The amelioration of conditions (also known as "affirmative action") of disadvantaged individuals or groups because of race, national or ethnic origin, colour, religion, sex, age or mental or physical disability is not considered a breach of equality rights. Rather, the focus is on enabling governments to pro-actively combat existing discrimination through affirmative measures.

There are also exceptions for circumstances in which an action is reasonable and justifiable under the circumstances. For instance, the protected ground of age may not apply to persons under the age of 18 in relation to tenancy or some goods, services, accommodation, or facilities. For example, insurance companies typically charge higher fees for younger drivers. This may appear to be age discrimination in the practice of providing a service.

However, due to the fact that younger drivers are proven to be the cause of more accidents than older drivers, this differential treatment is viewed as justifiable under the circumstances.

## **HUMAN RIGHTS COMPLAINTS IN ALBERTA**

If a person has reason to believe that they been discriminated against, they may file a complaint with the Alberta Human Rights Commission. A complaint form may be obtained from the Commission, and there is no fee for filing a complaint. Also, an optional letter explaining the circumstances may be attached. The letter and all attachments must be signed and dated by the complainant. All information must be served on the respondent against whom the violation is alleged. The respondent then has 21 days to file a response to the allegations. The response must be shared with the Commission and the complainant.

A complainant must describe each incident of alleged discrimination, with reference to the areas and grounds listed above. Information concerning what the complaint is about, why the complainant believes they were discriminated against, how they were treated differently than others, who did the discriminating, the date(s) and place(s) where the discrimination occurred, and any other action (if any) that has been taken regarding the situation.

Note that a complaint or confidential advice from the Alberta Human Rights Commission must be sought within 12 months of any alleged violation of the *Alberta Human Rights Act*.

Any person who makes a complaint under this *Act* that is untrue, malicious or frivolous does so in strict contravention of the *Act*, and is liable for fines or other penalties to be imposed by the Commission.

Complainants do not require a lawyer to act for them, but one may be obtained at any stage of the proceedings. If someone chooses to use a lawyer, he or she will be required to pay the lawyer's fees. There are some organizations that may represent a complainant at no cost.

### **1. Union Members**

Those who belong to a union must go through arbitration rather than filing a human rights complaint. Arbitration is a process for resolving disputes without resorting to the Courts that is usually mandated by collective agreements. The parties submit their cases to an arbitrator, or a group of arbitrators, who have been selected jointly by the parties. Union representatives will be able to explain this process to a union member who has questions.

### **2. Conciliation**

One way that the dispute may be resolved is through conciliation. This is a voluntary, non-adversarial method in which a neutral conciliator helps the complainant and respondent identify and discuss the issues that gave rise to the complaint. All information given at this point is without prejudice, which means that it can only be used for purposes of the conciliation and for no other purpose. If an acceptable solution is not reached, a human rights investigator will then be assigned.

If an investigation follows, the Commission will notify the parties that an overview of the situation is being undertaken to determine whether there is any merit to the complaint. The investigator may demand records and documents, electronic or otherwise, that may be relevant to the subject matter of the investigation.

### **3. Possible Outcomes**

If there are no reasonable grounds to believe that discrimination has occurred, the complaint will be dismissed. If the Director believes that the complainant has refused to accept a fair

settlement, the investigation may result in a discontinuance. This means that no further investigation will take place.

#### **4. Appeals**

Appeals can be made to the Chief of the Commission and Tribunals in writing within 30 days. If the Chief of the Commission and Tribunals decides that the investigation should not have been discontinued, the complaint is then referred to a Human Rights Tribunal. If the Chief of the Commission and Tribunals agrees to dismiss or discontinue the complaint, that decision is final and binding. The Court of Queen's Bench may review the process giving rise to the decision to dismiss the complaint, but only if a review is requested within 6 months.

The Human Rights Tribunal is made up of one or more Commissioners, and may or may not include the Chief of the Commission and Tribunals. The hearing shall be open to the public unless the Tribunal decides that a private hearing would better suit the confidential nature of the matter to be heard. All persons named in the complaint may attend the hearing.

Evidence may be given in any manner that the Tribunal considers appropriate, and the rules respecting evidence in judicial proceedings do not apply.

If it is found that the complaint is without merit, the Tribunal will order that the complaint be dismissed.

If merit is found in whole or part of the complaint, the Tribunal may order that the person against whom the finding was made do any or all of the following:

Cease the violation in question;

- a. Refrain from committing the same or any similar violation in the future;

- b. Make available to the complainant the rights, opportunities, or privileges that the person was denied, contrary to the *Act*;
- c. Compensate the complainant for any lost wages, lost income or expenses incurred by reason of the violation of the *Act*; or
- d. Take any other action that the Tribunal deems appropriate to place the complainant in the position they would have been had the violation never occurred.

#### **5. Remedies**

Remedies are based on Alberta and Canadian precedents in human rights cases. This means that the Court will follow what has been done before in similar cases. The purpose of the remedy is not to punish the respondent, but rather to put the complainant in the position they would have been in had the harm not occurred. Because each case is different, the remedies will differ depending on the degree of discrimination or harassment, as well as the characteristics of the particular complainant.

For example, the complainant's interests may be addressed by ordering the respondent to provide an apology or a job reference. Compensation, financial or non-financial, would also serve the individual's interests by attempting to alleviate pain and suffering. The public interest may be addressed by ordering an employer to conduct an education session on human rights, or by introducing a non-discriminatory policy into the workplace.

Once the decision of the Human Rights Tribunal has been filed with the Court, it has the same force and effect as a Court of Queen's Bench decision. This means that any appeal must be directed towards the Court of Appeal of the Province, or the Supreme Court of Canada (if it is merited).

## **6. Safety**

If a person believes that their safety or the safety of anyone named in the form is at risk, they should contact the local police service and notify the Commission.

Retaliation against any person involved with making a complaint, conducting an investigation, giving evidence, or carrying out the settlement imposed by the Commission or Human Rights Tribunal is a contravention of the *Act* and may be prosecuted.

## **HATE CRIMES**

There is no nationally accepted definition of what constitutes a hate crime. The Edmonton Police Service defines a hate crime as “an offence committed against a person or property which is motivated in whole or in part by the suspects’ hate, prejudice or bias against an identifiable group based on real or perceived race, national or ethnic origin, language, colour, religion, sex, age, mental or physical disability, sexual orientation or any other similar factor.” In other words, a hate crime is any act designed to injure, terrify or intimidate a member of a specific, identifiable group. Victims of hate crimes are usually selected simply because they are a member of one of these identifiable groups, not because of anything specific that they have done.

There is no single offence in the *Criminal Code* that makes hate crimes illegal. Certain provisions criminalize the promotion of genocide, the public encouragement of hatred against an identifiable group, the willful promotion of hatred, and the creation of hate propaganda. Beyond these offences, a person cannot be convicted of committing a “hate crime”.

However, whether or not the offence was motivated by hate, bias or prejudice can be used as an aggravating factor at sentencing. This means that a hate-motivated crime can be given a harsher sentence than the same type of crime that was not motivated by

hate. For example, an aggravated assault that has been classified as a hate crime will probably receive a longer sentence than an aggravated assault that was not motivated by hate.

## **EXAMPLES OF HATE CRIMES**

It is difficult to give specific examples of what constitutes a hate crime. Because hate crimes are only classified as such if it can be determined that the underlying offence was motivated by hate, deciding whether or not a hate crime has been committed will depend heavily on the details of the situation. However, the Edmonton Police Service suggests that the following actions could result in a hate crime classification:

- a. Violence or threats of violence;
- b. Acts of mischief or vandalism;
- c. Distribution of hate literature or hate mail;
- d. Threatening phone calls; or,
- e. Destruction of religious property or symbols

While not all instances of hate are necessarily criminal in nature, the EPS also suggests it is important to tell the police if you witness the following:

- a. Intimidation against an identifiable group;
- b. Distribution of prejudicial material; or,
- c. The use of racial slurs

## **REPORTING HATE CRIMES**

If a person feels that he or she has been the victim of a hate crime, he or she has a few options available:

- a. If the crime is in progress, call 911
- b. If the crime is not in progress, call the EPS Complaint Line or the EPS Hate Crimes Unit. Be sure to include the date, time, place and a short description of the incident when leaving the message. (Please see the back of the pamphlet for referral numbers)

Ultimately, whether or not the police file will end up with the Hate Crimes Unit is up to the investigating officer. He or she must decide whether to classify the incident as a hate crime. If the investigating officer decides to classify the offence as a hate crime, the file will be transferred to the Hate Crimes Unit and be investigated accordingly. Therefore, if you feel that you have been the victim of a hate crime, it is very important to make sure that the investigating officer knows that you believe that the offence committed against you was motivated by hate.

In reality, it is rare for someone to be convicted of a hate crime in Canada. This is because the Crown must get permission from the provincial Attorney General before he or she may prosecute an offence as a hate crime.

### **VICTIMS OF HATE CRIME**

Victims of hate crimes are often severely affected by their experiences, and should consider contacting the Victim Services Unit. Here, the victim will be put in contact with victim advocates. These individuals are community volunteers who have been trained in crisis intervention, trauma, court preparation and accompaniment, bereavement, suicide awareness, home security, personal safety, crime prevention and community programs. Victim advocates will be able to provide support to the victim after the incident.

### **REFERENCE NUMBERS AND WEBSITES**

#### **Alberta Human Rights Commission**

Toll free in AB... dial 310-0000 and then the number  
Confidential Inquiry Line... [780] 427-7661  
[www.albertahumanrights.ab.ca](http://www.albertahumanrights.ab.ca)  
800 Standard Life Centre  
10405 Jasper Avenue, Edmonton, AB, T5J 4R7

#### **Edmonton Police Service:**

Complaint Line... [780] 423-4567  
Hate Crimes Unit... [780] 421-3489  
Victim Services Unit (Administration)... [780] 421-2217  
Victim Services Unit (Southeast)... [780] 426-8260  
Victim Services Unit (West)... [780] 426-8060  
Victim Services Unit (Downtown)... [780] 421-2760  
Victim Services Unit (North)... [780] 426-8160

#### **For Legal Assistance:**

Legal Services Center... [780] 427-7575  
Dial-A-Law (Legal Information on Tape)... 1-800-332-1091  
Edmonton Community Legal Centre... [780] 702-1725  
Lawyer Referral Service... 1-800-661-1095  
Edmonton Legal Aid... [780] 427-7575  
[www.legalaid.ab.ca](http://www.legalaid.ab.ca)

#### **Student Legal Services of Edmonton ([www.slsedmonton.com](http://www.slsedmonton.com))**

Administration... [780] 492-2226  
Civil Law... [780] 492-8244  
Criminal Law... [780] 425-3356