

# FUNDAMENTALS OF HUMAN RIGHTS LAW IN CANADA

<b>Table of Cases</b> .....	xi
<b>I. Introduction: The Concept of Human Rights in Canada</b> .....	§1
1. Scope of Title .....	§1
2. Human Rights and Civil Liberties .....	§2
3. Sources of Authority for Canadian Human Rights Law: Constitu- tional Enactments .....	§4
4. Enactment of Federal and Provincial Anti-Discrimination Legislation .....	§6
5. Overview of Prohibited Grounds of Discrimination .....	§8
(a) General .....	§8
(b) Race .....	§9
(i) Prohibitions of Discrimination on the Basis of Race .....	§9
(ii) Definitions of Race .....	§17
(c) Para-racial Grounds of Discrimination .....	§19
(i) Prohibitions of Discrimination on Para-racial Grounds .....	§19
(ii) Definitions of Para-racial Grounds of Discrimination .....	§27
A. General .....	§27
B. Ethnic (Group or Origin) .....	§28
C. Nationality .....	§29
D. Ancestry .....	§30
E. Citizenship .....	§31
(d) Religion and Creed .....	§32
(i) Prohibitions of Discrimination on Grounds of Religion, Re- ligious Belief, and/or Creed .....	§32
(ii) Definitions of Religion and/or Creed .....	§40
A. General .....	§40
B. Religion .....	§43
C. Creed .....	§45
(e) Age .....	§46
(i) Prohibitions of Discrimination Based on Age .....	§46

FUNDAMENTALS OF HUMAN RIGHTS LAW IN CANADA

---

(ii) Definition of Age ..... §53

(f) Sex ..... §54

    (i) Prohibitions of Discrimination Based on Sex ..... §54

    (ii) Definitions of Sex ..... §61

(g) Sexual Orientation ..... §63

    (i) Prohibitions of Discrimination Based on Sexual  
        Orientation ..... §63

    (ii) Definition of Sexual Orientation ..... §70

(h) Gender Identity and Gender Expression ..... §71

(i) Marital and/or Family Status ..... §73

    (i) Prohibition of Discrimination Based on Marital or Family  
        Status ..... §73

    (ii) Definition of Marital Status/Family Status ..... §80

(j) Disability ..... §81

    (i) Prohibition of Discrimination Based on Disability ..... §81

    (ii) Definition of Disability ..... §88

(k) Criminal Conviction(s) ..... §89

(l) Receipt of Social Assistance/Source of Income ..... §93

(m) Political Association or Activity ..... §99

(n) Social Disadvantage ..... §100

**II. Concept of Discrimination in Anti-Discrimination Enactments; Foundational Doctrines ..... §102**

1. Definitions of Discrimination in Anti-Discrimination Enactments ..... §102

    (a) Statutory Definitions of Discrimination ..... §102

    (b) Definitions of Discrimination in Anti-Discrimination  
        Jurisprudence ..... §105

2. Definition of a Bona Fide Occupational Requirement (or Qualification) (BFOR/Q) ..... §111

3. Duty of Reasonable Accommodation Short of Undue Hardship .... §114

**III. Principles of Interpretation of Anti-Discrimination Enactments; Constitutional Aspects; the Burden of Proof ..... §117**

1. Principles of Interpretation of Anti-Discrimination Enactments .... §117

2. Constitutional Aspects of Anti-Discrimination Enactments ..... §132

3. Proof of Discrimination Under Anti-Discrimination Enactments ... §141

**IV. Discriminatory Practices Under Anti-Discrimination Enactments:  
Defences and Exemptions to Allegations of Discrimination** . . . . . §147

1. General . . . . . §147

2. Canadian Human Rights Act . . . . . §148

    (a) Discriminatory Practices . . . . . §148

        (i) General . . . . . §148

        (ii) Goods, Services, Facilities or Accommodations Customarily Available to the General Public . . . . . §149

        (iii) Commercial Premises or Residential Accommodations . . . . . §153

        (iv) Employment . . . . . §154

            A. General . . . . . §154

            B. Refusal to Employ . . . . . §156

            C. Refusal to Continue to Employ Complainant in Status Quo Ante . . . . . §157

            D. Adverse Differentiation Against Employee . . . . . §158

            E. Employment Application . . . . . §159

            F. Employment Advertisement or Hiring Interview . . . . §160

            G. Employment Policy . . . . . §161

            H. Discriminatory Agreement . . . . . §162

            I. Wage Differential . . . . . §164

            J. Harassment (Non-Sexual) . . . . . §168

            K. Harassment (Sexual) . . . . . §169

            L. Employee Organizations . . . . . §170

            M. Retaliation . . . . . §171

        (v) Notices or Telecommunications . . . . . §172

    (b) Defences and Exemptions . . . . . §174

        (i) The BFOR/Q Doctrine . . . . . §174

        (ii) BFOR/Q-like Defence Open to Service Providers . . . . . §179

        (iii) Specific Exemptions Under the Canadian Human Rights Act . . . . . §180

            A. Age Limitation/Exemption . . . . . §180

            B. Pension Plans . . . . . §181

            C. Miscellaneous Exemptions . . . . . §184

3. Ontario Human Rights Code . . . . . §187

    (a) Discriminatory Practices . . . . . §187

        (i) Concept of Discrimination . . . . . §187

FUNDAMENTALS OF HUMAN RIGHTS LAW IN CANADA

---

(ii) Signs, Symbols, Publications . . . . .	§194
(iii) Public Services, Goods and Facilities . . . . .	§195
(iv) Housing Accommodations . . . . .	§200
(v) Contracts . . . . .	§206
(vi) Employment . . . . .	§209
A. General . . . . .	§209
B. Refusal to Employ Complainant . . . . .	§210
C. Refusal to Continue to Employ (Including Changes to Complainant's Employment Status Quo Ante) . . . . .	§211
(vii) Harassment in Employment and Accommodation . . . . .	§213
(viii) Employment Advertisements, Application Forms or Pre- Employment Inquiries . . . . .	§214
(ix) Retaliation . . . . .	§216
(x) Miscellaneous Prohibitions Affecting Employers' Activities . . . . .	§217
(xi) Discrimination by Employment Agencies . . . . .	§218
(xii) Discrimination by Vocational Associations . . . . .	§219
(b) Defences and Exemptions . . . . .	§220
(i) BFOR/Q Defence/Exemption . . . . .	§220
(ii) BFOR/Q-like Exemptions . . . . .	§224
(iii) General Statutory Exemptions Related to Employment . . . . .	§226
(iv) Exemption for Special Programs . . . . .	§229
(v) Public Service Related Statutory Exemptions . . . . .	§231
(vi) Exemptions for Certain Types of Contracts . . . . .	§234
(vii) Exemptions Relating to Accommodations . . . . .	§238
(viii) Where Conduct is Declared Non-Discriminatory . . . . .	§241
4. British Columbia Human Rights Code . . . . .	§242
(a) Discriminatory Practices . . . . .	§242
(i) Concept of Discrimination . . . . .	§242
(ii) Notices and Publications . . . . .	§248
(iii) Public Services, Goods and Facilities . . . . .	§253
A. General . . . . .	§253
B. Definition of Public Services . . . . .	§254
C. Scope of Public Services . . . . .	§257
(iv) Purchase of Property . . . . .	§260
(v) Rental of Property . . . . .	§262

FUNDAMENTALS OF HUMAN RIGHTS LAW IN CANADA

---

(vi) Employment Advertisements . . . . .	§263
(vii) Wage Differential . . . . .	§264
(viii) Employment . . . . .	§266
(ix) Unions and Associations . . . . .	§270
(x) Retaliation . . . . .	§271
(b) Defences and/or Exemptions . . . . .	§272
(i) BFOR/Q Defence/Exemption . . . . .	§272
(ii) General Exemption for Special Interest Organizations . . . . .	§275
(iii) Exemptions for Seniority, Pension Plans or Insurance Plans . . . . .	§277
(iv) Exemptions Relating to Public Services and Facilities . . . . .	§279
(v) Defences/Exemptions Relating to Tenancy . . . . .	§281
(vi) Exemption for Special Programs . . . . .	§286
(vii) Miscellaneous Exemption . . . . .	§287
5. Alberta Human Rights Act . . . . .	§288
(a) Discriminatory Practices . . . . .	§288
(i) Concept of Discrimination . . . . .	§288
(ii) Publications and Notices . . . . .	§292
(iii) Goods and Services . . . . .	§298
(iv) Tenancy . . . . .	§300
(v) Equal Pay . . . . .	§302
(vi) Employment Practices . . . . .	§303
(vii) Employment Applications and Advertisements . . . . .	§305
(viii) Membership in Trade Unions, etc. . . . .	§306
(ix) Retaliation . . . . .	§307
(b) Exemptions and/or Defences . . . . .	§308
(i) BFOR/Q and Reasonable and Justifiable Contravention Defences . . . . .	§308
(ii) Defences Applying to Discriminatory Publications . . . . .	§311
(iii) Exemptions/Defences Applying to Public Services and Tenancy . . . . .	§314
6. Saskatchewan Human Rights Code . . . . .	§315
(a) Discriminatory Practices . . . . .	§315
(i) Concept of Discrimination; Positive Rights . . . . .	§315
(ii) Purchase of Property or Property Interest . . . . .	§321
(iii) Occupancy of Property . . . . .	§322

FUNDAMENTALS OF HUMAN RIGHTS LAW IN CANADA

---

(iv) Public Services and Facilities . . . . .	§323
(v) Publications . . . . .	§325
(vi) Contracts . . . . .	§328
(vii) Employment . . . . .	§330
(viii) Employment Agencies . . . . .	§332
(ix) Trade Unions . . . . .	§333
(x) Employment Applications . . . . .	§335
(xi) Retaliation . . . . .	§336
(b) Defences and Exemptions . . . . .	§337
(i) Concept of BFOR/Q . . . . .	§337
(ii) Exemptions in Respect of the Purchasing and Occupancy of Property . . . . .	§340
(iii) Exemptions in Relation to Public Services and Facilities . . . . . . . . .	§342
(iv) Exemption in Respect of Education . . . . .	§344
(v) Exemption in Respect of Publications . . . . .	§345
(vi) Exemption in Respect of Contracts . . . . .	§346
(vii) Employment . . . . .	§347
(viii) Special Programs and Measures . . . . .	§355
7. Manitoba Human Rights Code . . . . .	§357
(a) Discriminatory Practices . . . . .	§357
(i) Concept of Discrimination . . . . .	§357
(ii) Provision of Public Services and Facilities . . . . .	§361
(iii) Employment . . . . .	§364
(iv) Employment-Related Activities . . . . .	§367
(v) Contracts . . . . .	§369
(vi) Rental or Purchase of Property . . . . .	§370
(vii) Signs and Statements . . . . .	§372
(viii) Harassment . . . . .	§373
(ix) Retaliation/Reprisals . . . . .	§375
(b) Defences and Exemptions . . . . .	§376
(i) BFOR/Q and Reasonable Accommodation Doctrines . . . . .	§376
(ii) BFOR/Q-like Exemptions: Bona Fide and Reasonable Cause . . . . .	§380
(iii) Affirmative Action . . . . .	§383
(iv) Personal Services . . . . .	§384

FUNDAMENTALS OF HUMAN RIGHTS LAW IN CANADA

---

(v) Exemptions in Respect of Residential Accommodations . . . . .	§385
(vi) Miscellaneous Statutory Exemptions . . . . .	§386
<b>V. Composition and Jurisdiction of Human Rights Commissions . . . . .</b>	<b>§388</b>
1. General . . . . .	§388
2. Canadian Human Rights Commission . . . . .	§389
(a) Composition . . . . .	§389
(b) Jurisdiction . . . . .	§391
3. Ontario Human Rights Commission . . . . .	§417
(a) Composition . . . . .	§417
(b) Jurisdiction . . . . .	§419
4. Alberta Human Rights Commission . . . . .	§427
(a) Composition . . . . .	§427
(b) Jurisdiction . . . . .	§429
5. Saskatchewan Human Rights Commission . . . . .	§438
(a) Composition . . . . .	§438
(b) Jurisdiction . . . . .	§440
6. Manitoba Human Rights Commission . . . . .	§449
(a) Composition . . . . .	§449
(b) Jurisdiction . . . . .	§451
<b>VI. Human Rights Adjudicative Bodies . . . . .</b>	<b>§462</b>
1. Canadian Human Rights Tribunal . . . . .	§462
(a) Composition . . . . .	§462
(b) Jurisdiction . . . . .	§464
2. Human Rights Tribunal of Ontario . . . . .	§477
(a) Composition . . . . .	§477
(b) Jurisdiction . . . . .	§480
3. British Columbia Human Rights Tribunal . . . . .	§496
(a) Composition . . . . .	§496
(b) Jurisdiction . . . . .	§497
4. Alberta Human Rights Tribunal . . . . .	§513
(a) Composition . . . . .	§513
(b) Jurisdiction . . . . .	§515
5. Saskatchewan Court of Queen’s Bench . . . . .	§522

FUNDAMENTALS OF HUMAN RIGHTS LAW IN CANADA

---

6. Manitoba Adjudication Panel .....	§529
(a) Composition .....	§529
(b) Jurisdiction .....	§530
<b>VII. Offences Under Anti-Discrimination Enactments .....</b>	<b>§540</b>
1. Canadian Human Rights Act .....	§540
2. Ontario Human Rights Code .....	§541
3. British Columbia Human Rights Code .....	§542
4. Alberta Human Rights Act .....	§543
5. Saskatchewan Human Rights Code .....	§544
6. Manitoba Human Rights Code .....	§546
<b>Index .....</b>	<b>373</b>