



The Manitoba Human Rights Code by Doug Paterson, Q.C.

Both Canada and the Province of Manitoba have Acts and Regulations governing human rights. These Acts are generally given priority treatment over all the other Acts of Canada and Manitoba. In other words, if an Act conflicts with the applicable human rights legislation, the human rights one will govern.

This column deals with the Manitoba Human Rights Code. Its preamble is very lofty and high-minded in detailing how our legislators consider human rights to be of supreme importance in Canada, Manitoba and indeed the world. For those interested in the preamble and the Code, and if you are online, search “Laws of Manitoba” and hit “Continuing Consolidation”, hit “H” and then the Code itself.

The Manitoba Human Rights Code is mostly complaint-driven but the Human Rights Commission can move to enforce the Act and prevent human rights abuse. It can even apply for an injunction in the Court of Queens Bench if need be.

The job of the Human Rights

commission is to promote the freedom, dignity, and equality rights of people, to further equality of opportunity and equality before the law, to educate people about these, to promote the goals of the Code.

The Human Rights Commission employs an Executive-Director. Its main job is to receive complaints, and have them investigated, or settled, or adjudicated through its adjudication panels or prosecuted for Code violations.

“Discrimination” is defined as differential treatment of an individual or group (or perceived membership in a group) or in failing to make reasonable accommodation of an individual or group in relation to ancestry, race, color, nationality, ethnicity, religion or creed, age, sex, pregnancy, gender issues, sexual orientation, marital issues, income source, political issues, physical or mental issues. Of course, systemic discrimination is prohibited.

If an employee or agent breaches the Code while at

work, that person is liable as well as the employer, unless the employee or agent did not consent and took all reasonable steps to prevent the breach and afterwards took all reasonable steps to reduce the harm caused by the breach. You can well imagine some examples.

The Code does allow positive discrimination as it were in that one can make reasonable accommodation for those with special needs and so called “affirmative action” programs are allowed to promote the goals of the Code.

Discrimination is not allowed in any public service or facility, unless good and reasonable cause exists. No hotelier for example would be blamed for refusing a hotel guest known to be hotly chased by the police. Discrimination may sometimes be allowed by employers, if there are valid and reasonable qualifications needed as a pre-condition to the job. So, a non-swimmer applying for a life-guard job cannot yell discrimination. Only if such pre-conditions exist can they be advertised and used in pre-

screening applicants.

It is worth noting that for personal services in a private residence, an employer can discriminate but only on issues really touching on fostering or maintaining a desired environment in a residence.

Discrimination in contracts and rental of real property is not allowed, unless good and reasonable cause exists. So it makes sense to advertise only for pizza delivery people who have a car. Also, a commercial landlord could likely refuse an offer to lease from someone who is still in the bankruptcy process and not discharged yet.

An “occupier of a residence”, or “owner of a duplex” can discriminate when choosing a border or roomer or the occupier of the second duplex unit if the owner is in the first one.

Of course a person cannot harass anyone to which the Code applies, nor take reprisals against a person involved in a process under the Code.

Anyone can complain about a breach of the Code, but the victim must consent if he/she is

not the complainant. A six month time limit exists to register complaints.

During a complaint investigation, the Executive-Director may demand access to wherever documents are kept and inspect them. If denied, the Executive-Director can get a court order and ask the police to enforce it.

Every complaint hearing by the Adjudication Panel is open to the public, unless sufficient reason exists to close it.

If the Code were breached, the adjudicator may order compliance, compensation of costs, damages, exemplary damages, and order affirmative action programs. The order can be enforced as an Order of the Court of Queens Bench. The Orders are also binding on the Crown.