

**COURT OF APPEAL**

BETWEEN:

**B.C. Human Rights Tribunal**APPELLANT  
(Respondent)

AND:

**Gibraltar Mines Ltd.**RESPONDENT  
(Petitioner)

AND:

**Lisa Harvey**RESPONDENT  
(Respondent)

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**FACTUM OF THE INTERVENER**

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## OPENING STATEMENT

This appeal will determine whether employees with family caregiving obligations – disproportionately women – are afforded narrower protections under s. 13 of the *Human Rights Code*, R.S.B.C. 1996 c. 210 (the “Code”) than employees who allege discrimination in employment on the basis of other protected characteristics, or whose complaints may be filed in another Canadian jurisdiction.

Specifically, this Court must determine whether, as a matter of law, an employee in BC alleging discrimination in employment on the basis of family care obligations must meet the additional onus of demonstrating that the adverse impact alleged to be discriminatory flows from a change to terms and conditions of employment made by their employer. This additional burden is not required of complainants seeking to enforce their quasi-constitutional right to be free from discrimination in employment on the basis of other protected characteristics. Nor is it required of complainants making identical allegations in other Canadian jurisdictions.

Any interpretation of s. 13 limiting its application to circumstances where an employer has changed a term or condition of employment imports a limit on the protection against discrimination enshrined in s.13 that cannot be supported by the plain language of the *Code*, the modern approach to statutory interpretation, or the broad, liberal and purposive interpretive principles applicable to human rights legislation. Further, introducing (or affirming) such a limitation in family status cases involving caregiving obligations would offend the Supreme Court of Canada’s direction that a complainant’s legal burden be the same regardless of the protected characteristic and that human rights provisions be interpreted consistently across jurisdictions.

Most importantly, a test limiting the application of s. 13 in this fashion is contrary to the purposes of the *Code*. Shielding from the *Code*’s scrutiny discrimination that does not arise from a change to terms and conditions of employment - but which nevertheless impairs women’s ability to fully participate in the social and economic life of the province - risks further entrenching gender inequality, rather than ameliorating it. This cannot have been the legislature’s intention.

## **PART 1 – STATEMENT OF FACTS**

1. The Commissioner refers to and relies on the appellant's statement of facts.

## **PART 2 – ISSUES ON APPEAL**

2. The Commissioner refers to and relies on the appellant's statement of the issue on appeal.

## **PART 3 - ARGUMENT**

### **Section 13 does not require a unilateral change to employment terms**

3. The starting point for the interpretation of s.13, is the modern approach to statutory interpretation which requires that the words of s.13 be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the *Code*, the purposes of the *Code*, and the intention of the legislature: *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 S.C.R. 27 at para. 21.

4. This approach has been consistently applied by the Supreme Court of Canada in interpreting the scope of the *Code*'s protections: see, for example, *University of British Columbia v. Berg*, [1993] 2 S.C.R. 353 ("*Berg*") at pp. 371 and 373; *Gould v. Yukon Order of Pioneers*, [1996] 1 S.C.R. 571 ("*Gould*") at para. 5; *British Columbia (Superintendent of Motor Vehicles) v. British Columbia (Council of Human Rights)*, [1999] 3 S.C.R. 868 ("*Grismer*") at p. 873; and, *British Columbia Human Rights Tribunal v. Schrenk*, 2017 SCC 62 ("*Schrenk*") at paras. 30-32.

5. Here, section 13(1)(b) of the *Code* contains "two disjunctive prohibitions: the first refers to discrimination regarding 'employment'; the second refers to discrimination regarding 'any term or condition of employment'": *Schrenk* at paras. 2 and 46.

6. Limiting the scope of s.13(1)(b)'s protection in family status caregiving cases to only circumstances in which there has been a change to a term or condition of employment, not only ignores the disjunctive nature of s. 13(1)(b) by disregarding the

words “regarding employment”, it also purports to add or read in the limiting language of “a change” to the second prohibition respecting terms or conditions of employment. Such an approach is neither harmonious with the grammatical and ordinary language of s. 13, nor consistent with the purposes of the *Code* and the legislature’s intent.

7. Ignoring one of the two disjunctive prohibitions set out in s. 13(1)(b) and reading limiting language into the other is far from a broad, liberal and purposive interpretation of the *Code* aimed at furthering substantive equality. Rather, such an approach fails to take critical context into account, namely that women continue to bear most of the practical responsibility for family caregiving, and that women are more likely to require accommodation to avoid serious interference with parental or other caregiving as their personal circumstances change: Sylvia Fuller & Yue Quian, “Covid-19 and the Gender Gap in the Employment of Parents of young Children in Canada” (2021) 35:2 *Gender & Society* 206 at 209.

8. By limiting s. 13 only to circumstances where the employer changes a term or condition of employment (thereby precluding a change in personal circumstances from triggering an adverse impact), women will be forced to try and find ways to manage competing responsibilities that employers see as incompatible. This may take the form of women resorting to part-time and precarious forms of work that typically come with lower wages, fewer benefits, fewer promotional opportunities, and minimal or no retirement pensions: Elizabeth Shilton, “Family Status Discrimination: ‘Disruption and Great Mischief’ or Bridge over the Work-Family Divide?” (2019) 14 *JL & Equality* 33 at para. 2.

9. Employer policies or standards, which have not been changed but which nevertheless have an adverse effect on female caregivers, will be shielded from the *Code*’s scrutiny: *United Nurses of Alberta v. Alberta Health Services*, 2021 ABCA 194 (“*United Nurses*”) at paras. 85-86 and 91, see also *British Columbia (Public Service Employee Relations Commission) v. B.C.G.E.U.* [1999] 3 S.C.R. 3 (“*Meiorin*”) at paras. 29, 36, 41-42. The effect will be to preserve the status quo’s presumption of an unencumbered worker and remove the *Code* as a vehicle to change social norms which

act as a barrier to women's substantive equality.

10. Importantly, section 13(1) contains no limiting language. Section 8 of the *Code*, in contrast, contains limiting words which narrow the scope of the services, facilities and accommodations to which it applies by specifying that they must be “customarily available to the public.” The legislature is presumed to express itself consistently within a given statute: Ruth Sullivan, *Sullivan on the Construction of Statutes*, 7<sup>th</sup> ed. (Markham, Ont.: LexisNexis Canada, 2022) at § 8.04 and 8.09. Had the legislature intended to limit the scope of s. 13 here – either with respect to discrimination on the basis of family status under s.13(1)(b) or with respect to justification under s. 13(4) – it would have done so expressly, as it did with s. 8.

### **Quasi-constitutional rights must be interpreted broadly and purposively**

11. The proper approach to the interpretation of human rights statutes recognizes their special status as quasi-constitutional legislation. For this reason, the *Code* is to be interpreted broadly and liberally in order to best achieve its remedial purpose: *Ontario (Human Rights Commission) v. Simpson-Sears Ltd*, [1985] 2 S.C.R. 536 at para. 12 and *Schrenk* at para. 31.

12. Human rights protections are understood to be “fundamental law” of “vital importance”. Accordingly, rights conferring provisions are to be construed broadly, while exceptions or limitations are to be construed narrowly. The Supreme Court of Canada has long cautioned courts and tribunals not to “search for ways and means to minimize those rights and to enfeeble their proper impact”: *Canadian National Railway v. Canada (Canadian Human Rights Commission)*, [1987] 1 S.C.R. 1114 at para. 28, *Schrenk* at para. 31-32, and *Sullivan* at §19.1-19.2.

13. The purposes of the *Code*, which are set out in s. 3, include the following aims of particular relevance when considering the application of s. 13 to complaints of family status discrimination in employment where caregiving obligations are involved: fostering a society in British Columbia in which there are no impediments to full and free

participation in the economic, social, political and cultural life of British Columbia: s. 3(a); promoting a climate of understanding and mutual respect where all are equal in dignity and rights: s. 3(b); and, identifying and eliminating persistent patterns of inequality associated with discrimination under this Code: s. 3(d).

14. These ambitious legislative objectives require an expansive approach to interpreting the right to be free from discrimination in employment.

15. In the Commissioner's submission, a broad and purposive interpretation of human rights legislation in relation to discrimination in employment on the basis of family status must be oriented towards enabling the full participation of parents and caregivers in the workforce with the understanding that women continue to bear the brunt of caregiving responsibilities in families: Kanee and Cembrowski, "Family Status Discrimination and the Obligation to Self-Accommodate" (2018) 14 JL & Equality 61 at 70. Failing to acknowledge the gendered impact of child caregiving responsibilities risks impeding the kind of systemic change necessary to flatten gender hierarchies in workplaces and families by ignoring "the links between work-family conflict and women's economic, social, and cultural subordination": *Shilton* at 34.

16. The purposes of the *Code* and the goal of substantive equality demand that the scope of protection from discrimination in employment on the basis of family status be no different than the scope of protection afforded by s. 13(1) for any other protected characteristic.

**The established framework for discrimination does not support reading down s. 13**

17. The Supreme Court of Canada has directed courts and tribunals that are determining whether there has been a breach of the *Code* in a protected area of daily life on the basis of a protected characteristic, to employ a two-staged analysis. First, they must decide whether the complainant has established what has traditionally been called "*prima facie*" discrimination respecting a protected area on the basis of one or more protected characteristics. Second, they must decide whether a respondent has justified

its conduct, in which case a complaint will fail: *Meiorin* at paras. 54-55. For complaints of discrimination in employment, the first and second stages of this analysis take place under ss. 13(1) and 13(4) respectively.

18. This appeal engages only the first stage of the above analysis: what a complainant must establish in order to discharge their burden when alleging discrimination in employment on the basis of family status under s. 13(1)(b) of the *Code* where caregiving obligations and employment responsibilities conflict. In order for a complainant to discharge their onus at the first stage of the framework, they must show that: (1) they have a characteristic which is protected under the *Code*; (2) they have experienced an adverse effect with regard to their employment or a term or condition of that employment; and (3) that the protected characteristic was a factor in the adverse treatment: *Moore v. British Columbia*, 2012 SCC1 61 (“*Moore*”); *Stewart v. Elk Valley Coal Corp*, 2017 SCC 20 at para. 24 (“*Elk Valley*”). Additional requirements are not to be inserted into the third step of the *prima facie* test: *Elk Valley* at para. 46.

19. To justify its conduct at the second stage of the framework, an employer must establish a *bona fide* occupational requirement (“*BFOR*”) by demonstrating that: (1) it adopted the standard in question for a purpose rationally connected to the performance of the job; (2) it adopted the particular standard in an honest and good faith belief that it was necessary to the fulfilment of that legitimate purpose; and (3) that the standard is reasonably necessary to the accomplishment of that work-related purpose in the sense that it is impossible to accommodate an employee or employees with the characteristic in question without imposing undue hardship on the employer: *Meiorin* at para 54.

20. Accommodation at this final stage of the *BFOR* analysis, is a multi-party inquiry. The employer is primarily responsible, but the employee (and union, in unionized workplaces) must cooperate in the accommodation process: *Renaud v. Central Okanagan School District No 23*, [1992] 2 S.C.R. 970 at paras. 50-51 (“*Renaud*”). Cooperation includes accepting reasonable accommodation when offered by the employer: *Renaud* at pp. 994-995. A breach of the *Code* is found only if an employer is



unable to justify its conduct by establishing a *BFOR*.

21. In assessing whether there has been a breach of the *Code*, courts and tribunals no longer distinguish between direct discrimination (adverse treatment that is on its face discriminatory) and adverse effect discrimination (an otherwise neutral standard or action which has a disproportionate adverse effect on an individual or group). Put simply, “the terms of the British Columbia *Code* do not contemplate one type of employment-related discrimination being treated differently from another”: *Meiorin* at para. 45.

22. Notwithstanding the approach to discrimination outlined above however, courts and tribunals in British Columbia have often described a different test for allegations of discrimination in employment on the basis of family status taken from the reasons of this Court in *Health Sciences Association of BC v. Campbell River and North Island Transition Society*, 2005 BCCA 260 (“*Campbell River*”) and *Envirocon Environmental Services ULC v. Suen*, 2019 BCCA 46 (“*Envirocon*”).

23. This test – advanced by the respondent and applied by the Chambers Judge – is often cited as a two-part test requiring that a complainant establish both: (1) that the employer has changed a term or condition of employment, and (2) that the change creates a significant interference with a substantial parental obligation. However, in neither *Campbell River*, nor *Envirocon*, was the triggering event causing the significant interference at issue.

24. An interpretation of the test for discrimination in employment on the basis of family status requiring in all caregiving cases that an employee establish first that their employer has changed a term or condition of employment effectively re-writes the three-part test for a complainant to meet as articulated by the Supreme Court of Canada in *Moore* and improperly focuses the first step of the discrimination analysis on the employer’s actions. At this stage in the analysis, the focus is properly on impact on the complainant: *Elk Valley* at para. 45. Concerns respecting an employer’s actions are not imported into the first stage of the discrimination analysis, as doing so shifts the justificatory onus from the

employer onto the employee and obscures the two-step analysis required by *Meiorin: United Nurses* at para. 66.

**Limiting s. 13(1) is arbitrary and contrary to the rule of law**

25. A two-part test for complainants alleging discrimination on the basis of family status is not only contrary to the plain language of the *Code*, the purposes of the *Code* and the Supreme Court of Canada's jurisprudence, it is also arbitrary and contrary to the rule of law.

26. The Commissioner submits that the respondent's reading of s. 13(1)(b) is arbitrary because: first, there is no connection between the effect and the object of the law; second, there is no principled basis to depart from the well-established test a complainant must meet when alleging discrimination solely where family status regarding employment is concerned (and only in regards to family status cases where caregiving obligations are at issue), and; third, it implies that an employee's "choice" to have children or care for a dependent family member is relevant to the discharge of their burden in the discrimination analysis when the jurisprudence says otherwise.

27. Arbitrariness arises, among other places, where there is no connection between the effect and the object of an impugned law: *R. v. Morgentaler*, [1988] 1 S.C.R. 30 at pp. 110 and 120; and *Canada (Attorney General) v. Bedford*, 2013 SCC 72 at para. 98. So too may an administrative decision be arbitrary when it is contrary to the objectives of the legislation in question: *Canada (Attorney General) v. PHS Community Services Society*, 2011 SCC 44 at para. 129-132. These principles apply equally to the case at bar. An interpretation of the legal test for discrimination in employment on the basis of family status cannot stand if it is not connected to, or undermines, the purposes of the *Code*.

28. Requiring a unilateral change to terms or conditions of employment is not connected to and undermines the purposes of the *Code*. The purpose of eliminating family status discrimination is, in many cases, inextricably linked with achieving substantive equality for women: *Shilton* at pp. 36-37. Establishing the full and free

participation of mothers and other caregivers in the economic, political and social life of the province demands recognition of the unequal burden that remains the reality for many women. Requiring that complainants establish a unilateral change to the terms of employment in order to ground a complaint of discrimination will inhibit women from fully participating in the workforce and, in doing so, further the expectation that women should bear primary responsibility for caregiving. There can be no question, in the Commissioner's submission, that this is contrary to the goal of human rights legislation and is therefore arbitrary and contrary to the rule of law.

29. Limiting family status discrimination only to cases where there has been a change to the terms and conditions of employment is further arbitrary because there is no principled basis to depart from the established test a complainant must meet for other grounds in the *Code*. For example, it would be absurd to suggest that an employee who becomes disabled in a fashion preventing her from working her pre-disability shift, could not benefit from the protection of the *Code* because the employer did not change her hours of work.

30. Respectfully, family status is not the "*only* protected characteristic" which is "contingent entirely on third parties and events wholly removed from the employment relationship": respondent's factum at paras 77-78. Disability, for example, can itself arise as a result of "third parties and events wholly removed from the employment relationship". The law does not distinguish between disabilities that arise from the actions of third parties and those that do not before the *Code*'s protections are engaged. A worker who is injured outside of work and requires accommodation is just as entitled to the *Code*'s protection as one who is similarly injured while at work. The question in every instance is the same: whether the protected characteristic was a factor in the complainant's adverse treatment.

31. There is no dispute that jurisprudence defines the scope of protected characteristics, including, as the respondent points out at para. 67 of its factum, religion. Importing the requirement of a unilateral change to terms of conditions of employment does not speak to the scope of family status. It speaks to the area of discrimination in

which the allegations arise: employment. *Campbell River's* statement that there must be a substantial interference with a significant parental duty, in contrast, goes to the scope of the protected characteristic of family status, an issue not raised by this appeal.

32. Accordingly, the suggestion that a “triggering event occasioned by the employer” is a necessary threshold given the “particularly unique” nature of family status is, in the Commissioner’s respectful submission, without merit. The correct focus at the first stage should be on the effect on the complainant. A requirement for a unilateral change to a term or condition of employment is therefore arbitrary and contrary to the rule of law.

33. The Supreme Court of Canada has consistently rejected arguments that choice (i.e. whether an adverse effect is created by employer action or by a complainant’s own behaviour) is relevant to the first stage of the analytical framework: *Quebec (Attorney General) v. A*, 2013 SCC 5 at para. 336; *United Nurses* at para. 72. Notably, choice is often argued expressly or impliedly in cases where women’s rights are at play. Requiring an employer-initiated change to a term or condition of employment, before an employer will be tasked with justifying its actions, policies or practices, implies that the “choice” to have children or provide care for a family member ousts women from the protections of the *Code*. Putting aside the obvious error in assuming that all parenthood is a matter of choice, such an implication is unmistakably at odds with the purposes and objects of the *Code* and is, as such, arbitrary and contrary to the rule of law. Inequality undermines the rule of law, period: *Fraser v. Canada (Attorney General)*, 2020 SCC 28 and *United Nurses* at para. 7.

### **Interpretation should be consistent with other jurisdictions**

34. The Supreme Court of Canada has long held that human rights legislation across Canada must be interpreted consistently as between jurisdictions so as not to “obscure the essentially similar purposes of such provisions, unless the wording clearly evinces a different purpose on behalf of a particular provincial legislature”: *Berg* at para. 45 and *Johnstone v. Canada (Broder Services Agency)*, 2014 FCA 110 (“*Johnstone*”) at paras. 49-50. The Commissioner submits that to limit the application of s. 13(1)(b) to only

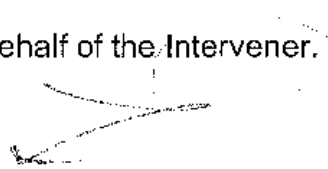
circumstances where an employer has changed a term or condition of employment – as the respondent argues *Campbell River* and *Envirocon* demand - would offend this principle of statutory interpretation.

35. All Canadian jurisdictions have human rights statutes that protect against discrimination in employment based on family status.<sup>1</sup> There is no appellate authority interpreting the relevant provisions of those statutes which requires a complainant to show a change in terms or conditions of employment in order to satisfy their onus. The Commissioner submits that, for the purposes of answering the question on appeal, the statutory language between jurisdictions establishes essentially the same protections against discrimination in employment and offers nothing that would justify a narrower protection in this province than in other jurisdictions.

36. The Commissioner acknowledges that, even if this Court rejects the respondent's interpretation of s. 13, *Campbell River*, and *Envirocon*, there will remain inconsistencies in the law respecting family status discrimination across Canada. There is already disagreement in the jurisprudence about the scope of family status as a protected characteristic: see *Johnstone* at paras. 74 and 93-97 and *United Nurses* at para. 78 and 99. Accepting an interpretation of s. 13 that necessitates a change of term or condition of employment would, the Commissioner submits, only exacerbate this legal uncertainty, creating more barriers to equality for women in BC than elsewhere in Canada without any principled basis to so.

All of which is respectfully submitted on behalf of the Intervener.

Date: September 9, 2022



**Lindsay A. Waddell and Heather D. Hoiness,**  
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<sup>1</sup> *Alberta Human Rights Act*, R.S.A. 2000, c. A-25.5, s. 7; *Canadian Human Rights Act*, R.S.C. 1985, c. H-6, ss.3 and 7; *Human Rights Code*, S.M. 1987-88, c. 45, ss. 9 and 14; *Human Rights Act*, R.S.N.B. 2011, c. 171, ss. 2.1 and 4; *Human Rights Act*, S.N.L. 2010, c. H-13.1, ss. 9 and 14; *Human Rights Act*, S.N.W.T. 2002, c. 18, ss.5 and 7; *Human Rights Act*, R.S.N.S. 1989, c. 214, s. 5; *Human Rights Act*, S.Nu. 2003, c. 12, ss. 7 and 9; *Human Rights Code*, R.S.O. 1990, c. H.19, s. 5; *Charter of Human Rights and Freedoms*, CQLR, c. C-12, ss. 10 and 16; *Human Rights Code*, S.S. 2018, c. S-24.2, s. 2 and 16; *Human Rights Act*, R.S.Y. 2002, c. 116, ss. 7 and 9.

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## ENACTMENTS

### *Human Rights Code, R.S.B.C. 1996 c. 210*

#### **Purposes**

**3** The purposes of this Code are as follows:

- (a) to foster a society in British Columbia in which there are no impediments to full and free participation in the economic, social, political and cultural life of British Columbia;
- (b) to promote a climate of understanding and mutual respect where all are equal in dignity and rights;
- (c) to prevent discrimination prohibited by this Code;
- (d) to identify and eliminate persistent patterns of inequality associated with discrimination prohibited by this Code;
- (e) to provide a means of redress for those persons who are discriminated against contrary to this Code.

(f) and (g)[Repealed 2002-62-2.]

#### **Discrimination in accommodation, service and facility**

**8** (1)A person must not, without a bona fide and reasonable justification,

- (a) deny to a person or class of persons any accommodation, service or facility customarily available to the public, or
- (b) discriminate against a person or class of persons regarding any accommodation, service or facility customarily available to the public

because of the Indigenous identity, race, colour, ancestry, place of origin, religion, marital status, family status, physical or mental disability, sex, sexual orientation, gender identity or expression, or age of that person or class of persons.

(2)A person does not contravene this section by discriminating

- (a) on the basis of sex, if the discrimination relates to the maintenance of public decency or to the determination of premiums or benefits under contracts of life or health insurance, or
- (b) on the basis of physical or mental disability or age, if the discrimination relates to the determination of premiums or benefits under contracts of life or health insurance.



**Discrimination in employment****13** (1) A person must not

- (a) refuse to employ or refuse to continue to employ a person, or
- (b) discriminate against a person regarding employment or any term or condition of employment

because of the Indigenous identity, race, colour, ancestry, place of origin, political belief, religion, marital status, family status, physical or mental disability, sex, sexual orientation, gender identity or expression, or age of that person or because that person has been convicted of a criminal or summary conviction offence that is unrelated to the employment or to the intended employment of that person.

(2) An employment agency must not refuse to refer a person for employment for any reason mentioned in subsection (1).

(3) Subsection (1) does not apply

- (a) as it relates to age, to a bona fide scheme based on seniority, or
- (b) as it relates to marital status, physical or mental disability, sex or age, to the operation of a bona fide retirement, superannuation or pension plan or to a bona fide group or employee insurance plan, whether or not the plan is the subject of a contract of insurance between an insurer and an employer.

(4) Subsections (1) and (2) do not apply with respect to a refusal, limitation, specification or preference based on a bona fide occupational requirement.

***Alberta Human Rights Act, R.S.A. 2000, c. A-25.5, s. 7***

**7. Discrimination re employment practices****7(1)** No employer shall

- (a) refuse to employ or refuse to continue to employ any person, or
- (b) discriminate against any person with regard to employment or any term or condition of employment,

because of the race, religious beliefs, colour, gender, gender identity, gender expression, physical disability, mental disability, age, ancestry, place of origin, marital status, source of income, family status or sexual orientation of that person or of any other person.

**7(2)** Subsection (1) as it relates to age and marital status does not affect the operation of any bona fide retirement or pension plan or the terms or conditions of any bona fide group or employee insurance plan.

**7(3)** Subsection (1) does not apply with respect to a refusal, limitation, specification or preference based on a bona fide occupational requirement.

***Canadian Human Rights Act, R.S.C. 1985, c. H-6, ss.3 and 7***

**3(1) Prohibited grounds of discrimination**

For all purposes of this Act, the prohibited grounds of discrimination are race, national or ethnic origin, colour, religion, age, sex, sexual orientation, gender identity or expression, marital status, family status, genetic characteristics, disability and conviction for an offence for which a pardon has been granted or in respect of which a record suspension has been ordered.

**3(2) Idem**

Where the ground of discrimination is pregnancy or child-birth, the discrimination shall be deemed to be on the ground of sex.

**3(3) Idem**

Where the ground of discrimination is refusal of a request to undergo a genetic test or to disclose, or authorize the disclosure of, the results of a genetic test, the discrimination shall be deemed to be on the ground of genetic characteristics.

**7. Employment**

It is a discriminatory practice, directly or indirectly,

- (a) to refuse to employ or continue to employ any individual, or
- (b) in the course of employment, to differentiate adversely in relation to an employee,

on a prohibited ground of discrimination.

***Charter of Human Rights and Freedoms, CQLR, c. C-12, ss. 10 and 16***

**10. Discrimination forbidden**

Every person has a right to full and equal recognition and exercise of his human rights and freedoms, without distinction, exclusion or preference based on race, colour, sex, gender identity or expression, pregnancy, sexual orientation, civil status, age except as provided by law, religion, political convictions, language, ethnic or national origin, social condition, a handicap or the use of any means to palliate a handicap.

**Discrimination defined**

— Discrimination exists where such a distinction, exclusion or preference has the effect of nullifying or impairing such right.

**16. Non-discrimination in employment**

No one may practise discrimination in respect of the hiring, apprenticeship, duration of the probationary period, vocational training, promotion, transfer, displacement, laying-off, suspension, dismissal or conditions of employment of a person or in the establishment of categories or classes of employment.

***Human Rights Act, R.S.N.B. 2011, c. 171, ss. 2.1 and 4*****2.1 Prohibited grounds of discrimination**

For the purposes of this Act, the prohibited grounds of discrimination are

- (a) race,
- (b) colour,
- (c) national origin,
- (d) ancestry,
- (e) place of origin,
- (f) creed or religion,
- (g) age,
- (h) physical disability,
- (i) mental disability,
- (j) marital status,
- (k) family status,
- (l) sex,
- (m) sexual orientation,
- (n) gender identity or expression,
- (o) social condition, and
- (p) political belief or activity.

**4.Discrimination in employment**

**4(1)** No person shall, based on a prohibited ground of discrimination,

- (a) refuse to employ or continue to employ any person, or
- (b) discriminate against any person in respect of employment or any term or condition of employment.

**4(2)** No employment agency shall discriminate against a person seeking employment based on a prohibited ground of discrimination.

**4(3)** No trade union or employers' organization shall, based on a prohibited ground of discrimination,

- (a) exclude any person from full membership,
- (b) expel, suspend or otherwise discriminate against any of its members, or
- (c) discriminate against any person in respect of his or her employment by an employer.

**4(4)** No person shall express either directly or indirectly a limitation, specification or preference,  
or require an applicant to furnish any information as to a prohibited ground of discrimination, in  
respect of

- (a) the use or circulation of a form of application for employment,
- (b) the publication of an advertisement in connection with employment or causing its publication, or
- (c) an oral or written inquiry in connection with employment.

**4(5)** [Repealed 2017, c. 24, s. 4(e).]

**4(6)** The provisions of subsections (1), (2), (3) and (4) as to age do not apply to

- (a) the termination of employment or a refusal to employ because of the terms or conditions of any bona fide retirement or pension plan,
- (b) the operation of the terms or conditions of a bona fide retirement or pension plan that have the effect of a minimum service requirement, or

- (c) the operation of terms or conditions of a bona fide group or employee insurance plan.

**4(7)** The provisions of subsections (1), (2), (3) and (4) as to age do not apply to a limitation, specification, exclusion, denial or preference in relation to a person who has not attained the age of majority if the limitation, specification, exclusion, denial or preference is required or authorized by an Act of the Legislature or a regulation made under that Act.

**4(8)** The provisions of subsections (1), (2), (3) and (4) as to physical disability and mental disability do not apply to the operation of the terms or conditions of a bona fide group or employee insurance plan.

***Human Rights Act, R.S.N.S. 1989, c. 214, s. 5***

**5(1) Prohibition of discrimination**

No person shall in respect of

- (a) the provision of or access to services or facilities;
- (b) accommodation;
- (c) the purchase or sale of property;
- (d) employment;
- (e) volunteer public service;
- (f) a publication, broadcast or advertisement;
- (g) membership in a professional association, business or trade association, employers' organization or employees' organization,

discriminate against an individual or class of individuals on account of

- (h) age;
- (i) race;
- (j) colour;
- (k) religion;
- (l) creed;
- (m) sex;

- (n) sexual orientation;
- (na) gender identity;
- (nb) gender expression;
- (o) physical disability or mental disability;
- (p) an irrational fear of contracting an illness or disease;
- (q) ethnic, national or aboriginal origin;
- (r) family status;
- (s) marital status;
- (t) source of income;
- (u) political belief, affiliation or activity;
- (v) that individual's association with another individual or class of individuals having characteristics referred to in clauses (h) to (u).

**5(2)Sexual harassment**

No person shall sexually harass an individual.

**5(3)** No person shall harass an individual or group with respect to a prohibited ground of discrimination.

***Human Rights Act, R.S.Y. 2002, c. 116, ss. 7 and 9*****7.Prohibited grounds**

It is discrimination to treat any individual or group unfavourably on any of the following grounds

- (a) ancestry, including colour and race;
- (b) national origin;
- (c) ethnic or linguistic background or origin;
- (d) religion or creed, or religious belief, religious association, or religious activity;
- (e) age;
- (f) sex, including pregnancy, and pregnancy related conditions;

- (a) (f.01) gender identity or gender expression;
- (g) sexual orientation;
- (h) physical or mental disability;
- (i) criminal charges or criminal record;
- (j) political belief, political association, or political activity;
- (k) marital or family status;
- (l) source of income;
- (m) actual or presumed association with other individuals or groups whose identity or membership is determined by any of the grounds listed in paragraphs (a) to (l).

**9. Prohibited discrimination**

No person shall discriminate

- (a) when offering or providing services, goods, or facilities to the public;
- (b) in connection with any aspect of employment or application for employment;
- (c) in connection with any aspect of membership in or representation by any trade union, trade association, occupational association, or professional association;
- (d) in connection with any aspect of the occupancy, possession, lease, or sale of property offered to the public;
- (e) in the negotiation or performance of any contract that is offered to or for which offers are invited from the public.

***Human Rights Act, S.N.L. 2010, c. H-13.1, ss. 9 and 14***

**PART II**

**PROHIBITIONS**

**SECTION 9**

*Prohibited grounds of discrimination*

9. (1) For the purpose of this Act, the prohibited grounds of discrimination are race, colour, nationality, ethnic origin, social origin, religious creed, religion, age, disability,

disfigurement, sex, sexual orientation, gender identity, gender expression, marital status, family status, source of income and political opinion.

(2) Where this Act protects an individual from discrimination on the basis of sex, the protection includes the protection of a female from discrimination on the basis that she is or may become pregnant.

(3) Where this Act protects an individual from discrimination on the basis of disability, the protection includes the protection of an individual from discrimination on the basis that he or she

- (a) has or has had a disability;
- (b) is believed to have or have had a disability; or
- (c) has or is believed to have a predisposition to developing a disability.

(4) Where this Act protects an individual from discrimination on the basis of a prohibited ground of discrimination, it also protects the individual from discrimination on the basis of

- (a) 2 or more prohibited grounds of discrimination or the effect of a combination of prohibited grounds; and
- (b) the individual's association or relationship, whether actual or presumed, with an individual or class of individuals identified by a prohibited ground of discrimination.

## **SECTION 14**

### *Discrimination in employment*

14. (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 on the basis of a prohibited ground of discrimination, or because of the conviction for an offence that is unrelated to the employment of the person.

(2) Subsection (1) does not apply to the expression of a limitation, specification or preference based on a good faith occupational qualification.

(3) 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 a person seeking employment on the basis of a prohibited ground of discrimination.

(4) A trade union shall not exclude a person from full membership or expel or suspend or otherwise discriminate against one of its members or discriminate against a person in regard to his or her employment by an employer, on the basis of a prohibited ground of discrimination.



(5) 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 based on a prohibited ground of discrimination;

or

(b) an intent to

(i) dismiss from employment,

(ii) refuse to employ or rehire, or

(iii) discriminate against

a person on the basis of a prohibited ground of discrimination,

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

(6) The provisions of subsections (1) , (4) and (5) as to age shall not apply to

(a) prevent the operation 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.

(7) Paragraph (6) (a) does not apply to a provision of a good faith retirement or pension plan requiring a person to retire at an age set out in the plan.

(8) This section does not apply to an employer

(a) that is an exclusively religious, fraternal or sororal organization that is not operated for private profit, where it is a reasonable and genuine qualification because of the nature of the employment; or

(b) with the exception of subsection (5) as it applies to advertising, in respect of the employment of a person to provide personal services.

(9) The right under this section to equal treatment with respect to employment is not infringed where a judge is required to retire on reaching a specified age under the Provincial Court Act, 1991.

(10) In paragraph (8) (b) and subsection 15(5) ,

- (a) "employer" means a person who employs a person to provide personal services to him or her or to a member of his or her family; and
- (b) "personal services" means work of a domestic, custodial, companionship, personal care, child care, or educational nature, or other work within the private residence that involves frequent contact or communication with persons who live in the residence.

***Human Rights Act, S.N.W.T. 2002, c. 18, ss.5 and 7***

**5(1) Prohibited grounds of discrimination**

For the purposes of this Act, the prohibited grounds of discrimination are race, colour, ancestry, nationality, ethnic origin, place of origin, creed, religion, age, disability, sex, sexual orientation, gender identity or expression, marital status, family status, family affiliation, political belief, political association, social condition and a conviction that is subject to a pardon or record suspension.

**5(2) Pregnancy**

Whenever this Act protects an individual from discrimination on the basis of sex, the protection includes, without limitation, the protection of a female from discrimination on the basis that she is or may become pregnant.

**5(2.1) Disability**

Whenever this Act protects an individual from discrimination on the basis of disability, the protection includes the protection of an individual from discrimination on the basis that he or she

- (a) has or has had a disability;
- (b) is believed to have or have had a disability; or
- (c) has or is believed to have a predisposition to developing a disability.

**5(3) Multiple grounds, association**

Whenever this Act protects an individual from discrimination on the basis of a prohibited ground of discrimination, it also protects the individual from discrimination on the basis of

- (a) two or more prohibited grounds of discrimination or the effect of a combination of prohibited grounds; and

- (b) the individual's association or relationship, whether actual or presumed, with an individual or class of individuals identified by a prohibited ground of discrimination.

### **7(1)Employment**

No person shall, on the basis of a prohibited ground of discrimination,

- (a) refuse to employ or refuse to continue to employ an individual or a class of individuals; or
- (b) discriminate against any individual or class of individuals in regard to employment or any term or condition of employment.

### **7(2)Retirement, pension and insurance plans**

In respect of the age, marital status and family status of an individual or a class of individuals, subsection (1) does not affect the operation of any *bona fide* retirement or pension plan or the terms and conditions of any *bona fide* group or employee insurance plan.

### **7(3)Bona fide occupational requirement**

Subsection (1) does not apply with respect to a practice based on a bona fide occupational requirement.

### **7(4)Duty to accommodate**

In order for a practice described in subsection (1) to be considered to be based on a bona fide occupational requirement, it must be established that accommodation of the needs of an individual or class of individuals affected would impose undue hardship on a person who would have to accommodate those needs.

### **7(5)Exception**

It is not a contravention of subsection (1) for an organization, society or corporation to give preference in employment to an individual or class of individuals if the preference is solely related to the special objects in respect of which the organization, society or corporation was established and the organization, society or corporation

- (a) is not operated for private profit; and
- (b) is
  - (i) a charitable, educational, fraternal, religious, social or cultural organization, society or corporation, or
  - (ii) an organization, society or corporation operated primarily to foster the welfare of a religious or racial group.

**7(6) Owner of business may give preference in employment**

It is not a contravention of subsection (1) for an owner of a business to give preference in employment, on the basis of family affiliation, to a member of his or her family.

***Human Rights Act, S.Nu. 2003, c. 12, ss. 7 and 9*****7(1) Prohibited grounds of discrimination**

For the purposes of this Act, the prohibited grounds of discrimination are race, colour, ancestry, ethnic origin, citizenship, place of origin, creed, religion, age, disability, sex, sexual orientation, gender identity, gender expression, marital status, family status, pregnancy, lawful source of income and a conviction for which a pardon has been granted.

**7(2) Affirmative action programs**

Nothing in this Act precludes any law, program or activity that has as its objective the amelioration of conditions of disadvantaged individuals or groups, including those who are disadvantaged because of any characteristic referred to in subsection (1), and that achieves or is likely to achieve that objective.

**7(3) Previously approved programs**

Any program designed to promote the welfare of any class of individuals that was approved under section 9 of the Fair Practices Act, R.S.N.W.T. 1988, c. F-2, is deemed, for the purposes of subsection (1), to be a program that has as its objective the amelioration of conditions of disadvantaged individuals or groups and that achieves or is likely to achieve that objective.

**7(4) Pregnancy and adoption**

Whenever this Act protects an individual from discrimination on the basis of sex, the protection includes, without limitation,

- (a) the protection of a female from discrimination on the basis that she may become pregnant or may adopt a child; and
- (b) the protection of a male from discrimination on the basis that he may adopt a child.

**7(5) Multiple grounds, association**

Whenever this Act protects an individual from discrimination on the basis of a prohibited ground of discrimination, it also protects the individual from discrimination on the basis of

- (a) two or more prohibited grounds of discrimination or the effect of a combination of prohibited grounds; and
- (b) the individual's association or relationship, whether actual or perceived, with an individual or class of individuals identified by a prohibited ground of discrimination.

**7(6)Harassment**

No person shall, on the basis of a prohibited ground of discrimination, harass any individual or class of individuals

- (a) in the provision of goods, services, facilities or contracts;
- (b) in the provision of commercial premises or residential accommodation;
- (c) in matters related to employment; or
- (d) in matters related to membership in an employees' organization, trade union, trade association, occupational or professional association or society, employers' organization or co-operative association or organization.

**9(1)Employment**

No person shall, on the basis of a prohibited ground of discrimination,

- (a) refuse to employ or refuse to continue to employ an individual or a class of individuals; or
- (b) discriminate against any individual or class of individuals in regard to employment or any term or condition of employment, whether the term or condition was prior to or is subsequent to the employment.

**9(2)Retirement, pension and insurance plans**

In respect of the age and marital status of an individual or a class of individuals, subsection (1) does not affect the operation of any genuine retirement or pension plan, or the terms and conditions of any genuine group or employee insurance plan.

**9(3)Genuine retirement or pension plan**

For the purposes of subsection (2), a genuine retirement or pension plan is one that is established in accordance with an Act of Canada or Nunavut.

**9(4)Justified occupational requirement**

Subsection (1) does not apply with respect to a practice based on a justified occupational requirement.

**9(5)Duty to accommodate**

When a practice referred to in subsection (1) results in discrimination, in order for it to be considered to be based on a justified occupational requirement, it must be established that accommodation of the needs of an individual or class of individuals affected would impose undue hardship on a person who would have to accommodate those needs.

**9(6)Exception**

It is not a contravention of subsection (1) for an organization, society or corporation to give preference in employment to an individual or class of individuals if the preference is solely related to the special objects in respect of which the organization, society or corporation was established and the organization, society or corporation

- (a) is a not for profit organization, society or corporation; and
- (b) is
  - (i) a charitable, educational, fraternal, religious, athletic, social or cultural organization, society or corporation, or
  - (ii) an organization, society or corporation operated primarily to foster the welfare of a religious or racial group.

**9(7)Personal services in private residence**

For the purposes of this section and section 10, it is a justified occupational requirement where, in choosing a person to provide personal services in a private residence, the employer discriminates for the genuine purpose of fostering or maintaining a desired environment within the residence, if there is otherwise no contravention of this Act in the employment relationship.

***Human Rights Code, R.S.O. 1990, c. H.19, s. 5*****5(1)Employment**

Every person has a right to equal treatment with respect to employment without discrimination because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, gender identity, gender expression, age, record of offences, marital status, family status or disability.

**5(2)Harassment in employment**

Every person who is an employee has a right to freedom from harassment in the workplace by the employer or agent of the employer or by another employee because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sexual orientation, gender identity, gender expression, age, record of offences, marital status, family status or disability.

***Human Rights Code, S.M. 1987-88, c. 45, ss. 9 and 14*****9(1)"Discrimination" defined**

In this Code, "**discrimination**" means

- (a) differential treatment of an individual on the basis of the individual's actual or presumed membership in or association with some class or group of persons, rather than on the basis of personal merit; or
- (b) differential treatment of an individual or group on the basis of any characteristic referred to in subsection (2); or
- (c) differential treatment of an individual or group on the basis of the individual's or group's actual or presumed association with another individual or group whose identity or membership is determined by any characteristic referred to in subsection (2); or
- (d) failure to make reasonable accommodation for the special needs of any individual or group, if those special needs are based upon any characteristic referred to in subsection (2).

### **9(1.1) Interpretation**

In this Code, "**discrimination**" includes any act or omission that results in discrimination within the meaning of subsection (1), regardless of

- (a) the form of the act or omission; and
- (b) whether the person responsible for the act or omission intended to discriminate.

### **9(2) Applicable characteristics**

The applicable characteristics for the purposes of clauses (1)(b) to (d) are

- (a) ancestry, including colour and perceived race;
- (b) nationality or national origin;
- (c) ethnic background or origin;
- (d) religion or creed, or religious belief, religious association or religious activity;
- (e) age;
- (f) sex, including sex-determined characteristics or circumstances, such as pregnancy, the possibility of pregnancy, or circumstances related to pregnancy;
- (g) gender identity;
- (h) sexual orientation;

- (i) marital or family status;
- (j) source of income;
- (k) political belief, political association or political activity;
- (l) physical or mental disability or related characteristics or circumstances, including reliance on a service animal, a wheelchair, or any other remedial appliance or device;
- (m) social disadvantage.

**9(2.1)Discrimination on basis of social disadvantage**

It is not discrimination on the basis of social disadvantage unless the discrimination is based on a negative bias or stereotype related to that social disadvantage.

**9(3)Systemic discrimination**

Interrelated actions, policies or procedures of a person that do not have a discriminatory effect when considered individually can constitute discrimination under this Code if the combined operation of those actions, policies or procedures results in discrimination within the meaning of subsection (1).

**9(4)Criminal conduct excluded**

For the purpose of dealing with any case of alleged discrimination under this Code, no characteristic referred to in subsection (2) shall be interpreted to extend to any conduct prohibited by the *Criminal Code* of Canada.

**9(5)No condoning or condemning of beliefs, etc.**

Nothing in this Code shall be interpreted as condoning or condemning any beliefs, values, or lifestyles based upon any characteristic referred to in subsection (2).

**14(1)Discrimination in employment**

No person shall discriminate with respect to any aspect of an employment or occupation, unless the discrimination is based upon *bona fide* and reasonable requirements or qualifications for the employment or occupation.

**14(2)"Any aspect", etc. defined**

In subsection (1), "**any aspect of an employment or occupation**" includes

- (a) the opportunity to participate, or continue to participate, in the employment or occupation;
- (b) the customs, practices and conditions of the employment or occupation;
- (c) training, advancement or promotion;



- (d) seniority;
- (e) any form of remuneration or other compensation received directly or indirectly in respect of the employment or occupation, including salary, commissions, vacation pay, termination wages, bonuses, reasonable value for board, rent, housing and lodging, payments in kind, and employer contributions to pension funds or plans, long-term disability plans and health insurance plans; and
- (f) any other benefit, term or condition of the employment or occupation.

#### **14(3)Employment advertising**

No person shall publish, broadcast, circulate or display, or cause to be published, broadcast, circulated or displayed, any statement, symbol or other representation, written or oral, that indicates directly or indirectly that any characteristic referred to in subsection 9(2) is or may be a limitation, specification or preference for an employment or occupation, unless the limitation, specification or preference is based upon bona fide and reasonable requirements or qualifications for the employment or occupation.

#### **14(4)Pre-employment inquiries**

No person shall use or circulate any application form for an employment or occupation, or direct any written or oral inquiry to an applicant for an employment or occupation, that

- (a) expresses directly or indirectly a limitation, specification or preference as to any characteristic referred to in subsection 9(2); or
- (b) requires the applicant to furnish information concerning any characteristic referred to in subsection 9(2);

unless the limitation, specification or preference or the requirement to furnish the information is based upon bona fide and reasonable requirements or qualifications for the employment or occupation.

#### **14(5)Discrimination by employment agencies, etc.**

No person who undertakes, with or without compensation, to

- (a) obtain any other person for an employment or occupation with a third person; or
- (b) obtain an employment or occupation for any other person; or
- (c) test, train or evaluate any other person for an employment or occupation; or
- (d) refer or recommend any other person for an employment or occupation; or
- (e) refer or recommend any other person for testing, training or evaluation for an employment or occupation;

shall discriminate when doing so, unless the discrimination is based upon bona fide and reasonable requirements or qualifications for the employment or occupation.

**14(6)Discrimination by organizations, etc.**

No trade union, employer, employers' organization, occupational association, professional association or trade association, and no member of any such union, organization or association, shall

- (a) discriminate in respect of the right to membership or any other aspect of membership in the union, organization or association; or
- (b) negotiate on behalf of any other person in respect of, or agree on behalf of any other person to, an agreement that discriminates; unless bona fide and reasonable cause exists for the discrimination.

**14(7)Employee benefits**

Subject to subsection 21(7.1) of The Pension Benefits Act, the Lieutenant Governor in Council may make regulations prescribing distinctions, conditions, requirements or qualifications that, for the purposes of this section, shall be deemed to be bona fide and reasonable in respect of an employee benefit plan, whether provided for by individual contract, collective agreement or otherwise.

**14(8)Personal services in private residence**

For the purposes of this section, it is a bona fide and reasonable requirement or qualification where, in choosing a person to provide personal services in a private residence, the employer discriminates for the bona fide purpose of fostering or maintaining a desired environment within the residence, if there is otherwise no contravention of this Code in the employment relationship.

**14(9)"Personal services" defined**

In subsection (8), "**personal services**" means work of a domestic, custodial, companionship, personal care, child care, or educational nature, or other work within the residence that involves frequent contact or communication with persons who live in the residence.

**14(10)Exception for age of majority**

Nothing in this section prevents a person from limiting the employment or occupation of a person under the age of majority, or from classifying or referring to a person under the age of majority for an employment or occupation, in accordance with a statute in force in Manitoba that regulates the employment or occupation of persons under the age of majority.

**14(11)Promotion of beliefs, etc.**

Nothing in this section prohibits the lawful and reasonable disciplining of an employee or person in an occupation who violates the duties, powers or privileges of the employment

or occupation by improperly using the employment or occupation as a forum for promoting beliefs or values based upon any characteristic referred to in subsection 9(2).

**14(12)No reduction of wages, etc.**

An employer shall not, in order to comply with this section,

- (a) terminate the employment or occupation of any person; or
- (b) reduce the wage level or diminish any other benefit available to any person in an employment or occupation; or
- (c) change the customs, practices and conditions of an employment or occupation to the detriment of any person; if the person accepted the employment or occupation, the wage level or other benefit, or the customs, practices and conditions in good faith.

**14(13)"Employment or occupation" defined**

In this section, "**employment or occupation**" includes

- (a) work that is actual or potential, full-time or part-time, permanent, seasonal or casual, and paid or unpaid; and
- (b) work performed for another person under a contract either with the worker or with another person respecting the worker's services.

***Human Rights Code, S.S. 2018, c. S-24.2, s. 2 and 16***

**2.Definitions**

**2(1)** In this Act:

"**age**" means any age of 18 years or more; ("**âge**")

"**commercial unit**" means a building or other structure or part of it that is used or occupied, or that is intended, arranged or designed to be used or occupied:

- (a) for the manufacture, sale, resale, processing, reprocessing, displaying, storing, handling, garaging or distribution of personal property; or
- (b) as a separate business, professional unit or office;

("local commercial")

"**commission**" means the Saskatchewan Human Rights Commission; ("**commission**")

"**court**" means the Court of Queen's Bench; ("**tribunal**")

"**creed**" means religious creed; ("**foi**")

**"disability"** means:

- (a) any degree of physical disability, infirmity, malformation or disfigurement, including:
  - (i) epilepsy;
  - (ii) any degree of paralysis;
  - (iii) amputation;
  - (iv) lack of physical coordination;
  - (v) blindness or visual impediment;
  - (vi) deafness or hearing impediment;
  - (vii) muteness or speech impediment; or
  - (viii) physical reliance on a service animal, wheelchair or other remedial appliance or device; or
- (b) any of the following disabilities:
  - (i) an intellectual disability or impairment;
  - (ii) a learning disability, or a dysfunction in one or more of the processes involved in the comprehension or use of symbols or spoken language;
  - (iii) a mental disorder;

("incapacité")

**"employee"** means a person employed by an employer and includes a person engaged pursuant to a limited term contract; ("*employé*")

**"employer"** means a person employing one or more employees, and includes a person acting on behalf of an employer; ("*employeur*")

**"employers' organization"** means an organization of employers formed for purposes that include the regulation of relations between employers and employees; ("*organisation patronale*")

**"employment agency"** includes a person who undertakes, with or without compensation:

- (a) to procure employees for employers; or
- (b) to procure employment for persons;

("agence de placement")

**"family status"** means the status of being in a parent and child relationship and, for the purposes of this definition:

- (a) "child" means son, daughter, stepson, stepdaughter, adopted child and person to whom another person stands in place of a parent;
- (b) "parent" means father, mother, stepfather, stepmother, adoptive parent and person who stands in place of a parent to another person;

("situation de famille")

**"fiscal year"** means the period commencing on April 1 in one year and ending on March 31 in the following year; ("*exercice financier*")

**"housing accommodation"** means any dwelling unit, and includes any place where other services are provided in addition to accommodation, but does not include a dwelling unit:

- (a) that is part of a building in which the owner or the owner's family resides; and
- (b) in which the occupant of the dwelling unit is required to share a bathroom or kitchen facility with the owner or the owner's family;

("logement")

**"marital status"** means the status of being engaged to be married, married, single, separated, divorced, widowed or living in a common-law relationship, but discrimination on the basis of a relationship with a particular person is not discrimination on the basis of marital status; ("*état matrimonial*")

**"mental disorder"** means a disorder of thought, perception, feelings or behaviour that impairs a person's:

- (a) judgment;
- (b) capacity to recognize reality;
- (c) ability to associate with others; or
- (d) ability to meet the ordinary demands of life;

("trouble mental")

"**minister**" means the member of the Executive Council to whom for the time being the administration of this Act is assigned; ("*ministre*")

"**occupational association**" means an organization, other than a trade union or employers' organization, in which membership is a prerequisite to carrying on a trade, occupation or profession; ("*ordre professionnel*")

"**offer**" includes an invitation to treat; ("*offre*")

"**person**", in addition to the extended meaning contained in The Legislation Act, includes an employment agency, an employers' organization, an occupational association and a trade union; ("*personne*")

"**prohibited ground**" means one of the following prohibited grounds of discrimination:

- (a) religion;
- (b) creed;
- (c) marital status;
- (d) family status;
- (e) sex;
- (f) sexual orientation;
- (g) disability;
- (h) age;
- (i) colour;
- (j) ancestry;
- (k) nationality;
- (l) place of origin;
- (m) race or perceived race;
- (n) receipt of public assistance;

- (o) gender identity;

("motif illicite")

"**receipt of public assistance**" means the receipt of:

- (a) assistance as defined in *The Saskatchewan Assistance Act*; or
- (b) a benefit as defined in *The Saskatchewan Income Plan Act*;

("réception d'aide sociale")

"**religion**" includes all aspects of religious observance and practice as well as beliefs;  
("religion")

"**sex**" means gender, and, unless otherwise provided in this Act, discrimination on the basis of pregnancy or pregnancy-related illnesses is deemed to be discrimination on the basis of sex; ("sexe")

"**trade union**" means an organization of employees formed for purposes that include the regulation of relations between employees and employers; ("syndicat ouvrier")

"**undue hardship**", for the purposes of sections 38 and 39, means intolerable financial cost or disruption to business having regard to the effect on:

- (a) the financial stability and profitability of the business undertaking;
- (b) the value of existing amenities, structures and premises as compared to the cost of providing proper amenities or physical access;
- (c) the essence or purpose of the business undertaking; and
- (d) the employees, customers or clients of the business undertaking, disregarding personal preferences;

but does not include the cost or business inconvenience of providing washroom facilities, living quarters or other facilities for persons with physical disabilities if those facilities must be provided by law for persons of both sexes. ("contrainte excessive")

**2(2)** Nothing in Part 3 prohibits a distinction on the basis of age if that distinction is permitted or required by any Act or regulation in force in Saskatchewan.

## **16. Discrimination in employment prohibited**

**16(1)** No employer shall refuse to employ, refuse to continue to employ or otherwise discriminate against a person or class of persons with respect to employment, or a term or condition of employment, on the basis of a prohibited ground.

**16(2)** No employee shall discriminate against another employee on the basis of a prohibited ground.

**16(3)** No employment agency shall discriminate on the basis of a prohibited ground against a person or class of persons:

- (a) in receiving, classifying, disposing of or otherwise acting on applications for the agency's services; or
- (b) in referring a person to an employer.

**16(4)** No employer, in the hiring or recruitment of persons for employment, shall use an employment agency that discriminates on the basis of a prohibited ground against a person or class of persons seeking employment.

**16(5)** No provision of this section relating to age prohibits the operation of any term or condition of:

- (a) a *bona fide* retirement, superannuation or pension plan;
- (b) a *bona fide* group or employee insurance plan; or
- (c) any *bona fide* scheme based on seniority.

**16(6)** Nothing in this section deprives a college established pursuant to an Act, a school, a board of education or the Conseil scolaire fransaskois of the right to employ persons of a particular religion or religious creed if religious instruction forms or may form the whole or part of the instruction or training provided by the college, school, board of education or Conseil scolaire fransaskois pursuant to *The Education Act, 1995*.

**16(7)** The provisions of this section relating to any discrimination, limitation, specification or preference for a position or employment based on sex, disability or age do not apply if sex, ability or age is a reasonable and bona fide occupational qualification and requirement for the position or employment.

**16(8)** This section does not prohibit an employer from refusing to employ or refusing to continue to employ a person on the basis of any prohibited ground if the employee is:

- (a) employed in a private home; or
- (b) living in the employer's home.

**16(9)** The provisions of this section shall not be construed to prohibit distinctions in terms or conditions of employment if those distinctions are permitted by virtue of Part II of *The Saskatchewan Employment Act* or the regulations made pursuant to that Act.



**16(10)** This section does not prohibit an exclusively non-profit charitable, philanthropic, fraternal, religious, racial or social organization or corporation that is primarily engaged in serving the interests of persons identified by their race, creed, religion, colour, sex, gender identity, sexual orientation, family status, marital status, disability, age, nationality, ancestry, place of origin or receipt of public assistance from only employing, or from giving preference in employment to, persons similarly identified if the qualification is a reasonable and bona fide qualification given the nature of the employment.

**16(11)** This section does not prohibit an employer from:

- (a) granting employment to, continuing to employ or advancing a person who is the parent, child or spouse of another employee of the employer if a reasonable and bona fide cause exists for the employer's action; or
- (b) refusing to employ, to continue to employ or to advance a person who is the parent, child or spouse of another employee of the employer if a reasonable and bona fide cause exists for the employer's refusal.