1980

c 340 Ontario Human Rights Code

Ontario

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Bibliographic Citation
Ontario Human Rights Code, RSO 1980, c 340

Repository Citation
Available at: http://digitalcommons.osgoode.yorku.ca/rso/vol1980/iss5/45

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CHAPTER 340

Ontario Human Rights Code

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 that every person is free and equal in dignity and rights without regard to race, creed, colour, sex, marital status, nationality, ancestry or place or origin;

AND WHEREAS these principles have been confirmed in Ontario by a number of enactments of the Legislature;

AND WHEREAS it is desirable to enact a measure to codify and extend such enactments and to simplify their administration; R.S.O. 1970, c. 318, Preamble; 1972, c. 119, s. 1.

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

PART I

1.—(1) No person shall publish or display or cause to be published or displayed or permit to be published or displayed any notice, sign, symbol, emblem or other representation indicating discrimination or an intention to discriminate against any person or any class of persons for any purpose because of the race, creed, colour, sex, marital status, nationality, ancestry or place of origin of such person or class of persons. R.S.O. 1970, c. 318, s. 1 (1); 1972, c. 119, s. 2.

(2) Nothing in this section shall be deemed to interfere with the free expression of opinion upon any subject. R.S.O. 1970, c. 318, s. 1 (2).

2.—(1) No person, directly or indirectly, alone or with another, by himself or by the interposition of another, shall
(a) deny to any person or class of persons the accommodation, services or facilities available in any place to which the public is customarily admitted; or

(b) discriminate against any person or class of persons with respect to the accommodation, services or facilities available in any place to which the public is customarily admitted,

because of the race, creed, colour, sex, marital status, nationality, ancestry or place of origin of such person or class of persons or of any other person or class of persons. R.S.O. 1970, c. 318, s. 2; 1972, c. 119, s. 3 (1).

Exception

(2) Subsection (1) does not apply to prevent the barring of any person because of the sex of such person from any accommodation, services or facilities upon the ground of public decency. 1972, c. 119, s. 3 (2).

3.—(1) No person, directly or indirectly, alone or with another, by himself or by the interposition of another, shall,

(a) deny to any person or class of persons occupancy of any commercial unit or any housing accommodation; or

(b) discriminate against any person or class of persons with respect to any term or condition of occupancy of any commercial unit or any housing accommodation,

because of race, creed, colour, sex, nationality, ancestry or place of origin of such person or class of persons or of any other person or class of persons. 1972, c. 119, s. 4, part.

Exception

(2) The prohibition in subsection (1) in respect of sex does not apply to housing accommodation in a building where the occupancy of all the housing accommodation other than that of the owner or his family is restricted to individuals who are of the same sex. 1974, c. 73, s. 1.

4.—(1) No person shall,

(a) refuse to refer or to recruit any person for employment;

(b) dismiss or refuse to employ or to continue to employ any person;

(c) refuse to train, promote or transfer an employee;
(d) subject an employee to probation or apprenticeship or enlarge a period of probation or apprenticeship;

(e) establish or maintain any employment classification or category that by its description or operation excludes any person from employment or continued employment;

(f) maintain separate lines of progression for advancement in employment or separate seniority lists where the maintenance will adversely affect any employee; or

(g) discriminate against any employee with regard to any term or condition of employment, because of race, creed, colour, age, sex, marital status, nationality, ancestry or place of origin of such person or employee.

(2) No employer shall publish, display, circulate or broadcast or cause or permit to be published, displayed, circulated or broadcast any words, symbol or other representation that indicate directly or indirectly that race, creed, colour, age, sex, marital status, nationality, ancestry or place of origin is or may be a limitation, specification or preference for a position or employment.

(3) No person shall publish, display, circulate or broadcast or cause or permit to be published, displayed, circulated or broadcast any advertisement for a position or employment for or on behalf of an employer,

(a) that contains any words, symbol or other representation; or

(b) that is under a classification or heading,
indicating directly or indirectly that race, creed, colour, age, sex, marital status, nationality, ancestry or place of origin is or may be a limitation, specification or preference for the position or employment.

(4) No person shall use or circulate any form of application for employment or make any written or oral inquiry that expresses either directly or indirectly any limitation, specification or preference as to race, creed, colour, nationality, ancestry or place or origin of any person or that requires an applicant for employment to furnish any information concerning race, creed, colour, nationality, ancestry or place of origin.
(5) No employment agency shall discriminate against any person because of race, creed, colour, age, sex, marital status, nationality, ancestry or place of origin in receiving, classifying, disposing of or otherwise acting upon applications for its service or in referring an applicant or applicants to an employer or anyone acting on his behalf. 1972, c. 119, s. 5, part.

Exception

(6) The provisions of this section relating to any discrimination, limitation, specification or preference for a position or employment based on age, sex or marital status do not apply where age, sex or marital status is a *bona fide* occupational qualification and requirement for the position or employment. 1974, c. 73, s. 2.

Exception

(7) The provisions of this section relating to limitation or preference in employment because of race, creed, colour, age, sex, marital status, nationality, ancestry or place of origin do not apply to an exclusively religious, philanthropic, educational, fraternal or social organization that is not operated for private profit, or to any organization that is operated primarily to foster the welfare of a religious or ethnic group and that is not operated for private profit where in any such case race, creed, colour, age, sex, marital status, nationality, ancestry or place of origin is a *bona fide* occupational qualification and requirement.

Domestic

(8) This section does not apply to a domestic employed or to be employed in a single family residence. 1972, c. 119, s. 5, part.

Exception

(9) Clause (1) (g) does not apply to any *bona fide* superannuation or pension fund or plan or any *bona fide* insurance plan that provides life, income, disability, sickness, medical or hospital payments or benefits of a monetary kind to which an employee, his survivors or dependants are or may be entitled that differentiates or makes a distinction, exclusion or preference between employees or any class or classes of employees because of age, sex or marital status. 1974, c. 73, s. 3.

Membership in trade union

5.—(1) No trade union shall exclude from membership or expel or suspend any person or member or discriminate against any person or member because of race, creed, colour, age, sex, marital status, nationality, ancestry or place of origin.

Membership in self-governing profession

(2) No self-governing profession shall exclude from membership or expel or suspend any person or member or discriminate against any person or member because of race,
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creed, colour, age, sex, marital status, ancestry or place of origin. 1972, c. 119, s. 6.

6. No person shall,

(a) refuse to employ or to continue to employ any person;

(b) threaten to dismiss or threaten to penalize in any other way any person in regard to his employment or any term or condition thereof;

(c) discriminate against any person in regard to his employment or any term or condition thereof; or

(d) intimidate or coerce or impose any pecuniary or other penalty upon any person, on the ground that such person,

(e) has made or may make a complaint under this Act;

(f) has made or may make a disclosure concerning the matter complained of;

(g) has testified or may testify in a proceeding under this Act; or

(h) has participated or may participate in any other way in a proceeding under this Act. R.S.O. 1970, c. 318, s. 5.

7. Subject to section 1 of the Public Officers Act, the prohibitions contained in this Part apply to and bind the Crown in right of Ontario and every agency thereof. R.S.O. 1970, c. 318, s. 6.

8. Notwithstanding the provisions of this Part, the Commission may, upon conditions or limitations and subject to revocation or suspension, approve in writing any special plan or program by the Crown or any agency thereof or any person to increase the employment of members of a group or class of persons because of the race, creed, colour, age, sex, marital status, nationality or place of origin of the members of the group or class of persons. 1972, c. 119, s. 7.

PART II

9.—(1) The Ontario Human Rights Commission is continued.
Composition
(2) The Commission shall be composed of three or more members as may be fixed from time to time by the Lieutenant Governor in Council.

Members
(3) The members of the Commission shall be appointed by the Lieutenant Governor in Council.

Chairman
(4) The Lieutenant Governor in Council may designate one of the members as chairman.

Vacancies
(5) The Lieutenant Governor in Council may fill any vacancy in the membership of the Commission.

Remuneration
(6) The Lieutenant Governor in Council may fix the remuneration of the members of the Commission. R.S.O. 1970, c. 318, s. 7.

Responsibility
10. The Commission is responsible to the Minister for the administration of this Act. R.S.O. 1970, c. 318, s. 8.

Duties of Commission
11. The Commission shall administer this Act and, without limiting the generality of the foregoing, the Commission shall,

(a) forward the principle that every person is free and equal in dignity and rights without regard to race, creed, colour, age, sex, marital status, nationality, ancestry or place of origin;

(b) promote an understanding and acceptance of and compliance with this Act;

(c) develop and conduct research and educational programs designed to eliminate discriminatory practices related to race, creed, colour, age, sex, marital status, nationality, ancestry or place of origin;

(d) investigate complaints in contravention of and enforce this Act. 1972, c. 119, s. 9, part.

Staff
12. A secretary and such other officers, clerks and servants of the Commission as are considered appropriate may be appointed under the Public Service Act. 1972, c. 119, s. 9, part.

Cost
13. The cost of the administration of this Act is payable out of the moneys appropriated therefor by the Legislature. R.S.O. 1970, c. 318, s. 11.
14. The Lieutenant Governor in Council may make regulations adding to or extending the functions of the Commission and respecting any matter necessary or advisable to carry out effectively the intent and purpose of this Act. R.S.O. 1970, c. 318, s. 12.

PART III

15.—(1) Any person who has reasonable grounds for believing that any person has contravened a provision of this Act may file with the Commission a complaint in the form prescribed by the Commission.

(2) Where a complaint is made by a person other than the person whom it is alleged was dealt with contrary to the provisions of this Act, the Commission may refuse to file the complaint unless the person alleged to be offended against consents thereto. 1971, c. 50, s. 63, part.

(3) Where the Commission has reason for believing that any person has contravened a provision of sections 1 to 5 in respect of a person or group of persons, the Commission may initiate a complaint. 1972, c. 119, s. 10.

16.—(1) Where a complaint has been filed with or initiated by the Commission, the Commission or an officer thereof shall inquire into the complaint and endeavour to effect a settlement of the matter complained of.

(2) In carrying out an inquiry under subsection (1), the Commission or an officer of the Commission may,

(a) subject to subsection (3), enter in or upon the lands or premises of a person at any reasonable time without a warrant for the purpose of investigating the complaint;

(b) require the production for inspection and examination of employment applications, payrolls, records, documents, writings and papers that are or may be relevant to the investigation of the complaint;

(c) upon giving a receipt therefor, remove any employment applications, payrolls, records, documents, writings and papers mentioned in clause (b) for the purpose of making copies or extracts of such applications, payrolls, records, documents, writings and papers, but such copying shall be carried on with reasonable dispatch and the applications, payrolls, records, documents, writings and papers shall be
promptly thereafter returned and to the premises from which they were removed;

(d) make any inquiries of any person separate or apart from another person that are or may be relevant to the complaint.

(3) An officer of the Commission shall not enter any room or place actually being used as a dwelling without the consent of the occupier except under the authority of an order issued pursuant to subsection (4).

(4) Where a justice of the peace is satisfied, upon an ex parte application by an officer of the Commission, that there is reasonable ground for believing that it is necessary to enter any premises for purposes relevant to an inquiry under this Act, the justice of the peace may issue an order authorizing an officer of the Commission to enter and view such premises for such purposes, but every such entry and viewing shall be made between sunrise and sunset unless the justice of the peace by the order authorizes the officer to make such entry and viewing at night.

(5) No person shall hinder, obstruct, molest or interfere with the Commission or an officer of the Commission in the exercise of a power or the performance of a duty under this Act or withhold from it or him any employment applications, payrolls, records, documents, writings or papers that are or may be relevant to the investigation of a complaint.

1974, c. 73, s. 5.

17.—(1) Where it appears to the Commission that a complaint will not be settled, the Commission shall make a recommendation to the Minister as to whether or not a board of inquiry should be appointed, and the Minister may, in his discretion, appoint a board of inquiry consisting of one or more persons to hear and decide the complaint.

(2) Forthwith after the appointment of a board of inquiry, the Minister shall communicate the names of the members of the board to,

(a) the Commission; and

(b) the parties referred to in clauses 18 (1) (b), (c) and (d),

and thereupon it shall be presumed conclusively that the board was appointed in accordance with this Act.
(3) The Lieutenant Governor in Council may determine the remuneration of the chairman and the members of a board of inquiry appointed under this section. 1971, c. 50, s. 63, part. 18.

18.—(1) The parties to a proceeding before a board of inquiry with respect to any complaint are,

(a) the Commission, which shall have the carriage of the complaint;

(b) the person named in the complaint as the complainant;

(c) any person named in the complaint and alleged to have been dealt with contrary to the provisions of this Act;

(d) any person named in the complaint as alleged to have contravened this Act; and

(e) any other person specified by the board upon such notice as the board may determine and after such person has been given an opportunity to be heard against his joinder as a party.

(2) A true copy of the complaint shall be annexed to the notice of the hearing that is given to any party except the Commission.

(3) A member of the board hearing a complaint shall not have taken part in any investigation or consideration of the complaint prior to the hearing and shall not communicate directly or indirectly in relation to the complaint with any person or with any party or his representative except upon notice to and opportunity for all parties to participate, but the board may seek legal advice from an adviser independent from the parties and in such case the nature of the advice should be made known to the parties in order that they may make submissions as to the law.

(4) The oral evidence taken before a board at a hearing shall be recorded and, if so required, copies or a transcript thereof shall be furnished upon the same terms as in the Supreme Court.

(5) The findings of fact of the board pursuant to a hearing shall be based exclusively on evidence admissible or matters that may be noticed under sections 15 and 16 of the Statutory Powers Procedure Act.
(6) Subject to appeal under section 20, the board of inquiry has exclusive jurisdiction and authority to determine any question of fact or law or both required to be decided in reaching a decision as to whether or not any person has contravened this Act or for the making of any order pursuant to such decision. 1971, c. 50, s. 63, \textit{part}.

19. The board, after hearing a complaint,

(a) shall decide whether or not any party has contravened this Act; and

(b) may order any party who has contravened this Act to do any act or thing that, in the opinion of the board, constitutes full compliance with such provision and to rectify any injury caused to any person or to make compensation therefor. 1971, c. 50, s. 63, \textit{part}.

20.—(1) Any party to a hearing before a board may appeal from the decision or order of the board to the Divisional Court in accordance with the rules of court.

(2) Where notice of an appeal is served under this section, the board shall forthwith file in the Supreme Court the record of the proceedings before it in which the decision or order appealed from was made which, together with a transcript of the oral evidence taken before the board if it is not part of the record of the board, shall constitute the record in the appeal.

(3) The Minister is entitled to be heard, by counsel or otherwise, upon the argument of an appeal under this section.

(4) An appeal under this section may be made on questions of law or fact or both and the court may affirm or reverse the decision or order of the board or direct the board to make any decision or order that the board is authorized to make under this Act and the court may substitute its opinion for that of the board. 1971, c. 50, s. 63, \textit{part}.

PART IV

21. Every person who contravenes any of the provisions of this Act or any order made under this Act is guilty of an offence and on conviction is liable,
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(a) if an individual, to a fine of not more than $1,000; or

(b) if a corporation, trade union, employers' organization or employment agency, to a fine of not more than $5,000. R.S.O. 1970, c. 318, s. 15; 1972, c. 119, s. 12.

22. No prosecution for an offence under this Act shall be instituted except with the consent in writing of the Minister. R.S.O. 1970, c. 318, s. 16.

23. A prosecution for an offence under this Act may be instituted against a trade union or employers' organization in the name of the union or organization, and any act or thing done or omitted by an officer, official or agent of a trade union or employers' organization within the scope of his authority to act on behalf of the trade union or employers' organization shall be deemed to be an act or thing done or omitted by the trade union or employers' organization. R.S.O. 1970, c. 318, s. 17.

24. Compliance with any provision for the protection or welfare of females contained in the Occupational Health and Safety Act, the Employment Standards Act, or the Mining Act shall not be deemed to be a contravention of this Act. 1972, c. 119, s. 13.

25.—(1) Where a person has been convicted of a contravention of this Act, the Minister may apply by way of originating notice to a judge of the Supreme Court for an order enjoining such person from continuing such contravention.

(2) The judge in his discretion may make such order and the order may be entered and enforced in the same manner as any other order or judgment of the Supreme Court. R.S.O. 1970, c. 318, s. 18.

PART V

26. In this Act,

(a) "age" means any age of forty years or more and less than sixty-five years;

(b) "commercial unit" means any building or other structure or part thereof that is used or occupied or is intended, arranged or designed to be used or
occupied for the manufacture, sale, resale, processing, reprocessing, displaying, storing, handling, garaging or distribution of personal property, or any space that is used or occupied or is intended, arranged or designed to be used or occupied as a separate business or professional unit or office in any building or other structure or in a part thereof;

(c) "Commission" means the Ontario Human Rights Commission;

(d) "employers' organization" means an organization of employers formed for purposes that include the regulation of relations between employers and employees;

(e) "employment agency" includes a person who undertakes with or without compensation to procure employees for employers and a person who undertakes with or without compensation to procure employment for persons;

(f) "housing accommodation" means any place of dwelling except a place of dwelling being part of a building in which the owner or his family reside and the occupant or occupants of the place of dwelling are required to share a bathroom or kitchen facility with the owner or his family;

(g) "Minister" means the Minister of Labour or such other member of the Executive Council to whom this Act is assigned by the Lieutenant Governor in Council;

(h) "pay" means remuneration in any form;

(i) "person" in addition to the extended meaning given it by the Interpretation Act, includes an employment agency, an employers' organization and a trade union;

(j) "trade union" means an organization of employees formed for purposes that include the regulation of relations between employees and employers and includes a provincial, national or international trade union and a certified council of trade unions. R.S.O. 1970, c. 318, s. 19; 1972, c. 119, s. 14.