

1990 BILL 8

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Second Session, 22nd Legislature, 39 Elizabeth II

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THE LEGISLATIVE ASSEMBLY OF ALBERTA

# **BILL 8**

**INDIVIDUAL'S RIGHTS PROTECTION  
AMENDMENT ACT, 1990**

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THE MINISTER OF LABOUR

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First Reading .....

Second Reading .....

Committee of the Whole .....

Third Reading .....

Royal Assent .....

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*Bill 8*

## **BILL 8**

1990

### **INDIVIDUAL'S RIGHTS PROTECTION AMENDMENT ACT, 1990**

*(Assented to , 1990)*

HER 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 In the following provisions "sex" is struck out and "gender" is  
substituted:*

the Preamble;  
section 2(1) and (3)(a);  
section 3;  
section 4;  
section 6(4);  
section 10;  
section 16(1)(a) and (c).

*3 In the following provisions " , mental disability" is added after  
"physical disability":*

the Preamble;  
section 2(1);  
section 3;  
section 4;  
section 10;  
section 16(1)(a) and (c).

*4 Section 7 is amended*

*(a) in subsection (1)*

*(i) by striking out "sex" and substituting "gender";*

## **Explanatory Notes**

**1** This Bill will amend chapter I-2 of the Revised Statutes of Alberta 1980.

**2** Change in terminology.

**3** Adds “mental disability” to various provisions.

**4** Section 7 presently reads in part:

*7(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*

- (ii) *by adding “, mental disability” after “physical disability”;*
- (b) *by repealing subsections (1.1) and (1.2).*

**5** *Section 8(1) is amended*

*(a) in clause (a)*

- (i) by striking out “sex” and substituting “gender”;*
- (ii) by adding “, mental disability, marital status” after “disability”;*

*(b) in clause (b)*

- (i) by striking out “sex” and substituting “gender”;*
- (ii) by adding “, mental disability, marital status, age” after “disability”.*

**6** *Section 9 is repealed and the following is substituted:*

**9** Sections 7 and 8 apply with respect to

- (a) a domestic employed in a private home, and

*(b) discriminate against any person with regard to employment or any term or condition of employment,*

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

*(1.1) For the purposes of subsection (1), an employer or person acting on behalf of an employer who*

*(a) refuses to continue to employ any female employee, or*

*(b) discriminates against any female employee with regard to any term or condition of employment,*

*by reason only of pregnancy shall be deemed to have discriminated against that employee because of the sex of that employee.*

*(1.2) Nothing in this section shall be construed so as to limit or enlarge the rights provided to female employees under Division 10 of Part 2 of the Employment Standards Code.*

**5** Section 8 presently reads:

*8(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 indicating discrimination on the basis of the race, religious beliefs, colour, sex, physical disability, age, ancestry or place of origin of any person, or*

*(b) that requires an applicant to furnish any information concerning race, religious beliefs, colour, sex, physical disability, 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 requirement.*

**6** Sections 7, 8 and 9 presently read:

*7(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) a farm employee who resides in the private home of the farmer who employs him,

but only insofar as they relate to sexual harassment.

*7 Section 11 is repealed and the following is substituted:*

**11** No person shall evict, discharge, suspend, expel, intimidate, coerce, impose a pecuniary or other penalty on or otherwise discriminate against a person because that person

(a) has made or attempted to make a complaint under this Act,

*(b) discriminate against any person with regard to employment or any term or condition of employment,*

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

*(2) Subsection (1) as it relates to age and marital status does 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 requirement.*

*8(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 indicating discrimination on the basis of the race, religious beliefs, colour, sex, physical disability, age, ancestry or place of origin of any person, or*

*(b) that requires an applicant to furnish any information concerning race, religious beliefs, colour, sex, physical disability, 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 requirement.*

*9 Sections 7 and 8 do not apply with respect to*

*(a) a domestic employee in a private home, or*

*(b) a farm employee who resides in the private home of the farmer who employs him.*

*7 Section 11 presently reads:*

*11 No person shall evict, discharge, suspend, expel, intimidate, coerce, impose a pecuniary or other penalty on, or otherwise discriminate against a 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.*

(b) has given evidence or otherwise participated in or may give evidence or otherwise participate in a proceeding under this Act,

(c) has made or is about to make a disclosure that he may be required to make in a proceeding under this Act, or

(d) has assisted in any way in

(i) making or attempting to make a complaint under this Act, or

(ii) the investigation or prosecution of a complaint under this Act.

8 *Section 14(2), (2.1) and (3) are amended by striking out "chairman" wherever it occurs and substituting "chief commissioner".*

9 *Section 27(4) is amended by striking out "chairman and" and substituting "persons appointed to chair boards of inquiry and the".*

10 *Section 29 is amended*

*(a) in subsection (1)(a) by striking out " , which shall have carriage of the complaint";*

*(b) by adding the following after subsection (2):*

(3) If in any proceeding before it a board of inquiry is satisfied that a mistake has been made in good faith in respect of the name of a person who is a party to the proceeding, or in naming or not naming a person as a party to the proceeding, the board may direct that the name of the person be corrected or be substituted, added or deleted as a party to the proceeding, and may make any other direction that it considers to be appropriate relative to the naming of the person.



8 Section 14 presently reads in part:

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

*(2.1) The Minister may designate one of the members of the Commission as acting chairman of the Commission, and the acting chairman so designated has, during the absence of the chairman, the powers and duties of the chairman.*

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

9 Section 27(4) presently reads:

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

10 Section 29 presently reads:

*29(1) Notwithstanding section 2(b) of the Administrative Procedures Act, the following persons are parties to a proceeding before a board of inquiry:*

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

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

*(c) any person named in the complaint who is alleged to have been dealt with contrary to this Act;*

*(d) any person named in the complaint who is alleged to have contravened this Act;*

*11 The following is added after section 29:*

**29.1(1)** Subject to subsection (2), the Commission shall have carriage of a proceeding before a board of inquiry.

(2) If after a direction is made under section 27(1) or (2) with respect to a complaint the complainant rejects an offer to settle that in the opinion of the Commission is reasonable in the circumstances, the complainant shall take carriage of the proceeding before the board of inquiry.

*12 Section 31(1)(b)(iii), (iv) and (v) are repealed and the following is substituted:*

(iii) to make available to the person dealt with contrary to this Act the rights, opportunities or privileges he was denied contrary to this Act;

(iv) to compensate the person dealt with contrary to this Act for all or any part of any wages or income lost or expenses incurred by reason of the contravention of this Act;

(v) to take any other action the board considers proper to place the person dealt with contrary to this Act in the position he would have been in but for the contravention of this Act.

*13 Section 31.1 is amended by striking out "by that person".*

*(e) any other person specified by the board, on any notice that the board determines, and after that person has been given an opportunity to be heard against his joinder as a party.*

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

**11** Carriage of proceeding.

**12** Section 31(1) presently reads:

*31(1) A board of inquiry*

*(a) shall, if it finds that a complaint is not justified, order that the complaint be dismissed, and*

*(b) may, if it finds that a complaint is justified in whole or in part, order the person against whom the finding was made to do any or all of the following:*

*(i) to cease the contravention complained of;*

*(ii) to refrain in future from committing the same or any similar contravention;*

*(iii) to make available to the person discriminated against the rights, opportunities or privileges he was denied contrary to this Act;*

*(iv) 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;*

*(v) to take any other action the board considers proper to place the person discriminated against in the position he would have been in but for the contravention of this Act.*

**13** Section 31.1 presently reads:

*31.1 No settlement effected by the Commission or order made by a board of inquiry may compensate a person for wages or*

*14 Section 33 is repealed and the following is substituted:*

**33(1)** A party to a proceeding before a board of inquiry may appeal an order of the board to the Court of Queen's Bench by originating notice filed with the clerk of the Court of the judicial district in which the inquiry was held.

(2) The originating notice under subsection (1) shall be filed with the clerk and served on the board of inquiry and the other parties within 30 days of the date the appellant receives a copy of the order of the board.

(3) Forthwith after being served with an originating notice under subsection (2) the board of inquiry shall file the following with the clerk of the Court:

- (a) the board order, together with reasons;
- (b) the complaint;
- (c) the evidence taken at the hearing and all exhibits filed.

(4) The Court may

- (a) confirm, reverse or vary the order of the board and make any order that the board may make under section 31, or
- (b) remit the matter back to the board with directions.

(5) Commencement of an appeal under this section does not operate as a stay of proceedings under the order of the board of inquiry unless the Court so orders.

*15 Section 38 is amended*

- (a) *by renumbering it as section 38(1);*

*income lost or expenses incurred prior to 2 years before the date of the complaint by that person under section 19.*

**14** Section 33 presently reads:

*33(1) A party to a proceeding before a board of inquiry may appeal the order of the board to the Court of Queen's Bench by originating notice filed with the clerk of the Court of the judicial district in which the inquiry was held.*

*(2) If the grounds of appeal consist wholly or partly of a question of fact or mixed fact and law, no appeal lies without the leave of a judge of the Court of Queen's Bench.*

*(3) An application for leave to appeal under subsection (2) shall be made by notice of motion within 30 days of the date the appellant receives a copy of the order of the board of inquiry.*

*(4) The judge may, after taking into consideration any matters that he considers appropriate, grant leave to appeal under subsection (2).*

*(5) The originating notice under subsection (1) shall*

*(a) be filed with the clerk*

*(i) within 30 days of the date leave to appeal was granted, if the appeal is one to which subsection (2) applies, or*

*(ii) within 30 days of the date the appellant receives a copy of the order of the board of inquiry, if the appeal is not one to which subsection (2) applies,*

*(b) be returnable not later than 15 days after it is filed with the clerk, and*

*(c) be served, together with all affidavits in support, on the board of inquiry and the other parties to the proceeding before the board not more than 5 days before the return date.*

*(6) The Court may confirm, reverse or vary the order of the board and may make any order that the board can make under section 31.*

*(7) Commencement of an appeal under this section does not operate as a stay of proceedings under the order of the board of inquiry unless the Court orders otherwise.*

**15** Adds interpretation provisions.

*(b) by adding the following after subsection (1)(e):*

(e.1) “mental disability” means

(i) a disorder of thought, mood, perception, orientation or memory that impairs

(A) judgment,

(B) behaviour,

(C) capacity to recognize reality, or

(D) ability to meet the ordinary demands of life,

(ii) a condition of mental retardation or mental impairment, or

(iii) a learning disability or a dysfunction in one or more of the processes involved in understanding or using symbols or spoken language;

*(c) by adding the following after subsection (1):*

(2) Whenever this Act protects a person from being adversely dealt with on the basis of gender, the protection includes, without limitation, protection of a female from being adversely dealt with on the basis of pregnancy.

