

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 67-1.2-4
 - • 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

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

- revised policy, 45

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*