

1970 Bill 140

Third Session, 16th Legislature, 19 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 140

An Act for an Alberta Bill of Rights

MR. LOUGHEED

First Reading

Second Reading

Third Reading

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An Act for an Alberta Bill of Rights

(Assented to _____, 1970)

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 the Parliament of Canada has proclaimed the Canadian Bill of Rights, being chapter 44, Statutes of Canada, 1960, which provisions are by section 5(3) thereof specifically construed as extending only to matters coming within the legislative authority of the Parliament of Canada;

AND WHEREAS by section 92 of the *British North America Act* there are established matters within the exclusive power of the provincial legislatures, including property and civil rights and the administration of justice;

AND WHEREAS it is recognized in Alberta as a fundamental principle and as a matter of public policy that all persons are equal in dignity and human rights without regard to race, religious beliefs, colour, sex, age, ancestry or place of origin;

AND WHEREAS it is fitting that this principle be affirmed by the Legislative Assembly of Alberta by the enactment of a Bill of Rights, whereby these rights of the individual may be safeguarded;

THEREFORE HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Alberta, enacts as follows:

1. This Act may be cited as the "*Alberta Bill of Rights*".

2. Every law of Alberta shall, unless it is expressly declared by an Act of the Legislature that it shall operate notwithstanding the *Alberta Bill of Rights*, be so construed and applied as not to abrogate, abridge or infringe, or to authorize the abrogation, abridgment or infringement of any of the rights herein recognized and declared.

Explanatory Notes

This provision is similar to section (2) of the Canadian Bill of Rights, but has the reverse effect of section 2 of the existing Alberta Human Rights Act, which makes the latter Act subservient to other Alberta Statutes.

PART I

DECLARATION OF RIGHTS

3. Every person shall enjoy the right to freedom of conscience, opinion and belief, and freedom of religious association, teaching and worship.

4. Every person shall enjoy the right to freedom from arbitrary arrest or detention and every person who is arrested or detained shall enjoy the right forthwith to a judicial interpretation of the legality of his detention and as to the nature of the charges or the certificate of committal upon which he is detained.

5. Every person shall enjoy the right of the individual to equality before the law and the protection of the law.

6. Every person shall under the law enjoy the right to freedom of expression through all means of communication.

7. Every person shall enjoy the right to peaceable assembly with others and to form with others association of any character under the law, provided such peaceable assembly be conducted in such manner as not to interfere with the privacy or affairs of others.

8. Every person shall enjoy the right to engage in and carry on any occupation, business, or enterprise under the law without discrimination because of race, religious beliefs, colour, sex, age, ancestry or place of origin.

9. Every person shall have the right to enjoyment of his property and the right not to be deprived of his property, except by the due process of law.

10. Every qualified voter resident in Alberta shall enjoy the right to exercise freely his franchise in all elections.

11. (1) Every person resident in Alberta shall enjoy the right to education without discrimination because of race, religious beliefs, colour, sex, ancestry or place of origin.

(2) Nothing in subsection (1) prevents a school, college, university or other institution or place of learning that enrolls persons of a particular creed or religion exclusively, or that is conducted by a religious order or society from policies with respect to such enrollment.

12. Nothing in this Part I shall be construed to abrogate or abridge any human right or fundamental freedom not enumerated herein that existed in Alberta at the time of proclamation of this Act.

There are no comparable provisions in this entire Part I contained in the existing Alberta Human Rights Act.

PART II
CODE OF CONDUCT

13. No person shall:

- (a) publish or display, or cause to be published or displayed; or
- (b) permit to be published or displayed on lands or premises or in a newspaper, through a television or radio broadcasting station, or by means of any other medium which he owns or controls

any notice, sign, symbol, emblem, or other representation indicating discrimination, or any intention to discriminate against any person or class of persons for any purpose because of the race, religious beliefs, colour, sex, ancestry or place of origin of that person or class of persons.

14. 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, religious beliefs, colour, sex, ancestry or place of origin of that person or class of persons or of any other person or class of persons.

15. 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 self contained dwelling unit in a building which contains three or more such units that are available for renting, or
- (b) discriminate against any person or class of persons with respect to any term of condition of occupancy of any self contained dwelling unit in a building which contains three or more such units that are available for renting,

because of the race, religious beliefs, colour, ancestry or place of origin of that person or class of persons or of any other person or class of persons.

16. (1) No employer and no person acting on his behalf shall discriminate between his male and female employees by paying a female employee at a rate of pay less than the rate of pay paid to a male employee employed by him for the same work or substantially the same work done in the same establishment.

There is no comparable provision in the existing Human Rights Act.

The existing Alberta Human Rights Act contains no comparable provision to include discrimination against sex in the similar section.

This is similar to the comparable section of the Alberta Human Rights Act (section 3 (a)).

Subsections (1) and (2) are similar to section 109 of The Alberta Labour Act and subsection (3) is comparable to the provisions of chapter 310 of the Revised Statutes of Alberta, being The Sex Disqualification Removal Act.

(2) A difference in the rate of pay between a female and a male employee based on any factor other than sex does not constitute a failure to comply with this section.

(3) A person shall not be disqualified by sex

(a) from the exercise of a public function;

(b) from being appointed to or holding a civil or judicial post or office;

(c) from entering or assuming, or carrying on a civil profession or vocation, or

(d) for admission to an incorporated society.

17. (1) No employer shall refuse to employ, or refuse to continue to employ, any person, or discriminate against any person in regard to employment or any term or condition of employment,

(a) because of his race, religious beliefs, colour, sex, ancestry or place of origin; or

(b) because of his age, if the person has attained the age of forty-five years and has not attained the age of sixty-five years; or

(c) because the person has made a complaint under this Act or has testified, or is believed to be about to testify, in any proceedings relative to the enforcement of this Act.

(2) Subsection (1) does not apply to the expression of a limitation, specification, or preference based on a *bona fide* occupational qualification.

18. (1) No person shall use or circulate any form of application for employment or publish or display, or cause or permit to be published or displayed, any advertisement in connection with employment or make any written or oral inquiry in connection with employment

(a) which expresses, either directly or indirectly,

(i) any limitation, specification, or preference as to race, religious beliefs, colour, sex, ancestry or place of origin; or

(ii) any intent to

(A) dismiss from employment; or

(B) refuse to employ or rehire; or

(C) discriminate against

any person because of age, if the person has attained the age of forty-five years and has not attained the age of sixty-five years,

(b) or which requires an applicant to furnish any information concerning race, religious beliefs, colour, ancestry or place of origin.

There is no comparable provision in The Alberta Human Rights Act regarding non-discrimination in employing a person because of sex.

This is a major addition to the existing Alberta Human Rights Act—no comparable legislation exists in Alberta.

(2) Subsection (1) does not apply to the expression of a limitation, specification or preference based on a *bona fide* occupational qualification.

19. No trade union, employer's organization or other occupational association shall exclude from membership or expel or suspend any person or member, or discriminate against any person or member

- (a) because of his race, religious beliefs, colour, sex, ancestry or place of origin; or
- (b) because of his age, if the person or member has attained the age of forty-five years and has not attained the age of sixty-five years; or
- (c) because the person or member has made a complaint under this Act or has testified, or is believed to be about to testify, in any proceedings relative to the enforcement of this Act.

20. (1) The provisions of sections 17, 18 and 19 relating to refusal, discrimination, exclusion, expulsion, or suspension because of age, or to expression of intent to dismiss, refuse to employ or rehire, or discriminate, because of age do not apply to the

- (a) termination of employment because of the terms or conditions of a *bona fide* retirement or pension plan;
- (b) operation of the terms or conditions of any *bona fide* retirement or pension plan which have the effect of a minimum service requirement;
- (c) operation of the terms or conditions of any *bona fide* group or employee insurance plan;
- (d) because of minimum age requirements of any other Act.

(2) The provisions of sections 17 and 18 do not apply to any exclusively charitable, philanthropic, educational, fraternal, religious, or social organization or corporation that is not operated for profit, or to any organization that is operated primarily to foster the welfare of a religious or ethnic group and is not operated for profit.

(3) The provisions of this Act relating to discrimination because of sex do not apply to, supersede, or otherwise affect any statute, by-law, rule, order, or regulation having the force and effect of law which prohibits, restricts, or controls the employment of any person.

(4) This Act does not apply to the employment or prospective employment of a domestic employee in a private home.

This adds to Alberta legislation comparable non-discrimination provisions for professional and other membership groups, in addition to trade union and employer's organizations (see definition—section 37).

21. No person shall evict, expel, or otherwise discriminate against any other person because he has made a complaint or given evidence or assisted in any way in respect of the initiation or prosecution of a complaint or other proceeding under this Act.

22. (1) The prohibitions contained in this Act apply to and bind the Crown in right of Alberta and every agency and servant thereof.

(2) The Lieutenant Governor in Council shall require that contracts designated or classified in any regulations entered into and with

- (a) Her Majesty in right of the Province or a member of the Executive Council of Alberta acting for and on behalf of Her Majesty; and
- (b) a municipality in the Province; and
- (c) the board of trustees of a school district or school division in the Province; and
- (d) the board of management of a hospital as defined in *The Alberta Hospitals Act*

shall contain such provisions in such form and terms as the Lieutenant Governor in Council may provide, designed to secure the observance, so far as possible, of the non-discrimination provisions of this Act.

Subsection (1) is an addition to The Alberta Human Rights Act by adding members of the Civil Service. There is no comparable provision to subsection (2) in The Alberta Human Rights Act.

PART III
HUMAN RIGHTS COMMISSION

23. (1) The Lieutenant Governor in Council shall establish a commission to be known as the "Human Rights Commission", which shall consist of a chairman and such number of other members as the Lieutenant Governor in Council may determine.

(2) The Lieutenant Governor in Council shall appoint the chairman and other members of the Commission.

(3) In addition to the chairman and other members of the Commission, the Lieutenant Governor in Council may appoint one or more vice-chairmen to act in the place of the chairman during his absence for any reason, and a person appointed vice-chairman is a member of the Commission.

(4) A majority of the members of the Commission, including the chairman or vice-chairman, is a quorum.

(5) A decision of the majority of the members of the Commission present and constituting a quorum shall be the decision of the Commission; and if the votes are equal, the chairman, or in his absence the vice-chairman, shall have a second or casting vote.

24. (1) The Commission and each member thereof has the power of a commissioner under *The Public Inquiries Act*.

(2) *The Administrative Procedures Act* applies to the operation of the Commission.

(3) The Commission may delegate to one or more of its members any of the functions or duties of the Commission.

(4) The Commission may receive and accept whatever evidence and information on oath, affidavit, or otherwise it, in its discretion, deems fit and proper, whether admissible as evidence in a court of law or not.

25. The Commission may, either by any member of the Commission designated in writing by the chairman thereof or by any person authorized in writing by the chairman or Administrator

- (a) inspect and examine all books, payrolls, personnel records, registers, notices, documents, and other records of any person which in any way relate to
 - (i) the wages, hours of labour, or conditions of employment affecting any person;
 - (ii) membership of any person in or an application by any person for membership in a trade union, or both;

This is a significantly different administration arrangement from that existing under The Alberta Human Rights Act, which Act relies upon an Administrator and ad hoc board of inquiry appointed only upon ministerial discretion.

- (iii) the accommodation, services, or facilities available in any place to which the public is customarily admitted; and
 - (iv) the occupancy of any commercial unit or self-contained dwelling unit containing three or more such units;
- (b) take extracts from or make copies of any entry in those books, payrolls, personnel records, registers, notices, documents, and records;
 - (c) require any person to make or furnish full and correct statements, either orally or in writing, in whatever form is required, respecting matters referred to in clause (a) and, in the discretion of the member of the Commission or person so authorized, require the statements to be made by the person on oath or to be verified by a statutory declaration;
 - (d) require any person to make full disclosure, production, or delivery to the Commission, or to the person so authorized, of
 - (i) all records, documents, statements, writing, books, papers, extracts therefrom, or copies thereof that the person has in his possession or control; or
 - (ii) other information, either oral or in writing, and either verified on oath or otherwise as may be directed, that may in any way relate to matters referred to in clause (a);
 - (e) make such examination and inquiry as may be necessary to ascertain whether the provisions of this Act are complied with;
 - (f) administer all oaths and take all affidavits and statutory declarations required or authorized to be made under this Act, and to summon any person to give evidence in connection with any investigation, inquiry, or examination.

26. There may be employed pursuant to the provisions of *The Public Service Act, 1968*, an Administrator and such officers, clerks and employees as are necessary for the administration of this Act.

27. The Commission is responsible to the Minister for the administration of this Act.

28. The Commission is responsible

- (a) to forward the principle that every person is equal in dignity and rights without regard to race, religious beliefs, colour, sex, age, ancestry or place of origin,

- (b) to promote an understanding of, acceptance of and compliance with this Act, and
- (c) to develop and conduct educational programs designed to eliminate discriminatory practices related to race, religious beliefs, colour, sex, age, ancestry or place of origin.

29. The Minister shall lay before the Assembly within fifteen days after the commencement of each Session an annual report of the Commission, including a survey of all complaints and prosecutions under the Act during the previous year.

There is no comparable reporting obligation within the existing Alberta Human Rights Act.

PART IV

COMPLAINTS AND PROSECUTIONS

30. (1) Every complaint under subsection (2) shall be in writing and shall be mailed or delivered to the Administrator at his office.

(2) Where a person complains that

- (a) he or she has been discriminated against contrary to section 13;
- (b) he or she has been denied accommodation, services or facilities or discriminated against contrary to section 14;
- (c) he or she has been denied occupancy or discriminated against, contrary to section 15;
- (d) she has been discriminated against, contrary to subsection (1) of section 16;
- (e) he or she has been refused employment, discharged or discriminated against, contrary to subsection (1) of section 17;
- (f) that there has been discrimination contrary to section 18;
- (g) he or she has been excluded, expelled, suspended or discriminated against, contrary to section 19;
- (h) any other contravention of this Act has taken place; the Administrator shall inquire into the complaint.

(3) The Administrator shall endeavour to effect a settlement of the matter complained of.

(4) If the matter complained of is not settled under subsection (3), the Administrator shall refer the matter to the Commission.

(5) If, in the opinion of the Commission, a complaint referred under subsection (4) is without merit, the Commission may dismiss the complaint at any stage of proceedings.

(6) If, in the opinion of the Commission, a person named in a complaint referred under subsection (4) has contravened any provision of this Act, the Commission:

- (a) shall make an order directing the person to cease the contravention;
- (b) may, in the same order or in a subsequent order, direct the person to rectify the contravention; and
- (c) may include in an order a direction
 - (i) that an employer employ or re-employ a person and pay the person the sum equal to wages lost by reason of the contravention; or

This is a major difference from the existing Alberta Human Rights Act section 12(1)—the appointment of a board of inquiry is only upon the recommendation of the Administrator under The Alberta Human Rights Act and dependent also upon the discretion of the Minister.

- (ii) that a trade union, employer's organization or occupational association include a person in membership or reinstate him as a member;
- (d) shall publish such order and the reasons therefor in such manner as it deems advisable;

and the order is final, subject to appeal pursuant to the provisions of section 35.

(7) If, after service of the order and after the expiration of fourteen days from the date of the order or the date provided in the order for compliance, whichever is the later, a person requests the Commission to file a copy of the order in the Supreme Court, the Commission may file a copy of the order with the Clerk of the Court in the judicial district where the inquiry was held and an order so filed is enforceable as a judgment or order of that court.

31. (1) A person who contravenes any order of the Commission is guilty of an offence and is liable upon summary conviction,

- (a) if an individual, to a fine of not more than one hundred dollars for a first offence and of not more than two hundred dollars for a second or subsequent offence, or
- (b) if a corporation, trade union, employers' organization or employment agency, to a fine of not more than five hundred dollars for a first offence and of not more than one thousand dollars for a second or subsequent offence.

(2) Where an employer is convicted by reason of his having suspended, transferred, laid off or discharged an employee contrary to this Act, the convicting magistrate

- (a) may, in addition to any other penalty, order the employer to pay to the employee compensation for loss of employment not exceeding the sum that in the opinion of the magistrate is equivalent to the wages, salary or remuneration that would have accrued to the employee up to the date of the conviction but for the suspension, transfer, lay-off or discharge, and
- (b) may order the employer to reinstate the employee in his employ, at such date as in the opinion of the magistrate is just and proper and in the position the employee would have held but for the suspension, transfer, lay-off or discharge.

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

(2) The judge, in his discretion, may make such order, and the order may be enforced in the same manner as any other order or judgment of the Supreme Court.

The obligation to publish the recommendations of the board of inquiry is merely permissive in section 16(1) of The Alberta Human Rights Act.

There is a major difference between this Act and the existing Alberta Human Rights Act. In this Act, the Commission can issue an order—under The Alberta Human Rights Act, the board of inquiry by sections 15 and 16 merely reports recommendations and then the Minister may issue orders to carry the recommendations into effect.

This is a major difference from the existing Alberta Human Rights Act—section 19 of that Act requires the consent of the Minister for any prosecutions for an offence under the Act.

33. A prosecution for an offence under this Act may be instituted against a trade union or employers' organization or occupational association in their name and any act or thing done or omitted by an officer, official, or agent of a trade union or employers' organization or occupational association within the scope of his authority to act on its behalf shall be deemed to be an act or thing done or omitted by the trade union or employers' organization or occupational association, as the case may be.

34. (1) No member of the Commission, nor the Administrator, shall be required by any court to give evidence relative to information obtained for the purpose of this Act.

(2) No proceeding under this Act shall be deemed invalid by reason of any defect in form or any technical irregularity.

35. (1) Where the Commission finds a complaint to be justified, in whole or in part, the person against whom the finding was made may appeal therefrom to the Supreme Court within the time limited by subsection (2).

(2) The person appealing

(a) shall file a notice of appeal, naming the Administrator as respondent, with the clerk of the court of the judicial district wherein the inquiry was held, and

(b) shall serve a copy of the notice of appeal upon the Administrator

within thirty days of the date he was furnished with a copy of the recommendations and findings of the Commission.

(3) The Supreme Court shall hear and determine the appeal by holding an inquiry *de novo* and may confirm, reverse or vary the findings of the Commission.

36. Any person who has submitted a complaint to the Administrator pursuant to subsection (2) of section 30 and objects to the dismissal of such complaint by the Commission pursuant to subsection (5) of section 30, may request the Ombudsman to review the complaint pursuant to the provisions of *The Ombudsman Act*.

37. In this Act,

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

(b) "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;

No comparable specific remedy exists under The Alberta Human Rights Act.

- (c) "Minister" means the member of the Executive Council charged with the administration of this Act;
- (d) "occupational association" means any group other than a trade union or employers' organization in which membership is a prerequisite to carrying on any trade, occupation or profession;
- (e) "person", in addition to the extended meaning given it by *The Interpretation Act, 1958*, includes an employment agency, an employers' organization and a trade union;
- (f) "trade union" means an organization of employees formed for purposes that include the regulation of relations between employees and employers.

38. *The Human Rights Act*, being chapter 39 of the Statutes of Alberta, 1966, and *The Sex Disqualification Removal Act*, being chapter 310 of the Revised Statutes of Alberta, 1955, are hereby repealed.

39. This Act comes into force upon a date to be fixed by proclamation.

