

## INDEX

The commentary entries in the index are referenced to page number. The entries for regulations in the index are referenced to page number. Entries in the index for the *Canadian Human Rights Act* and the *Employment Equity Act* are referenced to the section numbers of specific acts. Where the references are to section numbers of acts, the following acronyms will appear before the section number:

*Canadian Human Rights Act*: CHRA

*Employment Equity Act*: EEA

For example:

In the entry:

- application, 95; EEA 4  
95 refers to page 95

EEA 4 refers to section 4 of the *Employment Equity Act*

### A

#### **Accommodation Plans and Special Programs**

- accommodation ends when employer endures undue hardship, 48
- • Impaired at Work guide, 48
- accommodation plans, 55; CHRA 17
- • prior Commission approval, 56
- • rescinding plan by Commission, 57; CHRA 18
- • section 17 of the CHRA, 56
- return to work process, 49
- • clarifications by Supreme Court of Canada, 53

- • five-step process, 49
- special programs to reduce disadvantages, 55; CHRA 16
- • section 16 of the CHRA, 55
- substance dependence, 47
- • five-step program, 47

#### **Alcohol Testing**, 45

**Alternative Redress Procedures**, *see* Other Redress Procedures

### B

#### **Benefit and Pension Plans**

- definition of wages includes employer contributions to pension funds, CHRA 11(7)
- minimum ages for access, 39, CHRA 15(1)(d)

## Index

- Benefit and Pension Plans  
(*cont'd*)
- participation in pension plans, Can. Reg. 80-68, 175-189
- Bona Fide Occupational Requirement (BFOR)**
- drug and alcohol testing, 45
  - mandatory retirement for pilots, 39
  - modern test, 41
- C**
- Canadian Human Rights Act***
- application, CHRA 62-65
  - Canadian Human Rights Commission, 9-12; CHRA Part II (ss. 26-38.2)
    - • Accessibility Commissioner, CHRA 38.1-38.2
    - • convention on rights of persons with disabilities, CHRA 28.1
    - • establishment and structure, 9; CHRA 26
    - • mandate, 10; CHRA 27
    - • Human Rights Maturity Model, 10
    - • officers and staff, 9; CHRA 31-36, 38
      - • • accessibility unit, CHRA 32.1
    - • Operations Sector, 10
  - • power, duties and functions, 9; CHRA 27-29
  - • remuneration, CHRA 30
  - Canadian Human Rights Tribunal, 12; CHRA Part III (s. 48.1)
    - • establishment and structure, 12; CHRA 48.1
    - • mandate, 13
    - • proceedings, 13
    - conciliator, CHRA 47
    - discriminatory practices and general provisions, CHRA Part III (ss. 39-65)
      - exceptions to the rule against discrimination, 39; CHRA 15
        - • bona fide occupational requirement (BFOR), 40; CHRA 15(1)(a)
          - • • drug and alcohol testing, 45
          - • • three-step test, 42
          - • • questions for employer, 43
        - employer enduring undue hardship, 43, 45, CHRA 15(2)
      - accomodation ends, 47, 48, 49
      - managing the return to work process, 49
      - • clarifications by Supreme Court of Canada, 53
    - introduction, 1

## Index

- Canadian Human Rights Act*  
(*cont'd*)
- • purpose and interpretation, 7
  - • • fundamental law, 8
  - inquiries into complaints, CHRA 49-59
  - investigation, CHRA 43-46
  - Minister responsible, CHRA 61.1
  - offences and punishment, CHRA 60
  - proscribed discrimination, CHRA Part I (ss. 3-25)
    - • discriminatory practices, CHRA 5-25
    - • general, CHRA 3-4
    - purpose, 7; CHRA 2
    - reports, CHRA 61
    - scope, 15
    - • discriminatory practice, 27
    - • • comparator group, 29
    - • • discriminatory comments, 30
    - • • employment, 33
    - • • provision of goods, services, and residential/commercial accommodation, 29
    - • • section 13 of the *CHRA*, 26-27
  - • environmental sensitivity, 18
  - • federal and federally regulated works and industries, 15
  - • First Nations, 15, 24, 30, 31, 32; CHRA 67-1.1-4
  - • prohibited grounds of discrimination, 16
  - settlement, 60, CHRA 48
  - special programs, 51; CHRA 16
- Canadian Human Rights Commission**, *see also* *Canadian Human Rights Act*
- Accessibility Commissioner, CHRA 38.1-38.2
  - annual report to Parliament, 11
  - established, CHRA 26
  - Human Rights Maturity Model, 10
  - Operations Sector, 10
  - Pay Equity Commissioner, CHRA 38.2(1), 38.2(2)
  - powers, functions, duties, 9, 10; CHRA 27-29
- Canadian Human Rights Tribunal (CHRT)**, *see also* *Canadian Human Rights Act*; Remedies Ordered by Tribunal
- separate agency, 12

**Canadian Human Rights Tribunal (CHRT) (*cont'd*)**

- voluntary mediation process, 68

**Canadian Human Rights Tribunal Rules of Procedure, 2021, SOR/2021-137, 237**

**Complaint Process, *see also* Other Redress Procedures; Inquiries into Complaints**

- filing a complaint with the Commission, 59
- • appropriate forum, 61
- • complaint form, 62
- • • follow-up by Commission Office, 62
- • complaint rules, 63
- • federal jurisdiction and the respondent, 60
- • investigation, *see* Investigation
- • live controversy, 61
- • mediation, *see* Mediation of Complaints
- • preliminary assessment, 64
- • *prima facie* reasonableness, 62
- • resolution in another forum, 61
- • right to file, 59

- • whether situation described covered by prohibited grounds, 60

**Conciliation Process**

- conciliator appointed by Commission, 64; CHRA 47(1)
- conciliator cannot be called as witnesses in Tribunal proceedings, 74
- confidentiality, 74; CHRA 47(1)
- functions of conciliator, 73
- mandatory, 73
- no authority to make decisions, 74
- referral to Tribunal, 74
- settlement submitted to Commission for approval, 73; CHRA 48(1)
- subsequent to voluntary mediation and any investigation, 73
- successful, 73
- unsuccessful, 73

**COVID-19**

- genetic characteristics, 116
- implications, 115

**D**

**Discrimination, grounds of, *see* Prohibited Ground of Discrimination**

## Index

- revised policy, 45
- Discriminatory Practices**
- discriminatory practices, 29; CHRA 5-24
  - accommodation premises, 31; CHRA 6
  - comparator group, 32
  - denial of good, service or accommodation, 31; CHRA 5, 6
  - discriminatory comments and notices, 32; CHRA 12
  - disclosure of personal information, CHRA 40.01
  - employment, 35; CHRA 7
  - family status, 19
  - pay equity, 37; CHRA 11
  - harassment, 17, 30; CHRA 14
  - hate speech, 29
  - provision of goods, services, and residential/commercial accommodation, 31; CHRA 5, 6
  - retaliation, CHRA 14.1
  - section 13 of the *CHRA*, 29-30
  - exceptions to rule, *see* Exceptions to the Rule against Discrimination
  - general provisions, CHRA 39
- Drug and Alcohol Testing**
- E**
- Employment Equity Act, 103**
- annual report,
    - 2010, 105
    - 2011, 106
    - 2014, 108
    - 2017, 108
    - 2018, 109
  - application, 103, EEA 4
  - assessment of monetary penalties, EEA 35-40
  - enforcement of monetary penalty, EEA 40
  - options, EEA 38-39
  - violations, EEA 35-37
  - compliance audits, EEA 22
  - designated groups, 103; EEA 7
  - employer obligations, EEA 5-6
  - employment equity plan, EEA 10-16
  - employment equity process, 107, 110
  - employment equity review tribunals, EEA 28-32
  - federal programs, 104

## Index

- Employment Equity Act, 103  
(*cont'd*)
- Federal Contractors Program, *see* Federal Contractors Program
  - Legislated Employment Equity Program (“LEEP”), 104
  - Framework for Compliance Audits, 107
  - systemic issues in Indigenous employment, 110
  - general, EEA 41-55
  - coming into force, EEA 55
  - consequential amendments, EEA 46-53
  - repeal, EEA 54
  - transitional provision, EEA 45
  - horizontal issue-based audits, 110
  - gender-based lens, 109
  - interpretation, EEA 3
  - limitations respecting directions and orders, EEA 33
  - online application tool, Workplace Equity Information Management System, 110, 111
  - privileged information, EEA 34
  - purpose, 103, EEA 2
  - records and reports, EEA 17-21
  - requests for review or order, EEA 27
  - undertakings and directions, EEA 25-26
- Exceptions to the Rule against Discrimination**
- *bona fide* occupational requirement (BFOR), 40; CHRA 15(1)(a)
  - three-step test for *prima facie* discriminatory standard, 42
  - distinction between direct and adverse discrimination discarded, 42
  - drug and alcohol testing, 45
  - employer enduring undue hardship, 43
  - mandatory retirement repealed, 39, 41
  - minimum or maximum age required by law, 39; CHRA 15(1)(b)
  - minimum age for accessing pension, 39; CHRA 15(1)(d), (d.1)
  - special programs, 55; CHRA 16
  - return to work process, 49

**F**

**Federal Contractors Program (FCP)**, 102, *see also Employment Equity Act*

- administration, 104; EEA 42(2)
- enforcement, 104
- initiated by Cabinet Decision, 104

**H**

**Hate Speech**

- CHRA section 13 repealed, 27
- *Warman v. Lemire*, 27

**Hearings**

- in-person and virtual, 83

**History of Human Rights Legislation in Canada**

- creation of Canadian Human Rights Commission, 4
- enactment of *Canadian Human Rights Act*, 4
- post Second World War, 2
  - movement against institutionalized racism, 2
  - trade union movements, 2
- provincial steps to address discrimination, 2
- *Fair Employment Practices Act* (Ontario), 3

- Ontario Human Rights Commission, 4
- *Racial Discrimination Act* (Ontario), 2, 3
- *Saskatchewan Bill of Rights*, 3
- *Social Assistance Act* (British Columbia), 2

**I**

**Impaired at Work Guide**, 47

**Inquiries into Complaints**

- instituting an inquiry, 77
  - Chambre des notaires du Quebec, 77
  - Commission can occupy one of three positions that conduct inquiry, 77
  - Commission may request of Chairperson of CHRT at any time after filing of complaint, 77
- how the Tribunal works, 86
- powers of a panel or Member of the Tribunal, 82
- indefinite adjournments exceptional remedy, 78
- informal and expeditious proceedings, 78; CHRA 48.9(1)
- procedure before the Tribunal, 78

## Index

- Inquiries into Complaints  
(*cont'd*)
- Rules of Procedure, 78, 231
  - Statement of Particulars, 80, 82
  - whether or not a certain act or regulation is inconsistent with the CHRA, 77

### **Investigation**

- Commission employs staff of investigators, 69
- hindrance or obstruction of investigator's an offence, 69; CHRA 43(3), 60(1)(c)
- investigator's report to Commission, 68, 70
- offence under *CHRA*, 69; CHRA 60(2)
- powers of investigators per *CHRA*, 67; CHRA 43
- warrant, 69; CHRA 43(2.2)
- reasonableness standard, 70
- Review Agency, CHRA 45

## **J**

### **Judicial Review by Federal Court, 89**

- application for, 91, 92, 93
- declaratory power of Court, 92, 99
- filing of affidavits and exhibits, 95

- filing of applicant's record, 96
- service of respondent's record, 96
- notice using Form 301, 94
- possible relief, 92
- power and jurisdiction, 91, 97, 98
- pre-hearing conference, 97
- requisition for date for hearing, 97
- standard of correctness, 93-94
- standard of reasonableness, 94

## **M**

### **Mediation of Complaints**

- advantages, 67
- Commission employs staff of mediators, 67
- early stage of complaint, 67
- if mediation fails, 68
- if parties decline to participate, 68
- Minutes of Settlement, 68
- private and confidential settlement, 67
- time allotted by Commission to complete, 63
- voluntary, 68



## Index

### O

#### **Other Redress Procedures**

- Commission still involved, 77
- grievance arbitration as an example, 77
- investigator appointed, 77
- referral a decision of Commission, 77
- list of, 16
- marital status, 16
- national or ethnic origin, 16
- pregnancy, 17, CHRA 3(2)
- race, 16, 17
- religion, 16, 17
- sex, 16, 17
- sexual orientation, 16

### P

#### **Pay Equity, 38; CHRA 11**

- Pay Equity Division, CHRA 36.1
- Pay Equity Unit, CHRA 32.2

#### **Pension Plans, see** Benefit and Pension Plans

#### **Prohibited Grounds of**

##### **Discrimination, 16; CHRA 3**

- age, 16
- ancestry, 24
- conviction where pardon granted or record suspension, 17
- disability, 17, 25
- family status, 18
- gender identity or expression, 17
- genetic characteristic, 16, 23
- ground “read in” by courts, 26

### R

#### **Regulations, By-Laws and Guidelines, 101**

- Can. Reg. 80-68 — *Canadian Human Rights Benefit Regulations*, 175
- Can. Reg. 86-1082 — *Equal Wages Guidelines, 1986*, 191
- listing of, 99
- SOR/2021-137 — *Canadian Human Rights Tribunal Rules of Procedure*, 99, 237

#### **Remedies Ordered by Tribunal, 87, see also** Inquiries into Complaints

- cannot order reimbursement of legal costs incurred in enforcing rights, 89
- cannot require removal of an individual from a position, 91

## Index

### Remedies Ordered by Tribunal (*cont'd*)

- Commission may oversee implementation of, 89
- compensation for complainant, 89
- dismissal of complaint, 87
- if complaint proven, 87
- interest, 90
- judicial review, 91
- no right of appeal from CHRT decision, 91
- pain and suffering compensation, 90
- remedial orders, 87

- • monetary, 90
- • non-monetary, 88
- remedial powers of the Tribunal, 87

### **Return-to-Work Process**, *see also* Accommodation Plans

- managing the process, 49
- • clarifications by Supreme Court of Canada, 53

## T

**Tribunal**, *see Canadian Human Rights Act; Canadian Human Rights Tribunal; Remedies Ordered by Tribunal*