



# Justice Centre

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## From Bad to Worse

Examining Restrictions on Speech and Procedural Fairness  
in Human Rights Legislation in fourteen Canadian Jurisdictions

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March 2012

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## About the Justice Centre for Constitutional Freedoms

***"Never doubt that a small group of thoughtful, committed people can change the world. Indeed, it is the only thing that ever has."***

The free and democratic society which the *Canadian Charter of Rights and Freedoms* holds out as our ideal can only be fulfilled by honouring and preserving Canada's traditions of freedom of speech, freedom of religion, freedom of association, constitutionally limited government, the equality of all citizens before the law, and the rule of law.

The Justice Centre for Constitutional Freedoms (JCCF) was founded in 2010 for the purpose of advancing and promoting the core principles of freedom and equality through education and litigation. The JCCF is a registered charity (charitable registration number 817174865-RR0001) and issues official tax receipts to donors for donations of \$50 or more. The JCCF is funded entirely by the voluntary donations of Canadians who agree with the Centre's goals, mission, vision and activities. The centre is independent and non-partisan, and receives no funding from any government or government organization.

In addition to its education and research activities, the JCCF also provides *pro bono* legal representation to Canadians whose human rights or constitutional freedoms are violated.

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## Executive Summary

All of Canada's provinces and territories, as well as the federal government, have human rights legislation that forbids discrimination in accommodation, employment, contracts, facilities, the sale of goods and services, and other areas. The prohibition on discrimination in these areas seems to enjoy broad public support.

However, many Canadians are concerned about the legislation's lack of procedural fairness. None of the fourteen jurisdictions (ten provinces, three territories, one federal government) have human rights legislation that provides for much procedural fairness, hence this paper's title "From Bad to Worse." Nunavut and B.C. display the least amount of procedural unfairness in their legislation. The worst jurisdiction for procedural fairness is Ontario, followed closely by Alberta and P.E.I.

Further, in at least four jurisdictions, the legislation undermines the long-standing right of Canadians to express their opinions about social, political, moral, religious, cultural and other topics. When it comes to respecting freedom of expression, Yukon, Ontario, Nunavut and Manitoba are among the better jurisdictions in Canada. Canada's worst violators of free speech rights are B.C., Alberta, Saskatchewan, and the federal government.

### Freedom of Expression

In Alberta, British Columbia, Saskatchewan, and at the federal level, prohibiting discrimination in the area of "publications" has proven to be a serious violation of the fundamentally important right of Canadians to express their views. These laws enable human rights complaints to be filed against citizens for expressing "discriminatory" opinion in a variety of media, including newspapers, pamphlets, flyers, and on the internet. The prohibition on discriminatory publications restricts debate about public policy issues (eg. immigration, criminal justice, foreign policy, social assistance, aboriginal policy) because these issues will frequently, *and necessarily*, include references to enumerated grounds set out in human rights legislation, such as race, ethnicity, religion, sexual orientation, and age. A person can violate human rights legislation simply by participating in public debate over the contents of the public school curriculum, or who should be eligible to receive social assistance, or the kind of foreign policy that Canada should pursue in the Middle East, naming just three examples.

In Alberta, human rights legislation has been used against Stephen Boissoin (letter-to-the-editor about the contents of a public school curriculum), Catholic Bishop Fred Henry (disseminating his Church's teaching about the definition of marriage) and Ezra Levant (publishing the "Danish cartoons" of Mohammed in the *Western Standard* magazine).

In B.C., human rights legislation has been used against *Maclean's* magazine (publishing excerpts from Mark Steyn's book *America Alone*) and comedian Guy Earle (dealing with hecklers during his stand-up comedy routine).



In Saskatchewan, William Whatcott was ordered to pay \$17,500 to four complainants whose feelings were hurt by the contents of flyers he distributed, in a case awaiting a decision from the Supreme Court of Canada (*Whatcott v. Saskatchewan Human Rights Tribunal*).

In each of these four jurisdictions, individuals have been forced to incur thousands of dollars – in some cases tens of thousands of dollars – in legal costs to defend against human rights complaints that were filed purely in respect of the expression of opinion, without any actual discrimination in employment, goods, services or other areas.

A “discriminatory” statement which touches on religion, race, age, disability, or another listed ground, can violate human rights legislation even when the statement is true, and even when the statement merely expresses an opinion. The common law checks and balances which provide fairness between plaintiffs and defendants are excluded from human rights legislation. A defendant who is sued for defamation in court can raise the defences of “truth” and of “fair comment.” But these defences are not available to people who face a human rights complaint in regards to their speech. In practice, the hurt feelings of a complainant are usually sufficient to establish that a respondent has violated human rights legislation, even if the respondent’s statements are true.

It is not necessary to undermine centuries old constitutionally protected free speech rights in order to legislate against discrimination in employment, housing, and services. This is demonstrated by Yukon, Nunavut, Ontario, and Manitoba, which prohibit discrimination without restricting their respective citizens’ right to express opinions on social, moral, political, cultural, and public policy matters. Yukon’s *Human Rights Act* says nothing about publications. Nunavut, Ontario and Manitoba indicate that discriminatory signs, notices and publications are prohibited *only in relation to employment, housing, facilities, goods, services, contracts and other areas where the legislation seeks to address actual discrimination*. In other words, it is illegal to advertise the availability of a rental unit and say that a particular group (for example, women, aboriginals, seniors) need not apply, but there are no restrictions on the contents of a politically incorrect letter-to-the-editor, flyer, or pamphlet.

### Procedural fairness

In addition to restrictions on speech, the second major area of concern about Canada’s human rights legislation is its lack of procedural fairness. Firstly, governments typically only assist complainants, while respondents are burdened with paying all their own costs. Secondly, those who adjudicate human rights complaints do not need to have a law degree, or be trained as lawyers to understand procedural fairness. Thirdly, human rights tribunals can, and often do, accept hearsay evidence which is normally excluded by courts because of its unreliability. Fourthly, people can file frivolous or malicious complaints without risking any consequences, all while forcing respondents to pay for their own legal costs. Finally, the legislation authorizes the imposition of large and sometimes unlimited awards in respect of hurt feelings.



In all fourteen Canadian jurisdictions, the government provides direct or indirect assistance to complainants, in one or more of the following ways:

- The human rights commission can file or initiate complaints against a person
- The human rights commission has carriage of the complaint, and presents the complainant's case at the hearing;
- The human rights commission has standing as a party at the hearing, and takes a position that is identical to, or similar to, the position taken by the complainant;
- The human rights commission provides or pays for legal representation for the complainant;
- The government provides funding to organizations which assist complainants.

With the exception of B.C. and Nunavut, every jurisdiction in Canada has a human rights commission, which actively assists complainants, but provides no assistance to respondents.

In Saskatchewan, Manitoba, Ontario, the Northwest Territories and at the federal level, the commission itself can also function like a prosecutor, by initiating a human rights complaint against a person.

In most jurisdictions, if the commission decides that the complaint should go to a hearing, the commission will have carriage of the complaint, and put forth the complainant's case at the hearing. The commission will also be a party at the hearing, in addition to the complainant. While technically not providing legal representation for complainants, the commission assists complainants by presenting their complaint at the hearing.

Conversely, a respondent to a complaint needs to represent herself or himself, or pay for a lawyer for representation.

Human rights commissions are fond of declaring that they do not provide legal representation to complainants or to respondents. This may be technically true, but this position ignores the reality that these same commissions provide significant assistance to complainants by presenting the complaint at the hearing, or appearing as a party at the hearing and advocating for a position that is similar to, or identical to, the complainant's position. Therefore, complainants do not need legal representation, because they are already receiving help from the commission. The assertion that "both complainants and respondents are free to retain legal counsel if they choose" is a half truth. It ignores the structural biases which favour the complainant.

All fourteen Canadian jurisdictions permit hearsay evidence (eg. "I heard Mark Smith say that . . ."). Hearsay evidence is normally excluded from court proceedings because its accuracy cannot be tested by cross-examination. Courts regard hearsay as inherently unfair. In contrast, human rights tribunals are authorized by human rights legislation to accept hearsay evidence.

In most of Canada's fourteen jurisdictions, it is not necessary for the adjudicator of a human rights complaint to be a lawyer, or to possess a law degree. While lawyers are frequently appointed to human rights tribunals, this is not required by legislation.



Most of Canada's fourteen jurisdictions allow human rights complaints to be filed by "third parties" who themselves have not suffered any alleged discrimination, thereby allowing "community activists" to advance political agendas.

With few exceptions, Canada's human rights laws do not impose any penalty, costs, or other consequence on complainants, even those who file frivolous, malicious, or baseless complaints. This means that the respondent is forced to absorb all of the legal costs of defending herself or himself against the frivolous complaint, while the complainant suffers no burden at all.

The absence of monetary consequences makes human rights legislation radically different from the civil court system, in which the loser (whether plaintiff or defendant) pays a substantial portion of the winner's legal costs. The civil court system discourages frivolous and unfounded actions, because the potential plaintiff must seriously consider the actual merits of her or his case, and must be willing to risk paying the other side's legal costs if unsuccessful. In the same way, the civil court system also discourages defendants from taking unfounded or unsupportable positions, since the practice of awarding costs against the unsuccessful party applies to the defendant as well as the plaintiff.

Unlike courts, which have limited powers to award damages for hurt feelings, human rights tribunals can order the respondent to pay money to the complainant for hurt feelings, often characterized in legislation with terms such as "injury to dignity and self-respect." Most jurisdictions place no limit on the amount of money that a respondent can be ordered to pay a complainant for hurt feelings. The courts have never recognized this type of damage because of its inherent subjectivity and unfairness.

When it comes to respecting and preserving the citizen's free speech rights, Ontario is among the four best jurisdictions in Canada.

However, when it comes to procedural fairness in human rights proceedings, Ontario is the worst jurisdiction in Canada:

- Hearsay evidence is admissible;
- the decision-maker does not need a law degree or training as a lawyer;
- the Ontario Human Rights Commission actively assists complainants without providing any assistance or legal representation to respondents;
- the Commission can initiate complaints;
- third parties can file complaints without having suffered discrimination themselves;
- there are no consequences for those who file frivolous or malicious complaints; and
- there is no cap or ceiling on the amount of damages that can be awarded for hurt feelings.

When it comes to lacking procedural fairness, Alberta and P.E.I. are a close second to Ontario. In Alberta and in P.E.I., the commission is not authorized to initiate complaints. Otherwise, in respect of the other criteria in the paragraph above, the legislation in Alberta and P.E.I. is like Ontario's human rights legislation.



The least amount of procedural unfairness can be found in human rights legislation in Nunavut and B.C. Neither jurisdiction has a human rights commission, which means that complainants and respondents are more likely to be on an equal footing. In B.C. some respondents may qualify for legal assistance and representation. In Nunavut a complainant could potentially face monetary consequences for filing a frivolous or malicious complaint. However, in both B.C. and Nunavut:

- Hearsay evidence is admissible;
- the decision-maker does not need a law degree or training as a lawyer;
- third parties can file complaints without having suffered discrimination themselves; and
- there is no cap or ceiling on the amount of damages that can be awarded for hurt feelings.

As set out in the Summary of Findings on the next page, the remaining nine jurisdictions exhibit degrees of procedural unfairness that fall between the legislation of Ontario and the legislation in Nunavut and B.C. Regarding procedural unfairness, the fourteen jurisdictions, *from bad to worse*, are:

- Nunavut
- B.C.
- Saskatchewan
- Northwest Territories
- Nova Scotia
- the federal government
- Yukon
- Newfoundland
- New Brunswick
- Quebec
- Manitoba
- P.E.I.
- Alberta
- Ontario



## Summary of findings

A – impact on free expression (none, minimal, some, large)

B – defences of truth and fair comment available to person accused of violating legislation

C – hearsay evidence can be admitted in a hearing

D – decision-maker must be a lawyer, or must have a law degree

E – has a Commission (as a separate body from the decision-maker)

F – Commission takes carriage of human rights complaint, has standing at the hearing, or both

G – Commission is expressly authorized by legislation to initiate or file complaints

H – third parties, who have not suffered discrimination themselves, can file complaints

I – consequences for complainants who file frivolous complaints

J – government assistance for complainants

K – government assistance for respondents

L – cap or ceiling on damages for hurt feelings and loss of dignity

	A	B	C	D	E	F	G	H	I	J	K	L
Fed	large	No	Yes	partly	Yes	No	Yes	Yes	No	Yes	No	\$20K
BC	large	No	Yes	No	No	N.A.	N.A.	Yes	No	Yes	Yes	No
AB	large	No	Yes	No	Yes	Yes	No	Yes	No	Yes	No	No
SK	large	No	Yes	Yes	Yes	Yes	Yes	Yes	unclear	Yes	No	\$10K
MB	minimal	N.A.	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes	No	\$2K
ON	none	N.A.	Yes	No	Yes	Yes	Yes	Yes	No	Yes	No	No
QB	minimal	N.A.	Yes	partly	Yes	Yes	No	Yes	No	Yes	No	No
NB	minimal	N.A.	Yes	No	Yes	Yes	No	No	No	Yes	No	No
NS	minimal	N.A.	Yes	Yes	Yes	Yes	No	No	No	Yes	No	No
PE	minimal	N.A.	Yes	No	Yes	Yes	No	Yes	No	Yes	No	No
NL	minimal	N.A.	Yes	No	Yes	Yes	No	Yes	Yes	Yes	No	No
YK	none	N.A.	Yes	No	Yes	Yes	No	No	No	Yes	No	No
NT	some	No	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes	No	No
NU	none	N.A.	Yes	No	No	N.A.	N.A.	Yes	Yes	Yes	No	No



## Introduction to Canada's human rights legislation

All of Canada's provinces and territories, as well as the federal government, have human rights legislation that forbids discrimination on the basis of enumerated grounds. These laws forbid discrimination in accommodation, employment, publications, the sale of goods and services, and other areas.

Each of the fourteen jurisdictions (one federal, three territorial, ten provincial) has similar enumerated grounds: race, religion, colour, gender, physical disability, mental disability, age, ancestry, place of origin, marital status, family status, and sexual orientation.

Laws in most Canadian jurisdictions also have *political belief, opinion, or conviction* as a ground in respect of which discrimination is prohibited. The laws in Nunavut, Ontario, Saskatchewan, and Alberta do not include "political belief" as a ground, thereby implying that one can discriminate against people on the basis of belief and opinion in these jurisdictions.

Alberta also has "source of income" as a listed ground in its legislation. Saskatchewan adds "receipt of public assistance" as a protected ground. Quebec, New Brunswick and the Northwest Territories have adopted "social condition" as an enumerated ground. Nunavut has "lawful source of income" as a protected ground.

Nova Scotia's human rights law also adds "an irrational fear of contracting an illness or disease" as a protected ground.

Most of the provisions in human rights legislation have little impact on free expression.

Prohibiting discrimination in accommodation, employment, and the sale of goods and services may affect freedom of speech incidentally. Where legislation prohibits discrimination in employment and tenancy, the legislation also prohibits advertisements that exclude people on the basis of an enumerated ground (eg. race, religion, age). For example, Manitoba's law regarding employment advertising states:

14(3) 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.

However, as will be explored in this paper, forbidding discrimination in the area of "publications" has proven to be a serious violation of the long-standing and fundamentally important right of Canadians to express their views and opinions on matters of politics, morality, culture, religion, philosophy, and public policy.



## Censoring speech by prohibiting discrimination in publications

Most of Canada's fourteen jurisdictions prohibit discrimination in the area of "publications," which typically includes newspapers, magazines, pamphlets, posters and flyers. Depending on the specific language in the legislation, this prohibition has the effect of restricting public commentary and debate on a wide range of social, moral, political, cultural and religious topics. Debate about public policy issues (eg. immigration, criminal justice, foreign policy, social assistance, aboriginal policy) will frequently *and necessarily* include references to enumerated grounds set out in human rights legislation, such as race, ethnicity, religion, and age. By making a "discriminatory" statement, a person can violate human rights legislation simply by engaging in public debate over the contents of the public school curriculum, or who should be eligible to receive social assistance, or the kind of foreign policy that Canada should pursue in the Middle East, for example.

The following publication provision, found in the *Alberta Human Rights Act*, is typical of legislation found in several Canadian jurisdictions:

### **Discrimination re publications, notices**

**3(1)** No person shall publish, issue or display or cause to be published, issued or displayed before the public any statement, publication, notice, sign, symbol, emblem or other representation that

- (a) indicates discrimination or an intention to discriminate against a person or a class of persons, or
- (b) is likely to expose a person or a class of persons to hatred or contempt because of the race, religious beliefs, colour, gender, physical disability, mental disability, age, ancestry, place of origin, marital status, source of income, family status or sexual orientation of that person or class of persons.

In Alberta, human rights legislation has been used against Stephen Boisson (letter-to-the-editor about the contents of public school curriculum), Catholic Bishop Fred Henry (disseminating his Church's teaching about the definition of marriage) and Ezra Levant (publishing the "Danish cartoons" of Mohammed in the *Western Standard* magazine).

In B.C., human rights legislation has been used against *Maclean's* magazine (publishing excerpts from Mark Steyn's book *America Alone*) and comedian Guy Earle (dealing with hecklers during his stand-up comedy routine).

In Saskatchewan, William Whatcott was ordered to pay \$17,500 to four complainants whose feelings were hurt by the contents of flyers he distributed, in a case awaiting a decision from the Supreme Court of Canada (*Whatcott v. Saskatchewan Human Rights Tribunal*).



## The extent to which human rights legislation limits free expression

Yukon's *Human Rights Act* is the only human rights legislation in Canada which places no restrictions on publications. Yukon's law prohibits discrimination in employment, housing, and the provision of goods and services, but without restricting free discussion and frank debate of public policy issues. Yukon's legislation is unique in Canada because it does not restrict or limit the free expression of belief and opinion about political, moral, social or other issues.

The *Nunavut Human Rights Act* prohibits only publications which discriminate in relation to the provision of goods, services, facilities or contracts, accommodations, employment or formal associations. For example, an advertisement for rental accommodations could not indicate that persons of a particular age, gender, or race are unwelcome to apply. Further, Nunavut's human rights law expressly exempts newspapers from the prohibition on discriminatory publications. As such, Nunavut's law does not apply to public discussion and debate of moral, political, social or cultural questions.

Ontario's *Human Rights Code* differs from that of most other Canadian jurisdictions because, in order for discrimination to exist, there must be an intention to discriminate, or an intention to incite discrimination, in services, accommodation, contracts, employment, and other areas. To be found in violation of Ontario's legislation, the publisher must *intend* to discriminate and the discrimination must be in relation to a specific area such as housing, employment, or the provision of goods and services. While Ontario's legislation prohibits discrimination in the area of "publications," this is directed at publications that pertain directly and specifically to matters of employment, housing, and services. The prohibition on discriminatory publications does not apply to public debate as expressed in newspapers, flyers, pamphlets, and the internet. Further, Ontario's human rights law expressly exempts newspapers from the prohibition on discriminatory publications. As such, Ontario's legislation has little impact on public discussion and debate of topics that concern citizens.

Manitoba's *Human Rights Code* does not apply to the expression of opinion unless the opinion expressed is directly related to the provision of goods, services, accommodations or other areas to which the *Code* applies. Manitoba's legislation has a minimal impact on speech because it prohibits only communications that discriminate "in respect of an activity or undertaking to which this Code applies."

Legislation in New Brunswick, Nova Scotia, P.E.I., and Newfoundland could potentially be used to restrict public discussions of controversial moral, political or religious issues, as has been the case in Alberta, B.C., and Saskatchewan. In these four jurisdictions, the prohibition on "discriminatory" publications does not require a direct link between the publication and a contextual area (eg. housing, employment, goods, services). The absence of information about human rights proceedings taken against an individuals for having expressed an opinion suggest that this legislation has thus far not been used to censor or restrict speech in these five jurisdictions.

The Northwest Territories legislation prohibits any "representation" that is likely to expose a person or class to "hatred or contempt," thereby allowing for human rights complaints to be filed



against a person in respect of comments she or he made on a political, social, moral, religious or other topic. As in B.C., Alberta, Saskatchewan and federally, this legislation is not limited to preventing actual discrimination in housing, goods, services, facilities, employment, etc. This legislation can be used to censor controversial or offensive speech.

Quebec's law says that no one may distribute, publish or publicly exhibit a notice, symbol or sign involving discrimination, or authorize anyone to do so. The law does not state that this provision is restricted or limited to communications in respect of employment, housing facilities, goods and services, and can therefore be used to censor speech that is not related to actual discrimination.

The *Canadian Human Rights Act* (R.S.C., 1985, c. H-6) applies to federal undertakings that are under the legislative authority of Parliament, including the internet. Section 12 prohibits discrimination in a "notice, sign, symbol, emblem or other similar representation" and is not directed at communications outside of employment, accommodations and other areas where discrimination is sought to be prohibited. However, Section 13 is specifically aimed at speech which is unrelated to actual discrimination, by prohibiting "hate messages" through "telecommunications," which includes the internet. This federal *Act* is the only human rights legislation in Canada that applies to internet communications, which gives the federal law an extremely broad reach.

As was demonstrated by the human rights proceedings initiated against Maclean's Magazine for having published excerpts of Mark Steyn's book *America Alone* (*Elmasry and Habib v. Roger's Publishing*, 2008 BCHRT 378) B.C.'s human rights legislation applies to the expression of opinion even when the opinion is entirely unrelated to the provision of goods, services, employment and accommodations. In numerous cases, complaints about controversial opinions have gone to a hearing rather than being dismissed immediately. For discrimination to exist in BC, there need not be any actual discrimination in the provision of accommodations, services, employment or other areas. Discrimination can occur purely on the basis of an individual expressing a controversial opinion on a matter of public policy that touches upon an enumerated ground.

Alberta's legislation applies to individuals expressing their opinions in newspapers, flyers and pamphlets. The legislation does not apply to the internet, but could apply to a "statement" made on television or radio. Discrimination can exist in the area of "publications" even when the statement or publication is not linked to actual discrimination in matters such as tenancy, employment, the sale of goods and services, etc.

Of all fourteen jurisdictions, the *Saskatchewan Human Rights Code* has the broadest reach:

14(1) No person shall publish or display, or cause or permit to be published or displayed, on any lands or premises or in a newspaper, through a television or radio broadcasting station or any other broadcasting device, or in any printed matter or publication or by means of any other medium that the person owns, controls, distributes or sells, any representation, including any notice, sign, symbol, emblem, article, statement or other representation:

(a) tending or likely to tend to deprive, abridge or otherwise restrict the



enjoyment by any person or class of persons, on the basis of a prohibited ground, of any right to which that person or class of persons is entitled under law; or  
(b) that exposes or tends to expose to hatred, ridicules, belittles or otherwise affronts the dignity of any person or class of persons on the basis of a prohibited ground.

The additions of “the restriction of enjoyment,” as well as “ridicule, belittling or an affront to the dignity of a person” make the Saskatchewan legislation reach farther than any other provincial or federal law. Other laws prohibit exposing people to hatred or contempt, but do not ban expression that might ridicule or belittle someone.

## Truth is no defence, nor is fair comment

A “discriminatory” statement which touches on religion, race, age, disability, or another listed ground can violate human rights legislation even when the statement is true, and even when the statement merely expresses an opinion. None of Canada’s jurisdictions provide the respondent (the party against whom the complaint is filed) with a defence of “truth” or of “fair comment.” In this regard, Canada’s speech codes lack the balance that can be found in the common law tort of defamation. At common law, a person can be sued for making a defamatory comment, but can also defend against a court action by showing that the defamatory comment is true. The common law of defamation also allows some latitude for the “fair comment” expression of opinion. These checks and balances create a level playing field for plaintiffs and defendants, such that the legal proceedings are not seen as favouring one side or the other.

## Hearsay evidence is admissible

Canada’s human rights tribunals typically have wide power concerning procedure. There are few written rules to inform the parties of their rights and duties, or to provide for procedural fairness. All fourteen jurisdictions permit hearsay evidence, which is normally excluded from court proceedings because its accuracy cannot be tested by cross-examination. Courts regard hearsay evidence as inherently unfair.

## Decision-makers need not be lawyers, or even have a law degree

In most jurisdictions, it is not necessary for the adjudicator of a human rights complaint to be a lawyer, or to possess a law degree. While lawyers are frequently appointed to human rights tribunals, this is not required by legislation.

Saskatchewan, Nova Scotia, the Northwest Territories, Quebec and the federal government are the only jurisdictions in which one, some, or all of the decision-makers are required by legislation to be lawyers or to have a law degree. The other nine jurisdictions do not have legislation that requires the decision-makers to have this qualification.



## Anyone can complain, even if not directly affected by discrimination

With the exception of Nova Scotia, New Brunswick, the Northwest Territories and Yukon, every jurisdiction allows human rights complaints to be filed by “third parties” who have themselves not suffered any discrimination. This allows “community activists” to advance political agendas on behalf of other people who might not agree with, or consent to, this type of activism.

## The Human Rights Commission as prosecutor

With the exceptions of B.C. and Nunavut, every jurisdiction in Canada has a Human Rights Commission which actively assists complainants, and which provides no assistance to respondents.

In Saskatchewan, Manitoba, Ontario, the Northwest Territories and federally, the Commission itself can function like a prosecutor by initiating a human rights complaint – even when the alleged victim(s) of discrimination have not done so.

If the Commission decides that the complaint should go to a hearing, the Commission has carriage of the complaint and puts forth the complainant’s case at the hearing. In most jurisdictions, the Commission is a party at the hearing, in addition to the complainant. While technically not providing legal representation for complainants, the Commission assists complainants by presenting their complaint at the hearing. Respondents to a complaint need to represent themselves, or pay for their own lawyer.

## No consequences for making a frivolous complaint

With few exceptions, Canada’s human rights laws do not impose any penalty, costs, or other consequence on people who file frivolous, malicious, or baseless complaints. This means that the respondent is forced to absorb all of the legal costs of defending herself or himself against the frivolous complaint.

The absence of costs consequences makes human rights legislation radically different from the civil court system, in which the loser (whether plaintiff or defendant) pays a substantial portion of the winner’s legal costs. The civil court system discourages frivolous and unfounded actions, since the potential plaintiff must seriously consider the actual merits of her or his case, and must be willing to risk paying the other side’s legal costs if unsuccessful. In the same way, the civil court system also discourages defendants from taking unfounded or unsupportable positions, since the practice of awarding costs against the unsuccessful party applies to the defendant as well as the plaintiff.



In contrast, under human rights legislation in most jurisdictions, anyone can file a frivolous or malicious complaint, force the respondent to incur legal costs to defend against the complaint, wait for the complaint to be dismissed (either before or after a hearing), and then walk away from the situation without a care in the world.

Manitoba, Newfoundland, the Northwest Territories and Nunavut are the only jurisdictions in which the complainant could potentially be ordered to pay costs to the respondent for having filed a frivolous or malicious complaint.

The remaining ten jurisdictions have legislation which states that frivolous complaints will be dismissed or rejected, but without any penalty, costs or other consequence to the complainant.

## Government assistance provided to complainants only

All fourteen jurisdictions provide direct or indirect assistance to complainants, in one or more of the following ways:

- The Human Rights Commission can file or initiate a complaint against a person
- The Human Rights Commission has carriage of the complaint, and presents the complainant's case at the hearing;
- The Human Rights Commission has standing as a party at the hearing, and takes a position that is identical to, or similar to, the position taken by the complainant;
- The Human Rights Commission provides or pays for legal representation for the complainant;
- The government provides funding to organizations which assist complainants.

Human rights commissions are fond of declaring that they do not provide legal representation to complainants or to respondents. This may be technically true, but ignores the reality that these same commissions provide significant assistance to complainants by presenting the complaint at the hearing, or appearing as a party at the hearing and advocating for a position that is similar to, or identical to, the complainant's position. Therefore, complainants don't need legal representation because they are already receiving help from the commission. The assertion that "both complainants and respondents are free to retain legal counsel if they choose" is technically true, but not an accurate portrayal of reality.

British Columbia is the only jurisdiction in Canada in which some assistance is provided to respondents. The Victoria-based Law Centre provides assistance to both complainants and respondents who meet eligibility criteria. The majority of the Law Centre's funding is provided by the Law Foundation of B.C., not the provincial government.

Aside from B.C., respondents to human rights complaints in the other 13 jurisdictions face the choice of paying for their own lawyer, or representing themselves without a lawyer.



## Damage awards for hurt feelings

Human rights legislation empowers Canada's human rights tribunals to order a respondent to pay money to a complainant, as well as imposing other orders that are not of a monetary nature.

Unlike courts, which have limited powers to award damages for hurt feelings, human rights tribunals can order the respondent to pay money to the complainant for hurt feelings, often characterized in legislation with terms such as "injury to dignity and self-respect." Most jurisdictions place no limit on the amount of money that a respondent can be ordered to pay a complainant for hurt feelings.

The *Canadian Human Rights Act* provides that respondents can be ordered to pay up to \$20,000 to complainants. In Saskatchewan, the maximum costs order for injury to dignity and self-respect is \$10,000. In Manitoba, there is a limit of \$2,000 on exemplary (punitive) damages.

However, in the remaining 11 jurisdictions, there is no legislated ceiling, cap or limit on the amount that a human rights tribunal can order the respondent to pay to the complainant in respect of hurt feelings. In Ontario, the Tribunal can make "any order" regarding remedy. In Manitoba, the adjudicator can award whatever she or he deems "just" and "appropriate." In B.C., the highest award for injury to dignity and hurt feelings has been \$35,000.

## Human rights legislation summaries for Canada's 14 jurisdictions

### **British Columbia's *Human Rights Code***

#### **Protected grounds**

Race, colour, ancestry, place of origin, religion, marital status, family status, physical or mental disability, sex, sexual orientation, and age. In some circumstances, discrimination is prohibited on grounds of source of income, political belief, and criminal convictions.

#### **Areas of application**

Publications; accommodation, service and facility; property; tenancy; employment and employment advertisements; wages; unions and associations.

#### **Application of the legislation to publications**

7 (1) A person must not publish, issue or display, or cause to be published, issued or displayed, any statement, publication, notice, sign, symbol, emblem or other representation that



- (a) indicates discrimination or an intention to discriminate against a person or a group or class of persons, or
- (b) is likely to expose a person or a group or class of persons to hatred or contempt based on an enumerated ground.

### **Application of the legislation to public debate and freedom of expression**

As was demonstrated by the human rights proceedings initiated against Maclean's Magazine for having published excerpts of Mark Steyn's book *America Alone (Elmasry and Habib v. Roger's Publishing, 2008 BCHRT 378)* B.C.'s human rights legislation applies to the expression of opinion even when the opinion is entirely unrelated to the provision of goods, services, employment and accommodations. In numerous cases, complaints about controversial opinions (for example, as expressed in a letter-to-the-editor) have gone to a hearing rather than being dismissed immediately. In B.C. (and other jurisdictions) for discrimination to exist, there need not be any actual discrimination in the provision of accommodations, services, employment or other areas. Discrimination can occur purely on the basis of an individual expressing a controversial opinion on a matter of public policy that touches upon an enumerated ground.

### **Defences of truth and fair comment**

The legislation does not provide for the defences of truth and fair comment in proceedings related to the expression of opinion.

### **Admissibility of hearsay evidence in human rights proceedings**

Hearsay evidence is admissible in a human rights hearing before the tribunal.

### **Qualifications required for serving on human rights tribunals**

In British Columbia, all present members of the Tribunal are lawyers, but this is not required by legislation.

### **Complaints by the Commission or other third parties**

The *Code* allows for human rights complaints to be filed by third parties who themselves have not suffered any discrimination:

- 21** (1) Any person or group of persons that alleges that a person has contravened this Code may file a complaint with the tribunal in a form satisfactory to the tribunal.
- (2) and (3) [Repealed 2002-62-7.]



(4) Subject to subsection (5), a complaint under subsection (1) may be filed on behalf of

(a) another person, or

(b) a group or class of persons whether or not the person filing the complaint is a member of that group or class.

### **Consequences for filing a frivolous complaint**

The *Code* states that frivolous complaints will be dismissed or rejected, but there are no penalties, costs, or other consequences for the person making such a complaint. The respondent is forced to absorb all of the legal costs of defending herself or himself against the frivolous complaint. Costs could be awarded against a complainant or a respondent for improper conduct during the human rights proceedings, but not because a complaint is frivolous by virtue of its substance and content.

### **Government assistance for complainants**

Complainants may access government-funded legal assistance provided through various organizations such as the Human Rights Clinic (which assists only complainants, not respondents), and through the Law Centre in Victoria, funded by the Law Foundation of British Columbia.

### **Government assistance for respondents**

Respondents can access assistance and legal representation through the Law Centre in Victoria. It appears that B.C. is the only jurisdiction in Canada in which assistance is provided for those responding to a human rights complaint, if the respondents meet eligibility criteria. In all other jurisdictions, only complainants receive assistance.

### **Damage awards for hurt feelings**

There is no legislated ceiling on damages, whether in respect of “injury to dignity, feelings and self-respect” or other heads. The *Code* states that the adjudicator can order the respondent to pay the complainant any “appropriate” amount for “injury to dignity, feelings and self-respect.”



# *Alberta Human Rights Act*

## **Protected grounds**

Race, religious beliefs, colour, gender, physical disability, mental disability, age, ancestry, place of origin, marital status, source of income, family status, and sexual orientation.

## **Areas of application**

Publications, notices; Goods, services, accommodation, facilities; Employment practices; Applications and advertisements re: employment; Membership in trade union.

## **Application of the legislation to publications**

The *Alberta Human Rights Act* applies to any statement, publication, notice, sign, symbol, emblem or other representation that

(a) indicates discrimination or an intention to discriminate against a person or a class of persons, or

(b) is likely to expose a person or a class of persons to hatred or contempt because of the race, religious beliefs, colour, gender, physical disability, mental disability, age, ancestry, place of origin, marital status, source of income, family status or sexual orientation of that person or class of persons.

## **Application of the legislation to public debate and freedom of expression**

Alberta's legislation applies to individuals expressing their opinions in newspapers, flyers and pamphlets. Discrimination can exist in the area of "publications" even when the statement or publication is not linked to actual discrimination in matters such as tenancy, employment, the sale of goods and services, etc.

## **Defences of truth and fair comment**

In human rights proceedings that are initiated against a person for having expressed her or his opinion, the defences of truth and of fair comment do not exist.

Subsection 3(2) of Alberta's legislation says that "Nothing in this section shall be deemed to interfere with the free expression of opinion on any subject." However, provisions like these are routinely ignored by human rights commissions and by human rights tribunals, in jurisdictions across Canada. People have been found to be in violation of human rights legislation for having expressed an opinion that touched on, or referred to, an enumerated ground (eg. race, religion, gender, sexual orientation, etc.)



### **Admissibility of hearsay evidence in human rights proceedings**

Hearsay evidence is admissible in a human rights hearing before the tribunal.

### **Qualifications required for serving on human rights tribunals**

Though all present members of the Alberta Human Rights Commission are lawyers, Alberta's legislation does not require that members be lawyers, or have a law degree.

### **Complaints by the Commission or other third parties**

The legislation allows complaints to be filed by third parties, who have themselves not suffered any discrimination. The legislation does not authorize the Commission to file complaints.

### **Consequences for filing a frivolous complaint**

The *Code* states that frivolous complaints will be dismissed or rejected, but there are no penalties, costs, or other consequences for the person making such a complaint. The respondent is forced to absorb all of the legal costs of defending herself or himself against the frivolous complaint.

### **Government assistance for complainants**

The Alberta Human Rights Commission provides legal representation for the complainant whenever the Commission deems a complaint to have merit. The Commission has carriage of the complaint before the Tribunal, making the complainant's case before this decision-maker. Respondents to a complaint need to represent themselves, or pay for their own lawyer. Only at the initial stages of the complaints process are complainants and respondents on an equal footing. The complainant can become responsible for obtaining (and paying for) his or her own legal representation only in cases where the complainant chooses to pursue a matter further, after the Commission has made an initial decision to dismiss the complaint.

### **Government assistance for respondents**

Beyond providing basic information about human rights proceedings and forms, the government does not provide any assistance to respondents. The respondent is not provided with any legal representation in any circumstance, and must assume all legal costs incurred, even if the complaint is eventually found to be frivolous.



## **Damage awards for hurt feelings**

The tribunal can make any order as to costs that it “considers appropriate”. Alberta’s legislation does not detail the maximum allowed compensation awards. A respondent has no way to predict the probable financial consequences of a claim filed against her or him.

# ***The Saskatchewan Human Rights Code***

## **Protected grounds**

Religion; creed; marital status; family status; sex; sexual orientation; disability; age; colour; ancestry; nationality; place of origin; race or perceived race; and receipt of public assistance.

## **Areas of application**

Housing; places to which public is admitted; right to education; publications; contracts; employment; membership in associations; trade unions.

## **Application of the legislation to publications**

14(1) No person shall publish or display, or cause or permit to be published or displayed, on any lands or premises or in a newspaper, through a television or radio broadcasting station or any other broadcasting device, or in any printed matter or publication or by means of any other medium that the person owns, controls, distributes or sells, any representation, including any notice, sign, symbol, emblem, article, statement or other representation:

- (a) tending or likely to tend to deprive, abridge or otherwise restrict the enjoyment by any person or class of persons, on the basis of a prohibited ground, of any right to which that person or class of persons is entitled under law; or
- (b) that exposes or tends to expose to hatred, ridicules, belittles or otherwise affronts the dignity of any person or class of persons on the basis of a prohibited ground.

## **Application of the legislation to public debate and freedom of expression**

A person can face human rights proceedings for having expressed an opinion on an issue that touches upon a protected ground, even when there is no actual discrimination in employment, housing, services, or other areas. Saskatchewan’s *Code* applies to the expression of opinion in newspapers, television and radio, but excludes the internet. Like laws in other provinces, this



legislation prohibits communications that are “likely to expose a person or a class of persons to hatred or contempt.” However, Saskatchewan’s law goes even further by prohibiting “ridicule, belittlement or affronting the dignity of another person or class or persons.”

### **Defences of truth and fair comment**

In human rights proceedings that are initiated against a person for having expressed her or his opinion, the defences of truth and of fair comment do not exist.

Subsection 14(2) of Saskatchewan’s legislation says that “Nothing in subsection (1) restricts the right to freedom of expression under the law upon any subject.” However, provisions like these are routinely ignored by human rights commissions and by human rights tribunals, in jurisdictions across Canada. People have been found in violation of human rights legislation for having expressed an opinion that touched on, or referred to, an enumerated ground (eg. race, religion, gender, sexual orientation, etc.).

### **Admissibility of hearsay evidence in human rights proceedings**

Hearsay evidence is admissible in a human rights hearing.

### **Qualifications required for serving on human rights tribunals**

Saskatchewan’s legislation has recently been amended, with hearings taking place before the Court of Queen’s Bench rather than the Human Rights Tribunal. The Tribunal only exists at present to finish winding down cases which were before it prior to the legislative changes. Future human rights complaints will be adjudicated by judges only.

### **Complaints by the Commission or other third parties**

The legislation allows human rights complaints to be filed by third parties who themselves have not suffered any discrimination. The Commission itself can also initiate a complaint.

### **Consequences for filing a frivolous complaint**

Recent amendments to *The Saskatchewan Human Rights Code* have moved hearings into the Court of Queen’s Bench; they are no longer heard by the Human Rights Tribunal. The Court may award costs against a complainant or a respondent who has engaged in “vexatious, frivolous or abusive conduct.” It is unclear whether “conduct” applies to the nature and substance of the complaint itself. If a complainant files a complaint which is itself frivolous, but the complainant does not otherwise engage in vexatious, frivolous or abusive *conduct* during and through the



legal process, it is not clear whether that complainant will be ordered to pay costs to the respondent in respect of the frivolous complaint.

### **Government assistance for complainants**

The Commission provides legal counsel to the complainant at no cost, at every step of the legal process, up to and including hearings at the Supreme Court of Canada. Once a complaint goes to a hearing, the Commission has carriage of the complaint and puts forth the complainant's case at the hearing. The Commission is itself a party at the hearing, alongside the complainant. Respondents to a complaint must represent themselves, or pay for their own lawyer.

### **Government assistance for respondents**

Beyond providing basic information about human rights proceedings and providing some assistance in filling out forms, the government does not provide assistance to respondents. The respondent is not provided with any legal assistance or representation, and must assume all legal costs incurred, even if the complaint is eventually found to be frivolous.

### **Damage awards for hurt feelings**

The respondent can be ordered to pay the complainant up to \$10,000 for injury to dignity and self-respect. Further, there is no ceiling on payments for lost salary or other kinds of damages, with complainants having received awards as high as \$80,000.

## ***The Human Rights Code of Manitoba***

### **Protected Grounds**

- (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 pregnancy, the possibility of pregnancy, or circumstances related to pregnancy;
- (g) gender-determined characteristics or circumstances other than those included in (f);
- (h) sexual orientation;
- (i) marital or family status;
- (j) source of income;
- (k) political belief, political association or political activity;



- (1) physical or mental disability or related characteristics or circumstances, including reliance on a dog guide or other animal assistant, a wheelchair, or any other remedial appliance or device.

### **Areas of application**

Services, accommodation; employment and employment advertising; organizations and unions; contracts, rentals and property.

### **Application of the legislation to publications**

18 No person shall publish, broadcast, circulate or publicly display, or cause to be published, broadcast, circulated or publicly displayed, any sign, symbol, notice or statement that

- (a) discriminates or indicates intention to discriminate in respect of an activity or undertaking to which this Code applies; or
- (b) incites, advocates or counsels discrimination in respect of an activity or undertaking to which this Code applies;

unless bona fide and reasonable cause exists for the discrimination.

### **Application of the legislation to public debate and freedom of expression**

This legislation does not apply to the expression of opinion unless the opinion expressed is directly related to the provision of goods, services, accommodations or other areas to which the *Code* applies. The section of the *Code* which prohibits “inciting, advocating or counseling discrimination” leaves the door open for human rights prosecutions against politically incorrect speech that could be found in pamphlets, brochures, books, and letters-to-the-editor. Nevertheless, Manitoba’s legislation has a far smaller impact on speech by prohibiting only communications that discriminate “in respect of an activity or undertaking to which this Code applies.” Unlike the situation in Saskatchewan, B.C. and Alberta, in Manitoba you are not likely to face human rights proceedings because of a letter-to-the-editor, website posting, pamphlet or brochure.

### **Defences of truth and fair comment**

Manitoba’s legislation does not provide for the defences of truth and fair comment. But the absence of these defences is not relevant, since the legislation’s focus is preventing actual discrimination rather than censoring or restricting speech.

### **Admissibility of hearsay evidence in human rights proceedings**

Hearsay evidence is admissible in a human rights hearing before the tribunal.



## **Qualifications required for serving on human rights tribunals**

The adjudicators who decide on human rights complaints are often lawyers, however, this is not required by the legislation.

## **Complaints by the Commission or other third parties**

The legislation allows human rights complaints to be filed by third parties who have not themselves suffered any discrimination. The legislation also allows the Commission to initiate and file a complaint against a person.

## **Consequences for filing a frivolous complaint**

Manitoba's *Human Rights Code* states that: "Where the adjudicator regards a complaint or reply as frivolous or vexatious, or is satisfied that the investigation or adjudication has been frivolously or vexatiously prolonged by the conduct of any party, the adjudicator may order the party responsible for the complaint or reply or for the conduct to pay some or all of the costs of any other party affected thereby."

## **Government assistance for complainants**

Once a complaint goes to a hearing, the Commission has carriage of the complaint and puts forth the complainant's case at the hearing. The Commission itself is also a party at the hearing. While technically not providing legal representation for complainants, the Commission assists complainants by presenting their complaint. Respondents to a complaint need to represent themselves, or pay for their own lawyer. Only at the initial stages of the complaints process are complainants and respondents on an equal footing.

## **Government assistance for respondents**

Beyond providing basic information about human rights proceedings and forms, the government does not provide assistance to respondents. The respondent is not provided with any legal representation in any circumstance, and must assume all legal costs incurred, even if the complaint is ultimately dismissed.

## **Damage awards for hurt feelings**

Remedies ordered may include: the complainant refraining and rectifying, compensation for loss, damages for injury, exemplary damages against an individual not exceeding \$2,000 for an



individual, adoption of a program. Other than the limit on exemplary damages, there is no limit on other damages and the damages can extend to what the adjudicator considers “just and appropriate”.

## **Ontario’s *Human Rights Code***

### **Protected grounds**

Race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, age, marital status, family status, and disability. A record of offences and the receipt of public assistance are also grounds, in certain circumstances.

### **Areas of application**

Services, goods, facilities, accommodations, contracts, employment, and membership in a trade union, trade or occupational association, or self-governing profession.

### **Application of the legislation to publications**

A right under Part I (Freedom from Discrimination) is infringed by a person who publishes or displays before the public or causes the publication or display before the public of any notice, sign, symbol, emblem, or other similar representation that indicates the intention of the person to infringe a right under Part I or that is intended by the person to incite the infringement of a right under Part I.

### **Application of the legislation to public debate and freedom of expression**

Ontario’s *Code* prohibits publications which express an intention to discriminate in the provision of services, goods, facilities, accommodations, contracts, employment, and other areas. As such, this *Code* seeks to prevent actual discrimination but without attempting to regulate, control, limit or censor public debate about controversial issues. The *Code*’s impact on the individual’s freedom of expression is very minimal.

### **Defences of truth and fair comment**

In the event of a human rights proceedings initiated against a person for having expressed an opinion, the defences of truth and fair comment would not be available to that person. However, this is not relevant because Ontario’s *Code* does not authorize human rights prosecutions in relation to speech that are not directly related to the provision of goods and services.



### **Admissibility of hearsay evidence in human rights proceedings**

Hearsay evidence is admissible in a human rights hearing before the tribunal.

### **Qualifications required for serving on human rights tribunals**

There is no requirement that adjudicators be lawyers, or possess a law degree.

### **Complaints by the Commission or other third parties**

Ontario allows for human rights complaints to be filed by people who have themselves not suffered from discrimination, and also allows the Human Rights Commission to initiate a complaint.

### **Consequences for filing a frivolous complaint**

Ontario allows for frivolous complaints to be dismissed or rejected, but without any penalties, costs or other consequence to the complainant. The respondent is forced to absorb all of the legal costs of defending herself or himself against the frivolous complaint.

### **Government assistance for complainants**

In Ontario, the Human Rights Legal Support Centre gives free legal assistance to complainants, and the Commission frequently acts as an advocate for complainants in proceedings before the Human Rights Tribunal.

### **Government assistance for respondents**

Respondents receive no assistance from the Human Rights Legal Support Centre. Beyond providing basic information about human rights proceedings and forms, the government does not provide assistance to respondents. The respondent is not provided with any assistance or legal representation in any circumstance, and must assume all legal costs incurred, even if the complaint is eventually found to be frivolous.



## **Damage awards for hurt feelings**

In Ontario's legislation, the Tribunal has the power to make "any order" regarding remedy, including financial compensation for loss, including injury to "dignity, feelings and self-respect"; anything to bring "compliance with this Act"; anything in terms of future practices. There is no limit on the amount that a respondent can be ordered to pay to a complainant.

## ***Quebec's Charter of Human Rights and Freedoms***

### **Protected grounds**

Race, colour, sex, 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. In regards to employment, prior conviction of a penal or criminal offence is a prohibited ground as well.

### **Areas of application**

Public places, employment, juridical acts, contracts, associations.

### **Application of the legislation to publications:**

No one may distribute, publish or publicly exhibit a notice, symbol or sign involving discrimination, or authorize anyone to do so.

### **Application of the legislation to public debate and freedom of expression**

It is unclear to what extent this legislation applies to the expression of opinion on moral, political, religious or philosophical issues.

Quebec's legislation states: "Every person is the possessor of the fundamental freedoms, including freedom of conscience, freedom of religion, freedom of opinion, freedom of expression, freedom of peaceful assembly and freedom of association." However, provisions like these are routinely ignored by human rights commissions and by human rights tribunals, in jurisdictions across Canada. People have been found in violation of human rights legislation for having expressed an opinion that touched on, or referred to, an enumerated ground (eg. race, religion, gender, sexual orientation, etc.).



Section 4 states that “every person has a right to the safeguard of his dignity, honour and reputation.” Depending on how one defined “dignity,” “honour,” and “reputation,” this section could be used both to protect *or to undermine* the individual’s right to free expression.

In the absence of information indicating that human rights proceedings have been initiated against individuals for expressing an opinion, it appears that the legislation’s impact on free expression is minimal.

### **Defences of truth and fair comment**

In the event of human rights proceedings being initiated against a person for having expressed an opinion, the defences of truth and fair comment would not be available to that person.

### **Admissibility of hearsay evidence in human rights proceedings**

Hearsay evidence is admissible in human rights proceedings.

### **Qualifications required for serving on human rights tribunals**

The president of the Human Rights Tribunal is a judge, but legislation does not stipulate that other Tribunal members, who are known as “assessors,” be lawyers or have a law degree.

### **Complaints by the Commission or other third parties**

The legislation allows human rights complaints to be filed by “any organization dedicated to the defence of human rights and freedoms or to the welfare of a group of persons” but the written consent of the victim or victims is required. The government’s website states: “Any person (family member, friend, neighbour, volunteer, etc.) who witnesses exploitation or discrimination can also report it to the Commission.”

### **Consequences for filing a frivolous complaint**

A complaint may be refused on the basis that it is frivolous, vexatious or made in bad faith, but there are no penalties, costs or other consequences for those who bring forward frivolous, vexatious or bad faith complaints. The respondent is always responsible for all of the legal costs that she or he incurs to defend against the complaint, even when the complaint is frivolous.



## **Government assistance for complainants**

The Commission assists complainants in drafting their complaints, and throughout the human rights proceedings.

## **Government assistance for respondents**

Beyond providing basic information about human rights proceedings and forms, the government does not provide assistance to respondents. The respondent is not provided with any legal representation in any circumstance, and must assume all legal costs incurred, even if the complaint is eventually found to be frivolous.

## **Damage awards for hurt feelings**

There is no limit on the amount that a respondent can be ordered to pay to a complainant. The legislation stipulates “any remedy which the commission may consider appropriate”.

# ***New Brunswick’s Human Rights Act***

## **Protected grounds**

Race, colour, religion, national origin, ancestry, place of origin, age, physical disability, mental disability, marital status, sexual orientation, sex, social condition, political belief or activity.

## **Areas of application**

Employment, housing and sale of property, accommodation and services, notices and signs and associations or businesses.

## **Application of the legislation to publications**

**6(1)**No person shall

(a)publish, display, or cause to be published or displayed, or

(b)permit to be published or displayed on lands or premises, in a newspaper, through a television or radio broadcasting station, or by means of any other medium that he owns or controls, any notice, sign, symbol, emblem or other representation indicating discrimination or an intention to discriminate against any person or class of persons for any purpose because of race, colour, religion, national origin, ancestry, place of origin, age, physical disability, mental disability, marital status, sexual orientation, sex, social condition, political belief or activity.



## **Application of the legislation to public debate and freedom of expression**

This legislation could potentially be used to restrict public discussions of controversial moral, political or religious issues, as has been the case in Alberta, B.C., and Saskatchewan. The prohibition on discriminatory publications does not require a direct link between the publication and a contextual area (eg. housing, employment, goods, services). Further, the legislation's words "other representation" extend its application to a wide (or arguably infinite) range of communications. Nevertheless, the absence of information about human rights proceedings taken against an individuals for having expressed an opinion suggest that this legislation has not been used to censor or restrict speech.

## **Defences of truth and fair comment**

In the event of human rights proceedings being initiated against a person for having expressed an opinion, the defences of truth and fair comment would not be available to that person.

Subsection 6(2) of New Brunswick's legislation says that "Nothing in this section interferes with, restricts, or prohibits the free expression of opinions upon any subject by speech or in writing." However, provisions like these are routinely ignored by human rights commissions and by human rights tribunals, in jurisdictions across Canada. People have been found to be in violation of human rights legislation for having expressed an opinion that touched on, or referred to, an enumerated ground (eg. race, religion, gender, sexual orientation, etc.).

## **Admissibility of hearsay evidence in human rights proceedings**

Hearsay evidence is admissible in a human rights hearing before the tribunal.

## **Qualifications required for serving on human rights tribunals**

The members of the New Brunswick Board of Inquiry are typically members of the New Brunswick Labour Board, which can be appointed to sit in adjudication of human rights complaints. Presently the Chairperson of the Labour Board either hears the matter himself, or assigns the matter to one of the vice-chairs. At present, the vice-chair assigned is a lawyer, but there is no requirement that members be lawyers.

## **Complaints by the Commission or other third parties**

New Brunswick does not allow human rights complaints to be filed by "third parties" who have not suffered discrimination themselves, and the legislation does not authorize the Commission to initiate a complaint.



### **Consequences for filing a frivolous complaint**

The legislation states that frivolous complaints can be dismissed or rejected, but there is no penalty, cost or other consequence to the complainant. The respondent is forced to absorb all of the legal costs of defending herself or himself against the frivolous complaint.

### **Government assistance for complainants**

Once a complaint is referred to a Board of Inquiry and goes to a hearing, the Commission has carriage of the complaint and puts forth the complainant's case at the Board of Inquiry hearing. The Commission is itself a party at the hearing, alongside the complainant. While technically not providing legal representation for complainants, the Commission assists complainants by presenting their complaint to the Board of Inquiry. Respondents to a complaint need to represent themselves, or pay for their own lawyer. Only at the initial stages of the complaints process are complainants and respondents on an equal footing.

### **Government assistance for respondents**

Beyond providing basic information about human rights proceedings and forms, the government does not provide any assistance to respondents. The respondent is not provided with any legal representation in any circumstance, and must assume all legal costs incurred, even if the complaint is eventually dismissed as frivolous or otherwise unfounded.

### **Damage awards for hurt feelings**

There is no ceiling on damages. The Board of Inquiry can order the respondent to pay the complainant for "emotional suffering, including that resulting from injury to dignity, feelings or self-respect, in such amount as the Board considers just and appropriate."

## ***Nova Scotia's Human Rights Act***

### **Protected grounds**

Race; colour; religion; creed; sex; sexual orientation; physical disability or mental disability; an irrational fear of contracting an illness or disease; ethnic, national or aboriginal origin; family status; marital status; source of income; political belief, affiliation or activity; an individual's association with another individual or class of individuals.



## **Areas of application**

Services or facilities; accommodation; the purchase or sale of property; employment; volunteer public service; a publication, broadcast or advertisement or associations.

## **Application of the legislation to publications**

No person shall publish, display or broadcast, or permit to be published, displayed or broadcast, on lands or premises, in a newspaper, by radio or television or by means of any medium, a notice, sign, symbol, implement or other representation indicating discrimination or an intention to discriminate against an individual or class of individuals because of a protected ground.

## **Application of the legislation to public debate and freedom of expression**

This legislation could potentially be used to restrict public discussions of controversial moral, political or religious issues, as has been the case in Alberta, B.C., and Saskatchewan. The prohibition on discriminatory publications does not require a direct link between the publication and a contextual area (eg. housing, employment, goods, services). Further, the legislation's words "other representation" extend its application to a wide (or arguably infinite) range of communications. Nevertheless, the absence of information about human rights proceedings taken against an individuals for having expressed an opinion suggest that this legislation has not been used to censor or restrict speech.

## **Defences of truth and fair comment**

In the event of a human rights proceedings in respect of the expression of a controversial opinion, the defences of truth and fair comment would not be available to the person being prosecuted.

Subsection 7(2) of Nova Scotia's legislation says that "Nothing in this Section is deemed to interfere with the free expression of opinion upon any subject in speech or in writing." However, provisions like these are routinely ignored by human rights commissions and by human rights tribunals, in jurisdictions across Canada. People have been found to be in violation of human rights legislation for having expressed an opinion that touched on, or referred to, an enumerated ground (eg. race, religion, gender, sexual orientation, etc.).

## **Admissibility of hearsay evidence in human rights proceedings**

Hearsay evidence is admissible in a human rights hearing before the tribunal.



## **Qualifications required for serving on human rights tribunals**

In Nova Scotia, the tribunal that adjudicates complaints is called the Board of Inquiry. The legislation does not require that Board members be lawyers, but each member of the ten-person Board must have a law degree, as well as having human rights experience.

## **Complaints by the Commission or other third parties**

Nova Scotia does not allow “third party” human rights complaints. This means that only the person who is affected by discrimination can file a complaint about that discrimination. This prevents “community activists” from advancing political agendas on behalf of other people who might not agree with, or consent to, this type of activism.

## **Consequences for filing a frivolous complaint**

In Nova Scotia, frivolous complaints can be dismissed or rejected, but without any penalty, costs or other consequence to the complainant. The respondent is forced to absorb all of the legal costs of defending herself or himself against a frivolous complaint. The Act expressly states that the Board of Inquiry can order costs against the respondent but not the complainant.

## **Government assistance for complainants**

Once a complaint is referred to a Board of Inquiry and goes to a hearing, the Commission itself becomes a party at the hearing. While technically not providing legal representation for complainants, the Commission assists complainants at the hearing by taking a similar or identical position as the complainant. Respondents to a complaint need to represent themselves, or pay for their own lawyer, and receive no assistance from the Commission. Only at the initial stages of the complaints process are complainants and respondents on an equal footing.

## **Government assistance for respondents**

Beyond providing basic information about human rights proceedings and forms, the government does not provide assistance to respondents. The respondent is not provided with any legal representation in any circumstance, and must assume all legal costs incurred, even if the complaint is eventually found to be frivolous.

## **Damage awards for hurt feelings**

Costs are awarded by the board of inquiry “as it considers appropriate in the circumstances,” without any cap or limit.



# Prince Edward Island's *Human Rights Act*

## **Protected grounds**

Age, colour, creed, ethnic or national origin, family status, marital status, physical or intellectual disability, political belief, race, religion, sex, sexual orientation, and source of income.

## **Areas of application**

Accommodation, services, facilities, employment, property, and associations.

## **Application of the legislation to publications**

No person shall publish, display or broadcast, or permit to be published, displayed or broadcasted on lands or premises, or in a newspaper or through a radio or television broadcasting station or by means of any other medium, any notice, sign, symbol, implement or other representation indicating discrimination or an intention to discriminate against any person or class of persons.

## **Application of the legislation to public debate and freedom of expression**

This legislation could potentially be used to restrict public discussions of controversial moral, political or religious issues, as has been the case in Alberta, B.C., and Saskatchewan. The prohibition on discriminatory publications does not require a direct link between the publication and a contextual area (eg. housing, employment, goods, services). Further, the legislation's words "other representation" extend its application to a wide (or arguably infinite) range of communications. Nevertheless, the absence of information about human rights proceedings taken against an individuals for having expressed an opinion suggest that this legislation has not been used to censor or restrict speech.

## **Defences of truth and fair comment**

In the event of a human rights proceedings commenced against a person for having expressed her or his opinion, the defences of truth and fair comment would not be available to that person.

Subsection 12(2) of the legislation states that "Nothing in this section shall be deemed to interfere with the free expression of opinion upon any subject in speech or in writing." However, provisions like these are routinely ignored by human rights commissions and by human rights tribunals, in jurisdictions across Canada. People have been found in violation of human rights legislation for having expressed an opinion that touched on, or referred to, an enumerated ground (eg. race, religion, gender, sexual orientation, etc.).



### **Admissibility of hearsay evidence in human rights proceedings**

Hearsay evidence is admissible in a human rights hearing before the Human Rights Panel.

### **Qualifications required for serving on human rights tribunals**

PEI's legislation does not require decision-makers to be lawyers or to have a law degree.

### **Complaints by the Commission or other third parties**

The legislation allows human rights complaints to be filed by third parties who have themselves not suffered any discrimination.

### **Consequences for filing a frivolous complaint**

PEI's legislation allows for frivolous complaints to be dismissed or rejected, but without any penalty, cost or other consequence to the complainant. The respondent is forced to absorb all of the legal costs of defending herself or himself against the frivolous complaint.

### **Government assistance for complainants**

If the Commission decides that the complaint should go to a hearing, the Commission has carriage of the complaint and puts forth the complainant's case at the hearing. While technically not providing legal representation for complainants, the Commission assists complainants by presenting their complaint at the hearing. Respondents to a complaint need to represent themselves, or pay for their own lawyer.

### **Government assistance for respondents**

Beyond providing basic information about human rights proceedings and forms, the government does not provide any assistance to respondents. The respondent is not provided with any legal assistance or representation, and must assume all legal costs incurred, even if the complaint is eventually found to be frivolous.

### **Damage awards for hurt feelings**

There is no cap on financial compensation in PEI.



# **Newfoundland and Labrador's *Human Rights Act***

## **Protected grounds**

Race, colour, nationality, ethnic origin, social origin, religious creed, religion, age, disability, disfigurement, sex, sexual orientation, marital status, family status, source of income, and political opinion. Also protected, in the context of employment, is conviction for an offence unrelated to the employment of a person.

## **Areas of application**

Goods, services, accommodations or facilities, occupancy of commercial or dwelling units, employment, publications and contracts.

## **Application of the legislation to publications**

19(1) A person shall not

- (a) publish or display; or
- (b) permit to be published or displayed on lands or premises or in a newspaper, through a radio or television broadcasting station, or by means of another medium which he or she runs or controls,

a notice, sign, symbol, emblem or other representation indicating discrimination or an intention to discriminate against a person or a class of persons on the basis of a prohibited ground of discrimination.

## **Application of the legislation to public debate and freedom of expression**

This legislation could potentially be used to restrict public discussions of controversial moral, political or religious issues, as has been the case in Alberta, B.C., and Saskatchewan. The prohibition on discriminatory publications does not require a direct link between the publication and a contextual area (eg. housing, employment, goods, services). Further, the legislation's words "other representation" extend its application to a wide (or arguably infinite) range of communications. Nevertheless, the absence of information about human rights proceedings taken against an individuals for having expressed an opinion suggest that this legislation has not been used to censor or restrict speech.

## **Defences of truth and fair comment**

In the event of human rights proceedings taken against a person for having expressed an opinion, the defences of truth and fair comment would not be available to that person.



Subsection 19(2) of Newfoundland’s legislation states that “Nothing in this section interferes with the free expression of opinions upon a subject by speech or in writing.” However, provisions like these are routinely ignored by human rights commissions and by human rights tribunals, in jurisdictions across Canada. People have been found to be in violation of human rights legislation for having expressed an opinion that touched on, or referred to, an enumerated ground (eg. race, religion, gender, sexual orientation, etc.).

### **Admissibility of hearsay evidence in human rights proceedings**

Hearsay evidence is admissible in a human rights hearing before the tribunal.

### **Qualifications required for serving on human rights tribunals**

The Board of Inquiry in Newfoundland and Labrador consists of at least six persons, possessing knowledge or training “with respect to human rights law and issues,” but the legislation does not require that Board members to be lawyers, or have a law degree.

### **Complaints by the Commission or other third parties**

The legislation permits the filing of human rights complaints by third parties who have themselves not suffered any discrimination.

### **Consequences for filing a frivolous complaint**

When the Commission dismisses a complaint for being “frivolous, trivial, vexatious or made in bad faith,” there are no penalties, costs or other consequences for making a frivolous complaint. If the Board of Inquiry dismisses a complaint after a hearing, it may make whatever order as to costs that it considers appropriate, which could potentially include costs awarded against a complainant.

### **Government assistance for complainants**

Once a complaint is referred to a Board of Inquiry and goes to a hearing, the Commission has carriage of the complaint, and takes the lead in putting forth the complaint at the hearing. The Commission is itself a party at the hearing, in addition to the complainant. While technically not providing legal representation for complainants, the Commission assists complainants by presenting their complaint to the Board of Inquiry. Respondents to a complaint need to pay for their own lawyer, or represent themselves without a lawyer.



## **Government assistance for respondents**

Beyond providing basic information about human rights proceedings and forms, the government does not provide assistance to respondents. The respondent is not provided with any assistance or legal representation in any circumstance, and must assume all legal costs incurred, even if the complaint is eventually found to be frivolous.

## **Damage awards for hurt feelings**

There are no legislated limits on what the Board may order a respondent to pay to a complainant, and the Board may “take whatever other action the Board considers appropriate.”

# ***Yukon’s Human Rights Act***

## **Protected grounds**

Ancestry, including colour and race; national origin; ethnic or linguistic background or origin; religion or creed, or religious belief, religious association, or religious activity; age; sex, including pregnancy, and pregnancy related conditions; sexual orientation; physical or mental disability; criminal charges or criminal record; political belief, political association, or political activity; marital or family status; source of income; actual or presumed association with other individuals or groups whose identity or membership is determined by these grounds.

## **Areas of application**

Services, employment, associations, occupancy and property, and contract.

## **Application of the legislation to publications**

Yukon’s human rights legislation is unique in Canada because it has no provisions governing signs, symbols, notices, emblems, and publications. Presumably, the prohibition of discrimination would automatically and necessarily include a prohibition on discriminatory signs and notices (eg. “women need not apply”).

## **Application of the legislation to public debate and freedom of expression**

Yukon’s legislation does not restrict or limit the free expression of belief and opinion about political, moral, social or other issues. Yukon’s *Human Rights Act* prohibits discrimination in



employment, housing, and the provision of goods and services, and does so without restricting free discussion and frank debate of public policy issues.

### **Defences of truth and fair comment**

In the absence of legislation that restricts or censors speech, these defences are not necessary, because no person will face a human rights complaint simply for having expressed an opinion.

### **Admissibility of hearsay evidence in human rights proceedings**

Hearsay evidence is admissible in a human rights hearing before the tribunal.

### **Qualifications required for serving on human rights tribunals**

In Yukon, a person who adjudicates human rights complaints is currently not required to be a lawyer or to have a law degree.

### **Complaints by the Commission or other third parties**

Yukon does not allow third parties to file human rights complaints; only the person who is affected by discrimination can file a complaint about that discrimination. Further, the legislation does not authorize the Commission to file or initiate a complaint.

### **Consequences for filing a frivolous complaint**

The Board can order the Commission – but not the complainant – to pay costs or damages to the respondent when a complaint is found to be frivolous or vexatious. However, the complainant who files a frivolous or vexatious complaint, or who prolongs the proceedings unfairly or unnecessarily, does not face any penalty, costs, or other consequences. This holds true regardless of whether the complaint is dismissed by the Commission initially (without going to a hearing) or dismissed by the Board after a hearing.

### **Government assistance for complainants**

In Yukon, the Commission joins the complainant as an additional party at the hearing, and usually presents a case very similar to the complainant's case. Technically, the Commission is not representing the complainant, but practically the Commission's advocacy will usually assist the complainant, not the respondent.



### **Government assistance for respondents**

Beyond providing basic information about human rights proceedings and forms, the government does not provide assistance or legal representation to respondents.

The respondent could be reimbursed (by the Commission, not by the complainant) for some or all of her or his costs in defending against a complaint if the Board concludes that the complaint was frivolous or vexatious, or that the proceedings were unfairly or unnecessarily prolonged. The Board can also order the Commission to pay the respondent damages for injury to the respondent's reputation.

### **Damage awards for hurt feelings**

In Yukon there is no ceiling on compensation for injury to dignity. Respondents have been ordered to pay as much as \$10,000 to complainants for this category of damage.

## **The Northwest Territories *Human Rights Act***

### **Protected grounds**

Race, colour, ancestry, nationality, ethnic origin, place of origin, creed, religion, age, disability, sex, sexual orientation, gender identity, marital status, family status, family affiliation, political belief, political association, social condition, and conviction for which a pardon has been granted.

### **Areas of application**

Employment, tenancy, public services, memberships in trade unions, and publications.

### **Application of the legislation to publications**

No person shall, on the basis of a prohibited ground of discrimination, publish or display or cause or permit to be published or displayed any statement, notice, sign, symbol, emblem or other representation that

- (a) expresses or implies discrimination or any intention to discriminate against any individual or class of individuals;
- (b) incites or is calculated to incite others to discriminate against any individual or



class of individuals; or  
(c) is likely to expose any individual or class  
of individuals to hatred or contempt.

### **Application of the legislation to public debate and freedom of expression**

The legislation prohibits any “representation” that is likely to expose a person or class to “hatred or contempt,” thereby allowing for human rights complaints to be filed against a person in respect of comments she or he made on a political, social, moral, religious or other topic. As in other jurisdictions, this legislation is not strictly limited to preventing actual discrimination in housing, goods, services, facilities, employment, etc. but can be used to censor controversial or offensive speech. However, research has not uncovered any information about complaints having been filed against an individual for having expressed an opinion. This suggests that this legislation has thus far not been used to restrict or censor speech.

### **Defences of truth and fair comment**

In human rights proceedings taken against a person for having expressed an opinion, the legislation does not provide for the defences of truth and fair comment.

Subsection 13(2) of the legislation states that “nothing shall be construed so as to interfere with the free expression of opinion on any subject.” However, provisions like these are routinely ignored by human rights commissions and by human rights tribunals, in jurisdictions across Canada. People have been found to be in violation of human rights legislation for having expressed an opinion that touched on, or referred to, an enumerated ground (eg. race, religion, gender, sexual orientation, etc.).

### **Admissibility of hearsay evidence in human rights proceedings**

Hearsay evidence is admissible in a human rights hearing before the tribunal.

### **Qualifications required for serving on human rights tribunals**

Each member of the adjudication panel in the North West Territories is required to have at least five years in the practice of law, or at least five years’ experience as a member of another tribunal or court.



### **Complaints by the Commission or other third parties**

The Northwest Territories legislation does not allow third party complaints from people who have not suffered any discrimination themselves, except for the Human Rights Commission, which can initiate complaints.

### **Consequences for filing a frivolous complaint**

A complaint can be dismissed because it is “trivial, frivolous, vexatious or made in bad faith,” and in such cases, the adjudicator could order the complainant to pay all or some of the court costs of the respondent.

### **Government assistance for complainants**

The legislation empowers the Human Rights Commission to assist the complainant by appearing before the NWT Human Rights Adjudication Panel as a party and advocating for the complainant, or taking a position similar to that of the complainant.

### **Government assistance for respondents**

Beyond providing basic information about human rights proceedings and forms, there is no government assistance of any kind for respondents. The respondent is not provided with any legal representation in any circumstance, and must assume all legal costs incurred, even if the complaint is eventually dismissed as frivolous or otherwise unfounded.

### **Damage awards for hurt feelings**

There is no cap or limit on the amount that a respondent can be ordered to pay a complainant for injury to “dignity, feelings and self respect.” The Panel can order any amount it considers “appropriate.”

## ***The Nunavut Human Rights Act***

### **Protected grounds**

Race, colour, ancestry, ethnic origin, citizenship, place of origin, creed, religion, age, disability, sex, sexual orientation, marital status, family status, pregnancy, lawful source of income, and a conviction for which a pardon has been granted.



## **Areas of application**

Goods, services, facilities or contracts; employment; accommodations; membership in organizations and associations. Priority hiring for Inuit is permitted, pursuant to the Nunavut Land Claims Agreement, and employment advertising may specify this priority hiring.

## **Application of the legislation to publications**

No person shall, on the basis of a prohibited ground of discrimination, publish or display or cause or permit to be published or displayed any notice, sign, symbol, emblem or other representation that expresses or implies discrimination or any intention to discriminate, or incites or is calculated to incite others to discriminate, against 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.

## **Application of the legislation to public debate and freedom of expression**

The *Nunavut Human Rights Act* only prohibits publications which discriminate in relation to the provision of goods, services, facilities or contracts, accommodations, employment or formal associations. For example, an advertisement for rental accommodations could not indicate that persons of a particular age, gender, or race are unwelcome to apply. Further, Nunavut's human rights law expressly exempts newspapers from the prohibition on discriminatory publications. As such, Nunavut's legislation does not apply to public discussion and debate of moral, political, social or cultural questions.

## **Defences of truth and fair comment**

As Nunavut's legislation does not censor or restrict speech, these defences are not necessary, because no person will face a human rights complaint simply for having expressed an opinion.

## **Admissibility of hearsay evidence in human rights proceedings**

Hearsay evidence is admissible in a human rights hearing before the tribunal.



## **Qualifications required for serving on human rights tribunals**

In Nunavut, “a person appointed as a member of the Tribunal must have an interest in and a sensitivity to human rights and to Inuit culture and values that underlie the Inuit way of life.” There is no requirement that a member be a lawyer or have a law degree.

## **Complaints by the Commission or other third parties**

Nunavut allows human rights complaints to be filed by third parties, who have themselves not suffered from discrimination, but the person on whose behalf the complaint is filed must provide consent. There is no Commission, only a Tribunal.

## **Consequences for filing a frivolous complaint**

Costs may be ordered for frivolous or vexatious complaints.

## **Government assistance for complainants**

In Nunavut, complainants can potentially access legal representation from Legal Aid.

## **Government assistance for respondents**

Respondents do not receive legal representation through Legal Aid or other sources, and are responsible for paying all of their own legal costs.

## **Damage awards for hurt feelings**

There is no ceiling on financial compensation. The Act stipulates that costs are to be “an amount that the Tribunal considers appropriate.”



# *Canadian Human Rights Act*

## **Protected grounds**

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.

## **Areas of application**

Goods, services, facilities or accommodations; commercial premises or residential accommodation; employment; publications; prohibition of hate messages.

## **Application of the legislation to publications**

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.

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.

Interpretation

(2) For greater certainty, subsection (1) applies in respect of a matter that is communicated by means of a computer or a group of interconnected or related computers, including the Internet, or any similar means of communication, but does not apply in respect of a 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.



## **Application of the legislation to public debate and freedom of expression**

The *Canadian Human Rights Act* applies to federal undertakings, under the legislative authority of Parliament, including the internet. Section 12 prohibits discrimination in a “notice, sign, symbol, emblem or other similar representation” without specific inclusion of “publication,” “statement,” or “newspaper.” Section 12 is directed at preventing actual discrimination in practical matters such as housing and employment, without attempting to censor the free expression of opinion on issues of public concern.

Under the title of “hate messages,” Section 13 prohibits the expression of all thoughts and opinions that are “likely to expose” people to “hatred or contempt” on the basis of race, national or ethnic origin, colour, religion, age, sex, sexual orientation, marital status, family status, disability, or conviction for which a pardon has been granted. Section 13 of the federal legislation casts a chill on public discussions of a broad range of topics, applying to speech that has nothing to do with the provision of goods and services to members of the public.

Section 13 also applies to internet communications, which gives the federal law an extremely broad reach.

## **Defences of truth and fair comment**

In human rights proceedings commenced against a person for having expressed an opinion, the federal legislation does not provide for the defences of truth and fair comment.

## **Admissibility of hearsay evidence in human rights proceedings**

Hearsay evidence is admissible in a human rights hearing before the tribunal.

## **Qualifications required for serving on human rights tribunals**

Members of the Tribunal, which has up to 15 members, “must have experience, expertise and interest in, and sensitivity to, human rights.” Only four members of the Tribunal (Chairperson, Vice-chairperson and two others) must be lawyers; all other members are not required to be lawyers or possess a law degree.

## **Complaints by the Commission or other third parties**

Any person who believes that the Canadian Human Rights Act has been violated can file a complaint with the Commission, even if that person herself or himself has not suffered any discrimination. Further, the Commission itself also has the power to initiate complaints.



### **Consequences for filing a frivolous complaint**

There are no penalties, costs or other consequences for persons who file a complaint that is trivial, frivolous or made in bad faith, other than the dismissal of such a complaint. The respondent must pay for all legal costs even if the complaint is ultimately dismissed as frivolous or otherwise unfounded.

### **Government assistance for complainants**

The Commission assists complainants, and also provides them with legal representation. The Commission appears at hearings, presents evidence and makes representations, adopting a position that is similar to, or identical to, the position taken by the complainant.

### **Government assistance for respondents**

Beyond providing basic information about human rights proceedings and forms, the government does not provide any assistance to respondents. The respondent is not provided with any legal representation in any circumstance, and must assume all legal costs incurred, even if the complaint is eventually found to be frivolous or otherwise unfounded.

### **Damage awards for hurt feelings**

A person can be ordered to compensate the victim for wages and expenses, with an order for additional costs and for pain and suffering by an amount not exceeding \$20,000. An additional \$20,000 may be awarded to a complainant if the discrimination is found to be wilful or reckless.

