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# **Human Rights in Canada**

## **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.

## Provincial Human Rights Codes

Each province and territory in Canada has its own *Human Rights Code*, designed to protect individual rights and freedoms. These codes are 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.

## Provincial and Territorial Human Rights Commissions

Every province and territory in Canada has a Human Rights Commission, (with the exception of British Columbia) a government agency that is responsible for administering and enforcing the *Code*. In BC, this function is performed by BC Human Rights Tribunal.

These agencies operate at arm's length from the government, which means that they are completely independent from political interference in the handling of complaints. The Commissions/Tribunal fulfill their role by providing mediation, investigation and conciliation services. They also consult 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 Commissions only represent the public interest. They do 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 their provincial Human Rights Commission. The person filing the complaint (the "complainant") contacts the Commission Office by phone. 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.

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 a set period of time 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 Human Rights Commissions don'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 dispute 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.

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 or even longer, to complete.

## **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.

## **Tribunal**

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 for trial. Before the Tribunal, the parties are essentially dealing with an adversarial process, which is similar to a courtroom trial, and like a courtroom trial you would definitely need an experienced human rights lawyer to represent you.

### **How public is the process?**

Complaints filed to a 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.

## **Human Rights Commissions in Canada**

### **Alberta**

Alberta Human Rights and Citizenship Commission  
800 Standard Life Centre  
10405 Jasper Ave  
Edmonton, AB T5J 4R7  
Tel: (780) 427-7661  
E-mail: [humanrights@gov.ab.ca](mailto:humanrights@gov.ab.ca)  
Website: [www.albertahumanrights.ab.ca](http://www.albertahumanrights.ab.ca)

### **British Columbia**

BC Human Rights Tribunal  
1170 - 605 Robson Street  
Vancouver, BC V6B 5J3  
Tel. (604) 775-2000  
Toll-Free: 1-888-440-8844 (in BC. only)  
E-mail: [BCHumanRightsTribunal@gems9.gov.bc.ca](mailto:BCHumanRightsTribunal@gems9.gov.bc.ca)  
Website: [www.bchrt.bc.ca](http://www.bchrt.bc.ca)

### **Manitoba**

Manitoba Human Rights Commission  
7th Floor - 175 Hargrave Street  
Winnipeg, MB R3C 3R8  
Tel: (204) 945-3007  
Toll Free: 1-888-884-8681  
E-mail: [hrc@gov.mb.ca](mailto:hrc@gov.mb.ca)  
Website: [www.gov.mb.ca/hrc](http://www.gov.mb.ca/hrc)

### **New Brunswick**

New Brunswick Human Rights Commission  
P.O. Box 6000  
Fredericton, NB E3B 5H1  
Tel: (506) 453-2301  
Toll Free: 1-888-471-2233 (NB only)  
E-mail: [hrc.cdp@gnb.ca](mailto:hrc.cdp@gnb.ca)  
Website: <http://www.gnb.ca/hrc-cdp/e/>

### **Newfoundland and Labrador**

Newfoundland and Labrador Human Rights Commission  
PO Box 8700  
St. John's NF A1B 4J6  
Tel: (709) 729-2709  
E-mail: [humanrights.mail.gov.nf.ca](mailto:humanrights.mail.gov.nf.ca)  
Website: [www.gov.nf.ca/hrc](http://www.gov.nf.ca/hrc)

### **Northwest Territories**

Human Rights Commission  
P.O. BOX 1860  
Yellowknife, NT X1A 2P4  
Phone: (867) 669-5575  
Toll Free: 1-888-669-5575  
Website: <http://www.assembly.gov.nt.ca/HumanRightsAct.html>

### **Nova Scotia**

Nova Scotia Human Rights Commission  
6th Floor, Joseph Howe Building  
1690 Hollis Street  
PO Box 2221  
Halifax, NS B3J 3C4  
Tel: (902) 424-4111  
E-mail: [hrcinquiries@gov.ns.ca](mailto:hrcinquiries@gov.ns.ca)  
Website: [www.gov.ns.ca/humanrights](http://www.gov.ns.ca/humanrights)

### **Nunavut**

Nunavut Fair Practices Officer  
The Government of Nunavut  
Department of Justice  
PO Box 2528  
Iqaluit, NU X0A 0H0  
Tel: (867) 979-2043  
E-mail: [billr@nunanet.com](mailto:billr@nunanet.com)

## **Ontario**

Ontario Human Rights Commission  
180 Dundas Street West 7th Floor  
Toronto, ON M7A 2R9

Tel: (416) 326-9511

Toll-free 1-800-387-9080

E-mail: [info@ohrc.on.ca](mailto:info@ohrc.on.ca)

Website: [www.ohrc.on.ca](http://www.ohrc.on.ca)

## **Prince Edward Island**

Prince Edward Island Human Rights Commission  
98 Water Street  
P.O. Box 2000  
Charlottetown, PE C1A 7N8

Tel: (902) 368-4180

Toll free: 1-800-237-5031

E-mail: [howard@isn.net](mailto:howard@isn.net)

Website: [www.gov.pe.ca/humanrights](http://www.gov.pe.ca/humanrights)

## **Quebec**

Commission des droits de la personne et des droits de la jeunesse  
360, rue Saint-Jacques, 2nd étage  
Montreal, PQ H2Y 1P5

Tel: (514) 873-5146

Toll Free: 1-800-361-6477

E-mail: [wesmestre@cdpdj.gc.ca](mailto:wesmestre@cdpdj.gc.ca)

Website: <http://www.cdpdj.qc.ca>

## **Saskatchewan**

Saskatchewan Human Rights Commission  
8th Floor, Sturdy Stone Building  
122-3rd Avenue North  
Saskatoon, SK S7K 2H6

Tel: (306) 933-5952

Toll Free: 1-800-667-9249

E-mail: [shrc@justice.gov.sk.ca](mailto:shrc@justice.gov.sk.ca)

## **Yukon**

Yukon Human Rights Commission  
201-211 Hawkins Street  
Whitehorse, YT Y1A 1X3  
Tel: (867) 667-6226  
Toll Free: 1-800-661-0535  
E-mail: [humanrights@yhrc.yk.ca](mailto:humanrights@yhrc.yk.ca)  
Website: [www.yhrc.yk.ca](http://www.yhrc.yk.ca)

## **Canadian Human Rights Commission**

344 Slater Street, 8th Floor  
Ottawa, ON K1A 1E1  
Tel: (613) 995-1151  
Toll Free: 1-888-214-1090  
E-mail: [info.com@chrc-ccdp.ca](mailto:info.com@chrc-ccdp.ca)  
Web: [www.chrc-ccdp.ca](http://www.chrc-ccdp.ca)

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

## **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](http://www.sterlon.com)

**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.

# STERLON

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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 a combined 75 years of 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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