

1972 Bill 2

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First Session, 17th Legislature, 21 Elizabeth II

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THE LEGISLATIVE ASSEMBLY OF ALBERTA

**BILL 2**

The Individual's Rights Protection Act

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MR. GHITTER

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First Reading .....

Second Reading .....

Third Reading .....

# BILL 2

## THE INDIVIDUAL'S RIGHTS PROTECTION ACT

1972

(Assented to \_\_\_\_\_, 1972)

WHEREAS recognition of the inherent dignity and the equal and inalienable rights of all persons is the foundation of freedom, justice and peace in the world; 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 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 Legislature of Alberta in an enactment whereby those rights of the individual may be protected:

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

**1. (1)** Unless it is expressly declared by an Act of the Legislature that it operates notwithstanding this Act, every law of Alberta is inoperative to the extent that it authorizes or requires the doing of anything prohibited by this Act.

**(2)** In subsection (1), "law of Alberta" means

- (a) any Act of the Legislature of Alberta enacted before, on or after the commencement of this Act, and
- (b) any order, rule or regulation made or approved by the Lieutenant Governor in Council or by a Minister of the Crown before, on or after the commencement of this Act.

### Code of Conduct

**2. (1)** No person shall publish or display before the public or cause to be published or displayed before the public any notice, sign, symbol, emblem or other representation indicating discrimination or an intention to discriminate against any person or class of persons for any purpose because of the race, religious beliefs, colour, sex, age, ancestry or place of origin of that person or class of persons.

## Explanatory Notes

General. This Bill will provide for an Individual's Rights Protection Act. Whereas The Alberta Bill of Rights has for its primary object the protection of individuals from the power of the state to make laws that have discriminatory aspects, this Bill has as its primary object the protection of individuals from discriminatory acts and practices by his fellow citizens. It is aimed at preventing those discriminatory practices and, where they occur, at bringing them to an end by negotiation and voluntary settlement and failing that, by enforcement. The Bill will create the Alberta Human Rights Commission which will have the general administrative responsibility for administering the Act and will function primarily in the area of public education to minimize discrimination and to effect the settlement of complaints.

This Bill will repeal the present Human Rights Act, chapter 178 of the Revised Statutes of Alberta 1970.

1. This section has the effect of overriding and rendering inoperative any other law of Alberta (as defined) that purports to authorize or require the doing of anything prohibited by this Act. The only exception would be a case where the Legislature itself declared that that provision was to operate notwithstanding The Individual's Rights Protection Act.

2. Prohibition against notices, signs etc., indicating discrimination or an intention to discriminate.

(2) Nothing in this section shall be deemed to interfere with the free expression of opinion upon any subject.

3. 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 any accommodation, services or facilities customarily available to the public, or

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

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.

4. 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 right to occupy as a tenant, any commercial unit or self-contained dwelling unit that is advertised or otherwise in any way represented as being available for occupancy by a tenant, or

(b) discriminate against any person or class of persons with respect to any term or condition of the tenancy of any commercial unit or self-contained dwelling unit

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.

5. (1) No employer shall employ a female employee for any work at a rate of pay that is less than the rate of pay at which a male employee is employed by that employer for similar or substantially similar work.

(2) Work for which a female employee is employed and work for which a male employee is employed shall be deemed to be similar or substantially similar if the job, duties or services the employees are called upon to perform are similar or substantially similar.

(3) A difference in the rate of pay between a female and male employee based on any factor other than sex does not constitute a failure to comply with this section if the factor on which the difference is based would normally justify such a difference.

(4) No employer shall reduce the rate of pay of an employee in order to comply with this section.

**3.** Prohibition of discriminatory practices in public accommodation, services etc.

**4.** Prohibition against discriminatory practices in renting accommodation.

**5.** Prohibition against discrimination in rates of pay to male and female employees. This is the same as sections 119, 120 and 126 in Part 6 of The Alberta Labour Act, which Part will be repealed by this Bill.

(5) Where an employee is paid less than the rate of pay to which she is entitled under this section, she is entitled to recover from her employer by action the difference between the amount paid and the amount to which she was entitled, together with her costs, but

- (a) the action shall be commenced within 12 months from the date upon which the cause of action arose, and not afterward,
- (b) the action applies only to the wages of an employee during the 12-month period immediately preceding the termination of her services or the commencement of her action, whichever occurs first,
- (c) the action may not be commenced or proceeded with where the employee has made a complaint to the Commission in respect of the contravention of this section, and
- (d) no complaint by the employee in respect of the contravention shall be acted upon by the Commission where an action has been commenced by the employee under this section.

**6. (1)** No employer or person acting on behalf of an employer shall

- (a) refuse to employ or refuse to continue to employ any person, or
- (b) discriminate against any person with regard to employment or any term or condition of employment,

because of the race, religious beliefs, colour, sex, marital status, age, ancestry or place of origin of that person or of any other person.

(2) The provisions of subsection (1) relating to age shall not affect the operation of any bona fide retirement or pension plan or the terms or conditions of any bona fide group or employee insurance plan.

(3) Subsection (1) does not apply with respect to a refusal, limitation, specification or preference based on a bona fide occupational qualification.

**7. (1)** No person shall use or circulate any form of application for employment or publish any advertisement in connection with employment or prospective employment or make any written or oral inquiry of an applicant,

- (a) that expresses either directly or indirectly any limitation, specification or preference as to the race, religious beliefs, colour, sex, age, ancestry or place of origin of any person, or

**6. Prohibition against discriminatory practices in employment.**

**7. Prohibition against discriminatory practices in advertising employment opportunities or in making inquiries of applicants for employment.**

**8.** Prohibition against discriminatory practices in relation to membership in a trade union, employers' organization or occupational association.

**9.** Prohibition against punitive action against anyone for making a complaint under the Act or in any way assisting in carrying out the Act.

**10.** (1) Crown bound by prohibitions.

(2) Government powers in relation to the form of certain contracts to prevent discriminatory practices.

**11.** Establishment of the Alberta Human Rights Commission.



- (b) that requires an applicant to furnish any information concerning race, religious beliefs, colour, ancestry or place of origin.
- (2) Subsection (1) does not apply with respect to a refusal, limitation, specification or preference based on a bona fide occupational qualification.

8. No trade union, employers' organization or occupational association shall

- (a) exclude any person from membership therein, or
- (b) expel or suspend any member thereof, or
- (c) discriminate against any person or member, because of the race, religious beliefs, colour, sex, marital status, age, ancestry or place of origin of that person or member.

9. No person shall evict, discharge, suspend, expel, intimidate, coerce, impose any pecuniary or other penalty upon, or otherwise discriminate against any person because that person 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.

10. (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 may by regulations require that contracts designated or classified in the regulations and entered into by

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

shall contain such provisions as may be specified in the regulations, in such form and terms as the regulations may provide, for the purpose of securing the observance, as far as possible, of the provisions of sections 2 to 9.

#### Alberta Human Rights Commission

11. (1) There shall be a commission to be known as the "Alberta Human Rights Commission" which shall consist of such number of members as may be appointed by the Lieutenant Governor in Council.

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

(3) The chairman and other members of the Commission shall receive such remuneration for their services as may be prescribed by the Lieutenant Governor in Council.

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

**13.** (1) It is the function of the Commission

- (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,
- (c) to research, develop and conduct educational programs designed to eliminate discriminatory practices related to race, religious beliefs, colour, sex, age, ancestry or place of origin, and
- (d) to encourage and co-ordinate both public and private human rights programs and activities.

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

(3) 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.

**14.** In accordance with *The Public Service Act*, there may be appointed a Director of the Commission and such other employees as may be required for the purpose of enabling the Commission to carry on the administration of this Act.

**15.** (1) The Commission shall after the end of each year prepare and submit to the Minister a report of its activities during that year, including a survey of all complaints and prosecutions under this Act and such other information as the Minister may require.

(2) When the report is received by him, the Minister shall lay a copy of it before the Legislative Assembly if it is in session and if not, within 15 days after the commencement of the next ensuing session.

**12.** Commission responsible to Minister.

**13.** Functions of the Commission.

**14.** Staff.

**15.** Annual report of the Commission.

### Enforcement

**16.** (1) The Commission shall as soon as is reasonably possible cause an investigation to be made into and shall endeavor to effect a settlement of any complaint of an alleged contravention of this Act where

- (a) a person who believes he has been discriminated against contrary to this Act makes a complaint in writing to the Commission, or
- (b) the Commission has reasonable grounds for believing that a complaint exists.

(2) The Commission shall, before commencing an investigation under subsection (1), give written notice of the complaint and of the Commission's intention to investigate it, to the person against whom the complaint was made.

(3) Any complaint filed pursuant to this section by an aggrieved person must be filed within six months after the alleged contravention of this Act.

(4) If, in the opinion of the Commission, a complaint is without merit, the Commission may dismiss the complaint at any stage of proceeding.

**17.** (1) If the Commission is unable to effect a settlement of the matter complained of, the Minister may, on the request of the Commission, appoint a board of inquiry composed of one or more persons to investigate the matter.

(2) The Minister shall forthwith communicate the names of the members of the board of inquiry to the parties to the complaint.

(3) The Lieutenant Governor in Council may determine the rate of remuneration of the chairman and members of boards of inquiry.

**18.** (1) A board of inquiry and each member thereof has all the powers of a commissioner appointed under *The Public Inquiries Act*.

(2) If a board of inquiry is composed of more than one person, the recommendations of the majority are the recommendations of the board.

**19.** (1) A board of inquiry shall give the parties to the complaint full opportunity to be represented by counsel, to present evidence and to make submissions.

(2) The board of inquiry 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.

**16.** Initial action by Commission on receiving a complaint or where it believes a complaint exists.

**17.** Appointment of board of inquiry where the Commission is unable to effect a settlement.

**18.** Powers of board of inquiry. Majority recommendations are binding.

**19.** Proceedings of board of inquiry.

(3) *The Administrative Procedures Act* applies to the proceedings of a board of inquiry.

20. (1) A board of inquiry shall submit a report of its inquiry to the Commission within 14 days, exclusive of Saturdays and holidays, after its appointment or within such longer period as the Minister may approve.

(2) In its report a board of inquiry shall state whether it found the complaint to be justified or not.

(3) After a board of inquiry has made its report, the Commission may direct it to clarify or amplify any of its findings or recommendations and the report shall be deemed not to have been received by the Commission until they have been so clarified or amplified.

(4) Upon receipt of the report of a board of inquiry, the Commission shall furnish a copy thereof to each of the persons affected and, if it considers it advisable, shall publish the report in such manner as it considers fit.

21. (1) Where a board of inquiry finds a complaint to be justified, in whole or in part, it shall in the report recommend the course of action it thinks ought to be taken with respect to the complaint.

(2) If the Commission cannot effect a settlement on the course of action to be taken with the person against whom the finding was made within 30 days of the date he was furnished with a copy of the report of the board of inquiry, the Commission shall forthwith deliver all of its files and other records pertaining to the complaint to the Attorney General.

(3) The Attorney General may, within 30 days after receiving the Commission's files and other records pursuant to subsection (2), apply to the Supreme Court of Alberta for an order under subsection (5) by way of originating notice of motion filed in the office of the clerk of the court of the judicial district in which the inquiry of the board of inquiry was held.

(4) The judge hearing the motion shall hold an inquiry de novo and may confirm, reverse or vary the findings and recommendations of the board of inquiry and may make an order under subsection (5).

(5) The judge in his discretion may make an order directing the person against whom the finding was made to do any or all of the following:

(a) to cease the contravention complained of or to refrain in future from committing the same or any similar contravention;

**20.** Report of board of inquiry.

**21.** Where the Commission is unable to effect a settlement on the basis of the report of the board of inquiry, it may refer the matter to the Attorney General who may in turn apply to the Supreme Court which in turn may make an order it considers appropriate in the circumstances.

- (b) to make available to the person discriminated against the rights, opportunities or privileges he was denied contrary to this Act;
- (c) to compensate the person discriminated against for all or any part of any wages or income lost or expenses incurred by reason of the discriminatory action;
- (d) to take such other action as the judge considers proper to place the person discriminated against in the position he would have been but for the contravention of this Act;
- (e) to pay to the Crown a penalty of
  - (i) not more than \$200, in the case of an individual, or
  - (ii) not more than \$1000, in the case of a corporation, trade union, employers' organization, employment agency or occupational association;and the order may be enforced in the same manner as any other order of the Supreme Court.

**22.** (1) Where a board of inquiry finds a complaint not to be justified, the person who submitted the complaint may appeal therefrom to the Supreme Court in accordance with this section.

(2) Where a board of inquiry 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 in accordance with this section.

(3) An appeal under this section shall be made by way of an originating notice of motion filed with the clerk of the court of the judicial district in which the inquiry was held.

(4) The originating notice of motion

- (a) shall be filed with the clerk of the court within 30 days of the date the appellant was furnished with a copy of the report of the board of inquiry;
- (b) shall be returnable on a date not later than 15 days after the date it is filed with the clerk;
- (c) shall show as a respondent the complainant or the person against whom the finding of the board of inquiry was made, as the case may be;
- (d) shall shew the Commission as a nominal respondent for the purpose only of allowing the Commission to be notified of the motion and subsequent proceedings.

(5) The Supreme Court shall hear and determine the appeal by holding an inquiry de novo and may confirm,



**22.** Appeal to the Supreme Court from the finding of the board of inquiry on whether the complaint was justified or not.

reverse or vary the findings and recommendations of the board of inquiry and make any order that may be made under section 21, subsection (5).

**23.** (1) Where an order of the Supreme Court under section 21 or 22 did not direct a person to cease the contravention complained of, the Attorney General may subsequently apply by way of originating notice of motion to the Supreme Court for an order enjoining the person from continuing the contravention.

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

**24.** (1) Any proceedings under this Act may be instituted against a trade union or employers' organization or occupational association in its name.

(2) 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.

**25.** (1) No member of the Commission, nor the Director or any employee mentioned in section 14, 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.

**26.** *The Ombudsman Act* applies to the activities of the Commission and every board of inquiry appointed under this Act.

**27.** In this Act

- (a) "age" means any age of 45 years or more and less than 65 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,

**23.** Injunction against continuing the contravention.

**24.** Proceedings against trade unions, employers' organization and occupational associations.

**25.** Confidentiality of information in the Commission's hands.  
Validity of proceedings not affected by technical defects.

**26.** Application of The Ombudsman Act.

**27.** Definitions.

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

**28.** *The Human Rights Act* is repealed.

**29.** *The Alberta Labour Act* is amended by striking out Part 6.

**30.** This Act comes into force on a date to be fixed by Proclamation.

**28.** This Bill will repeal chapter 178 of the Revised Statutes of Alberta 1970.

**29.** Chapter 196 of the Revised Statutes of Alberta 1970 is amended by striking out Part 6 entitled "Equal Pay": see section 5 of this Bill.