

FEDERAL COURT OF APPEAL

B E T W E E N :

ATTORNEY GENERAL OF CANADA

Appellant

- and -

**CANADIAN HUMAN RIGHTS COMMISSION,
FIRST NATIONS CHILD AND FAMILY CARING SOCIETY,
ASSEMBLY OF FIRST NATIONS, CHIEFS OF ONTARIO
and AMNESTY INTERNATIONAL**

Respondents

**MEMORANDUM OF FACT AND LAW OF THE RESPONDENT,
FIRST NATIONS CHILD AND FAMILY CARING SOCIETY**

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I. STATEMENT OF FACT

A. Overview

1. The overarching goal of the *Canadian Human Rights Act* (the “Act”) is to promote and protect substantive equality: to allow all Canadians to live the lives they are able and wish to have, and to have their needs accommodated, without the hindrance of discriminatory practices. In support of this goal, one of the central provisions of the Act, section 5, states that it is discriminatory to deny access to a service, or to “differentiate adversely in relation to any individual” in providing a service, based on a prohibited ground of discrimination.

2. In deciding whether a person has been the victim of discrimination, the Canadian Human Rights Tribunal (the “Tribunal”) must assess whether that person was denied a service, or received lesser or poorer service, on the basis of their race, ethnic origin, religion, age, sex, or other prohibited ground. In some cases, this is established through evidence that others who are not of the same group have received the denied service, or have received better service (or goods, facilities, residential accommodation, or employment). The use of such a “comparator group” provides ready evidence that there has been discrimination on a prohibited ground, particularly where the comparator group has been provided the same service by the same service provider.

3. However, in some cases, comparison to such a perfect “mirror” comparator group may not be possible, as there may be no other individual or group who receives or has yet received the same service from that provider. This does not mean, however, that a person cannot be the victim of discrimination: they may still be denied service, or get lesser or poorer service than they would have received had they been of a different race, ethnic origin, religion, age or sex.

4. This case is such a case. Because of their unique status under s. 91(24) of the *Constitution Act, 1867*, First Nations children and families living on reserve receive child welfare services from the federal government through agencies funded and controlled by Aboriginal Affairs and Northern Development Canada (“AANDC”, formerly Indian and Northern Affairs Canada (INAC)), rather than from the provinces or territories who provide and/or fund such services for other people in Canada.

5. The First Nations Child and Family Caring Society (“Caring Society”) and the Assembly of First Nations (“AFN”) allege that the federal government’s flawed and inequitable funding and policies for First Nations children and families on reserve constitutes discrimination under

s. 5 of the Act: that the federal government is denying or providing poorer child welfare services to First Nations children and families on reserve on the prohibited grounds that they *are* First Nations on reserve (the “Complaint”). As a result, First Nations children and families are over-represented at every point of child welfare intervention, including placement in foster care.

6. Although the Act says nothing about comparator groups, and does not specify any particular type of evidence required to establish discrimination, the Tribunal held on a preliminary motion brought by the Attorney General that discrimination under s. 5(b) of the Act could only be proved through evidence of a comparator group. Since other people in Canada do not receive child welfare services from the federal government, the Tribunal held that there was no available comparator group, and thus by definition no discrimination. Further, although the Tribunal expressly found that such a comparator group was *not* required to show discrimination under s. 5(a) of the Act, the Tribunal nonetheless dismissed the entirety of the Complaint.

7. On judicial review to the Federal Court, the Honourable Madam Justice Mactavish correctly determined that (i) the Tribunal erred in failing to consider the Complaint under s. 5(a) of the Act; (ii) the Tribunal’s interpretation of s. 5(b) of the Act was unreasonable; and (iii) the Tribunal failed to have regard to consider the federal government’s own choice of provincial child welfare standards is an appropriate comparator. Mactavish J. also found that the determination of the issue was unfair owing to the Tribunal’s inappropriate consideration of evidence that had not been filed on the motion. Mactavish J. allowed the applications and remitted the Complaint back to a differently constituted Tribunal.

8. As elaborated more fully in this memorandum, the Caring Society respectfully asks that the Attorney General’s appeal be dismissed, for four main reasons. First, contrary to the Attorney General’s assertions, Mactavish J. did apply the reasonableness standard to her review of the decision (although she would have been entitled to apply the correctness standard). Review on a reasonableness standard does not mean that a reviewing judge cannot consider the relevant statutory provisions, the purpose of the statute or the principles of statutory interpretation, as the Attorney General implies. Mactavish J. found that the Tribunal’s decision was unreasonable not because it merely differed from her own interpretation, but because it “flies in the face of the scheme and purpose of the Act and leads to patently absurd results.”

9. Second, the Tribunal's interpretation of s. 5(b) is unreasonable. The Tribunal found that to find discrimination under s. 5(b), "one has to compare the experience of the alleged victims with that of someone else receiving those same services from the same provider" [emphasis added]. This interpretation is wholly contrary to both the purpose and language of the Act and the Supreme Court of Canada's recent decision in *Withler v. Canada (Attorney General)*. Such a reading of s. 5 would preclude various legitimate human rights complaints including those based on evidence of an intention to discriminate. The Attorney General's approach advocates for a different test for discrimination depending on whether discrimination is intentional or not, contrary to this Honourable Court's clear finding that it makes no difference whether discrimination is intentional or not.

10. Third, Mactavish J. was correct that the Tribunal's dismissal of the Complaint notwithstanding its conclusion that s. 5(a) did *not* require a mirror comparator was both unreasonable and unfair. The Complaint was brought on the basis of s. 5 as a whole and the Attorney General's motion contended that a mirror comparator was necessary for all of s. 5. The parties therefore did not make extensive submissions on the application of s. 5(a) as opposed to s. 5(b). The Tribunal, however, for the first time in its reasons put forward an interpretation that different standards applied to s. 5(a) and s. 5(b), with a mirror comparator group being required for the latter but not for the former. It nonetheless dismissed the Complaint as a whole. In such circumstances, it is absurd to suggest, as the Attorney General does, that the Tribunal was not required to address the reason for this inconsistent outcome.

11. Finally, as Mactavish J. found, the Tribunal's consideration of extraneous material not on the record resulted in an unfairness that voids the decision. Speculation as to the degree to which the extraneous material influenced the Tribunal is no answer to such unfairness.

12. The Caring Society respectfully submits that Mactavish J.'s decision ought to stand, and that the hearing of the Complaint – which has finally begun, over five years after the Complaint was filed – ought to be allowed to continue so that the Tribunal can determine the Complaint on its merits by assessing whether there has been discrimination against First Nations children and families.

B. The Caring Society and AFN's Human Rights Complaint

13. In Canada, child welfare services for First Nations children and families living on reserve are provided by the federal government through AANDC's First Nations Child and Family Services Program (the "FNCFS Program"). This program funds the child welfare agencies offering the services to on-reserve First Nations children and families and controls such agencies through various funding criteria, formulae and policies. Child welfare services for children and families living off reserve (both First Nations and non-First Nations), on the other hand, are provided by provincial/territorial governments.¹

14. The express purpose of the FNCFS Program is to provide for child welfare services to registered Indian children resident on-reserve that are comparable to those provided off-reserve in provincial and territorial jurisdictions.² Contrary to this stated objective, however, various government reports and studies suggest that the current level of child welfare services provided to on-reserve First Nations children is not comparable and in fact is less than such services provided to off-reserve children.³

15. On February 26, 2007, the Caring Society and the Assembly of First Nations (the "AFN") filed the Complaint with the Human Rights Commission (the "Commission").⁴ The Complaint alleges that contrary to s. 5 of the Act, the Government of Canada discriminates in providing child welfare services to First Nations children and families living on reserve by providing inequitable and insufficient funding structured in improper ways to on-reserve child welfare agencies. This directly results in a lack of comparable child welfare services being available to First Nations children on-reserve compared to those provided off-reserve.⁵

16. The Complaint also alleges that jurisdictional disputes between governments regarding services for First Nations children adversely impact those children and are discriminatory. The Complaint was filed, in part, in response to Canada's failure to implement "Jordan's Principle", named after Jordan River Anderson, a five-year-old boy from Norway House Cree Nation in

¹ Complaint, at pp. 1, 3 [Appeal Book, Vol. 1, Tab 5, pp. 224, 226]; Affidavit of Cindy Blackstock, sworn February 11, 2010, at paras. 9-11, 20 [Appeal Book, Vol. 3, Tab 5, pp. 697-698, 700].

² FNCFS National Program Manual, at s. 1.3.5 [Appeal Book, Vol. 4, Tab 5, pp. 1369].

³ Affidavit of Cindy Blackstock, sworn May 31, 2011 ("Blackstock Affidavit"), at paras. 6-7 [Appeal Book, Vol. 6, Tab 6, pp. 1950-1951]; Complaint, at pp. 2-3 [Appeal Book, Vol. 1, Tab 5, at pp. 225-226].

⁴ Blackstock Affidavit at paras. 4-5 [Appeal Book, Vol. 6, Tab 6, p. 1949].

⁵ Complaint, at pp. 1-3 [Appeal Book, Vol. 1, Tab 5, pp. 224-226].

Manitoba who died in a Winnipeg hospital in 2005. Although cleared by doctors to return home, Jordan's illness meant he was unable to live at home without in-home care. The governments of Canada and Manitoba disagreed as to which of them should pay for Jordan's in-home care, given his on-reserve First Nations status. As a result of this disagreement, Jordan remained in a hospital room until he died at the age of five. Jordan's Principle calls on the government of first contact to provide and immediately pay for services required by a First Nations child and, if appropriate, seek reimbursement from the appropriate government department.⁶

17. Since filing the Complaint, on December 12, 2007, a private member's motion was passed unanimously by the House of Commons in support of Jordan's Principle.⁷ Nonetheless, the Complaint sets out the continuing substantial problem raised by ongoing jurisdictional disputes arising from a failure to adequately and appropriately implement Jordan's Principle.⁸

C. The Procedural History of the Complaint

1) The Commission's Decision to Deal with the Complaint

18. On May 6, 2008, the Attorney General asked the Commission to decline to deal with the Complaint as it was beyond the Commission's jurisdiction. The Attorney General argued that (a) its role in funding the FNCFS Program is not a "service" within the meaning of s. 5 of the Act (the "Service Issue"), and (b) the Complaint raised a "cross-jurisdictional comparison" between federal and provincial/territorial funding structures that "cannot amount to differential treatment based on any ground under the Act" (the "Comparator Issue").⁹

19. The Assessor appointed to review the Complaint rejected the Attorney General's argument and recommended that the Commission deal with the Complaint, noting that the court had "rejected the notion that a comparative analysis is necessary to prove discrimination."¹⁰ On September 30, 2008, having reviewed the parties' submissions on the Assessor's report, the Commission asked the Tribunal to institute an inquiry into the Complaint.¹¹

⁶ Blackstock Affidavit, at paras. 5, 8 [Appeal Book, Vol. 6, Tab 6, pp. 1949, 1951].

⁷ Blackstock Affidavit, at para. 9 [Appeal Book, Vol. 6, Tab 6, p. 1951].

⁸ Complaint, at p. 3 [Appeal Book, Vol. 1, Tab 5, p. 226].

⁹ Blackstock Affidavit, at para. 10 and Exhibit "B" [Appeal Book, Vol. 6, Tab 6, pp. 1951-1952, 1987-1988, 1999-2003].

¹⁰ Blackstock Affidavit, at para. 11 [Appeal Book, Vol. 6, Tab 6, p. 1952]; Assessment Report, at pp. 1, 4-6 [Appeal Book, Vol. 1, Tab 5, pp. 228, 231-233].

¹¹ Commission's Decision to Request an Inquiry [Appeal Book, Vol. 1, Tab 5, pp. 239-244]; Blackstock Affidavit, at para. 12 [Appeal Book, Vol. 6, Tab 6, p. 1952].

2) *Judicial Review of the Commission’s Decision to Request an Inquiry*

20. In November 2008, the Attorney General sought judicial review of the Commission’s decision, asking this Court to dismiss the Complaint on the basis of the Service and Comparator Issues. The Caring Society and the AFN brought a motion to strike the Attorney General’s application or, alternatively, stay it until the Complaint had been dealt with by the Tribunal.¹²

21. On November 24, 2009, Madam Prothonotary Aronovitch stayed the Attorney General’s application for judicial review until disposition of the Complaint before the Tribunal, but refused to strike the application. The Attorney General appealed the stay, and the Caring Society and the AFN appealed the refusal to strike the application. Justice O’Reilly dismissed both appeals.¹³

3) *The Tribunal’s Carriage of the Complaint*

22. In the interim, on September 14, 2009, the adjudication of the Complaint commenced pursuant to a schedule set by then Chairperson Grant Sinclair. Further hearing dates were set for November 2009, January 2010 and February 2010.¹⁴

23. On November 2, 2009, Shirish Chotalia assumed her appointment as the new Chairperson of the Tribunal and took carriage of the Complaint. Following case conferences in November and December 2009, and without the consent of the parties, the Tribunal vacated all of the scheduled hearing dates.¹⁵ On December 21, 2009, although Chairperson Sinclair had earlier refused to hear such a motion,¹⁶ the Attorney General filed its motion to dismiss the Complaint for lack of jurisdiction on the basis of the Service Issue and Comparator Issue.¹⁷

D. The Attorney General’s Motion to Dismiss

1) *The Attorney General’s Motion was Brought Pursuant to s. 5 of the Act*

24. The Attorney General’s motion was brought within the context of s. 5 of the Act and made no distinction between s. 5(a) and s. 5(b) of the Act. With respect to the Comparator Issue,

¹² Blackstock Affidavit, at paras. 13-14 and Exhibits “C” and “D” [Appeal Book, Vol. 6, Tab 6, pp. 1952, 2007, 2013, 2017].

¹³ Decision of Justice O’Reilly, at p. 1 [Appeal Book, Vol. 6, Tab 6, p. 2032].

¹⁴ Tribunal Direction, Sept. 17, 2009, at p. 2 [Appeal Book, Vol. 1, Tab 5, p. 377].

¹⁵ Blackstock Affidavit, at paras. 25, 28, 30, 31 [Appeal Book, Vol. 6, Tab 6, pp. 1954-1956]; Transcript of Case Management Conference Call, December 14, 2009, at pp. 25-27 [Appeal Book, Vol. 9, Tab 7, pp. 3323-3325]; Tribunal Direction, Nov. 12, 2009, at p. 2 [Appeal Book, Vol. 2, Tab 5, p. 504].

¹⁶ Blackstock Affidavit, at para. 17 [Appeal Book, Vol. 6, Tab 6, p. 1953].

¹⁷ Dismissal Motion, at pp. 1-2 [Appeal Book, Vol. 2, Tab 5, pp. 584-585].

the Attorney General argued that a mirror comparator group is required under s. 5 of the Act, irrespective of whether a complaint proceeds under s. 5(a) or s. 5(b). After quoting *Singh (Re)*, the Attorney General submitted as follows:

This analysis stems from s. 5 of the Act where the words “discriminatory practice in the provision of goods and services, facilities or accommodation” must be read in conjunction with the words “deny” and “differentiate adversely”. These words express a clear intention that a single actor must provide a good, service, facility or accommodation to one individual, while either denying the same to another individual or adversely differentiating in the provision of the same to another individual.¹⁸ [Emphasis added]

25. Similarly, in its oral submissions, the Attorney General made no distinction between ss. 5(a) and 5(b) but rather argued that a comparator group is required under s. 5 of the Act.¹⁹

2) *The Attorney General’s Expert Report was not before the Tribunal on the Motion*

26. The Attorney General’s dismissal motion, heard on June 2 and 3, 2010, included approximately 2,000 pages of motion material, plus authorities. The Attorney General does not dispute the size of the record before the Tribunal on the Dismissal Motion.

27. Expert reports put forward by the parties, as well as some 8,000 pages of documents filed with respect to the merits of the Complaint, were not before the Tribunal on the dismissal motion and were not filed in support of the motion. Indeed, the Attorney General did not file its expert report (the “KPMG Report”), until September 15, 2010, months after the hearing of the motion.²⁰ The Attorney General had failed to serve the parties with the KPMG Report on July 30, 2010 (a peremptory date set by the Tribunal), instead filing the report with the Tribunal alone.²¹ The Caring Society objected to the *ex parte* filing of the KPMG Report and asked the Tribunal to make an order prohibiting the Attorney General from relying on the report.²² Ultimately, the Tribunal returned the KPMG Report to the Attorney General un-copied and granted the Attorney General until September 15, 2010 to seek a direction regarding confidentiality and/or to serve and file the KPMG Report.²³ The Attorney General ultimately delivered the report on this date.

¹⁸ Written Submissions of the Attorney General of Canada in Support of His Motion to Dismiss the Complaint, at para. 92 [Appeal Book, Vol.5, Tab 5, p. 1620].

¹⁹ Transcript of June 2, 2010 hearing, at pp. 13, 94-97 [Appeal Book, Vol. 7, Tab 7, pp. 2399, 2480-2483].

²⁰ Dept. of Justice Letter, Sept. 15, 2010 and KPMG Report [Appeal Book, Vol. 6, Tab 6, pp. 2107-2249].

²¹ Blackstock Affidavit, at paras. 55-56 [Appeal Book, Vol. 6, Tab 6, p. 1961].

²² Letter from Anne Levesque, Aug. 3, 2010 [Appeal Book, Vol. 6, Tab 6, p. 2101].

²³ Tribunal Direction, Aug. 20, 2010 [Appeal Book, Vol. 6, Tab 6, p. 2104].

28. The KPMG Report directly addresses the feasibility of comparing child welfare funding levels across jurisdictions and calls into question the finding of the National Policy Review (a report filed by the complainants on the merits) that the federal government provides 22 percent less funding per First Nations child for child welfare services than does the average province.²⁴

29. At no time during or following the hearing of the dismissal motion did the Tribunal advise the parties that it would be considering material filed outside of the motion records and the written submissions made by the parties.²⁵

E. The Tribunal's Decision to Dismiss the Complaint

30. The Tribunal concluded that it had the jurisdiction to dismiss a complaint without a hearing where the moving party has demonstrated that the material facts are clear and not in dispute and/or where the issues raised involve questions of pure law.²⁶ Applying this standard, the Tribunal found that the Service Issue could not be determined on a summary motion, as it was a fact driven inquiry and the material facts were not clear or uncontroverted.²⁷ However, the Tribunal concluded that it could determine the Comparator Issue on a summary motion, and dismissed the Complaint on the basis of this issue.²⁸

31. The Comparator Issue raises a consideration of the discriminatory practices defined in section 5 of the Act:²⁹

	DISCRIMINATORY PRACTICES	ACTES DISCRIMINATOIRES	
Denial of good, service, facility or accommodation	<p>5. It is a discriminatory practice in the provision of goods, services, facilities or accommodation customarily available to the general public</p> <p>(a) <u>to deny, or to deny access to, any such good, service, facility or accommodation</u> to any individual, or</p> <p>(b) <u>to differentiate adversely</u> in relation to any individual,</p> <p>on a prohibited ground of discrimination.</p>	<p>5. Constitue un acte discriminatoire, s'il est fondé sur un motif de distinction illicite, le fait, pour le fournisseur de biens, de services, d'installations ou de moyens d'hébergement destinés au public :</p> <p>a) <u>d'en priver un individu;</u></p> <p>b) de le <u>défavoriser à l'occasion de leur fourniture.</u></p>	Refus de biens, de services, d'installations ou d'hébergement

²⁴ Dept. of Justice Letter, Sept. 15, 2010 and KPMG Report [Appeal Book, Vol. 6, Tab 6, pp. 2107-2249].

²⁵ Blackstock Affidavit, at paras. 46-51 [Appeal Book, Vol. 6, Tab 6, pp. 1959-1960].

²⁶ Decision, at paras. 3, 30-34, 38 [Appeal Book, Vol. 1, Tab 4, pp. 142, 154-156].

²⁷ Decision, at para. 76 [Appeal Book, Vol. 1, Tab 4, p. 171].

²⁸ Decision, at paras. 95, 97 [Appeal Book, Vol. 1, Tab 4, pp. 179-180].

²⁹ *Canadian Human Rights Act*, s. 5, Tab A hereto; Decision, at paras. 5, 9-17, 113-131 [Appeal Book, Vol. 1, Tab 4, pp. 143-147, 187-193].

32. The Tribunal concluded that no comparator is required under s. 5(a) of the Act.³⁰ While the allegations of discrimination in the Complaint are not limited to s. 5(b) of the Act,³¹ the Tribunal limited its analysis to that subsection, and found that to establish a discriminatory practice under section 5(b) requires a comparison to a “comparator group” receiving the same services from the same provider.³²

33. In reaching this conclusion, the Tribunal referred to the status of First Nations peoples as a “constitutional quagmire”, effectively recognizing that its interpretation resulted in First Nations people being denied the ability to make any complaint of discrimination against the very government that provides most services to them.³³ Nonetheless, the Tribunal apparently considered that this was the interpretation that best ensured the object of the Act (which the Tribunal recognized was “the promotion of equal opportunity”).³⁴

34. The Tribunal concluded that the French and English versions of s. 5(b) could not have a “shared meaning”, since in her view the use of the English term “differentiate” necessarily requires a comparison to “a different individual”, while the French “défavoriser” does not require such a comparator.³⁵ As the Tribunal conceded, this finding that there was no “shared meaning” is effectively a finding that the two versions are “irreconcilable”.³⁶

35. On the issue of whether the comparator group must be a same-service/same-provider comparator, the Tribunal invoked an *in terrorem* argument (as does the Attorney General) that allowing a comparison to services provided to off-reserve children funded by the provinces/territories, as proposed by the Caring Society, would “open the flood gates to a barrage of new types of complaints”, and represented a “sea-change in the analytical framework”.³⁷

36. Finally, the Tribunal apparently felt that its approach to s. 5(b) would save First Nations from themselves, given the adverse impact on First Nations it believed arose from the interpretation put forward by the Caring Society and the AFN.³⁸

³⁰ Decision, at para. 125 [Appeal Book, Vol. 1, Tab 4, p. 191].

³¹ Complaint, at pp. 1-3 [Appeal Book, Vol. 1, Tab 5, pp. 224-226].

³² Decision, at paras. 5, 9-17, 113-131 [Appeal Book, Vol. 1, Tab 4, pp. 143-147, 187-193].

³³ Decision, at para. 20 [Appeal Book, Vol. 1, Tab 4, p. 148].

³⁴ Decision, at para. 37, 111, 116, 127 [Appeal Book, Vol. 1, Tab 4, pp. 156, 186, 188, 191].

³⁵ Decision, at paras. 113-114 [Appeal Book, Vol. 1, Tab 4, pp. 187-188].

³⁶ Decision, at paras. 109 [Appeal Book, Vol. 1, Tab 4, p. 185].

³⁷ Decision, at paras. 129, 131 [Appeal Book, Vol. 1, Tab 4, pp. 192-193].

³⁸ Decision, at paras. 132-133, 139 [Appeal Book, Vol. 1, Tab 4, pp. 193, 196].

37. In rendering its decision, but without advising the parties of its intention to do so, the Tribunal relied on the materials filed in connection with the merits of the Complaint, including the KPMG Report which, as outlined above, is the subject of some controversy.³⁹ The parties did not make submissions with respect to this material (nor were they invited to) and had not tested the assertions made in the expert reports.

F. The Application Judge's Decision

38. The Caring Society, the AFN and the Commission each sought judicial review of the Tribunal's decision. The applications were heard on February 13, 14 and 15, 2012. In reasons issued April 18, 2012, Mactavish J. granted the applications, holding that the Tribunal's conclusion that s. 5(b) required a formal comparator group and its decision to dismiss the entirety of the Complaint without consideration of s. 5(a) were unreasonable, and that its consideration of extrinsic material breached procedural fairness. Mactavish J. set aside the Tribunal's decision and remitted the matter to a differently constituted panel of the Tribunal.

1) The Comparator Issue

39. Mactavish J. correctly concluded that the Tribunal committed three principal errors with respect to the Comparator Issue: (i) the Tribunal failed to provide any reasons for considering the Complaint under section 5(a) of the Act; (ii) the Tribunal's decision that the Complaint could not succeed in the absence of an identifiable comparator group was unreasonable; and (iii) the Tribunal erred in failing to consider the significance of the government's own adoption of provincial child welfare standards in its funding policies.

40. Mactavish J. found that the Complaint was brought under s. 5 of the Act.⁴⁰ As a result, most of the written and oral submissions were directed at the question of whether there could be discrimination under s. 5 of the Act "*as a whole*"; no attempt was made by any of the parties during the hearing to address the differences or implications of such differences in the wording as between ss. 5(a) and 5(b).⁴¹ Given that the Tribunal "provided no explanation whatsoever as to why the complaint could not be considered under subsection 5(a)", Mactavish J., in reliance on Supreme Court of Canada jurisprudence, determined that the lack of reasons amounted to an

³⁹ Decision, at paras. 6, 49, 107, Appendix "A" [Appeal Book, Vol. 1, Tab 4, p. 143, 160-161, 184, 199-206].

⁴⁰ Reasons for the Judgment and Judgment of the Honourable Madam Justice Mactavish, 2012 FC 445 at para. 207 ("Federal Court Reasons") [Appeal Book, Vol. 1, Tab 2, pp. 59-60].

⁴¹ Federal Court Reasons, at paras. 216-217 [Appeal Book, Vol. 1, Tab 2, p. 62].

error in law and a breach of procedural fairness.⁴²

41. On the merits, Mactavish J. held that the comparator group requirement imposed by the Tribunal on s. 5(b) of the Act was unreasonable. Her Honour reasoned that such a requirement would bar blatant human rights violations, such as in instances where the complainant experiencing discrimination was the only employee of an employer:

On the Tribunal's analysis, the employer who consciously decides to pay his or her only employee less because she is a woman, or black, or Muslim, would not have committed a discriminatory practice within the meaning of subsection 7(b) of the Act because there is no other employee to whom the disadvantaged employee could be compared.⁴³

42. Mactavish J. concluded that the overall purpose of the Act and the intention of Parliament would be nullified if such clear victims of discrimination could not seek recourse under the Act. As a result, she determined that the appropriate meaning of "differentiate adversely in relation to any individual" is to ask whether someone has been treated differently than they might otherwise have because of their membership in a protected group.⁴⁴

43. With respect to the two official versions of the Act, Mactavish J. noted that the Tribunal's interpretation of s. 5(b) creates an internal incoherence, as the term "défavoriser" does not require a comparator in all cases. Moreover, such an approach would create an internal inconsistency within s. 5 of the Act by establishing different legal and evidentiary requirements in order to establish discrimination under each provision, ultimately creating anomalous results.⁴⁵

44. Mactavish J. recognized that while comparisons may be helpful in some cases, this Court's decision in *Morris v. Canada (Armed Forces)*, as well as the Supreme Court's decision in *Withler v. Canada (Attorney General)*, made clear that a comparator group is an evidentiary tool rather than a requirement for establishing discrimination.⁴⁶ For these foregoing reasons, Mactavish J. found that the Tribunal's conclusion "is unreasonable as it flies in the face of the scheme and purpose of the Act, and leads to patently absurd results that could not have been intended by Parliament."⁴⁷

⁴² Federal Court Reasons, at para. 220 [Appeal Book, Vol. 1, Tab 2, p. 63].

⁴³ Federal Court Reasons, at para. 256 [Appeal Book, Vol. 1, Tab 2, p. 72].

⁴⁴ Federal Court Reasons, at para. 254 [Appeal Book, Vol. 1, Tab 2, p. 72].

⁴⁵ Federal Court Reasons, at paras. 269, 273, 276, 278 [Appeal Book, Vol. 1, Tab 2, pp. 75-77].

⁴⁶ Federal Court Reasons, at paras. 290, 296, 299-302 [Appeal Book, Vol. 1, Tab 2, pp. 80, 81 and 82-83].

⁴⁷ Federal Court Reasons, at para. 251 [Appeal Book, Vol. 1, Tab 2, p. 71].

45. Mactavish J. also held that the Tribunal's failure to consider the material fact that the federal government's itself adopted provincial child welfare standards as the appropriate comparator for the purposes of the FNCFS Program, meant its decision lacked the justification, transparency and intelligibility required of a reasonable decision.⁴⁸

2) *Extrinsic Material*

46. Mactavish J. found that the Tribunal did not distinguish between the 8,000 pages of material in relation to the merits of the Complaint and the approximately 2,000 pages, plus authorities, of material filed on the dismissal motion.⁴⁹ She held that this consideration of extrinsic material without advising the parties and without affording them an opportunity to respond amounted to a breach of procedural fairness to which the Tribunal was subject.⁵⁰

47. Mactavish J. recognized that the applicants, including the Caring Society, need not show actual prejudice resulting from the consideration of extrinsic material, but only that they may have reasonably been prejudiced.⁵¹ Her Honour concluded that it was reasonable to assume that some of the extrinsic evidence filed on the merits of the Complaint discussed the Comparator Issue and would have been relevant to the issues being addressed on the dismissal motion. As a result, Mactavish J. reasoned that the Tribunal's breach of fairness may have reasonably prejudiced the applicants and set aside the decision on this basis as well.⁵²

II. POINTS IN ISSUE

48. It is submitted that the following issues stand to be determined on this appeal:

- A. Did the Application Judge apply the proper standard of review?
- B. Did the Application Judge err in quashing the decision of the Tribunal on the basis of the Comparator Issue?
- C. Did the Application Judge err in finding the Tribunal's dismissal of the whole Complaint on the basis of its s. 5(b) analysis unfair and unreasonable?
- D. Did the Application Judge err in determining that the Tribunal breached the duty of procedural fairness by considering extrinsic material?

⁴⁸ Federal Court Reasons, at paras. 367, 373 and 379 [Appeal Book, Vol. 1, Tab 2, pp. 99, 100 and 102].

⁴⁹ Federal Court Reasons, at paras. 171, 173 and 180 [Appeal Book, Vol. 1, Tab 2, pp. 51 and 53].

⁵⁰ Federal Court Reasons, at paras. 132, 157 and 167 [Appeal Book, Vol. 1, Tab 2, pp. 41, 47-48, 50].

⁵¹ Federal Court Reasons, at para. 195 [Appeal Book, Vol. 1, Tab 2, p. 56].

⁵² Federal Court Reasons, at paras. 199-204 [Appeal Book, Vol. 1, Tab 2, p. 57-59].

III. SUBMISSIONS

A. Standard of Review

49. Contrary to the submissions made by the Attorney General, Mactavish J. applied the standard of reasonableness to the Comparator Issue. Throughout her reasons, Mactavish J. considered whether the Tribunal's decision was justified, transparent and intelligible, as well as whether it fell within a range of possible acceptable outcomes:

As explained below, the Tribunal erred in concluding that the ordinary meaning of the term “differentiate adversely” in subsection 5(b) requires a comparator in every case in order to establish discrimination in the provision of services. This conclusion is unreasonable as it flies in the face of the scheme and purpose of the Act, and leads to patently absurd results that could not have been intended by Parliament.

[...]

An interpretation of “differentiate adversely” as the term is used in subsections 5(b), 6(b) and 7(b) of the Act that leads to the above conclusions does not fall within the range of possible acceptable outcomes which are defensible in light of the facts and the law. [...] It is simply unreasonable.⁵³
[Emphasis added]

50. In reviewing the Comparator Issue, Mactavish J. thoroughly referenced the Tribunal's decision and articulated how the Tribunal's reasons could not reasonably be supported by the legal framework of the Act or the jurisprudence. Her Honour did not substitute her own reasons for those of the Tribunal, but rather determined, in accordance with the facts and law, that the Tribunal's decision was unreasonable. As recently articulated by the Supreme Court of Canada, while “courts should not substitute their own reasons, [...] they may, if they find it necessary, look to the record for the purpose of assessing the reasonableness of the outcome”.⁵⁴

51. As the Supreme Court of Canada's recent jurisprudence with respect to the Act has shown, judicial review on the reasonableness standard allows for – and may indeed require – a “careful examination of the text, context and purpose of the provisions”.⁵⁵ The Attorney General's claim that Mactavish J. conducted a *de novo* review or somehow misapplied the reasonableness standard runs contrary to the entire tenor and language of her decision, which throughout assesses the merits of the Tribunal's decision on reasonableness grounds.⁵⁶

⁵³ Federal Court Reasons, paras. 251 and 266 [Appeal Book, Vol. 1, Tab 2, p. 71 and 74-75].

⁵⁴ *N.L.N.U. v. Newfoundland & Labrador (Treasury Board)*, 2011 SCC 62, at para. 15.

⁵⁵ *Canada (Canadian Human Rights Commission) v. Canada (Attorney General)*, 2011 SCC 53, [2011] 3 S.C.R. 471, at para. 32.

⁵⁶ Federal Court Reasons, paras. 8, 234-240, 251-280, 337, 359-363 [Appeal Book, Vol. 1, Tab 2, pp. 10, 67-78, 91, 97-98].

Similarly, there is no basis for the Attorney General's assertion that Mactavish J. "ignored" the Complaint's comparison between federal and provincial service funding: Mactavish J. was well aware of this and referred to it on a number of occasions in her judgment and discussion of the issue takes up a separate section in the reasons.⁵⁷

52. In any event, it is submitted that Mactavish J. would have been justified in applying a standard of correctness had she in fact done so. While most aspects of a decision of the Tribunal are reviewed on the reasonableness standard, the standard will depend on the nature of the question of law.⁵⁸ The Tribunal's conclusion on the Comparator Issue is a question of law regarding the legal test for establishing a *prima facie* case of discrimination, which this Court has held to be reviewable on the correctness standard.⁵⁹ Further, the Attorney General's motion was a jurisdictional one,⁶⁰ and the question of whether the Tribunal can entertain a claim for discrimination based on evidence other than a mirror comparator group falls within the Supreme Court of Canada's description of a true jurisdictional question and/or a question of general law of central importance to the legal system as a whole outside the adjudicator's specialized area of expertise. Such determinations are reviewable on the correctness standard.⁶¹

B. A Perfect Mirror Comparator Group is Not Invariably Required

1) The Correct Approach to Interpretation of the Canadian Human Rights Act

53. The modern approach to statutory interpretation is that "the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament".⁶² In applying this principle to human rights legislation, this "fundamental" or "quasi-constitutional" legislation should receive a large, liberal and purposive interpretation:

This Court has repeatedly stressed that a broad, liberal and purposive approach is appropriate to human rights legislation, and that such legislation, according to La Forest in *Robichaud*, at p. 89, "must be so interpreted as to

⁵⁷ Federal Court Reasons, paras. 66, 162, 229-230, 365, 367-390 [Appeal Book, Vol. 1, Tab 2, pp. 24, 48-49, 65-66, 98, 99-104].

⁵⁸ *Royal Canadian Mounted Police v. Tahmourpour*, 2010 FCA 192, at para. 8.

⁵⁹ *Morris v. Canada (Canadian Armed Forces)*, 2005 FCA 154, at paras. 22-23, 27; *Walden v. Canada (Social Development)*, 2010 FC 1135, at paras. 43-45.

⁶⁰ Dismissal Motion, at p. 2 [Appeal Book, Vol. 2, Tab 5, p. 585].

⁶¹ *Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190, at para. 59; *Smith v. Alliance Pipeline Ltd.*, 2011 SCC 7, [2011] 1 S.C.R. 160, at para. 26.

⁶² *Bell ExpressVu Limited Partnership v. Rex*, 2002 SCC 42, at para. 26.

advance the broad policy considerations underlying it”.⁶³

54. The purposive approach to interpretation is particularly relevant where, as here, Parliament has given an express statement of the legislation’s purpose.⁶⁴ The approach to assessing *prima facie* discrimination under the Act is to be guided by the broad purpose in s. 2:⁶⁵

	PURPOSE OF ACT	OBJET	
Purpose	<p>2. The purpose of this Act is to extend the laws in Canada to give effect, within the purview of matters coming within the legislative authority of Parliament, to the principle that <u>all individuals should have an opportunity equal to other individuals to make for themselves the lives that they are able and wish to have</u> and to have their needs accommodated, consistent with their duties and obligations as members of society, without being hindered in or prevented from doing so by discriminatory practices based on race, national or ethnic origin, colour, religion, age, sex, sexual orientation, marital status, family status, disability or conviction for an offence for which a pardon has been granted.</p>	<p>2. La présente loi a pour objet de compléter la législation canadienne en donnant effet, dans le champ de compétence du Parlement du Canada, au principe suivant : <u>le droit de tous les individus, dans la mesure compatible avec leurs devoirs et obligations au sein de la société, à l'égalité des chances d'épanouissement</u> et à la prise de mesures visant à la satisfaction de leurs besoins, indépendamment des considérations fondées sur la race, l'origine nationale ou ethnique, la couleur, la religion, l'âge, le sexe, l'orientation sexuelle, l'état matrimonial, la situation de famille, la déficience ou l'état de personne gracée.</p>	Objet

55. The overarching purpose of the Act is to promote and safeguard substantive equality, achieved by preventing discriminatory practices based on the Act’s enumerated grounds. In order to fulfill this purpose the impact and the result of the impugned activity must be examined. The Supreme Court recently described substantive equality as follows:

Substantive equality, unlike formal equality, rejects the mere presence or absence of difference as an answer to differential treatment. It insists on going behind the façade of similarities and differences. It asks not only what characteristics the different treatment is predicated upon, but also whether those characteristics are relevant considerations under the circumstances. The focus of the inquiry is on the actual impact of the impugned law, taking full account of social, political, economic and historical factors concerning the group.⁶⁶ [Emphasis added]

⁶³ *University of British Columbia v. Berg*, [1993] 2 S.C.R. 353, at para. 26; see also *Canada (Canadian Human Rights Commission) v. Canada (Attorney General)*, 2011 SCC 53, at paras. 33-34, *Battlefords and District Co-operative Ltd. v. Gibbs*, [1996] 3 S.C.R. 566, at para. 18; *Singh (Re)*, [1989] 1 F.C. 430 (C.A.), at para. 15, pp. 439-440.

⁶⁴ Ruth Sullivan, *Sullivan on the Construction of Statutes*, 5th ed. (Markham: LexisNexis, 2008), at pp. 270-271, 387-392.

⁶⁵ *Canadian Human Rights Act*, s. 2, Tab A hereto; *Vilven v. Air Canada*, 2009 FC 367, at paras. 76-83.

⁶⁶ *Withler v. Canada (Attorney General)*, 2011 SCC 12, [2011] 1 S.C.R. 396, at para. 39; *Canadian National Railway v. Canada (Canadian Human Rights Commission)*, [1987] 1 S.C.R. 1114, at paras. 26-27.

56. In the present case, these social, political, economic and historical factors involve consideration of the historical disadvantages and prejudice facing on-reserve First Nations children and their families, as well as the political and social reality facing on-reserve First Nations communities. The lived experiences of on-reserve First Nations peoples includes the political and social parameters created by the *Indian Act*, section 91(24) of the *Constitution Act, 1867* and section 35(1) of the *Constitution Act, 1982*. These realities, including that many services provided on-reserve are provided by provincial and territorial governments off-reserve, must be folded into the *prima facie* discrimination analysis with a focus on substantive equality.

57. Closely connected to the goal of substantive equality is the remedial nature of human rights legislation. Often protections afforded pursuant to human rights legislation are the “final refuge of the disadvantaged and the disenfranchised” and “the last protection of the most vulnerable members of society”.⁶⁷ It follows that a strict grammatical analysis of the Act (urged by the Attorney General) may be subordinated to the remedial purposes of the law.⁶⁸

58. The Attorney General’s interpretation of the Act forecloses a consideration of the realities facing complainants and instead imposes rigid and strict formulas that do not accord with the fundamental goal of substantive equality, thwarts its remedial purpose, and potentially denies otherwise legitimate claimants from human rights protections. Indeed, as noted by this Court in *Morris v. Canada (Canadian Armed Forces)*, “increasing the number and specificity of legal rules does not necessarily enhance certainty in the administration of the law”.⁶⁹

2) A Comparator Group is Not Required

59. It is submitted that Mactavish J. correctly determined that the Tribunal’s decision that a same-service/same-provider comparator group is invariably required to demonstrate discrimination under section 5(b) of the Act was unreasonable.

a) The Goal of Comparison: Evidence of Discrimination

60. Section 5 of the Act is reproduced at paragraph 31 above. There is nothing on the face of the section that calls for a “comparator group” analysis to be performed in every case, or makes

⁶⁷ *Zurich Insurance Co. v. Ontario (Human Rights Commission)*, [1992] 2 S.C.R. 321, at p. 339.

⁶⁸ *New Brunswick (Human Rights Commission) v. Potash Corp. of Saskatchewan Inc.*, 2008 SCC 45, at paras. 67, 69, per McLachlin C.J., concurring.

⁶⁹ *Morris*, *supra* note 59, at para. 30.

any reference whatsoever to the types of evidence that may be adduced to establish discrimination.⁷⁰

61. All a complainant under the Act must demonstrate is that he or she has been treated differently on the basis of a prohibited ground of discrimination. The fundamental question under the Act is whether the evidence before the Tribunal, if believed, is complete and sufficient to justify a verdict in the complainant's favour in the absence of an answer from the respondent?⁷¹ Indeed, Mactavish J. correctly concluded that the *O'Malley* test is flexible enough to allow the Tribunal to consider all relevant factors in a given case, including historic disadvantage, stereotyping, prejudice, vulnerability, the purpose or effect of the measure in issue, and any connection between a prohibited ground of discrimination and the alleged adverse differential treatment.⁷²

62. The starting point is therefore not whether there is an appropriate comparator group but rather, whether the evidence advanced by the complainant is sufficient. Bellamy J. of the Divisional Court of Ontario explained the nature and importance of a comparison as follows:

It would seem from the court's most recent pronouncements on the issue that a discrimination claim does not turn on identification of a single correct comparator group. However, comparison may nonetheless be useful, for example, in the initial stage of discrimination analysis, as evidence of the fact of distribution of benefits or burdens among different individuals or groups.⁷³ [Emphasis added]

63. The goal of conducting a comparison under the Act – and the purpose of undertaking a comparator group analysis – is to assess whether an individual has been discriminated against on a prohibited ground. However, while discrimination is a “comparative concept” and determining whether discrimination exists will typically involve some form of comparison,⁷⁴ this does not mean that assessing discrimination under s. 5 requires a formal comparator group, and in particular a perfect mirror comparator group, in every case. Indeed, insisting on a mirror comparator group in every case may stand in the way of this inquiry, as noted recently by Rowles J.A. in *British Columbia (Ministry of Education) v. Moore*, (in dissent):

⁷⁰ *Canadian Human Rights Act*, s. 5, Tab A hereto.

⁷¹ *Ontario (Human Rights Commission) v. Simpsons-Sears Ltd.*, [1985] 2 S.C.R. 536, at para. 28; *Morris*, *supra* note 59, at paras. 25-26; *Lincoln v. Bay Ferries Ltd.*, 2004 FCA 204, lv. to app. ref'd, [2004] S.C.C.A. 367, at para. 18.

⁷² Federal Court Reasons, para. 338 [Appeal Book, Vol. 1, Tab 2, p. 91].

⁷³ *Ontario (Director of Disability Support Program) v. Tranchemontagne* (2009), 95 OR (3d) 327 (Div. Ct.), at para. 113.

⁷⁴ *Withler*, *supra* note 66, at para. 41.

Here the complainant seeks equal access to a provided benefit or service. Requiring a comparison with another disability group, who may be suffering from a lack of accommodation, risks perpetuating the very disadvantage and exclusion from mainstream society the Code is intended to remedy. The fact that there may have been same treatment of some groups is irrelevant if the end result is that the complainant receives unequal access to the benefit or service. Rather, I agree with Andrea Wright that the proper, substantive equality advancing approach focuses on the gravamen of the complaint and asks what position the complainant would have been in had he or she not been disabled.⁷⁵ [Emphasis added]

64. On appeal to the Supreme Court, the Caring Society intervened and urged the Court, as it does here, that the appropriate “comparison” is that identified by Rowles J.A.: a comparison between the position of the complainant and the position they would have been in had they not been a member of the enumerated group. This assessment can often be most easily made by comparing the complainant’s position to those who are not in the enumerated group, *i.e.*, those in a comparator group. However, as noted by Mactavish J., the use of a comparator group is but one evidentiary tool in the adjudicator’s toolkit and is not to act as a barrier where a complaint is unique and legitimate.⁷⁶

65. There are any number of ways in which discrimination can be demonstrated, without reliance solely on a mirror comparator group. Evidence that focuses on the differential treatment at the heart of the discrimination complaint can include the complaint’s understanding of their relative experience, expert evidence regarding relative treatment, and comparative evidence outside the traditional scope, including the same service provided by different service providers. From this evidence, the Tribunal can infer and determine how a complaint would have been treated had they not been a member of the enumerated group. Moreover, this approach allows for multidimensional grounds for discrimination and promotes the goal of substantive equality by ensuring that groups and claimants who cannot demonstrate a perfect “mirror” comparator group remain protected by human rights legislation.⁷⁷

⁷⁵ *British Columbia (Ministry of Education) v. Moore*, 2010 BCCA 478, at para. 121, *per* M.A. Rowles J.A., dissenting. Currently under reserve by the Supreme Court of Canada; see also *Singh*, *supra* note 63, at para. 22.

⁷⁶ Federal Court Reasons, at para. 290 [Appeal Book, Vol. 1, Tab 2, p. 80].

⁷⁷ See, *e.g.* *Falkiner v. Ontario (Ministry of Social Services, Income Maintenance Branch)* (2002), 59 OR (3d) 481 (CA), at paras. 71-72, *lv. to app. ref’d* [2002] SCCA No. 297, where the Ontario Court of Appeal allowed the claimants to advance three comparator groups, none of which adhered to the traditional requirements of a “similarly situated” group, on the basis of the unique circumstances of the case.

66. The Attorney General is mistaken to assert that the evil that the Act seeks to address is “discrimination by a service provider among members of that class on prohibited grounds”.⁷⁸ The evil that the Act expressly seeks to address is not discrimination “among members of a class” but discrimination in relation to “any individual”.

b) There Are Not Different Tests for Intentional and Unintentional Discrimination

67. In her reasons, Mactavish J. reviewed a number of examples of discrimination, demonstrating that adoption to the Tribunal’s interpretation would bar legitimate human rights complainants from recourse under the Act. For example:

Take the employer who sets out to hire only foreign workers in the belief that the company could pay such workers 50 percent of the going rate. On the Tribunal’s analysis, the employer would not have committed a discriminatory practice if the company did not employ any Canadian workers to whom the foreign workers could be compared.⁷⁹

68. The Attorney General attempts to dismiss these examples by arguing that they are examples of intentional discrimination, and that there is nothing in the Tribunal’s approach that precludes allegations of intentional discrimination under the Act.⁸⁰ However, as has been made clear by the jurisprudence, intention to discriminate is not a necessary element to proving discrimination under the Act – it is the impact of the law or policy that must be considered.⁸¹ In *Canada (Human Rights Commission) v. Toronto-Dominion Bank* this Court made it clear that it makes no difference whether discrimination is intentional:

In summary, direct discrimination arises when an employer adopts a practice or rule which on its face discriminates on a prohibited ground. Indirect discrimination is characterized by a neutral rule or policy of general application which has a discriminatory effect on only a sub-group. [...] Direct discrimination requires a motive whereas indirect discrimination is accidental. [...] But the law is clear that it makes no difference whether discrimination is intentional or not. It is the effect of the policy which is of critical significance.⁸² [Emphasis added]

⁷⁸ Memorandum of Fact and Law of the Appellant, the Attorney General of Canada, at para. 30.

⁷⁹ Federal Court Reasons, at para. 261 [Appeal Book, Vol. 1, Tab 2, p. 73].

⁸⁰ Memorandum of Fact and Law of the Appellant, the Attorney General of Canada, at paras.53 and 62.

⁸¹ See for example, *Simpsons-Sears Ltd.*, *supra* note 71, at para. 13, *Brown v. Royal Canadian Mounted Police*, 2004 CHRT 5, at para. 54 and *Eldridge v. British Columbia (Attorney General)*, [1997] 3 S.C.R. 624, at para. 62.

⁸² *Canada (Human Rights Commission) v. Toronto-Dominion Bank (C.A.)*, [1998] 4 F.C.205 (C.A.), at para.137.

69. There therefore cannot be two separate tests for determining the existence of discrimination under s. 5(b) of the Act, one for intentional discrimination and one for unintentional discrimination. The single provision calls for a single test applicable to any allegation of discrimination. Yet if one applied the Tribunal's approach as the test, the foreign workers posited by Mactavish J. above would not be considered victims of discrimination and would not be entitled to any human rights protections afforded under the Act. Mactavish J. properly concluded that this outcome is unreasonable and could not have been the intention of Parliament.⁸³ Rather, the appropriate single test is whether the service provider gave lesser service to the individual (than they would otherwise have got) because of a prohibited ground of discrimination. How this may be proved in any particular case – by evidence of intention, by use of a mirror comparator group, or by other evidence – does not alter the meaning of the provision.

c) Courts and the Tribunal Have Concluded that a Comparator Group is Not Required

70. This is the conclusion that has been reached by this court, as well as the Tribunal itself and other provincial Courts.⁸⁴ In *Morris*, relied on by Mactavish J., this Court addressed a claim in respect of employment under s. 7(b) of the Act (which the Tribunal recognized ought to be interpreted coherently with s. 5(b)). The Attorney General argued that discrimination under s. 7(b) could normally only be established by adducing comparative evidence in the form of information about successful candidates (although the Attorney General there conceded that an exception would be made where no comparator was available). The Court of Appeal disagreed, noting that the *Shakes* analysis was simply an application of the general requirement to show a *prima facie* case of discrimination.⁸⁵ Mactavish J. noted and applied the *Morris* decision in her reasons, describing it as follows:

In upholding the Tribunal's decision, the Federal Court of Appeal specifically rejected the appropriateness of a fixed formula or test for the establishment of a *prima facie* case, noting that a flexible test is better suited to advancing the broad purpose underlying the Act. The Federal Court of Appeal noted that “[d]iscrimination takes new and subtle forms” and that it was “now recognized that comparative evidence of discrimination comes in many more forms than the particular one identified in *Shakes*”: *Morris*, above at para. 28.⁸⁶

⁸³ Federal Court Reasons, at para. 255 [Appeal Book, Vol. 1, Tab 2, p. 72].

⁸⁴ See for example *Kelly v. British Columbia (Ministry of Public Safety & Solicitor General)*, 2011 BCHRT 183.

⁸⁵ *Morris*, *supra* note 59, at para. 27.

⁸⁶ Federal Court Reasons, at para. 302 [Appeal Book, Vol. 1, Tab 2, pp. 82-83].

71. In *Lavoie v. Canada (Treasury Board of Canada)* the Tribunal squarely addressed the need for a comparator group under the Act and determined that it is not a pre-requisite to a finding of *prima facie* discrimination. Ms. Lavoie alleged that the Treasury Board's maternity policy discriminated on the basis of sex, as it refused to count the period of maternity leave in determining eligibility for an employment opportunity. The Tribunal agreed. On the issue of the comparator group, the Tribunal held as follows:

I must point out that it is not always necessary to determine a comparator group. In this case, it is my opinion that for maternity leave, determining a comparator group appears pointless since only women take maternity leave. On this point, I agree with the comments made by the Court of Appeal of Québec in *Gobeil c. CECQ*, where the Court held that a school board's refusal to hire, on a part-time basis, a teacher who was not available based on her pregnancy was discriminatory: [Emphasis added; citation omitted]

[TRANSLATION]

Pregnant women, but for their pregnancy, would be available. *For this reason, I cannot adhere to a comparative analysis likening them to unavailable persons in order to determine whether or not there is a distinction. A rule that has the effect of depriving pregnant women the right to be hired when they otherwise would have had access thereto necessarily breaches the right to full equality.* The distinction created by the availability clause arises from the fact that childbirth and maternity leave hinder women from getting the contract to which they would be entitled.⁸⁷ [Emphasis added by the Tribunal]

72. The reasoning in *Lavoie* is directly applicable to the Caring Society's Complaint. First Nations children, but for their on-reserve status and the constitutional status of First Nations under s. 91(24) of the *Constitution Act, 1867*, would receive child welfare services from provincial and territorial governments. In other words, the determining factor of whether a child or family receives services funded by the federal government is whether it operates on reserve. There is no direct comparison to be made, as "on-reserve status" cannot be shared or compared with other Canadians.

73. A similar result was reached in *Lane v. ADGA Group Consultants Inc.*,⁸⁸ where the Ontario Divisional Court determined that a comparator group is not required in cases of disability in the employee termination context. In *Lane*, the complainant was diagnosed with

⁸⁷ *Lavoie v. Canada (Treasury Board of Canada)*, 2008 CHRT 27, at para. 143.

⁸⁸ *Lane v. ADGA Group Consultants Inc.* (2008), 295 D.L.R. (4th) 425, at para. 77.

Bipolar 1 Disorder and was ultimately terminated as a result of his manic behaviour. He filed a complaint alleging that ADGA discriminated against him on the basis of disability. The Tribunal found that ADGA had failed to accommodate Mr. Lane and awarded him damages and ordered ADGA to, *inter alia*, establish an anti-discrimination policy. ADGA sought review of the decision and in particular argued that the Tribunal failed to establish a correct comparator group.

74. The Divisional Court concluded that, in cases involving disability in the employee termination context, it is not necessary or appropriate to establish a comparator group, as a person with a disability who seeks accommodation does not seek to be treated exactly the same as others are treated and therefore no comparison is necessary.⁸⁹ The Court thus recognized that the particular facts of a case will require a flexible approach to assessing discrimination.

75. The principle underlying the *Lane* decision is equally applicable to cases involving First Nations peoples living on reserve. It is axiomatic that First Nations peoples face unique social, political, economic and historical realities. In addition to these experiences, First Nations peoples' position relative to the federal government is not only particular and individualized, it is a *sui generis* relationship that mandates unique legal treatment. The principle governing this unique relationship is the federal Crown's obligation to act in a fiduciary capacity towards Aboriginal peoples, including those living on-reserve.⁹⁰ The "recognition and affirmation" of Aboriginal rights in section 35(1) of the *Constitution Act, 1982* incorporates this fiduciary duty, giving it constitutional force as a "restraint on the exercise of sovereign power".⁹¹

76. The Attorney General misplaces its reliance on *Warren Gibson Ltd. v. Canada (Human Rights Commission)*. The issue in *Gibson* was not, as it is in this case, whether a comparator group is required but was rather whether the correct comparator group had been selected.⁹² The court in *Gibson* did not foreclose the possibility that a valid claim of discrimination could proceed absent a comparator group but instead held that if choosing a comparator group, there must be sufficient similarity between the comparator and the complainant.⁹³ In any event,

⁸⁹ *Lane v. ADGA*, *supra* note 88, at paras. 88 and 94.

⁹⁰ *Guerin v. Canada*, [1984] 2 S.C.R. 335, at paras. 104, 108.

⁹¹ *R. v. Sparrow*, [1990] 1 S.C.R. 1075, at para. 62.

⁹² *Warren Gibson Ltd. v. Canada (Human Rights Commission)*, 2004 FC 1439.

⁹³ *Gibson*, *supra* note 92, at para. 21.

Gibson was decided before the Supreme Court of Canada conclusively held in *Withler* that a comparator group was not necessary to establish a claim for discrimination.

d) The Supreme Court of Canada's Recent Decision in *Withler*

77. The Supreme Court of Canada recently considered the value of a comparator group analysis in *Withler*, a case dealing with an equality claim under s. 15(1) of the *Charter*. While cases brought pursuant to section 15(1) of the *Charter* had previously included a mirror comparator group requirement, the Court noted that applying a strict comparator approach is detrimental to the goal of substantive equality and to the discrimination analysis:

It is unnecessary to pinpoint a particular group that precisely corresponds to the claimant group except for the personal characteristic or characteristics alleged to ground the discrimination. Provided that the claimant establishes a distinction based on one or more enumerated or analogous grounds, the claim should proceed to the second step of the analysis. This provides the flexibility required to accommodate claims based on intersecting grounds of discrimination. It also avoids the problem of eliminating claims at the outset because no precisely corresponding group can be posited.⁹⁴ [Emphasis added]

78. The Court in *Withler* recognized that equality is a comparative concept, necessarily invoking some element of comparison, an approach similar to that of the Federal Court in *Walden* and *Wignal*.⁹⁵ However, to say that some level of *comparison* may be “inevitable” is not to say that a *rigid comparator group* analysis is inevitable. The Supreme Court warned that comparison must be approached with caution, and concluded that a comparator group is not a necessary component of the analysis.⁹⁶ Thus the Attorney General is incorrect to suggest that jurisprudence does not distinguish between “comparison” and “comparator group”.⁹⁷ To the contrary, the Supreme Court expressly found that while there is “comparison” inherent in s. 15, this is not the same thing as a “comparator group”.

⁹⁴ *Withler*, *supra* note 66, at para. 63.

⁹⁵ *Canada (Attorney General) v. Walden*, 2010 FC 490, at para. 78; *Canada (Human Rights Commission) v. M.N.R.*, 2003 FC 1280 (“*Wignal*”), at para. 22.

⁹⁶ *Withler*, *supra* note 66, at paras. 41-43.

⁹⁷ Memorandum of Fact and Law of the Appellant, the Attorney General of Canada, at para. 46.

79. The equality analysis under s. 15 of the *Charter* and the discrimination analysis under s. 5 of the Act are not identical. However, s. 15 is aimed at the same thing that s. 5 is aimed at, namely “preventing discrimination on grounds such as race, age and sex.”⁹⁸

80. The *Charter* equality standard is in fact a more stringent one than that in human rights legislation, and the comparator group analysis was originally a product of s. 15 *Charter* jurisprudence.⁹⁹ Even before *Withler* clearly removed the need for a mirror comparator group in cases under s. 15 of the *Charter*, the Federal Court confirmed that the more stringent *Charter* standard is not applicable to human rights legislation.¹⁰⁰ The Supreme Court’s reasoning in *Withler* is thus all the more applicable: if comparator groups are not required under the *Charter*, to require them in the analysis under the Act would subject claimants under the Act to a higher standard than those asserting constitutional claims. Further, to the extent that s. 5 may be considered to be open to more than one interpretation, it must be interpreted in a manner consistent with the *Charter*.¹⁰¹

3) *A Formal Comparator Group Requirement Excludes First Nations Peoples from Human Rights Protections*

81. An interpretation of the Act that invariably requires a perfect mirror comparator group, and thereby excludes First Nations from the ability to make discrimination claims in respect of government services that other Canadians are able to make, is not consistent with the *Charter* or *Charter* values. Mactavish J. recognized this potential:

Finally, an interpretation of section 5 of the Act that invariably requires a mirror comparator group would exclude First Nations Canadians from the protection of the Act in relation to services provided by the Government of Canada only to Aboriginal people. Unlike other Canadians, First Nations people would be unable to make a complaint under section 5 of the *Canadian Human Rights Act* if they believed that they were the victim of a discriminatory practice in the provision of those services. Such an interpretation of what is intended to be a remedial statute is not consistent with the purpose of the Act, the *Charter* values, or with Canada’s obligations under international law. As such, it is unreasonable.¹⁰²

⁹⁸ *Alberta (Aboriginal Affairs and Northern Development) v. Cunningham*, 2011 SCC 37, at para. 39.

⁹⁹ *British Columbia v. Moore*, *supra* note 75, at para. 112, *per* Rowles J.A., dissenting.

¹⁰⁰ *Wignall*, *supra* note 95, at paras. 8 and 12.

¹⁰¹ *New Brunswick v. Potash Corp.*, *supra* note 68, at paras. 67, 69; *Vilven*, *supra* note 65, at para. 80.

¹⁰² Federal Court Reasons, at para. 363 [Appeal Book, Vol. 1, Tab 2, p. 98].

82. Failing to afford federal human rights protections to on-reserve Aboriginal peoples would further marginalize this community that has already been affected “by the legacy of stereotyping and prejudice against Aboriginal peoples”, and who already face serious social disadvantages.¹⁰³ Conversely, an interpretation of the Act that accepts the *sui generis* status of First Nations and recognizes that different approaches to assessing claims of discrimination are necessary depending on the social context of the claim is consistent with and promotes *Charter* values.

83. The Attorney General espouses a floodgates argument, rhetorically asking what would happen if an individual from a First Nations community sought to compare their experience with that of another First Nation for the purposes of the discrimination analysis.¹⁰⁴ This question ignores the need for a prohibited ground under the Act and makes it clear that all the Attorney General is doing is attempting to fortify the position of the federal government against potential legitimate human rights complaints.

4) A Cross-Jurisdictional Comparison Is Appropriate

84. As evidence in support of its claim of discrimination, the Caring Society and the AFN point to the situation of those living off-reserve whose child welfare services are funded by the provincial or territorial governments. The Caring Society submits that such a cross-jurisdictional comparison is an appropriate part of the assessment of discrimination, as it helps answer the question: “How would these children and families be treated if they were not First Nations living on reserve?”

85. Selecting a comparator group requires a flexible approach, rooted in the recognition that an overly formalistic discrimination analysis should not act as an obstacle to claimants. As established in *Law* itself, the natural starting point is to consider the claimant’s view regarding the comparator group that would best bring into focus the differential treatment at the heart of the discrimination complaint.¹⁰⁵

86. In instances where no comparator group is adequate to capture the differential treatment complained of, courts have facilitated a flexible and liberal approach, applying claimants’

¹⁰³ *Ardoch Algonquin First Nation and Allies v. Ontario*, 2000 SCC 37, at para. 69; *Vriend v. Alberta*, [1998] 1 S.C.R. 493, at para. 99. See also *Arzem v. Ontario (Ministry of Community & Social Services)*, 2006 HRTO 17.

¹⁰⁴ Memorandum or Fact and Law of the Appellant, the Attorney General of Canada, at para. 63.

¹⁰⁵ *Law v. Canada (Minister of Employment and Immigration)*, [1999] 1 S.C.R. 497, at para. 58.

unconventional choice of comparator groups. For example, in *Falkiner*, the claimants proposed three separate comparator groups, all of which failed to adhere to the traditional requirements of a “similarly situated” comparator group. The Ontario Court of Appeal reasoned that the claimants’ approach was appropriate and allowed their choice of comparator to proceed, with some refinement from the court:

Because the respondents’ equality claim alleges differential treatment on the basis of an interlocking set of personal characteristics, I think their general approach is appropriate. Multiple comparator groups are needed to bring into focus the multiple forms of differential treatment alleged.¹⁰⁶ [Emphasis added]

87. The Attorney General’s argument that federalism bars the cross-jurisdictional comparator group put forward by the complainants (and chosen based on the federal government’s own use of this comparison) is ill founded. The unique and constitutional status of First Nations peoples is immutable, and it is this unique aspect of federalism that must be taken into account in assessing a discrimination claim brought by First Nations.

88. For example, in *Corbiere v. Canada*, First Nations members of a band who lived off the band’s reserve challenged the provision under the *Indian Act* that made residence on the reserve a requirement for voting in band elections. The Supreme Court held that “Aboriginality-residence” was an analogous ground, and that the voting requirement was a breach of s. 15 of the *Charter*. In underlining the special status of First Nations peoples, the Court was clear that its decision was confined to “off-reserve band member status” and did not apply to other Canadians:

The ordinary ‘residence’ decisions faced by the average Canadian should not be confused with the profound decisions Aboriginal band members make to live on or off their reserves, assuming choice is possible.¹⁰⁷

89. The use of evidence regarding the situation of those living off-reserve whose child welfare services are funded by the provincial or territorial governments does not in any way interfere with notions of federalism. The point of such evidence is to assist the Tribunal in assessing the case before it: whether there has been discrimination by the federal government against First Nations children and families. Neither the Complaint nor the use of such evidence

¹⁰⁶ *Falkiner v. Ontario (Ministry of Community and Social Services, Income Maintenance Branch)* (2002), 59 OR (3d) 481 (CA) at paras. 71-72, lv. to app. ref’d [2002] SCCA No. 297.

¹⁰⁷ *Corbiere v. Canada*, [1999] 2 S.C.R. 203, at para. 15.

attempts to “create a guarantee of identical legislation across Canada”. The Attorney General’s reliance on *Charter* cases that rejected discrimination claims on the basis that province of residence is not a prohibited ground and that different provinces can have different legislation¹⁰⁸ is thus misplaced as the cases are wholly irrelevant to the case at bar. If anything, federalism is offended by the interpretation of the Tribunal, which treats the division of powers as a “constitutional quagmire” and uses the constitutionally unique status of First Nations as grounds to deny them the ability to assert discrimination claims against government.

90. In this case, the federal government has selected its own comparator group, namely off-reserve children receiving child protection services from off-reserve child welfare agencies. The FNCFCS Program itself uses this basis for comparison.¹⁰⁹ The issue that should have been addressed by the Tribunal, as noted by Mactavish J., is the significance of the federal government’s own choice of comparing services off reserve.¹¹⁰

C. The Tribunal Erred in Dismissing the Entirety of the Complaint

91. Mactavish J. correctly determined that the Tribunal breached procedural fairness and erred in failing to provide reasons as to why the Complaint could not proceed under s. 5(a) of the Act. While a tribunal is not required to address each and every issue placed before it, this Court has recognized that every issue of central importance must be addressed by a tribunal’s reasons.¹¹¹ In this case, the issue of central importance was whether the Complaint could proceed under s. 5 of the Act without a comparator group, and not, as now suggested by the Attorney General, whether the Complaint could proceed under s. 5(b).

92. As noted by Mactavish J., both the Complaint and the Attorney General’s motion were based on s. 5 as a whole, as were the submissions of the parties, including those made by the Attorney General.¹¹² None of the parties could have anticipated that the Tribunal would – contrary to the submissions of all parties – determine that the Comparator Issue applied to s. 5(b) only and not s. 5(a). Thus, once the Tribunal determined that no mirror comparator group was required under s. 5(a), but was required pursuant to s. 5(b) and not satisfied by the Complaint, it

¹⁰⁸ Memorandum or Fact and Law of the Appellant, the Attorney General of Canada, at paras. 68-73.

¹⁰⁹ FNCFS National Program Manual, at s. 1.3.5 [Appeal Book, Vol. 4, Tab 5, p. 1369].

¹¹⁰ Federal Court Reasons, at paras. 379 and 381 [Appeal Book, Vol. 1, Tab 2, p. 102].

¹¹¹ *Ralph v. Canada*, 2010 FCA 256, at para. 19; *Turner v. Attorney General of Canada*, 2012 FCA 159, at para. 40.

¹¹² Transcript of June 2, 2010 hearing, at pp. 13, 94-97 [Appeal Book, Vol. 7, pp. 2399, 2480-2483].

was of central importance to determine whether the Complaint could proceed under s. 5(a) of the Act.

93. The Tribunal provided no indication in its reasons as to why the Complaint could not proceed under s. 5(a) of the Act. The Tribunal thereby failed to satisfy the purpose of providing reasons on an issue of central importance – to foster meaningful appellate review and assure the Complainants that their position has been heard.¹¹³ As noted by the Federal Court, a tribunal’s reasons “must at least leave the complainant with the impression that it considered his or her allegations before rejecting them”.¹¹⁴ There is nothing in the Tribunal’s reasons to suggest why the Complaint could not proceed under s. 5(a) or how such a determination was made. As such, as Mactavish J. concluded, it is impossible to determine whether the Tribunal’s decision on this point falls within a range of acceptable outcomes.¹¹⁵

94. In addition to failing to provide adequate reasons, the Tribunal’s ultimate conclusion on this issue – that the entire Complaint under ss. 5(a) and (b) should be dismissed notwithstanding that the reasons given for dismissal applied only to s. 5(b) – is inherently inconsistent and illogical. It is therefore unreasonable on its face, regardless of the absence of reasons: no possible reasons could justify dismissing the entire Complaint on grounds that apply only to s. 5(b). The Attorney General’s protests that the Complaint is only one of adverse differentiation and not of denial¹¹⁶ are belied by the Complaint itself, which refers to both denied and lesser services, the evidence of denied services filed by the complainants on the motion, and by the Attorney General’s own reference to and reliance on both subsections in support of the dismissal motion.¹¹⁷

D. The Tribunal Erred in Considering Extraneous Material

95. On the dismissal motion, the parties filed affidavits, cross-examination transcripts, written submissions and additional written submissions regarding issues that arose subsequent to

¹¹³ *Vancouver International Airport Authority v. Public Service Alliance of Canada*, 2010 FCA 158, at para.14.

¹¹⁴ *Conroy v. Professional Institute of the Public Service of Canada*, 2012 FC 887, at para. 41.

¹¹⁵ *Conroy*, *supra* note 114 at para. 41.

¹¹⁶ Memorandum or Fact and Law of the Appellant, the Attorney General of Canada, at para. 117.

¹¹⁷ Federal Court Reasons, at paras. 209-218 [Appeal Book, Vol. 1, Tab 2, pp. 60-63].

the hearing of the motion.¹¹⁸ However, before and after the hearing of the motion, the parties also exchanged voluminous materials with respect to the merits of the Complaint. These materials include the parties' Will-Say Statements, Statements of Particulars, witness lists, documents lists, further disclosure and expert reports.¹¹⁹

96. The materials filed with respect to the merits of the Complaint were not properly before the Tribunal with respect to the dismissal motion, and the parties did not have the opportunity to make representations or arguments with respect to these materials. Nonetheless, as noted by Mactavish J., and contrary to the duty of fairness, the Tribunal reviewed the full record in reaching its decision on the dismissal motion, as set out in Appendix "A" to the decision.¹²⁰

97. The principles of natural justice and procedural fairness require that a party be given the opportunity to respond to evidence put before a tribunal where such evidence is contrary to its own position. The Ontario Court of Appeal has made this point clear:

The right to procedural fairness means little unless the person affected is informed of contrary information and arguments and given an opportunity to address them before the decision is made.¹²¹

98. In *Pfizer Co. v. Deputy Minister of National Revenue (Customs & Excise)*, the Tariff Board relied on two reports regarding the classification of the impugned salt product that were not presented at the hearing. In allowing the appeal of the classification, the Supreme Court of Canada concluded as follows:

Counsel for the appellant has pointed out that the two publications there mentioned had not been put in evidence nor referred to at the hearing, and took exception to this procedure. In my view, the objection is well founded. While the Board is authorized by statute to obtain information otherwise than under the sanction of an oath or affirmation (...), this does not authorize it to depart from the rules of natural justice. It is clearly contrary to those rules to rule on information obtained after the hearing was completed without disclosing it to the parties and giving them an opportunity to meet it.¹²² [Emphasis added]

¹¹⁸ Matte Affidavit, at Exhibits 32, 40, 41, 42, 48-54, 59-65, 66-78; and paras. 40, 52-56, 58-59, 69-75, 84-90, 92-102 [Appeal Book, Vols. 2-5 and Vol. 1, Tab 5, pp. 212, 214-221].

¹¹⁹ Matte Affidavit, at Exhibits 4, 5, 6, 7, 8, 13, 14, 15, 16, 17, 18-22, 26, 27, 29, 34, 38 [Appeal Book, Vols. 1 and 2].

¹²⁰ Decision, at paras. 6, 49, 107, Appendix "A" [Appeal Book, Vol. 1, Tab 4, p. 143, 160-161, 184, 199-206].

¹²¹ *Khan v. University of Ottawa*, (1997), 34 OR (3d) 535 (Ont. C.A.), at para. 33; see also *Kane v. University of British Columbia*, [1980] 1 S.C.R. 1105, at paras. 32-33.

¹²² *Pfizer Co. v. Deputy Minister of National Revenue (Customs & Excise)*, [1977] 1 S.C.R. 456, at para. 18.

99. The Tribunal breached the principles of natural justice and the rules of procedural fairness by failing to confine its reasoning to the motion material filed and relying on the KPMG Report filed after the Dismissal Motion. While the Attorney General argues that the complainants were not reasonably prejudiced, Mactavish J. applied the proper test articulated by the Supreme Court and determined that prejudice may have resulted.¹²³

E. Conclusion

100. The fundamental purpose of human rights legislation, including the Act in particular, is to protect and promote substantive equality by prohibiting discrimination and providing a means to remedy it. Adopting a narrow and formalistic analytical approach to discrimination that by definition excludes the claims of First Nations peoples and immunizes the federal government from human rights scrutiny of their actions vis-à-vis First Nations wholly subverts this purpose. No amount of deference to the Tribunal on administrative law grounds can justify maintaining a decision and approach that runs contrary to the purpose and language of the Act and the human rights jurisprudence of this Court and the Supreme Court of Canada. Mactavish J. correctly concluded that Tribunal's decision was unreasonable and unfair, and ought to be set aside. It is respectfully submitted that this Honourable Court should uphold that result and dismiss this appeal.

IV. ORDER SOUGHT

101. The Applicant therefore respectfully requests that this appeal be dismissed with costs.

ALL OF WHICH IS RESPECTFULLY SUBMITTED



NICHOLAS MCHAFFIE
SARAH CLARKE
Of Counsel for the Respondent

¹²³ Federal Court Reasons, at paras. 195 and 199 [Appeal Book, Vol. 1, Tab 2, pp. 56 and 57].

**SCHEDULE “A”
LIST OF AUTHORITIES**

1. *Alberta (Aboriginal Affairs and Northern Development) v. Cunningham*, 2011 SCC 37
2. *Ardoch Algonquin First Nation and Allies v. Ontario*, 2000 SCC 37
3. *Arzem v. Ontario (Ministry of Community & Social Services)*, 2006 HRTO 17
4. *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817
5. *Battlefords and District Co-operative Ltd. v. Gibbs*, [1996] 3 S.C.R. 566
6. *Bell ExpressVu Limited Partnership v. Rex*, 2002 SCC 42
7. *British Columbia (Ministry of Education) v. Moore*, 2010 BCCA 478
8. *Brown v. Royal Canadian Mounted Police*, 2004 CHRT 5
9. *Buffet v. Canada (Canadian Armed Forces)*, 2005 CHRT 16
10. *Canada (Attorney General) v. Davis*, 2010 FCA 134
11. *Canada (Attorney General) v. Walden*, 2010 FC 490
12. *Canada (Canadian Human Rights Commission) v. Canada (Attorney General)*, 2011 SCC 53, [2011] 3 S.C.R. 471
13. *Canada (Human Rights Commission) v. Canada Post Corp.*, 2004 FC 81
14. *Canada (Human Rights Commission) v. M.N.R.*, 2003 FC 1280
15. *Canada (Human Rights Commission) v. Toronto-Dominion Bank (C.A.)*, [1998] 4 F.C.205 (C.A.)
16. *Canadian National Railway v. Canada (Canadian Human Rights Commission)*, [1987] 1 S.C.R. 1114
17. *Canadian Union of Public Employees v. Ontario (Minister of Labour)*, 2003 SCC 29
18. *Centre for Research-Action on Race Relations v. www.bcwhitepride.com*, 2006 CHRT 29
19. *Conroy v. Professional Institute of the Public Service of Canada*, 2012 FC 887
20. *Corbiere v. Canada (Minister of Indian and Northern Affairs)*, [1999] 2 S.C.R. 203
21. *Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190
22. *Eldridge v. British Columbia (Attorney General)*, [1997] 3 S.C.R. 624

23. *Falkiner v. Ontario (Ministry of Community and Social Services, Income Maintenance Branch)* (2002), 59 OR (3d) 481 (CA)
24. *Guerin v. Canada*, [1984] 2 S.C.R. 335
25. *Harkin c. Canada (Procureur général)*, 2009 CHRT 6
26. *Kane v. University of British Columbia*, [1980] 1 S.C.R. 1105
27. *Kelly v. British Columbia (Ministry of Public Safety & Solicitor General)*, 2011 BCHRT 183
28. *Khan v. University of Ottawa*, (1997), 34 OR (3d) 535 (Ont. C.A.)
29. *Khosa v. Canada (Minister of Citizenship & Immigration)*, 2009 SCC 12
30. *Lane v. ADGA Group Consultants Inc.* (2008), 295 D.L.R. (4th) 425 (Ont. C.A.)
31. *Lavoie v. Canada (Treasury Board of Canada)*, 2008 CHRT 27
32. *Law v. Canada (Minister of Employment and Immigration)*, [1999] 1 S.C.R. 497
33. *Lincoln v. Bay Ferries Ltd.*, 2004 FCA 204
34. *Malec v. Conseil des Montagnais de Natashquan*, 2009 CHRT 9
35. *Morris v. Canada (Canadian Armed Forces)*, 2005 FCA 154
36. *New Brunswick (Human Rights Commission) v. Potash Corp. of Saskatchewan Inc.*, 2008 SCC 45
37. *N.L.N.U. v. Newfoundland & Labrador (Treasury Board)*, 2011 SCC 62
38. *O'Connor v. Canadian National Railway*, 2006 CHRT 5
39. *Ontario (Director of Disability Support Program) v. Tranchemontagne* (2009), 95 OR (3d) 327 (Div. Ct.)
40. *Ontario (Human Rights Commission) v. Simpsons-Sears Ltd.*, [1985] 2 S.C.R. 536
41. *Oster v. I.L.W.U. Local 400*, 2001 FCT 1115
42. *Pfizer Co. v. Deputy Minister of National Revenue (Customs & Excise)*, [1977] 1 S.C.R. 456
43. *R. v. Kapp*, 2008 SCC 41,
44. *R. v. Oakes*, [1986] 1 S.C.R. 103
45. *R. v. Sparrow*, [1990] 1 S.C.R. 1075

46. *Ralph v. Canada*, 2010 FCA 256
47. *Roberts v. Canada*, [2002] 4 S.C.R. 425
48. *Roch v. Canadian Human Rights Commission*, 2003 CHRT 33
49. *Royal Canadian Mounted Police v. Tahmourpour*, 2010 FCA 192
50. *Singh (Re)*, [1989] 1 F.C. 430 (C.A.)
51. *Sketchley v. Canada (Attorney General)*, 2005 FCA 404
52. *Smith v. Alliance Pipeline Ltd.*, 2011 SCC 7, [2011] 1 S.C.R. 160
53. *Turner v. Attorney General of Canada*, 2012 FCA 159
54. *University of British Columbia v. Berg*, [1993] 2 S.C.R. 353
55. *Vancouver International Airport Authority v. Public Service Alliance of Canada*, 2010 FCA 158
56. *Vilven v. Air Canada*, 2009 FC 367
57. *Vriend v. Alberta*, [1998] 1 S.C.R. 493
58. *Walden v. Canada (Social Development)*, 2010 FC 1135
59. *Warren Gibson Ltd. v. Canada (Human Rights Commission)*, 2004 FC 1439.
60. *Withler v. Canada (Attorney General)*, 2011 SCC 12, [2011] 1 S.C.R. 396
61. *Zurich Insurance Co. v. Ontario (Human Rights Commission)*, [1992] 2 S.C.R. 321
62. Sullivan, R., *Sullivan on the Construction of Statutes*, 5th ed. (Markham: LexisNexis, 2008)

SCHEDULE "B"
RELEVANT STATUTES

- A. *Canadian Human Rights Act*, R.S.C. 1985, c. H-6, as amended.



CANADA

CONSOLIDATION

CODIFICATION

Canadian Human Rights Act

Loi canadienne sur les droits de la personne

R.S.C., 1985, c. H-6

L.R.C., 1985, ch. H-6

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R.S.C., 1985, c. H-6

L.R.C., 1985, ch. H-6

An Act to extend the laws in Canada that proscribe discrimination

Loi visant à compléter la législation canadienne en matière de discrimination

SHORT TITLE

TITRE ABRÉGÉ

Short title

1. This Act may be cited as the *Canadian Human Rights Act*.
1976-77, c. 33, s. 1.

1. *Loi canadienne sur les droits de la personne*.
1976-77, ch. 33, art. 1.

Titre abrégé

PURPOSE OF ACT

OBJET

Purpose

2. The purpose of this Act is to extend the laws in Canada to give effect, within the purview of matters coming within the legislative authority of Parliament, to the principle that all individuals should have an opportunity equal with other individuals to make for themselves the lives that they are able and wish to have and to have their needs accommodated, consistent with their duties and obligations as members of society, without being hindered in or prevented from doing so by discriminatory practices based on race, national or ethnic origin, colour, religion, age, sex, sexual orientation, marital status, family status, disability or conviction for an offence for which a pardon has been granted or in respect of which a record suspension has been ordered.
R.S., 1985, c. H-6, s. 2; 1996, c. 14, s. 1; 1998, c. 9, s. 9; 2012, c. 1, s. 137(E).

2. La présente loi a pour objet de compléter la législation canadienne en donnant effet, dans le champ de compétence du Parlement du Canada, au principe suivant : le droit de tous les individus, dans la mesure compatible avec leurs devoirs et obligations au sein de la société, à l'égalité des chances d'épanouissement et à la prise de mesures visant à la satisfaction de leurs besoins, indépendamment des considérations fondées sur la race, l'origine nationale ou ethnique, la couleur, la religion, l'âge, le sexe, l'orientation sexuelle, l'état matrimonial, la situation de famille, la déficience ou l'état de personne graciée.
L.R. (1985), ch. H-6, art. 2; 1996, ch. 14, art. 1; 1998, ch. 9, art. 9; 2012, ch. 1, art. 137(A).

Objet

PART I

PARTIE I

PROSCRIBED DISCRIMINATION

MOTIFS DE DISTINCTION ILLICITE

GENERAL

DISPOSITIONS GÉNÉRALES

Prohibited grounds of discrimination

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

3. (1) Pour l'application de la présente loi, les motifs de distinction illicite sont ceux qui sont fondés sur la race, l'origine nationale ou ethnique, la couleur, la religion, l'âge, le sexe, l'orientation sexuelle, l'état matrimonial, la situation de famille, l'état de personne graciée ou la déficience.

Motifs de distinction illicite

Idem	<p>(2) Where the ground of discrimination is pregnancy or child-birth, the discrimination shall be deemed to be on the ground of sex.</p> <p>R.S., 1985, c. H-6, s. 3; 1996, c. 14, s. 2; 2012, c. 1, s. 138(E).</p>	<p>(2) Une distinction fondée sur la grossesse ou l'accouchement est réputée être fondée sur le sexe.</p> <p>L.R. (1985), ch. H-6, art. 3; 1996, ch. 14, art. 2; 2012, ch. 1, art. 138(A).</p>	Idem
Multiple grounds of discrimination	<p>3.1 For greater certainty, a discriminatory practice includes a practice based on one or more prohibited grounds of discrimination or on the effect of a combination of prohibited grounds.</p> <p>1998, c. 9, s. 11.</p>	<p>3.1 Il est entendu que les actes discriminatoires comprennent les actes fondés sur un ou plusieurs motifs de distinction illicite ou l'effet combiné de plusieurs motifs.</p> <p>1998, ch. 9, art. 11.</p>	Multiplicité des motifs
Orders regarding discriminatory practices	<p>4. A discriminatory practice, as described in sections 5 to 14.1, may be the subject of a complaint under Part III and anyone found to be engaging or to have engaged in a discriminatory practice may be made subject to an order as provided in sections 53 and 54.</p> <p>R.S., 1985, c. H-6, s. 4; 1998, c. 9, s. 11.</p>	<p>4. Les actes discriminatoires prévus aux articles 5 à 14.1 peuvent faire l'objet d'une plainte en vertu de la partie III et toute personne reconnue coupable de ces actes peut faire l'objet des ordonnances prévues aux articles 53 et 54.</p> <p>L.R. (1985), ch. H-6, art. 4; 1998, ch. 9, art. 11.</p>	Ordonnances relatives aux actes discriminatoires
DISCRIMINATORY PRACTICES		ACTES DISCRIMINATOIRES	
Denial of good, service, facility or accommodation	<p>5. It is a discriminatory practice in the provision of goods, services, facilities or accommodation customarily available to the general public</p> <p>(a) to deny, or to deny access to, any such good, service, facility or accommodation to any individual, or</p> <p>(b) to differentiate adversely in relation to any individual,</p> <p>on a prohibited ground of discrimination.</p> <p>1976-77, c. 33, s. 5.</p>	<p>5. Constitue un acte discriminatoire, s'il est fondé sur un motif de distinction illicite, le fait, pour le fournisseur de biens, de services, d'installations ou de moyens d'hébergement destinés au public :</p> <p>a) d'en priver un individu;</p> <p>b) de le défavoriser à l'occasion de leur fourniture.</p> <p>1976-77, ch. 33, art. 5.</p>	Refus de biens, de services, d'installations ou d'hébergement
Denial of commercial premises or residential accommodation	<p>6. It is a discriminatory practice in the provision of commercial premises or residential accommodation</p> <p>(a) to deny occupancy of such premises or accommodation to any individual, or</p> <p>(b) to differentiate adversely in relation to any individual,</p> <p>on a prohibited ground of discrimination.</p> <p>1976-77, c. 33, s. 6.</p>	<p>6. Constitue un acte discriminatoire, s'il est fondé sur un motif de distinction illicite, le fait, pour le fournisseur de locaux commerciaux ou de logements :</p> <p>a) de priver un individu de leur occupation;</p> <p>b) de le défavoriser à l'occasion de leur fourniture.</p> <p>1976-77, ch. 33, art. 6.</p>	Refus de locaux commerciaux ou de logements
Employment	<p>7. It is a discriminatory practice, directly or indirectly,</p> <p>(a) to refuse to employ or continue to employ any individual, or</p> <p>(b) in the course of employment, to differentiate adversely in relation to an employee,</p>	<p>7. Constitue un acte discriminatoire, s'il est fondé sur un motif de distinction illicite, le fait, par des moyens directs ou indirects :</p> <p>a) de refuser d'employer ou de continuer d'employer un individu;</p> <p>b) de le défavoriser en cours d'emploi.</p> <p>1976-77, ch. 33, art. 7; 1980-81-82-83, ch. 143, art. 3(F).</p>	Emploi

on a prohibited ground of discrimination.

1976-77, c. 33, s. 7; 1980-81-82-83, c. 143, s. 3(F).

Employment applications, advertisements

8. It is a discriminatory practice

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

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

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

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

Employee organizations

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

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

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

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

Exception

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

(3) [Repealed, 1998, c. 9, s. 12]

R.S., 1985, c. H-6, s. 9; 1998, c. 9, s. 12.

Discriminatory policy or practice

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

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

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

8. Constitue un acte discriminatoire, quand y sont exprimées ou suggérées des restrictions, conditions ou préférences fondées sur un motif de distinction illicite :

a) l'utilisation ou la diffusion d'un formulaire de demande d'emploi;

b) la publication d'une annonce ou la tenue d'une enquête, oralement ou par écrit, au sujet d'un emploi présent ou éventuel.

1976-77, ch. 33, art. 8.

Demandes d'emploi, publicité

9. (1) Constitue un acte discriminatoire, s'il est fondé sur un motif de distinction illicite, le fait, pour une organisation syndicale :

a) d'empêcher l'adhésion pleine et entière d'un individu;

b) d'expulser ou de suspendre un adhérent;

c) d'établir, à l'endroit d'un adhérent ou d'un individu à l'égard de qui elle a des obligations aux termes d'une convention collective, que celui-ci fasse ou non partie de l'organisation, des restrictions, des différences ou des catégories ou de prendre toutes autres mesures susceptibles soit de le priver de ses chances d'emploi ou d'avancement, soit de limiter ses chances d'emploi ou d'avancement, ou, d'une façon générale, de nuire à sa situation.

Organisations syndicales

(2) Ne constitue pas un acte discriminatoire au sens du paragraphe (1) le fait pour une organisation syndicale d'empêcher une adhésion ou d'expulser ou de suspendre un adhérent en appliquant la règle de l'âge normal de la retraite en vigueur pour le genre de poste occupé par l'individu concerné.

(3) [Abrogé, 1998, ch. 9, art. 12]

L.R. (1985), ch. H-6, art. 9; 1998, ch. 9, art. 12.

Exception

10. Constitue un acte discriminatoire, s'il est fondé sur un motif de distinction illicite et s'il est susceptible d'annihiler les chances d'emploi ou d'avancement d'un individu ou d'une catégorie d'individus, le fait, pour l'employeur, l'association patronale ou l'organisation syndicale :

Lignes de conduite discriminatoires

matter relating to employment or prospective employment,

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

R.S., 1985, c. H-6, s. 10; 1998, c. 9, s. 13(E).

a) de fixer ou d'appliquer des lignes de conduite;

b) de conclure des ententes touchant le recrutement, les mises en rapport, l'engagement, les promotions, la formation, l'apprentissage, les mutations ou tout autre aspect d'un emploi présent ou éventuel.

L.R. (1985), ch. H-6, art. 10; 1998, ch. 9, art. 13(A).

Equal wages	<p>11. (1) It is a discriminatory practice for an employer to establish or maintain differences in wages between male and female employees employed in the same establishment who are performing work of equal value.</p>	<p>11. (1) Constitue un acte discriminatoire le fait pour l'employeur d'instaurer ou de pratiquer la disparité salariale entre les hommes et les femmes qui exécutent, dans le même établissement, des fonctions équivalentes.</p>	Disparité salariale discriminatoire
Assessment of value of work	<p>(2) In assessing the value of work performed by employees employed in the same establishment, the criterion to be applied is the composite of the skill, effort and responsibility required in the performance of the work and the conditions under which the work is performed.</p>	<p>(2) Le critère permettant d'établir l'équivalence des fonctions exécutées par des salariés dans le même établissement est le dosage de qualifications, d'efforts et de responsabilités nécessaire pour leur exécution, compte tenu des conditions de travail.</p>	Critère
Separate establishments	<p>(3) Separate establishments established or maintained by an employer solely or principally for the purpose of establishing or maintaining differences in wages between male and female employees shall be deemed for the purposes of this section to be the same establishment.</p>	<p>(3) Les établissements distincts qu'un employeur aménage ou maintient dans le but principal de justifier une disparité salariale entre hommes et femmes sont réputés, pour l'application du présent article, ne constituer qu'un seul et même établissement.</p>	Établissements distincts
Different wages based on prescribed reasonable factors	<p>(4) Notwithstanding subsection (1), it is not a discriminatory practice to pay to male and female employees different wages if the difference is based on a factor prescribed by guidelines, issued by the Canadian Human Rights Commission pursuant to subsection 27(2), to be a reasonable factor that justifies the difference.</p>	<p>(4) Ne constitue pas un acte discriminatoire au sens du paragraphe (1) la disparité salariale entre hommes et femmes fondée sur un facteur reconnu comme raisonnable par une ordonnance de la Commission canadienne des droits de la personne en vertu du paragraphe 27(2).</p>	Disparité salariale non discriminatoire
Idem	<p>(5) For greater certainty, sex does not constitute a reasonable factor justifying a difference in wages.</p>	<p>(5) Des considérations fondées sur le sexe ne sauraient motiver la disparité salariale.</p>	Idem
No reduction of wages	<p>(6) An employer shall not reduce wages in order to eliminate a discriminatory practice described in this section.</p>	<p>(6) Il est interdit à l'employeur de procéder à des diminutions salariales pour mettre fin aux actes discriminatoires visés au présent article.</p>	Diminutions de salaire interdites
Definition of "wages"	<p>(7) For the purposes of this section, "wages" means any form of remuneration payable for work performed by an individual and includes</p> <p>(a) salaries, commissions, vacation pay, dismissal wages and bonuses;</p> <p>(b) reasonable value for board, rent, housing and lodging;</p> <p>(c) payments in kind;</p>	<p>(7) Pour l'application du présent article, « salaire » s'entend de toute forme de rémunération payable à un individu en contrepartie de son travail et, notamment :</p> <p>a) des traitements, commissions, indemnités de vacances ou de licenciement et des primes;</p> <p>b) de la juste valeur des prestations en repas, loyers, logement et hébergement;</p>	Définition de « salaire »

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

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

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

c) des rétributions en nature;

d) des cotisations de l'employeur aux caisses ou régimes de pension, aux régimes d'assurance contre l'invalidité prolongée et aux régimes d'assurance-maladie de toute nature;

e) des autres avantages reçus directement ou indirectement de l'employeur.

1976-77, ch. 33, art. 11.

Publication of discriminatory notices, etc.

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

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

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

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

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

Hate messages

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

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 telecommuni-

Divulgence de faits discriminatoires, etc.

12. Constitue un acte discriminatoire le fait de publier ou d'exposer en public, ou de faire publier ou exposer en public des affiches, des écriteaux, des insignes, des emblèmes, des symboles ou autres représentations qui, selon le cas :

a) expriment ou suggèrent des actes discriminatoires au sens des articles 5 à 11 ou de l'article 14 ou des intentions de commettre de tels actes;

b) en encouragent ou visent à en encourager l'accomplissement.

1976-77, ch. 33, art. 12; 1980-81-82-83, ch. 143, art. 6.

Propagande haineuse

13. (1) Constitue un acte discriminatoire le fait, pour une personne ou un groupe de personnes agissant d'un commun accord, d'utiliser ou de faire utiliser un téléphone de façon répétée en recourant ou en faisant recourir aux services d'une entreprise de télécommunication relevant de la compétence du Parlement pour aborder ou faire aborder des questions susceptibles d'exposer à la haine ou au mépris des personnes appartenant à un groupe identifiable sur la base des critères énoncés à l'article 3.

Interprétation

(2) Il demeure entendu que le paragraphe (1) s'applique à l'utilisation d'un ordinateur, d'un ensemble d'ordinateurs connectés ou reliés les uns aux autres, notamment d'Internet, ou de tout autre moyen de communication semblable mais qu'il ne s'applique pas dans les cas où les services d'une entreprise de radiodiffusion sont utilisés.

Interprétation

(3) Pour l'application du présent article, le propriétaire ou exploitant d'une entreprise de télécommunication ne commet pas un acte discriminatoire du seul fait que des tiers ont utilisé

cation undertaking owned or operated by that person are used by other persons for the transmission of that matter.

R.S., 1985, c. H-6, s. 13; 2001, c. 41, s. 88.

Harassment

- 14.** (1) It is a discriminatory practice,
- (a) in the provision of goods, services, facilities or accommodation customarily available to the general public,
 - (b) in the provision of commercial premises or residential accommodation, or
 - (c) in matters related to employment,

to harass an individual on a prohibited ground of discrimination.

Sexual harassment

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

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

Retaliation

14.1 It is a discriminatory practice for a person against whom a complaint has been filed under Part III, or any person acting on their behalf, to retaliate or threaten retaliation against the individual who filed the complaint or the alleged victim.

1998, c. 9, s. 14.

Exceptions

- 15.** (1) It is not a discriminatory practice if
- (a) any refusal, exclusion, expulsion, suspension, limitation, specification or preference in relation to any employment is established by an employer to be based on a *bona fide* occupational requirement;
 - (b) employment of an individual is refused or terminated because that individual has not reached the minimum age, or has reached the maximum age, that applies to that employment by law or under regulations, which may be made by the Governor in Council for the purposes of this paragraph;
 - (c) an individual's employment is terminated because that individual has reached the normal age of retirement for employees working in positions similar to the position of that individual;
 - (d) the terms and conditions of any pension fund or plan established by an employer, employee organization or employer organiza-

ses installations pour aborder des questions visées au paragraphe (1).

L.R. (1985), ch. H-6, art. 13; 2001, ch. 41, art. 88.

Harcèlement

14. (1) Constitue un acte discriminatoire, s'il est fondé sur un motif de distinction illicite, le fait de harceler un individu :

- a) lors de la fourniture de biens, de services, d'installations ou de moyens d'hébergement destinés au public;
- b) lors de la fourniture de locaux commerciaux ou de logements;
- c) en matière d'emploi.

Harcèlement sexuel

(2) Pour l'application du paragraphe (1) et sans qu'en soit limitée la portée générale, le harcèlement sexuel est réputé être un harcèlement fondé sur un motif de distinction illicite.

1980-81-82-83, ch. 143, art. 7.

Représailles

14.1 Constitue un acte discriminatoire le fait, pour la personne visée par une plainte déposée au titre de la partie III, ou pour celle qui agit en son nom, d'exercer ou de menacer d'exercer des représailles contre le plaignant ou la victime présumée.

1998, ch. 9, art. 14.

Exceptions

15. (1) Ne constituent pas des actes discriminatoires :

- a) les refus, exclusions, expulsions, suspensions, restrictions, conditions ou préférences de l'employeur qui démontre qu'ils découlent d'exigences professionnelles justifiées;
- b) le fait de refuser ou de cesser d'employer un individu qui n'a pas atteint l'âge minimal ou qui a atteint l'âge maximal prévu, dans l'un ou l'autre cas, pour l'emploi en question par la loi ou les règlements que peut prendre le gouverneur en conseil pour l'application du présent alinéa;
- c) le fait de mettre fin à l'emploi d'une personne en appliquant la règle de l'âge de la retraite en vigueur pour ce genre d'emploi;
- d) le fait que les conditions et modalités d'une caisse ou d'un régime de retraite constitués par l'employeur, l'organisation patronale ou l'organisation syndicale pré-

tion provide for the compulsory vesting or locking-in of pension contributions at a fixed or determinable age in accordance with sections 17 and 18 of the *Pension Benefits Standards Act, 1985*;

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

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

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

voient la dévolution ou le blocage obligatoires des cotisations à des âges déterminés ou déterminables conformément aux articles 17 et 18 de la *Loi de 1985 sur les normes de prestation de pension*;

e) le fait qu'un individu soit l'objet d'une distinction fondée sur un motif illicite, si celle-ci est reconnue comme raisonnable par une ordonnance de la Commission canadienne des droits de la personne rendue en vertu du paragraphe 27(2);

f) le fait pour un employeur, une organisation patronale ou une organisation syndicale d'accorder à une employée un congé ou des avantages spéciaux liés à sa grossesse ou à son accouchement, ou d'accorder à ses employés un congé ou des avantages spéciaux leur permettant de prendre soin de leurs enfants;

g) le fait qu'un fournisseur de biens, de services, d'installations ou de moyens d'hébergement destinés au public, ou de locaux commerciaux ou de logements en prive un individu ou le défavorise lors de leur fourniture pour un motif de distinction illicite, s'il a un motif justifiable de le faire.

Accommodation of needs

(2) For any practice mentioned in paragraph (1)(a) to be considered to be based on a *bona fide* occupational requirement and for any practice mentioned in paragraph (1)(g) to be considered to have a *bona fide* justification, it must be established that accommodation of the needs of an individual or a class of individuals affected would impose undue hardship on the person who would have to accommodate those needs, considering health, safety and cost.

(2) Les faits prévus à l'alinéa (1)a) sont des exigences professionnelles justifiées ou un motif justifiable, au sens de l'alinéa (1)g), s'il est démontré que les mesures destinées à répondre aux besoins d'une personne ou d'une catégorie de personnes visées constituent, pour la personne qui doit les prendre, une contrainte excessive en matière de coûts, de santé et de sécurité.

Besoins des individus

Regulations

(3) The Governor in Council may make regulations prescribing standards for assessing undue hardship.

(3) Le gouverneur en conseil peut, par règlement, déterminer les critères d'évaluation d'une contrainte excessive.

Règlement

Publication of proposed regulations

(4) Each regulation that the Governor in Council proposes to make under subsection (3) shall be published in the *Canada Gazette* and a reasonable opportunity shall be given to interested persons to make representations in respect of it.

(4) Les projets de règlement d'application du paragraphe (3) sont publiés dans la *Gazette du Canada*, les intéressés se voyant accorder la possibilité de présenter leurs observations à cet égard.

Prépublication

Consultations

(5) The Canadian Human Rights Commission shall conduct public consultations concerning any regulation proposed to be made by the Governor in Council under subsection (3) and shall file a report of the results of the con-

(5) La Commission des droits de la personne tient des consultations publiques concernant tout projet de règlement publié au titre du paragraphe (4) et fait rapport au gouverneur en conseil dans les meilleurs délais.

Consultations

sultations with the Minister within a reasonable time after the publication of the proposed regulation in the *Canada Gazette*.

Exception	<p>(6) A proposed regulation need not be published more than once, whether or not it has been amended as a result of any representations.</p>	<p>(6) La modification du projet de règlement n'entraîne pas une nouvelle publication.</p>	Modification
Making of regulations	<p>(7) The Governor in Council may proceed to make regulations under subsection (3) after six months have elapsed since the publication of the proposed regulations in the <i>Canada Gazette</i>, whether or not a report described in subsection (5) is filed.</p>	<p>(7) Faute par la Commission de lui remettre son rapport dans les six mois qui suivent la publication du projet de règlement, le gouverneur en conseil peut procéder à la prise du règlement.</p>	Prise du règlement
Application	<p>(8) This section applies in respect of a practice regardless of whether it results in direct discrimination or adverse effect discrimination.</p>	<p>(8) Le présent article s'applique à tout fait, qu'il ait pour résultat la discrimination directe ou la discrimination par suite d'un effet préjudiciable.</p>	Application
Universality of service for Canadian Forces	<p>(9) Subsection (2) is subject to the principle of universality of service under which members of the Canadian Forces must at all times and under any circumstances perform any functions that they may be required to perform.</p> <p>R.S., 1985, c. H-6, s. 15; R.S., 1985, c. 32 (2nd Supp.), s. 41; 1998, c. 9, ss. 10, 15.</p>	<p>(9) Le paragraphe (2) s'applique sous réserve de l'obligation de service imposée aux membres des Forces canadiennes, c'est-à-dire celle d'accomplir en permanence et en toutes circonstances les fonctions auxquelles ils peuvent être tenus.</p> <p>L.R. (1985), ch. H-6, art. 15; L.R. (1985), ch. 32 (2^e suppl.), art. 41; 1998, ch. 9, art. 10 et 15.</p>	Universalité du service au sein des Forces canadiennes
Special programs	<p>16. (1) It is not a discriminatory practice for a person to adopt or carry out a special program, plan or arrangement designed to prevent disadvantages that are likely to be suffered by, or to eliminate or reduce disadvantages that are suffered by, any group of individuals when those disadvantages would be based on or related to the prohibited grounds of discrimination, by improving opportunities respecting goods, services, facilities, accommodation or employment in relation to that group.</p>	<p>16. (1) Ne constitue pas un acte discriminatoire le fait d'adopter ou de mettre en œuvre des programmes, des plans ou des arrangements spéciaux destinés à supprimer, diminuer ou prévenir les désavantages que subit ou peut vraisemblablement subir un groupe d'individus pour des motifs fondés, directement ou indirectement, sur un motif de distinction illicite en améliorant leurs chances d'emploi ou d'avancement ou en leur facilitant l'accès à des biens, à des services, à des installations ou à des moyens d'hébergement.</p>	Programmes de promotion sociale
Advice and assistance	<p>(2) The Canadian Human Rights Commission, may</p> <p>(a) make general recommendations concerning desirable objectives for special programs, plans or arrangements referred to in subsection (1); and</p> <p>(b) on application, give such advice and assistance with respect to the adoption or carrying out of a special program, plan or arrangement referred to in subsection (1) as will serve to aid in the achievement of the</p>	<p>(2) La Commission canadienne des droits de la personne peut :</p> <p>a) faire des recommandations d'ordre général, relatives aux objectifs souhaitables pour les programmes, biens ou arrangements visés au paragraphe (1);</p> <p>b) sur demande, prêter son concours à l'adoption ou à la mise en œuvre des programmes, plans ou arrangements visés au paragraphe (1).</p>	Concours

objectives the program, plan or arrangement was designed to achieve.

Collection of information relating to prohibited grounds

(3) It is not a discriminatory practice to collect information relating to a prohibited ground of discrimination if the information is intended to be used in adopting or carrying out a special program, plan or arrangement under subsection (1).

R.S., 1985, c. H-6, s. 16; 1998, c. 9, s. 16.

(3) Ne constitue pas un acte discriminatoire le fait de recueillir des renseignements relatifs à un motif de distinction illicite s'ils sont destinés à servir lors de l'adoption ou de la mise en œuvre des programmes, plans ou arrangements visés au paragraphe (1).

L.R. (1985), ch. H-6, art. 16; 1998, ch. 9, art. 16.

Renseignements relatifs à un motif de distinction illicite

Plans to meet the needs of disabled persons

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

17. (1) La personne qui entend mettre en œuvre un programme prévoyant l'adaptation de services, d'installations, de locaux, d'activités ou de matériel aux besoins particuliers des personnes atteintes d'une déficience peut en demander l'approbation à la Commission canadienne des droits de la personne.

Programme d'adaptation

Approval of plan

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

(2) La Commission peut, par avis écrit à l'auteur de la demande visée au paragraphe (1), approuver le programme si elle estime que celui-ci convient aux besoins particuliers des personnes atteintes d'une déficience.

Approbation du programme

Effect of approval of accommodation plan

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

(3) Dans le cas où des services, des installations, des locaux, des activités ou du matériel ont été adaptés conformément à un programme approuvé en vertu du paragraphe (2), les questions auxquelles celui-ci pourvoit ne peuvent servir de fondement à une plainte déposée en vertu de la partie III portant sur une déficience visée par le programme.

Conséquence de l'approbation

Notice when application not granted

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

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

(4) Dans le cas où elle décide de refuser la demande présentée en vertu du paragraphe (1), la Commission envoie à son auteur un avis exposant les motifs du refus.

1980-81-82-83, ch. 143, art. 9.

Avis de refus

Rescinding approval of plan

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

18. (1) La Commission canadienne des droits de la personne peut, par avis écrit à la personne qui entend adapter les services, les installations, les locaux, les activités ou le matériel conformément à un programme approuvé en vertu du paragraphe 17(2), en annuler l'approbation, en tout ou en partie, si elle estime que, vu les circonstances nouvelles, celui-ci ne convient plus aux besoins particuliers des personnes atteintes d'une déficience.

Annulation de l'approbation

Effect where approval rescinded

(2) To the extent to which approval of a plan is rescinded under subsection (1), subsection

(2) Le paragraphe 17(3) ne s'applique pas à un programme, dans la mesure où celui-ci est

Conséquence de l'annulation

Statement of reasons for rescinding approval	<p>17(3) does not apply to the plan if the discriminatory practice to which the complaint relates is subsequent to the rescission of the approval.</p> <p>(3) Where the Commission rescinds approval of a plan pursuant to subsection (1), it shall include in the notice referred to therein a statement of its reasons therefor.</p> <p>1980-81-82-83, c. 143, s. 9.</p>	<p>annulé en vertu du paragraphe (1), si l'acte discriminatoire dénoncé par la plainte est postérieur à l'annulation.</p> <p>(3) Dans le cas où elle annule l'approbation d'un programme en vertu du paragraphe (1), la Commission indique dans l'avis y mentionné les motifs de l'annulation.</p> <p>1980-81-82-83, ch. 143, art. 9.</p>	Motifs de l'annulation
Opportunity to make representations	<p>19. (1) Before making its decision on an application or rescinding approval of a plan pursuant to section 17 or 18, the Canadian Human Rights Commission shall afford each person directly concerned with the matter an opportunity to make representations with respect thereto.</p>	<p>19. (1) Avant de rendre une décision en vertu des paragraphes 17(2) ou 18(1), la Commission canadienne des droits de la personne donne aux intéressés la possibilité de présenter des observations à son sujet.</p>	Possibilité de présenter des observations
Restriction on deeming plan inappropriate	<p>(2) For the purposes of sections 17 and 18, a plan shall not, by reason only that it does not conform to any standards prescribed pursuant to section 24, be deemed to be inappropriate for meeting the needs of persons arising from disability.</p> <p>1980-81-82-83, c. 143, s. 9.</p>	<p>(2) Pour l'application des articles 17 et 18, un programme n'est pas inadapté aux besoins particuliers des personnes atteintes d'une déficience du seul fait qu'il est incompatible avec les normes établies en vertu de l'article 24.</p> <p>1980-81-82-83, ch. 143, art. 9.</p>	Réserve
Certain provisions not discriminatory	<p>20. A provision of a pension or insurance fund or plan that preserves rights acquired before March 1, 1978 or that preserves pension or other benefits accrued before that day does not constitute the basis for a complaint under Part III that an employer, employee organization or employer organization is engaging or has engaged in a discriminatory practice.</p> <p>R.S., 1985, c. H-6, s. 20; 1998, c. 9, s. 17.</p>	<p>20. Les dispositions des caisses ou régimes de pension et des régimes ou fonds d'assurance protégeant les droits acquis avant le 1^{er} mars 1978 ou maintenant le droit aux prestations de pension ou autres accumulées avant cette date ne peuvent servir de fondement à une plainte déposée au titre de la partie III pour actes discriminatoires commis par l'employeur, l'organisation patronale ou l'organisation syndicale.</p> <p>L.R. (1985), ch. H-6, art. 20; 1998, ch. 9, art. 17.</p>	Dispositions non discriminatoires
Funds and plans	<p>21. The establishment of separate pension funds or plans for different groups of employees does not constitute the basis for a complaint under Part III that an employer, employee organization or employer organization is engaging or has engaged in a discriminatory practice if the employees are not grouped in those funds or plans according to a prohibited ground of discrimination.</p> <p>R.S., 1985, c. H-6, s. 21; 1998, c. 9, s. 17.</p>	<p>21. La constitution de caisses ou de régimes de pension distincts pour différents groupes d'employés ne peut servir de fondement à une plainte déposée au titre de la partie III pour actes discriminatoires commis par l'employeur, l'organisation patronale ou l'organisation syndicale, lorsque ces groupes ne sont pas établis par suite de distinctions illicites.</p> <p>L.R. (1985), ch. H-6, art. 21; 1998, ch. 9, art. 17.</p>	Caisses ou régimes
Regulations	<p>22. The Governor in Council may, by regulation, prescribe the provisions of any pension or insurance fund or plan, in addition to the provisions described in sections 20 and 21, that do not constitute the basis for a complaint under Part III that an employer, employee organization or employer organization is engaging or has engaged in a discriminatory practice.</p> <p>R.S., 1985, c. H-6, s. 22; 1998, c. 9, s. 17.</p>	<p>22. Outre les cas prévus aux articles 20 et 21, le gouverneur en conseil peut, par règlement, déterminer quelles dispositions des caisses ou régimes de pension et des régimes ou fonds d'assurance ne peuvent servir de fondement à une plainte déposée au titre de la partie III pour actes discriminatoires commis par</p>	Règlements

		l'employeur, l'organisation patronale ou l'organisation syndicale.	
		L.R. (1985), ch. H-6, art. 22; 1998, ch. 9, art. 17.	
Regulations	<p>23. The Governor in Council may make regulations respecting the terms and conditions to be included in or applicable to any contract, licence or grant made or granted by Her Majesty in right of Canada providing for</p> <p>(a) the prohibition of discriminatory practices described in sections 5 to 14.1; and</p> <p>(b) the resolution, by the procedure set out in Part III, of complaints of discriminatory practices contrary to such terms and conditions.</p> <p>R.S., 1985, c. H-6, s. 23; 1998, c. 9, s. 18.</p>	<p>23. Le gouverneur en conseil peut, par règlement, assortir les contrats, permis, licences ou subventions accordés par Sa Majesté du chef du Canada, de conditions et modalités prévoyant :</p> <p>a) l'interdiction des actes discriminatoires visés aux articles 5 à 14.1;</p> <p>b) le règlement, conformément à la procédure de la partie III, des plaintes relatives aux actes discriminatoires ainsi interdits.</p> <p>L.R. (1985), ch. H-6, art. 23; 1998, ch. 9, art. 18.</p>	Règlements
Accessibility standards	<p>24. (1) The Governor in Council may, for the benefit of persons having any disability, make regulations prescribing standards of accessibility to services, facilities or premises.</p>	<p>24. (1) Le gouverneur en conseil peut, par règlement, établir au profit des personnes atteintes d'une déficience des normes d'accès aux services, aux installations ou aux locaux.</p>	Établissement de normes d'accès
Effect of meeting accessibility standards	<p>(2) Where standards prescribed pursuant to subsection (1) are met in providing access to any services, facilities or premises, a matter of access thereto does not constitute any basis for a complaint under Part III regarding discrimination based on any disability in respect of which the standards are prescribed.</p>	<p>(2) Dans le cas où l'accès aux services, aux installations ou aux locaux est assuré conformément aux normes établies en vertu du paragraphe (1), l'accès à ceux-ci ne peut servir de fondement à une plainte déposée en vertu de la partie III portant sur une déficience visée par les normes.</p>	Conséquence du respect des normes
Publication of proposed regulations	<p>(3) Subject to subsection (4), a copy of each regulation that the Governor in Council proposes to make pursuant to this section shall be published in the <i>Canada Gazette</i> and a reasonable opportunity shall be afforded to interested persons to make representations with respect thereto.</p>	<p>(3) Sous réserve du paragraphe (4), les projets de règlements d'application du présent article sont publiés dans la <i>Gazette du Canada</i>, les intéressés se voyant accorder la possibilité de présenter leurs observations à cet égard.</p>	Publication des projets de règlements
Exception	<p>(4) Subsection (3) does not apply in respect of a proposed regulation that has been published pursuant to that subsection, whether or not it has been amended as a result of representations made pursuant to that subsection.</p>	<p>(4) Ne sont pas visés les projets de règlement déjà publiés dans les conditions prévues au paragraphe (3), qu'ils aient été modifiés ou non à la suite d'observations présentées conformément à ce paragraphe.</p>	Exception
Discriminatory practice not constituted by variance from standards	<p>(5) Nothing shall, by virtue only of its being at variance with any standards prescribed pursuant to subsection (1), be deemed to constitute a discriminatory practice.</p> <p>1980-81-82-83, c. 143, s. 11.</p>	<p>(5) L'incompatibilité avec les normes établies en vertu du paragraphe (1) ne peut être assimilée à un acte discriminatoire.</p> <p>1980-81-82-83, ch. 143, art. 11.</p>	Incompatibilité
Definitions	<p>25. In this Act,</p>	<p>25. Les définitions qui suivent s'appliquent à la présente loi.</p> <p>« déficience » Déficience physique ou mentale, qu'elle soit présente ou passée, y compris le dé-</p>	Définitions
			« déficience » "disability"

<p>“conviction for an offence for which a pardon has been granted or in respect of which a record suspension has been ordered” « état de personne graciée »</p>	<p>“conviction for an offence for which a pardon has been granted or in respect of which a record suspension has been ordered” means a conviction of an individual for an offence in respect of which a pardon has been granted under Her Majesty’s royal prerogative of mercy or under section 748 of the <i>Criminal Code</i> or a record suspension has been ordered under the <i>Criminal Records Act</i>, that has not been revoked or ceased to have effect;</p> <p>“conviction for which a pardon has been granted” [Repealed, 2012, c. 1, s. 139]</p>	<p>figurement ainsi que la dépendance, présente ou passée, envers l’alcool ou la drogue.</p> <p>« emploi » Y est assimilé le contrat conclu avec un particulier pour la fourniture de services par celui-ci.</p> <p>« état de personne graciée » État d’une personne physique qui a obtenu un pardon accordé en vertu de la prérogative royale de clémence que possède Sa Majesté ou de l’article 748 du <i>Code criminel</i> ou une suspension du casier au titre de la <i>Loi sur le casier judiciaire</i>, qui n’a pas été révoqué ni annulé.</p>	<p>« emploi » “employment”</p> <p>« état de personne graciée » “conviction for an offence for which a pardon has been granted or in respect of which a record suspension has been ordered”</p>
<p>“disability” « déficience »</p>	<p>“disability” means any previous or existing mental or physical disability and includes disfigurement and previous or existing dependence on alcohol or a drug;</p>	<p>« organisation patronale » Groupement d’employeurs ayant notamment pour objet de régler les relations entre employeurs et employés.</p>	<p>« organisation patronale » “employer organization”</p>
<p>“employee organization” « organisation syndicale »</p>	<p>“employee organization” includes a trade union or other organization of employees or a local, the purposes of which include the negotiation of terms and conditions of employment on behalf of employees;</p>	<p>« organisation syndicale » Syndicat ou autre groupement d’employés, y compris ses sections locales, chargé notamment de négocier les conditions de travail des employés au nom de ceux-ci.</p>	<p>« organisation syndicale » “employee organization”</p>
<p>“employer organization” « organisation patronale »</p>	<p>“employer organization” means an organization of employers the purposes of which include the regulation of relations between employers and employees;</p>	<p>« Tribunal » Le Tribunal canadien des droits de la personne constitué par l’article 48.1.</p>	<p>« Tribunal » “Tribunal”</p>
<p>“employment” « emploi »</p>	<p>“employment” includes a contractual relationship with an individual for the provision of services personally by the individual;</p>	<p>L.R. (1985), ch. H-6, art. 25; 1992, ch. 22, art. 13; 1998, ch. 9, art. 19; 2012, ch. 1, art. 139.</p>	
<p>“Tribunal” « Tribunal »</p>	<p>“Tribunal” means the Canadian Human Rights Tribunal established by section 48.1.</p> <p>R.S., 1985, c. H-6, s. 25; 1992, c. 22, s. 13; 1998, c. 9, s. 19; 2012, c. 1, s. 139.</p>		

PART II

CANADIAN HUMAN RIGHTS
COMMISSION

<p>Commission established</p>	<p>26. (1) A commission is hereby established to be known as the Canadian Human Rights Commission, in this Part and Part III referred to as the “Commission”, consisting of a Chief Commissioner, a Deputy Chief Commissioner and not less than three or more than six other members, to be appointed by the Governor in Council.</p>
<p>Members</p>	<p>(2) The Chief Commissioner and Deputy Chief Commissioner are full-time members of the Commission and the other members may be appointed as full-time or part-time members of the Commission.</p>

PARTIE II

COMMISSION CANADIENNE DES DROITS
DE LA PERSONNE

<p>26. (1) Est constituée la Commission canadienne des droits de la personne, appelée, dans la présente loi, la « Commission », composée de cinq à huit membres, ou commissaires, dont le président et le vice-président, nommés par le gouverneur en conseil.</p>	<p>Constitution de la Commission</p>
<p>(2) Le président et le vice-président sont nommés à temps plein et les autres commissaires, à temps plein ou à temps partiel.</p>	<p>Commissaires</p>

Term of appointment	(3) Each full-time member of the Commission may be appointed for a term not exceeding seven years and each part-time member may be appointed for a term not exceeding three years.	(3) La durée maximale du mandat des commissaires à temps plein est de sept ans et celle du mandat des commissaires à temps partiel, de trois ans.	Durée du mandat
Tenure	(4) Each member of the Commission holds office during good behaviour but may be removed by the Governor in Council on address of the Senate and House of Commons.	(4) Les commissaires occupent leur poste à titre inamovible, sous réserve de révocation par le gouverneur en conseil sur adresse du Sénat et de la Chambre des communes.	Occupation du poste
Re-appointment	(5) A member of the Commission is eligible to be re-appointed in the same or another capacity. 1976-77, c. 33, s. 21.	(5) Les commissaires peuvent recevoir un nouveau mandat, aux fonctions identiques ou non. 1976-77, ch. 33, art. 21.	Nouveau mandat

POWERS, DUTIES AND FUNCTIONS

Powers, duties and functions

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

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

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

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

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

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

(f) shall carry out or cause to be carried out such studies concerning human rights and freedoms as may be referred to it by the Min-

POUVOIRS ET FONCTIONS

Pouvoirs et fonctions

27. (1) Outre les fonctions prévues par la partie III au titre des plaintes fondées sur des actes discriminatoires et l'application générale de la présente partie et des parties I et III, la Commission :

a) élabore et exécute des programmes de sensibilisation publique touchant le principe énoncé à l'article 2, la présente loi et le rôle et les activités que celle-ci lui confère;

b) entreprend ou patronne des programmes de recherche dans les domaines qui ressortissent à ses objets aux termes de la présente loi ou au principe énoncé à l'article 2;

c) se tient en liaison étroite avec les organismes ou les autorités provinciales de même nature pour favoriser l'adoption de lignes de conduite communes et éviter les conflits dans l'instruction des plaintes en cas de chevauchement de compétence;

d) exécute les fonctions que lui attribuent les accords conclus conformément au paragraphe 28(2);

e) peut étudier les recommandations, propositions et requêtes qu'elle reçoit en matière de droits et libertés de la personne, ainsi que les mentionner et les commenter dans le rapport visé à l'article 61 dans les cas où elle le juge opportun;

f) fait ou fait faire les études sur les droits et libertés de la personne que lui demande le ministre de la Justice et inclut, dans chaque cas, ses conclusions et recommandations dans le rapport visé à l'article 61;

ister of Justice and include in a report referred to in section 61 a report setting out the results of each such study together with such recommendations in relation thereto as it considers appropriate;

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

(h) shall, so far as is practical and consistent with the application of Part III, try by persuasion, publicity or any other means that it considers appropriate to discourage and reduce discriminatory practices referred to in sections 5 to 14.1.

g) peut examiner les règlements, règles, décrets, arrêtés et autres textes établis en vertu d'une loi fédérale, ainsi que les mentionner et les commenter dans le rapport visé à l'article 61 dans les cas où elle les juge incompatibles avec le principe énoncé à l'article 2;

h) dans la mesure du possible et sans transgresser la partie III, tente, par tous les moyens qu'elle estime indiqués, d'empêcher la perpétration des actes discriminatoires visés aux articles 5 à 14.1.

Guidelines	(2) The Commission may, on application or on its own initiative, by order, issue a guideline setting out the extent to which and the manner in which, in the opinion of the Commission, any provision of this Act applies in a class of cases described in the guideline.	(2) Dans une catégorie de cas donnés, la Commission peut, sur demande ou de sa propre initiative, décider de préciser, par ordonnance, les limites et les modalités de l'application de la présente loi.	Directives
Guideline binding	(3) A guideline issued under subsection (2) is, until it is revoked or modified, binding on the Commission and any member or panel assigned under subsection 49(2) with respect to the resolution of a complaint under Part III regarding a case falling within the description contained in the guideline.	(3) Les ordonnances prises en vertu du paragraphe (2) lient, jusqu'à ce qu'elles soient abrogées ou modifiées, la Commission et le membre instructeur désigné en vertu du paragraphe 49(2) lors du règlement des plaintes déposées conformément à la partie III.	Effet obligatoire
Publication	(4) Each guideline issued under subsection (2) shall be published in Part II of the <i>Canada Gazette</i> . R.S., 1985, c. H-6, s. 27; 1998, c. 9, s. 20.	(4) Les ordonnances prises en vertu du paragraphe (2) et portant sur les modalités d'application de certaines dispositions de la présente loi à certaines catégories de cas sont publiées dans la partie II de la <i>Gazette du Canada</i> . L.R. (1985), ch. H-6, art. 27; 1998, ch. 9, art. 20.	Publication
Assignment of duties	28. (1) On the recommendation of the Commission, the Governor in Council may, by order, assign to persons or classes of persons specified in the order who are engaged in the performance of the duties and functions of the Department of Human Resources and Skills Development such of the duties and functions of the Commission in relation to discriminatory practices in employment outside the federal public administration as are specified in the order.	28. (1) Sur recommandation de la Commission, le gouverneur en conseil peut, par décret, déléguer à des personnes ou catégories de personnes données travaillant pour le ministère des Ressources humaines et du Développement des compétences certaines fonctions de la Commission, qui y sont précisées, concernant les actes discriminatoires en matière d'emploi à l'extérieur de l'administration publique fédérale.	Délégation de fonctions

Interdelegation	<p>(2) Subject to the approval of the Governor in Council, the Commission may enter into agreements with similar bodies or authorities in the provinces providing for the performance by the Commission on behalf of those bodies or authorities of duties or functions specified in the agreements or for the performance by those bodies or authorities on behalf of the Commission of duties or functions so specified.</p> <p>R.S., 1985, c. H-6, s. 28; 1996, c. 11, s. 61; 2003, c. 22, s. 224(E); 2005, c. 34, s. 79.</p>	<p>(2) Sous réserve de l'autorisation du gouverneur en conseil, la Commission peut conclure avec les organismes ou les autorités provinciales de même nature des accords portant, à charge de réciprocité éventuelle, délégation de fonctions déterminées.</p> <p>L.R. (1985), ch. H-6, art. 28; 1996, ch. 11, art. 61; 2003, ch. 22, art. 224(A); 2005, ch. 34, art. 79.</p>	Délégations réciproques
Regulations	<p>29. The Governor in Council, on the recommendation of the Commission, may make regulations authorizing the Commission to exercise such powers and perform such duties and functions, in addition to those prescribed by this Act, as are necessary to carry out the provisions of this Part and Parts I and III.</p> <p>1976-77, c. 33, s. 23.</p>	<p>29. Sur recommandation de la Commission, le gouverneur en conseil peut lui accorder par règlement, outre les pouvoirs et les fonctions prévus par la présente loi, ceux qui sont nécessaires à l'application de la présente partie et des parties I et III.</p> <p>1976-77, ch. 33, art. 23.</p>	Règlements
REMUNERATION		RÉTRIBUTION	
Salaries and remuneration	<p>30. (1) Each full-time member of the Commission shall be paid a salary to be fixed by the Governor in Council and each part-time member of the Commission may be paid such remuneration, as is prescribed by by-law of the Commission, for attendance at meetings of the Commission, or of any division or committee of the Commission, that the member is requested by the Chief Commissioner to attend.</p>	<p>30. (1) Les commissaires à temps plein reçoivent le traitement que fixe le gouverneur en conseil. Les commissaires à temps partiel reçoivent la rémunération fixée par règlement administratif lorsque le président requiert leur présence aux réunions tant de la Commission que de ses sections ou comités.</p>	Traitements et rémunération
Additional remuneration	<p>(2) A part-time member of the Commission may, for any period during which that member, with the approval of the Chief Commissioner, performs any duties and functions additional to the normal duties and functions of that member on behalf of the Commission, be paid such additional remuneration as is prescribed by by-law of the Commission.</p>	<p>(2) Les commissaires à temps partiel reçoivent la rémunération supplémentaire fixée par règlement administratif à l'occasion des missions extraordinaires qu'ils accomplissent pour le compte de la Commission avec l'approbation du président.</p>	Rémunération supplémentaire
Travel expenses	<p>(3) Each member of the Commission is entitled to be paid such travel and living expenses incurred by the member in the performance of duties and functions under this Act as are prescribed by by-law of the Commission.</p> <p>1976-77, c. 33, s. 24.</p>	<p>(3) Les commissaires sont indemnisés, conformément au règlement administratif, des frais de déplacement et de séjour engagés dans l'exercice des fonctions qui leur sont confiées en application de la présente loi.</p> <p>1976-77, ch. 33, art. 24.</p>	Frais de déplacement et de séjour
OFFICERS AND STAFF		DIRIGEANTS ET PERSONNEL	
Chief Commissioner	<p>31. (1) The Chief Commissioner is the chief executive officer of the Commission and has supervision over and direction of the Commission and its staff and shall preside at meetings of the Commission.</p>	<p>31. (1) Le président est le premier dirigeant de la Commission; à ce titre, il en assure la direction, préside ses réunions et contrôle la gestion de son personnel.</p>	Président

Absence or incapacity	(2) In the event of the absence or incapacity of the Chief Commissioner, or if that office is vacant, the Deputy Chief Commissioner has all the powers and may perform all the duties and functions of the Chief Commissioner.	(2) En cas d'absence ou d'empêchement du président ou de vacance de son poste, la présidence est assumée par le vice-président.	Absence ou empêchement
Idem	(3) In the event of the absence or incapacity of the Chief Commissioner and the Deputy Chief Commissioner, or if those offices are vacant, the full-time member with the most seniority has all the powers and may perform all the duties and functions of the Chief Commissioner. 1976-77, c. 33, s. 25.	(3) En cas d'absence ou d'empêchement du président et du vice-président ou de vacance de leurs postes, la présidence est assumée par le commissaire à temps plein ayant le plus d'ancienneté dans son poste. 1976-77, ch. 33, art. 25.	Idem
Staff	32. (1) Such officers and employees as are necessary for the proper conduct of the work of the Commission shall be appointed in accordance with the <i>Public Service Employment Act</i> .	32. (1) Le personnel nécessaire à l'exécution des travaux de la Commission est nommé conformément à la <i>Loi sur l'emploi dans la fonction publique</i> .	Personnel
Contractual assistance	(2) The Commission may, for specific projects, enter into contracts for the services of persons having technical or specialized knowledge of any matter relating to the work of the Commission to advise and assist the Commission in the exercise of its powers or the performance of its duties and functions under this Act, and those persons may be paid such remuneration and expenses as may be prescribed by by-law of the Commission. 1976-77, c. 33, s. 26.	(2) La Commission peut, pour des travaux déterminés, engager à contrat des experts compétents dans des domaines relevant de son champ d'activité et leur verser à cette occasion la rémunération et les indemnités fixées par règlement administratif. 1976-77, ch. 33, art. 26.	Assistance contractuelle
Compliance with security requirements	33. (1) Every member of the Commission and every person employed by the Commission who is required to receive or obtain information relating to any investigation under this Act shall, with respect to access to and the use of such information, comply with any security requirements applicable to, and take any oath of secrecy required to be taken by, individuals who normally have access to and use of such information.	33. (1) Les commissaires et les agents de la Commission appelés à recevoir ou à recueillir des renseignements dans le cadre des enquêtes prévues par la présente loi doivent, quant à l'accès à ces renseignements et à leur utilisation, respecter les normes de sécurité applicables et prêter les serments imposés à leurs usagers habituels.	Respect des normes de sécurité
Disclosure	(2) Every member of the Commission and every person employed by the Commission shall take every reasonable precaution to avoid disclosing any matter the disclosure of which (a) might be injurious to international relations, national defence or security or federal-provincial relations; (b) would disclose a confidence of the Queen's Privy Council for Canada;	(2) Les commissaires et les agents de la Commission prennent toutes précautions raisonnables pour éviter de dévoiler des renseignements dont la révélation serait susceptible : a) de nuire aux relations internationales, à la défense ou à la sécurité nationales ou aux relations fédéro-provinciales; b) de violer le secret attaché aux travaux du Conseil privé de la Reine pour le Canada;	Divulgation

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

- (i) in relation to national security,
- (ii) in the course of investigations pertaining to the detection or suppression of crime generally, or
- (iii) in the course of investigations pertaining to particular offences against any Act of Parliament;

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

- (i) lead to a serious disruption of that individual's institutional, parole or mandatory supervision program,
- (ii) reveal information originally obtained on a promise of confidentiality, express or implied, or
- (iii) result in physical or other harm to that individual or any other person;

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

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

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

Head office

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

Other offices

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

Meetings

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

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

c) d'entraîner la divulgation de renseignements obtenus par un organisme d'enquête du gouvernement du Canada :

- (i) soit sur la sécurité nationale,
- (ii) soit au cours d'enquêtes sur la détection ou la prévention du crime en général,
- (iii) soit au cours d'enquêtes sur des infractions précises aux lois fédérales;

d) dans le cas d'un individu condamné pour infraction à une loi fédérale :

- (i) soit d'avoir de graves conséquences sur son régime pénitentiaire, sa libération conditionnelle ou sa surveillance obligatoire,
- (ii) soit d'entraîner la divulgation de renseignements qui, à l'origine, ont été obtenus expressément ou implicitement sous le sceau du secret,
- (iii) soit de causer, à lui ou à quiconque, des dommages, corporels ou autres;

e) d'entraver le fonctionnement d'un tribunal judiciaire ou quasi judiciaire, ou le déroulement d'une enquête instituée en vertu de la *Loi sur les enquêtes*;

f) d'entraîner la divulgation de consultations juridiques données à un ministère ou à un organisme gouvernemental ou de violer le secret professionnel existant entre l'avocat et son client à propos d'une affaire touchant à l'administration publique.

1976-77, ch. 33, art. 27.

34. (1) Le siège de la Commission est fixé dans la région de la capitale nationale définie à l'annexe de la *Loi sur la capitale nationale*.

Siège

(2) La Commission peut créer, jusqu'à concurrence de douze, les bureaux régionaux ou locaux dont elle estime la création nécessaire à l'exercice de ses pouvoirs et fonctions dans le cadre de la présente loi.

Bureaux régionaux ou locaux

(3) La Commission tient ses réunions aux dates, heures et lieux choisis par le président selon les besoins.

Réunions

1976-77, ch. 33, art. 28.

Majority is a decision of the Commission	<p>35. A decision of the majority of the members present at a meeting of the Commission, if the members present constitute a quorum, is a decision of the Commission.</p> <p>1976-77, c. 33, s. 28.</p>	<p>35. La Commission prend ses décisions, sous réserve du quorum, à la majorité des voix des commissaires présents.</p> <p>1976-77, ch. 33, art. 28.</p>	Décisions à la majorité des voix
Establishment of divisions	<p>36. (1) For the purposes of the affairs of the Commission, the Chief Commissioner may establish divisions of the Commission and all or any of the powers, duties and functions of the Commission, except the making of by-laws, may, as directed by the Commission, be exercised or performed by all or any of those divisions.</p>	<p>36. (1) Le président peut constituer au sein de la Commission des sections qui peuvent exercer, conformément aux instructions de la Commission, tout ou partie des pouvoirs et fonctions de celle-ci, à l'exception du pouvoir de prendre des règlements administratifs.</p>	Constitution de sections
Designation of presiding officer	<p>(2) Where a division of the Commission has been established pursuant to subsection (1), the Chief Commissioner may designate one of the members of the division to act as the presiding officer of the division.</p> <p>1976-77, c. 33, s. 28.</p>	<p>(2) Le président peut choisir le président d'une section parmi les commissaires qui la composent.</p> <p>1976-77, ch. 33, art. 28.</p>	Désignation du président de section
By-laws	<p>37. (1) The Commission may make by-laws for the conduct of its affairs and, without limiting the generality of the foregoing, may make by-laws</p> <p>(a) respecting the calling of meetings of the Commission or any division thereof and the fixing of quorums for the purposes of those meetings;</p> <p>(b) respecting the conduct of business at meetings of the Commission or any division thereof;</p> <p>(c) respecting the establishment of committees of the Commission, the delegation of powers, duties and functions to those committees and the fixing of quorums for meetings thereof;</p> <p>(d) respecting the procedure to be followed in dealing with complaints under Part III that have arisen in Yukon, the Northwest Territories or Nunavut;</p> <p>(e) prescribing the rates of remuneration to be paid to part-time members of the Commission and any person engaged under subsection 32(2); and</p> <p>(f) prescribing reasonable rates of travel and living expenses to be paid to members of the Commission and any person engaged under subsection 32(2).</p>	<p>37. (1) La Commission peut, par règlement administratif, régir son activité et, notamment, prévoir :</p> <p>a) la convocation de ses réunions et de celles des sections, ainsi que la fixation de leur quorum;</p> <p>b) le déroulement de ses réunions et de celles des sections;</p> <p>c) la constitution de comités, la délégation de pouvoirs et fonctions aux comités et la fixation de leur quorum;</p> <p>d) la procédure relative aux plaintes déposées sous le régime de la partie III et ayant leur origine au Yukon, dans les Territoires du Nord-Ouest ou au Nunavut;</p> <p>e) le barème de rémunération des commissaires à temps partiel et des personnes visées au paragraphe 32(2);</p> <p>f) le barème des frais de déplacement et de séjour payables aux commissaires et aux personnes visées au paragraphe 32(2).</p>	Règlements administratifs

Treasury Board approval	<p>(2) No by-law made under paragraph (1)(e) or (f) has effect unless it is approved by the Treasury Board.</p> <p>R.S., 1985, c. H-6, s. 37; 1993, c. 28, s. 78; 1998, c. 9, s. 21; 2002, c. 7, s. 126.</p>	<p>(2) Les règlements administratifs pris sous le régime des alinéas (1)e) ou f) sont inopérants tant qu'ils n'ont pas été approuvés par le Conseil du Trésor.</p> <p>L.R. (1985), ch. H-6, art. 37; 1993, ch. 28, art. 78; 1998, ch. 9, art. 21; 2002, ch. 7, art. 126.</p>	<p>Approbation du Conseil du Trésor</p>
Superannuation, etc.	<p>38. The full-time members of the Commission are deemed to be persons employed in the public service for the purposes of the <i>Public Service Superannuation Act</i> and to be employed in the federal public administration for the purposes of the <i>Government Employees Compensation Act</i> and any regulations made under section 9 of the <i>Aeronautics Act</i>.</p> <p>R.S., 1985, c. H-6, s. 38; 2003, c. 22, s. 137(E).</p>	<p>38. Les commissaires à temps plein sont réputés appartenir à la fonction publique pour l'application de la <i>Loi sur la pension de la fonction publique</i> et appartenir à l'administration publique fédérale pour l'application de la <i>Loi sur l'indemnisation des agents de l'État</i> et des règlements pris en vertu de l'article 9 de la <i>Loi sur l'aéronautique</i>.</p> <p>L.R. (1985), ch. H-6, art. 38; 2003, ch. 22, art. 137(A).</p>	<p>Pensions de retraite, etc.</p>
<p>PART III</p> <p>DISCRIMINATORY PRACTICES AND GENERAL PROVISIONS</p>		<p>PARTIE III</p> <p>ACTES DISCRIMINATOIRES ET DISPOSITIONS GÉNÉRALES</p>	
Definition of "discriminatory practice"	<p>39. For the purposes of this Part, a "discriminatory practice" means any practice that is a discriminatory practice within the meaning of sections 5 to 14.1.</p> <p>R.S., 1985, c. H-6, s. 39; 1998, c. 9, s. 22.</p>	<p>39. Pour l'application de la présente partie, « acte discriminatoire » s'entend d'un acte visé aux articles 5 à 14.1.</p> <p>L.R. (1985), ch. H-6, art. 39; 1998, ch. 9, art. 22.</p>	<p>Définition de « acte discriminatoire »</p>
Complaints	<p>40. (1) Subject to subsections (5) and (7), any individual or group of individuals having reasonable grounds for believing that a person is engaging or has engaged in a discriminatory practice may file with the Commission a complaint in a form acceptable to the Commission.</p>	<p>40. (1) Sous réserve des paragraphes (5) et (7), un individu ou un groupe d'individus ayant des motifs raisonnables de croire qu'une personne a commis un acte discriminatoire peut déposer une plainte devant la Commission en la forme acceptable pour cette dernière.</p>	<p>Plaintes</p>
Consent of victim	<p>(2) If a complaint is made by someone other than the individual who is alleged to be the victim of the discriminatory practice to which the complaint relates, the Commission may refuse to deal with the complaint unless the alleged victim consents thereto.</p>	<p>(2) La Commission peut assujettir la recevabilité d'une plainte au consentement préalable de l'individu présenté comme la victime de l'acte discriminatoire.</p>	<p>Consentement de la victime</p>
Investigation commenced by Commission	<p>(3) Where the Commission has reasonable grounds for believing that a person is engaging or has engaged in a discriminatory practice, the Commission may initiate a complaint.</p>	<p>(3) La Commission peut prendre l'initiative de la plainte dans les cas où elle a des motifs raisonnables de croire qu'une personne a commis un acte discriminatoire.</p>	<p>Autosaisine de la Commission</p>
Limitation	<p>(3.1) No complaint may be initiated under subsection (3) as a result of information obtained by the Commission in the course of the administration of the <i>Employment Equity Act</i>.</p>	<p>(3.1) La Commission ne peut prendre l'initiative d'une plainte qui serait fondée sur des renseignements qu'elle aurait obtenus dans le cadre de l'application de la <i>Loi sur l'équité en matière d'emploi</i>.</p>	<p>Restriction</p>
Complaints may be dealt with together	<p>(4) If complaints are filed jointly or separately by more than one individual or group alleging that a particular person is engaging or has engaged in a discriminatory practice or a</p>	<p>(4) En cas de dépôt, conjoint ou distinct, par plusieurs individus ou groupes de plaintes dénonçant la perpétration par une personne donnée d'actes discriminatoires ou d'une série</p>	<p>Jonctions de plaintes</p>

series of similar discriminatory practices and the Commission is satisfied that the complaints involve substantially the same issues of fact and law, it may deal with the complaints together under this Part and may request the Chairperson of the Tribunal to institute a single inquiry into the complaints under section 49.

No complaints to be considered in certain cases

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

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

(b) occurred in Canada and was a discriminatory practice within the meaning of section 5, 8, 10, 12 or 13 in respect of which no particular individual is identifiable as the victim; or

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

Determination of status

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

No complaints to be dealt with in certain cases

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

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

(b) any accrued survivor's benefits.

R.S., 1985, c. H-6, s. 40; R.S., 1985, c. 31 (1st Supp.), s. 62; 1995, c. 44, s. 47; 1998, c. 9, s. 23.

d'actes discriminatoires de même nature, la Commission peut, pour l'application de la présente partie, joindre celles qui, à son avis, soulèvent pour l'essentiel les mêmes questions de fait et de droit et demander au président du Tribunal d'ordonner, conformément à l'article 49, une instruction commune.

(5) Pour l'application de la présente partie, la Commission n'est valablement saisie d'une plainte que si l'acte discriminatoire :

a) a eu lieu au Canada alors que la victime y était légalement présente ou qu'elle avait le droit d'y revenir;

b) a eu lieu au Canada sans qu'il soit possible d'en identifier la victime, mais tombe sous le coup des articles 5, 8, 10, 12 ou 13;

c) a eu lieu à l'étranger alors que la victime était un citoyen canadien ou qu'elle avait été légalement admise au Canada à titre de résident permanent.

Recevabilité

(6) En cas de doute sur la situation d'un individu par rapport à une plainte dans les cas prévus au paragraphe (5), la Commission renvoie la question au ministre compétent et elle ne peut procéder à l'instruction de la plainte que si la question est tranchée en faveur du plaignant.

Renvoi au ministre compétent

(7) La Commission ne peut connaître, au titre du paragraphe (1), d'une plainte qui porte sur les conditions et les modalités d'une caisse ou d'un régime de pensions, lorsque le redressement demandé aurait pour effet de priver un participant de droits acquis avant le 1^{er} mars 1978 ou de prestations de pension ou autres accumulées jusqu'à cette date, notamment :

a) de droits ou de prestations attachés à un âge déterminé de retraite;

b) de prestations de réversion.

L.R. (1985), ch. H-6, art. 40; L.R. (1985), ch. 31 (1^{er} suppl.), art. 62; 1995, ch. 44, art. 47; 1998, ch. 9, art. 23.

Cas d'irrecevabilité

Definitions	<p>40.1 (1) In this section, “designated groups” has the meaning assigned in section 3 of the <i>Employment Equity Act</i>;</p> <p>“employer” means a person who or organization that discharges the obligations of an employer under the <i>Employment Equity Act</i>.</p>	<p>40.1 (1) Les définitions qui suivent s’appliquent au présent article.</p> <p>« employeur » Toute personne ou organisation chargée de l’exécution des obligations de l’employeur prévues par la <i>Loi sur l’équité en matière d’emploi</i>.</p> <p>« groupes désignés » S’entend au sens de l’article 3 de la <i>Loi sur l’équité en matière d’emploi</i>.</p>	<p>Définitions</p> <p>« employeur » “employer”</p> <p>« groupes désignés » “designated groups”</p>
Employment equity complaints	<p>(2) No complaint may be dealt with by the Commission pursuant to section 40 where</p> <p>(a) the complaint is made against an employer alleging that the employer has engaged in a discriminatory practice set out in section 7 or paragraph 10(a); and</p> <p>(b) the complaint is based solely on statistical information that purports to show that members of one or more designated groups are underrepresented in the employer’s workforce.</p> <p>1995, c. 44, s. 48.</p>	<p>(2) La Commission ne peut se fonder sur l’article 40 pour connaître des plaintes qui, à la fois, sont :</p> <p>a) faites contre un employeur et dénonçant la perpétration d’actes discriminatoires visés à l’article 7 ou à l’alinéa 10a);</p> <p>b) fondées uniquement sur des données statistiques qui tendent à établir la sous-représentation des membres des groupes désignés dans l’effectif de l’employeur.</p> <p>1995, ch. 44, art. 48.</p>	<p>Exception à la compétence</p>
Commission to deal with complaint	<p>41. (1) Subject to section 40, the Commission shall deal with any complaint filed with it unless in respect of that complaint it appears to the Commission that</p> <p>(a) the alleged victim of the discriminatory practice to which the complaint relates ought to exhaust grievance or review procedures otherwise reasonably available;</p> <p>(b) the complaint is one that could more appropriately be dealt with, initially or completely, according to a procedure provided for under an Act of Parliament other than this Act;</p> <p>(c) the complaint is beyond the jurisdiction of the Commission;</p> <p>(d) the complaint is trivial, frivolous, vexatious or made in bad faith; or</p> <p>(e) the complaint is based on acts or omissions the last of which occurred more than one year, or such longer period of time as the Commission considers appropriate in the circumstances, before receipt of the complaint.</p>	<p>41. (1) Sous réserve de l’article 40, la Commission statue sur toute plainte dont elle est saisie à moins qu’elle estime celle-ci irrecevable pour un des motifs suivants :</p> <p>a) la victime présumée de l’acte discriminatoire devrait épuiser d’abord les recours internes ou les procédures d’appel ou de règlement des griefs qui lui sont normalement ouverts;</p> <p>b) la plainte pourrait avantageusement être instruite, dans un premier temps ou à toutes les étapes, selon des procédures prévues par une autre loi fédérale;</p> <p>c) la plainte n’est pas de sa compétence;</p> <p>d) la plainte est frivole, vexatoire ou entachée de mauvaise foi;</p> <p>e) la plainte a été déposée après l’expiration d’un délai d’un an après le dernier des faits sur lesquels elle est fondée, ou de tout délai supérieur que la Commission estime indiqué dans les circonstances.</p>	<p>Irrecevabilité</p>
Commission may decline to deal with complaint	<p>(2) The Commission may decline to deal with a complaint referred to in paragraph 10(a) in respect of an employer where it is of the opinion that the matter has been adequately</p>	<p>(2) La Commission peut refuser d’examiner une plainte de discrimination fondée sur l’alinéa 10a) et dirigée contre un employeur si elle estime que l’objet de la plainte est traité de fa-</p>	<p>Refus d’examen</p>

dealt with in the employer's employment equity plan prepared pursuant to section 10 of the *Employment Equity Act*.

çon adéquate dans le plan d'équité en matière d'emploi que l'employeur prépare en conformité avec l'article 10 de la *Loi sur l'équité en matière d'emploi*.

Meaning of "employer"	<p>(3) In this section, "employer" means a person who or organization that discharges the obligations of an employer under the <i>Employment Equity Act</i>.</p> <p>R.S., 1985, c. H-6, s. 41; 1994, c. 26, s. 34(F); 1995, c. 44, s. 49.</p>	<p>(3) Au présent article, «employeur» désigne toute personne ou organisation chargée de l'exécution des obligations de l'employeur prévues par la <i>Loi sur l'équité en matière d'emploi</i>.</p> <p>L.R. (1985), ch. H-6, art. 41; 1994, ch. 26, art. 34(F); 1995, ch. 44, art. 49.</p>	Définition de « employeur »
Notice	<p>42. (1) Subject to subsection (2), when the Commission decides not to deal with a complaint, it shall send a written notice of its decision to the complainant setting out the reason for its decision.</p>	<p>42. (1) Sous réserve du paragraphe (2), la Commission motive par écrit sa décision auprès du plaignant dans les cas où elle décide que la plainte est irrecevable.</p>	Avis
Attributing fault for delay	<p>(2) Before deciding that a complaint will not be dealt with because a procedure referred to in paragraph 41(a) has not been exhausted, the Commission shall satisfy itself that the failure to exhaust the procedure was attributable to the complainant and not to another.</p> <p>1976-77, c. 33, s. 34.</p>	<p>(2) Avant de décider qu'une plainte est irrecevable pour le motif que les recours ou procédures mentionnés à l'alinéa 41a) n'ont pas été épuisés, la Commission s'assure que le défaut est exclusivement imputable au plaignant.</p> <p>1976-77, ch. 33, art. 34.</p>	Imputabilité du défaut
INVESTIGATION		ENQUÊTE	
Designation of investigator	<p>43. (1) The Commission may designate a person, in this Part referred to as an "investigator", to investigate a complaint.</p>	<p>43. (1) La Commission peut charger une personne, appelée, dans la présente loi, « l'enquêteur », d'enquêter sur une plainte.</p>	Nomination de l'enquêteur
Manner of investigation	<p>(2) An investigator shall investigate a complaint in a manner authorized by regulations made pursuant to subsection (4).</p>	<p>(2) L'enquêteur doit respecter la procédure d'enquête prévue aux règlements pris en vertu du paragraphe (4).</p>	Procédure d'enquête
Power to enter	<p>(2.1) Subject to such limitations as the Governor in Council may prescribe in the interests of national defence or security, an investigator with a warrant issued under subsection (2.2) may, at any reasonable time, enter and search any premises in order to carry out such inquiries as are reasonably necessary for the investigation of a complaint.</p>	<p>(2.1) Sous réserve des restrictions que le gouverneur en conseil peut imposer dans l'intérêt de la défense nationale ou de la sécurité, l'enquêteur muni du mandat visé au paragraphe (2.2) peut, à toute heure convenable, pénétrer dans tous locaux et y perquisitionner, pour y procéder aux investigations justifiées par l'enquête.</p>	Pouvoir de visite
Authority to issue warrant	<p>(2.2) Where on <i>ex parte</i> application a judge of the Federal Court is satisfied by information on oath that there are reasonable grounds to believe that there is in any premises any evidence relevant to the investigation of a complaint, the judge may issue a warrant under the judge's hand authorizing the investigator named therein to enter and search those premises for any such evidence subject to such conditions as may be specified in the warrant.</p>	<p>(2.2) Sur demande <i>ex parte</i>, un juge de la Cour fédérale peut, s'il est convaincu, sur la foi d'une dénonciation sous serment, qu'il y a des motifs raisonnables de croire à la présence dans des locaux d'éléments de preuve utiles à l'enquête, signer un mandat autorisant, sous réserve des conditions éventuellement fixées, l'enquêteur qui y est nommé à perquisitionner dans ces locaux.</p>	Délivrance du mandat

Use of force	<p>(2.3) In executing a warrant issued under subsection (2.2), the investigator named therein shall not use force unless the investigator is accompanied by a peace officer and the use of force has been specifically authorized in the warrant.</p>	<p>(2.3) L'enquêteur ne peut recourir à la force dans l'exécution du mandat que si celui-ci en autorise expressément l'usage et que si lui-même est accompagné d'un agent de la paix.</p>	Usage de la force
Production of books	<p>(2.4) An investigator may require any individual found in any premises entered pursuant to this section to produce for inspection or for the purpose of obtaining copies thereof or extracts therefrom any books or other documents containing any matter relevant to the investigation being conducted by the investigator.</p>	<p>(2.4) L'enquêteur peut obliger toute personne se trouvant sur les lieux visés au présent article à communiquer, pour examen, ou reproduction totale ou partielle, les livres et documents qui contiennent des renseignements utiles à l'enquête.</p>	Examen des livres
Obstruction	<p>(3) No person shall obstruct an investigator in the investigation of a complaint.</p>	<p>(3) Il est interdit d'entraver l'action de l'enquêteur.</p>	Entraves
Regulations	<p>(4) The Governor in Council may make regulations</p> <p>(a) prescribing procedures to be followed by investigators;</p> <p>(b) authorizing the manner in which complaints are to be investigated pursuant to this Part; and</p> <p>(c) prescribing limitations for the purpose of subsection (2.1).</p> <p>R.S., 1985, c. H-6, s. 43; R.S., 1985, c. 31 (1st Supp.), s. 63.</p>	<p>(4) Le gouverneur en conseil peut fixer, par règlement :</p> <p>a) la procédure à suivre par les enquêteurs;</p> <p>b) les modalités d'enquête sur les plaintes dont ils sont saisis au titre de la présente partie;</p> <p>c) les restrictions nécessaires à l'application du paragraphe (2.1).</p> <p>L.R. (1985), ch. H-6, art. 43; L.R. (1985), ch. 31 (1^{er} suppl.), art. 63.</p>	Règlements
Report	<p>44. (1) An investigator shall, as soon as possible after the conclusion of an investigation, submit to the Commission a report of the findings of the investigation.</p>	<p>44. (1) L'enquêteur présente son rapport à la Commission le plus tôt possible après la fin de l'enquête.</p>	Rapport
Action on receipt of report	<p>(2) If, on receipt of a report referred to in subsection (1), the Commission is satisfied</p> <p>(a) that the complainant ought to exhaust grievance or review procedures otherwise reasonably available, or</p> <p>(b) that the complaint could more appropriately be dealt with, initially or completely, by means of a procedure provided for under an Act of Parliament other than this Act,</p> <p>it shall refer the complainant to the appropriate authority.</p>	<p>(2) La Commission renvoie le plaignant à l'autorité compétente dans les cas où, sur réception du rapport, elle est convaincue, selon le cas :</p> <p>a) que le plaignant devrait épuiser les recours internes ou les procédures d'appel ou de règlement des griefs qui lui sont normalement ouverts;</p> <p>b) que la plainte pourrait avantageusement être instruite, dans un premier temps ou à toutes les étapes, selon des procédures prévues par une autre loi fédérale.</p>	Suite à donner au rapport
Idem	<p>(3) On receipt of a report referred to in subsection (1), the Commission</p> <p>(a) may request the Chairperson of the Tribunal to institute an inquiry under section 49 into the complaint to which the report relates if the Commission is satisfied</p>	<p>(3) Sur réception du rapport d'enquête prévu au paragraphe (1), la Commission :</p> <p>a) peut demander au président du Tribunal de désigner, en application de l'article 49, un membre pour instruire la plainte visée par le rapport, si elle est convaincue :</p>	Idem

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

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

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

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

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

Notice

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

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

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

R.S., 1985, c. H-6, s. 44; R.S., 1985, c. 31 (1st Supp.), s. 64; 1998, c. 9, s. 24.

Definition of "Review Committee"

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

Complaint involving security considerations

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

(a) dismiss the complaint; or

(b) refer the matter to the Review Committee.

Notice

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

(a) shall notify in writing the complainant and the person against whom the complaint

(i) d'une part, que, compte tenu des circonstances relatives à la plainte, l'examen de celle-ci est justifié,

(ii) d'autre part, qu'il n'y a pas lieu de renvoyer la plainte en application du paragraphe (2) ni de la rejeter aux termes des alinéas 41c) à e);

b) rejette la plainte, si elle est convaincue :

(i) soit que, compte tenu des circonstances relatives à la plainte, l'examen de celle-ci n'est pas justifié,

(ii) soit que la plainte doit être rejetée pour l'un des motifs énoncés aux alinéas 41c) à e).

Avis

(4) Après réception du rapport, la Commission :

a) informe par écrit les parties à la plainte de la décision qu'elle a prise en vertu des paragraphes (2) ou (3);

b) peut informer toute autre personne, de la manière qu'elle juge indiquée, de la décision qu'elle a prise en vertu des paragraphes (2) ou (3).

L.R. (1985), ch. H-6, art. 44; L.R. (1985), ch. 31 (1^{er} sup- pl.), art. 64; 1998, ch. 9, art. 24.

Définition de « comité de surveillance »

45. (1) Au présent article et à l'article 46, « comité de surveillance » s'entend au sens de la *Loi sur le Service canadien du renseignement de sécurité*.

Plainte mettant en cause la sécurité

(2) Si, à toute étape entre le dépôt d'une plainte et le début d'une audience à ce sujet devant un membre instructeur, la Commission reçoit un avis écrit d'un ministre fédéral l'informant que les actes qui font l'objet de la plainte mettent en cause la sécurité du Canada, elle peut :

a) soit rejeter la plainte;

b) soit transmettre l'affaire au comité de surveillance.

Avis

(3) Sur réception de l'avis mentionné au paragraphe (2), la Commission :

a) informe par écrit les parties à la plainte de la décision qu'elle a prise en vertu des alinéas (2)a) ou b);

	<p>was made of its action under paragraph (2)(a) or (b); and</p> <p>(b) may, in such manner as it sees fit, notify any other person whom it considers necessary to notify of its action under paragraph 2(a) or (b).</p>	<p>b) peut informer toute autre personne, de la manière qu'elle juge indiquée, de la décision qu'elle a prise en vertu des alinéas (2)a) ou b).</p>	
<p>Stay of procedures</p>	<p>(4) Where the Commission has referred the matter to the Review Committee pursuant to paragraph (2)(b), it shall not deal with the complaint until the Review Committee has, pursuant to subsection 46(1), provided it with a report in relation to the matter.</p>	<p>(4) Lorsqu'elle a transmis une affaire au comité de surveillance en vertu de l'alinéa (2)b), la Commission ne peut poursuivre l'étude d'une plainte avant que celui-ci ne lui ait remis son rapport à cet égard en vertu du paragraphe 46(1).</p>	<p>Suspension des procédures</p>
<p>Application of the <i>Canadian Security Intelligence Service Act</i></p>	<p>(5) Where a matter is referred to the Review Committee pursuant to paragraph (2)(b), subsections 39(2) and (3) and sections 43, 44 and 47 to 51 of the <i>Canadian Security Intelligence Service Act</i> apply, with such modifications as the circumstances require, to the matter as if the referral were a complaint made pursuant to section 42 of that Act except that a reference in any of those provisions to "deputy head" shall be read as a reference to the minister referred to in subsection (2).</p>	<p>(5) Lorsqu'une affaire est transmise au comité de surveillance en vertu de l'alinéa (2)b), les paragraphes 39(2) et (3) et les articles 43, 44 et 47 à 51 de la <i>Loi sur le Service canadien du renseignement de sécurité</i> s'appliquent, compte tenu des adaptations de circonstance, à cette affaire comme s'il s'agissait d'une plainte présentée en vertu de l'article 42 de cette loi, sauf qu'un renvoi dans l'une de ces dispositions à l'administrateur général vaut renvoi au ministre visé au paragraphe (2).</p>	<p>Application de la <i>Loi sur le Service canadien du renseignement de sécurité</i></p>
<p>Statement to be sent to person affected</p>	<p>(6) The Review Committee shall, as soon as practicable after a matter in relation to a complaint is referred to it pursuant to paragraph (2)(b), send to the complainant a statement summarizing such information available to it as will enable the complainant to be as fully informed as possible of the circumstances giving rise to the referral.</p> <p>R.S., 1985, c. H-6, s. 45; 1998, c. 9, s. 25.</p>	<p>(6) Afin de permettre au plaignant d'être informé de la façon la plus complète possible des circonstances qui ont donné lieu à la transmission de l'affaire en vertu de l'alinéa (2)b), le comité de surveillance lui envoie, dans les plus brefs délais possible après la transmission, un résumé des informations dont il dispose à ce sujet.</p> <p>L.R. (1985), ch. H-6, art. 45; 1998, ch. 9, art. 25.</p>	<p>Résumé envoyé à la personne visée</p>
<p>Report</p>	<p>46. (1) On completion of its investigation under section 45, the Review Committee shall, not later than forty-five days after the matter is referred to it pursuant to paragraph 45(2)(b), provide the Commission, the minister referred to in subsection 45(2) and the complainant with a report containing the findings of the Committee.</p>	<p>46. (1) À l'issue de son enquête et au plus tard quarante-cinq jours après qu'une affaire lui a été transmise en vertu de l'alinéa 45(2)b), le comité de surveillance remet à la Commission, au ministre visé au paragraphe 45(2) et au directeur un rapport contenant ses conclusions.</p>	<p>Rapport</p>
<p>Action on receipt of report</p>	<p>(2) After considering a report provided pursuant to subsection (1), the Commission</p> <p>(a) may dismiss the complaint or, where it does not do so, shall proceed to deal with the complaint pursuant to this Part; and</p> <p>(b) shall notify, in writing, the complainant and the person against whom the complaint was made of its action under paragraph (a) and may, in such manner as it sees fit, notify</p>	<p>(2) Après examen du rapport remis en vertu du paragraphe (1), la Commission :</p> <p>a) peut rejeter la plainte ou, si elle ne la rejette pas, doit continuer à l'étudier en conformité avec la présente partie;</p> <p>b) doit informer par écrit les parties à la plainte de la décision qu'elle a prise en vertu de l'alinéa a) et peut informer toute autre</p>	<p>Conséquences du rapport</p>

any other person whom it considers necessary to notify of that action.

1984, c. 21, s. 73.

CONCILIATOR

Appointment of conciliator

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

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

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

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

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

Eligibility

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

Confidentiality

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

1976-77, c. 33, s. 37; 1980-81-82-83, c. 143, s. 17(F); 1984, c. 21, s. 74.

SETTLEMENT

Referral of a settlement to Commission

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

Certificate

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

Enforcement of settlement

(3) A settlement approved under this section may, for the purpose of enforcement, be made an order of the Federal Court on application to that Court by the Commission or a party to the settlement.

R.S., 1985, c. H-6, s. 48; 1998, c. 9, s. 26.

personne, de la manière qu’elle juge indiquée, de cette décision.

1984, ch. 21, art. 73.

CONCILIATION

Nomination du conciliateur

47. (1) Sous réserve du paragraphe (2), la Commission peut charger un conciliateur d’en arriver à un règlement de la plainte, soit dès le dépôt de celle-ci, soit ultérieurement dans l’un des cas suivants :

a) l’enquête ne mène pas à un règlement;

b) la plainte n’est pas renvoyée ni rejetée en vertu des paragraphes 44(2) ou (3) ou des alinéas 45(2)a) ou 46(2)a);

c) la plainte n’est pas réglée après réception par les parties de l’avis prévu au paragraphe 44(4).

Incompatibilité

(2) Pour une plainte donnée, les fonctions d’enquêteur et de conciliateur sont incompatibles.

Renseignements confidentiels

(3) Les renseignements recueillis par le conciliateur sont confidentiels et ne peuvent être divulgués sans le consentement de la personne qui les a fournis.

1976-77, ch. 33, art. 37; 1980-81-82-83, ch. 143, art. 17(F); 1984, ch. 21, art. 74.

RÈGLEMENT

Présentation des conditions de règlement à la Commission

48. (1) Les parties qui conviennent d’un règlement à toute étape postérieure au dépôt de la plainte, mais avant le début de l’audience d’un tribunal des droits de la personne, en présentent les conditions à l’approbation de la Commission.

Certificat

(2) Dans le cas prévu au paragraphe (1), la Commission certifie sa décision et la communique aux parties.

Exécution du règlement

(3) Le règlement approuvé par la Commission peut, par requête d’une partie ou de la Commission à la Cour fédérale, être assimilé à une ordonnance de cette juridiction et être exécuté comme telle.

L.R. (1985), ch. H-6, art. 48; 1998, ch. 9, art. 26.

CANADIAN HUMAN RIGHTS TRIBUNAL

TRIBUNAL CANADIEN DES DROITS DE LA PERSONNE

Establishment of Tribunal	48.1 (1) There is hereby established a tribunal to be known as the Canadian Human Rights Tribunal consisting, subject to subsection (6), of a maximum of fifteen members, including a Chairperson and a Vice-chairperson, as may be appointed by the Governor in Council.	48.1 (1) Est constitué le Tribunal canadien des droits de la personne composé, sous réserve du paragraphe (6), d'au plus quinze membres, dont le président et le vice-président, nommés par le gouverneur en conseil.	Constitution du Tribunal
Qualifications for appointment of members	(2) Persons appointed as members of the Tribunal must have experience, expertise and interest in, and sensitivity to, human rights.	(2) Les membres doivent avoir une expérience et des compétences dans le domaine des droits de la personne, y être sensibilisés et avoir un intérêt marqué pour ce domaine.	Choix des membres
Legal qualifications	(3) The Chairperson and Vice-chairperson must be members in good standing of the bar of a province or the Chambre des notaires du Québec for at least ten years and at least two of the other members of the Tribunal must be members in good standing of the bar of a province or the Chambre des notaires du Québec.	(3) Outre le président et le vice-président, qui doivent l'être depuis au moins dix ans, au moins deux autres membres du Tribunal doivent être membres en règle du barreau d'une province ou de la Chambre des notaires du Québec.	Exigences pour certains membres
Regional representation	(4) Appointments are to be made having regard to the need for regional representation in the membership of the Tribunal.	(4) Le gouverneur en conseil procède aux nominations avec le souci d'assurer une bonne représentation des régions.	Représentation des régions
Appointment of temporary members — incapacity	(5) If a member is absent or incapacitated, the Governor in Council may, despite subsection (1), appoint a temporary substitute member to act during the absence or incapacity.	(5) Malgré le paragraphe (1), le gouverneur en conseil peut, en cas d'empêchement ou d'absence d'un membre, lui nommer un remplaçant à titre provisoire.	Membres nommés à titre provisoire
Appointment of temporary members — workload	(6) The Governor in Council may appoint temporary members to the Tribunal for a term of not more than three years whenever, in the opinion of the Governor in Council, the workload of the Tribunal so requires. R.S., 1985, c. 31 (1st Supp.), s. 65; 1998, c. 9, s. 27.	(6) Le gouverneur en conseil peut nommer des vacataires pour un mandat maximal de trois ans lorsqu'il estime que la charge de travail du Tribunal le justifie. L.R. (1985), ch. 31 (1 ^{er} suppl.), art. 65; 1998, ch. 9, art. 27.	Vacataires
Terms of office	48.2 (1) The Chairperson and Vice-chairperson are to be appointed to hold office during good behaviour for terms of not more than seven years, and the other members are to be appointed to hold office during good behaviour for terms of not more than five years, but the Chairperson may be removed from office by the Governor in Council for cause and the Vice-chairperson and the other members may be subject to remedial or disciplinary measures in accordance with section 48.3.	48.2 (1) Le président et le vice-président du Tribunal sont nommés à titre inamovible pour un mandat maximal de sept ans et les autres membres le sont pour un mandat maximal de cinq ans, sous réserve, quant au président, de la révocation motivée que prononce le gouverneur en conseil et, quant aux autres membres, des mesures correctives ou disciplinaires prévues à l'article 48.3.	Durée du mandat
Acting after expiration of appointment	(2) A member whose appointment expires may, with the approval of the Chairperson, conclude any inquiry that the member has begun, and a person performing duties under this subsection is deemed to be a part-time member for	(2) Le membre dont le mandat est échu peut, avec l'agrément du président, terminer les affaires dont il est saisi. Il est alors réputé être un membre à temps partiel pour l'application des articles 48.3, 48.6, 50 et 52 à 58.	Prolongation du mandat

the purposes of sections 48.3, 48.6, 50 and 52 to 58.

Reappointment	<p>(3) The Chairperson, Vice-chairperson or any other member whose term has expired is eligible for reappointment in the same or any other capacity.</p> <p>R.S., 1985, c. 31 (1st Supp.), s. 65; 1998, c. 9, s. 27.</p>	<p>(3) Le président, le vice-président ou tout autre membre peut recevoir un nouveau mandat, aux fonctions identiques ou non.</p> <p>L.R. (1985), ch. 31 (1^{er} suppl.), art. 65; 1998, ch. 9, art. 27.</p>	Nouveau mandat
Remedial and disciplinary measures	<p>48.3 (1) The Chairperson of the Tribunal may request the Minister of Justice to decide whether a member should be subject to remedial or disciplinary measures for any reason set out in paragraphs (13)(a) to (d).</p>	<p>48.3 (1) Le président du Tribunal peut demander au ministre de la Justice de décider si des mesures correctives ou disciplinaires s'imposent à l'égard d'un membre pour tout motif énoncé aux alinéas (13)a) à d).</p>	Mesures correctives et disciplinaires
Measures	<p>(2) On receipt of the request, the Minister may take one or more of the following measures:</p> <p>(a) obtain, in an informal and expeditious manner, any information that the Minister considers necessary;</p> <p>(b) refer the matter for mediation, if the Minister is satisfied that the issues in relation to the request may be appropriately resolved by mediation;</p> <p>(c) request of the Governor in Council that an inquiry be held under subsection (3); or</p> <p>(d) advise the Chairperson that the Minister considers that it is not necessary to take further measures under this Act.</p>	<p>(2) Sur réception de la demande, le ministre peut prendre une ou plusieurs des mesures suivantes :</p> <p>a) obtenir de façon expéditive et sans formalisme les renseignements qu'il estime nécessaires;</p> <p>b) soumettre la question à la médiation s'il estime qu'elle peut ainsi être réglée de façon satisfaisante;</p> <p>c) demander au gouverneur en conseil la tenue de l'enquête prévue au paragraphe (3);</p> <p>d) informer le président qu'il n'estime pas nécessaire de prendre d'autres mesures au titre de la présente loi.</p>	Mesures
Appointment of inquirer	<p>(3) On receipt of a request referred to in paragraph (2)(c), the Governor in Council may, on the recommendation of the Minister, appoint a judge of a superior court to conduct the inquiry.</p>	<p>(3) Saisi de la demande prévue à l'alinéa (2)c), le gouverneur en conseil peut, sur recommandation du ministre, nommer à titre d'enquêteur un juge d'une juridiction supérieure.</p>	Nomination d'un enquêteur
Powers	<p>(4) The judge has all the powers, rights and privileges that are vested in a superior court, including the power to</p> <p>(a) issue a summons requiring any person to appear at the time and place specified in the summons in order to testify about all matters within the person's knowledge relative to the inquiry and to produce any document or thing relative to the inquiry that the person has or controls; and</p> <p>(b) administer oaths and examine any person on oath.</p>	<p>(4) L'enquêteur a alors les attributions d'une juridiction supérieure; il peut notamment :</p> <p>a) par citation adressée aux personnes ayant connaissance des faits se rapportant à l'affaire dont il est saisi, leur enjoindre de comparaître comme témoins aux date, heure et lieu indiqués et de produire tous documents ou autres pièces, utiles à l'affaire, dont elles ont la possession ou la responsabilité;</p> <p>b) faire prêter serment et interroger sous serment.</p>	Pouvoirs d'enquête
Staff	<p>(5) The judge may engage the services of counsel and other persons having technical or specialized knowledge to assist the judge in</p>	<p>(5) L'enquêteur peut retenir les services des experts, avocats ou autres personnes dont il estime le concours utile pour l'enquête, définir</p>	Personnel

conducting the inquiry, and may establish the terms and conditions of their engagement and, with the approval of the Treasury Board, fix and pay their remuneration and expenses.

leurs fonctions et leurs conditions d'emploi et, avec l'approbation du Conseil du Trésor, fixer et payer leur rémunération et leurs frais.

Inquiry in public	(6) Subject to subsections (7) and (8), an inquiry shall be conducted in public.	(6) Sous réserve des paragraphes (7) et (8), l'enquête est publique.	Enquête publique
Confidentiality of inquiry	(7) The judge may, on application, take any appropriate measures and make any order that the judge considers necessary to ensure the confidentiality of the inquiry if, after having considered all available alternative measures, the judge is satisfied that (a) there is a real and substantial risk that matters involving public security will be disclosed; (b) there is a real and substantial risk to the fairness of the inquiry such that the need to prevent disclosure outweighs the societal interest that the inquiry be conducted in public; or (c) there is a serious possibility that the life, liberty or security of a person will be endangered.	(7) L'enquêteur peut, sur demande en ce sens, prendre toute mesure ou rendre toute ordonnance pour assurer la confidentialité de l'enquête s'il est convaincu, après examen de toutes les solutions de rechange à sa disposition, que, selon le cas : (a) il y a un risque sérieux de divulgation de questions touchant la sécurité publique; (b) il y a un risque sérieux d'atteinte au droit à une enquête équitable de sorte que la nécessité d'empêcher la divulgation de renseignements l'emporte sur l'intérêt qu'a la société à ce que l'enquête soit publique; (c) il y a une sérieuse possibilité que la vie, la liberté ou la sécurité d'une personne puisse être mise en danger par la publicité des débats.	Confidentialité de l'enquête
Confidentiality of application	(8) If the judge considers it appropriate, the judge may take any measures and make any order that the judge considers necessary to ensure the confidentiality of a hearing held in respect of an application under subsection (7).	(8) L'enquêteur peut, s'il l'estime indiqué, prendre toute mesure ou rendre toute ordonnance qu'il juge nécessaire pour assurer la confidentialité de la demande.	Confidentialité de la demande
Rules of evidence	(9) In conducting an inquiry, the judge is not bound by any legal or technical rules of evidence and may receive, and base a decision on, evidence presented in the proceedings that the judge considers credible or trustworthy in the circumstances of the case.	(9) L'enquêteur n'est pas lié par les règles juridiques ou techniques de présentation de la preuve. Il peut recevoir les éléments qu'il juge crédibles ou dignes de foi en l'occurrence et fonder sur eux ses conclusions.	Règles de preuve
Intervenors	(10) An interested party may, with leave of the judge, intervene in an inquiry on any terms and conditions that the judge considers appropriate.	(10) L'enquêteur peut, par ordonnance, accorder à tout intervenant la qualité pour agir à l'enquête, selon les modalités qu'il estime indiquées.	Intervenant
Right to be heard	(11) The member who is the subject of the inquiry shall be given reasonable notice of the subject-matter of the inquiry and of the time and place of any hearing and shall be given an opportunity, in person or by counsel, to be heard at the hearing, to cross-examine witnesses and to present evidence.	(11) Le membre en cause doit être informé, suffisamment à l'avance, de l'objet de l'enquête, ainsi que des date, heure et lieu de l'audience, et avoir la possibilité de se faire entendre, de contre-interroger les témoins et de présenter tous éléments de preuve utiles à sa décharge, personnellement ou par procureur.	Avis de l'audience
Report to Minister	(12) After an inquiry has been completed, the judge shall submit a report containing the	(12) À l'issue de l'enquête, l'enquêteur présente au ministre un rapport faisant état de ses conclusions.	Rapport au ministre

judge's findings and recommendations, if any, to the Minister.

Recommendations

(13) The judge may, in the report, recommend that the member be suspended without pay or removed from office or that any other disciplinary measure or any remedial measure be taken if, in the judge's opinion, the member

(a) has become incapacitated from the proper execution of that office by reason of infirmity;

(b) has been guilty of misconduct;

(c) has failed in the proper execution of that office; or

(d) has been placed, by conduct or otherwise, in a position that is incompatible with the due execution of that office.

Transmission of report to Governor in Council

(14) When the Minister receives the report, the Minister shall send it to the Governor in Council who may, if the Governor in Council considers it appropriate, suspend the member without pay, remove the member from office or impose any other disciplinary measure or any remedial measure.

R.S., 1985, c. 31 (1st Supp.), s. 65; 1998, c. 9, s. 27.

Status of members

48.4 (1) The Chairperson and Vice-chairperson are to be appointed as full-time members of the Tribunal, and the other members are to be appointed as either full-time or part-time members.

Functions of Chairperson

(2) The Chairperson is the chief executive officer of the Tribunal and has supervision over and direction of its work, including the allocation of work among the members and the management of the Tribunal's internal affairs.

Functions of Vice-chairperson

(3) The Vice-chairperson shall assist the Chairperson and shall perform the functions of the Chairperson if the Chairperson is absent or unable to act or the office of Chairperson is vacant.

Acting Chairperson

(4) The Governor in Council may authorize a member of the Tribunal to perform the functions of the Chairperson on a temporary basis if the Chairperson and Vice-chairperson are absent or unable to act or if both of those offices are vacant.

R.S., 1985, c. 31 (1st Supp.), s. 65; 1998, c. 9, s. 27.

(13) L'enquêteur peut, dans son rapport, recommander la révocation, la suspension sans traitement ou toute autre mesure disciplinaire ou toute mesure corrective s'il est d'avis que le membre en cause, selon le cas :

a) n'est plus en état de s'acquitter efficacement de ses fonctions pour cause d'invalidité;

b) s'est rendu coupable de manquement à l'honneur ou à la dignité;

c) a manqué aux devoirs de sa charge;

d) s'est placé en situation d'incompatibilité, par sa propre faute ou pour toute autre cause.

Recommandations

(14) Le cas échéant, le ministre transmet le rapport au gouverneur en conseil qui peut, s'il l'estime indiqué, révoquer le membre en cause, le suspendre sans traitement ou imposer à son égard toute autre mesure disciplinaire ou toute mesure corrective.

L.R. (1985), ch. 31 (1^{er} suppl.), art. 65; 1998, ch. 9, art. 27.

Transmission du dossier au gouverneur en conseil

48.4 (1) Le président et le vice-président sont nommés à temps plein et les autres membres le sont à temps plein ou à temps partiel.

Statut des membres

(2) Le président est le premier dirigeant du Tribunal; à ce titre, il en assure la direction et en contrôle les activités, notamment en ce qui a trait à la répartition des tâches entre les membres et à la gestion de ses affaires internes.

Fonctions du président

(3) Le vice-président assiste le président dans ses fonctions et, en cas d'absence ou d'empêchement du président ou de vacance de son poste, assume la présidence.

Fonctions du vice-président

(4) En cas d'absence, d'empêchement ou de vacance du président et du vice-président, le gouverneur en conseil peut désigner un autre membre pour assumer la présidence.

L.R. (1985), ch. 31 (1^{er} suppl.), art. 65; 1998, ch. 9, art. 27.

Empêchement du vice-président

Residence	<p>48.5 The full-time members of the Tribunal shall reside in the National Capital Region, as described in the schedule to the <i>National Capital Act</i>, or within forty kilometres of that Region.</p> <p>R.S., 1985, c. 31 (1st Supp.), s. 65; 1998, c. 9, s. 27.</p>	<p>48.5 Les membres à temps plein doivent résider dans la région de la capitale nationale définie à l'annexe de la <i>Loi sur la capitale nationale</i> ou dans une zone périphérique de quarante kilomètres.</p> <p>L.R. (1985), ch. 31 (1^{er} suppl.), art. 65; 1998, ch. 9, art. 27.</p>	Lieu de résidence
Remuneration	<p>48.6 (1) The members of the Tribunal shall be paid such remuneration as may be fixed by the Governor in Council.</p>	<p>48.6 (1) Les membres du Tribunal reçoivent la rémunération que fixe le gouverneur en conseil.</p>	Rémunération
Travel expenses	<p>(2) Members are entitled to be paid travel and living expenses incurred in carrying out duties as members of the Tribunal while absent from their place of residence, but the expenses must not exceed the maximum limits authorized by the Treasury Board directives for employees of the Government of Canada.</p>	<p>(2) Ils ont droit aux frais de déplacement et de subsistance entraînés par l'accomplissement, hors du lieu de leur résidence habituelle, des fonctions qui leur sont confiées en application de la présente loi, sous réserve des montants maximaux que les instructions du Conseil du Trésor fixent en semblable matière pour les fonctionnaires du gouvernement du Canada.</p>	Frais de déplacement
Deemed employment in federal public administration	<p>(3) Members are deemed to be employed in the federal public administration for the purposes of the <i>Government Employees Compensation Act</i> and any regulations made under section 9 of the <i>Aeronautics Act</i>.</p> <p>1998, c. 9, s. 27; 2003, c. 22, s. 224(E).</p>	<p>(3) Ils sont réputés rattachés à l'administration publique fédérale pour l'application de la <i>Loi sur l'indemnisation des agents de l'État</i> et des règlements pris sous le régime de l'article 9 de la <i>Loi sur l'aéronautique</i>.</p> <p>1998, ch. 9, art. 27; 2003, ch. 22, art. 224(A).</p>	Statut
Head office	<p>48.7 The head office of the Tribunal shall be in the National Capital Region, as described in the schedule to the <i>National Capital Act</i>.</p> <p>1998, c. 9, s. 27.</p>	<p>48.7 Le siège du Tribunal est fixé dans la région de la capitale nationale définie à l'annexe de la <i>Loi sur la capitale nationale</i>.</p> <p>1998, ch. 9, art. 27.</p>	Siège
Registrar and other staff	<p>48.8 (1) The registrar and the other officers and employees necessary for the proper conduct of the work of the Tribunal shall be appointed in accordance with the <i>Public Service Employment Act</i>.</p>	<p>48.8 (1) La nomination du registraire et des autres membres du personnel nécessaire au bon fonctionnement du Tribunal se fait conformément à la <i>Loi sur l'emploi dans la fonction publique</i>.</p>	Personnel
Technical experts	<p>(2) The Chairperson may engage persons having technical or special knowledge to assist or advise members of the Tribunal in any matter and may, with the approval of the Treasury Board, fix their remuneration and reimburse their expenses in the same manner as the expenses of members of the Tribunal are reimbursed.</p> <p>1998, c. 9, s. 27.</p>	<p>(2) Le président du Tribunal peut engager des experts pour aider et conseiller les membres et, avec l'approbation du Conseil du Trésor, fixer leur rémunération. Ils reçoivent les autres indemnités accordées aux membres du Tribunal.</p> <p>1998, ch. 9, art. 27.</p>	Experts
Conduct of proceedings	<p>48.9 (1) Proceedings before the Tribunal shall be conducted as informally and expeditiously as the requirements of natural justice and the rules of procedure allow.</p>	<p>48.9 (1) L'instruction des plaintes se fait sans formalisme et de façon expéditive dans le respect des principes de justice naturelle et des règles de pratique.</p>	Fonctionnement
Tribunal rules of procedure	<p>(2) The Chairperson may make rules of procedure governing the practice and procedure before the Tribunal, including, but not limited to, rules governing</p>	<p>(2) Le président du Tribunal peut établir des règles de pratique régissant, notamment :</p> <p style="margin-left: 20px;">a) l'envoi des avis aux parties;</p>	Règles de pratique

	<p>(a) the giving of notices to parties;</p> <p>(b) the addition of parties and interested persons to the proceedings;</p> <p>(c) the summoning of witnesses;</p> <p>(d) the production and service of documents;</p> <p>(e) discovery proceedings;</p> <p>(f) pre-hearing conferences;</p> <p>(g) the introduction of evidence;</p> <p>(h) time limits within which hearings must be held and decisions must be made; and</p> <p>(i) awards of interest.</p>	<p>b) l'adjonction de parties ou d'intervenants à l'affaire;</p> <p>c) l'assignation des témoins;</p> <p>d) la production et la signification de documents;</p> <p>e) les enquêtes préalables;</p> <p>f) les conférences préparatoires;</p> <p>g) la présentation des éléments de preuve;</p> <p>h) le délai d'audition et le délai pour rendre les décisions;</p> <p>i) l'adjudication des intérêts.</p>	
Publication of proposed rules	(3) Subject to subsection (4), a copy of each rule that the Tribunal proposes to make shall be published in the <i>Canada Gazette</i> and a reasonable opportunity shall be given to interested persons to make representations with respect to it.	(3) Sous réserve du paragraphe (4), ces règles sont publiées avant leur établissement dans la <i>Gazette du Canada</i> et il doit être donné aux intéressés la possibilité de présenter des observations à leur sujet.	Publication préalable
Exception	(4) A proposed rule need not be published more than once, whether or not it has been amended as a result of any representations. 1998, c. 9, s. 27.	(4) La modification des règles proposées n'entraîne pas une nouvelle publication. 1998, ch. 9, art. 27.	Modification
INQUIRIES INTO COMPLAINTS		INSTRUCTION DES PLAINTES	
Request for inquiry	49. (1) At any stage after the filing of a complaint, the Commission may request the Chairperson of the Tribunal to institute an inquiry into the complaint if the Commission is satisfied that, having regard to all the circumstances of the complaint, an inquiry is warranted.	49. (1) La Commission peut, à toute étape postérieure au dépôt de la plainte, demander au président du Tribunal de désigner un membre pour instruire la plainte, si elle est convaincue, compte tenu des circonstances relatives à celle-ci, que l'instruction est justifiée.	Instruction
Chairperson to institute inquiry	(2) On receipt of a request, the Chairperson shall institute an inquiry by assigning a member of the Tribunal to inquire into the complaint, but the Chairperson may assign a panel of three members if he or she considers that the complexity of the complaint requires the inquiry to be conducted by three members.	(2) Sur réception de la demande, le président désigne un membre pour instruire la plainte. Il peut, s'il estime que la difficulté de l'affaire le justifie, désigner trois membres, auxquels dès lors les articles 50 à 58 s'appliquent.	Formation
Chair of panel	(3) If a panel of three members has been assigned to inquire into the complaint, the Chairperson shall designate one of them to chair the inquiry, but the Chairperson shall chair the inquiry if he or she is a member of the panel.	(3) Le président assume lui-même la présidence de la formation collégiale ou, lorsqu'il n'en fait pas partie, la délègue à l'un des membres instructeurs.	Présidence
Copy of rules to parties	(4) The Chairperson shall make a copy of the rules of procedure available to each party to the complaint.	(4) Le président met à la disposition des parties un exemplaire des règles de pratique.	Exemplaire aux parties

Qualification of member	(5) If the complaint involves a question about whether another Act or a regulation made under another Act is inconsistent with this Act or a regulation made under it, the member assigned to inquire into the complaint or, if three members have been assigned, the member chairing the inquiry, must be a member of the bar of a province or the Chambre des notaires du Québec.	(5) Dans le cas où la plainte met en cause la compatibilité d'une disposition d'une autre loi fédérale ou de ses règlements d'application avec la présente loi ou ses règlements d'application, le membre instructeur ou celui qui préside l'instruction, lorsqu'elle est collégiale, doit être membre du barreau d'une province ou de la Chambre des notaires du Québec.	Avocat ou notaire
Question raised subsequently	(6) If a question as described in subsection (5) arises after a member or panel has been assigned and the requirements of that subsection are not met, the inquiry shall nevertheless proceed with the member or panel as designated. R.S., 1985, c. H-6, s. 49; R.S., 1985, c. 31 (1st Supp.), s. 66; 1998, c. 9, s. 27.	(6) Le fait qu'une partie à l'enquête soulève la question de la compatibilité visée au paragraphe (5) en cours d'instruction n'a pas pour effet de dessaisir le ou les membres désignés pour entendre l'affaire et qui ne seraient pas autrement qualifiés pour l'entendre. L.R. (1985), ch. H-6, art. 49; L.R. (1985), ch. 31 (1 ^{er} suppl.), art. 66; 1998, ch. 9, art. 27.	Argument présenté en cours d'instruction
Conduct of inquiry	50. (1) After due notice to the Commission, the complainant, the person against whom the complaint was made and, at the discretion of the member or panel conducting the inquiry, any other interested party, the member or panel shall inquire into the complaint and shall give all parties to whom notice has been given a full and ample opportunity, in person or through counsel, to appear at the inquiry, present evidence and make representations.	50. (1) Le membre instructeur, après avis conforme à la Commission, aux parties et, à son appréciation, à tout intéressé, instruit la plainte pour laquelle il a été désigné; il donne à ceux-ci la possibilité pleine et entière de comparaître et de présenter, en personne ou par l'intermédiaire d'un avocat, des éléments de preuve ainsi que leurs observations.	Fonctions
Power to determine questions of law or fact	(2) In the course of hearing and determining any matter under inquiry, the member or panel may decide all questions of law or fact necessary to determining the matter.	(2) Il tranche les questions de droit et les questions de fait dans les affaires dont il est saisi en vertu de la présente partie.	Questions de droit et de fait
Additional powers	(3) In relation to a hearing of the inquiry, the member or panel may (a) in the same manner and to the same extent as a superior court of record, summon and enforce the attendance of witnesses and compel them to give oral or written evidence on oath and to produce any documents and things that the member or panel considers necessary for the full hearing and consideration of the complaint; (b) administer oaths; (c) subject to subsections (4) and (5), receive and accept any evidence and other information, whether on oath or by affidavit or otherwise, that the member or panel sees fit, whether or not that evidence or information is or would be admissible in a court of law;	(3) Pour la tenue de ses audiences, le membre instructeur a le pouvoir : a) d'assigner et de contraindre les témoins à comparaître, à déposer verbalement ou par écrit sous la foi du serment et à produire les pièces qu'il juge indispensables à l'examen complet de la plainte, au même titre qu'une cour supérieure d'archives; b) de faire prêter serment; c) de recevoir, sous réserve des paragraphes (4) et (5), des éléments de preuve ou des renseignements par déclaration verbale ou écrite sous serment ou par tout autre moyen qu'il estime indiqué, indépendamment de leur admissibilité devant un tribunal judiciaire; d) de modifier les délais prévus par les règles de pratique;	Pouvoirs

	<p>(d) lengthen or shorten any time limit established by the rules of procedure; and</p> <p>(e) decide any procedural or evidentiary question arising during the hearing.</p>	<p>e) de trancher toute question de procédure ou de preuve.</p>	
Limitation in relation to evidence	<p>(4) The member or panel may not admit or accept as evidence anything that would be inadmissible in a court by reason of any privilege under the law of evidence.</p>	<p>(4) Il ne peut admettre en preuve les éléments qui, dans le droit de la preuve, sont confidentiels devant les tribunaux judiciaires.</p>	Restriction
Conciliators as witnesses	<p>(5) A conciliator appointed to settle the complaint is not a competent or compellable witness at the hearing.</p>	<p>(5) Le conciliateur n'est un témoin ni compétent ni contraignable à l'instruction.</p>	Le conciliateur n'est ni compétent ni contraignable
Witness fees	<p>(6) Any person summoned to attend the hearing is entitled in the discretion of the member or panel to receive the same fees and allowances as those paid to persons summoned to attend before the Federal Court.</p> <p>R.S., 1985, c. H-6, s. 50; 1998, c. 9, s. 27.</p>	<p>(6) Les témoins assignés à comparaître en vertu du présent article peuvent, à l'appréciation du membre instructeur, recevoir les frais et indemnités accordés aux témoins assignés devant la Cour fédérale.</p> <p>L.R. (1985), ch. H-6, art. 50; 1998, ch. 9, art. 27.</p>	Frais des témoins
Duty of Commission on appearing	<p>51. In appearing at a hearing, presenting evidence and making representations, the Commission shall adopt such position as, in its opinion, is in the public interest having regard to the nature of the complaint.</p> <p>R.S., 1985, c. H-6, s. 51; 1998, c. 9, s. 27.</p>	<p>51. En comparaisant devant le membre instructeur et en présentant ses éléments de preuve et ses observations, la Commission adopte l'attitude la plus proche, à son avis, de l'intérêt public, compte tenu de la nature de la plainte.</p> <p>L.R. (1985), ch. H-6, art. 51; 1998, ch. 9, art. 27.</p>	Obligations de la Commission
Hearing in public subject to confidentiality order	<p>52. (1) An inquiry shall be conducted in public, but the member or panel conducting the inquiry may, on application, take any measures and make any order that the member or panel considers necessary to ensure the confidentiality of the inquiry if the member or panel is satisfied, during the inquiry or as a result of the inquiry being conducted in public, that</p> <p>(a) there is a real and substantial risk that matters involving public security will be disclosed;</p> <p>(b) there is a real and substantial risk to the fairness of the inquiry such that the need to prevent disclosure outweighs the societal interest that the inquiry be conducted in public;</p> <p>(c) there is a real and substantial risk that the disclosure of personal or other matters will cause undue hardship to the persons involved such that the need to prevent disclosure outweighs the societal interest that the inquiry be conducted in public; or</p> <p>(d) there is a serious possibility that the life, liberty or security of a person will be endangered.</p>	<p>52. (1) L'instruction est publique, mais le membre instructeur peut, sur demande en ce sens, prendre toute mesure ou rendre toute ordonnance pour assurer la confidentialité de l'instruction s'il est convaincu que, selon le cas :</p> <p>a) il y a un risque sérieux de divulgation de questions touchant la sécurité publique;</p> <p>b) il y a un risque sérieux d'atteinte au droit à une instruction équitable de sorte que la nécessité d'empêcher la divulgation de renseignements l'emporte sur l'intérêt qu'a la société à ce que l'instruction soit publique;</p> <p>c) il y a un risque sérieux de divulgation de questions personnelles ou autres de sorte que la nécessité d'empêcher leur divulgation dans l'intérêt des personnes concernées ou dans l'intérêt public l'emporte sur l'intérêt qu'a la société à ce que l'instruction soit publique;</p> <p>d) il y a une sérieuse possibilité que la vie, la liberté ou la sécurité d'une personne puisse être mise en danger par la publicité des débats.</p>	Instruction en principe publique

Confidentiality of application	<p>(2) If the member or panel considers it appropriate, the member or panel may take any measures and make any order that the member or panel considers necessary to ensure the confidentiality of a hearing held in respect of an application under subsection (1).</p> <p>R.S., 1985, c. H-6, s. 52; 1998, c. 9, s. 27.</p>	<p>(2) Le membre instructeur peut, s'il l'estime indiqué, prendre toute mesure ou rendre toute ordonnance qu'il juge nécessaire pour assurer la confidentialité de la demande visée au paragraphe (1).</p> <p>L.R. (1985), ch. H-6, art. 52; 1998, ch. 9, art. 27.</p>	Confidentialité
Complaint dismissed	<p>53. (1) At the conclusion of an inquiry, the member or panel conducting the inquiry shall dismiss the complaint if the member or panel finds that the complaint is not substantiated.</p>	<p>53. (1) À l'issue de l'instruction, le membre instructeur rejette la plainte qu'il juge non fondée.</p>	Rejet de la plainte
Complaint substantiated	<p>(2) If at the conclusion of the inquiry the member or panel finds that the complaint is substantiated, the member or panel may, subject to section 54, make an order against the person found to be engaging or to have engaged in the discriminatory practice and include in the order any of the following terms that the member or panel considers appropriate:</p> <p>(a) that the person cease the discriminatory practice and take measures, in consultation with the Commission on the general purposes of the measures, to redress the practice or to prevent the same or a similar practice from occurring in future, including</p> <p style="padding-left: 20px;">(i) the adoption of a special program, plan or arrangement referred to in subsection 16(1), or</p> <p style="padding-left: 20px;">(ii) making an application for approval and implementing a plan under section 17;</p> <p>(b) that the person make available to the victim of the discriminatory practice, on the first reasonable occasion, the rights, opportunities or privileges that are being or were denied the victim as a result of the practice;</p> <p>(c) that the person compensate the victim for any or all of the wages that the victim was deprived of and for any expenses incurred by the victim as a result of the discriminatory practice;</p> <p>(d) that the person compensate the victim for any or all additional costs of obtaining alternative goods, services, facilities or accommodation and for any expenses incurred by the victim as a result of the discriminatory practice; and</p> <p>(e) that the person compensate the victim, by an amount not exceeding twenty thousand dollars, for any pain and suffering that the</p>	<p>(2) À l'issue de l'instruction, le membre instructeur qui juge la plainte fondée, peut, sous réserve de l'article 54, ordonner, selon les circonstances, à la personne trouvée coupable d'un acte discriminatoire :</p> <p>a) de mettre fin à l'acte et de prendre, en consultation avec la Commission relativement à leurs objectifs généraux, des mesures de redressement ou des mesures destinées à prévenir des actes semblables, notamment :</p> <p style="padding-left: 20px;">(i) d'adopter un programme, un plan ou un arrangement visés au paragraphe 16(1),</p> <p style="padding-left: 20px;">(ii) de présenter une demande d'approbation et de mettre en œuvre un programme prévus à l'article 17;</p> <p>b) d'accorder à la victime, dès que les circonstances le permettent, les droits, chances ou avantages dont l'acte l'a privée;</p> <p>c) d'indemniser la victime de la totalité, ou de la fraction des pertes de salaire et des dépenses entraînées par l'acte;</p> <p>d) d'indemniser la victime de la totalité, ou de la fraction des frais supplémentaires occasionnés par le recours à d'autres biens, services, installations ou moyens d'hébergement, et des dépenses entraînées par l'acte;</p> <p>e) d'indemniser jusqu'à concurrence de 20 000\$ la victime qui a souffert un préjudice moral.</p>	Plainte jugée fondée

victim experienced as a result of the discriminatory practice.

Special compensation

(3) In addition to any order under subsection (2), the member or panel may order the person to pay such compensation not exceeding twenty thousand dollars to the victim as the member or panel may determine if the member or panel finds that the person is engaging or has engaged in the discriminatory practice wilfully or recklessly.

(3) Outre les pouvoirs que lui confère le paragraphe (2), le membre instructeur peut ordonner à l'auteur d'un acte discriminatoire de payer à la victime une indemnité maximale de 20 000 \$, s'il en vient à la conclusion que l'acte a été délibéré ou inconsidéré.

Indemnité spéciale

Interest

(4) Subject to the rules made under section 48.9, an order to pay compensation under this section may include an award of interest at a rate and for a period that the member or panel considers appropriate.

(4) Sous réserve des règles visées à l'article 48.9, le membre instructeur peut accorder des intérêts sur l'indemnité au taux et pour la période qu'il estime justifiés.

Intérêts

R.S., 1985, c. H-6, s. 53; 1998, c. 9, s. 27.

L.R. (1985), ch. H-6, art. 53; 1998, ch. 9, art. 27.

Orders relating to hate messages

54. (1) If a member or panel finds that a complaint related to a discriminatory practice described in section 13 is substantiated, the member or panel may make only one or more of the following orders:

54. (1) Le membre instructeur qui juge fondée une plainte tombant sous le coup de l'article 13 peut rendre :

Cas de propagande haineuse

(a) an order containing terms referred to in paragraph 53(2)(a);

a) l'ordonnance prévue à l'alinéa 53(2)a);

(b) an order under subsection 53(3) to compensate a victim specifically identified in the communication that constituted the discriminatory practice; and

b) l'ordonnance prévue au paragraphe 53(3) — avec ou sans intérêts — pour indemniser la victime identifiée dans la communication constituant l'acte discriminatoire;

(c) an order to pay a penalty of not more than ten thousand dollars.

c) une ordonnance imposant une sanction pécuniaire d'au plus 10 000 \$.

Factors

(1.1) In deciding whether to order the person to pay the penalty, the member or panel shall take into account the following factors:

(1.1) Il tient compte, avant d'imposer la sanction pécuniaire visée à l'alinéa (1)c) :

Facteurs

(a) the nature, circumstances, extent and gravity of the discriminatory practice; and

a) de la nature et de la gravité de l'acte discriminatoire ainsi que des circonstances l'entourant;

(b) the wilfulness or intent of the person who engaged in the discriminatory practice, any prior discriminatory practices that the person has engaged in and the person's ability to pay the penalty.

b) de la nature délibérée de l'acte, des antécédents discriminatoires de son auteur et de sa capacité de payer.

Idem

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

(2) L'ordonnance prévue au paragraphe 53(2) ne peut exiger :

Idem

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

a) le retrait d'un employé d'un poste qu'il a accepté de bonne foi;

(b) requiring the expulsion of an occupant from any premises or accommodation, if that

b) l'expulsion de l'occupant de bonne foi de locaux, moyens d'hébergement ou logements.

L.R. (1985), ch. H-6, art. 54; 1998, ch. 9, art. 28.

occupant obtained such premises or accommodation in good faith.

R.S., 1985, c. H-6, s. 54; 1998, c. 9, s. 28.

Definitions

“designated groups”
« groupes désignés »

“employer”
« employeur »

Limitation of order re employment equity

Interpretation

Enforcement of order

Application respecting disclosure of information

54.1 (1) In this section, “designated groups” has the meaning assigned in section 3 of the *Employment Equity Act*; and “employer” means a person who or organization that discharges the obligations of an employer under the *Employment Equity Act*.

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

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

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

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

1995, c. 44, s. 50.

55. and 56. [Repealed, 1998, c. 9, s. 29]

57. An order under section 53 or 54 may, for the purpose of enforcement, be made an order of the Federal Court by following the usual practice and procedure or by the Commission filing in the Registry of the Court a copy of the order certified to be a true copy.

R.S., 1985, c. H-6, s. 57; 1998, c. 9, s. 29.

58. (1) Subject to subsection (2), if an investigator or a member or panel of the Tribunal requires the disclosure of any information and a minister of the Crown or any other interested person objects to its disclosure, the Commission may apply to the Federal Court for a determination of the matter and the Court may take any action that it considers appropriate.

54.1 (1) Les définitions qui suivent s’appliquent au présent article.

« employeur » Toute personne ou organisation chargée de l’exécution des obligations de l’employeur prévues par la *Loi sur l’équité en matière d’emploi*.

« groupes désignés » S’entend au sens de l’article 3 de la *Loi sur l’équité en matière d’emploi*.

(2) Le tribunal qui juge fondée une plainte contre un employeur ne peut lui ordonner, malgré le sous-alinéa 53(2)a)(i), d’adopter un programme, plan ou arrangement comportant des règles et usages positifs destinés à corriger la sous-représentation des membres des groupes désignés dans son effectif ou des objectifs et calendriers à cet effet.

(3) Il est entendu que le paragraphe (2) n’a pas pour effet de restreindre le pouvoir conféré au tribunal par l’alinéa 53(2)a) d’ordonner à un employeur de mettre fin à un acte discriminatoire ou d’y remédier de toute autre manière.

1995, ch. 44, art. 50.

55. et 56. [Abrogés, 1998, ch. 9, art. 29]

57. Aux fins de leur exécution, les ordonnances rendues en vertu des articles 53 et 54 peuvent, selon la procédure habituelle ou dès que la Commission en dépose au greffe de la Cour fédérale une copie certifiée conforme, être assimilées aux ordonnances rendues par celle-ci.

L.R. (1985), ch. H-6, art. 57; 1998, ch. 9, art. 29.

58. (1) Sous réserve du paragraphe (2), dans le cas où un ministre fédéral ou une autre personne intéressée s’oppose à la divulgation de renseignements demandée par l’enquêteur ou le membre instructeur, la Commission peut demander à la Cour fédérale de statuer sur la question et celle-ci peut prendre les mesures qu’elle juge indiquées.

Définitions

« employeur »
“employer”

« groupes désignés »
“designated groups”

Restriction

Précision

Exécution des ordonnances

Divulgation de renseignements

Canada
Evidence Act

(2) An objection to disclosure shall be determined in accordance with the *Canada Evidence Act* if

(a) under subsection (1), a minister of the Crown or other official objects to the disclosure in accordance with sections 37 to 37.3 or section 39 of that Act;

(b) within 90 days after the day on which the Commission applies to the Federal Court, a minister of the Crown or other official objects to the disclosure in accordance with sections 37 to 37.3 or section 39 of that Act; or

(c) at any time, an objection to the disclosure is made, or a certificate is issued, in accordance with sections 38 to 38.13 of that Act.

R.S., 1985, c. H-6, s. 58; 1998, c. 9, s. 30; 2001, c. 41, s. 45.

Intimidation or
discrimination

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

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

OFFENCES AND PUNISHMENT

Offence

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

(a) [Repealed, 1998, c. 9, s. 31]

(b) obstructs a member or panel in carrying out its functions under this Part; or

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

Punishment

(2) A person who is guilty of an offence under subsection (1) is liable on summary conviction to a fine not exceeding \$50,000.

Prosecution of
employer or
employee
organization

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

Loi sur la
preuve au
Canada

(2) Il est disposé de l'opposition à divulgation en conformité avec la *Loi sur la preuve au Canada* dans les cas suivants :

a) le ministre fédéral ou un fonctionnaire porte son opposition au titre du paragraphe (1) dans le cadre des articles 37 à 37.3 ou 39 de cette loi;

b) dans les quatre-vingt-dix jours suivant la demande de la Commission à la Cour fédérale, le ministre fédéral ou un fonctionnaire s'oppose à la divulgation dans le cadre des articles 37 à 37.3 ou 39 de cette loi;

c) en tout état de cause, l'opposition à divulgation est portée, ou un certificat est délivré, en conformité avec les articles 38 à 38.13 de cette loi.

L.R. (1985), ch. H-6, art. 58; 1998, ch. 9, art. 30; 2001, ch. 41, art. 45.

Intimidation ou
discrimination

59. Est interdite toute menace, intimidation ou discrimination contre l'individu qui dépose une plainte, témoigne ou participe de quelque façon que ce soit au dépôt d'une plainte, au procès ou aux autres procédures que prévoit la présente partie, ou qui se propose d'agir de la sorte.

1976-77, ch. 33, art. 45.

INFRACTIONS ET PEINES

Infraction

60. (1) Commet une infraction quiconque, selon le cas :

a) [Abrogé, 1998, ch. 9, art. 31]

b) entrave l'action du membre instructeur dans l'exercice des fonctions que lui confère la présente partie;

c) enfreint les paragraphes 11(6) ou 43(3) ou l'article 59.

Peine

(2) Quiconque commet une infraction prévue au paragraphe (1) encourt, sur déclaration de culpabilité par procédure sommaire, une amende maximale de 50 000 \$.

Poursuites
d'associations
patronales et
d'organisations
syndicales

(3) Les poursuites fondées sur les infractions prévues au présent article peuvent être intentées contre ou au nom d'une association patronale ou d'une organisation syndicale; à cette fin, l'association ou l'organisation est considérée comme une personne et toute action ou omission de ses dirigeants ou mandataires dans le cadre de leurs pouvoirs d'agir pour le compte

behalf of the organization is deemed to be an act or thing done or omitted by the organization.

de l'association est réputée être une action ou omission de l'association.

Consent of Attorney General

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

(4) Les poursuites fondées sur les infractions prévues au présent article ne peuvent être intentées que par le procureur général du Canada ou qu'avec son consentement.

Consentement du procureur général

Limitation period

(5) A prosecution for an offence under this section may not be instituted more than one year after the subject-matter of the proceedings arose.

(5) Les poursuites pour infraction au présent article se prescrivent par un an à compter du fait en cause.

Prescription

R.S., 1985, c. H-6, s. 60; 1998, c. 9, s. 31.

L.R. (1985), ch. H-6, art. 60; 1998, ch. 9, art. 31.

REPORTS

RAPPORTS

Annual report of Commission

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

61. (1) Dans les trois mois qui suivent la fin de l'année civile, la Commission présente au Parlement un rapport sur l'application de la présente partie et de la partie II au cours de cette année, y mentionnant et commentant tout point visé aux alinéas 27(1)e) ou g) qu'elle juge pertinent.

Rapport annuel

Special reports

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

(2) La Commission peut, à tout moment, présenter au Parlement un rapport spécial mentionnant et commentant toute question relevant de ses pouvoirs et fonctions d'une urgence ou d'une importance telles qu'il ne saurait attendre la présentation du prochain rapport annuel visé au paragraphe (1).

Rapports spéciaux

Annual report of Tribunal

(3) The Tribunal shall, within three months after December 31 in each year, prepare and submit to Parliament a report on its activities under this Act for that year.

(3) Dans les trois mois qui suivent la fin de l'année civile, le Tribunal présente au Parlement un rapport sur l'application de la présente loi au cours de cette année.

Dépôt devant le Parlement

Transmission of report

(4) Every report under this section shall be submitted by being transmitted to the Speaker of the Senate and to the Speaker of the House of Commons for tabling in those Houses.

(4) Les rapports prévus au présent article sont remis au président de chaque chambre du Parlement pour dépôt devant celle-ci.

Remise aux présidents

R.S., 1985, c. H-6, s. 61; 1998, c. 9, s. 32.

L.R. (1985), ch. H-6, art. 61; 1998, ch. 9, art. 32.

MINISTER RESPONSIBLE

MINISTRE RESPONSABLE

Minister of Justice

61.1 The Minister of Justice is responsible for this Act, and the powers of the Governor in Council to make regulations under this Act, with the exception of section 29, are exercisable on the recommendation of that Minister.

61.1 Le gouverneur en conseil prend les règlements autorisés par la présente loi, sauf ceux visés à l'article 29, sur la recommandation du ministre de la Justice, responsable de l'application de la présente loi.

Ministre de la Justice

1998, c. 9, s. 32.

1998, ch. 9, art. 32.

	APPLICATION	APPLICATION	
Limitation	<p>62. (1) This Part and Parts I and II do not apply to or in respect of any superannuation or pension fund or plan established by an Act of Parliament enacted before March 1, 1978.</p>	<p>62. (1) La présente partie et les parties I et II ne s'appliquent, ni directement ni indirectement, aux régimes ou caisses de retraite constitués par une loi fédérale antérieure au 1^{er} mars 1978.</p>	Restriction
Review of Acts referred to in subsection (1)	<p>(2) The Commission shall keep under review those Acts of Parliament enacted before March 1, 1978 by which any superannuation or pension fund or plan is established and, where the Commission deems it to be appropriate, it may include in a report mentioned in section 61 reference to and comment on any provision of any of those Acts that in its opinion is inconsistent with the principle described in section 2.</p> <p>1976-77, c. 33, s. 48.</p>	<p>(2) La Commission examine les lois fédérales, antérieures au 1^{er} mars 1978, établissant des régimes ou caisses de retraite; dans les cas où elle le juge approprié, elle peut mentionner et commenter dans le rapport visé à l'article 61 toute disposition de ces lois qu'elle estime incompatible avec le principe énoncé à l'article 2.</p> <p>1976-77, ch. 33, art. 48.</p>	Examen des lois visées au par. (1)
Application in the territories	<p>63. Where a complaint under this Part relates to an act or omission that occurred in Yukon, the Northwest Territories or Nunavut, it may not be dealt with under this Part unless the act or omission could be the subject of a complaint under this Part had it occurred in a province.</p> <p>R.S., 1985, c. H-6, s. 63; 1993, c. 28, s. 78; 2002, c. 7, s. 127.</p>	<p>63. Les plaintes déposées sous le régime de la présente partie qui portent sur des actions ou des omissions survenues au Yukon, dans les Territoires du Nord-Ouest ou au Nunavut ne sont recevables sous ce régime que dans la mesure où elles le seraient dans les provinces.</p> <p>L.R. (1985), ch. H-6, art. 63; 1993, ch. 28, art. 78; 2002, ch. 7, art. 127.</p>	Application dans les territoires
Canadian Forces and Royal Canadian Mounted Police	<p>64. For the purposes of this Part and Parts I and II, members of the Canadian Forces and the Royal Canadian Mounted Police are deemed to be employed by the Crown.</p> <p>1976-77, c. 33, s. 48.</p>	<p>64. Pour l'application de la présente partie et des parties I et II, les personnels des Forces canadiennes et de la Gendarmerie royale du Canada sont réputés être employés par la Couronne.</p> <p>1976-77, ch. 33, art. 48.</p>	Forces canadiennes et Gendarmerie royale du Canada
Acts of employees, etc.	<p>65. (1) Subject to subsection (2), any act or omission committed by an officer, a director, an employee or an agent of any person, association or organization in the course of the employment of the officer, director, employee or agent shall, for the purposes of this Act, be deemed to be an act or omission committed by that person, association or organization.</p>	<p>65. (1) Sous réserve du paragraphe (2), les actes ou omissions commis par un employé, un mandataire, un administrateur ou un dirigeant dans le cadre de son emploi sont réputés, pour l'application de la présente loi, avoir été commis par la personne, l'organisme ou l'association qui l'emploie.</p>	Présomption
Exculpation	<p>(2) An act or omission shall not, by virtue of subsection (1), be deemed to be an act or omission committed by a person, association or organization if it is established that the person, association or organization did not consent to the commission of the act or omission and exercised all due diligence to prevent the act or omission from being committed and, subsequently, to mitigate or avoid the effect thereof.</p> <p>1980-81-82-83, c. 143, s. 23.</p>	<p>(2) La personne, l'organisme ou l'association visé au paragraphe (1) peut se soustraire à son application s'il établit que l'acte ou l'omission a eu lieu sans son consentement, qu'il avait pris toutes les mesures nécessaires pour l'empêcher et que, par la suite, il a tenté d'en atténuer ou d'en annuler les effets.</p> <p>1980-81-82-83, ch. 143, art. 23.</p>	Réserve

PART IV
APPLICATION

PARTIE IV
APPLICATION

Binding on Her Majesty	<p>66. (1) This Act is binding on Her Majesty in right of Canada, except in matters respecting the Yukon Government or the Government of the Northwest Territories or Nunavut.</p> <p>(2) [Repealed, 2002, c. 7, s. 128]</p>	<p>66. (1) La présente loi lie Sa Majesté du chef du Canada sauf en ce qui concerne les gouvernements du Yukon, des Territoires du Nord-Ouest et du Nunavut.</p> <p>(2) [Abrogé, 2002, ch. 7, art. 128]</p>	Obligation de Sa Majesté
Idem	<p>* (3) The exception referred to in subsection (1) shall come into operation in respect of the Government of the Northwest Territories on a day to be fixed by proclamation.</p> <p>* [Note: The exception shall come into operation when all the provisions of the <i>Human Rights Act</i>, S.N.W.T. 2002, c. 18 and <i>An Act to Amend the Public Service Act</i>, S.N.W.T. 2003, c. 16 are in force, see SI/2004-63; all the aforementioned provisions in force July 1, 2004.]</p>	<p>* (3) L'exception prévue au paragraphe (1) entre en vigueur à l'égard du gouvernement des Territoires du Nord-Ouest à la date fixée par proclamation.</p> <p>* [Note: L'exception entre en vigueur lorsque toutes les dispositions de la <i>Loi sur les droits de la personne</i>, L.T.N.-O. 2002, ch. 18 et de la <i>Loi modifiant la Loi sur la fonction publique</i>, L.T.N.-O. 2003, ch. 16 sont en vigueur, voir TR/2004-63; toutes les dispositions ci-haut mentionnées sont en vigueur le 1^{er} juillet 2004.]</p>	Idem
Idem	<p>(4) The exception referred to in subsection (1) shall come into operation in respect of the Government of Nunavut on a day to be fixed by order of the Governor in Council.</p> <p>R.S., 1985, c. H-6, s. 66; 1993, c. 28, s. 78; 2002, c. 7, s. 128.</p> <p>67. [Repealed, 2008, c. 30, s. 1]</p>	<p>(4) L'exception prévue au paragraphe (1) entre en vigueur à l'égard du gouvernement du territoire du Nunavut à la date fixée par décret du gouverneur en conseil.</p> <p>L.R. (1985), ch. H-6, art. 66; 1993, ch. 28, art. 78; 2002, ch. 7, art. 128.</p> <p>67. [Abrogé, 2008, ch. 30, art. 1]</p>	Idem