

## **Understanding the Canadian Human Rights Act**

### **Discrimination: what can you do about it?**

The following bulletin is adapted from the Canadian Human Rights Commission's publication *Your Guide to Understanding the Canadian Human Rights Act*.

As federally regulated employees, the Canadian Human Rights Act is the jurisdiction that protects our Human Rights.

#### **What is discrimination?**

Discrimination is an action or a decision that results in the unfair or negative treatment of person or group because of their race, age, religion, sex, etc.

#### **What does the Act say about discrimination?**

##### **Grounds of discrimination**

It is illegal for *federally regulated employers* to discriminate against people, or treat them unfairly, based on the following grounds:

- race
- national or ethnic origin
- colour
- religion
- age
- sex
- sexual orientation
- marital status
- family status
- disability
- a conviction for which you have been granted a pardon

##### **Discriminatory practices**

The Act forbids the following discriminatory practices if they are based on one of the grounds of discrimination:

- Refusing to employ or continue to employ someone or treating them unfairly in the workplace.
- Following policies or practices that deprive people of employment opportunities.
- Paying men and women differently when they are doing work of the same value.
- Harassing someone.
- Retaliating against a person who has filed a complaint with the Commission.

### **Harassment: a common discriminatory practice**

#### **Harassment occurs when someone:**

- offends or humiliates you physically or verbally.
- threatens or intimidates you.
- makes unwelcome remarks or jokes about your race, religion, sex, age, disability, etc.
- makes unnecessary physical contact with you, such as touching, patting, pinching or punching (this can also be assault).

### **Duty to accommodate**

Sometimes, employers must take necessary steps to make it possible for people to work. Employers have a duty to accommodate only when an employee needs a change or modification, based on one of the grounds of discrimination.

If you have special circumstances that may require an accommodation you should:

- Contact the Local: [officers@local4094.ca](mailto:officers@local4094.ca) or [604-295-4259](tel:604-295-4259)

After consulting with the Union, and with Union representation:

- Tell the employer how your special circumstances may affect your work.
- Give enough information about your special circumstances to your employer to justify the change.
- Discuss with your employer ways to make it easier for you to do your job.

The employer does not have to accommodate your special circumstances if it would create undue hardship for the employer. For example, a person who cannot get a driver's license because their vision is impaired cannot be a bus driver.

### **What is undue hardship?**

An employer can claim undue hardship when the duty to accommodate would cost too much or create risks to health or safety. However, the burden of proof rests with the Employer.

### **When does the Act allow special treatment?**

Sometimes, treating everyone the same does not automatically result in equality. When this happens, the Act allows special treatment to ensure that people are treated fairly. In such cases, the duty to accommodate may require that adjustments be made to ensure full participation of the person. In other words, it may be necessary to treat someone differently in order to be fair.

### **Where can you get help?**

- As a unionized worker you can request that a grievance be filed on your behalf.

- If you file a complaint with the Commission, it will look first to see how you have tried to solve the problem within your organization (Union). If it is possible to deal with a complaint via the grievance procedure, the Commission will, in most cases, tell you to do that before it will proceed with your complaint. However, it would be prudent to file your complaint in order to protect time lines – you have only 12 months from when the discrimination happened to file a complaint with the Commission.

## **Making a complaint to the Commission**

If you believe you have been a victim of discrimination, you can contact the Commission in writing or by telephone. Staff will give you basic information about the Commission's services and tell you if it can deal with your complaint.

You must file a complaint within 12 months of the event or situation that you are complaining about. Your complaint must describe the action or decision that you think is a discriminatory practice, the grounds of discrimination, and how the discriminatory practice affected you.

Not all unfair situations are valid human rights complaints. A complaint requires grounds of discrimination, a discriminatory practice, and a negative effect on you

## **Filing a complaint**

A human rights officer will send you a kit with instructions on how to prepare the complaint form. You don't need a lawyer to file a complaint. If there is anything you do not understand, you can ask the human rights officer for help.

If the Commission accepts your complaint, the person or organization that you are complaining about (respondent) will receive a copy, so they will know about it. The Commission is impartial it doesn't take your side or the respondent's.

In some cases, there may be a reason why the Commission cannot proceed further with your complaint. The human rights officer may write an initial report asking the Commission to make a decision to deal or not to deal with your complaint. The Commission will need to make this decision where:

- there are other grievance or review procedures reasonably available.
- there are other more suitable procedures.
- the complaint is not based on a ground, or is not federally regulated.
- the 12-month period has expired.

You can send in your comments before the Commission makes this decision, and Commission members will read them along with the report, and any comments sent in by the respondent.

## **Retaliation**

When you file a complaint, the Act says that no one can retaliate or take action against you because of the complaint. If someone does that, you can file a new complaint.

## **How does the Commission deal with complaints?**

The Commission tries to resolve complaints at the earliest stage possible, as that is a good outcome for you, the respondent, and the Commission. If a complaint cannot be resolved, then it is usually assigned to a human rights officer to do an investigation. However, a complaint can be settled at any stage in the process.

## **Sending the complaint to the Tribunal**

The Commission no longer controls the complaint. The Tribunal will hold a hearing. It will ask you and the

respondent to hand in documents and call witnesses to support your arguments.

After the hearing, the Tribunal will decide whether there has been discrimination. The Tribunal can:

- dismiss the complaint, or
- find that there has been discrimination and order payment or other action (called corrective measures) to resolve the discrimination.

Corrective measures can include making the respondent:

- change its rules and policies or create an anti-harassment policy.
- pay you lost wages or give you your job back.
- learn more about human rights.
- pay you for pain and suffering and any losses caused by the discriminatory practice.

If the Commission feels that the complaint deals with a matter of public interest, it can also appear before the Tribunal to represent the public interest.

The complaints process is not public. All written information is kept on file for the human rights officer to prepare a report for the Commission. But if the complaint goes to the Tribunal or Federal Court, the documents become public.

### **What if you disagree with the Commission or the Tribunal?**

You can ask the Federal Court to review the decision. If the Federal Court agrees with you, it will send the case back to the Commission or the Tribunal to look at it again. The Federal Court cannot change the decision.

### **Where can you get more information?**

For more information about the Commission and its services, visit the [website](#) at or call toll free [1-888-214-1090](tel:1-888-214-1090).

Access the complete Guide here:

[Click Here](#)

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## **Local 4094 CONTACT INFO**

Email [officers@local4094.ca](mailto:officers@local4094.ca)

(or simply reply to this email bulletin)

Phone 604-295-4259