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A GUIDE TO THE LAW IN ALBERTA REGARDING



HUMAN RIGHTS

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GENERAL

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HUMAN RIGHTS

THE CHARTER OF RIGHTS AND FREEDOMS 2

ALBERTA HUMAN RIGHTS LEGISLATION 3

 Exceptions 4

HUMAN RIGHTS COMPLAINTS IN ALBERTA 5

 Union Members 6

 Conciliation 6

 Possible Outcomes 7

 Appeals 7

 Remedies 8

 Safety 9

REFERENCE NUMBERS AND WEBSITES 10

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 limited 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 the 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 that lays out the rights of each individual in Canada in relation to government action. This means that no laws created by either the Federal, Provincial or Municipal governments may go against the rights and freedoms guaranteed under the *Charter*. If a law does contravene the *Charter*, it may be declared invalid and of no effect by the Court.

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 either French or English

A GUIDE TO THE LAW IN ALBERTA REGARDING HUMAN RIGHTS

The *Charter* only applies to government action and not to interactions between individuals. 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 such as Canada. 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. Such limitations are considered reasonable.

ALBERTA HUMAN RIGHTS LEGISLATION

Human rights legislation has been enacted in each province of Canada, and is very similar province to province. 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 grounds under which people may not be subjected to differential treatment in various areas of their lives, in their public and private activities.

Every person in Alberta has certain rights guaranteed to him or her under the *Human Rights, Citizenship, and Multiculturalism 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;
- j. Age (18 years or older);
- k. Source of income;

A GUIDE TO THE LAW IN ALBERTA REGARDING HUMAN RIGHTS

- 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 Act. The protected ground of age does not apply to tenancy or goods, services, accommodation, or facilities. Also, persons under the age of 18 cannot use age as a basis for a complaint.

There are exceptions for circumstances in which an action is reasonable and justifiable under the circumstances. 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 he or she has been discriminated against, he or she may file a complaint with the Human Rights and Citizenship 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 he or she was discriminated against, how he or she was 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.

A complaint must be made, or confidential advice from the Alberta Human Rights and Multiculturalism Commission must be sought, within 12 months of any alleged violation of the Alberta *Human Rights, Citizenship, and Multiculturalism Act*.

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

Any 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 Panel is a contravention of the *Act* and may be the subject of prosecution under the *Act*.

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 their fees, but there are some organizations that may represent a complainant at no cost.

1. Union Members

Those who belong to a union, such as the Alberta Teacher's Association, must go through arbitration rather than file a human rights complaint against the government. Arbitration is a process for resolving disputes without resorting to the courts, whereby the parties submit their cases to an arbitrator, or a group of arbitrators, selected jointly by the parties. Union representatives will be able to explain this process as well each person's role 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 to identify and discuss the issues giving 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.

An investigation may follow, at which point 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 result in a dismissal. If the Director is of the opinion that the complainant has refused to accept a fair settlement, the investigation may result in a discontinuance, whereby no further investigation will take place.

4. Appeals

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

The Human Rights Panel is made up of one or more Commissioners, and may or may not include the Chief Commissioner. The hearing shall be open to the public unless the Panel 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 Panel considers appropriate, and the rules respecting evidence in judicial proceedings do not apply.

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

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

- a. To cease the violation in question;
- b. To refrain in the future from committing the same or any similar violation;

- c. To make available to the complainant the rights, opportunities, or privileges that the person was denied contrary to the *Act*;
- d. To compensate the complainant for any wages or income lost or expenses incurred by reason of the violation of the *Act*; or
- e. To take any other action that the Panel deems appropriate to place the complainant in the position they would have been but for the violation.

5. Remedies

Remedies are based on Alberta and Canadian precedents in human rights cases. This means that courts 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 contravention 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.

The individual's interests may be addressed, for example, by ordering the respondent to provide an apology to the complainant, or a job reference. Any compensation, financial or non-financial, would also serve the individual's interests by attempting to alleviate any 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.

A Human Rights Panel, once its decision is filed with the court, has the same force and effect of 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 his or her safety or the safety of anyone named in the form is at risk, he or she should contact the local police service and notify the Commission.

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
800 Standard Life Centre
10405 Jasper Avenue, Edmonton, AB, T5J 4R7

For Legal Assistance:

Alberta Law Line [780] 644-7777
The toll-free number 1-866-845-3425

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(Toll free)

Edmonton Legal Aid [780] 427-7575
www.legalaid.ab.ca

Student Legal Services of Edmonton (*www.slsedmonton.com*)

Criminal Law [780] 492-2226
Civil Law [780] 492-8244