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Canada

OFFICE CONSOLIDATION

Canadian Human Rights Act

R.S., 1985, c. H-6 July, 1996

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CHAPTER H-6

An Act to extend the laws in Canada that proscribe discrimination

SHORT TITLE

Short title

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

1976-77, c. 33, s. 1.

PURPOSE OF ACT

Purpose

2. The purpose of this Act is to extend the laws in Canada to give effect, within the purview of matters coming within the legislative authority of Parliament, to the principle that all individuals should have an equal opportunity to make for themselves the lives that they are able and wish to have, consistent with their duties and obligations as members of society, without being hindered in or prevented from doing so by discriminatory practices based on race, national or ethnic origin, colour, religion, age, sex, sexual orientation, marital status, family status, disability or conviction for an offence for which a pardon has been granted.

R.S., 1985, c. H-6, s. 2; 1996, c. 14, s. 1.

PART I - PROSCRIBED DISCRIMINATION

General

Prohibited grounds of discrimination

3. (1) For all purposes of this Act, the prohibited grounds of discrimination are race, national or ethnic origin, colour, religion, age, sex, sexual orientation, marital status, family status, disability and conviction for which a pardon has been granted.

Idem

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

R.S., 1985, c. H-6, s. 3; 1996, c. 14, s. 2.

Orders in respect of discriminatory practices

4. A discriminatory practice, as described in sections 5 to 14, may be the subject of a complaint under Part III and anyone found to be engaging or to have engaged in a discriminatory practice may be made subject to an order as provided in sections 53 and 54.

1976-77, c. 33, s. 4; 1980-81-82-83, c. 143, s. 2.

Discriminatory Practices

Denial of good, service, facility or accommodation

5. It is a discriminatory practice in the provision of goods, services, facilities or accommodation customarily available to the general public

(*a*) to deny, or to deny access to, any such good, service, facility or accommodation to any individual, or

(*b*) to differentiate adversely in relation to any individual,

on a prohibited ground of discrimination.

1976-77, c. 33, s. 5.

Denial of commercial premises or residential accommodation

6. It is a discriminatory practice in the provision of commercial premises or residential accommodation

(*a*) to deny occupancy of such premises or accommodation to any individual, or

(*b*) to differentiate adversely in relation to any individual,

on a prohibited ground of discrimination.

1976-77, c. 33, s. 6.

Employment

7. 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.

1976-77, c. 33, s. 7.

Employment applications, advertisements

8. It is a discriminatory practice

(*a*) to use or circulate any form of application for employment, or

(*b*) in connection with employment or prospective employment, to publish any advertisement or to make any written or oral inquiry

that expresses or implies any limitation, specification or preference based on a prohibited ground of discrimination.

1976-77, c. 33, s. 8.

Employee organizations

9. (1) It is a discriminatory practice for an employee organization on a prohibited ground of discrimination

(*a*) to exclude an individual from full membership in the organization;

(*b*) to expel or suspend a member of the organization; or

(*c*) to limit, segregate, classify or otherwise act in relation to an individual in a way that would deprive the individual of employment opportunities, or limit employment opportunities or otherwise adversely affect the status of the individual, where the individual is a member of the organization or where any of the obligations of the organization pursuant to a collective agreement relate to the individual.

Exception

(2) Notwithstanding subsection (1), it is not a discriminatory practice for an employee organization to exclude, expel or suspend an individual from membership in the organization because that individual has reached the normal age of retirement for individuals working in positions similar to the position of that individual.

Definition of "employee organization"

(3) For the purposes of this section and sections 10 and 60, "employee organization" includes a trade union or other organization of employees or local thereof, the purposes of which include the negotiation, on behalf of employees, of the terms and conditions of employment with employers.

1976-77, c. 33, s. 9; 1980-81-82-83, c. 143, s. 4.

Discriminatory policy or practice

10. It is a discriminatory practice for an employer, employee organization or organization of employers

(*a*) to establish or pursue a policy or practice, or

(*b*) to enter into an agreement affecting recruitment, referral, hiring, promotion, training, apprenticeship, transfer or any other matter relating to employment or prospective employment,

that deprives or tends to deprive an individual or class of individuals of any employment opportunities on a prohibited ground of discrimination.

1976-77, c. 33, s. 10; 1980-81-82-83, c. 143, s. 5.

Equal wages

11. (1) It is a discriminatory practice for an employer to establish or maintain differences in wages between male and female employees employed in the same establishment who are performing work of equal value.

Assessment of value of work

(2) In assessing the value of work performed by employees employed in the same establishment, the criterion to be applied is the composite of the skill, effort and responsibility required in the performance of the work and the conditions under which the work is performed.

Separate establishments

(3) Separate establishments established or maintained by an employer solely or principally for the purpose of establishing or maintaining differences in wages between male and female employees shall be deemed for the purposes of this section to be the same establishment.

Different wages based on prescribed reasonable factors

(4) Notwithstanding subsection (1), it is not a discriminatory practice to pay to male and female employees different wages if the difference is based on a factor prescribed by guidelines, issued by the Canadian Human Rights Commission pursuant to subsection 27(2), to be a reasonable factor that justifies the difference.

Idem

(5) For greater certainty, sex does not constitute a reasonable factor justifying a difference in wages.

No reduction of wages

(6) An employer shall not reduce wages in order to eliminate a discriminatory practice described in this section.

Definition of "wages"

(7) For the purposes of this section, "wages" means any form of remuneration payable for work performed by an individual and includes

(*a*) salaries, commissions, vacation pay, dismissal wages and bonuses;

(*b*) reasonable value for board, rent, housing and lodging;

(*c*) payments in kind;

(*d*) employer contributions to pension funds or plans, long-term disability plans and all forms of health insurance plans; and

(*e*) any other advantage received directly or indirectly from the individual's employer.

1976-77, c. 33, s. 11.

Publication of discriminatory notices, etc.

12. It is a discriminatory practice to publish or display before the public or to cause to be published or displayed before the public any notice, sign, symbol, emblem or other representation that

(*a*) expresses or implies discrimination or an intention to discriminate, or

(*b*) incites or is calculated to incite others to discriminate

if the discrimination expressed or implied, intended to be expressed or implied or incited or calculated to be incited would otherwise, if engaged in, be a discriminatory practice described in any of sections 5 to 11 or in section 14.

1976-77, c. 33, s. 12; 1980-81-82-83, c. 143, s. 6.

Hate messages

13. (1) It is a discriminatory practice for a person or a group of persons acting in concert to communicate telephonically or to cause to be so communicated, repeatedly, in whole or in part by means of the facilities of a telecommunication undertaking within the legislative authority of Parliament, any matter that is likely to expose a person or persons to hatred or contempt by reason of the fact that that person or those persons are identifiable on the basis of a prohibited ground of discrimination.

Exception

(2) Subsection (1) does not apply in respect of any matter that is communicated in whole or in part by means of the facilities of a broadcasting undertaking.

Interpretation

(3) For the purposes of this section, no owner or operator of a telecommunication undertaking communicates or causes to be communicated any matter described in subsection (1) by reason only that the facilities of a telecommunication undertaking owned or operated by that person are used by other persons for the transmission of that matter.

1976-77, c. 33, s. 13.

Harassment

14. (1) It is a discriminatory practice,

(*a*) in the provision of goods, services, facilities or accommodation customarily available to the general public,

(*b*) in the provision of commercial premises or residential accommodation, or

(*c*) in matters related to employment,

to harass an individual on a prohibited ground of discrimination.

Sexual harassment

(2) Without limiting the generality of subsection (1), sexual harassment shall, for the purposes of that subsection, be deemed to be harassment on a prohibited ground of discrimination.

1980-81-82-83, c. 143, s. 7.

Exceptions

15. It is not a discriminatory practice if

(*a*) any refusal, exclusion, expulsion, suspension, limitation, specification or preference in relation to any employment is established by an employer to be based on a *bona fide* occupational requirement;

(*b*) employment of an individual is refused or terminated because that individual has not reached the minimum age, or has reached the maximum age, that applies to that employment by law or under regulations, which may be made by the Governor in Council for the purposes of this paragraph;

(*c*) an individual's employment is terminated because that individual has reached the normal age of retirement for employees working in positions similar to the position of that individual;

(*d*) the terms and conditions of any pension fund or plan established by an employer provide for the compulsory vesting or locking-in of pension contributions at a fixed or determinable age in accordance with sections 17 and 18 of the *Pension Benefits Standards Act*, *1985*;

(*e*) an individual is discriminated against on a prohibited ground of discrimination in a manner that is prescribed by guidelines, issued by the Canadian Human Rights Commission pursuant to subsection 27(2), to be reasonable;

(*f*) an employer grants a female employee special leave or benefits in connection with pregnancy or child-birth or grants employees special leave or benefits to assist them in the care of their children; or

(*g*) in the circumstances described in section 5 or 6, an individual is denied any goods, services, facilities or accommodation or access thereto or occupancy of any commercial premises or residential accommodation or is a victim of any adverse differentiation and there is *bona fide*justification for that denial or differentiation.

R.S., 1985, c. H-6, s. 15; R.S., 1985, c. 32 (2nd Supp.), s. 41.

Special programs

16. (1) It is not a discriminatory practice for a person to adopt or carry out a special program, plan or arrangement designed to prevent disadvantages that are likely to be suffered by, or to eliminate or reduce disadvantages that are suffered by, any group of individuals when those disadvantages would be or are based on or related to the race, national or ethnic origin, colour, religion, age, sex, marital status, family status or disability of members of that group, by improving opportunities respecting goods, services, facilities, accommodation or employment in relation to that group.

Advice and assistance

(2) The Canadian Human Rights Commission may

(*a*) make general recommendations concerning desirable objectives for special programs, plans or arrangements referred to in subsection (1); and

(*b*) on application, give such advice and assistance with respect to the adoption or carrying out of a special program, plan or arrangement referred to in subsection (1) as will serve to aid in the achievement of the objectives the program, plan or arrangement was designed to achieve.

1976-77, c. 33, s. 15; 1980-81-82-83, c. 143, s. 8.

Plans to meet the needs of disabled persons

17. (1) A person who proposes to implement a plan for adapting any services, facilities, premises, equipment or operations to meet the needs of persons arising from a disability may apply to the Canadian Human Rights Commission for approval of the plan.

Approval of plan

(2) The Commission may, by written notice to a person making an application pursuant to subsection (1), approve the plan if the Commission is satisfied that the plan is appropriate for meeting the needs of persons arising from a disability.

Effect of approval of accommodation plan

(3) Where any services, facilities, premises, equipment or operations are adapted in accordance with a plan approved under subsection (2), matters for which the plan provides do not constitute any basis for a complaint under Part III regarding discrimination based on any disability in respect of which the plan was approved.

Notice when application not granted

(4) When the Commission decides not to grant an application made pursuant to subsection (1), it shall send a written notice of its decision to the applicant setting out the reasons for its decision.

1980-81-82-83, c. 143, s. 9.

Rescinding approval of plan

18. (1) If the Canadian Human Rights Commission is satisfied that, by reason of any change in circumstances, a plan approved under subsection 17(2) has ceased to be appropriate for meeting the needs of persons arising from a disability, the Commission may, by written notice to the person who proposes to carry out or maintains the adaptation contemplated by the plan or any part thereof, rescind its approval of the plan to the extent required by the change in circumstances.

Effect where approval rescinded

(2) To the extent to which approval of a plan is rescinded under subsection (1), subsection 17(3) does not apply to the plan if the discriminatory practice to which the complaint relates is subsequent to the rescission of the approval.

Statement of reasons for rescinding approval

(3) Where the Commission rescinds approval of a plan pursuant to subsection (1), it shall include in the notice referred to therein a statement of its reasons therefor.

1980-81-82-83, c. 143, s. 9.

Opportunity to make representations

19. (1) Before making its decision on an application or rescinding approval of a plan pursuant to section 17 or 18, the Canadian Human Rights Commission shall afford each person directly concerned with the matter an opportunity to make representations with respect thereto.

Restriction on deeming plan inappropriate

(2) For the purposes of sections 17 and 18, a plan shall not, by reason only that it does not conform to any standards prescribed pursuant to section 24, be deemed to be inappropriate for meeting the needs of persons arising from disability.

1980-81-82-83, c. 143, s. 9.

Certain provisions not discriminatory

20. A provision of a pension or insurance fund or plan that preserves rights acquired prior to March 1, 1978 or that preserves pension or other benefits accrued prior to that time does not constitute the basis for a complaint under Part III that an employer is engaging or has engaged in a discriminatory practice.

1976-77, c. 33, s. 16.

Funds and plans

21. The establishment of separate pension funds or plans for different groups of employees does not constitute the basis for a complaint under Part III that an employer is engaging or has engaged in a discriminatory practice if the employees are not grouped in those funds or plans according to a prohibited ground of discrimination.

1976-77, c. 33, s. 17.

Regulations

22. The Governor in Council may, by regulation, prescribe the provisions of any pension or insurance fund or plan, in addition to those provisions described in sections 20 and 21, that do not constitute the basis for a complaint under Part III that an employer is engaging or has engaged in a discriminatory practice.

1976-77, c. 33, s. 18.

Regulations

23. The Governor in Council may make regulations respecting the terms and conditions to be included in or applicable to any contract, licence or grant made or granted by Her Majesty in right of Canada providing for

(*a*) the prohibition of discriminatory practices described in sections 5 to 14; and

(*b*) the resolution, by the procedure set out in Part III, of complaints of discriminatory practices contrary to such terms and conditions.

1976-77, c. 33, s. 19; 1980-81-82-83, c. 143, s. 10.

Accessibility standards

24. (1) The Governor in Council may, for the benefit of persons having any disability, make regulations prescribing standards of accessibility to services, facilities or premises.

Effect of meeting accessibility standards

(2) Where standards prescribed pursuant to subsection (1) are met in providing access to any services, facilities or premises, a matter of access thereto does not constitute any basis for a complaint under Part III regarding discrimination based on any disability in respect of which the standards are prescribed.

Publication of proposed regulations

(3) Subject to subsection (4), a copy of each regulation that the Governor in Council proposes to make pursuant to this section shall be published in the *Canada Gazette* and a reasonable opportunity shall be afforded to interested persons to make representations with respect thereto.

Exception

(4) Subsection (3) does not apply in respect of a proposed regulation that has been published pursuant to that subsection, whether or not it has been amended as a result of representations made pursuant to that subsection.

Discriminatory practice not constituted by variance from standards

(5) Nothing shall, by virtue only of its being at variance with any standards prescribed pursuant to subsection (1), be deemed to constitute a discriminatory practice.

1980-81-82-83, c. 143, s. 11.

Definitions

25. In this Act,

"conviction for which a pardon has been granted" means a conviction of an individual for an offence in respect of which a pardon has been granted by any authority under law and, if granted or issued under the *Criminal Records Act*, has not been revoked or ceased to have effect;

"disability" means any previous or existing mental or physical disability and includes disfigurement and previous or existing dependence on alcohol or a drug.

R.S., 1985, c. H-6, s. 25; 1992, c. 22, s. 13.

PART II - CANADIAN HUMAN RIGHTS COMMISSION

Commission established

26. (1) A commission is hereby established to be known as the Canadian Human Rights Commission, in this Part and Part III referred to as the "Commission", consisting of a Chief Commissioner, a Deputy Chief Commissioner and not less than three or more than six other members, to be appointed by the Governor in Council.

Members

(2) The Chief Commissioner and Deputy Chief Commissioner are full-time members of the Commission and the other members may be appointed as full-time or part-time members of the Commission.

Term of appointment

(3) Each full-time member of the Commission may be appointed for a term not exceeding seven years and each part-time member may be appointed for a term not exceeding three years.

Tenure

(4) Each member of the Commission holds office during good behaviour but may be removed by the Governor in Council on address of the Senate and House of Commons.

Re-appointment

(5) A member of the Commission is eligible to be re-appointed in the same or another capacity.

1976-77, c. 33, s. 21.

Powers, Duties and Functions

Powers, duties and functions

27. (1) In addition to its duties under Part III with respect to complaints regarding discriminatory practices, the Commission is generally responsible for the administration of this Part and Parts I and III and

(*a*) shall develop and conduct information programs to foster public understanding of this Act and of the role and activities of the Commission thereunder and to foster public recognition of the principle described in section 2;

(*b*) shall undertake or sponsor research programs relating to its duties and functions under this Act and respecting the principle described in section 2;

(*c*) shall maintain close liaison with similar bodies or authorities in the provinces in order to foster common policies and practices and to avoid conflicts respecting the handling of complaints in cases of overlapping jurisdiction;

(*d*) shall perform duties and functions to be performed by it pursuant to any agreement entered into under subsection 28(2);

(*e*) may consider such recommendations, suggestions and requests concerning human rights and freedoms as it receives from any source and, where deemed by the Commission to be appropriate, include in a report referred to in section 61 reference to and comment on any such recommendation, suggestion or request;

(*f*) shall carry out or cause to be carried out such studies concerning human rights and freedoms as may be referred to it by the Minister of Justice and include in a report referred to in section 61 a report setting out the results of each such study together with such recommendations in relation thereto as it considers appropriate;

(*g*) may review any regulations, rules, orders, by-laws and other instruments made pursuant to an Act of Parliament and, where deemed by the Commission to be appropriate, include in a report referred to in section 61 reference to and comment on any provision thereof that in its opinion is inconsistent with the principle described in section 2; and

(*h*) shall, so far as is practical and consistent with the application of Part III, endeavour by persuasion, publicity or any other means that it considers appropriate to discourage and reduce discriminatory practices referred to in sections 5 to 14.

Guidelines

(2) The Commission may, on application or on its own initiative, by order, issue a guideline setting out the extent to which and the manner in which, in the opinion of the Commission, any provision of this Act applies in a particular case or in a class of cases described in the guideline.

Guideline binding

(3) A guideline issued under subsection (2) is, until it is subsequently revoked or modified, binding on the Commission, any Human Rights Tribunal appointed pursuant to subsection 49(1) and any Review Tribunal constituted pursuant to subsection 56(1) with respect to the resolution of any complaint under Part III regarding a case falling within the description contained in the guideline.

Publication or communication

(4) Each guideline issued under subsection (2) that relates to the manner in which a provision of this Act applies in a class of cases shall be published in Part II of the *Canada Gazette*, and each such guideline that applies in a particular case shall be communicated to the persons directly affected thereby in such manner as the Commission deems appropriate.

1976-77, c. 33, s. 22; 1977-78, c. 22, s. 5; 1980-81-82-83, c. 143, s. 13.

Assignment of duties

28. (1) On the recommendation of the Commission, the Governor in Council may, by order, assign to persons or classes of persons specified in the order who are engaged in the performance of the duties and functions of the Department of Human Resources Development such of the duties and functions of the Commission in relation to discriminatory practices in employment outside the public service of Canada as are specified in the order.

Interdelegation

(2) Subject to the approval of the Governor in Council, the Commission may enter into agreements with similar bodies or authorities in the provinces providing for the performance by the Commission on behalf of those bodies or authorities of duties or functions specified in the agreements or for the performance by those bodies or authorities on behalf of the Commission of duties or functions so specified.

R.S., 1985, c. H-6, s. 28; 1996, c. 11, s. 61.

Regulations

29. The Governor in Council, on the recommendation of the Commission, may make regulations authorizing the Commission to exercise such powers and perform such duties and functions, in addition to those prescribed by this Act, as are necessary to carry out the provisions of this Part and Parts I and III.

1976-77, c. 33, s. 23.

Remuneration

Salaries and remuneration

30. (1) Each full-time member of the Commission shall be paid a salary to be fixed by the Governor in Council and each part-time member of the Commission may be paid such remuneration, as is prescribed by by-law of the Commission, for attendance at meetings of the Commission, or of any division or committee of the Commission, that the member is requested by the Chief Commissioner to attend.

Additional remuneration

(2) A part-time member of the Commission may, for any period during which that member, with the approval of the Chief Commissioner, performs any duties and functions additional to the normal duties and functions of that member on behalf of the Commission, be paid such additional remuneration as is prescribed by by-law of the Commission.

Travel expenses

(3) Each member of the Commission is entitled to be paid such travel and living expenses incurred by the member in the performance of duties and functions under this Act as are prescribed by by-law of the Commission.

1976-77, c. 33, s. 24.

Officers and Staff

Chief Commissioner

31. (1) The Chief Commissioner is the chief executive officer of the Commission and has supervision over and direction of the Commission and its staff and shall preside at meetings of the Commission.

Absence or incapacity

(2) In the event of the absence or incapacity of the Chief Commissioner, or if that office is vacant, the Deputy Chief Commissioner has all the powers and may perform all the duties and functions of the Chief Commissioner.

Idem

(3) In the event of the absence or incapacity of the Chief Commissioner and the Deputy Chief Commissioner, or if those offices are vacant, the full-time member with the most seniority has all the powers and may perform all the duties and functions of the Chief Commissioner.

1976-77, c. 33, s. 25.

Staff

32. (1) Such officers and employees as are necessary for the proper conduct of the work of the Commission shall be appointed in accordance with the *Public Service Employment Act*.

Contractual assistance

(2) The Commission may, for specific projects, enter into contracts for the services of persons having technical or specialized knowledge of any matter relating to the work of the Commission to advise and assist the Commission in the exercise of its powers or the performance of its duties and functions under this Act, and those persons may be paid such remuneration and expenses as may be prescribed by by-law of the Commission.

1976-77, c. 33, s. 26.

Compliance with security requirements

33. (1) Every member of the Commission and every person employed by the Commission who is required to receive or obtain information relating to any investigation under this Act shall, with respect to access to and the use of such information, comply with any security requirements applicable to, and take any oath of secrecy required to be taken by, individuals who normally have access to and use of such information.

Disclosure

(2) Every member of the Commission and every person employed by the Commission shall take every reasonable precaution to avoid disclosing any matter the disclosure of which

(*a*) might be injurious to international relations, national defence or security or federal-provincial relations;

(*b*) would disclose a confidence of the Queen's Privy Council for Canada;

(*c*) would be likely to disclose information obtained or prepared by any investigative body of the Government of Canada

(i) in relation to national security,

(ii) in the course of investigations pertaining to the detection or suppression of crime generally, or

(iii) in the course of investigations pertaining to particular offences against any Act of Parliament;

(*d*) might, in respect of any individual under sentence for an offence against any Act of Parliament,

(i) lead to a serious disruption of that individual's institutional, parole or mandatory supervision program,

(ii) reveal information originally obtained on a promise of confidentiality, express or implied, or

(iii) result in physical or other harm to that individual or any other person;

(*e*) might impede the functioning of a court of law, or a quasi-judicial board, commission or other tribunal or any inquiry established under the *Inquiries Act*; or

(*f*) might disclose legal opinions or advice provided to a government department or body or privileged communications between lawyer and client in a matter of government business.

1976-77, c. 33, s. 27.

Head office

34. (1) The head office of the Commission shall be in the National Capital Region described in the schedule to the *National Capital Act*.

Other offices

(2) The Commission may establish such regional or branch offices, not exceeding twelve, as it considers necessary to carry out its powers, duties and functions under this Act.

Meetings

(3) The Commission may meet for the conduct of its affairs at such times and in such places as the Chief Commissioner considers necessary or desirable.

1976-77, c. 33, s. 28.

Majority is a decision of the Commission

35. A decision of the majority of the members present at a meeting of the Commission, if the members present constitute a quorum, is a decision of the Commission.

1976-77, c. 33, s. 28.

Establishment of divisions

36. (1) For the purposes of the affairs of the Commission, the Chief Commissioner may establish divisions of the Commission and all or any of the powers, duties and functions of the Commission, except the making of by-laws,

may, as directed by the Commission, be exercised or performed by all or any of those divisions.

Designation of presiding officer

(2) Where a division of the Commission has been established pursuant to subsection (1), the Chief Commissioner may designate one of the members of the division to act as the presiding officer of the division.

1976-77, c. 33, s. 28.

By-laws

37. (1) The Commission may make by-laws for the conduct of its affairs and, without limiting the generality of the foregoing, may make by-laws

(*a*) respecting the calling of meetings of the Commission or any division thereof and the fixing of quorums for the purposes of those meetings;

(*b*) respecting the conduct of business at meetings of the Commission or any division thereof;

(*c*) respecting the establishment of committees of the Commission, the delegation of powers, duties and functions to those committees and the fixing of quorums for meetings thereof;

(*d*) respecting the procedure to be followed in dealing with complaints under Part III that have arisen in the Yukon Territory or the Northwest Territories;

(*e*) prescribing the rates of remuneration to be paid to part-time members, members of a Human Rights Tribunal and any person engaged pursuant to subsection 32(2); and

(*f*) prescribing reasonable rates of travel and living expenses to be paid to members of the Commission, members of a Human Rights Tribunal and any person engaged pursuant to subsection 32(2).

Treasury Board approval

(2) No by-law made under paragraph (1)(*e*) or (*f*) has effect unless it is approved by the Treasury Board.

1976-77, c. 33, s. 29.

Superannuation, etc.

38. The full-time members of the Commission are deemed to be persons employed in the Public Service for the purposes of the *Public Service Superannuation Act* and to be employed in the public service of Canada for the purposes of the *Government Employees Compensation Act* and any regulations made under section 9 of the *Aeronautics Act*.

1976-77, c. 33, s. 30.

PART III - DISCRIMINATORY PRACTICES AND GENERAL PROVISIONS

Definition of "discriminatory practice"

39. For the purposes of this Part, a "discriminatory practice" means any practice that is a discriminatory practice within the meaning of sections 5 to 14.

1976-77, c. 33, s. 31; 1980-81-82-83, c. 143, s. 14.

Complaints

40. (1) Subject to subsections (5) and (7), any individual or group of individuals having reasonable grounds for believing that a person is engaging or has engaged in a discriminatory practice may file with the Commission a complaint in a form acceptable to the Commission.

Consent of victim

(2) If a complaint is made by someone other than the individual who is alleged to be the victim of the discriminatory practice to which the complaint relates, the Commission may refuse to deal with the complaint unless the alleged victim consents thereto.

Investigation commenced by Commission

(3) Where the Commission has reasonable grounds for believing that a person is engaging or has engaged in a discriminatory practice, the Commission may initiate a complaint.

Complaints may be dealt with together

(4) Where complaints are filed jointly or separately by more than one individual or group alleging that a particular person is engaging or has engaged in a discriminatory practice or a series of similar discriminatory practices and the Commission is satisfied that the complaints involve substantially the same issues of fact and law, it may deal with those complaints together under this Part and may request the President of the Human Rights Tribunal Panel to appoint a

single Human Rights Tribunal pursuant to section 49 to inquire into those complaints.

No complaints to be considered in certain cases

(5) No complaint in relation to a discriminatory practice may be dealt with by the Commission under this Part unless the act or omission that constitutes the practice

(*a*) occurred in Canada and the victim of the practice was at the time of the act or omission either lawfully present in Canada or, if temporarily absent from Canada, entitled to return to Canada;

(*b*) occurred in Canada and was a discriminatory practice within the meaning of section 8, 10, 12 or 13 in respect of which no particular individual is identifiable as the victim; or

(*c*) occurred outside Canada and the victim of the practice was at the time of the act or omission a Canadian citizen or an individual lawfully admitted to Canada for permanent residence.

Determination of status

(6) Where a question arises under subsection (5) as to the status of an individual in relation to a complaint, the Commission shall refer the question of status to the appropriate Minister and shall not proceed with the complaint unless the question of status is resolved thereby in favour of the complainant.

No complaints to be dealt with in certain cases

(7) No complaint may be dealt with by the Commission pursuant to subsection (1) that relates to the terms and conditions of a superannuation or pension fund or plan, if the relief sought would require action to be taken that would deprive any contributor to, participant in or member of, the fund or plan of any rights acquired under the fund or plan before March 1, 1978 or of any pension or other benefits accrued under the fund or plan to that date, including

(*a*) any rights and benefits based on a particular age of retirement; and

(*b*) any accrued survivor's benefits.

R.S., 1985, c. H-6, s. 40; R.S., 1985, c. 31 (1st Supp.), s. 62.

Commission to deal with complaint

41. Subject to section 40, the Commission shall deal with any complaint filed with it unless in respect of that complaint it appears to the Commission that

(*a*) the alleged victim of the discriminatory practice to which the complaint relates ought to exhaust grievance or review procedures otherwise reasonably available;

(*b*) the complaint is one that could more appropriately be dealt with, initially or completely, according to a procedure provided for under an Act of Parliament other than this Act;

(*c*) the complaint is beyond the jurisdiction of the Commission;

(*d*) the complaint is trivial, frivolous, vexatious or made in bad faith; or

(*e*) the complaint is based on acts or omissions the last of which occurred more than one year, or such longer period of time as the Commission considers appropriate in the circumstances, before receipt of the complaint.

R.S., 1985, c. H-6, s. 41; 1994, c. 26, s. 34(F).

Notice

42. (1) Subject to subsection (2), when the Commission decides not to deal with a complaint, it shall send a written notice of its decision to the complainant setting out the reason for its decision.

Attributing fault for delay

(2) Before deciding that a complaint will not be dealt with because a procedure referred to in paragraph 41(*a*) has not been exhausted, the Commission shall satisfy itself that the failure to exhaust the procedure was attributable to the complainant and not to another.

1976-77, c. 33, s. 34.

Investigation

Designation of investigator

43. (1) The Commission may designate a person, in this Part referred to as an "investigator", to investigate a complaint.

Manner of investigation

(2) An investigator shall investigate a complaint in a manner authorized by regulations made pursuant to subsection (4).

Power to enter

(2.1) Subject to such limitations as the Governor in Council may prescribe in the interests of national defence or security, an investigator with a warrant issued under subsection (2.2) may, at any reasonable time, enter and search any premises in order to carry out such inquiries as are reasonably necessary for the investigation of a complaint.

Authority to issue warrant

(2.2) Where on *ex parte* application a judge of the Federal Court is satisfied by information on oath that there are reasonable grounds to believe that there is in any premises any evidence relevant to the investigation of a complaint, the judge may issue a warrant under the judge's hand authorizing the investigator named therein to enter and search those premises for any such evidence subject to such conditions as may be specified in the warrant.

Use of force

(2.3) In executing a warrant issued under subsection (2.2), the investigator named therein shall not use force unless the investigator is accompanied by a peace officer and the use of force has been specifically authorized in the warrant.

Production of books

(2.4) An investigator may require any individual found in any premises entered pursuant to this section to produce for inspection or for the purpose of obtaining copies thereof or extracts therefrom any books or other documents containing any matter relevant to the investigation being conducted by the investigator.

Obstruction

(3) No person shall obstruct an investigator in the investigation of a complaint.

Regulations

(4) The Governor in Council may make regulations

(*a*) prescribing procedures to be followed by investigators;

(*b*) authorizing the manner in which complaints are to be investigated pursuant to this Part; and

(*c*) prescribing limitations for the purpose of subsection (2.1).

R.S., 1985, c. H-6, s. 43; R.S., 1985, c. 31 (1st Supp.), s. 63.

Report

44. (1) An investigator shall, as soon as possible after the conclusion of an investigation, submit to the Commission a report of the findings of the investigation.

Action on receipt of report

(2) If, on receipt of a report referred to in subsection (1), the Commission is satisfied

(*a*) that the complainant ought to exhaust grievance or review procedures otherwise reasonably available, or

(*b*) that the complaint could more appropriately be dealt with, initially or completely, by means of a procedure provided for under an Act of Parliament other than this Act,

it shall refer the complainant to the appropriate authority.

Idem

(3) On receipt of a report referred to in subsection (1), the Commission

(*a*) may request the President of the Human Rights Tribunal Panel to appoint a Human Rights Tribunal in accordance with section 49 to inquire into the complaint to which the report relates if the Commission is satisfied

(i) that, having regard to all the circumstances of the complaint, an inquiry into the complaint is warranted, and

(ii) that the complaint to which the report relates should not be referred pursuant to subsection (2) or dismissed on any ground mentioned in paragraphs 41(*c*) to (*e*); or

(*b*) shall dismiss the complaint to which the report relates if it is satisfied

(i) that, having regard to all the circumstances of the complaint, an inquiry into the complaint is not warranted, or

(ii) that the complaint should be dismissed on any ground mentioned in paragraphs 41(*c*) to (*e*).

Notice

(4) After receipt of a report referred to in subsection (1), the Commission

(*a*) shall notify in writing the complainant and the person against whom the complaint was made of its action under subsection (2) or (3); and

(*b*) may, in such manner as it sees fit, notify any other person whom it considers necessary to notify of its action under subsection (2) or (3).

R.S., 1985, c. H-6, s. 44; R.S., 1985, c. 31 (1st Supp.), s. 64.

Definition of "Review Committee"

45. (1) In this section and section 46, "Review Committee" has the meaning assigned to that expression by the *Canadian Security Intelligence Service Act*.

Complaint involving security considerations

(2) When, at any stage after the filing of a complaint and before the commencement of a hearing before a Human Rights Tribunal in respect thereof, the Commission receives written notice from a minister of the Crown that the practice to which the complaint relates was based on considerations relating to the security of Canada, the Commission may

(*a*) dismiss the complaint; or

(*b*) refer the matter to the Review Committee.

Notice

(3) After receipt of a notice mentioned in subsection (2), the Commission

(*a*) shall notify in writing the complainant and the person against whom the complaint was made of its action under paragraph (2)(*a*) or (*b*); and

(*b*) may, in such manner as it sees fit, notify any other person whom it considers necessary to notify of its action under paragraph 2(*a*) or (*b*).

Stay of procedures

(4) Where the Commission has referred the matter to the Review Committee pursuant to paragraph (2)(*b*), it shall not deal with the complaint until the Review Committee has, pursuant to subsection 46(1), provided it with a report in relation to the matter.

Application of the *Canadian Security Intelligence Service Act*

(5) Where a matter is referred to the Review Committee pursuant to paragraph (2)(*b*), subsections 39(2) and (3) and sections 43, 44 and 47 to 51 of the *Canadian Security Intelligence Service Act*apply, with such modifications as the circumstances require, to the matter as if the referral were a complaint made pursuant to section 42 of that Act except that a reference in any of those

provisions to "deputy head" shall be read as a reference to the minister referred to in subsection (2).

Statement to be sent to person affected

(6) The Review Committee shall, as soon as practicable after a matter in relation to a complaint is referred to it pursuant to paragraph (2)(*b*), send to the complainant a statement summarizing such information available to it as will enable the complainant to be as fully informed as possible of the circumstances giving rise to the referral.

1984, c. 21, s. 73.

Report

46. (1) On completion of its investigation under section 45, the Review Committee shall, not later than forty-five days after the matter is referred to it pursuant to paragraph 45(2)(*b*), provide the Commission, the minister referred to in subsection 45(2) and the complainant with a report containing the findings of the Committee.

Action on receipt of report

(2) After considering a report provided pursuant to subsection (1), the Commission

(*a*) may dismiss the complaint or, where it does not do so, shall proceed to deal with the complaint pursuant to this Part; and

(*b*) shall notify, in writing, the complainant and the person against whom the complaint was made of its action under paragraph (*a*) and may, in such manner as it sees fit, notify any other person whom it considers necessary to notify of that action.

1984, c. 21, s. 73.

Conciliator

Appointment of conciliator

47. (1) Subject to subsection (2), the Commission may, on the filing of a complaint, or if the complaint has not been

(*a*) settled in the course of investigation by an investigator,

(*b*) referred or dismissed under subsection 44(2) or (3) or paragraph 45(2)(*a*) or 46(2)(*a*), or

(*c*) settled after receipt by the parties of the notice referred to in subsection 44(4),

appoint a person, in this Part referred to as a "conciliator", for the purpose of attempting to bring about a settlement of the complaint.

Eligibility

(2) A person is not eligible to act as a conciliator in respect of a complaint if that person has already acted as an investigator in respect of that complaint.

Confidentiality

(3) Any information received by a conciliator in the course of attempting to reach a settlement of a complaint is confidential and may not be disclosed except with the consent of the person who gave the information.

1976-77, c. 33, s. 37; 1984, c. 21, s. 74.

Settlement

Referral of a settlement to Commission

48. (1) When, at any stage after the filing of a complaint and before the commencement of a hearing before a Human Rights Tribunal in respect thereof, a settlement is agreed on by the parties, the terms of the settlement shall be referred to the Commission for approval or rejection.

Certificate

(2) If the Commission approves or rejects the terms of a settlement referred to in subsection (1), it shall so certify and notify the parties.

1976-77, c. 33, s. 38.

Human Rights Tribunal Panel

Human Rights Tribunal Panel

48.1 There is hereby established a panel to be known as the Human Rights Tribunal Panel consisting of a President and such other members as may be appointed by the Governor in Council.

R.S., 1985, c. 31 (1st Supp.), s. 65.

Term of office

48.2 The President of the Human Rights Tribunal Panel shall be appointed to hold office during good behaviour for a term of three years and each of the other members of the Panel shall be appointed to be a member of the Panel during good behaviour for a term not exceeding five years, but may be removed by the Governor in Council for cause.

R.S., 1985, c. 31 (1st Supp.), s. 65.

Absence or incapacity

48.3 In the event of the absence or incapacity of the President of the Human Rights Tribunal Panel, or if there is no President, the Governor in Council may authorize a member of the Panel to act as President and a member so authorized, while so acting, has all the powers and may perform all the duties of the President.

R.S., 1985, c. 31 (1st Supp.), s. 65.

Re-appointment

48.4 A President of the Human Rights Tribunal Panel as well as any member of the Panel whose term has expired is eligible for re-appointment in the same or any other capacity.

R.S., 1985, c. 31 (1st Supp.), s. 65.

Remuneration of President

48.5 The President of the Human Rights Tribunal Panel shall be paid remuneration and expenses for the performance of duties as President at the same rate as is prescribed by by-law of the Commission for a member of a Tribunal acting in the capacity of a Chairman thereof.

R.S., 1985, c. 31 (1st Supp.), s. 65.

Human Rights Tribunal

Human Rights Tribunal

49. (1) The Commission may, at any stage after the filing of a complaint, request the President of the Human Rights Tribunal Panel to appoint a Human Rights Tribunal, in this Part referred to as a "Tribunal", to inquire into the complaint if the Commission is satisfied that, having regard to all the circumstances of the complaint, an inquiry into the complaint is warranted.

President to appoint Tribunal

(1.1) On receipt of a request under subsection (1), the President of the Human Rights Tribunal Panel shall appoint a Tribunal to inquire into the complaint to which the request relates.

Membership

(2) A Tribunal may not be composed of more than three members.

Eligibility

(3) No member, officer or employee of the Commission, and no individual who has acted as investigator or conciliator in respect of the complaint in relation to which a Tribunal is appointed, is eligible to be appointed to the Tribunal.

Remuneration

(4) A member of a Tribunal is entitled to be paid such remuneration and expenses for the performance of duties as a member of the Tribunal as may be prescribed by by-law of the Commission.

Selection from Panel

(5) Subject to subsection (5.1), in selecting any individual or individuals to be appointed as a Tribunal, the President of the Human Rights Tribunal Panel shall select from among the members of the Human Rights Tribunal Panel.

President may appoint himself

(5.1) The President of the Human Rights Tribunal Panel may sit as a Tribunal or as a member of a Tribunal.

Chairman

(6) Subject to subsection (7), where a Tribunal consists of more than one member, the President of the Human Rights Tribunal Panel shall designate one of the members to be the Chairman of the Tribunal.

Idem

(7) Where the President of the Human Rights Tribunal Panel is a member of a Tribunal consisting of more than one member, the President shall be Chairman of the Tribunal.

R.S., 1985, c. H-6, s. 49; R.S., 1985, c. 31 (1st Supp.), s. 66.

Duties

50. (1) A Tribunal shall, after due notice to the Commission, the complainant, the person against whom the complaint was made and, at the discretion of the Tribunal, any other interested party, inquire into the complaint in respect of which it was appointed and shall give all parties to whom notice has been given a full and ample opportunity, in person or through counsel, to appear before the Tribunal, present evidence and make representations to it.

Powers

(2) In relation to a hearing under this Part, a Tribunal may

(*a*) in the same manner and to the same extent as a superior court of record, summon and enforce the attendance of witnesses and compel them to give oral or written evidence on oath and to produce such documents and things as the Tribunal deems requisite to the full hearing and consideration of the complaint;

(*b*) administer oaths; and

(*c*) receive and accept such evidence and other information, whether on oath or by affidavit or otherwise, as the Tribunal sees fit, whether or not that evidence or information is or would be admissible in a court of law.

Limitation in relation to evidence

(3) Notwithstanding paragraph (2)(*c*), a tribunal may not admit or accept as evidence anything that would be inadmissible in a court by reason of any privilege under the law of evidence.

Conciliator not competent or compellable

(4) Notwithstanding paragraph (2)(*a*), a conciliator appointed to settle a complaint is not a competent or compellable witness at a hearing of a Tribunal appointed to inquire into the complaint.

Witness fees

(5) Any person summoned to attend a hearing pursuant to this section is entitled in the discretion of the Tribunal to receive the like fees and allowances for so doing as if summoned to attend before the Federal Court.

1976-77, c. 33, s. 40.

Duty of Commission on appearing

51. The Commission, in appearing before a Tribunal, presenting evidence and making representations to it, shall adopt such position as, in its opinion, is in the public interest having regard to the nature of the complaint being inquired into.

1976-77, c. 33, s. 40.

Hearing in public

52. A hearing of a Tribunal shall be public, but a Tribunal may exclude members of the public during the whole or any part of a hearing if it considers that exclusion to be in the public interest.

1976-77, c. 33, s. 40.

Complaint dismissed

53. (1) If, at the conclusion of its inquiry, a Tribunal finds that the complaint to which the inquiry relates is not substantiated, it shall dismiss the complaint.

Order

(2) If, at the conclusion of its inquiry, a Tribunal finds that the complaint to which the inquiry relates is substantiated, it may, subject to subsection (4) and section 54, make an order against the person found to be engaging or to have engaged in the discriminatory practice and include in that order any of the following terms that it considers appropriate:

(*a*) that the person cease the discriminatory practice and, in order to prevent the same or a similar practice from occurring in the future, take measures, including

(i) adoption of a special program, plan or arrangement referred to in subsection 16(1), or

(ii) the making of an application for approval and the implementing of a plan pursuant to section 17,

in consultation with the Commission on the general purposes of those measures;

(*b*) that the person make available to the victim of the discriminatory practice, on the first reasonable occasion, such rights, opportunities or privileges as, in the opinion of the Tribunal, are being or were denied the victim as a result of the practice;

(*c*) that the person compensate the victim, as the Tribunal may consider proper, for any or all of the wages that the victim was deprived of and for any expenses incurred by the victim as a result of the discriminatory practice; and

(*d*) that the person compensate the victim, as the Tribunal may consider proper, for any or all additional cost of obtaining alternative goods, services, facilities or accommodation and for any expenses incurred by the victim as a result of the discriminatory practice.

Special compensation

(3) In addition to any order that the Tribunal may make pursuant to subsection (2), if the Tribunal finds that

(*a*) a person is engaging or has engaged in a discriminatory practice wilfully or recklessly, or

(*b*) the victim of the discriminatory practice has suffered in respect of feelings or self-respect as a result of the practice,

the Tribunal may order the person to pay such compensation to the victim, not exceeding five thousand dollars, as the Tribunal may determine.

Order or recommendation to be made to avoid undue hardship

(4) If, at the conclusion of its inquiry into a complaint regarding discrimination based on a disability, the Tribunal finds that the complaint is substantiated but that the premises or facilities of the person found to be engaging or to have engaged in the discriminatory practice require adaptation to meet the needs of a person arising from such a disability, the Tribunal shall

(*a*) make such order pursuant to this section for that adaptation as it considers appropriate and as it is satisfied will not occasion costs or business inconvenience constituting undue hardship, or

(*b*) if the Tribunal considers that no such order can be made, make such recommendations as it considers appropriate,

and, in the event of such finding, the Tribunal shall not make an order unless required by this subsection.

1976-77, c. 33, s. 41; 1980-81-82-83, c. 143, s. 20.

Limitation of order

54. (1) Where a Tribunal finds that a complaint related to a discriminatory practice described in section 13 is substantiated, it may make only an order referred to in paragraph 53(2)(*a*).

Idem

(2) No order under subsection 53(2) may contain a term

(*a*) requiring the removal of an individual from a position if that individual accepted employment in that position in good faith; or

(*b*) requiring the expulsion of an occupant from any premises or accommodation, if that occupant obtained such premises or accommodation in good faith.

1976-77, c. 33, s. 42.

Appeals

55. Where a Tribunal that made a decision or order was composed of fewer than three members, the Commission, the complainant before the Tribunal or the person against whom the complaint was made may appeal the decision or order by serving a notice, in a manner and form prescribed by order of the Governor in Council, within thirty days after the decision or order appealed was pronounced, on all persons who received notice from the Tribunal under subsection 50(1).

1976-77, c. 33, s. 42.1.

Establishment of Review Tribunal

56. (1) Where an appeal is made pursuant to section 55, the President of the Human Rights Tribunal Panel shall select three members from the Human Rights Tribunal Panel, other than the member or members of the Tribunal whose decision or order is being appealed from, to constitute a Review Tribunal to hear the appeal.

Constitution and powers

(2) Subject to this section, a Review Tribunal shall be constituted in the same manner as, and shall have all the powers of, a Tribunal appointed pursuant to section 49, and subsection 49(4) applies in respect of members of a Review Tribunal.

Grounds for appeal

(3) An appeal lies to a Review Tribunal against a decision or order of a Tribunal on any question of law or fact or mixed law and fact.

Hearing of appeal

(4) A Review Tribunal shall hear an appeal on the basis of the record of the Tribunal whose decision or order is appealed and of submissions of interested parties but the Review Tribunal may, if in its opinion it is essential in the interests of justice to do so, admit additional evidence or testimony.

Disposition of appeal

(5) A Review Tribunal may dispose of an appeal under section 55 by dismissing it, or by allowing it and rendering the decision or making the order that, in its opinion, the Tribunal appealed against should have rendered or made.

R.S., 1985, c. H-6, s. 56; R.S., 1985, c. 31 (1st Supp.), s. 67.

Enforcement of order

57. Any order of a Tribunal under subsection 53(2) or (3) or any order of a Review Tribunal under subsection 56(5) may, for the purpose of enforcement, be made an order of the Federal Court by following the usual practice and procedure or, in lieu thereof, by the Commission filing in the Registry of the Court a copy of the order certified to be a true copy, and thereupon that order becomes an order of the Court.

1976-77, c. 33, s. 43.

Application respecting disclosure of information

58. (1) Where any investigator or Tribunal requires the disclosure of any information and a minister of the Crown or any other person interested objects to its disclosure, the Commission may apply to the Federal Court for a determination of the matter.

Certificate

(2) Where the Commission applies to the Federal Court pursuant to subsection (1) and the minister of the Crown or other person interested objects to the disclosure in accordance with sections 37 to 39 of the *Canada Evidence Act*, the matter shall be determined in accordance with the terms of those sections.

No certificate

(3) Where the Commission applies to the Federal Court pursuant to subsection (1) but the minister of the Crown or other person interested does not within ninety days thereafter object to the disclosure in accordance with sections 37 to 39 of the *Canada Evidence Act*, the Court may take such action as it deems appropriate.

1976-77, c. 33, s. 44; 1980-81-82-83, c. 111, s. 5, c. 143, s. 21.

Intimidation or discrimination

59. No person shall threaten, intimidate or discriminate against an individual because that individual has made a complaint or given evidence or assisted in any way in respect of the initiation or prosecution of a complaint or other proceeding under this Part, or because that individual proposes to do so.

1976-77, c. 33, s. 45.

Offences and Punishment

Offence

60. (1) Every person is guilty of an offence who

(*a*) fails to comply with the terms of any settlement of a complaint approved and certified under section 48;

(*b*) obstructs a Tribunal in carrying out its functions under this Part; or

(*c*) contravenes subsection 11(6) or 43(3) or section 59.

Punishment

(2) A person who is guilty of an offence under subsection (1) is liable on summary conviction

(*a*) if the accused is an employer, an employer association or an employee organization, to a fine not exceeding fifty thousand dollars; or

(*b*) in any other case, to a fine not exceeding five thousand dollars.

Prosecution of employer association or employee organization

(3) A prosecution for an offence under this section may be brought against an employer association or employee organization and in the name of that association or organization and for the purpose of the prosecution that association or organization shall be deemed to be a person and any act or thing done or omitted by an officer or agent of that association or organization within the scope of that officer's or agent's authority to act on behalf of the association or organization shall be deemed to be an act or thing done or omitted by the association or organization.

Consent of Attorney General

(4) A prosecution for an offence under this section may not be instituted except by or with the consent of the Attorney General of Canada.

Definition of "employer association"

(5) For the purposes of this section, "employer association" means any organization of employers the purposes of which include the negotiation, on behalf of employers, of the terms and conditions of employment of employees.

1976-77, c. 33, s. 46.

Reports

Annual report

61. (1) The Commission shall, within three months after December 31 in each year, transmit to the Minister of Justice a report on the activities of the Commission under this Part and Part II for that year including references to and comments on any matter referred to in paragraph 27(1)(*e*) or (*g*) that it considers appropriate.

Special reports

(2) The Commission may, at any time, transmit to the Minister of Justice a special report referring to and commenting on any matter within the scope of its powers, duties and functions where, in its opinion, the matter is of such urgency or importance that a report thereon should not be deferred until the time provided for transmission of its next annual report under subsection (1).

Tabling reports

(3) The Minister shall cause any report transmitted to the Minister pursuant to this section to be laid before each House of Parliament on any of the first fifteen days on which that House is sitting after the day the Minister receives it.

1976-77, c. 33, s. 47; 1980-81-82-83, c. 143, s. 22.

Application

Limitation

62. (1) This Part and Parts I and II do not apply to or in respect of any superannuation or pension fund or plan established by an Act of Parliament enacted before March 1, 1978.

Review of Acts referred to in subsection (1)

(2) The Commission shall keep under review those Acts of Parliament enacted before March 1, 1978 by which any superannuation or pension fund or plan is established and, where the Commission deems it to be appropriate, it may include in a report mentioned in section 61 reference to and comment on any provision of any of those Acts that in its opinion is inconsistent with the principle described in section 2.

1976-77, c. 33, s. 48.

Application in the Territories

63. Where a complaint under this Part relates to an act or omission that occurred in the Yukon Territory or the Northwest Territories, it may not be dealt with under this Part unless the act or omission could be the subject of a complaint under this Part had it occurred in a province.

1976-77, c. 33, s. 48.

Canadian Forces and Royal Canadian Mounted Police

64. For the purposes of this Part and Parts I and II, members of the Canadian Forces and the Royal Canadian Mounted Police are deemed to be employed by the Crown.

1976-77, c. 33, s. 48.

Acts of employees, etc.

65. (1) Subject to subsection (2), any act or omission committed by an officer, a director, an employee or an agent of any person, association or organization in the course of the employment of the officer, director, employee or agent shall, for the purposes of this Act, be deemed to be an act or omission committed by that person, association or organization.

Exculpation

(2) An act or omission shall not, by virtue of subsection (1), be deemed to be an act or omission committed by a person, association or organization if it is established that the person, association or organization did not consent to the commission of the act or omission and exercised all due diligence to prevent the act or omission from being committed and, subsequently, to mitigate or avoid the effect thereof.

1980-81-82-83, c. 143, s. 23.

PART IV - APPLICATION

Binding on Her Majesty

66. (1) This Act is binding on Her Majesty in right of Canada, except in matters respecting the Government of the Yukon Territory or the Northwest Territories.

Commencement

(2) The exception referred to in subsection (1) shall come into operation in respect of the Government of the Yukon Territory on a day to be fixed by proclamation.

Idem

(3) The exception referred to in subsection (1) shall come into operation in respect of the Government of the Northwest Territories on a day to be fixed by proclamation.

1976-77, c. 33, s. 63; 1980-81-82-83, c. 143, ss. 24, 29.

Saving

67. Nothing in this Act affects any provision of the *Indian Act* or any provision made under or pursuant to that Act.

1976-77, c. 33, s. 63.

RELATED PROVISION

- R.S., 1985, c. 31 (1st Supp.), s. 68:

Transitional

"**68.** Every Tribunal appointed prior to the coming into force of this Act shall continue to act as though this Part had not come into force."

AMENDMENTS NOT IN FORCE

- 1993, c. 28, s. 78 (Sch. III, ss. 68 to 70):

68. Paragraph 37(1)(*d*) is repealed and the following substituted therefor:

(*d*) respecting the procedure to be followed in dealing with complaints under Part III that have arisen in the Yukon Territory, the Northwest Territories or Nunavut;

69. Section 63 is repealed and the following substituted therefor:

Application in the territories

63. Where a complaint under this Part relates to an act or omission that occurred in the Yukon Territory, the Northwest Territories or Nunavut, it may not be dealt

with under this Part unless the act or omission could be the subject of a complaint under this Part had it occurred in a province.

70. (1) Subsection 66(1) is repealed and the following substituted therefor:

Binding on Her Majesty

66. (1) This Act is binding on Her Majesty in right of Canada, except in matters respecting the Government of the Yukon Territory, the Northwest Territories or Nunavut.

(2) Section 66 is further amended by adding thereto the following subsection:

Idem

(4) The exception referred to in subsection (1) shall come into operation in respect of the Government of Nunavut on a day to be fixed by order of the Governor in Council.

- 1995, c. 44, ss. 47 to 50:

47. Section 40 of the *Canadian Human Rights Act* is amended by adding the following after subsection (3):

Limitation

(3.1) No complaint may be initiated under subsection (3) as a result of information obtained by the Commission in the course of the administration of the *Employment Equity Act*.

48. The Act is amended by adding the following after section 40:

Definitions

40.1 (1) In this section,

"designated groups" has the meaning assigned in section 3 of the *Employment Equity Act*;

"employer" means a person who or organization that discharges the obligations of an employer under the *Employment Equity Act*.

Employment equity complaints

(2) No complaint may be dealt with by the Commission pursuant to section 40 where

(*a*) the complaint is made against an employer alleging that the employer has engaged in a discriminatory practice set out in section 7 or paragraph 10(*a*); and

(*b*) the complaint is based solely on statistical information that purports to show that members of one or more designated groups are underrepresented in the employer's workforce.

49. Section 41 of the Act is renumbered as subsection 41(1) and is amended by adding the following:

Commission may decline to deal with complaint

(2) The Commission may decline to deal with a complaint referred to in paragraph 10(*a*) in respect of an employer where it is of the opinion that the matter has been adequately dealt with in the employer's employment equity plan prepared pursuant to section 10 of the *Employment Equity Act*.

Meaning of "employer"

(3) In this section, "employer" means a person who or organization that discharges the obligations of an employer under the *Employment Equity Act*.

50. The Act is amended by adding the following after section 54:

Definitions

54.1 (1) In this section,

"designated groups" has the meaning assigned in section 3 of the *Employment Equity Act*; and

"employer" means a person who or organization that discharges the obligations of an employer under the *Employment Equity Act*.

Limitation of order re employment equity

(2) Where a Tribunal finds that a complaint against an employer is substantiated, it may not make an order pursuant to subparagraph 53(2)(*a*)(i) requiring the employer to adopt a special program, plan or arrangement containing

(*a*) positive policies and practices designed to ensure that members of designated groups achieve increased representation in the employer's workforce; or

(*b*) goals and timetables for achieving that increased representation.

Interpretation

(3) For greater certainty, subsection (2) shall not be construed as limiting the power of a Tribunal, under paragraph 53(2)(*a*), to make an order requiring an employer to cease or otherwise correct a discriminatory practice.

STATUTES OF CANADA, 1976-77 AND REVISED STATUTES OF CANADA, 1985

Abbreviations

CA: Consequential amendment

E-: English version

F-: French version

NC: Not consolidated and not repealed

OM: Omitted (spent or repealed by Revision)

part.: Partly or part of

Pr: Preamble

R: Rule

Sch: Schedule

STATUTES OF CANADA, 1976-77 AND REVISED STATUTES OF CANADA, 1985

Chapter 33, Sections 1 to 13

Chapter H-6, Sections 1 to 13

Chapter 33, Section 13.1

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Remarks: NC (Not consolidated and not repealed)

Chapter 33, Sections 66, 67

Remarks: CA (Consequential amendment)

Chapter 33, Section 69

Remarks: OM (Omitted (spent or repealed by Revision)