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### **Unofficial Office Consolidation – Chapter 116 Yukon *Human Rights Act* and Bill 71/83 – An Act to Amend the *Human Rights Act*:**

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## Preamble

Recognizing that respect for human rights is a fundamental part of Canada's heritage,

That Canada is a party to the United Nations' *Universal Declaration of Human Rights* and other international undertakings having as their object the improvement of human rights in Canada and other nations of the world,

That the Yukon Government has a responsibility to encourage an understanding and recognition of human rights that is consistent with Canada's international undertakings and with the initiatives taken by Canada and the provinces, and

That it is just and consistent with Canada's international undertakings to recognize and make special provision for the unique needs and cultural heritage of the aboriginal peoples of the Yukon,

The Commissioner of the Yukon Territory, by and with the advice and consent of the Legislative Assembly, enacts as follows:

## Objects

**1(1)** The objects of this Act are

- (a) to further in the Yukon the public policy that every individual is free and equal in dignity and rights;
- (b) to discourage and eliminate discrimination;
- (c) to promote recognition of the inherent dignity and worth and of the equal and inalienable rights of all members of the human family, these being principles underlying the *Canadian Charter of Rights and Freedoms* and the *Universal Declaration of Human Rights* and other solemn

undertakings, international and national, which Canada honours.

(2) This Act does not affect rights pertaining to aboriginal peoples established by the *Constitution of Canada* or by a land claims agreement.  
*R.S., Supp., c.11, s.1.*

### **Multi-cultural heritage**

**2** This Act shall be interpreted in a manner consistent with the preservation and enhancement of the multi-cultural heritage of the residents of the Yukon.  
*R.S., Supp., c.11, s.2.*

## **PART 1**

### **BILL OF RIGHTS**

#### **Right to freedom of religion and of conscience**

**3** Every individual and every group shall, in accordance with the law, enjoy the right to freedom of religion, conscience, opinion, and belief.  
*R.S., Supp., c.11, s.3.*

#### **Right to freedom of expression**

**4** Every individual and every group shall, in accordance with the law, enjoy the right to freedom of expression, including freedom of the press and other media of communication.  
*R.S., Supp., c.11, s.4.*

#### **Right to freedom of assembly and of association**

**5** Every individual and every group

shall, in accordance with the law, enjoy the right to peaceable assembly with others and the right to form with others associations of any character.

*R.S., Supp., c.11, s.5.*

#### **Right to enjoyment and disposition of property**

**6** Every individual has a right to the peaceful enjoyment and free disposition of their property, except to the extent provided by law, and no one shall be deprived of that right except with just compensation. *R.S., Supp., c.11, s.5.1.*

## **PART 2**

### **DISCRIMINATORY PRACTICES**

#### **Prohibited grounds**

**7** It is discrimination to treat any individual or group unfavourably on any of the following grounds

- a) ancestry, including colour and race;
- b) national origin;
- c) ethnic or linguistic background or origin;
- d) religion or creed, or religious belief, religious association, or religious activity;
- e) age;
- f) sex, including pregnancy, and pregnancy related conditions;
- g) sexual orientation;
- h) physical or mental disability;
- i) criminal charges or criminal records;
- j) political belief, political association, or political activity;
- k) marital or family status;
- l) source of income;
- m) actual or presumed association with other individuals or groups whose identity or membership is determined by any of the grounds listed in paragraphs a) to l). *S.Y. 1998, c.11, s.1 and 2; R.S., Supp., c.11, s.6.*

## **Duty to provide for special needs**

**8(1)** Every person has a responsibility to make reasonable provisions in connection with employment, accommodations, and services for the special needs of others if those special needs arise from physical disability, but this duty does not exist if making the provisions would result in undue hardship.

(2) For the purposes of subsection (1) "undue hardship" shall be determined by balancing the advantages of the provisions by reference to factors such as

- a) safety;
- b) disruption to the public;
- c) effect on contractual obligations;
- d) financial cost;
- e) business efficiency.

(3) This Act does not apply to structures which at the commencement of this Act were existing and complied with the applicable requirements of the *Building Standards Act* and regulations under the Act. *R.S., Supp., c.11, s.7.*

## **Prohibited discrimination**

**9** No person shall discriminate

- a) when offering or providing services, goods, or facilities to the public;
- b) in connection with any aspect of employment or application for employment;
- c) in connection with any aspect of membership in or representation by any trade union, trade association, occupational associations, or professional association;
- d) in connection with any aspect of the occupancy, possession, lease, or sale of property offered to the public;
- e) in the negotiation or performance of any contract that is offered to or for which offers are invited from the public. *R.S., Supp., c.11, s.8.*

## **Reasonable cause**

**10** It is not discrimination if treatment is based on

- a) reasonable requirements or qualifications for the employment;
- b) a criminal record or criminal charges relevant to the employment;
- c) sex, so as to respect the privacy of the people to whom accommodations or a service or facility is offered; or

- d) other factors establishing reasonable cause for the discrimination. *R.S. Supp., c. 11, s. 9.*

## **Exemptions**

11(1) It is not discrimination for a religious, charitable, educational, social, cultural, or athletic organization to give preference to its members or to people the organization exists to serve.

(2) It is not discrimination for individuals to give preference to members of their family.

(3) Section 9 does not apply to

(a) the employment of a person to provide services in a private home or in any exclusively religious, charitable, educational, social, cultural or athletic organization;

(b) the choice by an occupant of a private home of a boarder or tenant to occupy part of the home. *R.S., Supp., c. 11, s. 10.*

## **Systemic discrimination**

**12** Any conduct that results in discrimination is discrimination. *R.S., Supp., c. 11, s. 11.*

## **Special programs and affirmative action**

**13(1)** Special programs and affirmative action programs are not discrimination.

(2) Special programs are programs designed to prevent disadvantages that are likely to be suffered by any group identified by reference to a prohibited ground of discrimination.

(3) Affirmative action programs are programs designed to reduce disadvantages resulting from discrimination suffered by a group identified by reference to a prohibited ground of discrimination. *R.S., Supp., c. 11, s. 12.*

## **Harassment**

**14(1)** No person shall

(a) harass any individual or group by reference to a prohibited ground of discrimination;

(b) retaliate or threaten to retaliate against an individual who objects to the harassment.

(2) In subsection (1), "harass" means to engage in a course of vexatious conduct or to make a demand or a sexual solicitation or advance that one knows or ought reasonably to know is unwelcome. *R.S., Supp., c.11, s.13*

### **Equal pay for work of equal value**

**15**(1) This section applies only to the Government of the Yukon and municipalities and their corporations, boards, and commissions.

(2) It is discrimination for an employer to establish or maintain a difference in wages between employees who are performing work of equal value, if the difference is based on any of the prohibited grounds of discrimination.

(3) In assessing the value of the work performed the criterion to be applied is the composite of the skill, effort, and responsibility required and the working conditions.

(4) For the purposes of this section, "wages" means any form of payment for work performed by an individual, and includes salaries, commissions, vacation pay, dismissal wages, bonuses, value for board, rent housing, lodging, payments in kind, employer contributions to pension funds or plans, employer contributions to long-term disability plans, employer contributions to any forms of health insurance plans, and any other advantage received directly or indirectly from the individual's employer.

(5) An employer shall not reduce wages in order to comply with this section. *R.S., Supp., c.11, s.14.*

## **PART 3**

### **YUKON HUMAN RIGHTS COMMISSION**

#### **Human Rights Commission**

**16**(1) There shall be a Yukon Human Rights Commission accountable to the Legislature and the commission shall

(a) promote the principle that every individual is free and equal in dignity and rights;

(b) promote the principle that cultural diversity is a fundamental human value and a basic human right;

- (c) promote education and research designed to eliminate discrimination;
  - (d) promote a settlement of complaints in accordance with the objects of this Act by agreement of all parties;
  - (e) cause complaints which are not settled by agreement to be adjudicated, and at the adjudication adopt the position which in the opinion of the commission best promotes the objects of this Act.
- (2) The commission shall conduct education and research on the principle of equal pay for work of equal value in the private sector. *R.S., Supp., c.11, s.15.*

### **Appointment of commission**

- 17**(1) The commission shall consist of a minimum of three and a maximum of five members who shall be appointed for a term of three years by the Legislature.
- (2) A member of the commission may only be removed from office by resolution of the Legislature. *R.S., Supp., c.11, s.16.*

### **Annual report of the commission**

**18** In each financial year the commission shall deliver to the Speaker of the Legislature a report about the administration of this Act. The report shall not publish any names of individuals or businesses in which a complaint was dismissed or has not yet been dealt with. *R.S., Supp., c.11, s.17.*

### **Director of Human Rights**

- 19** There shall be a Director of Human Rights responsible to the commission for
- (a) ensuring that complaints are dealt with in accordance with this Act;
  - (b) carrying out, in accordance with the commission's policies and directives, the administration of this Act. *R.S., Supp., c.11, s.18.*

## **PART 4**

### **COMPLAINTS**

#### **Complaints**

**20(1)** Any person having reasonable grounds for believing that there has been a contravention of this Act against them may complaint to the commission who shall investigate the complaint unless

- (a) the complaint is beyond the jurisdiction of the commission;
- (b) the complaint is frivolous or vexatious;
- (c) the complainant asks that the investigation be stopped;
- (d) the commission asks a board of adjudication to decide the complaint without investigation;
- (e) the commission asks the Director of Human Rights to try to settle the complaint on terms agreed to by the parties prior to or during investigation;
- (f) the complainant abandons the complaint or fails to cooperate with the investigation;
- (g) the complainant at any time prior to the conclusion of the investigation declines a settlement offer that the commission considers fair and reasonable;
- (h) the complainant has not exhausted grievance or review procedures which are otherwise reasonably available or procedures provided for under another Act; or
- (i) the substance of the complaint has already been dealt with in another proceeding.

(2) A complaint must be made within 18 months of the alleged contravention or of the last instance of an alleged continuing contravention.

(3) Despite subsection (2), the commission may investigate a complaint made after 18 months if the commission is satisfied that

- (a) the delay in making the complaint was incurred in good faith; and
- (b) no substantial prejudice will result to any person because of the delay.

### **Disposition of complaints by commission**

**21** After investigation, the commission shall

- (a) dismiss the complaint; or

- (b) try to settle the complaint on terms agreed to by the parties; or
- (c) ask a board of adjudication to decide the complaint. *R.S., Supp., c.11, s.20.*

### **Panel of adjudicators**

**22(1)** There shall be a panel of adjudicators to be called on as required to adjudicate complaints.

(2) The panel of adjudicators shall consist of not less than three members, one of whom shall be designated Chief Adjudicator, who shall be appointed for a term of three years by the Legislature.

(3) A member of the panel may only be removed from the panel by resolution of the Legislature.

(4) When the commission asks that a complaint be adjudicated, the Chief Adjudicator shall establish a board of adjudication consisting of members of the panel of adjudicators.

(5) A board of adjudication established by the Chief Adjudicator shall consist of three members unless the Chief Adjudicator determines that circumstances warrant a smaller or larger board.

(6) A board of adjudication may consist of only one member if so determined by the Chief Adjudicator.

(7) The Chief Adjudicator shall be a member of each board of adjudication unless unable to act, in which case the Chief Adjudicator may designate another member to chair that board of adjudication.

(8) The panel of adjudicators shall be accountable to the Legislature and the Chief Adjudicator shall submit to the Speaker of the Legislature in each financial year a report of its activities. The report shall not publish any names of individuals or businesses in which a complaint was dismissed or which has not yet been dealt with.

### **Fundamental justice**

**23** The board of adjudication shall conduct its hearings in accordance with the principles of fundamental justice and may exercise all the powers of a board appointed under the *Public Inquiries Act*. *R.S., Supp., c.11, s.22.*

### **If complaint established**

**24(1)** If the complaint is proven on the balance of probabilities the board of adjudication may order the party who discriminated to

- (a) stop the discrimination;
- (b) rectify any condition that causes the discrimination;
- (c) pay damages for any financial loss suffered as a result of the discrimination;
- (d) pay damages for injury to dignity, feelings, or self-respect;
- (e) pay exemplary damages if the contravention was done maliciously;
- (f) pay costs.

(2) No order made under this section shall contain a term

- (a) requiring an individual to be removed from employment if the individual accepted the position in good faith; or
- (b) requiring an occupant of a dwelling to leave if the occupant obtained possession of the dwelling in good faith. *R.S., Supp., c.11, s.23.*

### **Costs of adjudication**

**25** If the board of adjudication concludes that the complaint was frivolous or vexatious or that the proceedings have been frivolously or vexatiously prolonged the board may order the commission to pay to the respondent

- (a) part or all of the respondent's costs of defending against the complaint; and
- (b) damages for injury to the respondent's reputation. *R.S., Supp., c.11, s.24.*

### **False information – costs**

**26** If the board of adjudication concludes that the complaint was based on information that the complainant knew to be false the board may order the complainant to pay to the respondent

- (a) part or all of the respondent's costs of defending against the complaint; and
- (b) damages for injury to the respondent's reputation. *R.S., Supp., c.11, s.24.1.*

### **Enforcement of adjudication order by court**

**27** An order of the board of adjudication may be filed in the Supreme Court and it shall then be enforceable as an order of the Supreme Court. *R.S., Supp., c.11, s.25.*

## **Appeals**

**28(1)** Any party to a proceeding before a board of adjudication may appeal final decisions of the board to the Supreme Court by filing a notice of appeal with the court within 30 days after the order of the board is pronounced.

(2) The procedure for the appeal shall be the same as for an appeal in the Court of Appeal.

(3) An appeal under this section may be made on questions of law and the court may affirm or set aside the order of the board and direct the board to conduct a new hearing.

(4) The only proceeding that may be taken to set aside or vary decisions of the board is the right of appeal given by this Act. *R.S., Supp., c.11, s.26.*

## **PART 5**

### **OFFENCES**

#### **Obstruction**

**29** Every person who willfully obstructs or interferes with any person acting under the authority of this Act commits an offence. *R.S., Supp., c.11, s.27.*

#### **Retaliation**

**30** It is an offence for a person to retaliate or threaten to retaliate against any other person on the ground that the other person has done or proposes to do anything this Act permits or obliges them to do. *R.S., Supp., c.11, s.28.*

#### **False reports**

**31** Any person who reports to the commission information that the person knows to be false commits an offence. *R.S., Supp., c.11, s.28.1.*

#### **Penalties**

**32** A person who commits an offence under section 29, 30, or 31 is liable on summary conviction to a fine of up to \$2,000. *R.S., Supp., c.11, s.29.*

## **PART 6**

### **MISCELLANEOUS**

#### **Interim injunction**

**33** If a complaint has been made to the commission or a prosecution has been commenced, a judge of the Supreme Court may grant a temporary injunction restraining any conduct alleged to be in contravention of this Act, or requiring the respondent or accused to comply with this Act until the complaint proceedings or prosecution have been completed. *R.S., Supp., c.11, s.30.*

#### **Disclosure**

**34(1)** If a judge of the Supreme Court is satisfied that a request for disclosure of a document has been refused and that there are reasonable grounds to believe that the document is relevant to the investigation of a complaint, the judge may order the person who has the document to produce it for inspection and copying by the commission's investigator.

(2) Personal information under the control of the commission shall not, without consent of the individual to whom it relates, be disclosed or be used except

(a) in proceedings under this Act or for any other purpose for which the commission obtained the information or a purpose consistent with that purpose; or

(b) in accordance with an order or rules of procedure of a court or other adjudicative tribunal. *R.S., Supp., c.11, s.31.*

#### **Acts of employees**

**35** Employers are responsible for the discriminatory conduct of their employees unless it is established that the employer did not consent to the conduct and took care to prevent the conduct or, after learning of the conduct, tried to rectify the situation. *R.S., Supp., c.11, s.32.*

#### **Regulations**

**36** After consultations with the commission, the Commissioner in Executive Council may make regulations

(a) establishing the procedures of the commission and boards of adjudication;

(b) regarding the hiring of people by the commission and terms and conditions of their employment or service;

(c) prescribing remuneration and expenses that may be paid. *R.S., Supp., c.11, s.33.*

## **Interpretation**

**37** In this Act,

“mental disability” means any mental or psychological disorder such as organic brain syndrome, emotional or mental illness, or learning disability;

“person” includes a partnership, an unincorporated organization or association, and a trade union;

“physical disability” means any degree of physical disability, infirmity, malformation, or disfigurement that is caused by bodily injury, birth defect or illness and includes epilepsy, any degree of paralysis, amputation, lack of physical coordination, blindness or visual impediment, deafness or hearing impediment, muteness or speech impediment, and physical reliance on a service animal or on a wheelchair or other remedial appliance or device;

## **Act binds Government of the Yukon**

**38** This Act binds the Government of the Yukon and its corporations, boards, and commissions. *R.S., Supp., c.11, s.35.*

## **Paramountcy**

**39** This Act supersedes every other Act, whether enacted before or after this Act, unless it is expressly declared by the other Act that it shall supersede this Act. *R.S., Supp., c.11, s.36.*