

EMPLOYMENT ADVERTISING BY CHARITIES AND NOT-FOR-PROFITS: ISSUES IN HUMAN RIGHTS LAW

By Suzanne E. White, B.A., LL.B. and Mervyn F. White, B.A., LL.B

A. INTRODUCTION

Many charitable and not-for-profit organizations are actively involved in employment advertising to attract key personnel to carry out the organization's programs and activities.¹ Since these organizations often serve persons who fall into protected groups under human rights legislation, such as persons who have historically experienced discrimination due to age, sex, race, gender, religious beliefs, and creed, there is a tendency to hire persons having similar backgrounds and/or experiences to the groups that they aim to serve. However, charities and not-for-profit organizations must take care to avoid infringing human rights legislation and exposing themselves to human rights complaints in their efforts to hire appropriate employees.

The various federal, provincial and territorial human rights statutes across Canada operate generally in the same manner, in effect prohibiting the dissemination of discriminatory material including by way of employment advertising. Notwithstanding the prohibition of discriminatory employment advertising, each statute provides exemptions that would allow charities and not-for-profit organizations to engage in what would otherwise be considered discriminatory hiring practices, but which practices are reasonably necessary for the organization to further its mandate.

¹ See the Human Resources Report in "Cornerstones of the Community: Highlights of the National Survey of Nonprofit and Voluntary Organizations," Statistics Canada, 2004, available at <http://www.statcan.ca/english/freepub/61-533-XIE/61-533-XIE2004001.htm>.

As each of the fourteen federal, provincial and territorial jurisdictions in Canada has its own human rights legislation, it would be impossible to review every statute in detail within the confines of this *Charity Law Bulletin* (“Bulletin”). As such, this Bulletin summarizes human rights legislation in Ontario, British Columbia and federally that affects employment advertising for charities and not-for-profit organizations, and the resulting responsibilities and implications for these groups. However, where there are divergences in the human rights framework as set out in other provincial and territorial jurisdictions, references will be made to the different exemptions in the statutes, excerpts of which are set out in Schedule “A” to this Bulletin for ease of reference.

In reviewing this topic it is important to note that exemptions of application under human rights legislation normally fall within three separate categories;

- a) Exemptions for charities and non-profits;
- b) Exemptions for all entities with bona fide occupational requirements; and
- c) Exemptions for all entities advancing employment equity programs.

B. EMPLOYMENT ADVERTISING IN ONTARIO

In Ontario, discrimination in advertising is prohibited under sections 13 and 29 of the *Human Rights Code* (Ontario), which reads as follows:²

Employment

5. (1) Every person has a right to equal treatment with respect to employment without discrimination because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, age, record of offences, marital status, same-sex partnership status, family status or disability. R.S.O. 1990, c. H.19, s. 5 (1); 1999, c. 6, s. 28 (5); 2001, c. 32, s. 27 (1).

Announced intention to discriminate

13. (1) A right under Part I is infringed by a person who publishes or displays before the public or causes the publication or display before the public of any notice, sign, symbol, emblem, or other similar representation that indicates the intention of the person to infringe a right under Part I or that is intended by the person to incite the infringement of a right under Part I. R.S.O. 1990, c. H.19, s. 13 (1).

² R.S.O. 1990, c.H.19 [hereinafter *Human Rights Code* (Ontario)].

Opinion

(2) Subsection (1) shall not interfere with freedom of expression of opinion. R.S.O. 1990, c. H.19, s. 13 (2).

Employment

23. (1) The right under section 5 to equal treatment with respect to employment is infringed where an invitation to apply for employment or an advertisement in connection with employment is published or displayed that directly or indirectly classifies or indicates qualifications by a prohibited ground of discrimination. R.S.O. 1990, c. H.19, s. 23 (1).

It should be noted that section 14 (1) of the *Human Rights Code* (Ontario) permits any entity to engage in special programs to advance equal opportunity, such as preferentially hiring women in a male dominated field. As well, section 24(1)(a) of the *Human Rights Code* (Ontario) permits religious, philanthropic, educational, fraternal or social institutions or organizations to give preference to similarly identifiable persons. These sections read as follows:

Special programs

14. (1) A right under Part I is not infringed by the implementation of a special program designed to relieve hardship or economic disadvantage or to assist disadvantaged persons or groups to achieve or attempt to achieve equal opportunity or that is likely to contribute to the elimination of the infringement of rights under Part I. R.S.O. 1990, c. H.19, s. 14 (1).

Special employment

24. (1) The right under section 5 to equal treatment with respect to employment is not infringed where,
(a) a religious, philanthropic, educational, fraternal or social institution or organization that is primarily engaged in serving the interests of persons identified by their race, ancestry, place of origin, colour, ethnic origin, creed, sex, age, marital status, same-sex partnership status or disability employs only, or gives preference in employment to, persons similarly identified if the qualification is a reasonable and bona fide qualification because of the nature of the employment;

C. EMPLOYMENT ADVERTISING IN BRITISH COLUMBIA

In British Columbia, discriminatory advertising is prohibited by sections 7 and 11 of the British Columbia *Human Rights Code*³:

Discriminatory publication

7 (1) A person must not publish, issue or display, or cause to be published, issued or displayed, any statement, publication, notice, sign, symbol, emblem or other representation that

(a) indicates discrimination or an intention to discriminate against a person or a group or class of persons, or

(b) is likely to expose a person or a group or class of persons to hatred or contempt because of the race, colour, ancestry, place of origin, religion, marital status, family status, physical or mental disability, sex, sexual orientation or age of that person or that group or class of persons.

(2) Subsection (1) does not apply to a private communication or to a communication intended to be private.

Discrimination in employment advertisements

11 A person must not publish or cause to be published an advertisement in connection with employment or prospective employment that expresses a limitation, specification or preference as to race, colour, ancestry, place of origin, political belief, religion, marital status, family status, physical or mental disability, sex, sexual orientation or age unless the limitation, specification or preference is based on a bona fide occupational requirement.

As in Ontario, the B.C. *Human Rights Code* provides an exemption for charitable and non-profit organizations, under section 41:

Exemptions

41 If a charitable, philanthropic, educational, fraternal, religious or social organization or corporation that is not operated for profit has as a primary purpose the promotion of the interests and welfare of an identifiable group or class of persons characterized by a physical or mental disability or by a common race, religion, age, sex, marital status, political belief, colour, ancestry or place of origin, that organization or corporation must not be considered to be contravening this Code because it is granting a preference to members of the identifiable group or class of persons.

³ R.S.B.C. 1996, c.210 (hereinafter “B.C. *Human Rights Code*”).

This exemption is not specific to employment advertising, and could also apply to other situations such as membership qualifications. Since it is not clear cut, it is advisable to obtain a written exemption from the B.C. Human Rights Tribunal, as described below.

Special programs

42 (1) It is not discrimination or a contravention of this Code to plan, advertise, adopt or implement an employment equity program that

(a) has as its objective the amelioration of conditions of disadvantaged individuals or groups who are disadvantaged because of race, colour, ancestry, place of origin, physical or mental disability, or sex, and

(b) achieves or is reasonably likely to achieve that objective.

(2) [Repealed 2002-62-23.]

(3) On application by any person, with or without notice to any other person, the chair, or a member or panel designated by the chair, may approve any program or activity that has as its objective the amelioration of conditions of disadvantaged individuals or groups.

(4) Any program or activity approved under subsection (3) is deemed not to be in contravention of this Code.

In researching this topic, the authors were referred by the B.C. Human Rights Tribunal, which accepts and adjudicates formal human rights complaints in British Columbia, to make inquiries regarding the substance of human rights complaints to the B.C. Human Rights Coalition, a charitable community based organization that provides extensive human rights information to the public. Charitable and not-for-profit organizations seeking an exemption from section 11 of the B.C. *Human Rights Code* are advised by the B.C. Human Rights Coalition, to write to the Chair of the B.C. Human Rights Tribunal, in order to obtain a documented written exemption before publishing employment advertisements. Written exemptions from the B.C. Human Rights Tribunal can provide evidence that the advertisements are not discriminatory, in the face of a human rights complaint.

D. EMPLOYMENT ADVERTISING UNDER THE *CANADIAN HUMAN RIGHTS ACT*

The federal *Canadian Human Rights Act*⁴ protects Canadian residents from discrimination by federally regulated employers or service providers, such as: federal departments, agencies and Crown corporations, chartered banks, airlines, television and radio stations, inter-provincial communications and telephone

⁴ R.S. 1985, c. H-6.

companies, buses and railways that travel between provinces, First Nations, and other federally regulated industries, such as certain mining operations. Provincial and territorial human rights legislation prohibit discrimination in the applicable jurisdictions.

Prohibited grounds of discrimination under the *Canadian Human Rights Act* include:

Prohibited grounds of discrimination

3. (1) For all purposes of this Act, the prohibited grounds of discrimination are race, national or ethnic origin, colour, religion, age, sex, sexual orientation, marital status, family status, disability and conviction for which a pardon has been granted.

Idem

(2) Where the ground of discrimination is pregnancy or child-birth, the discrimination shall be deemed to be on the ground of sex.

1. Employment Advertising on the Internet

In a Canada-wide context, recruitment ads that are in print would be subject to the human rights legislation that governs the particular jurisdiction where the print advertisement is distributed. Any electronic advertisements on the Internet would, however, be subject to the *Canadian Human Rights Act*, which is administered by the Canadian Human Rights Commission, which tries to resolve formal federal human rights complaints before possibly requesting that the Canadian Human Rights Tribunal adjudicates the case.

In *Citron v. Zundel*,⁵ a case focusing on hate messages being spread telephonically, the Canadian Human Rights Tribunal held that:

Finally, an interpretation of "telephonically" that refers back to the underlying system of transmission also respects the legislative authority of the federal Parliament, and defines telephonic by reference to the limits of Parliament's constitutional authority.⁶

In our opinion, changes in technology that alter and expand the means of telephonic communication cannot diminish the importance of the purpose found in s. 13(1) to

⁵ [2002] C.H.R.D. No. 1 [hereinafter *Citron*].

⁶ *Ibid* at 87.

prevent messages of hatred and contempt directed at identifiable groups that undermine the dignity and self-worth of those individuals. The Internet, as a technology, is capable of purveying and transmitting the same kind of hate messages restrained under s. 13(1) in *Taylor*.⁷

In our view, the use of s. 13(1) of the Act to deal with hateful telephonic messages on the Internet remains a restriction on the Respondent's freedom of speech which is reasonable and justified in a free and democratic society.⁸

As such, only the *Canadian Human Rights Act* has jurisdiction over human rights complaints concerning the Internet.

2. Bona Fide Occupational Requirement

While some Canadian jurisdictions provide very specific exemption provisions that set out reasons for which particular entities may prefer members of identifiable groups and escape exposure to a human rights complaint other human rights legislation simply states that there must be a *bona fide occupational requirement* in order for the entity in question to prefer certain individuals in its hiring practices. Some statutes contain references to both exemptions for charitable and not-for-profit organizations, as well as bona fide occupational requirements⁹. The *bona fide occupational requirement* exemption provided under the *Canadian Human Rights Act* is set out in section 15:

Exceptions

15. (1) It is not a discriminatory practice if
(a) any refusal, exclusion, expulsion, suspension, limitation, specification or preference in relation to any employment is established by an employer to be based on a bona fide occupational requirement;

⁷ *Ibid* at 233.

⁸ *Ibid* at 242.

⁹ See Schedule "A", specifically *Canadian Human Rights Act*, R.S. 1985, c.H-6, s. 15 (1)(a); B.C. *Human Rights Code*, R.S.B.C. 1996, c.210, s. 41; *Human Rights, Citizenship and Multiculturalism Act* (Alberta), R.S.A. 2000, c.H-14, s. 11; *Saskatchewan Human Rights Code*, S.C. 1979, c.S-24.1, as amended by the Statutes of Saskatchewan, 1980-81, c.41 and 81; 1989-90, c.23; 1989-90, 1993, c.55 and 61; and 2000, c. 26, ss. 16 (7) and (10); *Human Rights Code* (Manitoba), C.C.S.M. c.H.175, ss. 14(3) and (4); *Human Rights Code* (Ontario), R.S.O. 1990, c.H-19, s. 24 (1)(a); *Quebec Charter of Rights and Freedoms*, R.S.Q. c.C-12, s. 20; *Human Rights Act* (New Brunswick), R.S.N.B. 1985, c.H-11, s. 5(2) and s. 6(3); *Human Rights Act* (Nova Scotia), R.S.N.S. 1989, c.214, s.6(c)(ii) and (iii); *Human Rights Act* (Prince Edward Island), R.S.P.E.I. 1988, Cap. H-12, s. 6(4)(c) and s. 14(2); *Human Rights Code* (Newfoundland), R.S.N.L. 1990, c.H-14, s. 9(1) and 9(6); *Human Right Act* (Yukon), R.S.Y. 2002, c.116, s 10 and s. 11(1); *Human Rights Act* (Northwest Territories), S.N.W.T. 2002, c.18, s. 67(1); *Fair Practices Act*, R.S.N.W.T. 1988, c.F-2, s. 2(1) and s.2(3).

Accommodation of needs

(2) For any practice mentioned in paragraph (1)(a) to be considered to be based on a bona fide occupational requirement and for any practice mentioned in paragraph (1)(g) to be considered to have a bona fide justification, it must be established that accommodation of the needs of an individual or a class of individuals affected would impose undue hardship on the person who would have to accommodate those needs, considering health, safety and cost.

A bona fide occupational requirement is determined through a two-pronged test derived from the Supreme Court of Canada case *Caldwell v. St. Thomas Aquinas High School*,¹⁰ which states that:

(1) To be a bona fide occupational qualification and requirement a limitation, such as a mandatory retirement at a fixed age, must be imposed honestly, in good faith, and in the sincerely held belief that such limitation is imposed in the interests of the adequate performance of the work involved with all reasonable dispatch, safety and economy, and not for ulterior or extraneous reasons aimed at objectives which could defeat the purpose of the Code.

(2) In addition it must be related in an objective sense to the performance of the employment concerned, in that it is reasonably necessary to assure the efficient and economical performance of the job without endangering the employee, his fellow employees and the general public.¹¹

As such, exemptions based on religion, sex or ethnicity or any other enumerated protected ground would have to meet the above test in order to be an acceptable bona fide occupational requirement under the *Canadian Human Rights Act*. Advertisements posted by charities and not-for-profit organizations should be based on solid reasoning as to why this particular job requirement is justifiable. For example, if a cultural organization posted an employment advertisement in which it required that the applicant speak a certain language, this would appear to be discrimination based on ethnic origin. However, under s. 15 (2) of the *Canadian Human Rights Act* (above), a cultural organization could argue that accommodating a person who could not speak that particular language would present undue financial hardship on the organization, as it would need an interpreter for the applicant to speak to the group members who do not speak English. Moreover, cultural organizations would want to foster an open, comfortable environment for its members, which may be hindered if particular employees, such as

¹⁰ [1982] 1 S.C.R. 202 [hereinafter *Caldwell*].

¹¹ *Ibid* at p. 11.

the executive director, have little or no knowledge or affinity with the group's cultural practices and norms.

E. RESPONSIBILITY OF ADVERTISING MEDIUMS

Charities and not-for-profit organizations must also be aware that advertising mediums, such as newspapers and electronic job banks that post employment ads for charities and not-for-profits also have obligations to comply with applicable human rights legislation. The *Owens v. Saskatchewan*¹² case appears to be the most relevant Canadian court decision concerning advertising and human rights law. In *Owens*, a private citizen placed advertisements in the *Saskatoon Star-Phoenix* newspaper for the sale of bumper stickers that made reference to Biblical passages condemning homosexuality. Three homosexual males filed human rights complaints against Owens and the newspaper. The newspaper was found to have violated the *Saskatchewan Human Rights Code* for publishing these advertisements, and did not appeal the decision. Owens was also found to have violated the *Saskatchewan Human Rights Code*, and a subsequent appeal was dismissed. The implications of the *Owens* decision are such that newspapers, at least in Saskatchewan, will not be able to avoid liability as merely passive publishers of discriminatory material. In addition, Owens' reliance on his freedom of expression was insufficient to protect against liability under the *Saskatchewan Human Rights Code*.

F. PENALTIES FOR CONTRAVENING HUMAN RIGHTS LEGISLATION

While most charities and not-for-profit organizations would likely be able to state a preference for a certain type of employee in its advertising as long as there is a bona fide occupational requirement that can be shown, contraventions of federal and provincial/territorial human rights legislation may still occur. If an organization, a women's centre for example, has a preference for female employees, but refuses to consider females of a particular ethnic origin, and ethnic origin is unrelated to the occupational requirement, the organization risks exposing itself to a myriad of penalties.

¹² [2002] S.J. No. 732 (Sask. Q.B.) [hereinafter *Owens*].

1. Ontario

Pursuant to section 41 (1) under the *Human Rights Code (Ontario)*, an infringing party may be ordered by the Human Rights Tribunal to do something that would achieve compliance with the *Human Rights Code (Ontario)*, and make financial restitution, including monetary compensation for loss arising out of the infringement. Where the infringement was wilful or reckless, a maximum of \$10 000.00 may be awarded for mental anguish. The Human Rights Tribunal may also levy a fine of up to \$25,000.00 where sections 9 and 33(11) or an order is contravened. Potential complainants should also take note that if a complaint is dismissed by the Human Rights Tribunal on the grounds that it was trivial or caused undue hardship on the respondent, the Human Right Commission can be ordered to pay costs to the respondent.

2. British Columbia

The British Columbia Human Rights Tribunal can order, pursuant to section 37 of the B.C. *Human Rights Code*, a number of actions to provide redress for an aggrieved party, including an order to cease the discriminatory behaviour, implementation of special programs to combat discriminatory acts, and financial compensation, among others.

3. Federal

Under section 45 of the *Canadian Human Rights Act*, infringing acts committed by an officer, official, employee or agent of a corporation, trade union, trade or occupational association, unincorporated association or employer's organization would be considered responsible for the actions of its officers, officials, employees or agents. Fines in amounts up to \$50 000.00 may also be levied.

G. IMPLICATIONS FOR CHARITIES AND NOT-FOR-PROFIT ORGANIZATIONS

While all pieces of federal, provincial, and territorial human rights legislation provide certain exemptions allowing for the dissemination of otherwise discriminatory material through advertising, in relation to the enumerated heads of discrimination set out in each statute, there are also exemptions that charities and not-for-profit organizations should be aware of that may permit giving preference to identifiable groups in hiring

practices. Although it may appear that ensuring conformity with applicable human rights legislation across Canada is an overwhelmingly daunting task, particularly for charities and not-for-profit organizations that either post a large number of employment ads, or operate in a number of provinces, most human rights legislation has the same protected grounds of discrimination, and as such, conformity to human rights legislation in one province would most likely conform in other provinces as well.

H. CONCLUDING COMMENTS

Charities and not-for-profit organizations should endeavor to adjust their current practices to avoid a worst case scenario, such as in the court decision of *Owens*. Due diligence in advertising could include creating a list all the enumerated protected grounds in all jurisdictions where the registered charity intends to post employment advertisements, and ensuring that these advertisements conform to the applicable human rights legislation's exemption. For additional protection, it is advisable for charities and not-for-profit organizations operating in British Columbia to obtain a written exemption from the chair of the British Columbia Human Rights Tribunal, in order to document that the entity's employment advertisements have been reviewed and fall under the exemption provision.

Main Office Location211 Broadway, P.O. Box 440
Orangeville, ON, Canada, L9W 1K4
Tel: (519) 942-0001
Fax: (519) 942-0300
Toll Free: 1-877-942-0001**National Meeting Locations****Toronto** (416) 675-3766
Ottawa (613) 212-2213
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SCHEDULE "A"
HUMAN RIGHTS LEGISLATION ACROSS CANADA
EXEMPTION PROVISIONS

Provincial/Territorial Statute	Corresponding Exemption Provision
<p align="center">Canada</p> <p><i>Canadian Human Rights Act, R.S.</i> 1985, c. H-6</p>	<p>15. (1) It is not a discriminatory practice if</p> <p>(a) any refusal, exclusion, expulsion, suspension, limitation, specification or preference in relation to any employment is established by an employer to be based on a <i>bona fide</i> occupational requirement;</p> <p>(b) employment of an individual is refused or terminated because that individual has not reached the minimum age, or has reached the maximum age, that applies to that employment by law or under regulations, which may be made by the Governor in Council for the purposes of this paragraph;</p> <p>(c) an individual's employment is terminated because that individual has reached the normal age of retirement for employees working in positions similar to the position of that individual;</p> <p>(d) the terms and conditions of any pension fund or plan established by an employer, employee organization or employer organization provide for the compulsory vesting or locking-in of pension contributions at a fixed or determinable age in accordance with sections 17 and 18 of the <i>Pension Benefits Standards Act, 1985</i>;</p> <p>(e) an individual is discriminated against on a prohibited ground of discrimination in a manner that is prescribed by guidelines, issued by the Canadian Human Rights Commission pursuant to subsection 27(2), to be reasonable;</p> <p>(f) an employer, employee organization or employer organization grants a female employee special leave or benefits in connection with pregnancy or child-birth or grants employees special leave or benefits to assist them in the care of their children; or</p> <p>(g) in the circumstances described in section 5 or 6, an individual is denied any goods, services, facilities or accommodation or access thereto or occupancy of any commercial premises or residential accommodation or is a victim of any adverse differentiation and there is <i>bona fide</i> justification for that denial or differentiation.</p> <p>Accommodation of needs</p> <p>(2) For any practice mentioned in paragraph (1)(a) to be considered to be based on a <i>bona fide</i> occupational requirement and for any practice mentioned in</p>

Provincial/Territorial Statute	Corresponding Exemption Provision
	<p>paragraph (1)(g) to be considered to have a <i>bona fide</i> justification, it must be established that accommodation of the needs of an individual or a class of individuals affected would impose undue hardship on the person who would have to accommodate those needs, considering health, safety and cost.</p> <p>Regulations</p> <p>(3) The Governor in Council may make regulations prescribing standards for assessing undue hardship.</p> <p>Publication of proposed regulations</p> <p>(4) Each regulation that the Governor in Council proposes to make under subsection (3) shall be published in the <i>Canada Gazette</i> and a reasonable opportunity shall be given to interested persons to make representations in respect of it.</p> <p>Consultations</p> <p>(5) The Canadian Human Rights Commission shall conduct public consultations concerning any regulation proposed to be made by the Governor in Council under subsection (3) and shall file a report of the results of the consultations with the Minister within a reasonable time after the publication of the proposed regulation in the <i>Canada Gazette</i>.</p> <p>Exception</p> <p>(6) A proposed regulation need not be published more than once, whether or not it has been amended as a result of any representations.</p> <p>Making of regulations</p> <p>(7) The Governor in Council may proceed to make regulations under subsection (3) after six months have elapsed since the publication of the proposed regulations in the <i>Canada Gazette</i>, whether or not a report described in subsection (5) is filed.</p> <p>Application</p> <p>(8) This section applies in respect of a practice regardless of whether it results in direct discrimination or adverse effect discrimination.</p> <p>Universality of service for Canadian Forces</p> <p>(9) Subsection (2) is subject to the principle of universality of service under which members of the Canadian Forces must at all times and under any circumstances perform any functions that they may be required to perform.</p>

Provincial/Territorial Statute	Corresponding Exemption Provision
	<p>R.S., 1985, c. H-6, s. 15; R.S., 1985, c. 32 (2nd Supp.), s. 41; 1998, c. 9, ss. 10, 15.</p> <p><u>Special programs</u></p> <p>16. (1) It is not a discriminatory practice for a person to adopt or carry out a special program, plan or arrangement designed to prevent disadvantages that are likely to be suffered by, or to eliminate or reduce disadvantages that are suffered by, any group of individuals when those disadvantages would be based on or related to the prohibited grounds of discrimination, by improving opportunities respecting goods, services, facilities, accommodation or employment in relation to that group.</p> <p>Advice and assistance</p> <p>(2) The Canadian Human Rights Commission, may</p> <p>(a) make general recommendations concerning desirable objectives for special programs, plans or arrangements referred to in subsection (1); and</p> <p>(b) on application, give such advice and assistance with respect to the adoption or carrying out of a special program, plan or arrangement referred to in subsection (1) as will serve to aid in the achievement of the objectives the program, plan or arrangement was designed to achieve.</p> <p>Collection of information relating to prohibited grounds</p> <p>(3) It is not a discriminatory practice to collect information relating to a prohibited ground of discrimination if the information is intended to be used in adopting or carrying out a special program, plan or arrangement under subsection (1).</p> <p>R.S., 1985, c. H-6, s. 16; 1998, c. 9, s. 16.</p> <p><u>Plans to meet the needs of disabled persons</u></p> <p>17. (1) A person who proposes to implement a plan for adapting any services, facilities, premises, equipment or operations to meet the needs of persons arising from a disability may apply to the Canadian Human Rights Commission for approval of the plan.</p> <p>Approval of plan</p> <p>(2) The Commission may, by written notice to a person making an application pursuant to subsection (1), approve the plan if the Commission is satisfied that the plan is appropriate for meeting the needs of persons arising from a disability.</p>

Provincial/Territorial Statute	Corresponding Exemption Provision
	<p>Effect of approval of accommodation plan</p> <p>(3) Where any services, facilities, premises, equipment or operations are adapted in accordance with a plan approved under subsection (2), matters for which the plan provides do not constitute any basis for a complaint under Part III regarding discrimination based on any disability in respect of which the plan was approved.</p> <p>Notice when application not granted</p> <p>(4) When the Commission decides not to grant an application made pursuant to subsection (1), it shall send a written notice of its decision to the applicant setting out the reasons for its decision.</p> <p>1980-81-82-83, c. 143, s. 9.</p>
<p>British Columbia</p> <p><i>Human Rights Code,</i> R.S.B.C. 1996, c.210</p>	<p>Exemptions</p> <p>41 If a charitable, philanthropic, educational, fraternal, religious or social organization or corporation that is not operated for profit has as a primary purpose the promotion of the interests and welfare of an identifiable group or class of persons characterized by a physical or mental disability or by a common race, religion, age, sex, marital status, political belief, colour, ancestry or place of origin, that organization or corporation must not be considered to be contravening this Code because it is granting a preference to members of the identifiable group or class of persons.</p> <p>Special programs</p> <p>42 (1) It is not discrimination or a contravention of this Code to plan, advertise, adopt or implement an employment equity program that</p> <p>(a) has as its objective the amelioration of conditions of disadvantaged individuals or groups who are disadvantaged because of race, colour, ancestry, place of origin, physical or mental disability, or sex, and</p> <p>(b) achieves or is reasonably likely to achieve that objective.</p> <p>(2) [Repealed 2002-62-23.]</p> <p>(3) On application by any person, with or without notice to any other person, the chair, or a member or panel designated by the chair, may approve any program or activity that has as its objective the amelioration of conditions of disadvantaged individuals or groups.</p> <p>(4) Any program or activity approved under subsection (3) is deemed not to be in contravention of this Code.</p>

Provincial/Territorial Statute	Corresponding Exemption Provision
<p style="text-align: center;">Alberta</p> <p style="text-align: center;"><i>Human Rights, Citizenship and Multiculturalism Act</i>, R.S.A. 2000, c.H-14</p>	<p>Reasonable and justifiable contravention</p> <p>11 A contravention of this Act shall be deemed not to have occurred if the person who is alleged to have contravened the Act shows that the alleged contravention was reasonable and justifiable in the circumstances.</p>
<p style="text-align: center;">Saskatchewan</p> <p><i>Saskatchewan Human Rights Code</i>, S.S. 1979, c.S-24.1) as amended by the Statutes of Saskatchewan, 1980-81, c.41 and 81; 1989-90, c.23; 1989-90, 1993, c.55 and 61; and 2000, c.26.</p>	<p>Discrimination prohibited in employment</p> <p>16(1) No employer shall refuse to employ or continue to employ or otherwise discriminate against any person or class of persons with respect to employment, or any term of employment, on the basis of a prohibited ground.</p> <p>(7) The provisions of this section relating to any discrimination, limitation, specification or preference for a position or employment based on sex, disability or age do not apply where sex, ability or age is a reasonable occupational qualification and requirement for the position or employment.</p> <p>(8) This section does not prohibit an employer from refusing to employ or refusing to continue to employ a person for reasons of any prohibited ground of discrimination where the employee is:</p> <p>(a) employed in a private home; or</p> <p>(b) living in the home of the employer.</p> <p>(9) The provisions of this section shall not be construed to prohibit distinctions in terms or conditions of employment where those distinctions are permitted by virtue of <i>The Labour Standards Act</i> or the regulations made pursuant to that Act.</p> <p>(10) This section does not prohibit an exclusively non-profit charitable, philanthropic, fraternal, religious, racial or social organization or corporation that is primarily engaged in serving the interests of persons identified by their race, creed, religion, colour, sex, sexual orientation, family status, marital status, disability, age, nationality, ancestry, place of origin or receipt of public assistance from employing only or giving preference in employment to persons similarly identified if the qualification is a reasonable and <i>bona fide</i> qualification because of the nature of the employment.</p> <p>(11) This section does not prohibit an employer from:</p> <p>(a) granting employment to, continuing to employ or advancing a person who is the parent, child or spouse of another employee of the employer where a reasonable and bona fide cause exists for the employer's action; or</p> <p>(b) refusing to employ, to continue to employ or to advance a person who is the parent, child or spouse of another employee of the employer where a reasonable and bona fide cause exists for the employer's refusal.</p> <p>1979, c.S-24.1, s.16; 1980-81, c.41, s.4; 1989-90, c.23, s.12; 1993, c.55, s.188; 1993, c.61, s.11;</p>
<p style="text-align: center;">Manitoba</p> <p style="text-align: center;"><i>Human Rights Code</i>, C.C.S.M. c.H.175</p>	<p>Affirmative action, etc. permitted</p> <p>11 Notwithstanding any other provision of this Code, it is not discrimination, a contravention of this Code, or an offence under this Code</p>

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	<p>(a) to make reasonable accommodation for the special needs of an individual or group, if those special needs are based upon any characteristic referred to in subsection 9(2); or</p> <p>(b) to plan, advertise, adopt or implement an affirmative action program or other special program that</p> <p style="padding-left: 40px;">(i) has as its object the amelioration of conditions of disadvantaged individuals or groups, including those who are disadvantaged because of any characteristic referred to in subsection 9(2), and</p> <p style="padding-left: 40px;">(ii) achieves or is reasonably likely to achieve that object.</p> <p>Reasonable accommodation required</p> <p>12 For the purpose of interpreting and applying sections 13 to 18, the right to discriminate where bona fide and reasonable cause exists for the discrimination, or where the discrimination is based upon bona fide and reasonable requirements or qualifications, does not extend to the failure to make reasonable accommodation within the meaning of clause 9(1)(d).</p> <p>Employment advertising</p> <p>14(3) No person shall publish, broadcast, circulate or display, or cause to be published, broadcast, circulated or displayed, any statement, symbol or other representation, written or oral, that indicates directly or indirectly that any characteristic referred to in subsection 9(2) is or may be a limitation, specification or preference for an employment or occupation, unless the limitation, specification or preference is based upon bona fide and reasonable requirements or qualifications for the employment or occupation.</p> <p>Pre-employment inquiries</p> <p>14(4) No person shall use or circulate any application form for an employment or occupation, or direct any written or oral inquiry to an applicant for an employment or occupation, that</p> <p style="padding-left: 40px;">(a) expresses directly or indirectly a limitation, specification or preference as to any characteristic referred to in subsection 9(2); or</p> <p style="padding-left: 40px;">(b) requires the applicant to furnish information concerning any characteristic referred to in subsection 9(2);</p> <p>unless the limitation, specification or preference or the requirement to furnish the information is based upon bona fide and reasonable requirements or qualifications for the employment or occupation.</p> <p>Discrimination by employment agencies, etc.</p> <p>14(5) No person who undertakes, with or without compensation, to</p> <p style="padding-left: 40px;">(a) obtain any other person for an employment or occupation with a third</p>

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	<p>person; or</p> <p>(b) obtain an employment or occupation for any other person; or</p> <p>(c) test, train or evaluate any other person for an employment or occupation; or</p> <p>(d) refer or recommend any other person for an employment or occupation; or</p> <p>(e) refer or recommend any other person for testing, training or evaluation for an employment or occupation;</p> <p>shall discriminate when doing so, unless the discrimination is based upon bona fide and reasonable requirements or qualifications for the employment or occupation.</p>
<p style="text-align: center;">Ontario</p> <p><i>Human Rights Code</i>, R.S.O. 1990, c.H-19</p>	<p>18. The rights under Part I to equal treatment with respect to services and facilities, with or without accommodation, are not infringed where membership or participation in a religious, philanthropic, educational, fraternal or social institution or organization that is primarily engaged in serving the interests of persons identified by a prohibited ground of discrimination is restricted to persons who are similarly identified. R.S.O. 1990, c. H.19, s. 18.</p> <p>Separate school rights preserved</p> <p>19. (1) This Act shall not be construed to adversely affect any right or privilege respecting separate schools enjoyed by separate school boards or their supporters under the <i>Constitution Act, 1867</i> and the <i>Education Act</i>. R.S.O. 1990, c. H.19, s. 19 (1).</p> <p>Duties of teachers</p> <p>(2) This Act does not apply to affect the application of the <i>Education Act</i> with respect to the duties of teachers. R.S.O. 1990, c. H.19, s. 19 (2).</p> <p>Restriction of facilities by sex</p> <p>20. (1) The right under section 1 to equal treatment with respect to services and facilities without discrimination because of sex is not infringed where the use of the services or facilities is restricted to persons of the same sex on the ground of public decency. R.S.O. 1990, c. H.19, s. 20 (1).</p> <p>Minimum drinking age</p> <p>(2) The right under section 1 to equal treatment with respect to services, goods and facilities without discrimination because of age is not infringed by the provisions of the <i>Liquor Licence Act</i> and the regulations under it relating to providing for and enforcing a minimum drinking age of nineteen years. R.S.O.</p>

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	<p>1990, c. H.19, s. 20 (2).</p> <p>Recreational clubs</p> <p>(3) The right under section 1 to equal treatment with respect to services and facilities is not infringed where a recreational club restricts or qualifies access to its services or facilities or gives preferences with respect to membership dues and other fees because of age, sex, marital status, same-sex partnership status or family status. R.S.O. 1990, c. H.19, s. 20 (3); 1999, c. 6, s. 28 (9).</p> <p>Special employment</p> <p>24. (1) The right under section 5 to equal treatment with respect to employment is not infringed where,</p> <p>(a) a religious, philanthropic, educational, fraternal or social institution or organization that is primarily engaged in serving the interests of persons identified by their race, ancestry, place of origin, colour, ethnic origin, creed, sex, age, marital status, same-sex partnership status or disability employs only, or gives preference in employment to, persons similarly identified if the qualification is a reasonable and <i>bona fide</i> qualification because of the nature of the employment;</p> <p>(b) the discrimination in employment is for reasons of age, sex, record of offences, marital status or same-sex partnership status if the age, sex, record of offences, marital status or same-sex partnership status of the applicant is a reasonable and <i>bona fide</i> qualification because of the nature of the employment;</p> <p>(c) an individual person refuses to employ another for reasons of any prohibited ground of discrimination in section 5, where the primary duty of the employment is attending to the medical or personal needs of the person or of an ill child or an aged, infirm or ill spouse, same-sex partner or relative of the person; or</p> <p>(d) an employer grants or withholds employment or advancement in employment to a person who is the spouse, same-sex partner, child or parent of the employer or an employee. R.S.O. 1990, c. H.19, s. 24 (1); 1999, c. 6, s. 28 (11); 2001, c. 32, s. 27 (5).</p>
<p style="text-align: center;">Quebec</p> <p><i>Quebec Charter of Human Rights and Freedoms</i>, R.S.Q., c. C-12 [English version]</p>	<p>Distinction based on aptitudes, non-discriminatory.</p> <p>20. A distinction, exclusion or preference based on the aptitudes or qualifications required for an employment, or justified by the charitable, philanthropic, religious, political or educational nature of a non-profit institution or of an institution devoted exclusively to the well-being of an ethnic group, is deemed non-discriminatory.</p> <p>1975, c. 6, s. 20; 1982, c. 61, s. 6; 1996, c. 10, s. 1.</p>
<p style="text-align: center;">New Brunswick</p>	<p>5(1) No person, directly or indirectly, alone or with another, by himself or by the</p>

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<p><i>Human Rights Act</i>, R.S. N.B. 1985 c. H-11</p>	<p>interposition of another, shall</p> <p>(a) deny to any person or class of persons any accommodation, services or facilities available to the public, or</p> <p>(b) discriminate against any person or class of persons with respect to any accommodation, services or facilities available to the public,</p> <p>because of race, colour, religion, national origin, ancestry, place of origin, age, physical disability, mental disability, marital status, sexual orientation or sex.</p> <p>5(2) Notwithstanding subsection (1), a limitation, specification, exclusion, denial or preference because of sex, physical disability, mental disability, marital status or sexual orientation shall be permitted if such limitation, specification, exclusion, denial or preference is based upon a <i>bona fide</i> qualification as determined by the Commission.</p> <p>5(3) The provisions of subsection (1) as to age do not apply to a limitation, specification, exclusion, denial or preference in relation to a person who has not attained the age of majority if the limitation, specification, exclusion, denial or preference is required or authorized by an Act of the Legislature or a regulation made under that Act.</p> <p>6(1) No person shall</p> <p>(a) publish, display, or cause to be published or displayed, or</p> <p>(b) permit to be published or displayed on lands or premises, in a newspaper, through a television or radio broadcasting station, or by means of any other medium that he owns or controls,</p> <p>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 race, colour, religion, national origin, ancestry, place of origin, age, physical disability, mental disability, marital status, sexual orientation or sex.</p> <p>6(2) Nothing in this section interferes with, restricts, or prohibits the free expression of opinions upon any subject by speech or in writing.</p> <p>6(3) Notwithstanding subsection (1), a limitation, specification, exclusion, denial or preference because of sex, physical disability, mental disability, marital status or sexual orientation shall be permitted if such limitation, specification, exclusion, denial or preference is based upon a <i>bona fide</i> qualification as determined by the Commission.</p> <p>6(4) The provisions of subsection (1) as to age do not apply to a limitation, specification, exclusion, denial or preference in relation to a person who has not attained the age of majority if the limitation, specification, exclusion, denial or preference is required or authorized by an Act of the Legislature or a regulation made under that Act.</p>
<p>Nova Scotia</p>	<p>Exceptions</p> <p>6 Subsection (1) of Section 5 does not apply</p>

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<p><i>Human Rights Act</i>, R.S.N.S. 1989, c. 214</p>	<p>(a) in respect of the provision of or access to services or facilities, to the conferring of a benefit on or the providing of a protection to youth or senior citizens;</p> <p>(b) in respect of accommodation, where the only premises rented consist of one room in a dwelling house the rest of which is occupied by the landlord or the landlords family and the landlord does not advertise the room for rental by sign, through any news media or listing with any housing, rental or tenants agency;</p> <p>(c) in respect of employment, to</p> <p>(i) a domestic employed and living in a single family home,</p> <p>(ii) an exclusively religious or ethnic organization or an agency of such an organization that is not operated for private profit and that is operated primarily to foster the welfare of a religious or ethnic group with respect to persons of the same religion or ethnic origin, as the case may be, with respect to a characteristic referred to in clauses (h) to (v) of subsection (1) of Section 5 if that characteristic is a reasonable occupational qualification, or</p> <p>(iii) employees engaged by an exclusively religious organization to perform religious duties;</p> <p>(d) in respect of volunteer public service, to an exclusively religious or ethnic organization that is not operated for private profit and that is operated primarily to foster the welfare of a religious or ethnic group with respect to persons of the same religion or ethnic origin, as the case may be;</p> <p>(e) where the nature and extent of the physical disability or mental disability reasonably precludes performance of a particular employment or activity;</p> <p>(f) where a denial, refusal or other form of alleged discrimination is</p> <p>(i) based upon a <i>bona fide</i> qualification, or</p> <p>(ii) a reasonable limit prescribed by law as can be demonstrably justified in a free and democratic society;</p> <p>(g) to prevent, on account of age, the operation of a <i>bona fide</i> retirement or pension plan or the terms or conditions of a <i>bona fide</i> group or employee insurance plan;</p> <p>(h) to preclude a <i>bona fide</i> plan, scheme or practice of mandatory retirement; or</p> <p>(i) to preclude a law, program or activity that has as its object the amelioration of conditions of disadvantaged individuals or classes of individuals including those who are disadvantaged because of a characteristic referred to in clauses (h) to (v) of subsection (1) of Section 5. 1991, c. 12, s. 1.</p>
<p>Prince Edward Island</p> <p><i>Human Rights Act</i>, R.S.P.E.I, 1988, Cap. H-12</p>	<p>6(4) – This section does not apply to</p> <p>(a) a refusal, limitation, specification or preference based on a genuine occupational qualification;</p> <p>(b) employment where physical or mental handicap is a reasonable disqualification;</p> <p>(c) an exclusively religious or ethnic organization or an agency of such an organization that is not operated for private profit and that is operated primarily to foster the welfare of a religious or ethnic origin as the case may be, if religion, creed, colour, sex, marital status or ethnic or national origin is</p>

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	<p>a reasonable occupational qualification.</p> <p>10 (1) No person or agency carrying out a public function, including fire protection or hospital services, through the use in whole or in part of volunteers, shall exclude, expel or limit any volunteer applicant on a discriminatory basis.</p> <p>(2) This section does not apply to an exclusively religious or ethnic organization that is not operated for private profit and that is operated primarily to foster the welfare of a religious or ethnic group with respect to persons of the same religion or ethnic origin, as the case may be.</p> <p>s. 14 (1) Sections 2 to 13 do not apply</p> <p>(a) to the display of a notice, sign, symbol, emblem, or other representation displayed to identify facilities customarily used by one sex;</p> <p>(b) to display or publication by or on behalf of an organization that</p> <p>(i) is composed exclusively or primarily of persons having the same political or religious beliefs, nationality, ancestry, or place of origin, and</p> <p>(ii) is operated as a non-profit organization, of a notice, sign, symbol, emblem, or other representation indicating a purpose or membership qualification of the organization;</p> <p>(c) to philanthropic, fraternal or service groups, associations or organizations, to the extent that they discriminate on the basis of sex in their qualifications for membership;</p> <p>(d) to a refusal, limitation, specification, or preference based on a genuine qualification; or</p> <p>(e) to trusts, deeds, contracts, agreements or other instruments entered into before this Act come into force.</p> <p>(2) The onus of proving that a qualification is a genuine qualification is on the employer or other person asserting that the qualification is a genuine qualification.</p>
<p>Newfoundland</p> <p><i>Human Rights Code, R.S.N.L. 1990, c.H-14</i></p>	<p>Discrimination in employment</p> <p>9. (1) An employer, or a person acting on behalf of an employer, shall not refuse to employ or to continue to employ or otherwise discriminate against a person in regard to employment or a term or condition of employment because of</p> <p>(a) that person's race, religion, religious creed, political opinion, colour or ethnic, national or social origin, sex, sexual orientation, marital status, physical disability or mental disability; or</p> <p>(b) that person's age, if that person has reached the age of 19 years and has not reached the age of 65 years,</p> <p>but this subsection does not apply to the expression of a limitation, specification or preference based on a good faith occupational qualification.</p> <p>(6) This section does not apply to an employer</p> <p>(a) which is an exclusively religious, fraternal or sororal organization that is not operated for private profit; or</p> <p>(b) in respect of the employment of a domestic employed and living in a single-family home.</p>

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<p style="text-align: center;">Yukon</p> <p><i>Human Rights Act</i>, R.S.Y. 2002, c.116</p>	<p>Reasonable cause</p> <p>10 It is not discrimination if treatment is based on</p> <ul style="list-style-type: none"> (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. <p>R.S., Supp., c.11, s.9.</p> <p>Exemptions</p> <p>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.</p> <p>(2) It is not discrimination for individuals to give preference to members of their family.</p> <p>(3) Section 9 does not apply to</p> <ul style="list-style-type: none"> (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. <p>Special programs and affirmative action</p> <p>13(1) Special programs and affirmative action programs are not discrimination.</p> <p>(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.</p> <p>(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.</p>
<p style="text-align: center;">Northwest Territories</p> <p><i>Human Rights Act</i>, S.N.W.T. 2002, c. 18</p>	<p>67.(1) Nothing in this Act precludes any law, program or activity that has as its object the amelioration of conditions of disadvantaged individuals or groups, including those who are disadvantaged because of any characteristic referred to in subsection 5(1).</p> <p>(2) Any program designed to promote the welfare of any class of individuals that was approved under section 9 of the <i>Fair Practices Act</i>, R.S.N.W.T. 1988, c.F-2, is deemed, for the purposes of subsection (1), to be a program that has as its object the amelioration of conditions of disadvantaged individuals or groups.</p>
<p style="text-align: center;">Nunavut</p> <p><i>Fair Practices Act</i>, R.S.N.W.T. 1988,c.F-2</p>	<p>2. (1) This Act does not apply to the employment of persons</p> <ul style="list-style-type: none"> (a) in domestic service in a private home; (b) by an exclusively charitable, educational, fraternal, religious or social organization, society or corporation not operated for private profit, where the

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	<p>discrimination practised by the organization, society or corporation in relation to such employment is solely related to those special objects in respect of which the organization, society or corporation was established; or</p> <p>(c) in any organization that is operated primarily to foster the welfare of a religious or racial group and that is not operated for private profit.</p> <p>Bona fide occupational qualification</p> <p>(3) Nothing in this Act deprives any employer of the right to employ persons of any particular race, creed, colour, sex, marital status, nationality, ancestry, place of origin, disability, age or family status or who have obtained a pardon in respect of a conviction in preference to other persons where the preference is based on a <i>bona fide</i> occupational qualification necessary to the normal operation of the business or enterprise of the employer.</p>