



Professional Engineers
Ontario



Guideline on Human Rights in Professional Practice

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PREFACE

This guideline deals mainly with aspects of human rights in employee/employer and workplace situations and is not intended to deal exhaustively with all human rights issues that may arise in a professional engineering practice. For example, human rights in relation to an engineer's clients are not discussed.

It should be understood that Professional Engineers Ontario (PEO) is fully prepared to take action on complaints about human rights violations in situations

of professional engineering practice, even if such situations are not covered in this guideline.

This guideline refers primarily to the *Ontario Human Rights Code*. It does not refer expressly to the sections in the *Canadian Human Rights Act*, which is legislation that governs workplaces that are federally regulated. However, generally, the concepts outlined in this guideline are applicable to federally regulated workplaces.



1. INTRODUCTION

The purpose of this guideline is to assist professional engineers in Ontario¹ to carry out their work in a professional manner without infringing on the rights of others and with appropriate sensitivities to human relations.

Professional Engineers Ontario aims to promote a workplace free of harassment and discrimination, and to encourage its members to create such an environment in their own workplaces.

A workplace for the purposes of this guideline should be considered every place at which a professional engineer is practising professional engineering—not just the engineer's home office or regular work location.

1.1 Policy Statement

All members of Professional Engineers Ontario have a professional responsibility to respect the human rights of others, and to:

- ◆ be proactive in understanding human rights issues;
- ◆ be familiar with applicable legislation;
- ◆ take action where appropriate to protect human rights; and
- ◆ be vigilant against discrimination and harassment.

1.2 Professional Governance

Professional Engineers Ontario has a responsibility to the public to encourage its members to carry out their activities in the practice of professional engineering in accordance with the laws of Ontario and the high standards of the profession. It also has a responsibility to inform members on issues affecting professional practices.

To this end, PEO has a system of governance that will take action if it is found that members are not practising professional engineering in accordance with the standards of the profession. This includes aspects of engineering practice related to human

rights and respect of others, in accordance with the policy and criteria set out in this guideline.

All employers, people, firms, associations and organizations in Ontario who provide services must act in accordance with applicable human rights legislation. Employers must move to address infringement of human rights by individuals under their authority, should they become aware of such infringement.

PEO will hear complaints against members who are accused of employment-related harassment and discrimination as defined in the *Ontario Human Rights Code*, or, as applicable, the *Canadian Human Rights Act*. In instances where such complaints do involve the practice of engineering and infringements of human rights are found to have occurred, the responsible professional engineers may be considered to be guilty of professional misconduct, in accordance with section 72(2)(j) of Regulation 941/90 made under the Professional Engineers Act, and may be subject to disciplinary action. Any action on the part of Professional Engineers Ontario does not prevent a subsequent or concurrent complaint to the Human Rights Commission.

1.3 Ontario Human Rights Code

The Ontario Human Rights Code sets out requirements to provide for equal rights and opportunities and to promote and create an environment of mutual respect.² This philosophy is expressed in paragraph two of the preamble to the Code, which states:

“And whereas it is public policy in Ontario to recognize the dignity and worth of every person and to provide for equal rights and opportunities without discrimination that is contrary to law, and having as its aim the creation of a climate of understanding and mutual respect for the dignity and worth of each person so that each person feels a part of the community and able to contribute fully to development and well-being of the community and the Province.”

Sections 1 to 9 of the Ontario Human Rights Code set out the rights of individuals in Ontario to be free

¹ The reference to professional engineers and to members of Professional Engineers Ontario in this guideline shall include a person who holds a licence or a temporary licence, a limited licence, or a Certificate of Authorization.

² *Ontario Human Rights Code*, Preamble. Employers operating under federal legislation will be subject to the *Canadian Human Rights Act*. Also, some of the issues involved may be dealt with by the *Employment Standards Act and Pay Equity Act*.



from direct discrimination; sections 10 to 26 set the parameters regarding definitions and application of the requirements and confirm the rights of individuals to be free from indirect or systemic discrimination; sections 27 to 31 describe the administrative requirements; the balance is related to enforcement of the Code. A copy of this Code is included in Appendix A, along with explanatory side notes.

Selected definitions in the Ontario Human Rights Code

“Harassment”

- ◆ means engaging in a course of vexatious comment or conduct that is known, or ought reasonably to be known, to be unwelcome.³

“Equal”

- ◆ means subject to all requirements, qualifications and considerations that are not a prohibited ground of discrimination⁴ (See section 1 for prohibited grounds of discrimination in services and section 5 for prohibited grounds of discrimination in employment).

Other definitions

- ◆ may be found in section 10 of the Code. Their applicability will depend on the circumstances of the situation.

The Ontario Human Rights Code is as much a philosophy as a statement of law. As a result, there are other terms or descriptive phrases that are not defined in the Code but that have some general understanding as a result of legal actions involving the Code. Some of these are set out below.

- ◆ *Sexual harassment* is generally understood to mean:
“unwelcome conduct of a sexual nature that detrimentally affects the work environment or leads to

adverse job-related consequences for the victims of the harassment. It is ... an abuse of power. When sexual harassment occurs in the workplace, it is an abuse of both economic and sexual power. Sexual harassment is a demeaning practice, one that constitutes a profound affront to the dignity of the employees forced to endure it. By requiring an employee to contend with unwelcome sexual actions or explicit sexual demands, sexual harassment in the workplace attacks the dignity and self-respect of the victim both as an employee and as a human being.”⁵

Situations involving sexual harassment are commonly divided into two categories:

1. those in which there is a disparity of power and requests for sexual favours are made under threats of adverse job consequences.
2. those in which a “hostile” or “poisoned” work environment exists, in which offensive behaviour prevails in the workplace, creating a negative psychological and emotional work environment for those to whom the offensive behaviour is directed.

However, the courts have concluded that while the distinction between the types of harassment may be useful to demonstrate fully the range of behaviour that constitutes harassment, the main point in allegations of sexual harassment is that unwelcome sexual conduct has invaded the workplace.⁶

- ◆ *Workplace harassment*, including sexual harassment, is generally considered to mean any vexatious or inappropriate conduct, comment, or series of behaviours or comments by employers, other employees, or agents of an employer (such as people performing a contracted service) based on race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, handicap, age, marital status, family status, and record of offenses for which a pardon has not been granted that is:

³ Ontario Human Rights Code, section 10.

⁴ Ontario Human Rights Code, section 10.

⁵ *Janzen v. Platy Enterprises* [1989], 1 S.C.R. 1252 at 1284; *Bannister v. General Motors of Canada Ltd.* (1998), 40 O.R. (3d) 577 (Ont. C.A.), at 579.

⁶ *Janzen v. Platy*, supra, at p. 1284.



- known or reasonably ought to be known to be unwelcome or objectionable, and
- likely to cause offense or humiliation.⁷

Discrimination is not specifically defined in the Ontario Human Rights Code. However, it has been interpreted by the Supreme Court of Canada as:

“a distinction, whether intentional or not, but based on grounds relating to personal characteristics of the individual or group, which has the effect of imposing burdens, obligations, or disadvantages on such individual or group not imposed upon others, or which withholds or limits access to opportunities, benefits or advantages available to other members of society. Distinctions based on personal characteristics attributed to an individual solely on the basis of association

with a group will rarely escape the charge of discrimination, while those based on an individual’s merits and capabilities will rarely be so classed.”⁸

In another Supreme Court of Canada interpretation:

“The essence of direct discrimination in employment is the making of a rule that generalizes about a person’s ability to perform a job based on membership in a group sharing a common personal attribute such as age, sex, religion, etc. The ideal of human rights legislation is that each person be accorded equal treatment as an individual, taking into account those attributes. Thus, justification of a rule manifesting a group stereotype depends on the validity of the generalization and/or the impossibility of making individualized assessments.”⁹

⁷ *Ontario Human Rights Code*, section 10.

⁸ *Andrews v. Law Society of B.C.* [1989] 1 S.C.R. 143, as cited in *Brooks v. Canada Safeway Ltd.* (1989), 58 D.L.R. (4th) 321.

⁹ *Central Alberta Dairy Pool v. Alberta (Human Rights Commission)* (1990), 72 D.L.R. (4th) 417 (S.C.C.)



2. WHAT PROFESSIONAL ENGINEERS SHOULD DO AS EMPLOYERS TO REDUCE THE OCCURRENCES OF HARASSMENT AND DISCRIMINATION IN THEIR WORKPLACES

Many organizations frequently change staff and management personnel in response to business conditions. As a result, organizations need to continually update supervisors on human rights, and orient new employees and supervisors. They should also regularly review the effectiveness of the organization's compliance efforts.

Employers are required to comply with the governing human rights legislation. This means employers have a responsibility to provide a working environment that is free from harassment and discrimination. Employers could be held liable by a court or tribunal if they or their managers do not act to put an end to discrimination or harassment in the workplace.¹⁰

To fulfill this responsibility, employers are expected to take appropriate actions and wherever possible should:

- ◆ educate and orient employees on appropriate conduct, so that harassment and discrimination will not be as likely to occur out of ignorance, and update such education on a regular schedule;
- ◆ inform employees that discriminatory conduct or inappropriate behaviour will not be tolerated;
- ◆ take proactive steps to prevent harassment and discrimination due to a “poisoned” work environment;
- ◆ establish a process and disciplinary procedure to deal with acts of harassment and discrimination;
- ◆ establish a hiring procedure that complies with the Ontario Human Rights Code, and instruct anyone who may be involved in hiring, so that discrimination does not occur in the procedure;
- ◆ develop and implement an organizational policy promoting non-discrimination;
- ◆ hold managers and supervisors accountable for enforcing the policy in their areas of responsibility;
- ◆ encourage all employees to meet acceptable standards of personal behaviour in a business environment;
- ◆ encourage employees who feel that they have been harassed or discriminated against to come forward;
- ◆ regularly review the effectiveness of the education, policy and procedures in preventing harassment and discrimination, and revise those that are not working effectively;
- ◆ provide a knowledgeable, helpful person to consult with employees, to whom employees can comfortably bring their concerns;
- ◆ investigate complaints promptly, impartially and in a dignified manner;
- ◆ implement suitable remedial action, where appropriate, following the investigation of a complaint; and
- ◆ undertake not to engage in reprisal actions against employees who initiate complaints in good faith.

Treating people with dignity is the result of common sense and the application of appropriate human relations sensitivities. However, it is often also advisable to obtain professional assistance, including legal advice in some situations.

Implementing the above-listed steps will not only reduce the likelihood of incidents of harassment and discrimination, but may also provide assistance to an employer in the event that the organization is involved in a complaint. Documentation, like other aspects of running an operation, is important for analyzing effectiveness, as well as for reducing exposure to liability. To ensure that policies are effective and are being applied, regular audits (at least annually) should be carried out. Documentation facilitates this exercise.

2.1 Policy

Like many other aspects of an organization, there needs to be some statement of what is expected of

¹⁰ *Robichaud v. Brennan* (1987), 8 C.H.R.R.D/4326 (S.C.C.) (determined under the *Canadian Human Rights Act*); *Janzen v. Platy Enterprises* (supra); *Shaw v. Levac Supply Ltd.* (1991), 14 C.H.R.R.D/36; *Strauss v. Cdn. Property Investment Corp. (No. 2)*, (1995), 24 C.H.R.R.D/43; *Naraine v. Ford Motor Co of Canada (No. 4)* (1999), 34 C.H.R.R.D/405 (Ont. Div. Ct).



employees in regard to harassment and discrimination issues. This is often called a policy.

The policy should be a written statement outlining the employer's commitment to providing a harassment-free workplace. Developing it should involve as many of the people expected to implement the policy as is practical. Involvement and participation creates acceptance and commitment.

The policy statement may be short and general, or long and detailed, depending on the organization size and complexity of operations. Appendix B is an example of a policy, suitable for a workplace employing engineers, which covers most of the important components of a typical policy.

Employees should be advised of the existence of the policy, once it is confirmed. A copy of the policy should be posted in a conspicuous location in the workplace, including field offices.

2.2 Complaint Resolution

It is important that an organization's policy on harassment and discrimination be applied to complaints, which must be handled fairly, honestly, accurately, and expeditiously. Employers should have a formal process incorporating these criteria for dealing with such complaints.

Because these issues are often sensitive and employees may be reticent to talk to supervisors, it is preferable that an organization designate someone in the workplace (an advisor), to whom employees can turn for advice if they feel they have been harassed or discriminated against. This person should be able to provide practical advice on how best to deal with or approach resolving the problem, including how to lodge an internal complaint.

To be effective, this person should be neutral, objective and knowledgeable about human rights, as well as about the organization's complaint resolution approaches, procedures and practices.

Because employees are sometimes afraid to involve themselves directly in lodging a complaint, the complaint resolution process should ideally permit representation by other employees from the workplace, where requested. It should also provide for other employees to lodge the complaint, where appropriate.

After a complaint has been thoroughly investigated, if determined to be valid, it must be resolved, and

the resolution implemented to prevent a recurrence of the offending behaviour. This requires that the complaint resolution and remedial action be clearly articulated and communicated to the appropriate parties; education be provided where warranted; supervisors be made accountable for implementation, where appropriate; and follow-up take place to ensure effective remedial action is being taken. Also, employers must ensure that there are no reprisals as a result of complaints or witnesses coming forward with the complaint.

There may be occasions where investigation reveals there are insufficient grounds to launch a complaint, or where the evidence does not support the making of a complaint. However, it is important from an employer's perspective that the employer attempt to address a complainant's concern, if that employee believes in good faith that he or she has been the subject of discriminatory conduct.

Where the investigation reveals that the conduct complained about does constitute harassment or discrimination, the appropriate remedial action should be implemented. The employer's findings and resolution of the complaint should be communicated, as mentioned above.

Vexatious complaints are those that are brought purposely to harass or vex another person. After a fair and complete investigation, people who launch such complaints should be dealt with firmly.

A definition of trivial and vexatious complaints, from the *Ontario Human Rights Commission Procedures Manual*, is included as Appendix C of this guideline.

2.3 Claims Investigation

It is important that claims are investigated promptly, fairly and thoroughly. The investigation and the investigator should be as independent and objective as possible.

Wherever possible, investigators should not be supervisors of the person complaining or complained against or the workplace advisors mentioned above.

For small organizations, having an independent investigator for all situations may pose a problem. However, where a claim is serious, hiring an outside investigator may convey a message of fairness and professionalism to both the complainant and the alleged perpetrator.



Investigators should preferably have training in human rights issues, as well as in investigative procedures. Care should be exercised to ensure the process is confidential, except to the extent necessary to deal with the complaint and take appropriate remedial action.

2.4 Discrimination

Employers must understand that it is contrary to the Ontario Human Rights Code to discriminate in employment because of: race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, age, record of offenses for which pardons have not been granted, marital status, family status, or handicap. These are “*prohibited grounds*” for discrimination. It is contrary to the Code to treat people differently from others for any of these reasons. People who have been discriminated against for any of these reasons are said to belong to “*protected groups*” under the Code.

There are, however, some very limited exceptions permitted to the general right to equal treatment in employment without discrimination. These are set out in the Code and should be understood clearly before they are relied upon. The courts have said that rights should be interpreted broadly and legislated exceptions to the exercise of these rights should be narrowly interpreted.¹¹

To understand the requirements regarding discrimination, employers should either read the Code, or have their responsibilities explained to them by a professional, preferably both. Because much of the information needed to interpret some sections is contained in case law, it may be prudent to obtain legal or human resources advice, especially if an employer is contemplating relying on the exceptions contained in the Code.

Currently, the Ontario Human Rights Code prohibits both direct and indirect discrimination.¹²

◆ *Direct discrimination* is treatment, which on its face, is unequal due to such prohibited grounds

as race, colour, sex, etc. (see grounds set out earlier). Examples would be advertising a position to be filled only by men, or refusing to promote a woman because she may become pregnant.

◆ *Indirect discrimination* occurs when a requirement, qualification or factor (a “Standard”, see footnote), which, on its face, is not directly discriminatory has, when imposed, a greater negative effect on individuals protected by the Code than on others. One example would be a requirement that a person have 10 years Canadian experience as a condition of hire. Such a requirement may discriminate against people newly arrived in this jurisdiction and may therefore be discriminatory on the basis of race, place of origin, citizenship or possibly ethnic origin. A second example would be a requirement to have a driver’s licence as a condition of employment, even when the individual could get to work (or to clients) using public transportation, taxis, car pools or other forms of transportation. Sometimes, people with a disability such as epilepsy may be precluded from holding a driver’s licence, so this requirement (where driving a vehicle is not an essential duty of the job) might constitute discrimination on the basis of disability. Another example is the requirement that a position be filled by “aggressive candidates”, since such a requirement may inadvertently exclude people from certain cultures from consideration. Height, weight and strength restrictions may also indirectly discriminate where the imposed requirement is not necessary to perform the essential duties of the position.

2.5 Hiring and Promotion

The hiring process, including the job application and/or the interview stages, can create situations in which discrimination may occur. Managers or others involved in interviews should clearly understand the limits of questioning. Again, it is advisable, when possible, to have the job application form and intended questions reviewed with a human resources spe-

¹¹ *Dickason v. University of Alberta* (1992) 141 N.R. 1 (S.C.C.); *Thornton v. North American Life Assurance Co. (No. 5)* (1995), 23 C.H.R.R.D/1 (Ont. Div. Ct).

¹² *B.C. v. B.C.G.S.E.U.* [1991] S.C.J. No. 46 (1999), 176 D.L.R. (4th) 1. In this case, the Court declared that there should be a unified approach to assess if the Standard is discriminatory (either direct or indirect), and if so, if the Standard is (1) rationally connected to the performance of the job, (2) imposed honestly and in good faith and (3) reasonably necessary to perform the job. To show that the Standard is reasonably necessary, the employer must demonstrate that it is impossible to accommodate individual employees without imposing undue hardship on the employer.



cialist. For more information relating to the human rights issues involved in hiring and promotion, refer to the bibliography in Appendix D.

It is prudent to retain applications for 12 months following their receipt, to defend against any human rights complaint that may be initiated after the hiring process. It is also prudent to note in an advertisement for any position that all applications will be destroyed six months after receipt. There is a six-month time limit for complaints under the Code. However, because these time limits are sometimes ignored, the 12-month retention is suggested.

2.6 Harassment

The Ontario Human Rights Code expressly states that every person who is an employee has a right to be free from harassment in the workplace by the employer or agent of the employer or another employee.¹³ There are four elements to a claim of harassment under this section of the Code: (1) there must be a course of vexatious comment or conduct to a degree that it troubled the complainant; (2) the conduct must have been carried out by the employer, its agent or fellow employees; (3) the respondent must have known, or ought to have known, that the conduct was unwelcome; and (4) the conduct must be related to a “prohibited ground” under the Code.¹⁴ Although a reading of the Code may suffice to understand generally the meaning of harassment, it may occasionally be prudent to seek professional help to determine if a particular set of circumstances would constitute harassment. The following definitions of harassment are intended to assist employers in understanding this area, but should not be considered to be exhaustive or comprehensive.

◆ *Harassment* is:

- conduct, comment, gestures, or displays that are known or that could reasonably be expected to be known to create an intimidating, hostile, or offensive workplace for a person or a group of people;
- conduct, comment, gestures or displays that are known or that could reasonably be expect-

ed to be known to demean, belittle, or cause personal humiliation or embarrassment;

- sexual, racial or ethnic slurs, racially derogatory nicknames, unwelcome remarks, practical jokes, innuendoes or taunts, patronizing behaviour, and language or terminology that reinforces stereotypes and undermines self-respect, or adversely affects work performance or working conditions.

The following are examples of circumstances that have constituted harassment:

- racial slurs;
- name calling;
- racist jokes;
- negative stereotyping;
- bullying;
- threats.

◆ *Sexual harassment.* In a separate section, the Ontario Human Rights Code provides for the right to be free from sexual harassment and from a reprisal for the rejection of a sexual solicitation or advance in the workplace because of sex.¹⁵ Sexual harassment is:

- any sexually oriented practice that endangers an individual’s continued employment, negatively affects his/her work performance, or undermines his/her sense of personal dignity;
- any conduct, comment, gesture or contact of a sexual nature that an individual knew or ought reasonably to have known would cause offense or humiliation;
- any conduct that is known or ought reasonably to be known to be objectionable or unwelcome;
- any conduct, comment, gesture or contact of a sexual nature that might reasonably be perceived by the recipient as placing an implicit or explicit sexual condition on employment, opportunities for training, job security, performance assessment, promotion or salary increases;

¹³ *Ontario Human Rights Code*, section 5(2). A person has the right to be free from harassment because of: race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, age, record of offences, marital status, family status, or handicap.

¹⁴ *Ghosh v. Domglas (No. 2)* (1992), 17 C.H.R.R.D/216 (Ont. Bd. of Inquiry); *Boehm v. National Systems of Baking Ltd.* (1987), 8. C.H.R.R.D/4110 (Ont. Bd. of Inquiry).

¹⁵ *Ontario Human Rights Code*, sections 7(2) and 7(3).



- ongoing conduct that is not overly sexual in nature, but is related to the person's gender; and
- possible in behaviour by men to women, by women to men, or between the same gender.

The following are examples of circumstances that have constituted sexual harassment:

- displaying offensive or demeaning pictures or materials, or pictorial representations of a sexual nature anywhere in the workplace, including on or via personal computers;
- unwelcome sexually oriented remarks, invitations, jokes or requests, whether indirect or explicit;
- leering or obscene or offensive gestures;
- unwanted and inappropriate physical contact, such as touching, kissing, crowding, patting, pinching and brushing up against a person;
- inquiries or comments about a person's sex life or sexual preferences;

Examples of harassment

Sexual harassment

A senior professional engineer supervising a female professional engineer manager makes belittling comments about her and other women in the branch, although their qualifications and performance are equal to their male counterparts. He criticizes their work and ignores their suggestions at meetings—in contrast to how he treats men.

Racial harassment

An engineer from a minority group finds cartoons, depicting derogatory references to people of his racial origin, in his in-basket.

Religious harassment

Several office workers are persistent in their efforts to persuade a co-worker, who is not of their faith, to read their religious literature and attend services, despite the co-worker's response that these efforts are unwelcome.

- making paternalistic or condescending remarks of a sexual nature and using terms that undermine the dignity of the recipient;
- gender-related comments about an individual's physical characteristics or mannerisms; and
- gender-related verbal abuse, taunts or threats.

Harassment and discrimination may occur orally, in writing, or through body language. In the modern workplace, it may also be transmitted via personal computers. It typically occurs more than once.¹⁶

False claims of harassment and discrimination may themselves constitute harassment and discrimination.

2.7 Education

Education is an important part of preventing harassment and discrimination in the workplace. Everyone responsible for enforcing the workplace policy relating to harassment or discrimination, or advising on procedures, should be thoroughly aware of these policies and procedures. To educate employees, organizations should:

- ◆ provide up-to-date information about human rights issues;
- ◆ make sure all staff are trained on an ongoing basis in how to deal with harassment and discrimination;
- ◆ measure the effectiveness of policies, and change them if necessary;
- ◆ respond immediately to claims of harassment and discrimination; and
- ◆ take remedial action if necessary.

2.8 Benefits of a Proactive Policy and Program Against Harassment and Discrimination

The main advantage of an active, ongoing, vigorously applied policy against harassment and discrimination is a cooperative and more productive workforce.

Although policy implementation may be difficult initially, the effort involved will be rewarded by more cooperation, less absenteeism, more productivity, and a more successful organization.

¹⁶ A single improper and insulting racial joke or comment made by an employee or even a supervisor is not likely to be found to constitute a violation of the Code unless it is egregious or constitutes a threat. *Parsonage v. Canadian Tire Corp* (1995), 23 C.H.R.R.D/42 (Ont. Bd. of Inquiry); *Gray v. A&W Food Services*, (unreported, May 12, 1994, Ont. Bd. of Inquiry). Similarly, while a course of conduct is generally required to demonstrate sexual harassment, a single, serious incident of sexual impropriety may constitute a violation of the Code.



3. EMPLOYEE ENGINEER RESPONSIBILITIES

Engineers should, as employees, strive to reduce the occurrence of harassment and discrimination in their workplaces.

In addition to their obligations under the Professional Engineers Act, professional engineers, like all Ontario citizens, are bound by provincial laws that recognize the dignity and worth of every person (Ontario Human Rights Code). They should therefore conduct their professional responsibilities in a manner that does not infringe on the rights of others, including the right to be free from harassment and discrimination.

Professional engineer employees should also be proactive in preventing harassment and discrimina-

tion from occurring as a result of the acts of others around them.

This means that in all aspects of their employment, professional engineers should:

- ◆ be proactive in understanding human rights issues;
- ◆ become familiar with applicable legislation, such as the Ontario Human Rights Code;
- ◆ avoid collusion in acts of harassment and discrimination—not only active collusion, but also collusion through silence or denial; and
- ◆ follow appropriate complaint procedures when reporting claims of harassment or discrimination.



4. WHAT TO DO IF YOU SUSPECT/EXPERIENCE HARASSMENT OR DISCRIMINATION IN THE WORKPLACE

If you experience or witness harassment or discrimination, there are several options you can pursue.

If your organization has a harassment and discrimination policy, you may report the experience to the person or people appointed to investigate within your organization. The internal process should be followed to resolve your complaint.

If your organization does not have a policy or procedure, you may choose to address the issue with someone who has the authority to deal with the complaint.

If your organization does not have a policy and procedures or you choose not to resolve your complaint through an internal process, or even if you have already initiated a complaint through an internal process, you may still file a complaint with the Ontario Human Rights Commission.

If you perceive an act of harassment and discrimination was perpetrated against you by a professional engineer, or if a professional engineer was involved in a situation or conduct that you question, in addition to contacting your employer you may also contact

Professional Engineers Ontario (see Complaints).

To improve the situation regarding discrimination generally and in the engineering profession in particular, engineers who witness, experience, or are advised of discrimination or harassment are strongly encouraged to report such situations to their employers.

4.1 Complaints

Wherever it can be accomplished satisfactorily, resolving workplace human rights complaints in the workplace will usually be the preferred arrangement.

Where complaints cannot be satisfactorily resolved in the workplace, they may be referred to the Ontario Human Rights Commission. If such complaints involve professional engineers and professional engineering practice, they may also be brought to Professional Engineers Ontario.

The process for making a complaint to Professional Engineers Ontario is detailed in the PEO publication *Making A Complaint, A Public Information Guide*, which is available on the PEO website (www.peo.on.ca), or from PEO.



APPENDIX A. HUMAN RIGHTS CODE

Sections 1 to 9 of the Ontario Human Rights Code set out the rights of individuals in Ontario; Sections 10 to 26 set the parameters regarding definitions and application of the requirements; Sections 27 to 31 describe the administrative requirements; the balance is related to enforcement of the Code.

While any number of sections may be involved in a particular complaint, sections 1 and 5 are of particular importance to employers, employees, and agents or individuals under the authority of employers.

Human Rights Code

R.S.O. 1990, CHAPTER H.19

Preamble

Whereas recognition of the inherent dignity and the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world and is in accord with the Universal Declaration of Human Rights as proclaimed by the United Nations;

And Whereas it is public policy in Ontario to recognize the dignity and worth of every person and to provide for equal rights and opportunities without discrimination that is contrary to law, and having as its aim the creation of a climate of understanding and mutual respect for the dignity and worth of each person so that each person feels a part of the community and able to contribute fully to the development and well-being of the community and the Province;

And Whereas these principles have been confirmed in Ontario by a number of enactments of the Legislature and it is desirable to revise and extend the protection of human rights in Ontario;

Therefore, Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

PART I FREEDOM FROM DISCRIMINATION

Services

1. Every person has a right to equal treatment with respect to services, goods and facilities, without discrimination because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, age, marital status, family status or disability. R.S.O. 1990, c.H.19, s. 1; 1999, c. 6, s. 28(1); 2001, c. 32, s. 27(1); 2005, c. 5, s. 32(1).

Accommodation

- 2.(1) Every person has a right to equal treatment with respect to the occupancy of accommodation, without discrimination because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, age, marital status, family status, disability or the receipt of public assistance. R.S.O. 1990, c.H.19, s. 2(1); 1999, c. 6, s. 28(2); 2001, c. 32, s. 27(1); 2005, c. 5, s. 32(2).

Harassment in accommodation

- (2) Every person who occupies accommodation has a right to freedom from harassment by the landlord or agent of the landlord or by an occupant of the same building because of race, ancestry,



place of origin, colour, ethnic origin, citizenship, creed, age, marital status, family status, disability or the receipt of public assistance. R.S.O. 1990, c.H.19, s. 2(2); 1999, c. 6, s. 28(3); 2001, c. 32, s. 27(1); 2005, c. 5, s. 32(3).

Contracts

3. Every person having legal capacity has a right to contract on equal terms without discrimination because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, age, marital status, family status or disability. R.S.O. 1990, c.H.19, s. 3; 1999, c. 6, s. 28(4); 2001, c. 32, s. 27(1); 2005, c. 5, s. 32(4).

Accommodation of person under eighteen

- 4.(1) Every sixteen- or seventeen-year-old person who has withdrawn from parental control has a right to equal treatment with respect to occupancy of and contracting for accommodation without discrimination because the person is less than eighteen years old. R.S.O. 1990, c.H.19, s. 4(1).

Idem

- (2) A contract for accommodation entered into by a sixteen- or seventeen-year-old person who has withdrawn from parental control is enforceable against that person as if the person were eighteen years old. R.S.O. 1990, c.H.19, s. 4(2).

Employment

- 5.(1) Every person has a right to equal treatment with respect to employment without discrimination because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, age, record of offences, marital status, family status or disability. R.S.O. 1990, c.H.19, s. 5(1); 1999, c. 6, s. 28(5); 2001, c. 32, s. 27(1); 2005, c. 5, s. 32(5).

Harassment in employment

- (2) Every person who is an employee has a right to freedom from harassment in the workplace by the employer or agent of the employer or by another employee because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, age, record of offences, marital status, family status or disability. R.S.O. 1990, c.H.19, s. 5(2); 1999, c. 6, s. 28(6); 2001, c. 32, s. 27(1); 2005, c. 5, s. 32(6).

Vocational associations

6. Every person has a right to equal treatment with respect to membership in any trade union, trade or occupational association or self-governing profession without discrimination because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, age, marital status, family status or disability.



ity. R.S.O. 1990, c.H.19, s. 6; 1999, c. 6, s. 28(7); 2001, c. 32, s. 27(1); 2005, c. 5, s. 32(7).

Sexual harassment

Harassment because of sex in accommodation

Section 7 is also of significant importance in regard to complaints relating to rights infringement in employment situations.

7.(1) Every person who occupies accommodation has a right to freedom from harassment because of sex by the landlord or agent of the landlord or by an occupant of the same building. R.S.O. 1990, c.H.19, s. 7(1).

Harassment because of sex in workplaces

(2) Every person who is an employee has a right to freedom from harassment in the workplace because of sex by his or her employer or agent of the employer or by another employee. R.S.O. 1990, c.H.19, s. 7(2).

Sexual solicitation by a person in position to confer benefit, etc.

- (3) Every person has a right to be free from,
- (a) a sexual solicitation or advance made by a person in a position to confer, grant or deny a benefit or advancement to the person where the person making the solicitation or advance knows or ought reasonably to know that it is unwelcome; or
 - (b) a reprisal or a threat of reprisal for the rejection of a sexual solicitation or advance where the reprisal is made or threatened by a person in a position to confer, grant or deny a benefit or advancement to the person. R.S.O. 1990, c.H.19, s. 7(3).

Section 8 is related to situations regarding rights infringement complaints

Reprisals

8. Every person has a right to claim and enforce his or her rights under this Act, to institute and participate in proceedings under this Act and to refuse to infringe a right of another person under this Act, without reprisal or threat of reprisal for so doing. R.S.O. 1990, c.H.19, s. 8.

Section 9 indicates no person shall infringe on the rights set out in sections 1 to 8.

Infringement prohibited

9. No person shall infringe or do, directly or indirectly, anything that infringes a right under this Part. R.S.O. 1990, c.H.19, s. 9.

PART II INTERPRETATION AND APPLICATION

Definitions re: Parts I and II

10.(1) In Part I and in this Part,

“age” means an age that is 18 years or more; (“âge”)

“disability” means,

- (a) any degree of physical disability, infirmity, malformation or



disfigurement that is caused by bodily injury, birth defect or illness and, without limiting the generality of the foregoing, includes diabetes mellitus, epilepsy, a brain injury, any degree of paralysis, amputation, lack of physical co-ordination, blindness or visual impediment, deafness or hearing impediment, muteness or speech impediment, or physical reliance on a guide dog or other animal or on a wheelchair or other remedial appliance or device,

- (b) a condition of mental impairment or a developmental disability,
- (c) a learning disability, or a dysfunction in one or more of the processes involved in understanding or using symbols or spoken language,
- (d) a mental disorder, or
- (e) an injury or disability for which benefits were claimed or received under the insurance plan established under the *Workplace Safety and Insurance Act, 1997*; (“handicap”)

“equal” means subject to all requirements, qualifications and considerations that are not a prohibited ground of discrimination; (“égal”)

“family status” means the status of being in a parent and child relationship; (“état familial”)

“group insurance” means insurance whereby the lives or well-being or the lives and well-being of a number of persons are insured severally under a single contract between an insurer and an association or an employer or other person; (“assurance-groupe”)

“harassment” means engaging in a course of vexatious comment or conduct that is known or ought reasonably to be known to be unwelcome; (“harcèlement”)

“marital status” means the status of being married, single, widowed, divorced or separated and includes the status of living with a person in a conjugal relationship outside marriage; (“état matrimonial”)

“record of offences” means a conviction for,

- (a) an offence in respect of which a pardon has been granted under the *Criminal Records Act* (Canada) and has not been revoked, or
- (b) an offence in respect of any provincial enactment; (“casier judiciaire”)

“services” does not include a levy, fee, tax or periodic payment imposed by law; (“services”)

“spouse” means the person to whom a person is married or with whom the person is living in a conjugal relationship out-



side marriage. (“conjoint”) R.S.O. 1990, c.H.19, s. 10(1); 1993, c. 27, Sched.; 1997, c. 16, s. 8; 1999, c. 6, s. 28(8); 2001, c. 13, s. 19; 2001, c. 32, s. 27(2, 3); 2005, c. 5, s. 32(8-10); 2005, c. 29, s. 1(1).

Pregnancy

- (2) The right to equal treatment without discrimination because of sex includes the right to equal treatment without discrimination because a woman is or may become pregnant. R.S.O. 1990, c.H.19, s. 10(2).

Past and presumed disabilities

- (3) The right to equal treatment without discrimination because of disability includes the right to equal treatment without discrimination because a person has or has had a disability or is believed to have or to have had a disability. 2001, c. 32, s. 27(4).

Constructive discrimination

Sections 11, 12, 13 and 23 will also be of special interest regarding indirect discrimination and requirements regarding solicitations for employment and job interviews.

All professional engineers, but especially those who are responsible for other employees’ actions, should be familiar with the detailed requirements in sections 10-26, which modify, extend or limit the application of sections 1-9, and describe what constitutes indirect discrimination.

- 11.(1) A right of a person under Part I is infringed where a requirement, qualification or factor exists that is not discrimination on a prohibited ground but that results in the exclusion, restriction or preference of a group of persons who are identified by a prohibited ground of discrimination and of whom the person is a member, except where,
 - (a) the requirement, qualification or factor is reasonable and bona fide in the circumstances; or
 - (b) it is declared in this Act, other than in section 17, that to discriminate because of such ground is not an infringement of a right. R.S.O. 1990, c.H.19, s. 11(1).

Idem

- (2) The Commission, the Tribunal or a court shall not find that a requirement, qualification or factor is reasonable and bona fide in the circumstances unless it is satisfied that the needs of the group of which the person is a member cannot be accommodated without undue hardship on the person responsible for accommodating those needs, considering the cost, outside sources of funding, if any, and health and safety requirements, if any. R.S.O. 1990, c.H.19, s. 11(2); 1994, c. 27, s. 65(1); 2002, c. 18, Sched. C, s. 2(1).

Idem

- (3) The Commission, the Tribunal or a court shall consider any standards prescribed by the regulations for assessing what is undue hardship. R.S.O. 1990, c.H.19, s. 11(3); 1994, c. 27, s. 65(2); 2002, c. 18, Sched. C, s. 2(2).

Discrimination because of association

12. A right under Part I is infringed where the discrimination is



because of relationship, association or dealings with a person or persons identified by a prohibited ground of discrimination. R.S.O. 1990, c.H.19, s. 12.

Announced intention to discriminate

13.(1) A right under Part I is infringed by a person who publishes or displays before the public or causes the publication or display before the public of any notice, sign, symbol, emblem, or other similar representation that indicates the intention of the person to infringe a right under Part I or that is intended by the person to incite the infringement of a right under Part I. R.S.O. 1990, c.H.19, s. 13(1).

Opinion

(2) Subsection (1) shall not interfere with freedom of expression of opinion. R.S.O. 1990, c.H.19, s. 13(2).

Special programs

14.(1) A right under Part I is not infringed by the implementation of a special program designed to relieve hardship or economic disadvantage or to assist disadvantaged persons or groups to achieve or attempt to achieve equal opportunity or that is likely to contribute to the elimination of the infringement of rights under Part I. R.S.O. 1990, c.H.19, s. 14(1).

Application to Commission

(2) A person may apply to the Commission for a designation of a program as a special program for the purposes of subsection (1). 2006, c. 30, s. 1.

Designation by Commission

(3) Upon receipt of an application, the Commission may,

- (a) designate the program as a special program if, in its opinion, the program meets the requirements of subsection (1); or
- (b) designate the program as a special program on the condition that the program make such modifications as are specified in the designation in order to meet the requirements of subsection (1). 2006, c. 30, s. 1.

Inquiries initiated by Commission

(4) The Commission may, on its own initiative, inquire into one or more programs to determine whether the programs are special programs for the purposes of subsection (1). 2006, c. 30, s. 1.

End of inquiry

(5) At the conclusion of an inquiry under subsection (4), the Commission may designate as a special program any of the programs under inquiry if, in its opinion, the programs meet the requirements of subsection (1). 2006, c. 30, s. 1.



Expiry of designation

- (6) A designation under subsection (3) or (5) expires five years after the day it is issued or at such earlier time as may be specified by the Commission. 2006, c. 30, s. 1.

Renewal of designation

- (7) If an application for renewal of a designation of a program as a special program is made to the Commission before its expiry under subsection (6), the Commission may,
 - (a) renew the designation if, in its opinion, the program continues to meet the requirements of subsection (1); or
 - (b) renew the designation on the condition that the program make such modifications as are specified in the designation in order to meet the requirements of subsection (1). 2006, c. 30, s. 1.

Effect of designation, etc.

- (8) In a proceeding,
 - (a) evidence that a program has been designated as a special program under this section is proof, in the absence of evidence to the contrary, that the program is a special program for the purposes of subsection (1); and
 - (b) evidence that the Commission has considered and refused to designate a program as a special program under this section is proof, in the absence of evidence to the contrary, that the program is not a special program for the purposes of subsection (1). 2006, c. 30, s. 1.

Crown programs

- (9) Subsections (2) to (8) do not apply to a program implemented by the Crown or an agency of the Crown. 2006, c. 30, s. 1.

Tribunal finding

- (10) For the purposes of a proceeding before the Tribunal, the Tribunal may make a finding that a program meets the requirements of a special program under subsection (1), even though the program has not been designated as a special program by the Commission under this section, subject to clause (8)(b). 2006, c. 30, s. 1.

14.1 REPEALED: 1995, c. 4, s. 3(1).

Age sixty-five or over

- 15. A right under Part I to non-discrimination because of age is not infringed where an age of sixty-five years or over is a requirement, qualification or consideration for preferential treatment. R.S.O. 1990, c.H.19, s. 15.



Canadian Citizenship

16.(1) A right under Part I to non-discrimination because of citizenship is not infringed where Canadian citizenship is a requirement, qualification or consideration imposed or authorized by law. R.S.O. 1990, c.H.19, s. 16(1).

Idem

(2) A right under Part I to non-discrimination because of citizenship is not infringed where Canadian citizenship or lawful admission to Canada for permanent residence is a requirement, qualification or consideration adopted for the purpose of fostering and developing participation in cultural, educational, trade union or athletic activities by Canadian citizens or persons lawfully admitted to Canada for permanent residence. R.S.O. 1990, c.H.19, s. 16(2).

Idem

(3) A right under Part I to non-discrimination because of citizenship is not infringed where Canadian citizenship or domicile in Canada with the intention to obtain Canadian citizenship is a requirement, qualification or consideration adopted by an organization or enterprise for the holder of chief or senior executive positions. R.S.O. 1990, c.H.19, s. 16(3).

Disability

17.(1) A right of a person under this Act is not infringed for the reason only that the person is incapable of performing or fulfilling the essential duties or requirements attending the exercise of the right because of disability. R.S.O. 1990, c.H.19, s. 17(1); 2001, c. 32, s. 27(5).

Accommodation

(2) No tribunal or court shall find a person incapable unless it is satisfied that the needs of the person cannot be accommodated without undue hardship on the person responsible for accommodating those needs, considering the cost, outside sources of funding, if any, and health and safety requirements, if any. R.S.O. 1990, c.H.19, s. 17(2); 1994, c. 27, s. 65(2); 2002, c. 18, Sched. C, s. 3(1); 2006, c. 30, s. 2(1).

Determining if undue hardship

(3) In determining for the purposes of subsection (2) whether there would be undue hardship, a tribunal or court shall consider any standards prescribed by the regulations. 2006, c. 30, s. 2(2).

(4) REPEALED: 2006, c. 30, s. 2(3).

Special interest organizations

18. The rights under Part I to equal treatment with respect to ser-



vices and facilities, with or without accommodation, are not infringed where membership or participation in a religious, philanthropic, educational, fraternal or social institution or organization that is primarily engaged in serving the interests of persons identified by a prohibited ground of discrimination is restricted to persons who are similarly identified. R.S.O. 1990, c.H.19, s. 18; 2006, c. 19, Sched. B, s. 10.

Solemnization of marriage by religious officials

- 18.1(1) The rights under Part I to equal treatment with respect to services and facilities are not infringed where a person registered under section 20 of the *Marriage Act* refuses to solemnize a marriage, to allow a sacred place to be used for solemnizing a marriage or for an event related to the solemnization of a marriage, or to otherwise assist in the solemnization of a marriage, if to solemnize the marriage, allow the sacred place to be used or otherwise assist would be contrary to,
- (a) the person's religious beliefs; or
 - (b) the doctrines, rites, usages or customs of the religious body to which the person belongs. 2005, c. 5, s. 32(11).

Same

- (2) Nothing in subsection (1) limits the application of section 18. 2005, c. 5, s. 32(11).

Definition

- (3) In this section, "sacred place" includes a place of worship and any ancillary or accessory facilities. 2005, c. 5, s. 32(11).

Separate school rights preserved

- 19.(1) This Act shall not be construed to adversely affect any right or privilege respecting separate schools enjoyed by separate school boards or their supporters under the *Constitution Act, 1867* and the *Education Act*. R.S.O. 1990, c.H.19, s. 19(1).

Duties of teachers

- (2) This Act does not apply to affect the application of the *Education Act* with respect to the duties of teachers. R.S.O. 1990, c.H.19, s. 19(2).

Restriction of facilities by sex

- 20.(1) The right under section 1 to equal treatment with respect to services and facilities without discrimination because of sex is not infringed where the use of the services or facilities is restricted to persons of the same sex on the ground of public decency. R.S.O. 1990, c.H.19, s. 20(1).



Minimum drinking age

- (2) The right under section 1 to equal treatment with respect to services, goods and facilities without discrimination because of age is not infringed by the provisions of the *Liquor Licence Act* and the regulations under it relating to providing for and enforcing a minimum drinking age of nineteen years. R.S.O. 1990, c.H.19, s. 20(2).

Recreational clubs

- (3) The right under section 1 to equal treatment with respect to services and facilities is not infringed where a recreational club restricts or qualifies access to its services or facilities or gives preferences with respect to membership dues and other fees because of age, sex, marital status or family status. R.S.O. 1990, c.H.19, s. 20(3); 1999, c. 6, s. 28(9); 2005, c. 5, s. 32(12).

Tobacco and young persons

- (4) The right under section 1 to equal treatment with respect to goods without discrimination because of age is not infringed by the provisions of the *Smoke-Free Ontario Act* and the regulations under it relating to selling or supplying tobacco to persons who are, or who appear to be, under the age of 19 years or 25 years, as the case may be. 1994, c. 10, s. 22; 2005, c. 18, s. 17.

Residential accommodation

Shared accommodation

- 21.(1) The right under section 2 to equal treatment with respect to the occupancy of residential accommodation without discrimination is not infringed by discrimination where the residential accommodation is in a dwelling in which the owner or his or her family reside if the occupant or occupants of the residential accommodation are required to share a bathroom or kitchen facility with the owner or family of the owner. R.S.O. 1990, c.H.19, s. 21(1).

Restrictions on accommodation, sex

- (2) The right under section 2 to equal treatment with respect to the occupancy of residential accommodation without discrimination because of sex is not infringed by discrimination on that ground where the occupancy of all the residential accommodation in the building, other than the accommodation, if any, of the owner or family of the owner, is restricted to persons who are of the same sex. R.S.O. 1990, c.H.19, s. 21(2).

Prescribing business practices

- (3) The right under section 2 to equal treatment with respect to the occupancy of residential accommodation without discrimination is not infringed if a landlord uses in the manner prescribed



under this Act income information, credit checks, credit references, rental history, guarantees or other similar business practices which are prescribed in the regulations made under this Act in selecting prospective tenants. 1997, c. 24, s. 212(1).

Restrictions for insurance contracts, etc.

22. The right under sections 1 and 3 to equal treatment with respect to services and to contract on equal terms, without discrimination because of age, sex, marital status, family status or disability, is not infringed where a contract of automobile, life, accident or sickness or disability insurance or a contract of group insurance between an insurer and an association or person other than an employer, or a life annuity, differentiates or makes a distinction, exclusion or preference on reasonable and bona fide grounds because of age, sex, marital status, family status or disability. R.S.O. 1990, c.H.19, s. 22; 1999, c. 6, s. 28(10); 2001, c. 32, s. 27(5); 2005, c. 5, s. 32(13).

Employment

- 23.(1) The right under section 5 to equal treatment with respect to employment is infringed where an invitation to apply for employment or an advertisement in connection with employment is published or displayed that directly or indirectly classifies or indicates qualifications by a prohibited ground of discrimination. R.S.O. 1990, c.H.19, s. 23(1).

Application for employment

- (2) The right under section 5 to equal treatment with respect to employment is infringed where a form of application for employment is used or a written or oral inquiry is made of an applicant that directly or indirectly classifies or indicates qualifications by a prohibited ground of discrimination. R.S.O. 1990, c.H.19, s. 23(2).

Questions at interview

- (3) Nothing in subsection (2) precludes the asking of questions at a personal employment interview concerning a prohibited ground of discrimination where discrimination on such ground is permitted under this Act. R.S.O. 1990, c.H.19, s. 23(3).

Employment agencies

- (4) The right under section 5 to equal treatment with respect to employment is infringed where an employment agency discriminates against a person because of a prohibited ground of discrimination in receiving, classifying, disposing of or otherwise acting upon applications for its services or in referring an applicant or applicants to an employer or agent of an employer. R.S.O. 1990, c.H.19, s. 23(4).



Special employment

- 24.(1) The right under section 5 to equal treatment with respect to employment is not infringed where,
- (a) a religious, philanthropic, educational, fraternal or social institution or organization that is primarily engaged in serving the interests of persons identified by their race, ancestry, place of origin, colour, ethnic origin, creed, sex, age, marital status or disability employs only, or gives preference in employment to, persons similarly identified if the qualification is a reasonable and bona fide qualification because of the nature of the employment;
 - (b) the discrimination in employment is for reasons of age, sex, record of offences or marital status if the age, sex, record of offences or marital status of the applicant is a reasonable and bona fide qualification because of the nature of the employment;
 - (c) an individual person refuses to employ another for reasons of any prohibited ground of discrimination in section 5, where the primary duty of the employment is attending to the medical or personal needs of the person or of an ill child or an aged, infirm or ill spouse or other relative of the person;
 - (d) an employer grants or withholds employment or advancement in employment to a person who is the spouse, child or parent of the employer or an employee;
 - (e) a judge or master is required to retire or cease to continue in office on reaching a specified age under the *Courts of Justice Act*;
 - (f) a case management master is required to retire on reaching a specified age under the *Courts of Justice Act*;
 - (g) the term of reappointment of a case management master expires on the case management master reaching a specified age under the *Courts of Justice Act*; or
 - (h) a justice of the peace is required to retire on reaching a specified age under the *Justices of the Peace Act*. R.S.O. 1990, c.H.19, s. 24(1); 1999, c. 6, s. 28(11); 2001, c. 32, s. 27(5); 2005, c. 5, s. 32(14); 2005, c. 29, s. 1(2).

Reasonable accommodation

- (2) No tribunal or court shall find that a qualification under clause (1)(b) is reasonable and bona fide unless it is satisfied that the circumstances of the person cannot be accommodated without undue hardship on the person responsible for accommodating those circumstances considering the cost, outside sources of funding, if any, and health and safety requirements, if any.



R.S.O. 1990, c.H.19, s. 24(2); 1994, c. 27, s. 65(4); 2002, c. 18, Sched. C, s. 4(1); 2006, c. 30, s. 3(1).

Determining if undue hardship

- (3) In determining for the purposes of subsection (2) whether there would be undue hardship, a tribunal or court shall consider any standards prescribed by the regulations. 2006, c. 30, s. 3(2).

Same

- (4) Clauses 24(1)(e), (f), (g) and (h) shall not be interpreted to suggest that a judge, master, case management master or justice of the peace is an employee for the purposes of this Act or any other Act or law. 2005, c. 29, s. 1(3).

24.1 REPEALED: 1995, c. 4, s. 3(2).

Employee benefit and pension plans

- 25.(1) The right under section 5 to equal treatment with respect to employment is infringed where employment is denied or made conditional because a term or condition of employment requires enrolment in an employee benefit, pension or superannuation plan or fund or a contract of group insurance between an insurer and an employer, that makes a distinction, preference or exclusion on a prohibited ground of discrimination. R.S.O. 1990, c.H.19, s. 25(1).

Same

- (2) The right under section 5 to equal treatment with respect to employment without discrimination because of sex, marital status or family status is not infringed by an employee superannuation or pension plan or fund or a contract of group insurance between an insurer and an employer that complies with the *Employment Standards Act, 2000* and the regulations thereunder. R.S.O. 1990, c.H.19, s. 25(2); 1999, c. 6, s. 28(12); 2005, c. 5, s. 32(15); 2005, c. 29, s. 1(4).

Same

- (2.1) The right under section 5 to equal treatment with respect to employment without discrimination because of age is not infringed by an employee benefit, pension, superannuation or group insurance plan or fund that complies with the *Employment Standards Act, 2000* and the regulations thereunder. 2005, c. 29, s. 1(5).

Same

- (2.2) Subsection (2.1) applies whether or not a plan or fund is the subject of a contract of insurance between an insurer and an employer. 2005, c. 29, s. 1(5).



Same

- (2.3) For greater certainty, subsections (2) and (2.1) apply whether or not “age”, “sex” or “marital status” in the *Employment Standards Act, 2000* or the regulations under it have the same meaning as those terms have in this Act. 2005, c. 29, s. 1(5).

Same

- (3) The right under section 5 to equal treatment with respect to employment without discrimination because of disability is not infringed,
- (a) where a reasonable and bona fide distinction, exclusion or preference is made in an employee disability or life insurance plan or benefit because of a pre-existing disability that substantially increases the risk;
 - (b) where a reasonable and bona fide distinction, exclusion or preference is made on the ground of a pre-existing disability in respect of an employee-pay-all or participant-pay-all benefit in an employee benefit, pension or superannuation plan or fund or a contract of group insurance between an insurer and an employer or in respect of a plan, fund or policy that is offered by an employer to employees if they are fewer than twenty-five in number. R.S.O. 1990, c.H.19, s. 25(3); 2001, c. 32, s. 27(5).

Compensation

- (4) An employer shall pay to an employee who is excluded because of a disability from an employee benefit, pension or superannuation plan or fund or a contract of group insurance between an insurer and the employer compensation equivalent to the contribution that the employer would make thereto on behalf of an employee who does not have a disability. R.S.O. 1990, c.H.19, s. 25(4); 2001, c. 32, s. 27(5).

Discrimination in employment under government contracts

- 26.(1) It shall be deemed to be a condition of every contract entered into by or on behalf of the Crown or any agency thereof and of every subcontract entered into in the performance thereof that no right under section 5 will be infringed in the course of performing the contract. R.S.O. 1990, c.H.19, s. 26(1).

Idem: government grants and loans

- (2) It shall be deemed to be a condition of every grant, contribution, loan or guarantee made by or on behalf of the Crown or any agency thereof that no right under section 5 will be infringed in the course of carrying out the purposes for which the grant, contribution, loan or guarantee was made. R.S.O. 1990, c.H.19, s. 26(2).



Sanction

- (3) Where an infringement of a right under section 5 is found by the Tribunal upon a complaint and constitutes a breach of a condition under this section, the breach of condition is sufficient grounds for cancellation of the contract, grant, contribution, loan or guarantee and refusal to enter into any further contract with or make any further grant, contribution, loan or guarantee to the same person. R.S.O. 1990, c.H.19, s. 26(3); 2002, c. 18, Sched. C, s. 5.

PART III THE ONTARIO HUMAN RIGHTS COMMISSION

The Commission

- 27.(1) The Ontario Human Rights Commission is continued under the name Ontario Human Rights Commission in English and Commission ontarienne des droits de la personne in French. 2006, c. 30, s. 4.

Composition

- (2) The Commission shall be composed of such persons as are appointed by the Lieutenant Governor in Council. 2006, c. 30, s. 4.

Appointment

- (3) Every person appointed to the Commission shall have knowledge, experience or training with respect to human rights law and issues. 2006, c. 30, s. 4.

Criteria

- (4) In the appointment of persons to the Commission under subsection (2), the importance of reflecting, in the composition of the Commission as a whole, the diversity of Ontario's population shall be recognized. 2006, c. 30, s. 4.

Chief Commissioner

- (5) The Lieutenant Governor in Council shall designate a member of the Commission as Chief Commissioner. 2006, c. 30, s. 4.

Powers and duties of Chief Commissioner

- (6) The Chief Commissioner shall direct the Commission and exercise the powers and perform the duties assigned to the Chief Commissioner by or under this Act. 2006, c. 30, s. 4.

Term of office

- (7) The Chief Commissioner and other members of the Commission shall hold office for such term as may be specified by the Lieutenant Governor in Council. 2006, c. 30, s. 4.



Remuneration

- (8) The Chief Commissioner and other members of the Commission shall be paid such remuneration and allowance for expenses as are fixed by the Lieutenant Governor in Council. 2006, c. 30, s. 4.

Employees

- (9) The Commission may appoint such employees as it considers necessary for the proper conduct of its affairs and the employees shall be appointed under Part III of the *Public Service of Ontario Act, 2006*. 2006, c. 30, s. 4; 2006, c. 35, Sched. C, s. 132(5).

Evidence obtained in performance of duties

- (10) A member of the Commission shall not be required to give testimony in a civil suit or any proceeding as to information obtained in the performance of duties under this Act. 2006, c. 30, s. 4.

Same, employees

- (11) An employee of the Commission shall not be required to give testimony in a civil suit or any proceeding other than a proceeding under this Act as to information obtained in the performance of duties under this Act. 2006, c. 30, s. 4.

Delegation

- (12) The Chief Commissioner may in writing delegate any of his or her powers, duties or functions under this Act to any member of the Anti-Racism Secretariat, the Disability Rights Secretariat or an advisory group or to any other member of the Commission, subject to such conditions as the Chief Commissioner may set out in the delegation. 2006, c. 30, s. 4.

Divisions

- (13) The Commission may authorize any function of the Commission to be performed by a division of the Commission composed of at least three members of the Commission. 2006, c. 30, s. 4.

Acting Chief Commissioner

- 28.(1) If the Chief Commissioner dies, resigns or is unable or neglects to perform his or her duties, the Lieutenant Governor in Council may appoint an Acting Chief Commissioner to hold office for such period as may be specified in the appointment. 2006, c. 30, s. 4.

Same

- (2) An Acting Chief Commissioner shall perform the duties and have the powers of the Chief Commissioner and shall be paid such remuneration and allowance for expenses as are fixed by the Lieutenant Governor in Council. 2006, c. 30, s. 4.



Functions of Commission

29. The functions of the Commission are to promote and advance respect for human rights in Ontario, to protect human rights in Ontario and, recognizing that it is in the public interest to do so and that it is the Commission's duty to protect the public interest, to identify and promote the elimination of discriminatory practices and, more specifically,
- (a) to forward the policy that the dignity and worth of every person be recognized and that equal rights and opportunities be provided without discrimination that is contrary to law;
 - (b) to develop and conduct programs of public information and education to,
 - (i) promote awareness and understanding of, respect for and compliance with this Act, and
 - (ii) prevent and eliminate discriminatory practices that infringe rights under Part I;
 - (c) to undertake, direct and encourage research into discriminatory practices and to make recommendations designed to prevent and eliminate such discriminatory practices;
 - (d) to examine and review any statute or regulation, and any program or policy made by or under a statute, and make recommendations on any provision, program or policy that in its opinion is inconsistent with the intent of this Act;
 - (e) to initiate reviews and inquiries into incidents of tension or conflict, or conditions that lead or may lead to incidents of tension or conflict, in a community, institution, industry or sector of the economy, and to make recommendations, and encourage and co-ordinate plans, programs and activities, to reduce or prevent such incidents or sources of tension or conflict;
 - (f) to promote, assist and encourage public, municipal or private agencies, organizations, groups or persons to engage in programs to alleviate tensions and conflicts based upon identification by a prohibited ground of discrimination;
 - (g) to designate programs as special programs in accordance with section 14;
 - (h) to approve policies under section 30;
 - (i) to make applications to the Tribunal under section 35;
 - (j) to report to the people of Ontario on the state of human rights in Ontario and on its affairs;
 - (k) to perform the functions assigned to the Commission under this or any other Act. 2006, c. 30, s. 4.



Commission policies

30. The Commission may approve policies prepared and published by the Commission to provide guidance in the application of Parts I and II. 2006, c. 30, s. 4.

Inquiries

- 31.(1) The Commission may conduct an inquiry under this section for the purpose of carrying out its functions under this Act if the Commission believes it is in the public interest to do so. 2006, c. 30, s. 4.

Conduct of inquiry

- (2) An inquiry may be conducted under this section by any person who is appointed by the Commission to carry out inquiries under this section. 2006, c. 30, s. 4.

Production of certificate

- (3) A person conducting an inquiry under this section shall produce proof of their appointment upon request. 2006, c. 30, s. 4.

Entry

- (4) A person conducting an inquiry under this section may, without warrant, enter any lands or any building, structure or premises where the person has reason to believe there may be documents, things or information relevant to the inquiry. 2006, c. 30, s. 4.

Time of entry

- (5) The power to enter a place under subsection (4) may be exercised only during the place's regular business hours or, if it does not have regular business hours, during daylight hours. 2006, c. 30, s. 4.

Dwellings

- (6) A person conducting an inquiry under this section shall not enter into a place or part of a place that is a dwelling without the consent of the occupant. 2006, c. 30, s. 4.

Powers on inquiry

- (7) A person conducting an inquiry may,
- (a) request the production for inspection and examination of documents or things that are or may be relevant to the inquiry;
 - (b) upon giving a receipt for it, remove from a place documents produced in response to a request under clause (a) for the purpose of making copies or extracts;
 - (c) question a person on matters that are or may be relevant to the inquiry, subject to the person's right to have counsel or



a personal representative present during such questioning and exclude from the questioning any person who may be adverse in interest to the inquiry;

- (d) use any data storage, processing or retrieval device or system used in carrying on business in the place in order to produce a document in readable form;
- (e) take measurements or record by any means the physical dimensions of a place;
- (f) take photographs, video recordings or other visual or audio recordings of the interior or exterior of a place; and
- (g) require that a place or part thereof not be disturbed for a reasonable period of time for the purposes of carrying out an examination, inquiry or test. 2006, c. 30, s. 4.

Written demand

- (8) A demand that a document or thing be produced must be in writing and must include a statement of the nature of the document or thing required. 2006, c. 30, s. 4.

Assistance

- (9) A person conducting an inquiry may be accompanied by any person who has special, expert or professional knowledge and who may be of assistance in carrying out the inquiry. 2006, c. 30, s. 4.

Use of force prohibited

- (10) A person conducting an inquiry shall not use force to enter and search premises under this section. 2006, c. 30, s. 4.

Obligation to produce and assist

- (11) A person who is requested to produce a document or thing under clause (7)(a) shall produce it and shall, on request by the person conducting the inquiry, provide any assistance that is reasonably necessary, including assistance in using any data storage, processing or retrieval device or system, to produce a document in readable form. 2006, c. 30, s. 4.

Return of removed things

- (12) A person conducting an inquiry who removes any document or thing from a place under clause (7)(b) shall,
 - (a) make it available to the person from whom it was removed, on request, at a time and place convenient for both that person and the person conducting the inquiry; and
 - (b) return it to the person from whom it was removed within a reasonable time. 2006, c. 30, s. 4.



Admissibility of copies

- (13) A copy of a document certified by a person conducting an inquiry to be a true copy of the original is admissible in evidence to the same extent as the original and has the same evidentiary value. 2006, c. 30, s. 4.

Obstruction

- (14) No person shall obstruct or interfere with a person conducting an inquiry under this section. 2006, c. 30, s. 4.

Search warrant

- 31.1(1) The Commission may authorize a person to apply to a justice of the peace for a warrant to enter a place and conduct a search of the place if,
 - (a) a person conducting an inquiry under section 31 has been denied entry to any place or asked to leave a place before concluding a search;
 - (b) a person conducting an inquiry under section 31 made a request for documents or things and the request was refused; or
 - (c) an inquiry under section 31 is otherwise obstructed or prevented. 2006, c. 30, s. 4.

Same

- (2) Upon application by a person authorized under subsection (1) to do so, a justice of the peace may issue a warrant under this section if he or she is satisfied on information under oath or affirmation that the warrant is necessary for the purposes of carrying out the inquiry under section 31. 2006, c. 30, s. 4.

Powers

- (3) A warrant obtained under subsection (2) may authorize a person named in the warrant, upon producing proof of his or her appointment,
 - (a) to enter any place specified in the warrant, including a dwelling; and
 - (b) to do any of the things specified in the warrant. 2006, c. 30, s. 4.

Conditions on search warrant

- (4) A warrant obtained under subsection (2) shall contain such conditions as the justice of the peace considers advisable to ensure that any search authorized by the warrant is reasonable in the circumstances. 2006, c. 30, s. 4.

Time of execution

- (5) An entry under a warrant issued under this section shall be



made at such reasonable times as may be specified in the warrant. 2006, c. 30, s. 4.

Expiry of warrant

- (6) A warrant issued under this section shall name a date of expiry, which shall be no later than 15 days after the warrant is issued, but a justice of the peace may extend the date of expiry for an additional period of no more than 15 days, upon application without notice by the person named in the warrant. 2006, c. 30, s. 4.

Use of force

- (7) The person authorized to execute the warrant may call upon police officers for assistance in executing the warrant and the person may use whatever force is reasonably necessary to execute the warrant. 2006, c. 30, s. 4.

Obstruction prohibited

- (8) No person shall obstruct or hinder a person in the execution of a warrant issued under this section. 2006, c. 30, s. 4.

Application

- (9) Subsections 31(11), (12) and (13) apply with necessary modifications to an inquiry carried out pursuant to a warrant issued under this section. 2006, c. 30, s. 4.

Evidence used in Tribunal proceedings

31.2. Despite any other Act, evidence obtained on an inquiry under section 31 or 31.1 may be received into evidence in a proceeding before the Tribunal. 2006, c. 30, s. 4.

Anti-Racism Secretariat

31.3(1) The Chief Commissioner directs the Anti-Racism Secretariat which shall be established in accordance with subsection (2). 2006, c. 30, s. 4.

Composition

- (2) The Anti-Racism Secretariat shall be composed of not more than six persons appointed by the Lieutenant Governor in Council on the advice of the Chief Commissioner. 2006, c. 30, s. 4.

Remuneration

- (3) The Lieutenant Governor in Council may fix the remuneration and allowance for expenses of the members of the Anti-Racism Secretariat. 2006, c. 30, s. 4.

Functions of the Secretariat

- (4) At the direction of the Chief Commissioner, the Anti-Racism Secretariat shall,



- (a) undertake, direct and encourage research into discriminatory practices that infringe rights under Part I on the basis of racism or a related ground and make recommendations to the Commission designed to prevent and eliminate such discriminatory practices;
- (b) facilitate the development and provision of programs of public information and education relating to the elimination of racism; and
- (c) undertake such tasks and responsibilities as may be assigned by the Chief Commissioner. 2006, c. 30, s. 4.

Disability Rights Secretariat

31.4(1) The Chief Commissioner directs the Disability Rights Secretariat which shall be established in accordance with subsection (2). 2006, c. 30, s. 4.

Composition

- (2) The Disability Rights Secretariat shall be composed of not more than six persons appointed by the Lieutenant Governor in Council on the advice of the Chief Commissioner. 2006, c. 30, s. 4.

Remuneration

- (3) The Lieutenant Governor in Council may fix the remuneration and allowance for expenses of the members of the Disability Rights Secretariat. 2006, c. 30, s. 4.

Functions of the Secretariat

- (4) At the direction of the Chief Commissioner, the Disability Rights Secretariat shall,
 - (a) undertake, direct and encourage research into discriminatory practices that infringe rights under Part I on the basis of disability and make recommendations to the Commission designed to prevent and eliminate such discriminatory practices;
 - (b) facilitate the development and provision of programs of public information and education intended to promote the elimination of discriminatory practices that infringe rights under Part I on the basis of disability; and
 - (c) undertake such tasks and responsibilities as may be assigned by the Chief Commissioner. 2006, c. 30, s. 4.

Advisory groups

31.5 The Chief Commissioner may establish such advisory groups as he or she considers appropriate to advise the Commission about the elimination of discriminatory practices that infringe rights under this Act. 2006, c. 30, s. 4.



Annual report

31.6 (1) Every year, the Commission shall prepare an annual report on the affairs of the Commission that occurred during the 12-month period ending on March 31 of each year. 2006, c. 30, s. 4.

Report to Speaker

(2) The Commission shall submit the report to the Speaker of the Assembly no later than on June 30 in each year who shall cause the report to be laid before the Assembly if it is in session or, if not, at the next session. 2006, c. 30, s. 4.

Copy to Minister

(3) The Commission shall give a copy of the report to the Minister at least 30 days before it is submitted to the Speaker under subsection (2). 2006, c. 30, s. 4.

Other reports

31.7 In addition to the annual report, the Commission may make any other reports respecting the state of human rights in Ontario and the affairs of the Commission as it considers appropriate, and may present such reports to the public or any other person it considers appropriate. 2006, c. 30, s. 4.

PART IV HUMAN RIGHTS TRIBUNAL OF ONTARIO

Tribunal

32.(1) The Tribunal known as the Human Rights Tribunal of Ontario in English and Tribunal des droits de la personne de l'Ontario in French is continued. 2006, c. 30, s. 5.

Composition

(2) The Tribunal shall be composed of such members as are appointed by the Lieutenant Governor in Council in accordance with the selection process described in subsection (3). 2006, c. 30, s. 5.

Selection process

(3) The selection process for the appointment of members of the Tribunal shall be a competitive process and the criteria to be applied in assessing candidates shall include the following:

1. Experience, knowledge or training with respect to human rights law and issues.
2. Aptitude for impartial adjudication.
3. Aptitude for applying the alternative adjudicative practices and procedures that may be set out in the Tribunal rules. 2006, c. 30, s. 5.



Remuneration

- (4) The members of the Tribunal shall be paid such remuneration and allowance for expenses as are fixed by the Lieutenant Governor in Council. 2006, c. 30, s. 5.

Term of office

- (5) A member of the Tribunal shall be appointed for such term as may be specified by the Lieutenant Governor in Council. 2006, c. 30, s. 5.

Chair, vice-chair

- (6) The Lieutenant Governor in Council shall appoint a chair and may appoint one or more vice-chairs of the Tribunal from among the members of the Tribunal. 2006, c. 30, s. 5.

Alternate chair

- (7) The Lieutenant Governor in Council shall designate one of the vice-chairs to be the alternate chair. 2006, c. 30, s. 5.

Same

- (8) If the chair is unable to act, the alternate chair shall perform the duties of the chair and, for this purpose, has all the powers of the chair. 2006, c. 30, s. 5.

Employees

- (9) The Tribunal may appoint such employees as it considers necessary for the proper conduct of its affairs and the employees shall be appointed under Part III of the *Public Service of Ontario Act, 2006*. 2006, c. 30, s. 5; 2006, c. 35, Sched. C, s. 132(6).

Evidence obtained in course of proceeding

- (10) A member or employee of the Tribunal shall not be required to give testimony in a civil suit or any proceeding as to information obtained in the course of a proceeding before the Tribunal. 2006, c. 30, s. 5.

Same

- (11) Despite subsection (10), an employee of the Tribunal may be required to give testimony in a proceeding before the Tribunal in the circumstances prescribed by the Tribunal rules. 2006, c. 30, s. 5.

Panels

- 33.(1) The chair of the Tribunal may appoint panels composed of one or more members of the Tribunal to exercise and perform the powers and duties of the Tribunal. 2006, c. 30, s. 5.

Person designated to preside over panel

- (2) If a panel of the Tribunal holds a hearing, the chair of the Tri-



bunal shall designate one member of the panel to preside over the hearing. 2006, c. 30, s. 5.

Reassignment of panel

- (3) If a panel of the Tribunal is unable for any reason to exercise or perform the powers or duties of the Tribunal, the chair of the Tribunal may assign another panel in its place. 2006, c. 30, s. 5.

Application by person

- 34.(1) If a person believes that any of his or her rights under Part I have been infringed, the person may apply to the Tribunal for an order under section 45.2,
 - (a) within one year after the incident to which the application relates; or
 - (b) if there was a series of incidents, within one year after the last incident in the series. 2006, c. 30, s. 5.

Late applications

- (2) A person may apply under subsection (1) after the expiry of the time limit under that subsection if the Tribunal is satisfied that the delay was incurred in good faith and no substantial prejudice will result to any person affected by the delay. 2006, c. 30, s. 5.

Form

- (3) An application under subsection (1) shall be in a form approved by the Tribunal. 2006, c. 30, s. 5.

Two or more persons

- (4) Two or more persons who are each entitled to make an application under subsection (1) may file the applications jointly, subject to any provision in the Tribunal rules that authorizes the Tribunal to direct that one or more of the applications be considered in a separate proceeding. 2006, c. 30, s. 5.

Application on behalf of another

- (5) A person or organization, other than the Commission, may apply on behalf of another person to the Tribunal for an order under section 45.2 if the other person,
 - (a) would have been entitled to bring an application under subsection (1); and
 - (b) consents to the application. 2006, c. 30, s. 5.

Participation in proceedings

- (6) If a person or organization makes an application on behalf of another person, the person or organization may participate in the proceeding in accordance with the Tribunal rules. 2006, c. 30, s. 5.



Consent form

- (7) A consent under clause (5)(b) shall be in a form specified in the Tribunal rules. 2006, c. 30, s. 5.

Time of application

- (8) An application under subsection (5) shall be made within the time period required for making an application under subsection (1). 2006, c. 30, s. 5.

Application

- (9) Subsections (2) and (3) apply to an application made under subsection (5). 2006, c. 30, s. 5.

Withdrawal of application

- (10) An application under subsection (5) may be withdrawn by the person on behalf of whom the application is made in accordance with the Tribunal rules. 2006, c. 30, s. 5.

Where application barred

- (11) A person who believes that one of his or her rights under Part I has been infringed may not make an application under subsection (1) with respect to that right if,
 - (a) a civil proceeding has been commenced in a court in which the person is seeking an order under section 46.1 with respect to the alleged infringement and the proceeding has not been finally determined or withdrawn; or
 - (b) a court has finally determined the issue of whether the right has been infringed or the matter has been settled. 2006, c. 30, s. 5.

Final determination

- (12) For the purpose of subsection (11), a proceeding or issue has not been finally determined if a right of appeal exists and the time for appealing has not expired. 2006, c. 30, s. 5.

Application by Commission

- 35.(1) The Commission may apply to the Tribunal for an order under section 45.3 if the Commission is of the opinion that,
 - (a) it is in the public interest to make an application; and
 - (b) an order under section 45.3 could provide an appropriate remedy. 2006, c. 30, s. 5.

Form

- (2) An application under subsection (1) shall be in a form approved by the Tribunal. 2006, c. 30, s. 5.



Effect of application

- (3) An application made by the Commission does not affect the right of a person to make an application under section 34 in respect of the same matter. 2006, c. 30, s. 5.

Applications dealt with together

- (4) If a person or organization makes an application under section 34 and the Commission makes an application under this section in respect of the same matter, the two applications shall be dealt with together in the same proceeding unless the Tribunal determines otherwise. 2006, c. 30, s. 5.

Parties

36. The parties to an application under section 34 or 35 are the following:
 1. In the case of an application under subsection 34(1), the person who made the application.
 2. In the case of an application under subsection 34(5), the person on behalf of whom the application is made.
 3. In the case of an application under section 35, the Commission.
 4. Any person against whom an order is sought in the application.
 5. Any other person or the Commission, if they are added as a party by the Tribunal. 2006, c. 30, s. 5.

Intervention by Commission

- 37.(1) The Commission may intervene in an application under section 34 on such terms as the Tribunal may determine having regard to the role and mandate of the Commission under this Act. 2006, c. 30, s. 5.

Intervention as a party

- (2) The Commission may intervene as a party to an application under section 34 if the person or organization who made the application consents to the intervention as a party. 2006, c. 30, s. 5.

Disclosure of information to Commission

38. Despite anything in the *Freedom of Information and Protection of Privacy Act*, at the request of the Commission, the Tribunal shall disclose to the Commission copies of applications and responses filed with the Tribunal and may disclose to the Commission other documents in its custody or in its control. 2006, c. 30, s. 5.

Powers of Tribunal

39. The Tribunal has the jurisdiction to exercise the powers conferred on it by or under this Act and to determine all questions of fact or law that arise in any application before it. 2006, c. 30, s. 5.



Disposition of applications

40. The Tribunal shall dispose of applications made under this Part by adopting the procedures and practices provided for in its rules or otherwise available to the Tribunal which, in its opinion, offer the best opportunity for a fair, just and expeditious resolution of the merits of the applications. 2006, c. 30, s. 5.

Interpretation of Part and rules

41. This Part and the Tribunal rules shall be liberally construed to permit the Tribunal to adopt practices and procedures, including alternatives to traditional adjudicative or adversarial procedures that, in the opinion of the Tribunal, will facilitate fair, just and expeditious resolutions of the merits of the matters before it. 2006, c. 30, s. 5.

Statutory Powers Procedure Act

- 42.(1) The provisions of the *Statutory Powers Procedure Act* apply to a proceeding before the Tribunal unless they conflict with a provision of this Act, the regulations or the Tribunal rules. 2006, c. 30, s. 5.

Conflict

- (2) Despite section 32 of the *Statutory Powers Procedure Act*, this Act, the regulations and the Tribunal rules prevail over the provisions of that Act with which they conflict. 2006, c. 30, s. 5.

Tribunal rules

- 43.(1) The Tribunal may make rules governing the practice and procedure before it. 2006, c. 30, s. 5.

Required practices and procedures

- (2) The rules shall ensure that the following requirements are met with respect to any proceeding before the Tribunal:
1. An application that is within the jurisdiction of the Tribunal shall not be finally disposed of without affording the parties an opportunity to make oral submissions in accordance with the rules.
 2. An application may not be finally disposed of without written reasons. 2006, c. 30, s. 5.

Same

- (3) Without limiting the generality of subsection (1), the Tribunal rules may,
- (a) provide for and require the use of hearings or of practices and procedures that are provided for under the *Statutory Powers Procedure Act* or that are alternatives to traditional adjudicative or adversarial procedures;



- (b) authorize the Tribunal to,
 - (i) define or narrow the issues required to dispose of an application and limit the evidence and submissions of the parties on such issues, and
 - (ii) determine the order in which the issues and evidence in a proceeding will be presented;
- (c) authorize the Tribunal to conduct examinations in chief or cross-examinations of a witness;
- (d) prescribe the stages of its processes at which preliminary, procedural or interlocutory matters will be determined;
- (e) authorize the Tribunal to make or cause to be made such examinations of records and such other inquiries as it considers necessary in the circumstances;
- (f) authorize the Tribunal to require a party to a proceeding or another person to,
 - (i) produce any document, information or thing and provide such assistance as is reasonably necessary, including using any data storage, processing or retrieval device or system, to produce the information in any form,
 - (ii) provide a statement or oral or affidavit evidence, or
 - (iii) in the case of a party to the proceeding, adduce evidence or produce witnesses who are reasonably within the party's control; and
- (g) govern any matter prescribed by the regulations. 2006, c. 30, s. 5.

General or particular

- (4) The rules may be of general or particular application. 2006, c. 30, s. 5.

Consistency

- (5) The rules shall be consistent with this Part. 2006, c. 30, s. 5.

Not a regulation

- (6) The rules made under this section are not regulations for the purposes of Part III of the *Legislation Act, 2006*. 2006, c. 30, ss. 5, 11.

Public consultations

- (7) The Tribunal shall hold public consultations before making a rule under this section. 2006, c. 30, s. 5.

Failure to comply with rules



- (8) Failure on the part of the Tribunal to comply with the practices and procedures required by the rules or the exercise of a discretion under the rules by the Tribunal in a particular manner is not a ground for setting aside a decision of the Tribunal on an application for judicial review or any other form of relief, unless the failure or the exercise of a discretion caused a substantial wrong which affected the final disposition of the matter. 2006, c. 30, s. 5.

Adverse inference

- (9) The Tribunal may draw an adverse inference from the failure of a party to comply, in whole or in part, with an order of the Tribunal for the party to do anything under a rule made under clause (3)(f). 2006, c. 30, s. 5.

Tribunal inquiry

- 44.(1) At the request of a party to an application under this Part, the Tribunal may appoint a person to conduct an inquiry under this section if the Tribunal is satisfied that,
 - (a) an inquiry is required in order to obtain evidence;
 - (b) the evidence obtained may assist in achieving a fair, just and expeditious resolution of the merits of the application; and
 - (c) it is appropriate to do so in the circumstances. 2006, c. 30, s. 5.

Production of certificate

- (2) A person conducting an inquiry under this section shall produce proof of their appointment upon request. 2006, c. 30, s. 5.

Entry

- (3) A person conducting an inquiry under this section may, without warrant, enter any lands or any building, structure or premises where the person has reason to believe there may be evidence relevant to the application. 2006, c. 30, s. 5.

Time of entry

- (4) The power to enter a place under subsection (3) may be exercised only during the place's regular business hours or, if it does not have regular business hours, during daylight hours. 2006, c. 30, s. 5.

Dwellings

- (5) A person conducting an inquiry shall not enter into a place or part of a place that is a dwelling without the consent of the occupant. 2006, c. 30, s. 5.

Powers on inquiry

- (6) A person conducting an inquiry may,



- (a) request the production for inspection and examination of documents or things that are or may be relevant to the inquiry;
- (b) upon giving a receipt for it, remove from a place documents produced in response to a request under clause (a) for the purpose of making copies or extracts;
- (c) question a person on matters that are or may be relevant to the inquiry, subject to the person's right to have counsel or a personal representative present during such questioning and exclude from the questioning any person who may be adverse in interest to the inquiry;
- (d) use any data storage, processing or retrieval device or system used in carrying on business in the place in order to produce a document in readable form;
- (e) take measurements or record by any means the physical dimensions of a place;
- (f) take photographs, video recordings or other visual or audio recordings of the interior or exterior of a place; and
- (g) require that a place or part thereof not be disturbed for a reasonable period of time for the purposes of carrying out an examination, inquiry or test. 2006, c. 30, s. 5.

Written demand

- (7) A demand that a document or thing be produced must be in writing and must include a statement of the nature of the document or thing required. 2006, c. 30, s. 5.

Assistance

- (8) A person conducting an inquiry may be accompanied by any person who has special, expert or professional knowledge and who may be of assistance in carrying out the inquiry. 2006, c. 30, s. 5.

Use of force prohibited

- (9) A person conducting an inquiry shall not use force to enter and search premises under this section. 2006, c. 30, s. 5.

Obligation to produce and assist

- (10) A person who is requested to produce a document or thing under clause (6)(a) shall produce it and shall, on request by the person conducting the inquiry, provide any assistance that is reasonably necessary, including assistance in using any data storage, processing or retrieval device or system, to produce a document in readable form. 2006, c. 30, s. 5.

Return of removed things



- (11) A person conducting an inquiry who removes any document or thing from a place under clause (6)(b) shall,
- (a) make it available to the person from whom it was removed, on request, at a time and place convenient for both that person and the person conducting the inquiry; and
 - (b) return it to the person from whom it was removed within a reasonable time. 2006, c. 30, s. 5.

Admissibility of copies

- (12) A copy of a document certified by a person conducting an inquiry to be a true copy of the original is admissible in evidence to the same extent as the original and has the same evidentiary value. 2006, c. 30, s. 5.

Obstruction

- (13) No person shall obstruct or interfere with a person conducting an inquiry under this section. 2006, c. 30, s. 5.

Inquiry report

- (14) A person conducting an inquiry shall prepare a report and submit it to the Tribunal and the parties to the application that gave rise to the inquiry in accordance with the Tribunal rules. 2006, c. 30, s. 5.

Transfer of inquiry to Commission

- (15) The Commission may, at the request of the Tribunal, appoint a person to conduct an inquiry under this section and the person so appointed has all of the powers of a person appointed by the Tribunal under this section and shall report to the Tribunal in accordance with subsection (14). 2006, c. 30, s. 5.

Deferral of application

45. The Tribunal may defer an application in accordance with the Tribunal rules. 2006, c. 30, s. 5.

Dismissal in accordance with rules

- 45.1 The Tribunal may dismiss an application, in whole or in part, in accordance with its rules if the Tribunal is of the opinion that another proceeding has appropriately dealt with the substance of the application. 2006, c. 30, s. 5.

Orders of Tribunal: applications under s. 34

- 45.2(1) On an application under section 34, the Tribunal may make one or more of the following orders if the Tribunal determines that a party to the application has infringed a right under Part I of another party to the application:
1. An order directing the party who infringed the right to pay monetary compensation to the party whose right was



infringed for loss arising out of the infringement, including compensation for injury to dignity, feelings and self-respect.

2. An order directing the party who infringed the right to make restitution to the party whose right was infringed, other than through monetary compensation, for loss arising out of the infringement, including restitution for injury to dignity, feelings and self-respect.
3. An order directing any party to the application to do anything that, in the opinion of the Tribunal, the party ought to do to promote compliance with this Act. 2006, c. 30, s. 5.

Orders under par. 3 of subs. (1)

- (2) For greater certainty, an order under paragraph 3 of subsection (1),
 - (a) may direct a person to do anything with respect to future practices; and
 - (b) may be made even if no order under that paragraph was requested. 2006, c. 30, s. 5.

Orders of Tribunal: applications under s. 35

45.3(1) If, on an application under section 35, the Tribunal determines that any one or more of the parties to the application have infringed a right under Part I, the Tribunal may make an order directing any party to the application to do anything that, in the opinion of the Tribunal, the party ought to do to promote compliance with this Act. 2006, c. 30, s. 5.

Same

- (2) For greater certainty, an order under subsection (1) may direct a person to do anything with respect to future practices. 2006, c. 30, s. 5.

Matters referred to Commission

45.4(1) The Tribunal may refer any matters arising out of a proceeding before it to the Commission if, in the Tribunal's opinion, they are matters of public interest or are otherwise of interest to the Commission. 2006, c. 30, s. 5.

Same

- (2) The Commission may, in its discretion, decide whether to deal with a matter referred to it by the Tribunal. 2006, c. 30, s. 5.

Documents published by Commission

45.5(1) In a proceeding under this Part, the Tribunal may consider policies approved by the Commission under section 30. 2006, c. 30, s. 5.



Same

- (2) Despite subsection (1), the Tribunal shall consider a policy approved by the Commission under section 30 in a proceeding under this Part if a party to the proceeding or an intervenor requests that it do so. 2006, c. 30, s. 5.

Stated case to Divisional court

- 45.6(1) If the Tribunal makes a final decision or order in a proceeding in which the Commission was a party or an intervenor, and the Commission believes that the decision or order is not consistent with a policy that has been approved by the Commission under section 30, the Commission may apply to the Tribunal to have the Tribunal state a case to the Divisional Court. 2006, c. 30, s. 5.

Same

- (2) If the Tribunal determines that the application of the Commission relates to a question of law and that it is appropriate to do so, it may state the case in writing for the opinion of the Divisional Court upon the question of law. 2006, c. 30, s. 5.

Parties

- (3) The parties to a stated case under this section are the parties to the proceeding referred to in subsection (1) and, if the Commission was an intervenor in that proceeding, the Commission. 2006, c. 30, s. 5.

Submissions by Tribunal

- (4) The Divisional Court may hear submissions from the Tribunal. 2006, c. 30, s. 5.

Powers of Divisional Court

- (5) The Divisional Court shall hear and determine the stated case. 2006, c. 30, s. 5.

No stay

- (6) Unless otherwise ordered by the Tribunal or the Divisional Court, an application by the Commission under subsection (1) or the stating of a case to the Divisional Court under subsection (2) does not operate as a stay of the final decision or order of the Tribunal. 2006, c. 30, s. 5.

Reconsideration of Tribunal decision

- (7) Within 30 days of receipt of the decision of the Divisional Court, any party to the stated case proceeding may apply to the Tribunal for a reconsideration of its original decision or order in accordance with section 45.7. 2006, c. 30, s. 5.

Reconsideration of Tribunal decision



45.7(1) Any party to a proceeding before the Tribunal may request that the Tribunal reconsider its decision in accordance with the Tribunal rules. 2006, c. 30, s. 5.

Same

- (2) Upon request under subsection (1) or on its own motion, the Tribunal may reconsider its decision in accordance with its rules. 2006, c. 30, s. 5.

Decisions final

45.8 Subject to section 45.6 of this Act, section 21.1 of the *Statutory Powers Procedure Act* and the Tribunal rules, a decision of the Tribunal is final and not subject to appeal and shall not be altered or set aside in an application for judicial review or in any other proceeding unless the decision is patently unreasonable. 2006, c. 30, s. 5.

Settlements

45.9(1) If a settlement of an application made under section 34 or 35 is agreed to in writing and signed by the parties, the settlement is binding on the parties. 2006, c. 30, s. 5.

Consent order

- (2) If a settlement of an application made under section 34 or 35 is agreed to in writing and signed by the parties, the Tribunal may, on the joint motion of the parties, make an order requiring compliance with the settlement or any part of the settlement. 2006, c. 30, s. 5.

Application where contravention

- (3) If a settlement of an application made under section 34 or 35 is agreed to in writing and signed by the parties, a party who believes that another party has contravened the settlement may make an application to the Tribunal for an order under subsection (8),
 - (a) within six months after the contravention to which the application relates; or
 - (b) if there was a series of contraventions, within six months after the last contravention in the series. 2006, c. 30, s. 5.

Late applications

- (4) A person may apply under subsection (3) after the expiry of the time limit under that subsection if the Tribunal is satisfied that the delay was incurred in good faith and no substantial prejudice will result to any person affected by the delay. 2006, c. 30, s. 5.



Form of application

- (5) An application under subsection (3) shall be in a form approved by the Tribunal. 2006, c. 30, s. 5.

Parties

- (6) Subject to the Tribunal rules, the parties to an application under subsection (3) are the following:
 1. The parties to the settlement.
 2. Any other person or the Commission, if they are added as a party by the Tribunal. 2006, c. 30, s. 5.

Intervention by Commission

- (7) Section 37 applies with necessary modifications to an application under subsection (3). 2006, c. 30, s. 5.

Order

- (8) If, on an application under subsection (3), the Tribunal determines that a party has contravened the settlement, the Tribunal may make any order that it considers appropriate to remedy the contravention. 2006, c. 30, s. 5.

Annual report

- 45.10(1) The Tribunal shall make a report to the Minister not later than June 30 in each year upon the affairs of the Tribunal during the year ending on March 31 of that year. 2006, c. 30, s. 5.

Report laid in Assembly

- (2) The Minister shall submit the report to the Lieutenant Governor in Council who shall cause the report to be laid before the Assembly if it is in session or, if not, at the next session. 2006, c. 30, s. 5.

PART IV.1 HUMAN RIGHTS LEGAL SUPPORT CENTRE

Centre established

- 45.11(1) A corporation without share capital is established under the name Human Rights Legal Support Centre in English and Centre d'assistance juridique en matière de droits de la personne in French. 2006, c. 30, s. 6.

Membership

- (2) The members of the Centre shall consist of its board of directors. 2006, c. 30, s. 6.

Not a Crown agency

- (3) The Centre is not an agent of Her Majesty nor a Crown agent



for the purposes of the *Crown Agency Act*, 2006, c. 30, s. 6.

Powers of natural person

- (4) The Centre has the capacity and the rights, powers and privileges of a natural person, subject to the limitations set out in this Act or the regulations. 2006, c. 30, s. 6.

Independent from but accountable to Ontario

- (5) The Centre shall be independent from, but accountable to, the Government of Ontario as set out in this Act. 2006, c. 30, s. 6.

Objects

45.12 The objects of the Centre are,

- (a) to establish and administer a cost-effective and efficient system for providing support services, including legal services, respecting applications to the Tribunal under Part IV;
- (b) to establish policies and priorities for the provision of support services based on its financial resources. 2006, c. 30, s. 6.

Provision of support services

45.13(1) The Centre shall provide the following support services:

1. Advice and assistance, legal and otherwise, respecting the infringement of rights under Part I.
2. Legal services in relation to,
 - i. the making of applications to the Tribunal under Part IV,
 - ii. proceedings before the Tribunal under Part IV,
 - iii. applications for judicial review arising from Tribunal proceedings,
 - iv. stated case proceedings,
 - v. the enforcement of Tribunal orders.
3. Such other services as may be prescribed by regulation. 2006, c. 30, s. 6.

Availability of services

- (2) The Centre shall ensure that the support services are available throughout the Province, using such methods of delivering the services as the Centre believes are appropriate. 2006, c. 30, s. 6.

Board of directors

45.14(1) The affairs of the Centre shall be governed and managed by its board of directors. 2006, c. 30, s. 6.

Composition and appointment



- (2) The board of directors of the Centre shall consist of no fewer than five and no more than nine members appointed by the Lieutenant Governor in Council in accordance with the regulations. 2006, c. 30, s. 6.

Appointment of Chair

- (3) A Chair designated by the Lieutenant Governor in Council will preside at meetings. 2006, c. 30, s. 6.

Remuneration

- (4) The board of directors may be remunerated as determined by the Lieutenant Governor in Council. 2006, c. 30, s. 6.

Duties

- (5) The board of directors of the Centre shall be responsible for furthering the objects of the Centre. 2006, c. 30, s. 6.

Delegation

- (6) The board of directors may delegate any power or duty to any committee, to any member of a committee or to any officer or employee of the Centre. 2006, c. 30, s. 6.

Same

- (7) A delegation shall be in writing and shall be on the terms and subject to the limitations, conditions or requirements specified in it. 2006, c. 30, s. 6.

Board to act responsibly

- (8) The board of directors shall act in a financially responsible and accountable manner in exercising its powers and performing its duties. 2006, c. 30, s. 6.

Standard of care

- (9) Members of the board of directors shall act in good faith with a view to the objects of the Centre and shall exercise the care, diligence and skill of a reasonably prudent person. 2006, c. 30, s. 6.

Government funding

45.15(1) The Centre shall submit its annual budget to the Minister for approval every year in a manner and form, and at a time, specified in the regulations. 2006, c. 30, s. 6.

Approved budget included in estimates

- (2) If approved by the Minister, the annual budget shall be submitted to Cabinet to be reviewed for inclusion in the estimates of the Ministry. 2006, c. 30, s. 6.

Appropriation by Legislature

- (3) The money required for the purposes of this Act shall be paid



out of such money as is appropriated therefor by the Legislature. 2006, c. 30, s. 6.

Centre's money not part of Consolidated Revenue Fund

45.16 The Centre's money and investments do not form part of the Consolidated Revenue Fund and shall be used by the Centre in carrying out its objects. 2006, c. 30, s. 6.

Annual report

45.17(1) The Centre shall submit an annual report to the Minister within four months after the end of its fiscal year. 2006, c. 30, s. 6.

Fiscal year

(2) The fiscal year of the Centre shall be from April 1 to March 31 of the following year. 2006, c. 30, s. 6.

Audit

45.18(1) The Centre must ensure that its books of financial account are audited annually in accordance with generally accepted accounting principles and a copy of the audit is given to the Minister. 2006, c. 30, s. 6.

Audit by Minister

(2) The Minister has the right to audit the Centre at any time that the Minister chooses. 2006, c. 30, s. 6.

PART V GENERAL

Definitions, general

46. In this Act,

“Commission” means the Ontario Human Rights Commission; (“Commission”)

“Minister” means the member of the Executive Council to whom the powers and duties of the Minister under this Act are assigned by the Lieutenant Governor in Council; (“ministre”)

“person” in addition to the extended meaning given it by Part VI (Interpretation) of the *Legislation Act, 2006*, includes an employment agency, an employers' organization, an unincorporated association, a trade or occupational association, a trade union, a partnership, a municipality, a board of police commissioners established under the *Police Act*, being chapter 381 of the Revised Statutes of Ontario, 1980, and a police services board established under the *Police Services Act*; (“personne”)

“regulations” means the regulations made under this Act; (“règlements”)



“Tribunal” means the Human Rights Tribunal of Ontario continued under section 32; (“Tribunal”)

“Tribunal rules” means the rules governing practice and procedure that are made by the Tribunal under section 43. (“règles du Tribunal”) R.S.O. 1990, c. H.19, s. 46; 1994, c. 27, s. 65 (24); 2002, c. 18, Sched. C, s. 7; 2006, c. 21, Sched. F, s. 136 (2); 2006, c. 30, s. 7.

Civil remedy

- 46.1(1) If, in a civil proceeding in a court, the court finds that a party to the proceeding has infringed a right under Part I of another party to the proceeding, the court may make either of the following orders, or both:
1. An order directing the party who infringed the right to pay monetary compensation to the party whose right was infringed for loss arising out of the infringement, including compensation for injury to dignity, feelings and self-respect.
 2. An order directing the party who infringed the right to make restitution to the party whose right was infringed, other than through monetary compensation, for loss arising out of the infringement, including restitution for injury to dignity, feelings and self-respect. 2006, c. 30, s. 8.

Same

- (2) Subsection (1) does not permit a person to commence an action based solely on an infringement of a right under Part I. 2006, c. 30, s. 8.

Penalty

- 46.2(1) Every person who contravenes section 9 or subsection 31(14), 31.1(8) or 44(13) or an order of the Tribunal is guilty of an offence and on conviction is liable to a fine of not more than \$25,000. 2006, c. 30, s. 8.

Consent to prosecution

- (2) No prosecution for an offence under this Act shall be instituted except with the consent in writing of the Attorney General. 2006, c. 30, s. 8.

Acts of officers, etc.

- 46.3(1) For the purposes of this Act, except subsection 2(2), subsection 5(2), section 7 and subsection 46.2(1), any act or thing done or omitted to be done in the course of his or her employment by an officer, official, employee or agent of a corporation, trade union, trade or occupational association, unincorporated association or employers' organization shall be deemed to be an act or thing done or omitted to be done by the corporation, trade



union, trade or occupational association, unincorporated association or employers' organization. 2006, c. 30, s. 8.

Opinion re authority or acquiescence

- (2) At the request of a corporation, trade union, trade or occupational association, unincorporated association or employers' organization, the Tribunal in its decision shall make known whether or not, in its opinion, an act or thing done or omitted to be done by an officer, official, employee or agent was done or omitted to be done with or without the authority or acquiescence of the corporation, trade union, trade or occupational association, unincorporated association or employers' organization, and the opinion does not affect the application of subsection (1). 2006, c. 30, s. 8.

Act binds Crown

- 47.(1) This Act binds the Crown and every agency of the Crown. R.S.O. 1990, c. H.19, s. 47(1).

Act has primacy over other Acts

- (2) Where a provision in an Act or regulation purports to require or authorize conduct that is a contravention of Part I, this Act applies and prevails unless the Act or regulation specifically provides that it is to apply despite this Act. R.S.O. 1990, c. H.19, s. 47(2).

Regulations

- 48.(1) The Lieutenant Governor in Council may make regulations,
 - (a) prescribing standards for assessing what is undue hardship for the purposes of section 11, 17 or 24;
 - (a.1) prescribing the manner in which income information, credit checks, credit references, rental history, guarantees or other similar business practices may be used by a landlord in selecting prospective tenants without infringing section 2, and prescribing other similar business practices and the manner of their use, for the purposes of subsection 21(3);
 - (b) prescribing matters for the purposes of clause 43(3)(g);
 - (c) respecting the Human Rights Legal Support Centre;
 - (d) governing any matter that is necessary or advisable for the effective enforcement and administration of this Act.
 - (e) REPEALED: 2006, c. 30, s. 9(1).
R.S.O. 1990, c. H.19, s. 48; 1994, c. 27, s. 65(25); 1997, c. 24, s. 212(2); 2006, c. 30, s. 9(1).

Human Rights Legal Support Centre



- (2) A regulation made under clause (1)(c) may,
 - (a) further define the Centre's constitution, management and structure as set out in Part IV.1;
 - (b) prescribe powers and duties of the Centre and its members;
 - (c) provide for limitations on the Centre's powers under subsection 45.11(4);
 - (d) prescribe services for the purposes of paragraph 3 of subsection 45.13(1);
 - (e) further define the nature and scope of support services referred to in subsection 45.13(1);
 - (f) provide for factors to be considered in appointing members and specify the circumstances and manner in which they are to be considered;
 - (g) provide for the term of appointment and reappointment of the Centre's members;
 - (h) provide for the nature and scope of the annual report required under section 45.17;
 - (i) provide for reporting requirements in addition to the annual report;
 - (j) provide for personal information to be collected by or on behalf of the Centre other than directly from the individual to whom the information relates, and for the manner in which the information is collected;
 - (k) provide for the transfer from specified persons or entities of information, including personal information, that is relevant to carrying out the functions of the Centre;
 - (l) provide for rules governing the confidentiality and security of information, including personal information, the collection, use and disclosure of such information, the retention and disposal of such information, and access to and correction of such information, including restrictions on any of these things, for the purposes of the carrying out of the functions of the Centre;
 - (m) specify requirements and conditions for the funding of the Centre and for the Centre's budget;
 - (n) provide for audits of the statements and records of the Centre;
 - (o) determine whether or not the *Business Corporations Act*, the *Corporations Information Act* or the *Corporations Act* or any provisions of those Acts apply to the Centre;
 - (p) provide for anything necessary or advisable for the purposes of Part IV.1. 2006, c. 30, s. 9(2).



PART VI TRANSITIONAL PROVISIONS

Definitions

49. In this Part,
- “effective date” means the day sections 4 and 5 of the *Human Rights Code Amendment Act, 2006* come into force; (“date d’effet”)
- “new Part IV” means Part IV as it reads on and after the effective date; (“nouvelle partie IV”)
- “old Part IV” means Part IV as it reads before the effective date. (“ancienne partie IV”) 2006, c. 30, s. 10.

Orders respecting special programs

50. On the fifth anniversary of the effective date, all orders that were made by the Commission under subsection 14(2) before the effective date shall be null and void. 2006, c. 30, s. 10.

Application of s. 32(3)

51. Subsection 32(3) applies to the selection and appointment of persons to the Tribunal on or after the day section 10 of the *Human Rights Code Amendment Act, 2006* comes into force. 2006, c. 30, s. 10.

Tribunal powers before effective date

- 52.(1) Despite anything to the contrary in the old Part IV, the Tribunal may, before the effective date,
- (a) make rules in accordance with the new Part IV, including rules with respect to the reconsideration of Tribunal decisions; and
 - (b) when dealing with complaints that are referred to it under section 36 of the old Part IV,
 - (i) deal with the complaint in accordance with the practices and procedures set out in the rules made under clause (a),
 - (ii) exercise the powers described in section 39 of the new Part IV, and
 - (iii) dispose of the complaint in accordance with section 40 of the new Part IV. 2006, c. 30, s. 10.

Application

- (2) Sections 41 and 42 of the new Part IV apply to rules made under clause (1)(a). 2006, c. 30, s. 10.

Tribunal decisions made before effective date



- (3) Despite anything in the old Part IV, the following applies before the effective date with respect to a complaint that is referred to the Tribunal by the Commission under section 36 of the old Part IV on or after the day section 10 of the *Human Rights Code Amendment Act, 2006* comes into force:
 1. Section 42 of the old Part IV does not apply to a decision of the Tribunal made with respect to the complaint.
 2. Sections 45.7 and 45.8 of the new Part IV apply to a decision of the Tribunal made with respect to the complaint. 2006, c. 30, s. 10.

Complaints before Commission on effective date

- 53.(1) This section applies to a complaint filed with the Commission under subsection 32(1) of the old Part IV or initiated by the Commission under subsection 32(2) of the old Part IV before the effective date. 2006, c. 30, s. 10.

Commission powers continued for six months

- (2) Subject to subsection (3) and despite the repeal of the old Part IV, during the six-month period that begins on the effective date, the Commission shall continue to deal with complaints referred to in subsection (1) in accordance with subsection 32(3) and sections 33, 34, 36, 37 and 43 of the old Part IV and, for that purpose,
 - (a) the Commission has all the powers described in subsection 32(3) and sections 33, 34, 36, 37 and 43 of the old Part IV; and
 - (b) the provisions referred to in clause (a) continue to apply with respect to the complaints, with necessary modifications. 2006, c. 30, s. 10.

Applications to Tribunal during six-month period

- (3) Subject to subsection (4), at any time during the six-month period referred to in subsection (2), the person who made a complaint that is continued under that subsection may, in accordance with the Tribunal rules, elect to abandon the complaint and make an application to the Tribunal with respect to the subject-matter of the complaint. 2006, c. 30, s. 10.

Expedited process

- (4) The Tribunal shall make rules with respect to the practices and procedures that apply to an application under subsection (3) in order to ensure that the applications are dealt with in an expeditious manner. 2006, c. 30, s. 10.

Applications to Tribunal after six-month period

- (5) If, after the end of the six-month period referred to in subsec-



tion (2), the Commission has failed to deal with the merits of a complaint continued under that subsection and the complaint has not been withdrawn or settled, the complainant may make an application to the Tribunal with respect to the subject-matter of the complaint within a further six-month period after the end of the earlier six-month period. 2006, c. 30, s. 10.

New Part IV applies

- (6) The new Part IV applies to an application made under subsections (3) and (5). 2006, c. 30, s. 10.

Disclosure of information

- (7) Despite anything in the *Freedom of Information and Protection of Privacy Act*, at the request of a party to an application under subsection (3) or (5), the Commission may disclose to the party any information obtained by the Commission in the course of an investigation. 2006, c. 30, s. 10.

Application barred

- (8) No application, other than an application under subsection (3) or (5), may be made to the Tribunal if the subject-matter of the application is the same or substantially the same as the subject-matter of a complaint that was filed with the Commission under the old Part IV. 2006, c. 30, s. 10.

Settlements effected by Commission

54. Section 45.9 of the new Part IV applies to the enforcement of a settlement that,
 - (a) was effected by the Commission under the old Part IV before the effective date or during the six-month period referred to in subsection 53(2); and
 - (b) was agreed to in writing, signed by the parties and approved by the Commission. 2006, c. 30, s. 10.

Where complaints referred to Tribunal

- 55.(1) This section applies to complaints that are referred to the Tribunal by the Commission under section 36 of the old Part IV before the effective date or during the six-month period referred to in subsection 53(2). 2006, c. 30, s. 10.

New Part IV applies

- (2) On and after the effective date, the new Part IV applies to a complaint described in subsection (1) as though it were an application made to the Tribunal under that Part and the Tribunal shall deal with the complaint in accordance with the new Part IV. 2006, c. 30, s. 10.

Parties



- (3) The Commission,
 - (a) shall continue to be a party to a complaint that was referred to the Tribunal before the effective date; and
 - (b) subject to subsection (4), shall not be a party to a complaint referred to the Tribunal during the six-month period referred to in subsection 53(2). 2006, c. 30, s. 10.

Same, exceptions

- (4) The Commission shall continue as a party to a complaint that was referred to the Tribunal during the six-month period referred to in subsection 53(2) if,
 - (a) the complaint was initiated by the Commission under subsection 32(2) of the old Part IV; or
 - (b) the Tribunal sets a date for the parties to appear before the Tribunal before the end of the six-month period. 2006, c. 30, s. 10.

Same

- (5) Nothing in subsection (3) shall prevent,
 - (a) the Tribunal from adding the Commission as a party to a proceeding under section 36 of the new Part IV; or
 - (b) the Commission from intervening in a proceeding with respect to a complaint described in subsection (1). 2006, c. 30, s. 10.

Regulations, transitional matters

- 56.(1) The Lieutenant Governor in Council may make regulations providing for transitional matters which, in the opinion of the Lieutenant Governor in Council, are necessary or desirable to facilitate the implementation of the *Human Rights Code Amendment Act, 2006*. 2006, c. 30, s. 10.

Same

- (2) Without limiting the generality of subsection (1), the Lieutenant Governor in Council may make regulations,
 - (a) providing for transitional matters relating to the changes to the administration and functions of the Commission;
 - (b) dealing with any problems or issues arising as a result of the repeal or enactment of a provision of this Act by the *Human Rights Code Amendment Act, 2006*. 2006, c. 30, s. 10.

Same

- (3) A regulation under this section may be general or specific in its application. 2006, c. 30, s. 10.

Conflicts



- (4) If there is a conflict between a provision in a regulation under this section and any provision of this Act or of any other regulation made under this Act, the regulation under this section prevails. 2006, c. 30, s. 10.

Review

- 57.(1) Three years after the effective date, the Minister shall appoint a person who shall undertake a review of the implementation and effectiveness of the changes resulting from the enactment of that Act. 2006, c. 30, s. 10.

Public consultations

- (2) In conducting a review under this section, the person appointed under subsection (1) shall hold public consultations. 2006, c. 30, s. 10.

Report to Minister

- (3) The person appointed under subsection (1) shall prepare a report on his or her findings and submit the report to the Minister within one year of his or her appointment. 2006, c.



APPENDIX B. SAMPLE POLICY FOR WORKPLACES EMPLOYING PROFESSIONAL ENGINEERS

The Ontario Human Rights Code provides that every employee has the right to work in an atmosphere that promotes equal opportunity and that is free from prohibited forms of harassment and discrimination because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex (including pregnancy), sexual orientation, age, record of offenses, marital status, family status or handicap. (INSERT YOUR ORGANIZATION'S NAME) is committed to providing a work environment that is free from prohibited harassment or discrimination and in which every employee is treated with dignity and respect and afforded equitable treatment.

(YOUR ORGANIZATION'S NAME) will not tolerate, ignore or condone harassment or discrimination by any principal, employee (full-time, part-time, probationary, student, contract), supervisor, or subordinate. Every reported incident of discrimination or harassment will be thoroughly and properly investigated. Employees are encouraged to report any incident of harassment or discrimination.

(YOUR ORGANIZATION'S NAME) will take steps to ensure that all individuals directly or peripherally involved in a complaint of harassment and discrimination will be treated with objectivity and fairness. Complaints will be responded to promptly and handled confidentially, to the extent necessary to investigate the complaint and take remedial action. If allegations of prohibited discrimination or harassment are substantiated (YOUR ORGANIZATION'S NAME) will take appropriate remedial action, which may include disciplinary action up to and including termination for cause.

(YOUR ORGANIZATION'S NAME) also recognizes that its principals and employees may be subjected to harassment or discrimination by clients, suppliers, contractors, subconsultants, volunteers, or others who conduct business with (YOUR ORGANIZATION'S NAME). While (YOUR ORGANIZATION'S NAME) has no direct control over the conduct of third parties, the firm will take reasonable steps to ensure that harassment and discrimination are brought to an end. All employees should therefore feel free to bring any concerns to the attention of (YOUR ORGANIZATION'S NAME).

Notwithstanding this policy, every person continues to have the right to seek assistance from the Ontario Human Rights Commission or, where appropriate, from Professional Engineers Ontario, even when steps are being taken under this policy.

If you have any questions concerning this policy, please contact (INSERT NAME OF DESIGNATED EMPLOYEES).

Note: Employers should outline a procedure by which complaints can be made and investigated. The procedure may be an attachment to the policy statement or circulated separately.



APPENDIX C. DEFINITION OF TRIVIAL OR VEXATIOUS COMPLAINTS

Trivial or frivolous complaints are those which may be described as trifling, inconsequential, of small worth or importance even when there appears to be a technical violation of the Code. A trivial or frivolous complaint should be distinguished from a complaint in which the subject matter is **not** trifling but where the possible remedy may be a limited one.

Complaints that are vexatious or made in bad faith are complaints “instituted without sufficient grounds, for the purpose of causing trouble or annoyance ...”. A vexatious complaint is a groundless complaint which may be motivated by malice or vindictiveness. Examples include (but are not limited to the following):

- (a) Complaints that are motivated solely by malice or vindictiveness;
- (b) Those in which the complainant files a complaint knowing that there are not reasonable grounds to believe that discrimination has occurred;
- (c) Those that are filed solely with the specific intent to embarrass or harass another person;
- (d) [not applicable]
- (e) Those in which a reasonable person would conclude that the complaint is based on an apparent absurdity or manifests they have no basis, in fact.

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APPENDIX D. BIBLIOGRAPHY

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Further Reading

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