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Human Rights in Ontario

What you need to know

RAVEN, ALLEN, CAMERON, BALLANTYNE & YAZBECK LLP/s.r.l.

Barristers & Solicitors • Avocats et notaires

Working for Working People • Le droit au service des travailleurs

Our Basic Rights as Canadians

The Canadian Charter of Rights and Freedoms guarantees everyone certain fundamental freedoms, as outlined in Section 1 of the Charter:

- a) freedom of conscience and religion;
- b) freedom of thought, belief, opinion and expression, including freedom of the press and other media and communication;
- c) freedom of peaceful assembly; and
- d) freedom of association.

Under the Charter, we are also guaranteed personal freedoms: Section 15 (1) states:

Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular without discrimination based on race, national or ethnic origin, colour, religion, sex, age, or mental or physical disability.

The Ontario Human Rights Code

In Ontario, our rights are protected under the *Human Rights Code*. The *Code* is aimed at creating 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 feels able to contribute to the community.

The Ontario Human Rights Commission

The Commission is the government agency that is responsible for administering and enforcing the *Code*. It operates at arm's length from the government, which means that it is completely independent from political interference in the handling of complaints. The Commission fulfils its role by providing mediation, investigation and conciliation services. It also consults with employers, unions and other organizations and agencies, and carries out public education and training about human rights and the *Code*.

What is Discrimination under the Code?

Under the *Code*, discrimination means unfair treatment based on grounds of:

- race
- sex
- colour
- handicap or perceived handicap
- ancestry
- sexual orientation
- place of origin (where one was born)
- age
- ethnic origin
- marital status
- citizenship
- family status
- creed (religion)
- record of offence (in employment only)
- receipt of public assistance (in housing/accommodation only)

Sexual advances in return for academic rewards (such as a higher grade in school) or professional advancement (such as a promotion) are also prohibited under the *Code*. In addition, the *Code* prohibits retaliation because someone resisted or refused an advance.

Reprisals against anyone who has exercised their rights under the *Code*, filed a Human Rights complaint, or participated in a Commission investigation are against the law.

It's important to note that The Commission only represents the public interest. It does not represent the person filing the complaint (the "complainant") or the person against whom the complaint is made (the "respondent").

What is the Process?

If someone feels that his or her rights have been violated, they can file a complaint with the office of The Ontario Human Rights Commission. The person filing the complaint (the "complainant") contacts the Commission Office via a toll-free number. All of the details of the complaint are gathered over the telephone. If the Commission believes that there are unresolved human rights issues, a formal complaint is initiated. The complainant is mailed a questionnaire to complete. Each questionnaire is specific to the type of discrimination being reported. The complainant has 21 days to complete and return the questionnaire.

Upon receipt of the completed questionnaire, a file is opened with all of the details of the complaint, including any supporting documents. The file is then assigned to an Intake Officer, a formal complaint is drafted, and signed by the parent and/or child.

What happens if someone files a complaint against me?

You will only be notified once a formal complaint has been filed against you. As the respondent, you will receive a copy of the signed complaint, via courier, along with a respondent's data form to complete and the name and contact information of the Intake Officer assigned to your file. Your response should reply to the allegations set out in the complaint, and may include documents that are relevant to the complaint and whether you are prepared to participate in the Commission's mediation services. The respondent's position on settlement may also be included. You have 21 days to complete and sign the questionnaire.

Your response will be shared with the complainant, with the exception of information about third parties such as witnesses, and he or she will be given a chance make a rebuttal.

When do I call a lawyer?

As soon as possible.

When a Human Rights complaint is brought against you, it can be a very unsettling experience. Although the Human Rights Commission doesn't require you to have a lawyer, it is always in your best interest to have a neutral perspective on any complaint. We strongly advise that you have legal counsel assist you formulating your response.

Mediation

Once all of the proper documentation is in place, both parties will be asked if they are willing to settle the case through mediation. Mediation is a practical way to help both sides to a complaint to check their facts and assumptions, exchange perceptions and ideas, and work towards mutually agreeable settlements. It allows both sides to understand the other persons' position and it allows each person to be involved directly in the process. It is important to understand that mediation is not a fact-finding process. Nor is the mediator going to make any decision regarding the complaint. What mediation does do is to offer a structured and controlled environment that is likely to lead to the fair settlement of the complaint.

Mediation is the quickest way to resolve a disputes without costly courtroom battles or delays. The benefits of agreeing to a mediated settlement are control over the process, speed and confidentiality. Both parties must agree and sign any settlement that is reached.

Moving to Investigation

A complaint can move to investigation only under certain circumstances. If mediation has failed, the case can be referred for assessment, which may or may not involve an investigation.

Tribunal

If both parties do not agree on mediation, or it isn't appropriate to address the complaint through the mediation process, it will be referred directly for investigation. This is a much more lengthy process than mediation, and can take anywhere from six months to a year to complete. Once an investigation is finalized, it may be recommended that both parties return to mediation, or the case may be forwarded to the Tribunal Office.

Mediation is almost always an option

At this point there is still the opportunity to resolve the complaint through mediation. Failing that, the case will proceed to a formal hearing. Even once this process has begun, the parties still have the option of returning to mediation.

How public is the process?

Complaints filed to the Human Rights Commission remain private throughout the process, until they are forwarded to the Tribunal Office. Complaints can still remain private, even at this stage, at the discretion of the Tribunal Chair.

Innocent until proven otherwise

Under the *Code*, the responsibility for proving an allegation of discrimination rests with the complainant. After a complaint is referred to the Board of Inquiry, the Commission has to show the Board that, on a "balance of probabilities," the *Code* was violated. "Balance of probabilities" means that there is sufficient evidence to support the allegations that the discriminatory behaviour took place. The decision-maker must find that it was more likely than not that the allegations are true in order for the complaint to succeed.

In many cases, the credibility of the parties becomes an issue and the Board must assess the credibility of each party. "Similar fact evidence," which could include testimony from others, who may have been treated similarly to the complainant, may be introduced to show that a pattern of behaviour might have occurred.

What are the possible results of a Human Rights Tribunal?

The first significant result could be a finding of a Human Rights violation against you and the maximum penalties could result in significant monetary damages and specific orders in terms of remedies regarding employment or accommodation. The findings could involve personal or joint liability. If you are found guilty of an outrageous form of discrimination, that hasn't been sanctioned by your employer, you could face disciplinary action or even dismissal.

Telephone Legal Advice

Information on Human Rights is available to policyholders from our Telephone Legal Advisory service, which is a feature of all **STERLON** policies. It provides toll-free telephone access to a lawyer, Monday to Friday, 9:00 am to 5:00 pm, EST. The service also provides free advice to policyholders on professional and personal matters.

For more information

For more information about Legal Expense Insurance contact **STERLON** at 905-436-3291 or visit our website www.sterlon.com

For more information about the Ontario Human Rights Commission, call toll-free 1-800-387-9080 or visit the Ontario Human Rights Commission website at www.ohrc.on.ca

To find out more about the Canadian Charter of Rights and Freedoms, visit <http://laws.justice.gc.ca/en/charter/>

Disclaimer: The information provided in this brochure is a guideline only and does not constitute legal advice. If you have any questions or concerns, or if someone has filed a Human Rights complaint against you, you should consider contacting your lawyer.

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STERLON Underwriting Managers Ltd. is dedicated to creating Legal Expense Insurance programs designed to meet the needs of Canadian companies, associations and individuals. These Legal Expense Insurance programs also include the provision of telephone Legal Advisory Services through established and accredited service providers.

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RAVEN, ALLEN, CAMERON, BALLANTYNE & YAZBECK LLP/s.r.l. is a bilingual law firm practicing primarily in the areas of union-side labour, employment and human rights. With over 75 years combined practice in these areas, we have developed extensive experience providing representation and policy advice to a wide variety of unions and individuals in the public and private sectors.

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