

1978 BILL 237

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Fourth Session, 18th Legislature, 27 Elizabeth II

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THE LEGISLATIVE ASSEMBLY OF ALBERTA

# BILL 237

AN ACT TO AMEND  
THE INDIVIDUAL'S RIGHTS PROTECTION ACT (NO. 3)

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MR. NOTLEY

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First Reading -----

Second Reading -----

Committee of the Whole -----

Third Reading -----

Royal Assent -----

Bill 237  
Mr. Notley

## BILL 237

1978

### AN ACT TO AMEND THE INDIVIDUAL'S RIGHTS PROTECTION ACT (NO. 3)

(Assented to \_\_\_\_\_, 1978)

**H**ER MAJESTY, by and with the advice and consent of the  
Legislative Assembly of Alberta, enacts as follows:

1. *The Individual's Rights Protection Act is amended by this Act.*

2. *The following section is added after section 17:*

**17.1** (1) If the parties to a complaint agree to a settlement before the complaint is determined by the Commission, the terms of the settlement may be referred by either of them to the Commission for confirmation or rejection.

(2) A party against whom a complaint is made may submit a written offer to settle the complaint to the Commission for confirmation or rejection.

(3) If the Commission confirms the terms of a settlement agreed upon by the parties or confirms a settlement offer pursuant to clause (b), it shall so certify and shall notify the parties that the complaint is determined in accordance with the settlement or offer.

3. *Section 18 is repealed and the following is substituted:*

**18.** (1) There shall be a tribunal to be known as the Alberta Human Rights Tribunal which shall consist of five members to be appointed by the Lieutenant Governor in Council.

(2) The Lieutenant Governor shall designate one of the members as chairman of the Tribunal.

(3) A member of the Tribunal shall hold office for a term not exceeding 5 years and is eligible for re-appointment for a second term not exceeding 5 years, but not for further re-appointment.

## **Explanatory Notes**

- 1.** This Bill will amend chapter 2 of the Statutes of Alberta, 1972.
- 2.** Provides for the parties concerned to arrive at a settlement before the complaint is determined by the Commission.
- 3.** Replaces the board of enquiry with the Alberta Human Rights Tribunal.

(4) A member of the Tribunal may be removed for cause on address of the Legislative Assembly.

(5) The Chairman and members of the Tribunal may be paid such remuneration for their services as may be prescribed by the Lieutenant Governor in Council providing that money has been appropriated to that purpose by the Legislature.

*4. Section 19 is repealed and the following is substituted:*

**19.** (1) Three members of the Tribunal shall constitute a quorum and shall be sufficient for the exercise of all the powers of the Tribunal.

(2) A decision of the majority of members present and constituting a quorum shall be a decision of the Tribunal.

*5. Section 20 is repealed and the following is substituted:*

**20.** If the Commission is unable to effect a settlement of a complaint it may do either or both of the following:

- (a) refer the matter to the Tribunal established pursuant to section 18 by delivering to the Tribunal the initial written complaint and any written answer by the party against whom the complaint is made;
- (b) refer the matter to the Attorney General with a request that he initiate and conduct proceedings before a court of summary jurisdiction for contravention of this Act.

*6. Section 21 is repealed and the following is substituted:*

**21.** (1) Subject to subsections (2) and (3) a complainant may appeal to the Tribunal if the decision of the Commission is:

- (a) to dismiss the complaint; or
- (b) to confirm a settlement offer from the party against whom the complaint is made pursuant to section 17.1.

(2) A complainant seeking leave to appeal from an order or decision of the Commission shall:

- (a) within 30 days after receiving notice of the order or decision of the Commission, file a written application with the Tribunal seeking leave to appeal that order or decision,
- (b) give written notice to the party against whom the complaint is made that leave to appeal has been requested;
- (c) give written notice to the Commission that leave to appeal has been requested.

**4. Quorum; decisions.**

**5. Referral procedure.**

**6. Procedure of appeal to the Tribunal.**

(3) After hearing the interested parties, the Tribunal shall decide whether or not to hear the appeal.

(4) A decision of the Tribunal whether to hear an appeal is final and is not subject to appeal.

*7. Section 22 is repealed and the following is substituted:*

**22.** (1) After giving notice to the parties to a complaint, and to such other persons as the Tribunal believes to be interested parties, the Tribunal shall proceed to hear the appeal.

(2) The Tribunal may, at its discretion, use one proceeding to determine two or more related complaints.

(3) The Tribunal and each member thereof shall have all the powers of a commissioner appointed under *The Public Inquiries Act*.

(4) Should the complainant not carry the proceedings diligently, the Commission may assume the carriage of those proceedings before the Tribunal.

(5) The Tribunal shall give to all persons who have received notice pursuant to subsection (1) and to the Commission if it has assumed the carriage of proceedings, a full opportunity to be represented by counsel, to present evidence and to make submissions.

(6) Subject to section 23(2) the Tribunal may receive and accept whatever evidence and information it deems fit and proper, whether or not such evidence and information would be admissible in a court of law.

(7) In proceedings before the Tribunal, questions of fact shall be determined on the basis of a preponderance of the evidence.

(8) To the extent that *The Administrative Procedures Act* is consistent with the provisions of, and regulations made under this Act, *The Administrative Procedures Act* shall apply to the proceedings of the Tribunal.

*8. Section 23 is repealed and the following is substituted:*

**23.** (1) The following persons are not competent or compellable witnesses at a hearing of the Tribunal:

- (a) a member of the Commission;
- (b) the Director of the Commission;
- (c) an employee of the Commission;

with respect to information obtained in order to administer this Act.

(2) With the exception of the initial written complaint and any written answer made thereto, Commission documents and corres-

**7. Appeal procedure.**

**8. Witnesses.**

pendence to or from the Commission are not admissible as evidence and shall not be received by the Tribunal.

*9. The following sections are added after section 23:*

**23.1** (1) As soon as is reasonably possible, the Tribunal shall render a written decision, and shall furnish a copy of that decision to the Commission and to each of the persons affected.

(2) The Tribunal shall publish its decision in such manner as it considers fit.

**23.2** (1) If the Tribunal decides that a complaint is not justified, it shall dismiss the complaint.

(2) If the Tribunal finds that the complaint is justified, in whole or in part, it may make an order directing the person against whom the complaint is made to do any or all of the following:

- (a) cease the contravention of this Act;
- (b) refrain in future from committing the same or any similar contraventions;
- (c) make available to the complainant the rights, opportunities or privileges that the person against whom the complaint is made denied to the complainant;
- (d) compensate the complainant for damages resulting from the action of the person against whom the complaint is made which contravened this Act;
- (e) take such other action as the Tribunal considers proper to place the complainant in the position that he would have been, had the contravention of this Act not taken place.

(3) If the Tribunal finds that the complainant has suffered a loss of dignity, reputation or self-respect, the Tribunal may, in addition to any action it may take under section 23.2 (2), order the person against whom the complaint is made to pay damages therefor not exceeding \$5000 to the complainant.

(4) No order shall be made under section 23.2 (2) or (3) in favor of a person unless that person is a party to the complaint, or is a person on whose behalf the Commission has instituted the complaint.

(5) No order shall be made under section 23.2 (2) or (3) with respect to contraventions of this Act occurring more than 6 months before the date on which a complaint was filed or instituted under section 17.

(6) The Tribunal may direct any party to a hearing to pay all or part of the costs which are incidental to that hearing.

**23.3** An order of the Tribunal made under section 23.2 becomes an order of the Supreme Court upon the filing with the



**9.** Enables the Tribunal to make binding decisions. Procedure of appeal to the Supreme Court of Alberta.

Clerk of the Supreme Court of a copy of the order certified to be true by the Tribunal and may thereafter be enforced in the same manner as any other order of the Supreme Court.

**23.4** (1) Either party to the complaint, or the Commission where it has assumed the carriage of proceedings before the Tribunal, may appeal to the Supreme Court from the whole or any part of a decision or order of the Tribunal.

(2) An appeal under this section shall be made by way of an originating notice of motion.

(3) 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 decision of the Tribunal;
- (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 to the appeal the complainant or the person against whom the complaint was made as is appropriate;
- (d) shall show the Commission as a respondent to the appeal where the Commission has assumed the carriage of the proceedings before the Tribunal but is neither the complainant nor the appellant.

(4) Where it is neither the appellant nor a respondent to the appeal, the Commission shall be notified of the motion and subsequent proceedings.

(5) The appeal shall be founded upon a copy of:

- (a) the referral to the Tribunal;
- (b) the evidence received by the Tribunal;
- (c) the record of the proceedings of the Tribunal;
- (d) the written decision of the Tribunal;

all of which shall be certified by the Tribunal.

(6) (a) The following persons are not competent or compellable witnesses at a hearing of any court:

- (i) a member of the Commission;
- (ii) the Director of the Commission;
- (iii) an employee of the Commission;

with respect to information obtained in order to administer this Act.

(b) With the exception of the initial written complaint and any written answer of the respondent, Commission documents and correspondence to or from the Commission are not admissible as evidence in any court.

(7) Subject to section 23.4 (6) (b), the Court may elect to receive further evidence about questions of fact, which may be



taken by oral examination, by affidavit, upon commission or otherwise as the Court sees fit.

(8) The Court may confirm, reverse or vary the findings and orders of the Tribunal, and may make any order authorized by section 23.2 (2) or (3).

*10. Section 27 is amended by striking out the words every board of inquiry and substituting the Tribunal.*

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

**10. Amends section 27. Section 27 presently reads:**  
27. The Ombudsman Act applies to the activities of the Commission and every board of inquiry appointed under this Act.