



Annexure A: Content of initial training seminars – Judges, magistrates, registrars and clerks

I set out below the content of those training programmes that I could source from TMT/TMB meetings and the ELETU office.

A.1 JUDGES AND MAGISTRATES

A.1.1 National seminar 16 – 21 April 2001

16 April

18:00-21:00 Registration, welcome and opening address (Chaskalson P, as he then was.)

17 April

9:00-10:00 Key note address (judicial education) (Judge Kirby, Australia)

10:00-11:00 Panel discussion

11:00-11:15 Tea

11:15-12:30 Group discussions

12:30-13:00 Plenary (reports and discussion)

13:00-14:00 Lunch

14:00-15:00 The Australian framework for equality

15:00-16:00 The Act and equality litigation in the United States: A comparative perspective

16:00-16:15 Tea

18 April

9:00-10:00 Social context and achieving equality in a constitutional democracy

10:00-11:00 Panel discussion on social context (difference and disadvantage, systematic inequality and discrimination, social bias in the judicial process and the challenge of achieving equality regardless of difference)

11:00-11:15 Tea

11:15-12:30 Group discussions

12:30-13:00 Plenary

- 13:00-14:00 Lunch
- 14:00-15:00 Part B of bench book: The South African framework for equality (values, substantive equality, unfair discrimination, emerging South African equality jurisprudence and the constitutional basis for the Act)
- 15:00-16:15 Group discussions
- 16:15-17:30 Plenary
- 20:00-21:00 Videos

19 April

- 9:00-10:00 Key challenges for the judiciary in the implementation of human rights legislation with a focus on the Act, CEDAW and other international obligations
- 10:00-11:00 Part C(1) and D of the bench book (overview of the Act, equality courts and related enforcement mechanisms)
- 11:00-11:15 Tea
- 11:15-12:30 Group discussions
- 12:30-13:00 Plenary
- 13:00-14:00 Lunch
- 14:00-16:00 Part C(2) of the bench book (unfair discrimination, systemic discrimination, indirect discrimination, race, gender and disability discrimination, hate speech, harassment, dissemination of information that unfairly discriminates)
- 16:00-16:15 Tea
- 16:15-17:30 Group discussions
- 17:30-18:00 Plenary
- 20:00-21:00 Video

20 April

- 9:00-10:00 Part E(1) of the bench book (listed grounds, highlighted grounds; judicial method)
- 10:00-11:00 Group discussions
- 11:00-11:15 Tea
- 11:15-12:30 Plenary



12:30-13:00	Part E(2) and F(1) of the bench book (unlisted grounds, section 34 grounds; role play)
13:00-14:00	Lunch
14:00-15:00	Group discussions
15:00-16:00	Plenary
16:00-16:15	Tea
16:15-18:00	Panel discussion on judicial method and section 29

21 April

9:00-10:00	Part F(2) of the bench book (values and ethical issues, judicial independence, case management, language, referrals and other practical service delivery issues for equality courts)
10:00-11:00	Group discussions
11:00-11:15	Tea
11:15-11:45	Plenary
12:00-12:50	The way forward
12:50-13:00	Closing remarks

A.1.2 National Seminar 24 – 27 July 2001

24 July

3:00 – 4:30	Facilitators' meeting
5:30 – 6:30	Registration
Dinner and key note address (Minister of Justice)	

25 July

8:30 – 9:30	Welcome, introductions, objectives, explanation of programme and resources
9:30 – 10:30	Panel discussion on training methods and strategies
10:30 – 11:00	Tea
11:00 – 13:00	Hypothetical to be discussed in small groups
13:00 – 14:00	Lunch
14:00 – 15:30	Report back from small groups and plenary discussion

- 15:30 – 16:00 Tea
16:00 – 17:00 General discussion on the hypothetical as a training method
19:00 Dinner at Wandí's (shebeen in Soweto)

26 July

- 9:00 – 10:15 Video session: “A Woman’s Place”, raising issues of customary law, culture and equality
10:15 – 11:30 Moot court
11:30 – 11:45 Tea
11:45 – 13:00 Break away groups to discuss judgment
13:00 – 14:00 Lunch
14:00 – 15:45 Team of judges (one member from each breakaway group) gives decision and discussion
15:45 – 16:00 Tea
16:00 – 17:00 General discussion on methodology of mock trial / moot court
19:00 Dinner

27 July

- 9:00 – 10:30 Presentations on international law, the directions enquiry, alternative fora
10:30 – 11:00 Tea
11:00 – 13:00 The way forward: question and answer session on training; panel discussion
13:00 Lunch and departure

A.1.3 Eastern Cape 27-28 September 2001

27 October

- 10:00-10:30 Registration and tea
10:30-10:45 Welcome
10:45-11:40 Overview of the Act, structure and key issues covered by the Act
11:40-12:00 Tension between the Act and the Employment Equity Act
12:00-12:45 Questions and answers
12:45-14:00 Lunch



- 14:00-15:00 Social context and awareness; alternative fora
- 15:15-15:45 Questions and answers
- 15:45-16:00 Tea
- 16:00-17:15 Video on gender equality

28 October

- 8:30-9:45 Video of equality court moot; distribution of other hypotheticals
- 9:45-11:00 Group discussion of hypotheticals
- 11:00-11:15 Tea
- 11:15-12:15 Report back by groups on hypotheticals
- 12:15-12:45 Questions and answers
- 12:45 Closure
- 13:00 Lunch and departure

A.1.4 Western Cape 15-19 October 2001

15 October (judges)

- 15:30-16:00 Discussion of the Act
- 16:00-17:00 The social context of the Act
- 17:00-17:45 Problem areas of the Act

16 October (judges)

- 15:30-16:00 Video of a moot court session.¹

¹ The moot court related to the following hypothetical: "Rights for All is an NGO that assists people in taking up human rights violations. It is based in Pretoria. It has several complaints against Muddle and Fuddle, an insurance company which has its registered office in Pretoria and which conducts business throughout South Africa.

Mr Jock, a white male aged 22 who drives a red BMW and who lives in Sea Point, complains that he is paying a higher insurance premium for comprehensive car insurance than his twin sister, Sharon, who has a white Corolla.

Mr Daniels is a single man of 40 who lives in a luxury flat in Clifton and who has been refused life insurance. In the application form prepared by Muddle and Fuddle, he was asked to fill in a range of "lifestyle questions", including his marital status and whether he lived alone. He was also asked to undergo an HIV test that was negative.

Mrs Khumalo who lives in a shack in Khayalitsha, is a 60 year old ex smoker who wants to buy a private hospitalisation plan. She is granted a policy but her premiums are 25% higher than the average. She is told in a letter from Muddle and Fuddle that her premium has been loaded because of her medical history and also because she is a "black woman of no real economic worth who lives in squalor".

The final complaint relates to a community of black farm workers composed of 40 adults and 126 children. They live in Boplaas, a small Karoo settlement, near Beaufort West, surrounded by several large farms owned by white farmers. Some own small houses and others live in shacks. Each household has one or two cattle and a few chickens. They



also undertake small vegetable gardening around their dwellings. All white farmers in the area have insured themselves, members of their families, their homes, equipment, such as expensive tractors and threshing machines, livestock and agricultural produce. The black community applies for insurance with a similar coverage to that of the white farmers. The insurance company writes back stating that it does not normally provide cover to rural households where the value of the annual income or combined assets is less than R500 000. The company also states that it is not in the business of dealing with people who do not have a history of proven creditworthiness that is certified by financial institutions of good standing.

The policy application of Daniels was refused at Muddle and Fuddle's office in Pretoria. The policy application by the Boplaas community was refused at the offices of Muddle and Fuddle in Beaufort West. The other two policies were entered into at Muddle and Fuddle's Pretoria office.

Rights for All brings a public interest challenge in its own name, claiming that all of the above actions amount to unfair discrimination by Muddle and Fuddle.

Rights for All submits and asks for the following:

- i) The higher premium paid by Jock is unfair discrimination on the basis of sex, gender and age. It asks that the premium be lowered to the rate that Jock's sister is paying.
- ii) Daniels is unfairly discriminated against on the basis of marital status, sex, gender, age and sexual orientation. Rights for All asks for an order granting him life cover and a public apology. It also asks that Daniels's name be removed from the register of names that the insurance industry maintains of refused applications.
- iii) Khumalo is unfairly discriminated against on the basis of age and the unlisted ground of "health status" and furthermore that she has been subjected to "hate speech". Rights for All asks for an order reducing the premium and for damages of R20 000 and an apology consequent upon the alleged "hate speech".
- iv) The Boplaas community is unfairly discriminated against on the basis of race and the unlisted ground of socio-economic status. Rights for All asks for an audit of the insurance practices of Muddle and Fuddle and for an order directing Muddle and Fuddle to reconsider the application of the Boplaas community.
- v) A general audit of the policies and practices of Muddle and Fuddle, to be reported back to the court within six months, at which stage the court should make whatever order it deems fit.
- vi) Further or ancillary relief is requested.
- vii) Costs against the respondent.

At the hearing Muddle and Fuddle raises several objections to the claim:

- i) It objects to the jurisdiction of the equality court in the Cape Town magistrates' court and asks for the matter to be removed to the High Court of the Cape alternatively of the Transvaal because of the amounts involved and the precedent-setting nature of the case, and the place of the conclusion of the relevant insurance policies, alternatively that the matter be referred to the South African Human Rights Commission alternatively the Gender Equality Commission.
- ii) Alternatively it asks for a postponement of the matter as the notice of complaint was served by fax (which Muddle and Fuddle admits receiving) and that the original was not received in the mail. The original is in the court file.
- iii) In the event that the preliminary objections being dismissed Muddle and Fuddle asks that all of the claims be dismissed with costs.

Once the preliminary questions are resolved, evidence is led which shows the following:

1. While red cars are more likely to be in accidents than white cars, owners of white Toyotas are more likely to be hijacked. Men are more likely to be involved than women and young people are more likely to have accidents than other age categories (except people over 60). These are statistics that are calculated for the industry as a whole. Evidence shows that the claims profile of the respondent does not support loading of premiums according to age. In addition, Jock has never had an accident and has an advanced drivers' certificate.
2. The insurance industry has a common set of questions for all life insurance applicants. Marital status is one of these. An internal company document, obtained by the process of discovery, shows that Daniels was refused insurance because "he fits the profile" of a gay man, and that the insurance company thus assumes that he might engage in high risk behaviour for HIV. According to the company, white, gay men are a high risk group. They support this with UK and US statistics. The evidence of the complainants' experts proves that a 40 year old white, gay male is at a lower risk than a 40 year old black, married woman in South Africa.
3. Medical evidence shows that ex-smokers who have stopped for 7 years or more are not a greater risk than non-smokers. Khumalo stopped smoking in 1992. He is asthmatic. The experts disagree on whether previous smoking and asthma are linked. The insurance company has statistics that show that older people are more likely to be hospitalised and argue that late entry into an insurance plan justifies higher premiums.



16:00-18:00 Discussion and consideration of the moot court problem

17 October (magistrates)

15:30-16:00 Discussion of the Act

16:00-17:00 The social context of the Act

17:00-17:45 Strengths and weaknesses in the Act

18 October (magistrates)

15:30-16:00 Moot court video

16:00-18:00 Discussion and consideration of moot court problem

19 October (joint session; judges and magistrates)

15:00 The Act: A frank discussion

A.1.6 Free State 2-3 November and 16-17 November 2001 (two identical sessions)

2/16 November

9:00-9:30 Registration

9:30-9:40 Welcome

9:40-10:15 Introduction to the Act

10:15-10:45 Interpretation and application of the Act

10:45-11:15 Tea

11:15-12:00 Grounds of discrimination, elements of a prima facie discrimination case, presumption of unfairness

12:00-13:00 Disability and HIV/AIDS discrimination

13:00-14:00 Lunch

14:00-14:45 Harassment and hate speech

4. Evidence shows that the Boplaas community is a stable and self-sustaining one. Members of the community have jobs in town and some work on the surrounding farms as permanent and seasonal workers. In addition, the community produces enough basic food for their own requirements. In addition, expert evidence shows that 90% of whites and 30% of blacks are insured in South Africa. The rate of rejection by applicants of insurance companies in the last six years is the reverse – 30% of whites and 60% of blacks. Expert evidence is also led about the Grameen Bank in Bangladesh which has a 98% repayment of small loans.

Matters for determination: i) Which of the complainants, if any, should succeed and if so, to what extent; ii) What remedies, if any, should be granted”.



- 14:45-15:45 Video: moot court
- 15:45-16:15 Coffee
- 16:15-17:00 Discussion of moot court

3/17 November

- 9:00-10:30 Equality courts, evidence and procedure
- 10:30-11:00 Tea
- 11:00-12:00 General discussion and questions
- 12:00 Closure

A.1.7 KwaZulu Natal 26-27 November 2001

26 November

- 9:30-10:00 Registration
- 10:00-10:10 Welcome and introduction
- 10:10-11:15 Opening address
- 11:15-11:30 Tea
- 11:30-12:30 Comparative law and the Constitution
- 12:30-13:45 Lunch
- 13:45-15:15 The Act and possible difficulties in its interpretation and application
- 15:15-15:30 Tea
- 15:30-16:15 Questions and discussion

27 November

- 9:00-10:00 Key concepts in the Act
- 10:00-11:00 Jurisdiction of the equality courts with special reference to labour matters
- 11:00-11:15 Tea
- 11:15-13:00 Mock equality court video and discussion groups
- 13:00-14:15 Lunch
- 14:15-15:40 Group representatives present judgments on mock trial; presentation of hypothetical cases and group discussion
- 15:30 Closing remarks; tea; departure



A.1.8 North West 2 December 2001

- 8:30 Tea
Welcome address
Introduction
An overview of the Act
- 11:00 Tea
The social context of the Act
Discussion of the Act
- 13:00 Lunch
- 13:45 Questions
Video
Closure

A.1.9 Gauteng 3, 5, 7, 10-14 December 2001²

- 9:00 – 9:30 Welcome and introductions
- 9:30 – 11:00 The Act (especially ss 6-14, 20, 21)
- 11:00 – 11:15 Tea
- 11:15 – 11:45 The Act (continued)
- 11:45-13:00 Social context
- 13:00 – 14:00 Lunch
- 14:00 – 16:30 Moot video and discussion (including tea) (facilitated by judges)

A.1.10 Gauteng 4 December 2001 (judges of the Transvaal Provincial Division)³

- 9:00 – 9:30 Tea, welcome and introduction to the symposium
- 9:30 – 11:15 The Act (especially ss 1(1)(viii), (xiii), (xxii), 6-14, 19(1), 20 & 21)
- 11:15 – 11:30 Tea
- 11:30 – 12:15 The Act (continued)

² The training programme for the 8 days followed the same broad sequence. A number of facilitators were used to present an analysis and explanation of the Act and to facilitate the moot court.

³ The seminar for judges of the Witwatersrand Local Division that took place on 6 December 2001 followed a similar sequence. Judges Zulman and Goldstein introduced the programme while Prof Albertyn again did most of the training.

- 12:15 – 13:00 Social context
13:00 – 14:00 Lunch
14:00 – 16:30 Moot court exercise (facilitated by a judge)

A.1.11 Northern Province 5-7 December 2001

5 December

- 16:30 – 18:00 Arrival and registration
18:30 – 20:00 Dinner
Welcome address
Keynote address

6 December

- 9:00 – 9:40 Cultural diversity
9:45 – 10:30 Interpretation and application of the Act
10:30 – 10:45 Tea
10:45 – 11:45 Grounds of discrimination; elements of a prima facie discrimination case;
presumption of unfairness
11:50 – 12:50 Disability and HIV/AIDS discrimination
12:50 – 13:50 Lunch
13:50 – 14:50 Harassment and hate speech
14:55 – 15:55 Video of the moot court
16:05 – 17:00 Discussion of the video

7 December

- 9:00 – 10:15 Equality courts: evidence and procedure
10:15 – 10:30 Tea
10:30 – 11:30 Introduction to the Act
11:35 – 12:35 General discussions and questions
12:40 Closure



A.1.12 Northern Cape 8 December 2001

9:00 – 16:00

Chairperson's remarks and introduction

Opening address

Purpose, background of the Act and related professional development activities

Overview of the Act, scope and application and importance of understanding law in context

Tea

Key provisions in the Act (theories of equality, concept of unfair discrimination, hate speech, harassment and dissemination of information that unfairly discriminates)

Enforcement mechanisms, including enquiry for determination of unfair discrimination, remedies and referrals

Lunch

Video on hypothetical insurance case

Facilitated breakaway groups

Judgments

Way forward and closure

A.1.13 Eastern Cape 14-15 December 2001

14 December

9:00-9:30 Registration

9:30-9:45 Welcome and introduction; purpose of seminar and bench book

9:45-10:15 Background to the Act, its purpose and its importance within the context of our constitutional legislation

10:15-10:45 Questions and discussion

10:45-11:00 Refreshments

11:00-11:40 The role of the equality courts, overview of the Act, jurisdiction in respect of causes of action

11:45-12:25 Other important provisions, complaints procedure, nature of hearing, role of presiding officer

12:25-13:00 Questions and discussion

13:00-14:00 Lunch

- 14:00-14:30 Concept of equality and its constitutional importance
- 14:30-15:00 Unfair discrimination, race, gender and disability, hate speech, harassment, dissemination of information that unfairly discriminates
- 15:00-15:30 Questions and discussion
- 15:30-15:45 Refreshments
- 15:45-16:45 Video on moot court session

15 December

- 9:00-9:45 Group discussions on moot court session – each group to prepare a brief judgment on the basis of the arguments presented to the moot court
- 9:45-10:05 Report back on judgment prepared by each group
- 10:05-10:30 Questions and discussion
- 10:30-10:45 Refreshments
- 10:45-13:15 Social context in relation to equality and a video relating to social context
- 13:15-14:00 Lunch
- 14:00-15:00 Referral to alternative fora, list of unfair practices in certain sectors, regulations, international and comparative foreign law
- 15:00-15:45 Questions and discussion
- 15:45-16:00 Closure

A.1.14 Mpumalanga 3-5 February 2002⁴

3 February

- 16:00-18:00 Registration
- 18:30 Dinner; Welcome address

4 February

- 9:00-9:30 Welcome and introduction
- 9:30-10:15 Introduction to the Act; background and constitutional imperatives
- 10:15-10:45 Questions and discussions

⁴ The seminar of 10-12 February 2002 (for a second group) followed the same broad sequence. Trainers at this seminar included Mr Raulinga, Mr Khunou, the author, Ms Madonsela, Prof Albertyn and Mr Kollapen.



10:45-11:45	Tea
11:45-12:30	Interpretation and application of the Act
12:30-13:00	Questions and discussion
13:00-14:00	Lunch
14:00-15:00	Grounds of discrimination, elements of a prima facie case, presumption of fairness
15:00-15:30	Questions and discussion
15:30-15:45	Tea
15:45-16:30	Harassment, hate speech, disability and HIV/AIDS discrimination
16:30-17:00	Questions and discussion

5 February

9:00-10:30	Social context of the Act; forms of diversity in South African society; vulnerable groups; bias and stereotyping; power relations
10:30-11:00	Questions and discussion
11:00-11:15	Tea
11:15-12:00	The way forward
12:00-12:30	Alternative fora
12:30-13:00	Questions and discussion
13:00-13:30	Thanks and closure
13:30-14:30	Lunch

A.1.15 Bloemfontein 27-28 September 2002

27 September

9:00-9:30	Registration
9:30-9:40	Welcome
9:40-10:15	Introduction to the Act
10:15-10:45	Interpretation and application of the Act; social context; relationship with Employment Equity Act 55 of 1998
10:45-11:15	Tea
11:15-12:00	Grounds of discrimination; elements of a <i>prima facie</i> case; presumption of unfairness

12:00-13:00	Disability and HIV/AIDS discrimination
13:00-14:00	Lunch
14:00-14:45	Harassment and hate speech
14:45-15:45	Applying the Act
15:45-16:15	Coffee
16:15-17:00	Discussion of hypothetical cases

28 September

9:00-10:00	Video: moot court
10:00-10:30	Tea
10:30-11:30	Discussion of moot court
11:30-12:00	Outline of contents of bench book
12:00	Closure

A.1.16 North West 1,2 and 3 October 2002⁵

8:00-8:45	Registration and tea
8:45-9:00	Welcome of guests and introduction of speakers and facilitators
9:00-9:55	Introduction to the Act
9:55-10:45	Discussion of the Act; principles; scope and application; constitutional and international legal basis
10:45-11:00	Tea
11:00-12:30	Substantive aspects with emphasis on race, gender, disability, hate speech and harassment; procedural matters
12:30-13:15	Lunch
13:15-14:15	Video
14:15-15:30	Social context education

⁵ The workshops were attended by three different groups; the content of the programme for the three days did not change.



A.1.17	Gauteng October/November 2002⁶
8:30-9:00	Registration and tea
9:00-9:05	Welcome and introduction to speakers
9:05-9:30	Background to the Act and judicial training (Langa DCJ as he then was)
9:35-10:05	The Act and the Employment Equity Act
10:05-11:00	The Act
11:00-11:20	Tea
11:20-13:00	The Act (continued)
13:00-14:00	Lunch
14:00-15:00	Moot video and discussion
15:00-15:30	Tea
15:30-16:30	Moot video discussion
16:30	Closure
A.1.18	Mpumalanga 15 November 2002
8:00-8:15	Registration
8:15-8:45	Breakfast
9:00-9:15	Welcome and introduction
9:15-10:30	Background to the Act, its purpose and its importance within the context of our constitutional legislation
10:30-10:45	Questions and discussion
10:45-11:00	Tea
11:00-12:15	The role of equality courts, overview of the Act, jurisdiction in respect of causes of action, practice and procedure
12:15-12:30	Questions and discussion
12:30-13:30	Lunch
13:30-14:30	Social context
14:30-14:45	Questions and discussion
14:45-15:00	Tea

⁶ The training seminars ran over a number of days during October/November 2002 and followed the same broad sequence. On some of the days a session on social context was presented by Jody Kollapen, SAHRC.

15:00-16:00 Video
16:00 Closure and thanks

A.1.19 KwaZulu-Natal October/November 2002

8:00-9:00 Arrival, registration and tea
9:00-9:15 Welcoming remarks
9:15-10:00 The Act: Background and constitutional context
10:00-11:00 Introducing the bench book, the framework of the Act, bringing a complaint
11:00-11:30 Tea
11:30-13:00 The adjudication process (listed and unlisted grounds, hate speech, harassment, dissemination of information that unfairly discriminates, remedies)
13:00-13:45 Lunch
13:45-14:15 Introducing the hypothetical
14:15-15:15 Group discussions of the hypothetical
15:15-16:00 Report back, comments and evaluation

A.2 CLERKS

A.2.1 National seminar 11-15 June 2001

11 June

8:00-8:30 Registration
8:30-9:00 Opening and introduction; house-keeping rules
9:00-9:15 Expectations of participants
9:15-10:00 The social context of equality and anti-discrimination legislation; forms of diversity in South African society; vulnerable groups
10:00-10:15 Tea
10:15-12:30 Vulnerable groups in South Africa; bias and stereotyping; diversity and historical disparities; power relations in South African society
12:30-14:00 Lunch
14:00-15:30 Contemporary forms of structural inequality
15:30-15:45 Tea
15:45-16:30 Basic introduction to the Act



12 June

8:30-10:00	International and national context of equality and anti-discrimination legislation; concept of unfair discrimination
10:00-10:15	Tea
10:15-12:30	Enforcement mechanisms
12:30-14:00	Lunch
14:00-15:30	Listed and unlisted grounds of discrimination including the three highlighted grounds of discrimination
15:30-15:45	Tea
15:45-16:30	Continuation of grounds of prohibited discrimination
16:30-17:00	Hypothetical

13 June

8:30-10:00	Practice and procedure; the enforcement mechanisms with the emphasis on the equality courts; The A-Z of the court process and the role of the equality court
10:00-10:15	Tea
10:15-12:30	Practice and procedure (continued)
12:30-14:00	Lunch
14:00-15:30	Practice and procedure (continued)
15:40-15:45	Tea
15:45-16:30	Hypothetical/feedback

14 June

8:30-10:00	Practice and procedure; the role of the clerk at the various stages of the process; case management and referrals
10:00-10:15	Tea
10:15-12:30	Practice and procedure; assessors; legal aid; victim support services
12:30-14:00	Lunch
14:00-15:30	Hypotheticals
15:30-15:45	Tea

15:45-17:00 Skills and ethics

15 June

8:30-10:00 Training management and techniques; adult education methodology and skills

10:00-10:15 Tea

10:15-12:30 Training methodology

12:30-14:00 Lunch

14:00-16:30 Way forward; practicals

A.2.2 KwaZulu-Natal seminar 22-24 October 2001

Monday

8:00-8:30 Registration

8:30-10:30 Part 1, 2 and 6 of the resource manual

10:45-13:00 Vulnerable groups, international law on human rights, referrals, unfair and fair discrimination

14:00-15:30 Listed and unlisted grounds, the schedule to the Act, hate speech, harassment, dissemination of material that unfairly discriminates

Tuesday

8:00-8:30 Revision

8:30-13:00 Practice and procedure

14:00-15:00 Practice and procedure

15:00-16:00 Hypothetical and training methodology

Wednesday

8:00-11:00 Hypothetical and training methodology

A.2.3 National seminar 12-14 November 2001

12 November 2001

8:00-9:00 Registration

9:30-10:30 Welcome



10:30-10:45	Tea
10:45-12:15	Social context
12:15-13:00	Lunch
13:00-15:00	Substance of the Act
15:00-15:15	Tea
15:15-16:15	Background; language; interpretation
16:15-17:15	Practice and procedure and role of the clerks and registrars
17:30	Closure

13 November

9:00-10:30	Practicals
10:30-10:45	Tea
10:45-12:15	Training video including practicals and filling in forms
12:15-13:00	Lunch
13:00-15:00	Training video continued
15:00-15:15	Tea
15:15-16:00	Training video continued
16:00-17:30	Training methodology

14 November

9:00-10:30	Practicals
10:30-10:45	Tea
10:45-12:15	Questions and answers session; the way forward
12:15-13:00	Lunch
13:00	Depart

A.2.4 National Seminar 14-16 October 2002

14 October

10:00-16:00

Introduction

Division of group into working teams

Vision behind the Act

Social context underpinning the Act

Overview of the Act

15 October

Role of clerks/registrars

Case flow management and procedure

Responsive service delivery taking into account diversity

Referrals to alternative forums

16 October

Group presentations on application of principles to hypotheticals/case studies

Review of organisation of decentralised training

Course review/evaluation

Closure

A.3 COMMENTS: GAUTENG QUESTIONNAIRE

- “A detailed discussion of the Act would have come in handy, not just a broad overview ... the video was too long and dealt with too many issues ... very superficial training. More intensive training required to empower judicial officers to be able to deal with the legislation ... Sessions were mostly awareness raising and not very helpful for future use”.
- “More time should be devoted to group work – around procedure, listening to arguments, writing judgments ... in the moot court issues should be dealt with separately and should not be shown after lunch ... one day is not enough to prepare magistrates, I still do not know about the procedure to be followed etc ... very annoying and disruptive to the process of paying attention when attempting to find stuff in a manual that is ‘deurmekaar’ ...”
- “The duration must be extended for detailed discussion and the moot video must be fitted in before lunch ...”
- “All aspects should be structured in follow up seminars in the assessment and evaluation after the implementation of the legislation”.



- “Hardly any input was contributed to the difference between the concepts of ‘formal equality’ and ‘substantive equality’ which is the central theme of the Act itself. Had I not already understood these concepts I would have been in no better situation after the seminar ... material to be handed to trainees in advance with notification that they are expected to have read the contents ...”
- “Moot video session should be made more exciting especially when it is held after lunch”.
- “No in depth discussion could take place or informed inputs made due to the fact that this was foreign territory. It would maybe be better to distribute the material first giving delegates an opportunity to study the material and then attend training sessions thereafter ... due to lack of enough knowledge found the moot video boring”.
- “Kindly submit the material prior to the seminar”.
- “One day not enough. Could’ve done it over maybe two days or longer”.
- “I suggest that this kind of training should be conducted for two days and all sections of the Act must be dealt with”.
- “Magistrates do not have access to the case law and other material needed for the implementation of this Act”.
- “Well organised. Only an introduction of a very important fundamental aspect of our law ... must have follow ups but only after Act came into operation”.
- “It is fine but can be improved by allowing more time on the discussion groups ... one day session on this important issue is not enough ... [training] should be continued especially to those who would be interested in this type of work”.
- “A follow-up after implementation of the Act”.
- “It was good but if we were given the Act and the relevant sections to go through before this date it would have made the training session more informative”.
- “The viewing of the moot video after lunch caused a few to start slumbering ... training should be done more often”.
- “More training sessions as follow ups should be organised”.
- “Much more training required for magistrates”.
- “Two day seminar might have been more appropriate since we had to rush in the afternoon to deal with the moot video and discussions”.
- “Would be more valuable if a group discussion was held in stead of watching the video”.

- “More time should be allowed [for training]”.
- “Cut out video – have discussion between magistrates”.
- “A more in depth course is required and special attention should be given to personal social context sensitizing of the various cultural groups, so that we can be made aware of the problems we face and our own prejudices”.
- “We are too new to this field to know what was not covered”.
- “It is excellent but follow up training must be done when the regulations become available”.
- “Found that there was not sufficient time to cover everything in the Act”.
- “The video covered too many aspects and thus too lengthy ... not enough active participation by too many attendants (note I don’t use the word ‘participants’ as too many seemed to attend just for the sake of a free lunch and lent no participation)”.
- “Meer tyd moes spandeer word op die toetse wat gebruik word en die praktiese toepassing daarvan. Die toetse is een van die grootste bene waarop die hele wetgewing rus en ek het gevind dat dit te vinnig en vaag behandel was ... dit behoort ‘n vereiste te wees dat alle landdroste op die ‘Law, Race and Gender’ kursus gaan voordat hulle aandui of hulle in sake van hierdie aard wil voorsit”.
- “Because of less participation by attendants one tends to lose concentration and it becomes boring; let attendants get involved”.
- “In future [the training] should be repeated after the courts are established. Then we will be able to share our experiences during presentations”.
- “Training was awareness raising in nature; which is important but not enough ... manual a mess, photocopies in wrong order etc, quite unprofessional ... all too superficial to be really valuable ... okay as far as general awareness raising but not sufficient to empower judicial officers to preside in these cases. Need to be more intensive over longer period of time. More practical. Give material in advance with request that people should have read through it before the time”.



Annexure B: Tables – Empirical survey

Table A: The training document

Training Document Survey Greater Pretoria

1. Make sure that you have the following:
 - (a) Map of the area where you have to do the survey
 - (b) Questionnaires (8 if Laudium/Eersterus; 18-25 other areas)

2. Do a “test run” to make sure that you know how to complete the questionnaire; ask me if you are unsure about something.

3. Method Sinoville/Laudium/Eersterus/Mamelodi/Atteridgeville:

Work out a route to cover the selected area

Count the number of houses in that area

Divide the number of houses by the amount of questionnaires that I provided to you to work out the interval at which you have to select houses

Example: let's say you count 1000 houses and I gave you 20 questionnaires: $1000/20 = 50$

– in other words, your interval is every 50th house

Work out a route to cover the whole area

Start at house 1, do the interview. Move on to the next house according to the interval. If the interval is 50, then count until you reach the 51st house and do your next interview at that house

4. Method “white” areas

Choose a starting point in the selected area

Work out a route to cover the whole area

Start at house 1, do the interview. Move on to the next house according to the interval. If the interval is 50, then count until you reach the 51st house and do your next interview at that house

I will give you the interval of your area

5. Interview

Knock at the door; explain that you are part of a doctorate research project and that you need that household's cooperation

Ask them to provide you with a list of residents in that house. ("Resident" = person who sleeps in that house at least 4 nights in a week. A domestic worker that sleeps in the house or in quarters adjoining the house at least 4 nights a week forms part of the household.) Write them down in order oldest to youngest on the questionnaire. Write their age next to their names. Do not include residents younger than 18. Do not include residents that will be away for the week of the survey. (ie, if a resident on leave or away on business for the whole week; do not include him/her.)

Use the random table to select who in that household you have to interview. I will show you how to use the table during our training session. Count from the top of the list (ie from oldest to youngest.) If that person is not around, make an appointment to see him/her at a later stage.

"Next house" rule: if the house where you are supposed to do the interview is locked or no one is home, move to the next house after 3 aborted visits. If the house is empty, move to the next house. If you get absolutely no cooperation and outright hostility, move to the next house. When you have to replace a household in this fashion select the next house by counting from the house where you were supposed to do the interview

Example: you are supposed to do the interviews at house 1, 51 and 101. House 51 is empty. Move to house 52. House 52 is locked for three visits. Move to house 53. Do the interview. The next interview will still be at house 101; not 103.

All the questions need to be completed.

Guide to questionnaire

"Stratum" (question 3)

1 "White" North (Sinoville selected randomly)

2 Eersterus



- 3 Mamelodi, Mahube Valley, Sun Valley, Morelete View
- 4 Atteridgeville, Saulsville
- 5 Laudium
- 6 “white” West (Westpark selected randomly)
- 7 “white” East (Constantia Park and Newlands selected randomly)
- 8 “white” Central, North, East (Moregloed, Meyerspark selected randomly)

Woongebied / Suburb (question 4)

- 1 Sinoville BJ 122 (7 qst) (Paul) (work out interval) (questionnaire 1-7)
- 2 Sinoville BK 122 (7 qst) (Paul) (work out interval) (questionnaire 8-14)
- 3 Sinoville BJ 123 (7 qst) (Paul) (work out interval) (questionnaire 15-21)
- 4 Eersterus “rich” (4 qst) (Celia) (work out interval) (questionnaire 22-25)
- 5 Eersterus “average to poor” (4 qst) (Celia) (work out interval) (26-29)
- 6 Laudium “rich” (4 qst) (Marlinee) (work out interval) (questionnaire 30-33)
- 7 Laudium “average to poor” (4 qst) (Marlinee) (work out interval) (34-37)
- 8 Wespark (36 qst) (Lisa, Jonathan, friend) (Interval: every 31st house) (38-73)
- 9 Meyerspark (23 qst) (Kristel) (every 58th house) (74-96)
- 10 Moregloed (23 qst) (Werner) (every 40th house) (97-119)
- 11 Newlands (23 qst) (Jean) (every 37th house) (120-142)
- 12 Constantia Park (23 qst) (Chris) (every 50th house) (143-165)
- 13 Mamelodi “rich” (22 qst) (work out interval) (Lulu) (166-187)
- 14 Mamelodi “average” (22 qst) (work out interval) (Joseph) (188-209)
- 15 Mamelodi “average” (22 qst) (work out interval) (Tshepo) (210-231)
- 16 Mamelodi “squatter” (22 qst) (work out interval) (Isaih) (232-253)
- 17 Atteridgeville “rich” (18 qst) (work out interval) (Tshepo) (254-271)
- 18 Atteridgeville “average to poor” (18 qst) (work out interval) (Marion) (272-289)
- 19 Atteridgeville “squatter” (18 qst) (work out interval) (Tshepo to arrange) (290-307)

Afrikaans areas / Eersterus:

I will provide you with Afrikaans questionnaires and a few replacement questionnaires in English should you come across an English household. You will note that the English questionnaires have

not been completed (questions 1-4). If you need to use an English questionnaire, please copy the information from the Afrikaans questionnaire onto the English questionnaire and do not use that Afrikaans questionnaire.

For example: you are supposed to use questionnaire 10. You come across an English household who insists on answering in English. Copy the information from questionnaire 10 onto a blank English questionnaire and destroy Afrikaans questionnaire 10. In the end every questionnaire must have its own unique number; therefore you have to destroy the Afrikaans questionnaire.

Table B: The questionnaire

Doctoral Study: Survey of Greater Pretoria area Impact of Equality legislation

This questionnaire aims at establishing the awareness and understanding of residents of Greater Pretoria of equality legislation and equality issues.

Your answers to these questions will be treated confidentially. We will ask you to provide a contact telephone number but this is only for control purposes. (You might receive a telephone call during which you will only be asked whether an interview was conducted with you.) You do not have to provide contact details if you do not want to.

Respondent's contact details: _____ (Optional)

1. Respondent number V1 1-3
2. Card Number V2 4-5
3. Stratum V3 6-7



4. Suburb

V4 8-9

Respondent's Biographical Details

1. Race (Note to interviewer: Do not ask)

Black	1
White	2
Coloured	3
Asian	4
Other: State: _____	5

V5 10

2. What language do you speak most often at home?

Afrikaans	1
English	2
Nguni language	3
Sotho language	4
Other African language	5
Indian language	6
European language	7
Other: State: _____	8

V6 11

3. Gender

Male	1
Female	2



V7 12

4. State your age in years: _____

V8 13-14

5. Educational level passed

None	1
Primary School	2
Std 6-9 / Grade 8-11	3
Std 10 / Grade 12	4
B degree	5
Honours degree	6
Master's degree	7
Other: State _____	8

V9 15

6. What is your current occupation? _____

V10 16-17

7. Do you read a daily newspaper regularly, that is, at least four out of six issues a week?

Yes	1
No	2

V11 18

8. Estimate how many hours on an average working day, that is, from Monday to Friday, you spend watching TV?



Less than 1 hour	1
1-2 hours	2
2-3 hours	3
3-4 hours	4
More than 4 hours	5
Never watch TV	6
Don't have a TV	7

V12 19

9. Estimate how many hours on an average working day, that is, from Monday to Friday, you spend listening to radio?

Less than 1 hour	1
1-2 hours	2
2-3 hours	3
3-4 hours	4
More than 4 hours	5
Never listen to radio	6
Don't have a radio	7

V13 20

10.1 How would you describe the following practices?

Practice	Not Disc rimin ation	Fair Disc rimin ation	Unfa ir Disc rimin ation	Uncerta in
Insurance companies insist on an HIV/AIDS test prior to issuing a life insurance policy	1	2	3	4
Males pay a higher premium for motor vehicle	1	2	3	4

V14 21

V15 22



insurance than females because males are involved in more collisions						
A restaurant refuses to serve black people	1	2	3	4	V16	23
Someone with a garden flat refuses to rent that flat to Muslims	1	2	3	4	V17	24
Banks refuse to grant loans to people wanting to buy property in certain areas	1	2	3	4	V18	25
The municipality requires a matriculation certificate for its garbage removal employees	1	2	3	4	V19	26
Insurance companies refuse to issue a life insurance policy to a HIV+ person or a person who has AIDS	1	2	3	4	V20	27
A nightclub only allows people of Asian origin	1	2	3	4	V21	28
The SAA refuses to employ cabin stewards who are HIV+ or who has AIDS	1	2	3	4	V22	29
The South African Medical and Dental Council refuses to allow dentists who are HIV+ or who has AIDS to operate on patients	1	2	3	4	V23	30
Gay couples are not allowed to adopt children	1	2	3	4	V24	31
A shopping centre does not allow pets into the centre and therefore also refuses blind people to bring their guide dogs onto the premises	1	2	3	4	V25	32
The Department of Justice invites job applications for prosecutors. They make it clear that no white males will be considered	1	2	3	4	V26	33
A pleasure park does not allow children under a certain age to go onto their rides	1	2	3	4	V27	34
A husband states in his will "My wife inherits all my belongings but if she chooses to remarry and if she marries a black man I disinherit her and I bequeath all my	1	2	3	4	V28	35



belongings to the Dutch Reformed Church”						
Mary and John invite all their work colleagues to their wedding except the black cleaners and tea ladies	1	2	3	4	V29	36
SARFU declares that in future all Springbok rugby test teams must include at least two black players	1	2	3	4	V30	37
A golf club charges an annual membership fee of R40 000 “to keep out undesirable elements”	1	2	3	4	V31	38
Pretoria municipality charges Faerie Glen according to actual consumption of water and electricity but charges Mamelodi a flat charge, irrespective of actual consumption, because of inferior services in Mamelodi compared with Faerie Glen	1	2	3	4	V32	39
A company fails to appoint a woman to the position of Marketing Director after she falls pregnant	1	2	3	4	V33	40

10.2 What do you think a South African court will decide on the following practices?

Practice	Not discrimination	Fair discrimination	Unfair discrimination	Uncertain		
Gay couples are not allowed to adopt children	1	2	3	4	V34	41
The Department of Justice invites job applications for prosecutors. They make it clear that no white males will be considered	1	2	3	4	V35	42
Pretoria municipality charges Faerie Glen according	1	2	3	4	V36	43

to actual consumption of water and electricity but charges Mamelodi a flat charge, irrespective of actual consumption, because of inferior services in Mamelodi compared with Faerie Glen				
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11. Are you aware of legislation that outlaws unfair discrimination?

Yes	1
No	2

V37 44

12. Indicate whether you have heard of the Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000 in one or more of the following:

Source	Yes	No
TV	1	2
Radio	1	2
Newspapers	1	2
Friends or family	1	2
Other: state: _____	1	2

V38	<input type="checkbox"/>	45
V39	<input type="checkbox"/>	46
V40	<input type="checkbox"/>	47
V41	<input type="checkbox"/>	48
V42	<input type="checkbox"/>	49

13.1 Do you think that SA courts grant fair decisions?

Always	1
Sometimes	2
Usually	3
Never	4
Uncertain	5

V43 50



13.2 Do you think that SA courts grant fair decisions in cases dealing with discrimination?

Always	1
Sometimes	2
Usually	3
Never	4
Uncertain	5

V44 51

14. Describe your attitude regarding the general political situation in South Africa at present.

Are you

Very positive about SA	1
Positive about SA	2
Neutral about SA	3
Negative about SA	4
Very negative about SA	5

V45 52

15. Do you think that South Africans from different races and cultures have become more tolerant towards each other in the last three years?

More tolerant	1
Remained the same	2
Less tolerant	3
Uncertain	4

V46 53

16.1 How many times in the last six months have you experienced unfair discrimination against you on one or more of the following grounds?

Ground	Never	Once	Twice	Three times	Four times	Five or more			
Race/Colour	0	1	2	3	4	5	V47	<input type="checkbox"/>	54
Gender	0	1	2	3	4	5	V48	<input type="checkbox"/>	55
Age	0	1	2	3	4	5	V49	<input type="checkbox"/>	56
Language/Culture	0	1	2	3	4	5	V50	<input type="checkbox"/>	57

16.2 If you indicated that you have suffered unfair discrimination in 16.1, describe the most serious incident of unfair discrimination / the incident that upset you most.

V51 58-59

16.3 If you have suffered unfair discrimination, did you approach any of the institutions listed below:

Institution	Yes	No			
The SA police service	1	2	V52	<input type="checkbox"/>	60
A Court	1	2	V53	<input type="checkbox"/>	61
The Human Rights Commission	1	2	V54	<input type="checkbox"/>	62
A Law Clinic or attorney	1	2	V55	<input type="checkbox"/>	63

17.1 Is it a crime to call someone a “kaffir”?



Yes	1
No	2
Uncertain	3

V56 64

17.2 Should it be a crime to call someone a “kaffir”?

Yes	1
No	2
Uncertain	3

V57 65

17.3 Is it a crime to shout something like “kill the farmer, kill the boer”?

Yes	1
No	2
Uncertain	3

V58 66

17.4 Should it be a crime to shout something like “kill the farmer, kill the boer”?

Yes	1
No	2
Uncertain	3

V59 67



18. If racism played a part in a murder or robbery or hijacking, what kind of sentence should a court impose?

Higher sentence	1
Lower sentence	2
Shouldn't make a difference	3

V60 68

19.1 How many times have you appeared in a South African court as a witness and/or as a party to a lawsuit? _____

V61 69-70

19.2 If you have ever been to a South African court, describe your impression of South African courts:

V62 71-72

20.1 How many times in your life have you consulted with a legal practitioner regarding a personal problem? _____

V63 73-74

20.2 What is your impression of lawyers?



V64 75-76

21. Do you agree with the following statement:

“The government is misusing the term “racist”. Whenever they don’t like what someone is saying about their policies, they describe such a person as a racist”.

Yes	1
No	2
Uncertain	3

V65 77

22. How effectively has the government been able to implement its anti-discrimination laws and policies?

Not effectively	1
Effectively	2
Very effectively	3
Uncertain	4

V66 78

Table C: Codes to open-ended options in Question 6

- 1 Unemployed
- 2 Pensioner



3	Student / scholar
4	Educational
5	Legal
6	Art
7	Business / Sales / Consultant / Entrepreneur
8	Management
9	Medical
10	Banking / Financial
11	Police / Security
12	Clerical / Secretarial
13	Manual or unskilled labour
14	Housewife
15	Other

Table D: Codes to open-ended options in Question 16.2

1	Work place (affirmative action; interview; retrenchments etc)
2	Social interaction (white-black; black-black; male-female)
3	Police
4	Educational institutions
5	Medical care institutions
6	Resorts, restaurants, shopping complexes

Table E: Codes to open-ended options in Question 19.2

1	Positive view
2	Negative view
3	Ambivalent view

Table F: Codes to open-ended options in Question 20.2

1	Positive view
2	Ambivalent view
3	Expensive / rich / making money out of clients' problems



- 4 Dishonest / liars / without principles
- 5 Favours criminals
- 6 Busy / Under pressure
- 7 Inaccessible
- 8 Selfish / self-centered
- 9 "An occupation"
- 10 Other negative opinion

Table G: Profile of respondents' attitude towards the general political situation in South Africa (question 14)

	Whole group	White	Black, coloured and Asian	Afrikaans	English and other European languages	African languages	Female	Male
"very positive"	23 (7.82%)	5 (3.82%)	18 (11.04%)	5 (4.2%)	1 (2.94%)	17 (12.32%)	15 (10.07%)	8 (5.63%)
"positive"	54 (18.37%)	22 (16.79%)	32 (19.63%)	20 (16.81%)	4 (11.76%)	29 (21.01%)	27 (18.12%)	26 (18.31%)
"neutral"	98 (33.33%)	37 (28.64%)	61 (37.42%)	33 (27.73%)	11 (32.35%)	53 (38.41%)	41 (27.52%)	56 (39.44%)
"negative"	86 (29.25%)	47 (35.88%)	39 (23.93%)	41 (34.45%)	13 (38.24%)	31 (22.46%)	47 (31.54%)	39 (27.46%)
"very negative"	33 (11.22%)	20 (15.27%)	13 (7.98%)	20 (16.81%)	5 (14.71%)	8 (5.8%)	19 (12.75%)	13 (9.15%)

Table H: Profile of respondents' views on racial tolerance (Question 15)

	Whole group	White	Black, coloured, Asian	Afrikaans	English; other European	African languages
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					languages	
“more tolerant”	107 (36.77%)	44 (34.11%)	63 (38.89%)	39 (33.33%)	13 (38.24%)	55 (40.15%)
“remained the same”	79 (27.15%)	34 (26.36%)	45 (27.78%)	37 (31.62%)	6 (17.65%)	35 (25.55%)
“less tolerant”	86 (29.55%)	42 (32.56%)	44 (27.16%)	33 (28.21%)	14 (41.18%)	38 (27.74%)
“uncertain”	19 (6.53%)	9 (6.98%)	10 (6.17%)	8 (6.84%)	1 (2.94%)	9 (6.57%)

Table I: Profile of respondents' views on the use/misuse of the term “racist” (Question 21)

	Whole group	White	Black, coloured and Asian	Afrikaans	English; other European languages	African languages
Misuses the term	197 (67.24%)	120 (91.6%)	77 (47.53%)	107 (89.92%)	27 (79.41%)	60 (43.8%)
Does not misuse the term	71 (24.23%)	2 (1.53%)	69 (42.59%)	3 (2.52%)	4 (11.75%)	64 (46.72%)
Uncertain	25 (8.53%)	9 (6.87%)	16 (9.88%)	9 (7.56%)	3 (8.82%)	13 (9.49%)

Table J: Profile of respondents' views on the implementation of anti-discrimination laws and policies (Question 22)

	Whole group	White	Black, coloured, Asian	Afrikaans	English Other European languages	African languages
“not effectively”	147 (50%)	72 (54.96%)	75 (46.01%)	62 (52.1%)	19 (55.88%)	65 (47.1%)
“effectively”	79 (26.87%)	21 (16.03%)	58 (35.58%)	18 (15.13%)	11 (32.35%)	49 (35.51%)
“very effectively”	12 (4.08%)	4 (3.05%)	8 (4.91%)	4 (3.36%)	2 (5.88%)	6 (4.35%)
“uncertain”	56 (19.05%)	34 (25.95%)	22 (13.5%)	35 (29.41%)	2 (5.88%)	18 (13.04%)

Table K: Awareness of the Act specifically

	Whole group	White	Black, coloured and Asian
TV	106 (39.11%)	37 (31.36%)	69 (45.1%)
Radio	101 (37.41%)	26 (22.22%)	75 (49.02%)
Newspapers	99 (36.4%)	32 (26.67%)	67 (44.08%)
Friends or family	66 (25%)	23 (20%)	43 (28.86%)
Other	8 (4.79%)	5 (6.02)	3 (3.57)

Table L: Respondents' response to question 10.1

Practice	Not discrimination (%)	Fair discrimination (%)	Unfair discrimination (%)	Uncertain (%)
Insurance companies insist on an HIV/AIDS test prior to issuing a life insurance policy	22.53	35.84	37.2	4.44
Males pay a higher premium for motor vehicle insurance than females because males are involved in more collisions	6.19	24.4	62.89	6.53
A restaurant refuses to serve black people	4.1	5.12	87.03	3.75
Someone with a garden flat refuses to rent that flat to Muslims	11.15	18.12	64.81	5.92
Banks refuse to grant loans to people wanting to buy property in certain areas	7.19	15.07	71.23	6.51
The municipality requires a matriculation certificate for its garbage removal employees	7.53	12.33	75.68	4.45
Insurance companies refuse to issue a life insurance policy to someone who is HIV+ or has AIDS	16.44	21.92	56.16	5.48
A nightclub only allows people of Asian origin	8.97	7.24	76.21	7.59
The SAA refuses to employ cabin stewards who are HIV+ or who has AIDS	13.27	25.85	55.1	5.78
The South African Medical and Dental Council refuses to allow	21.65	41.92	29.21	7.22

dentists who are HIV+ or who has AIDS to operate on patients				
Gay couples are not allowed to adopt children	20.48	33.79	35.84	9.9
A shopping centre does not allow pets into the centre and therefore also refuses blind people to bring their guide dogs onto the premises	2.05	6.14	87.71	4.1
The Department of Justice invites job applications for prosecutors. They make it clear that no white males will be considered	2.05	8.87	86.69	2.39
A pleasure park does not allow children under a certain age to go onto their rides	32.53	35.96	27.4	4.11
A husband states in his will "My wife inherits all my belongings but if she chooses to remarry and if she marries a black man I disinherit her and I bequeath all my belongings to the Dutch Reformed Church"	13.75	24.05	53.95	8.25
Mary and John invite all their work colleagues to their wedding except the black cleaners and tea ladies	15.36	15.02	66.21	3.41
SARFU declares that in future all Springbok rugby test teams must include at least two black players	14.04	33.22	46.92	5.82
A golf club charges an annual membership fee of R40 000 "to keep out undesirable elements"	10.73	18.69	62.28	8.3
Pretoria municipality charges Faerie Glen according to actual consumption of water and electricity but charges Mamelodi a flat charge, irrespective of actual consumption, because of inferior services in Mamelodi compared with Faerie Glen	5.14	23.63	67.47	3.77
A company fails to appoint a woman to the position of Marketing Director after she falls pregnant	3.42	13.36	79.79	3.42

Table M: White respondents' response to question 10.1

Practice	Not discrimi nation	Fair discrimi nation	Unfair discrimi nation	Uncertain (%)
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	(%)	(%)	(%)	
Insurance companies insist on an HIV/AIDS test prior to issuing a life insurance policy	42.75	46.56	6.11	4.58
Males pay a higher premium for motor vehicle insurance than females because males are involved in more collisions	8.46	27.69	53.85	10
A restaurant refuses to serve black people	7.69	10	75.38	6.92
Someone with a garden flat refuses to rent that flat to Muslims	20.93	31.78	37.21	10.08
Banks refuse to grant loans to people wanting to buy property in certain areas	11.54	24.62	56.15	7.69
The municipality requires a matriculation certificate for its garbage removal employees	6.92	4.62	82.31	6.15
Insurance companies refuse to issue a life insurance policy to a HIV+ person or a person who has AIDS	29.23	38.46	25.38	6.92
A nightclub only allows people of Asian origin	17.69	13.08	56.15	13.08
The SAA refuses to employ cabin stewards who are HIV+ or who has AIDS	23.66	38.93	29.77	7.63
The South African Medical and Dental Council refuses to allow dentists who are HIV+ or who has AIDS to operate on patients	25.19	58.02	9.16	7.63
Gay couples are not allowed to adopt children	26.15	43.85	19.23	10.77
A shopping centre does not allow pets into the centre and therefore also refuses blind people to bring their guide dogs onto the premises	0.76	6.87	90.08	2.29
The Department of Justice invites job applications for prosecutors. They make it clear that no white males will be considered	0.76	3.05	93.89	2.29
A pleasure park does not allow children under a certain age to go onto their rides	51.15	42.75	3.05	3.05
A husband states in his will "My wife inherits all my belongings but if she chooses to remarry and if she marries a black man I disinherit her and I bequeath all my belongings to the Dutch Reformed Church"	22.31	36.15	34.62	6.92
Mary and John invite all their work colleagues to their wedding	30.53	29.01	35.11	5.34

except the black cleaners and tea ladies				
SARFU declares that in future all Springbok rugby test teams must include at least two black players	16.03	18.32	57.25	8.4
A golf club charges an annual membership fee of R40 000 “to keep out undesirable elements”	16.15	33.08	42.31	8.46
Pretoria municipality charges Faerie Glen according to actual consumption of water and electricity but charges Mamelodi a flat charge, irrespective of actual consumption, because of inferior services in Mamelodi compared with Faerie Glen	2.29	11.45	83.97	2.29
A company fails to appoint a woman to the position of Marketing Director after she falls pregnant	4.62	18.46	70.77	6.15

Table N: Black, coloured and Asian respondents' response to question 10.1

Practice	Not discrimination (%)	Fair discrimination (%)	Unfair discrimination (%)	Uncertain (%)
Insurance companies insist on an HIV/AIDS test prior to issuing a life insurance policy	6.17	27.16	62.35	4.32
Males pay a higher premium for motor vehicle insurance than females because males are involved in more collisions	4.35	21.74	70.19	3.73
A restaurant refuses to serve black people	1.23	1.23	96.32	1.23
Someone with a garden flat refuses to rent that flat to Muslims	3.18	7.01	87.26	2.55
Banks refuse to grant loans to people wanting to buy property in certain areas	3.7	7.41	83.33	5.56
The municipality requires a matriculation certificate for its garbage removal employees	8.02	18.52	70.37	3.09
Insurance companies refuse to issue a life insurance policy to a HIV+ person or a person who has AIDS	6.17	8.64	80.86	4.32
A nightclub only allows people of Asian origin	1.87	2.5	92.5	3.13
The SAA refuses to employ cabin stewards who are HIV+ or who	4.91	15.34	75.46	4.29



has AIDS				
The South African Medical and Dental Council refuses to allow dentists who are HIV+ or who has AIDS to operate on patients	18.75	28.75	45.63	6.88
Gay couples are not allowed to adopt children	15.95	25.77	49.08	9.2
A shopping centre does not allow pets into the centre and therefore also refuses blind people to bring their guide dogs onto the premises	3.09	5.56	85.8	5.56
The Department of Justice invites job applications for prosecutors. They make it clear that no white males will be considered	3.09	13.58	80.86	2.47
A pleasure park does not allow children under a certain age to go onto their rides	17.39	30.43	47.2	4.97
A husband states in his will “My wife inherits all my belongings but if she chooses to remarry and if she marries a black man I disinherit her and I bequeath all my belongings to the Dutch Reformed Church”	6.83	14.29	69.57	9.32
Mary and John invite all their work colleagues to their wedding except the black cleaners and tea ladies	3.09	3.7	91.36	1.85
SARFU declares that in future all Springbok rugby test teams must include at least two black players	12.42	45.34	38.51	3.73
A golf club charges an annual membership fee of R40 000 “to keep out undesirable elements”	6.29	6.92	78.62	8.18
Pretoria municipality charges Faerie Glen according to actual consumption of water and electricity but charges Mamelodi a flat charge, irrespective of actual consumption, because of inferior services in Mamelodi compared with Faerie Glen	7.45	33.54	54.04	4.97
A company fails to appoint a woman to the position of Marketing Director after she falls pregnant	2.47	9.26	87.04	1.23

Table O: Afrikaans-speaking respondents’ response to question 10.1

Practice	Not discrimi	Fair discrimi	Unfair discrimi	Uncertain (%)
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	nation (%)	nation (%)	nation (%)	
Insurance companies insist on an HIV/AIDS test prior to issuing a life insurance policy	47.06	43.7	5.04	4.2
Males pay a higher premium for motor vehicle insurance than females because males are involved in more collisions	7.63	26.27	55.93	10.17
A restaurant refuses to serve black people	8.47	11.02	73.73	6.78
Someone with a garden flat refuses to rent that flat to Muslims	23.93	29.91	36.75	9.4
Banks refuse to grant loans to people wanting to buy property in certain areas	12.71	22.88	58.47	5.93
The municipality requires a matriculation certificate for its garbage removal employees	6.78	5.93	81.36	5.93
Insurance companies refuse to issue a life insurance policy to a HIV+ person or a person who has AIDS	33.05	32.3	27.12	7.63
A nightclub only allows people of Asian origin	18.64	12.71	55.93	12.71
The SAA refuses to employ cabin stewards who are HIV+ or who has AIDS	25.21	38.66	30.25	5.88
The South African Medical and Dental Council refuses to allow dentists who are HIV+ or who has AIDS to operate on patients	28.57	56.3	9.24	5.88
Gay couples are not allowed to adopt children	28.81	43.22	16.1	11.86
A shopping centre does not allow pets into the centre and therefore also refuses blind people to bring their guide dogs onto the premises	0.84	6.72	90.76	1.68
The Department of Justice invites job applications for prosecutors. They make it clear that no white males will be considered	0.84	5.04	91.6	2.52
A pleasure park does not allow children under a certain age to go onto their rides	51.26	42.86	2.52	3.36
A husband states in his will "My wife inherits all my belongings but if she chooses to remarry and if she marries a black man I disinherit her and I bequeath all my belongings to the Dutch Reformed Church"	22.88	33.9	35.59	7.63



Mary and John invite all their work colleagues to their wedding except the black cleaners and tea ladies	31.93	25.21	36.97	5.88
SARFU declares that in future all Springbok rugby test teams must include at least two black players	16.81	21.85	52.94	8.4
A golf club charges an annual membership fee of R40 000 “to keep out undesirable elements”	17.8	28.81	44.07	9.32
Pretoria municipality charges Faerie Glen according to actual consumption of water and electricity but charges Mamelodi a flat charge, irrespective of actual consumption, because of inferior services in Mamelodi compared with Faerie Glen	2.52	10.92	84.03	2.52
A company fails to appoint a woman to the position of Marketing Director after she falls pregnant	5.08	16.95	72.88	5.08

Table P: English-speaking (and other European languages) respondents’ response to question 10.1

Practice	Not discrimi nation (%)	Fair discrimi nation (%)	Unfair discrimi nation (%)	Uncertain (%)
Insurance companies insist on an HIV/AIDS test prior to issuing a life insurance policy	17.65	47.06	32.35	2.94
Males pay a higher premium for motor vehicle insurance than females because males are involved in more collisions	17.65	35.29	41.18	5.88
A restaurant refuses to serve black people	0.00	2.94	97.06	0.00
Someone with a garden flat refuses to rent that flat to Muslims	5.88	26.47	64.71	2.94
Banks refuse to grant loans to people wanting to buy property in certain areas	8.82	20.59	64.71	5.88
The municipality requires a matriculation certificate for its garbage removal employees	14.71	11.76	67.65	5.88
Insurance companies refuse to issue a life insurance policy to a HIV+ person or a person who has AIDS	2.94	44.12	41.18	11.76

A nightclub only allows people of Asian origin	2.94	8.82	79.41	8.82
The SAA refuses to employ cabin stewards who are HIV+ or who has AIDS	5.88	29.41	52.94	11.76
The South African Medical and Dental Council refuses to allow dentists who are HIV+ or who has AIDS to operate on patients	11.76	52.94	26.47	8.82
Gay couples are not allowed to adopt children	2.94	41.18	47.06	8.82
A shopping centre does not allow pets into the centre and therefore also refuses blind people to bring their guide dogs onto the premises	8.82	5.88	79.41	5.88
The Department of Justice invites job applications for prosecutors. They make it clear that no white males will be considered	0.00	14.71	85.29	0.00
A pleasure park does not allow children under a certain age to go onto their rides	38.24	44.12	11.76	5.88
A husband states in his will "My wife inherits all my belongings but if she chooses to remarry and if she marries a black man I disinherit her and I bequeath all my belongings to the Dutch Reformed Church"	5.88	29.41	55.88	8.82
Mary and John invite all their work colleagues to their wedding except the black cleaners and tea ladies	14.71	29.41	50	5.88
SARFU declares that in future all Springbok rugby test teams must include at least two black players	14.71	29.41	44.12	11.76
A golf club charges an annual membership fee of R40 000 "to keep out undesirable elements"	18.18	39.39	39.39	3.03
Pretoria municipality charges Faerie Glen according to actual consumption of water and electricity but charges Mamelodi a flat charge, irrespective of actual consumption, because of inferior services in Mamelodi compared with Faerie Glen	3.03	27.27	63.64	6.06
A company fails to appoint a woman to the position of Marketing Director after she falls pregnant	2.94	14.71	76.47	5.88

Table Q: Respondents' response to question 10.2

Practice	Not discrimination	Fair discrimination	Unfair discrimination	Uncertain
Gay couples are not allowed to adopt children	11.35	28.72	40.43	19.5
The Department of Justice invites job applications for prosecutors. They make it clear that no white males will be considered	3.55	18.09	69.15	9.22
Pretoria municipality charges Faerie Glen according to actual consumption of water and electricity but charges Mamelodi a flat charge, irrespective of actual consumption, because of inferior services in Mamelodi compared with Faerie Glen	4.98	30.6	52.67	11.74

Table R: White respondents' response to question 10.2

Practice	Not discrimination (%)	Fair discrimination (%)	Unfair discrimination (%)	Uncertain (%)
Gay couples are not allowed to adopt children	14.5	33.59	28.24	23.66
The Department of Justice invites job applications for prosecutors. They make it clear that no white males will be considered	4.62	30.77	53.85	10.77
Pretoria municipality charges Faerie Glen according to actual consumption of water and electricity but charges Mamelodi a flat charge, irrespective of actual consumption, because of inferior services in Mamelodi compared with Faerie Glen	6.11	35.88	44.27	13.74

Table S: Black, coloured and Asian respondents' response to question 10.2

Practice	Not discrimination	Fair discrimination	Unfair discrimination	Uncertain
Gay couples are not allowed to adopt children	8.61	24.5	50.99	15.89
The Department of Justice invites job applications for prosecutors. They make it clear that no white males will be considered	2.63	7.24	82.24	7.89

Pretoria municipality charges Faerie Glen according to actual consumption of water and electricity but charges Mamelodi a flat charge, irrespective of actual consumption, because of inferior services in Mamelodi compared with Faerie Glen	4	26	60	10
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Table T: Afrikaans-speaking respondents' response to question 10.2

Practice	Not discrimination	Fair discrimination	Unfair discrimination	Uncertain
Gay couples are not allowed to adopt children	15.97	35.29	23.53	25.21
The Department of Justice invites job applications for prosecutors. They make it clear that no white males will be considered	4.24	30.51	52.54	12.71
Pretoria municipality charges Faerie Glen according to actual consumption of water and electricity but charges Mamelodi a flat charge, irrespective of actual consumption, because of inferior services in Mamelodi compared with Faerie Glen	5.04	33.61	46.22	15.13

Table U: English-speaking (and other European languages) respondents' response to question 10.2

Practice	Not discrimination	Fair discrimination	Unfair discrimination	Uncertain
Gay couples are not allowed to adopt children	0.00	23.53	58.82	17.65
The Department of Justice invites job applications for prosecutors. They make it clear that no white males will be considered	5.88	23.53	67.65	2.94
Pretoria municipality charges Faerie Glen according to actual consumption of water and electricity but charges Mamelodi a flat charge, irrespective of actual consumption, because of inferior services in Mamelodi compared with Faerie Glen	8.82	38.24	41.18	11.76



Table V: Descriptions of discrimination

Workplace

- “Waar ek werk kan die swart en kleurling skoonmakers nie dieselfde toilette gebruik as die wit skoonmakers”.
- “When applying for a job, was not black enough to get the job”.
- “My kleur – hulle het my werk vir ‘n swarte gegee”.
- “Couldn’t get employment because of my age”. (41 year old black male.)
- “Applications for a government post, told that I was very old”. (25 year old black male with primary school education.)
- “I was in a job interview and I try to talk one of my African language and I mean it is one of the official language in South Africa, he just said non of the fucken language are allowed in this building”.
- “Retrenchment at government organization due to being white”.
- “Werkseleenthede; regstellende aksie op grond van ras”.
- “Pos ontnem ogv seksuele voorkeur”.
- “Werkseleenthede beperk tot jonger persone”. (45 year old Afrikaans-speaking white female)
- “Retrenchment – was retrenched 9 months ago as a result of age”.
- “Werkseleenthede op meriete”.
- “Kry nie werk agv ouderdom”. (45 year old white Afrikaans-speaking female)
- “Affirmative action! Need I say more?” (34 year old white English-speaking male)
- “Diskriminasie ogv ras, omdat persoon met swakker kwalifikasies die werk gekry het net omdat hy swart was”.
- “Regstellende aksie poste in advertensies vir werk”.
- “Every day at work, blacks earn less than whites even if the black may be more qualified than the white”.
- “Refused admission in the SANDF”. (27 year old black male.)
- “At work”.
- “Werkseleenthede nie beskikbaar vir sekere bevolkingsgroepe”.
- “Taalvoorkeur word teen persoon gebruik in werksituasie”.

- “Regstellende aksie”.
- “Werkseleenthede nie beskikbaar vir wit mans. (bv RGN), nie oorweeg ogv ras”.
- “Diskriminasie in die werkplek agv velkleur”. (60 year old white Afrikaans-speaking male)
- “Die feit dat daar geen bevorderingsmoontlikhede vir blankes is nie maar hulle die werkgewer moet dra”. (43 year old white Afrikaans-speaking clerk.)
- “Laat ons nie ontstel. My seun agt jaar in Polisie kry nie bevordering omdat hy wit is. Mense wat nie weet hoe nie word brigadiers”.
- “Diskriminasie op grond van taal tydens ‘n onderhoud”.
- “Due for posting outside the country and was refused”. (female, did not state age, diplomat assistant, black, alleging unfair discrimination based on race)
- “Volgens maatskappye is ‘n kleurling nie voldoende om aansoek te doen vir ‘affirmative action’ posisies nie”. (26 year old coloured female.)
- “They brought a white woman with only 2 years experience and that she should be my supervisor when I have 28 years”.
- “Opposed application for black manager”.
- “Work situation. I had a matric certificate but a white guy did not have but was my senior and earning more because he was white”.
- “If I have grievances at work just because Black they file it aside or I am helping a black person at work the white manager will come and tell me I have to serve a white person”.
- “Omdat ek ‘n vrou is kan ek nie ‘n maatskappymotor kry nie maar die getroude mans kan ‘n maatskappymotor kry”.
- “Ek het soveel teenkanting ontvang in my posisie as bestuurder dat dit uitloop het op ‘n dissiplinêre verhoor van een van my werknemers. Ek het rede om te glo dat dit spruit uit die feit dat ek die jongste bestuurder in my maatskappy is”.
- “Regstellende aksie in bevordering”.
- “All meetings conducted in other languages regardless of the diversity existing among us”.
- “When I applied for a sub-contract and was denied the opportunity but a white man of exactly the same position as mine was awarded the contract”.
- “Onderhoude word slegs in Engels gevoer”.
- “Job applications are turned down on basis of age”. (55 year old coloured female.)

- “Clients that call in insist on home language and I do not speak 11 languages”.
- “A lady offered me a position as a receptionist without finding out what qualifications I do have”.
- “18 maande werkloos van dosyne aansoeke absoluut geen terugvoer ontvang nie, indien wel was antwoord altyd dieselfde. Wit mans word nie aangestel”. (28 year old white Afrikaans-speaking male.)
- “At work, same rank but because of racial differences treated differently”. (age not stated, male, SAPS, black.)
- “Uit vorige pos agv omgekeerde diskriminasie”.
- “Iscoor discrimination based on age”. (black male, self-employed, did not state age.)
- “Place work, employers favour white employees compared black employees. Military refused to hire me because they said I’m above the age they want”.
- “At work – women were demanding same pay. Efforts failed”.
- “They say when applying for a job that I am lying about my age because I have a naturally big body”. (18 year old Sotho-speaking female.)
- “At a stocktaking job, I was told I am young, and I can’t do stocktaking”. (18 year old black male.)
- “Promotion – preference given to whites”.

Social interaction

- “Worked at Voortrekker Military Hospital and had to prove self-worth amongst fellow peers. As was the only Indian female in male dominated profession (physiotherapy) and had to earn their respect”.
- “Iemand wat onder my werk het my ‘n kaffirboar genoem en gesê ek het ‘n platkop”.
- “Blacks at my working place are treated and given orders as if they are children, as compared to their white counter-parts”.
- “A client called me a bloody mother-fucking kaffir. I reported it to the manager but nothing was done”.
- “At work motorists (white) arrived, saw me in uniform trying to attend to them and they asked me where the people are as if I am not a person simply because I am black”.

- People insist on speaking Afrikaans when they know that some people can't understand fully".
- "Mostly from men because I am a woman with an attitude".
- "Toe 'n Engelse vrou vir my 'n 'dumb dutchman' genoem het omdat ek nie geweet het hoe om my parkeerskyfie in die masjien te sit by die Brooklyn winkelsentrum".
- "Was called a 'koolie' in public which was very degrading".
- "Race. Is where by a Indian call me with a kaffir".
- "A beggar begged from me instead of the black guy in the BMW next to me. At a café. When I struck up a conversation with the beggar he asked me to marry him. I asked 'why' he said 'I want to fuck a white woman'".
- "From Witbank at robot there were white guys at the car behind and after overtaking us, they swore at us calling us kaffirs and other insulting names".
- "Unfair jokes about my tribe (Shagane)".
- "Sometimes our fellow students who use the language 'Venda' talk behind our backs, because we can't hear their language".
- "Nie bereid om met my Afrikaans te praat; jonger mans word voorkeur gegee in banktoue". (66 year old white Afrikaans speaking male.)
- "Stood in the way of a white man in town and he nearly fought with me".
- "In Westpark 2 white boys asked me and my friend for a lighter, we told them we don't have and the one guy started fighting my friend (because he knew him)".
- "Spoken to in Afrikaans of which I don't really understand".
- "If your pronunciation is definitely African most white people are less inclined to listen to whatever you have to say".
- "I'm Afrikaans and my friend most Sotho discriminates against me all the time". (49 year old coloured female, living in Atteridgeville)
- "Afrikaaners are not interested in learning our languages, but we are forced to learn theirs and I think that's unfair".
- "Doing interview for a newspaper some interview... [illegible] told me because I am woman can not take the heat".
- "Condescension in hardware section of stores by male customers and clerks".



- “White person swore at me, I bumped into him and I said sorry but he just swore at me”.
- “I was on a queue (sic) waiting to withdraw some cash so what happened the teller ask for a white lady to come before me”.
- “Chased away from town on a mere suspicion but I think it was racially motivated”.
- “You go clubbing and when you get there, because you’re black, the white patrons ask you what you want”.
- “In Hatfield trying to sell books. The shop attendant refused to buy my books”.
- “My position is to give instructions but when I give instructions to whites they do not follow. They don’t accept the position I hold”. (Self-employed 34 year old black male)
- “Couldn’t get help because I can’t speak English”.
- “Husband consulted or consultation requested after I had made decision on both our behalf and representation”.
- “People never accept my language. They think I’m stupid”. (23 year old Sotho-speaking male.)
- “Once I was walking in town, whites looked at me funny, they thought I was a criminal”.
- “Queue for payment, white person in shop goes before me”.
- “Ek het ‘n navraag met Assupol uitsorteer. Omdat die swartman nie geweet het om dit te hanteer nie het hy my beskuldig dat ek hom gaan vloek en toe sit hy die foon in [my oor neer?]”.
- “Pushing child with pram and wants to run into black lady in shop”.
- “Swartes met min respek behandel”.
- “Diskriminasie ogv taal. Is my reg om in my taal bedien te word”.

Police

- “Crossing the road at Sunnyside and a white motorist nearly ran me over, I went to the police and they never helped me”.
- “I was involved in a car accident. The other driver, a white male, was at fault and he was drunk. He had a phone (I don’t) so he called his friends, one of whom was a cop. When they came, the cop said it was my fault and he refused to hear my side of the story”.

- “Black traffic cop gives black person fine for not putting on safety belt but white person is told and not given fine”.
- “Harassed by two white police man from the Dog Unit”.
- “Two white boys driving same car as me, who happen to be my friends, similar speeds, I was stopped by cops but they weren’t”.

Educational institutions

- “I am currently studying at Tukkies and being black is difficult because of Afrikaans and we are constantly undermined”.
- “At school – discriminated on base of race”.
- “Refused entry to multiracial schools”.
- “Applied to a school, refused to take me because I’m black”.

Health facilities

- “Not treated fair in terms of the services in the hospital because of colour”.
- “White patients get better medical [than Africans?]”.
- “In a hospital where white patients get effective good medication and black patients getting generic medicine”.

Restaurants, resorts and similar recreational establishments

- “At Northern Province game lodge”.
- “When I go shopping the security guard always follows me like I am a thief” (26 year old coloured female).
- “White people in shopping malls (staff) do not treat us black people equal to white people. Eg once a white person in a shop first looked at how I am dressed or what class I fall under before she could serve me”.
- “Someone was kicked out of a restaurant because it was an all white res. I am Tsonga and people always discriminate against me on that basis, even black people”.



Other

- “Diskriminasie ogv taal en kultuur. Is aantasting van jou menswees en is ‘n gruwelike belediging”.
- “Het my nie eintlik beïnvloed nie”. (discrimination based on culture.)
- “Ras/kleur: ek dink nie dat dit ‘n verskil moet maak watter ras ‘n persoon is – hulle is almal dieselfde”.
- “For the incident that had happened last time at Dendrone of a guy who have killed by the whites guys”.
- “I think there is more Apartheid”.
- “Not serious incidents”.
- “Aanvaarding dat Blanke/Afrikaanssprekende persone, swartmense ten alle tye wil en sal tenakom”.
- “Daar word daaglik teen alle Afrikaanssprekendes se taalregte gediskrimineer”.
- “Omdat ons senior burgers is, is ons teikens van berowing en word gedurig besteel”.
- “As gevolg van sekere instellinge word ou standarde gehandhaaf alvorens gekyk word na sekere werklike aspekte”.
- “Last year in June, but I can’t remember exactly how”.
- “Too personal”. (X2)
- “Slegs Engelse advertensies”.
- “Serving on a National Committee, told the Committee was too ‘white’”.
- “I needed money to go to town at end of month, I went to police station asking for money policeman said ‘you walked in wrong direction, this is not a bank’. Insurance policy company refuses to pay me because I’m black”.

Table W : Positive opinions of lawyers

- “Helpful”. (X18)
- “Good” / “Very good” / variants (X13)
- “Fair”. (X2)
- “They are cool!” (X2)
- “Some are very good at what they do and they really want to help”.

- “Hulle is baie gehoorsaam en hulle probeer om probleme uit te sorteer”.
- “They help. For example if a company takes your money or charges too much a lawyer can fight for you”.
- “They are helpful people, they help you state your case”.
- “They are needed”.
- “I got acquitted because of a lawyer”.
- “They are co-operative and objective”.
- “I think lawyers are doing a very good job on helping innocent people”.
- “They do their work”.
- “Goeie opleiding”.
- “Professioneel”.
- “Hulle was reg vir my”.
- “Worked for lawyers for 30 years. Positive of majority”.
- “Positief”.
- “Meestal positief”.
- “Never personally been to lawyers but I belong to an association ... (illegible word) but they are helpful”.
- “Regverdig; moeilike werk om te bemeester”.
- “Probeer hulle beste lewer onder druk”.
- “Verskillende menings, positief en negatief, oorwegend positief”.
- “Doen goeie werk onder omstandighede”.
- “He was professional and considered my interest”.
- “They are able to do their job, they can actually guide as to what to do or not to do in order to win a case”.
- “They know what they are doing and they can really help you if you don’t know something”.
- “Satisfactory”.
- “We need them”.
- “Really necessary”.
- “Kom baie intelligent, met regte antwoorde voor. Kry baie reg”.
- “Necessary people. Provide good service”.



- “Baie beter georganiseerd as enige iets wat met die staat verband hou”.
- “Agting daarvoor”.
- “Bekwaam”.
- “They do their jobs properly”.
- “Bekwaam”.
- “They are nice people”.
- “Bank se regsplan help my met my testament. Hulle ken my en is baie vriendelik teenoor my”.
- “Hulle lyk vriendelik”.
- “Goed opgelei”.
- “I consulted a lawyer regarding my divorce. She was very helpful in terms of the advice she gave me. Very punctual and very expensive!”
- “My man is ‘n prokureur. Hulle is ‘nice”.
- “Hulle lyk almal baie slim, en dit lyk of almal ryk is”.

Table X: Negative opinions of lawyers

Rich / charge too much / money hungry

- “Onbillike tariewe”. (X2)
- “Maak net geld uit jou, veral as hulle weet jy het geld”.
- “Not considerate, charge a lot to do little work”.
- “Hulle is ryk en arrogant”.
- “Disinterested in your case; interested in your money”.
- “Te duur (prima facie)”.
- “Omkoopbaar en duur”.
- “Baie duur; nie agter waarheid”.
- “Duur”.
- “Money making racket”.
- “Agter geld aan”.
- “Net uit om geld te maak – wettig en onwettig”.
- “Not effective in solving our problems but yet we pay money”.

- “Very expensive, totally unreliable and mostly unhelpful”.
- “Just making money out of others’ troubles”.
- “Just want money”.
- “Professioneel maar is te duur. Prokureurs buit kliente uit”.
- “Gold diggers – they don’t do their jobs”.
- “Black lawyers were initially inferior. Most lawyers are out to make money”.
- “They are at times helpful but they demand exorbitant fees”.
- “Gold diggers and they don’t do their jobs”.
- “Geldwolwe en uitbuiters. Sien ‘n persoon vir ‘n uur waarin 4-5 onderbrekings plaasvind maar hef ‘n fooi vir die hele uur”.
- “Dit is te duur. Dit neem te lank om ‘n besluiting te kry”.
- “They are only after money”.
- “They love money, they do not have the best interest of people at heart”.
- “They charge too much”.
- “Just take your money”.
- “Working for money. Doing it for sake of money”.

Dishonest

- “Hulle is baie ryk, maar ook oneerlik”.
- “Hulle is oneerlik en gee nie om vir mense nie”.
- “Hulle is skelm en leer mense om te lieg”.
- “They take cases that are patently lost and still charge you high fees”.
- “They don’t help because if a person has killed they will try to twist the facts”.
- “Liars, cheats, cheat and take our money”.
- “Lawyers are not always honest, they rob people”.
- “They are liars, they cheat people of their money”.
- “Liars”.
- “Klomp skelms”.
- “Cheating people to simply get money”.
- “They are crooks; they cheat and lie”.



- “Skelms”.
- “They cheat people of their money, they are liars”.
- “They lie most of the time”.
- “Crooks!”
- “Not trustworthy”.
- “Cheats”.
- “Cheats, they only want money. Some people they help, some not”.
- “They represent clients at all costs, they do not know if its true or not”.
- “Lawyers simply represent their clients it doesn’t matter if she/he believes in what he says or not”.
- “They stand up for what they do not believe in, they just represent their clients at all costs”.
- “Skelms. Rip-offs”.
- “They are cheats and liars”.
- “Liars”.

Inaccessible

- “They sometimes speak so that I didn’t understand what they were saying”.
- “They treat me like I am stupid”.
- “Not easily accessible”.

Busy

- “Het nie genoeg tyd vir familie nie”.
- “Hulle werk baie hard en het min tyd vir hulle familie”.

Other

- “Treurig”.
- “Very wary of them and would only go on high recommendation”.
- “Sharks in suits”.
- “Take very long to show results”.

- “The lawyers their not play important role because always their always give a wrong impression by standing for the criminals”.
- “Vandag is omkoperij aan die orde van die dag veral met betrekking tot rassisme aangeleenthede”.
- “On the average, very mediocre, very unprepared and general about specific detail”.
- “Het nie beïndruk”.
- “Eie belang gewoonlik belangrik”.
- “Never helpful”.
- “They do not do their job”.
- “Met ‘n baie gebrekkige kennis oor die regsprofessie, sou ek sê ek het maar ‘n baie swak indruk van hulle”.
- “Pateties”.
- “They are bad”.
- “They only care about winning – not what is right – they rarely give you any information so that you can make choices”.
- “Relates more in business let alone the question of winning the case”.
- “Het nie altyd goeie interpersoonlike vaardighede nie. Magsbehep”.
- “Verdedig hul eie party al blyk dit onregverdig”.
- “Beskerm die krimineel”.
- “Lawyers love/have [illegible] money especially if they don’t work for the government”.
- “They just say court should not find one guilty, without actually arguing the merits of the case”.

Table Y: Ambivalent opinions of lawyers

- “Sometimes good sometimes bad”. (X2)
- “My egskeiding – hy was goed maar het baie geld gevra”.
- “Ek weet nie wat om te sê nie, ek ken nie een nie, en weet nie hoe hulle is nie”.
- “‘n Paar is goed”.
- “Iemand moet sulke werk doen en hulle moet net regverdig wees”.
- “Daar is ‘n paar wat baie goeie mense is maar nog ander wat net geld wil maak”.



- “n Mens het hulle nodig as jy in die moeilikheid beland”.
- “Iemand moet hulle werk doen en as hulle regverdig is dan is daar nie ‘n probleem nie”.
- “Ken nie eintlik een nie maar hulle behoort in my opinie slim en eerlik te wees, maar ek dink baie is oneerlik”.
- “Most are just doing a job that someone has to do”.
- “Fair / liars”.
- “Not good to generalize, but if they do their job well, they are helpful”.
- “They must take full responsibility to their client until the client get what she/he need because they get paid”.
- “Sometimes they are good, often times they lie just so as to defend their client”.
- “Sometimes they can save you, but other times they put you in jail”.
- “Sometimes they help people ease change”.
- “Het nodige hulp ontvang – geweldige koste”.
- “Corrupt (some)”.
- “Uitgeslape”.
- “Noodsaaklik, sal gebruik maak daarvan indien nodig, vermy egter sover moontlik agv hoe kostes”.
- “Doen hulle werk. Meer hof se uitsprake wat iets makeer”.
- “Slimy, self serving for men. Honest and caring for women”.
- “Takes all sorts”.
- “Sometimes trustworthy but often times not”.
- “They only do their job like everyone else”.
- “They appear to be helpful”.
- “Verskillende opinies oor verskillende prokureurs / wissel”.
- “Wissel van gehalte”.
- “Hoe gladder mond, hoe beter is prokureur, ongeag werklike kennis”.
- “Moet regte raad verskaf, en nie hofsake onnodig uitrek nie”.
- “Goed, alhoewel daar sloms gesloer word”.
- “Goed / sleg, elkeen verskil”.
- “Doen net hul werk”.

- “They are ok. Not great just ok”.
- “They deliver a service”.
- “They must just stand or side with their clients”.
- “Some are crooks”.
- “They do their work”.
- “My personal lawyer was fair; he was there for me. Government lawyers are generally bad”.
- “Others are good in their services but it depends on who you meet / consult”.
- “Neutral”.
- “I don’t know, I guess they’re OK”.
- “They do their work, try to ensure justice”.
- “Baie professioneel maar ook baie formeel. Die regs “taal” is baie ontoerykend vir die gewone man op straat. Ek het weggegaan met die gevoel van ‘hoop en vertrou maar vir die beste”.
- “Voor 1982 Baie goed”.
- “Redelik”.
- “Party is goed in wat hulle doen. Ander verryk hulself ten koste van ander. Regspraktisyns het al ‘n slegte naam agv hulle optrede en slinksheid”.
- “Redelik”.
- “Hard working, but not honest”.
- “Some do help some are cheats”.
- “Goed. Net duur!”
- “Helpful but for instance murder case, robbery cases they want money, government should not allow such lawyers to do that”.
- “Some are fair, some are cheats”.
- “They are not the same, some are helpful some are cheats”.
- “Some are helpful”.
- “They differ. You can’t generalize”.
- “Must be very careful who you choose. Pick a firm that specializes in the type of work you are dealing with”.



- “As jy daarvan hou, doen dit”.
- “Noodsaaklike euwel”.
- “Hulle integriteit is bo hulle verhewe. Moeilik om te sê”.
- “Lawyers are liars – sometimes they help”.
- “Weet nie altyd wat hulle van praat nie”.
- “Intelligent en goeie luisteraars op vriendskaplike / sosiale vlak”.
- “Like food and water a necessity; perhaps a little bitter or cause for heartburn at times”.
- “Neutrale houding teenoor regsgeleerdes. Sal opinie vorm wanneer met prokureurs en advokate te doen kry”.

Table Z: Positive view of courts

- “Goed”. (X3)
- “Fair”. (X2)
- “Nie sleg nie, respekvol, nie onorderlik nie”.
- “They are okay because the scale is balanced there”.
- “They were fair, if they were not I will still be in jail”.
- “Helpful”.
- “They are generally fair”.
- “Goed georganiseerd”.
- “They do their work”.
- “Generally fair”.
- “Baie positief; simpatiek met regters agv oorgangstadium”.
- “They were quite fair when I went there, so I would say they are fair”.
- “They follow a fair procedure”.
- “They were fair”.
- “They were fair, they looked or evaluated my evidence – correctly”.
- “Fair practice. Justice is done”.
- “Good impression”.
- “Impartiality”.
- “Courts are fair and objective”.

- “Courts are fair”.
- “They do their job properly, the judgments are fair. Courts are objective”. (worked in court as a cleaner, 67 year old black female)
- “Doen goed veral onder situasie”.
- “It’s OK!”
- “Judges are fair, criminals never admit that they’re wrong”.
- “They are doing a good job”.
- “They do their job well”.
- “They do their jobs properly”.
- “They’re doing their job”.
- “Netjies besadig”.
- “Positief. Proses is professioneel”.

Table AA: Negative view of courts

- “Ek het geskei; dit was baie vinnig en ek het nie baie daarvan verstaan nie”.
- “Baie tydsaam”.
- “They waste time”.
- “Tydsaam”.
- “They take a lot of time and sometimes make unnecessary delays”.
- “Rat race, confusing and gloomy”.
- “Poor and cold”.
- “Everything is slow and there is a lot of paperwork before one sees results”.
- “They treated me bad until I got a lawyer”.
- “Koud en klinies”.
- “Nie beindruk agv omkoper”.
- “Baie negatief”.
- “Try to rush you through system”.
- “Langdradig”.
- “Koud en onvriendelik. Buite is vuil. Jy voel soos die skuldige”.
- “Nie lekker nie, skrikkerig”.



- “Not impressed. Feel like criminal even though innocent. Not friendly or courteous”.
- “Agy staatsprokureur se onervaarigheid teenoor advokaat was die saak later uitgegooi. Negatief”.
- “I didn’t understand the proceedings. There is no justice, lawyers help the criminals to get free. The punishment is not enough”.
- “They are not doing their jobs”.
- “Too bad”.
- “Never helpful”.
- “Courts are unfair”.
- “Court are unfair, don’t listen to the poor”.
- “They are not fair, for example evidence”.
- “Koud en stadig”.
- “Ongeorganiseerd; tydrowend”.
- “Skrikwekkend, ongeorganiseerd”.
- “Stadig. Onregverdig”.
- “Die SA regsdiens is ‘n mors van tyd. Daar is nie orde. Die reg werk nie en mense is bang om die hof te benader”.
- “They don’t do their jobs, it’s just nonsense. ‘Bribes’ involved as well”.
- “Very unwelcoming and protective of young female prosecutors”.
- “They give unfair decisions period”.
- “Very formal; scary”.
- “If you are black, you’re automatically assumed guilty and you must prove your innocence”.
- “Very unfair. They were very discriminatory towards me”.
- “Not effective, delay cases unnecessarily”.
- “Unfair use of language – discriminatory – emphasis on African / Afrikaans [illegible]”.
- “Had a bad impression. The court was disorganized”.
- “Quite hectic and stressful”.
- “Quite intimidating”.
- “They are unfair”.
- “Not fair”.

- “Unfair”.
- “Chaos, lêers was nie daar nie, aanklaers wat onvoorbereid opdaag, langdradig en mors tyd. Hele dag daar vir 5 minute met magistraat”.
- “Totaal ongeorganiseerd met die klem op persoonlike agenda ver bo die betrokke saak”.
- “Koud en onvriendelik”.
- “Dit is tydrowend en vuil”.
- “Pateties en ondoeltreffend in 2001”.
- “They don’t do their jobs, dockets missing”.
- “Cases take too long perhaps because of lack of manpower, investigations. But definitely take too long. Overtime putting themselves under pressure”.
- “They are lazy (prosecutors) probably because they don’t get paid”.
- “Not advanced, they don’t do their work properly”.
- “They don’t do their job”.
- “Not fair”.
- “Pateties, mees onproduktiefste opset”.
- “Ongenaakbaar en onsimpatiek”.
- “They did not treat [me] well – never let me state my case”.
- “Court system is messed up”.
- “Quite an unpleasant environment. Little consideration and respect for time”.
- “My man is ‘n prokureur. Pretoria landdroshof is vuil en ongeorganiseerd. Daar is baie mense van swak ekonomiese stand”.
- “Koud, onpersoonlik, tydrowend”.

Table BB: Ambivalent opinions of courts

- “They do their job”. (X2)
- “Very long time ago so has changed”.
- “Dit vat te veel tyd om alles te doen maar anders doen hulle hul beste”.
- “They try and get things done with the amount of people they have”.
- “Some magistrates perform their jobs fairly”.
- “I can’t say much; I was found not guilty so I wasn’t punished”.



- “They are okay”.
- “In tagtigs – oordeel nvt”.
- “Afdelings verskil – sommige goed ander sleg”.
- “Besig met oorgangsfase”.
- “No impression”.
- “They make you very nervous, so I can’t really say”.
- “The first case was handled well but the second is still pending”.
- “There’s still room for improvement”.
- “Very unpredictable, at times they are disappointing”.
- “Courts are fair. Interdicts not fair, favours woman”.
- “1966 – regverdig”.
- “Te lank terug”.
- “Redelik”.
- “Redelik. Onseker - ek was nie voorberei op wat van my verwag word nie”.
- “No justice sometimes you get justice. Public treated with respect”.
- “They do their job sometimes. Rustenburg regional court they only wanted Afrikaaners not blacks or English speaking people. Interpreter they didn’t pay me”.
- “Okay”.
- “Redelik georden maar het nie ‘n benul van tyd nie”.



Annexure C: Canadian anti-discrimination legislation

C.1 Canadian Human Rights Tribunal

The *Canadian Human Rights Act*¹ prohibits discrimination on the prohibited grounds² of race, national or ethnic origin, colour, religion, age, sex,³ sexual orientation, marital status, family status, disability⁴ and conviction for which a pardon has been granted,⁵ in the following cases:

- the provision of goods, services, facilities or accommodation customarily available to the general public;⁶
- the provision of commercial premises or residential accommodation;⁷ and
- employment.⁸

Section 12 prohibits the publication of discriminatory notices, section 13 prohibits hate messages and section 14 prohibits harassment and retaliation.

Section 15 contains a number of defences to a claim of direct or indirect discrimination:⁹

¹ RS 1985 c H-6; 1976-77, c. 33, s. 1.

² In terms of s 3.1 a discriminatory practice includes a practice based on one or more prohibited grounds of discrimination or on the effect of a combination of prohibited grounds.

³ In terms of s 3.2, where the ground of discrimination is pregnancy or childbirth, the discrimination is deemed to be on the ground of sex.

⁴ Defined in s 25 as “any previous or existing mental or physical disability and includes disfigurement and previous or existing dependence on alcohol or a drug”.

⁵ Defined in s 25 as “a conviction of an individual for an offence in respect of which a pardon has been granted by any authority under law and, if granted or issued under the *Criminal Records Act*, has not been revoked or ceased to have effect”.

⁶ S 5 reads “It is a discriminatory practice in the provision of goods, services, facilities or accommodation customarily available to the general public (a) to deny, or to deny access to, any such good, service, facility or accommodation to any individual, or (b) to differentiate adversely in relation to any individual, on a prohibited ground of discrimination.

⁷ S 6 reads “It is a discriminatory practice in the provision of commercial premises or residential accommodation (a) to deny occupancy of such premises or accommodation to any individual, or (b) to differentiate adversely in relation to any individual, on a prohibited ground of discrimination”.

⁸ Ss 7-11.

⁹ Most of these defences relate to employment discrimination and I will not refer to all of these.



- An employer may show that a refusal, exclusion, expulsion, suspension, limitation, specification or preference in relation to any employment is based on a “*bona fide* occupational requirement”.¹⁰
- If the discrimination takes place in a manner that is described as reasonable in the guidelines issued by the Canadian Human Rights Commission.¹¹
- In other circumstances a respondent may show that where an individual was denied any goods, services, facilities or accommodation or access thereto or occupancy of any commercial premises or residential accommodation, or was a victim of any adverse differentiation, that a “*bona fide* justification” exists for that denial or differentiation.¹²

For both these defences the respondent must establish that the accommodation of the needs of an individual or a class of individuals affected would have imposed “undue hardship” on the person who would have had to accommodate those needs, considering health, safety and cost.¹³

The Act also contains a “special programs” defence in section 16(1).¹⁴

C.2 Alberta

The *Alberta Human Rights, Citizenship and Multiculturalism Act* prohibits discrimination in the following sectors: goods, services, accommodation and facilities;¹⁵ tenancy;¹⁶ employment;¹⁷ and

¹⁰ S 15(1)(a).

¹¹ S 15(1)(e).

¹² S 15(1)(g).

¹³ S 15(2).

¹⁴ “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”.

¹⁵ S 4: “No person shall (a) deny to any person or class of persons any goods, services, accommodation or facilities that are customarily available to the public, or (b) discriminate against any person or class of persons with respect to any goods, services, accommodation or facilities that are customarily available to the public, because of the race, religious beliefs, colour, gender, physical disability, mental disability, ancestry, place of origin, marital status, source of income or family status of that person or class of persons or of any other person or class of persons”.

¹⁶ S 5: “No person shall (a) deny to any person or class of persons the right to occupy as a tenant any commercial unit or self-contained dwelling unit that is advertised or otherwise in any way represented as being available for occupancy by a tenant, or (b) discriminate against any person or class of persons with respect to any term or condition of the tenancy of any commercial unit or self-contained dwelling unit, because of the race, religious beliefs, colour, gender, physical disability, mental disability, ancestry, place of origin, marital status, source of income or family status of that

membership in a trade union.¹⁸ The Act recognises the following grounds of discrimination: race, religious beliefs,¹⁹ colour, gender,²⁰ physical disability,²¹ mental disability,²² ancestry, place of origin, marital status,²³ lawful source of income and family status²⁴ of the complainant or a class of persons or of any other person or class of persons. Age²⁵ is recognised as a prohibited grounds relating to membership in a trade union. The Canadian Supreme Court has held that sexual orientation must be read into the Act.²⁶

The Act contains a very brief general defence:

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.

The Act also prohibits discriminatory publications and notices,²⁷ retaliation,²⁸ and frivolous or vexatious complaints.²⁹

person or class of persons or of any other person or class of persons". "Commercial unit" is defined as "a building or other structure or part of it that is used or occupied or is intended, arranged or designed to be used or occupied for the manufacture, sale, resale, processing, reprocessing, displaying, storing, handling, garaging or distribution of personal property, or a space that is used or occupied or is intended, arranged or designed to be used or occupied as a separate business or professional unit or office in a building or other structure or in a part of it".

¹⁷ Ss 6-8.

¹⁸ S 9: "No trade union, employers' organization or occupational association shall (a) exclude any person from membership in it, (b) expel or suspend any member of it, or (c) discriminate against any person or member, because of the race, religious beliefs, colour, gender, physical disability, mental disability, age, ancestry, place of origin, marital status, source of income or family status of that person or member".

¹⁹ "Religious beliefs" include native spirituality.

²⁰ "Gender" includes pregnancy. S 44(2) somewhat clumsily states that "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".

²¹ "Physical disability" is defined as "any degree of physical disability, infirmity, malformation or disfigurement that is caused by bodily injury, birth defect or illness and, without limiting the generality of the foregoing, includes epilepsy, paralysis, amputation, lack of physical co-ordination, blindness or visual impediment, deafness or hearing impediment, muteness or speech impediment, and physical reliance on a guide dog, wheelchair or other remedial appliance or device".

²² "Mental disability" is defined as "any mental disorder, developmental disorder or learning disorder, regardless of the cause or duration of the disorder".

²³ "Marital status" is defined as "the status of being married, single, widowed, divorced, separated or living with a person of the opposite sex in a conjugal relationship outside marriage".

²⁴ "Family status" is defined as "the status of being related to another person by blood, marriage or adoption".

²⁵ "Age" means 18 years of age or older.

²⁶ *Vriend v Alberta* [1998] 1 SCR 493.

²⁷ S 3.

²⁸ S 10(1).



C.3 British Columbia

The British Columbia *Human Rights Code*³⁰ prohibits discrimination in accommodation, services and facilities;³¹ the purchase of property;³² tenancy premises;³³ employment advertisements;³⁴ wages;³⁵ employment³⁶ and discrimination by unions and associations.³⁷ The following grounds of discrimination are recognised: race, colour, ancestry, place of origin, religion, marital status, family status,³⁸ physical or mental disability, sex, sexual orientation and age.³⁹ Intention is not required to found a claim.⁴⁰

The Code contains exemptions relating to discrimination in accommodation, services and facilities⁴¹ and tenancy premises⁴² and two general exemptions – the first relates to not-for-profit organisations⁴³ and the second to special programmes.⁴⁴

²⁹ S 10(2).

³⁰ RSBC 1996, c210.

³¹ S 8(1): "A person must not, without a bona fide and reasonable justification, (a) deny to a person or class of persons any accommodation, service or facility customarily available to the public, or (b) discriminate against a person or class of persons regarding any accommodation, service or facility customarily available to the public because of the race, colour, ancestry, place of origin, religion, marital status, family status, physical or mental disability, sex or sexual orientation of that person or class of persons".

³² S 9: "A person must not (a) deny to a person or class of persons the opportunity to purchase a commercial unit or dwelling unit that is in any way represented as being available for sale, (b) deny to a person or class of persons the opportunity to acquire land or an interest in land, or (c) discriminate against a person or class of persons regarding a term or condition of the purchase or other acquisition of a commercial unit, dwelling unit, land or interest in land because of the race, colour, ancestry, place of origin, religion, marital status, physical or mental disability, sexual orientation or sex of that person or class of persons".

³³ S 10(1): "A person must not (a) deny to a person or class of persons the right to occupy, as a tenant, space that is represented as being available for occupancy by a tenant, or (b) discriminate against a person or class of persons regarding a term or condition of the tenancy of the space, 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 class of persons, or of any other person or class of persons".

³⁴ S 11.

³⁵ S 12.

³⁶ S 13.

³⁷ S 14: "A trade union, employers' organization or occupational association must not (a) exclude any person from membership, (b) expel or suspend any member, or (c) discriminate against any person or member because of the race, colour, ancestry, place of origin, political belief, religion, marital status, family status, physical or mental disability, sex, sexual orientation or age of that person or member, or because that person or member has been convicted of a criminal or summary conviction offence that is unrelated to the membership or intended membership".

³⁸ Family status is not recognised relating to discrimination in the purchase of property.

³⁹ "Age" means an age of 19 years or more and less than 65 years. Age is recognised relating to discriminatory publications, discrimination in tenancy premises and discrimination by unions and associations.

⁴⁰ S 2.

⁴¹ S 8(2): "A person does not contravene this section by discriminating (a) on the basis of sex, if the discrimination relates to the maintenance of public decency or to the determination of premiums or benefits under contracts of life or health insurance, or (b) on the basis of physical or mental disability, if the discrimination relates to the determination of premiums or benefits under contracts of life or health insurance".

The Code prohibits discriminatory publications⁴⁵ and retaliation.⁴⁶

The Code contains a supremacy clause.⁴⁷

C.4 *Manitoba*

The *Manitoba Human Rights Code* contains a rather convoluted definition of “discrimination:

- (a) differential treatment of an individual on the basis of the individual's actual or presumed membership in or association with some class or group of persons, rather than on the basis of personal merit; or
- (b) differential treatment of an individual or group on the basis of any characteristic referred to in subsection (2); or
- (c) differential treatment of an individual or group on the basis of the individual's or group's actual or presumed association with another individual or group whose identity or membership is determined by any characteristic referred to in subsection (2); or
- (d) failure to make reasonable accommodation for the special needs of any individual or group, if those special needs are based upon any characteristic referred to in subsection (2).⁴⁸

⁴² S 10(2): “Subsection (1) does not apply in the following circumstances: (a) if the space is to be occupied by another person who is to share, with the person making the representation, the use of any sleeping, bathroom or cooking facilities in the space; (b) as it relates to family status or age, (i) if the space is a rental unit in residential premises in which every rental unit is reserved for rental to a person who has reached 55 years of age or to 2 or more persons, at least one of whom has reached 55 years of age, or (ii) a rental unit in a prescribed class of residential premises; (c) as it relates to physical or mental disability, if (i) the space is a rental unit in residential premises, (ii) the rental unit and the residential premises of which the rental unit forms part, (A) are designed to accommodate persons with disabilities, and (B) conform to the prescribed standards, and (iii) the rental unit is offered for rent exclusively to a person with a disability or to 2 or more persons, at least one of whom has a physical or mental disability”.

⁴³ S 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”.

⁴⁴ S 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”.

⁴⁵ S 7.

⁴⁶ S 43.

⁴⁷ S 4.



Section 9(2) contains the following prohibited grounds: ancestry, including colour and perceived race; nationality or national origin; ethnic background or origin; religion or creed, or religious belief, religious association or religious activity; age; sex, including pregnancy, the possibility of pregnancy, or circumstances related to pregnancy; gender-determined characteristics or circumstances other than those included under “sex”; sexual orientation; marital or family status; source of income; political belief, political association or political activity; physical or mental disability or related characteristics or circumstances, including reliance on a dog guide or other animal assistant, a wheelchair, or any other remedial appliance or device.

Section 9(3) is headed “systemic discrimination” but does not seem to include it in the definition:⁴⁹

In this Code, ‘discrimination’ includes any act or omission that results in discrimination within the meaning of subsection (1), regardless of the form that the act or omission takes and regardless of whether the person responsible for the act or omission intended to discriminate.

The Code prohibits discrimination in services and accommodation;⁵⁰ employment;⁵¹ contracts;⁵² rental of premises;⁵³ and in the purchase of immovable property.⁵⁴

The Code also prohibits discriminatory signs and statements,⁵⁵ harassment⁵⁶ and reprisals.⁵⁷

⁴⁸ S 9(1).

⁴⁹ In South African legal parlance, this definition would approximate that of “indirect” discrimination. “Indirect” discrimination is not a synonym for “systemic” discrimination.

⁵⁰ S 13(1): “No person shall discriminate with respect to any service, accommodation, facility, good, right, license, benefit, program or privilege available or accessible to the public or to a section of the public, unless *bona fide* and reasonable cause exists for the discrimination”.

⁵¹ S 14.

⁵² S 15(1): “No person shall discriminate with respect to (a) entering into any contract that is offered or held out to the public generally or to a section of the public; or (b) any term or condition of such a contract; unless *bona fide* and reasonable cause exists for the discrimination”.

⁵³ S 16(1): “No person shall discriminate with respect to (a) the leasing or other lawful occupancy of, or the opportunity to lease or otherwise lawfully occupy, any residence or commercial premises or any part thereof; or (b) any term or condition of the leasing or other lawful occupancy of any residence or commercial premises or any part thereof; unless *bona fide* and reasonable cause exists for the discrimination”.

⁵⁴ S 17: “No person shall discriminate with respect to (a) the purchase or other lawful acquisition of, or the opportunity to purchase or otherwise lawfully acquire, any residence, commercial premises, or other real property or interest therein that has been advertised or otherwise publicly represented as being available for purchase or acquisition; or (b) any term or condition of the purchase or other lawful acquisition of any such property or interest; unless *bona fide* and reasonable cause exists for the discrimination”.

Section 10 introduces vicarious liability:

For the purposes of this Code, where an officer, employee, director or agent of a person contravenes this Code while acting in the course of employment or the scope of actual or apparent authority, the person is also responsible for the contravention unless the person (a) did not consent to the contravention and took all reasonable steps to prevent it; and (b) subsequently took all reasonable steps to mitigate or avoid the effect of the contravention.

The Code contains a number of defences to a claim of discrimination:

- A general “*bona fide* and reasonable cause” defence;⁵⁸
- An “affirmative action” defence;⁵⁹ and
- A number of sector-specific defences.⁶⁰

The general defence does not apply where the discrimination exists in the failure to make reasonable accommodation as set out in section 9(1)(d) above. The sector-specific defences are as follows:⁶¹

- Services, accommodation, facilities, goods, rights, benefits, programs and privileges may be denied to a person who has not yet reached the age of majority if such denial is required or authorised by an Act in force in Manitoba;⁶²
- The Lieutenant Governor in Council may make regulations that prescribe certain distinctions made for life insurance, accident and sickness insurance purposes to be *bona fide* and reasonable;

⁵⁵ S 18.

⁵⁶ S 19.

⁵⁷ S 20.

⁵⁸ See the definitions quoted in fn 50-54 above.

⁵⁹ S 11: “Notwithstanding any other provision of this Code, it is not discrimination... (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) ...”

⁶⁰ Ss 13(2), 14(8), 14(10), 14(11), 15(2) and 16(2).

⁶¹ I do not deal with the employment-related defences.

⁶² S 13(2).



- An occupier of a residence may discriminate in the choice of a boarder or tenant if the occupier and the boarder or tenant will share the same residence, or the other unit in a duplex.⁶³

The Code contains a supremacy clause.⁶⁴

C.5 *New Brunswick*

The New Brunswick *Human Rights Act*⁶⁵ prohibits employment-related discrimination,⁶⁶ discrimination relating to the right to occupy a commercial or residential property,⁶⁷ discrimination in offering to sell or considering an offer to purchase property,⁶⁸ discrimination relating to accommodation, services or facilities available to the public,⁶⁹ discrimination in imposing or enforcing a contractual term relating to property,⁷⁰ or discrimination by a professional association or business or trade association.⁷¹ The New Brunswick Act recognises the following grounds of discrimination: race, colour, religion, national origin, ancestry, place of origin, age, physical

⁶³ S 16(2).

⁶⁴ S 58.

⁶⁵ 1985 c 30.

⁶⁶ S 3.

⁶⁷ S 4(1): "No person directly or indirectly, alone or with another, by himself or by the interposition of another, shall (a) deny to any person or class of persons the right to occupy any commercial unit or dwelling unit, or (b) discriminate against any person or class of persons with respect to any term or condition of occupancy of any commercial unit or dwelling unit, because of race, colour, religion, national origin, ancestry, place of origin, age, physical disability, mental disability, marital status, sexual orientation or sex".

⁶⁸ S 4(2): "No person who offers to sell property or any interest in property shall (a) refuse an offer to purchase the property or interest made by a person or class of persons, (b) discriminate against any person or class of persons with respect to any term or condition of the sale of any property or interest in property, because of race, colour, religion, national origin, ancestry, place of origin, age, physical disability, mental disability, marital status, sexual orientation or sex".

⁶⁹ S 5(1): "No person, directly or indirectly, alone or with another, by himself or by the interposition of another, shall (a) deny to any person or class of persons any accommodation, services or facilities available to the public, or (b) discriminate against any person or class of persons with respect to any accommodation, services or facilities available to the public, because of race, colour, religion, national origin, ancestry, place of origin, age, physical disability, mental disability, marital status, sexual orientation or sex".

⁷⁰ S 4(3): "No person shall impose, enforce or endeavour to impose or enforce, any term or condition on any conveyance, instrument or contract, whether written or oral, that restricts the right of any person or class of persons, with respect to property because of race, colour, religion, national origin, ancestry, place of origin, age, physical disability, mental disability, sexual orientation or sex". It is not clear why "marital status" was excluded from the list in s 4(3).

⁷¹ S 7(1): "No professional association or business or trade association shall exclude any persons from full membership or expel or suspend or otherwise discriminate against any of its members because of race, colour, religion, national origin, ancestry, place of origin, age, physical disability, mental disability, marital status, sexual orientation or sex".

disability,⁷² mental disability,⁷³ marital status, sexual orientation and sex.⁷⁴ The Act also prohibits discriminatory notices,⁷⁵ sexual harassment⁷⁶ and retaliation.⁷⁷

Employment-related discrimination generally allows for a defence of “*bona fide* occupational qualification” as determined by the Commission.⁷⁸

Non-employment forms of discrimination may be met by a defence that “such limitation, specification, exclusion, denial or preference is based upon a *bona fide* qualification as determined by the Commission” if the ground of discrimination relates to sex, physical disability, mental disability, marital status or sexual orientation.⁷⁹ It appears that this defence is therefore not available if the discrimination occurs on any of the other grounds.

If discrimination occurs based on age against person who has not yet reached the age of majority, a defence may be raised that the “limitation, specification, exclusion, denial or preference is required or authorised by an Act of the Legislature or a regulation made under that Act”.⁸⁰

A specific defence is available in cases of discrimination by a professional, business or trade association:

⁷² The Act defines it as “any degree of disability, infirmity, malformation or disfigurement of a physical nature caused by bodily injury, illness or birth defect and, without limiting the generality of the foregoing, includes any disability resulting from any degree of paralysis or from diabetes mellitus, epilepsy, amputation, lack of physical co-ordination, blindness or visual impediment, deafness or hearing impediment, muteness or speech impediment, or physical reliance on a guide dog or on a wheelchair, cane, crutch or other remedial device or appliance”.

⁷³ The Act defines it as “(a) any condition of mental retardation or impairment; (b) any learning disability, or dysfunction in one or more of the mental processes involved in the comprehension or use of symbols or spoken language; or (c) any mental disorder”.

⁷⁴ “Sex” includes pregnancy, the possibility of pregnancy or circumstances related to pregnancy in terms of s 1.

⁷⁵ S 6.

⁷⁶ S 7. “Sexually harass” is defined as to “engage in vexatious comment or conduct of a sexual nature that is known or ought reasonably to be known to be unwelcome”.

⁷⁷ See s 8: “No person shall discharge, refuse to employ, exclude, expel, suspend, deny, evict or otherwise discriminate against any person because he has made a complaint or given evidence or assisted in any way in respect of the initiation, inquiry or prosecution of a complaint or other proceeding under this Act”.

⁷⁸ S 3(5).

⁷⁹ S 4(4) and 5(2).

⁸⁰ S 4(5) and 5(3).



7(2) Nothing in this section affects the application of any statutory provision restricting membership in a professional association or business or trade association to Canadian citizens or British subjects.

The Act allows for vicarious liability in cases of sexual harassment.⁸¹

C.6 Newfoundland and Labrador

The Newfoundland *Human Rights Code*⁸² prohibits discrimination relating to accommodation, services, facilities or goods;⁸³ occupancy of a commercial unit or a self-contained dwelling unit;⁸⁴ and employment⁸⁵ on the grounds of race, religion, religious creed, political opinion, colour or ethnic, national or social origin, sex, sexual orientation, marital status, physical disability and mental disability.⁸⁶

The Code contains a number of defences and exceptions:⁸⁷

The rights and privileges of denominational schools, common or amalgamated schools, or denominational colleges are not prejudicially affected by the Code.⁸⁸

Preference may be given workers whose usual place of residence is Newfoundland.⁸⁹

Preference may be given to material, equipment or other things produced, originating, manufactured or distributed and serviced in Newfoundland.⁹⁰

⁸¹ S 7.1(6).

⁸² RSNL 1990 Chapter H-14.

⁸³ S 6(1).

⁸⁴ S 7(1).

⁸⁵ Ss 9-11.

⁸⁶ Employment discrimination based on age is prohibited if the person has reached the age of 19 and has not yet reached the age of 65. In other sectors age discrimination is apparently acceptable.

⁸⁷ I do not refer to employment-related defences.

⁸⁸ S 4(2).

⁸⁹ S 4(3)(a).

⁹⁰ S 4(3)(b).

Discrimination relating to accommodation, services, facilities and goods based on a physical or mental disability is permitted if the “limitation, exclusion, denial or preference is based upon a good faith qualification”.⁹¹

Discrimination relating to accommodation, services, facilities and goods is acceptable in the following circumstances:

- accommodation in a private residence;⁹² but not if that private residence offers a bed and breakfast accommodation for pay;⁹³
- exclusion from accommodation, services or facilities because of that person’s sex on the ground of public decency;⁹⁴
- exclusion from accommodation where sex is a reasonable criterion for admission to the accommodation;⁹⁵
- restriction of membership in a religious, philanthropic, educational, fraternal, sororal or social organisation that is primarily engaged in serving the interests of a group of people identified by a ground of discrimination;⁹⁶ and
- other situations where a good faith reason exists for the discrimination.⁹⁷

Discrimination relating to occupancy of a commercial unit or a self-contained dwelling unit on the basis of physical or mental disability may be defended by establishing a good faith qualification.⁹⁸

The Code contains a supremacy clause.⁹⁹

C.7 North West Territories

The relevant North West Territories legislation is relatively narrow in its scope.

⁹¹ S 6(2).

⁹² S 6(3)(a).

⁹³ S 6(4).

⁹⁴ S 6(3)(b).

⁹⁵ S 6(3)(c).

⁹⁶ S 6(3)(d).

⁹⁷ S 6(3)(e).

⁹⁸ S 7(2).

⁹⁹ S 5.



The *Consolidation of Fair Practices Act*¹⁰⁰ prohibits discrimination in employment¹⁰¹ and accommodation, services and facilities¹⁰² on the grounds of race, creed, colour, sex, marital status, nationality, ancestry, place of origin, disability, age or family status of a person or because of a conviction of a person for which a pardon has been granted.

The Act contains a number of employment-related exceptions,¹⁰³ as well as a “*bona fide* occupational qualification” defence.¹⁰⁴

The Act prohibits discriminatory publications.¹⁰⁵

C.8 Nova Scotia

The *Human Rights Act*¹⁰⁶ prohibits discrimination against individuals or a class of individuals in the provision of or access to services and facilities; accommodation; the purchase or sale of property; employment; volunteer public service; a publication, broadcast or advertisement; or membership in a professional association, business or trade association, employers organisation or employees organisation. The recognised prohibited grounds are age; race; colour; religion; creed; sex;¹⁰⁷ sexual orientation; physical disability or mental disability;¹⁰⁸ an irrational fear of contracting an

¹⁰⁰ RSNWT 1988 c F-2.

¹⁰¹ S 3 and 6.

¹⁰² S 4(1): “No person shall, because of the [the prohibited grounds are listed] deny to that person the accommodation, services or facilities available in any place to which the public is customarily admitted”. S 4(2): “No person shall, directly or indirectly, (a) deny to any person or class of persons occupancy of any apartment in any building that contains self-contained dwelling units, or (b) discriminate against any person or class of persons with respect to any term or condition of occupancy of any apartment in any building that contains self-contained dwelling units, because of the [prohibited grounds]”.

¹⁰³ S 2(1) and 2(2).

¹⁰⁴ S 2(3).

¹⁰⁵ S 5.

¹⁰⁶ RS, c 214, s 1, chapter 214 of the Revised Statutes 1989, revised 1991, c 12.

¹⁰⁷ “Sex” includes pregnancy, possibility of pregnancy and pregnancy-related illness.

¹⁰⁸ “Physical disability or mental disability” is defined as “an actual or perceived (i) loss or abnormality of psychological, physiological or anatomical structure or function, (ii) restriction or lack of ability to perform an activity, (iii) physical disability, infirmity, malformation or disfigurement, including, but not limited to, epilepsy and any degree of paralysis, amputation, lack of physical co-ordination, deafness, hardness of hearing or hearing impediment, blindness or visual impediment, speech impairment or impediment or reliance on a hearing-ear dog, a guide dog, a wheelchair or a remedial appliance or device, (iv) learning disability or a dysfunction in one or more of the processes involved in understanding or using symbols or spoken language, (v) condition of being mentally handicapped or impaired, (vi) mental disorder, or (vii) previous dependency on drugs or alcohol”.

illness or disease; ethnic, national or aboriginal origin; family status;¹⁰⁹ marital status;¹¹⁰ source of income; political belief, affiliation or activity; or an individual's association with another individual or class of individuals having characteristics with reference to these grounds.

“Discrimination” is somewhat clumsily defined as follows:

For the purpose of this Act, a person discriminates where the person makes a distinction, whether intentional or not, based on a characteristic, or perceived characteristic, referred to in clauses (h) to (v) of subsection (1) of Section 5 that has the effect of imposing burdens, obligations or disadvantages on an individual or a class of individuals not imposed upon others or which withholds or limits access to opportunities, benefits and advantages available to other individuals or classes of individuals in society.¹¹¹

The Act contains a relatively lengthy list of defences:¹¹²

- 6 Subsection (1) of Section 5 does not apply
 - (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;
 - (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;
 - (c) ...
 - (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;
 - (e) where the nature and extent of the physical disability or mental disability reasonably precludes performance of a particular employment or activity;
 - (f) where a denial, refusal or other form of alleged discrimination is
 - (i) based upon a *bona fide* qualification, or
 - (ii) a reasonable limit prescribed by law as can be demonstrably justified in a free and democratic society;

¹⁰⁹ “Family status” is defined as “the status of being in a parent-child relationship”.

¹¹⁰ “Marital status” is defined as “the status of being single, engaged to be married, married, separated, divorced, widowed or a man and woman living in the same household as if they were married”.

¹¹¹ S 4.

¹¹² I excluded the employment-related defences from the quotation.



- (g) to prevent, on account of age, the operation of a *bona fide* retirement or pension plan or the terms or conditions of a *bona fide* group or employee insurance plan;
- (h) to preclude a *bona fide* plan, scheme or practice of mandatory retirement; or
- (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.

The Act prohibits discriminatory publications¹¹³ and retaliation.¹¹⁴

C.9 Nunavut

The Nunavut *Consolidation of Fair Practices Act*¹¹⁵ prohibits discrimination in employment¹¹⁶ and accommodation, services or facilities,¹¹⁷ and prohibits discriminatory notices.¹¹⁸ The grounds of discrimination recognised in the Act are race, creed, colour, sex, marital status, nationality, ancestry, place of origin, disability, age or family status of that person or class of persons or because of a conviction for which a pardon has been granted.

The Act contains a number of employment-specific defences but does not contain a “catch-all” general defence against a complaint of discrimination.

C.10 Ontario

The Ontario legislature approached discrimination rather haphazardly. The Ontario *Racial Discrimination Act*¹¹⁹ targeted the use of “Whites Only” signs put up by shopkeepers and other service providers. The *Fair Employment Practices Act*¹²⁰ prohibited discrimination in employment

¹¹³ S 7.

¹¹⁴ S 11.

¹¹⁵ RSNWT 1988, c F-2.

¹¹⁶ S 3 and 6.

¹¹⁷ S 4(1): “No person shall, because of the [prohibited grounds] deny to that person the accommodation, services or facilities available in any place to which the public is customarily admitted”. S 4(2): “No person shall, directly or indirectly, (a) deny to any person or class of persons occupancy of any apartment in any building that contains self-contained dwelling units, or (b) discriminate against any person or class of persons with respect to any term or condition of occupancy of any apartment in any building that contains self-contained dwelling units, because of the [prohibited grounds]”.

¹¹⁸ S 5.

¹¹⁹ SO 1944 c51.

¹²⁰ SO 1951 c24.

and the *Females Employees Fair Remuneration Act*¹²¹ prohibited women being paid less for the same work performed by a male employee. The *Fair Accommodation Practices Act*¹²² prohibited the denial on discriminatory grounds of “accommodation, services or facilities available in any place to which the public is customarily admitted”. This Act was later amended to include the denial of rental accommodation in any building containing more than six units.¹²³ A later legislative expansion prohibited discrimination in the provision of *all* goods, services and facilities.¹²⁴ The first consolidation took place with the Ontario Code of 1962.¹²⁵ Periodic consolidations have taken place since then. The prohibited grounds have also grown over the years. Réaume¹²⁶ mentions that the growth in prohibited grounds “looks less like the result of the legislature’s attempts to work out a general theory about who deserves the law’s protection, than the *ad hoc* application of band-aids as the Ontario Human Rights Commission has publicized the plight of groups of people left out of the Code’s protection”. The first attempt at prohibiting discrimination only related to race and religion. Employment discrimination legislation thereafter added colour, nationality, ancestry or place of origin. A separate 1966 Act added age and sex; marital status was included in 1972; 1981 saw the inclusion of family status and handicap; and sexual orientation was added in 1986.¹²⁷

Réaume’s analysis is very apt:¹²⁸

It is hard to avoid the conclusion that, in respect of both these aspects of the problem of discrimination, the legislature has adopted the bottom-up method of case-by-case rule-making by waiting for fact situations not yet covered by the rules to present themselves and then deciding how they should be handled. Given our legal system’s lack of experience with equality as a norm, perhaps a case-by-case method was the best way to start. It is not to be expected that the legislature would be able to articulate at the outset a comprehensive theory in such uncharted territory. But it is not clear that the legislature has taken the next step – moving towards an articulation of the deeper principles that explain the concrete cases.

¹²¹ SO 1951 c26.

¹²² SO 1954 c28.

¹²³ Fair Accommodation Practices Amendment Act SO 1960-61 c28.

¹²⁴ Fair Accommodation Practices Act SO 1981 c53 s 1.

¹²⁵ SO 1961-62 c93.

¹²⁶ Réaume (2002) 40 *Osgoode Hall LJ* 127.

¹²⁷ See Réaume (2002) 40 *Osgoode Hall LJ* 127.

¹²⁸ Réaume (2002) 40 *Osgoode Hall LJ* 127-128.



The Ontario *Human Rights Code* prohibits discrimination in services,¹²⁹ accommodation,¹³⁰ contracts,¹³¹ employment¹³² and vocational associations.¹³³ The prohibited grounds differ somewhat according to the particular sector. The prohibited grounds common to all the sectors are race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex,¹³⁴ sexual orientation, age, marital status,¹³⁵ same-sex partnership status,¹³⁶ family status¹³⁷ and disability.¹³⁸ “Receipt of public assistance” is an additional ground in accommodation discrimination and “record of offences” is listed under employment discrimination. The Code explicitly prohibits discrimination because of association.¹³⁹

¹²⁹ S 1: “Every person has a right to equal treatment with respect to services, goods and facilities, without discrimination because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, age, marital status, same-sex partnership status, family status or disability”.

¹³⁰ S 2(1): “Every person has a right to equal treatment with respect to the occupancy of accommodation, without discrimination because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, age, marital status, same-sex partnership status, family status, disability or the receipt of public assistance”.

¹³¹ S 3: “Every person having legal capacity has a right to contract on equal terms without discrimination because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, age, marital status, same-sex partnership status, family status or disability”.

¹³² S 5(1).

¹³³ S 6: “Every person has a right to equal treatment with respect to membership in any trade union, trade or occupational association or self-governing profession without discrimination because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, age, marital status, same-sex partnership status, family status or disability”.

¹³⁴ S 10(2) states that “The right to equal treatment without discrimination because of sex includes the right to equal treatment without discrimination because a woman is or may become pregnant”.

¹³⁵ “Marital status” is defined as “the status of being married, single, widowed, divorced or separated and includes the status of living with a person of the opposite sex in a conjugal relationship outside marriage”.

¹³⁶ Defined as “the status of living with a person of the same sex in a conjugal relationship outside marriage”.

¹³⁷ “Family status” is defined as “the status of being in a parent and child relationship”.

¹³⁸ Defined as “(a) any degree of physical disability, infirmity, malformation or disfigurement that is caused by bodily injury, birth defect or illness and, without limiting the generality of the foregoing, includes diabetes mellitus, epilepsy, a brain injury, any degree of paralysis, amputation, lack of physical co-ordination, blindness or visual impediment, deafness or hearing impediment, muteness or speech impediment, or physical reliance on a guide dog or other animal or on a wheelchair or other remedial appliance or device, (b) a condition of mental impairment or a developmental disability, (c) a learning disability, or a dysfunction in one or more of the processes involved in understanding or using symbols or spoken language, (d) a mental disorder, or (e) an injury or disability for which benefits were claimed or received under the insurance plan established under the *Workplace Safety and Insurance Act, 1997*”. S 10(3) states that “[T]he right to equal treatment without discrimination because of disability includes the right to equal treatment without discrimination because a person has or has had a disability or is believed to have or to have had a disability”.

¹³⁹ S 12: “A right under Part I is infringed where the discrimination is because of relationship, association or dealings with a person or persons identified by a prohibited ground of discrimination”.

The Code also prohibits harassment in accommodation,¹⁴⁰ harassment in employment,¹⁴¹ harassment because of sex in accommodation,¹⁴² harassment because of sex in workplaces,¹⁴³ sexual solicitation,¹⁴⁴ reprisals¹⁴⁵ and discriminatory notices.¹⁴⁶

The Code seemingly only allows a general defence based on reasonableness and good faith / undue hardship in cases of *indirect* discrimination. Section 11 is headed “constructive discrimination” and reads as follows:

- (1) A right of a person under Part I is infringed where a requirement, qualification or factor exists that is not discrimination on a prohibited ground *but that results in the exclusion, restriction or preference of a group of persons* who are identified by a prohibited ground of discrimination and of whom the person is a member, except where,
 - (a) the requirement, qualification or factor is reasonable and *bona fide* in the circumstances; or
 - (b) it is declared in this Act, other than in section 17, that to discriminate because of such ground is not an infringement of a right.¹⁴⁷
- (2) The Commission, the Tribunal or a court shall not find that a requirement, qualification or factor is reasonable and *bona fide* in the circumstances unless it is satisfied that the needs of the group of which the person is a member cannot be accommodated without undue hardship on the person responsible for accommodating those needs, considering the cost, outside sources of funding, if any, and health and safety requirements, if any.

The Code also contains a number of more specific defences:

- a “special programs” defence;¹⁴⁸
- preferential treatment based on age of sixty-five years or over;¹⁴⁹

¹⁴⁰ S 2(2).

¹⁴¹ S 5(2).

¹⁴² S 7(1).

¹⁴³ S 7(2).

¹⁴⁴ S 7(3).

¹⁴⁵ S 8.

¹⁴⁶ S 13(1).

¹⁴⁷ S 11(1); my emphasis.

¹⁴⁸ S 14: “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”.

¹⁴⁹ S 15.



- discrimination based on citizenship where Canadian citizenship is a requirement, qualification or consideration imposed or authorised by law;¹⁵⁰
- discrimination based on disability where the disabled person is incapable of performing or fulfilling the essential duties or requirements attending the exercise of the right;¹⁵¹
- a defence favouring special interest organisations;¹⁵²
- a “public decency” defence in cases of sex discrimination relating to services and facilities;¹⁵³
- a statutory minimum drinking age of 19 years¹⁵⁴ and a similar prohibition relating to tobacco does not contravene the Code;¹⁵⁵
- a defence favouring recreational clubs;¹⁵⁶
- a defence against accommodation discrimination based on intimacy;¹⁵⁷
- a defence against accommodation discrimination based on same-sex occupancy;¹⁵⁸
- a defence favouring insurance companies;¹⁵⁹ and
- a number of employment-related defences.¹⁶⁰

¹⁵⁰ S 16(1).

¹⁵¹ S 17(1). S 17(2) states that a disabled person may not be found to be incapable unless the needs of the disabled person cannot be accommodated without undue hardship on the person responsible for accommodating those needs, taking into account the cost, sources of funding and health and safety requirements.

¹⁵² S 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”.

¹⁵³ S 20(1).

¹⁵⁴ S 20(2).

¹⁵⁵ S 20(4).

¹⁵⁶ S 20(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 preference with respect to membership dues and other fees because of age, sex, marital status, same-sex partnership status or family status”.

¹⁵⁷ S 21(1): “The right under section 2 to equal treatment with respect to the occupancy of residential accommodation without discrimination is not infringed by discrimination where the residential accommodation is in a dwelling in which the owner of his or her family reside if the occupant or occupants of the residential accommodation are required to share a bathroom or kitchen facility with the owner or family of the owner”.

¹⁵⁸ S 21(2): “The right under section 2 to equal treatment with respect to the occupancy of residential accommodation without discrimination because of sex is not infringed by discrimination on that ground where the occupancy of all the residential accommodation in the building, other than the accommodation, if any, of the owner or family of the owner, is restricted to persons who are of the same sex”.

¹⁵⁹ S 22: “The right under sections 1 and 3 to equal treatment with respect to services and to contract on equal terms, without discrimination because of age, sex, marital status, same-sex partnership status, family status or disability, is not infringed where a contract of automobile, life, accident or sickness or disability insurance or a contract of group insurance between an insurer and an association or person other than an employer, or a life annuity, differentiates or makes a distinction, exclusion or preference on reasonable and *bona fide* grounds because of age, sex, marital status, same-sex partnership status, family status or disability”.

The Code contains a supremacy clause.¹⁶¹

C.11 *Prince Edwards Islands*

The Prince Edward Islands *Human Rights Act* prohibits discrimination in the enjoyment of accommodation, services and facilities to which members of the public have access;¹⁶² occupancy of any commercial unit or self-contained dwelling unit or accommodation in a housing unit that is used to provide rental accommodation,¹⁶³ the purchase or sale of property,¹⁶⁴ title conditions,¹⁶⁵ employment¹⁶⁶ and membership of business, professional or trade association.¹⁶⁷ The Act prohibits discrimination on the grounds of race, religion, creed, colour, sex, marital status,¹⁶⁸ ethnic or national origin, age, physical or mental handicap¹⁶⁹ or political belief¹⁷⁰ of any person with whom the individual or class of individuals associates.¹⁷¹

¹⁶⁰ Ss 23-26.

¹⁶¹ S 47(2).

¹⁶² S 2(1): "No person shall discriminate (a) against any individual or class of individuals with respect to enjoyment of accommodation, services and facilities to which members of the public have access; or (b) with respect to the manner in which accommodations, services and facilities, to which members of the public have access, are provided to any individual or class of individuals.

¹⁶³ S 3(1): "No person shall (a) deny to any individual or class of individuals, on a discriminatory basis, occupancy of any commercial unit or self-contained dwelling unit or accommodation in a housing unit that is used to provide rental accommodation; or (b) discriminate against any individual or class of individuals with respect to any term or condition of occupancy of any commercial unit or self-contained dwelling unit, or accommodation in a housing unit that is used to provide rental accommodation".

¹⁶⁴ S 4: "No person who offers to sell property or any interest in property shall (a) refuse an offer to purchase the property or interest made by an individual or class of individuals on a discriminatory basis; or (b) discriminate against any individual or class of individuals with respect to any term or condition of sale of any property or interest".

¹⁶⁵ S 5: "Where in an instrument transferring an interest in real property a covenant or condition restricts the sale, ownership, occupation, or use of the property on a discriminatory basis, the covenant or condition is void".

¹⁶⁶ Ss 6-8.

¹⁶⁷ S 9: "No business, professional or trade association shall exclude any individual from full membership or expel or suspend any of its members on a discriminatory basis".

¹⁶⁸ "Marital status" is defined as "the status of being married, single, widowed, divorced, separated, or living with a person of the opposite sex in a conjugal relationship outside marriage".

¹⁶⁹ "Physical or mental handicap" is defined as "a previous or existing disability, infirmity, malformation or disfigurement, whether of a physical or mental nature, that is caused by injury, birth defect or illness, and includes but is not limited to epilepsy, any degree of paralysis, amputation, lack of physical coordination, blindness or visual impediment, deafness or hearing impediment, muteness or speech impediment, or physical reliance on a guidedog, wheelchair or other remedial device".

¹⁷⁰ "Political belief" is defined as "belief in the tenets of a political party that is at the relevant time registered under section 24 of the *Election Act* R.S.P.E.I. 1988, Cap. E-1 as evidenced by (i) membership of or contribution to that party, or (ii) open and active participation in the affairs of that party.

¹⁷¹ S 13.



The Act contains a few sector-specific defences:

- A defence against age discrimination relating to accommodation, services or facilities;¹⁷²
- A defence against sex discrimination relating to accommodation in a dwelling;¹⁷³
- A number of employment-related defences;¹⁷⁴
- A defence relating to exclusively religious or ethnic not-for-profit organisations;¹⁷⁵
- A defence against age and disability discrimination relating to retirement and pensions plans and group or employee insurance plans;¹⁷⁶ and
- A defence relating to the recipients of welfare assistance benefits.¹⁷⁷

The Act also contains the following general defences:

- 14.(1) Sections 2 to 13 do not apply
- (a) to the display of a notice, sign, symbol, emblem, or other representation displayed to identify facilities customarily used by one sex;
 - (b) to display or publication by or on behalf of an organization that
 - (i) is composed exclusively or primarily of persons having the same political or religious beliefs, nationality, ancestry, or place of origin, and
 - (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;
 - (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;
 - (d) to a refusal, limitation, specification, or preference based on a genuine qualification; or

¹⁷² S 2(2): "Subsection (1) does not prevent the denial or refusal of accommodation, services or facilities to a person on the basis of age if the accommodation, services or facilities are not available to that person by virtue of any enactment in force in the province".

¹⁷³ S 3(2): "This section does not apply to the barring of any person because of the sex of such person (a) from accommodation in a housing unit where the housing unit is in a structure having two or more housing units; (b) from a self-contained dwelling unit, where the dwelling unit is in a structure having two or more self-contained dwelling units, where occupancy of all the housing units or dwelling units, except that of the owner or the agent of the owner, is restricted to individuals of the same sex.

¹⁷⁴ S 6(4).

¹⁷⁵ S 10(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".

¹⁷⁶ S 11: "The provisions of this Act relating to discrimination in relation to age or physical or mental handicap do not affect the operation of any genuine retirement or pension plan or any genuine group or employee insurance plan".

¹⁷⁷ S 15.1: "Nothing in this Act prevents the Government of Prince Edward Island, an agency of the Crown, or a regional authority established pursuant to the *Health and Community Services Act* R.S.P.E.I. 1988, Cap. H-1.1 from requiring that persons be in receipt of, or eligible for, welfare assistance benefits in order to qualify for access to accommodations, services, programs, or facilities directed at assisting persons in receipt of, or eligible for, welfare assistance benefits".

- (e) to trusts, deeds, contracts, agreements or other instruments entered into before this Act comes into force.

The burden of proof of establishing the “genuine qualification” defence is on the party asserting it.¹⁷⁸

The Act also prohibits discriminatory publications¹⁷⁹ and reprisals.¹⁸⁰

The Act contains a supremacy clause.¹⁸¹

C.12 Saskatchewan

The Saskatchewan *Human Rights Code*¹⁸² protects the right to to engage in and carry on any occupation, business or enterprise under the law without discrimination,¹⁸³ and prohibits discrimination in the purchase of property,¹⁸⁴ housing occupancy (including commercial units);¹⁸⁵ accommodation, services or facilities to which the public is customarily admitted or that are offered to the public;¹⁸⁶ education;¹⁸⁷ contracts;¹⁸⁸ employment¹⁸⁹ and in professional and trade

¹⁷⁸ S 14(2).

¹⁷⁹ S 12.

¹⁸⁰ S 15.

¹⁸¹ S 1(2).

¹⁸² Chapter S-24.1 of the *Statutes of Saskatchewan, 1979* (effective August 7, 1979) 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.

¹⁸³ S 9.

¹⁸⁴ S 10(1): “No person shall, on the basis of a prohibited ground: (a) deny to any person or class of persons the opportunity to purchase any commercial unit or any place of dwelling that is advertised or in any way represented as being available for sale; (b) deny to any person or class of persons the opportunity to purchase or otherwise acquire land or an interest in land; or (c) discriminate against any person or class of persons with respect to any term of the purchase or other acquisition of any commercial unit or any place of dwelling, land or any interest in land”.

¹⁸⁵ S 11(1): “No person, directly or indirectly, alone or with another, or by the interposition of another shall, on the basis of a prohibited ground: (a) deny to any person or class of persons occupancy of any commercial unit or any housing accommodation; or (b) discriminate against any person or class of persons with respect to any term of occupancy of any commercial unit or any housing accommodation”.

¹⁸⁶ S 12(1): “No person, directly or indirectly, alone or with another, or by the interposition of another shall, on the basis of a prohibited ground: (a) deny to any person or class of persons the accommodation, services or facilities to which the public is customarily admitted or that are offered to the public; or (b) discriminate against any person or class of persons with respect to the accommodation, services or facilities to which the public is customarily admitted or that are offered to the public”.

¹⁸⁷ S 13(1): “Every person and every class of persons shall enjoy the right to education in any school, college, university or other institution or place of learning, vocational training or apprenticeship without discrimination on the basis of a prohibited ground other than age”.

¹⁸⁸ S 15(1): “No person shall, in making available to any person a contract that is offered to the public: (a) discriminate against any person or class of persons on the basis of a prohibited ground; or (b) include terms in the contract that discriminate against a person or class of persons on the basis of a prohibited ground”.

associations.¹⁹⁰ The prohibited grounds recognised in the Act are religion,¹⁹¹ creed,¹⁹² marital status,¹⁹³ family status,¹⁹⁴ sex,¹⁹⁵ sexual orientation, disability,¹⁹⁶ age,¹⁹⁷ colour, ancestry, nationality, place of origin, race or perceived race, and receipt of public assistance.

The Code contains a relatively large number of defences:

Discrimination in housing accommodation is not prohibited where the place of dwelling “is part of a building in which the owner or the owner’s family resides and where the occupant of the place of dwelling is required to share a bathroom or kitchen facility with the owner or the owner’s family”.¹⁹⁸

Discrimination in the purchase of property based on age is permitted where such discrimination “is permitted or required by law or regulation in force” in Saskatchewan.¹⁹⁹

Discrimination in the purchase of property based on age is permitted in the “offering for sale or the advertising for sale of a place of dwelling for occupancy by persons over 55 years of age exclusively”.²⁰⁰

¹⁸⁹ S 16.

¹⁹⁰ S 17: “Every person and every class of persons shall enjoy the right to membership, and all the benefits appertaining to membership, in any professional society or other occupational association without discrimination on the basis of a prohibited ground”.

¹⁹¹ “Religion” is defined as including “all aspects of religious observance and practice as well as beliefs”.

¹⁹² “Creed” is defined as “religious creed”.

¹⁹³ “Marital status” is defined as “that state of being engaged to be married, married, single, separated, divorced, widowed or living in a common-law relationship, but discrimination on the basis of a relationship with a particular person is not discrimination on the basis of marital status”.

¹⁹⁴ “Family status” is defined as “the status of being in a parent and child relationship and, for the purposes of this clause: (i) “child” means son, daughter, stepson, stepdaughter, adopted child and person to whom another person stands in place of a parent; (ii) “parent” means father, mother, stepfather, stepmother, adoptive parent and person who stands in place of a parent to another person”.

¹⁹⁵ “Sex” is defined as “gender, and, unless otherwise provided in this Act, discrimination on the basis of pregnancy or pregnancy-related illnesses is deemed to be discrimination on the basis of sex”.

¹⁹⁶ “Disability” is defined as “(i) any degree of physical disability, infirmity, malformation or disfigurement and, without limiting the generality of the foregoing, includes: (A) epilepsy; (B) any degree of paralysis; (C) amputation; (D) lack of physical co-ordination; (E) blindness or visual impediment; (F) deafness or hearing impediment; (G) muteness or speech impediment; or (H) physical reliance on a service animal, wheelchair or other remedial appliance or device; or (ii) any of: (A) an intellectual disability or impairment; (B) a learning disability or a dysfunction in one or more of the processes involved in the comprehension or use of symbols or spoken language; or (C) a mental disorder”. “Mental disorder” is defined as “a disorder of thought, perception, feelings or behaviour that impairs a person’s: (i) judgment; (ii) capacity to recognize reality; (iii) ability to associate with others; or (iv) ability to meet the ordinary demands of life”.

¹⁹⁷ “Age” is defined as “any age of eighteen years or more but less than sixty-five years”.

¹⁹⁸ This exclusion is contained in the definition of “housing accommodation”.

¹⁹⁹ S 10(2).

Three defences are available relating to discrimination in occupancy of a commercial unit or housing accommodation: Same sex accommodation;²⁰¹ a defence based on the sharing of the dwelling;²⁰² and occupancy aimed at people older than 55.²⁰³

Three defences are available relating to discrimination in places to which the public is admitted: Sex discrimination based on public decency;²⁰⁴ age discrimination where it is allowed by law;²⁰⁵ and the preferential treatment of people based on marital status and family status.²⁰⁶

Discrimination in education based on sex, creed, religion and disability is allowed in certain circumstances.²⁰⁷

The Code contains a defence favourable to insurers:²⁰⁸

The right pursuant to subsection (1) is not infringed where:

- (a) a contract of automobile, life, accident or sickness or disability insurance;
- (b) a contract of group insurance between an insurer and an association or person;
- (c) a life annuity;
- (d) a pension contract; or

²⁰⁰ S 10(3).

²⁰¹ S 11(2): "Subsection (1) does not apply to discrimination on the basis of the sex of a person with respect to housing accommodation, where the occupancy of all the housing accommodation in a building, except that of the owner or the owner's family, is restricted to individuals who are of the same sex".

²⁰² S 11(3): "Subsection (1) does not apply to discrimination on the basis of the sex or sexual orientation of a person with respect to the renting or leasing of any dwelling unit in any housing accommodation that is composed of not more than two dwelling units, where the owner of the housing accommodation or the owner's family resides in one of the two dwelling units".

²⁰³ S 11(4): "Nothing in subsection (1) prohibits the renting or leasing, the offering for rent or lease or the advertising for rent or lease, of any housing accommodation for occupancy by persons over 55 years of age exclusively".

²⁰⁴ S 12(2): "Subsection (1) does not apply to prevent the barring of any person because of the sex of that person from any accommodation, services or facilities upon the ground of public decency".

²⁰⁵ S 12(3): "Subsection (1) does not apply to prevent the denial or refusal of any accommodation, services or facilities to a person on the basis of age, if the accommodation, services or facilities are not available to that person by virtue of any law or regulation in force in the province".

²⁰⁶ S 12(4): "Subsection (1) does not apply to prevent the giving of preference because of marital status or family status with respect to membership dues, fees or other charges for services or facilities".

²⁰⁷ S 13(2): "Nothing in subsection (1) prevents a school, college, university or other institution or place of learning from following a restrictive policy with respect to enrolment on the basis of sex, creed, religion or disability, where it enrolls persons of a particular sex, creed or religion exclusively, or is conducted by a religious order or society, or where it enrolls persons who are disabled".

²⁰⁸ S 15(1.2).



(e) any contract other than one mentioned in clauses (a) to (d);
is prescribed in the regulations as a contract or one of a category of contracts that differentiates or makes a distinction, exclusion or preference on reasonable and bona fide grounds because of disability, age or family status.

The Code also contains a number of employment-specific defences.²⁰⁹

Where discrimination on the ground of disability related to premises, facilities or services consists in the impediment of physical access or the lack of proper amenities, a defence may be raised that an order to measures be taken to improve physical access or to provide proper amenities would cause undue hardship to the respondent.²¹⁰ “Undue hardship” is defined as follows:

... intolerable financial cost or disruption to business having regard to the effect on:

- (i) the financial stability and profitability of the business undertaking;
- (ii) the value of existing amenities, structures and premises as compared to the cost of providing proper amenities or physical access;
- (iii) the essence or purpose of the business undertaking; and
- (iv) the employees, customers or clients of the business undertaking, disregarding personal preferences;

but does not include the cost or business inconvenience of providing washroom facilities, living quarters or other facilities for persons with physical disabilities where those facilities must be provided by law for persons of both sexes.

C.13 Yukon

The Yukon *Human Rights Act*²¹¹ states that it is discrimination to treat any individual or any group unfavourably on grounds of ancestry, including colour and race; national origin; ethnic or linguistic background or origin; religion or creed, or religious belief, religious association, or religious activity; age; sex, including pregnancy, and pregnancy related conditions; sexual orientation; physical or mental disability; criminal charges or criminal record; political belief, political association or political activity; marital or family status; or actual or presumed association with other individuals or groups whose identity or membership is determined by any of the listed grounds.²¹²

²⁰⁹ S 16(4) to 16(11).

²¹⁰ Ss 31.2(b) and 31.3(e).

²¹¹ SY 1987, c.3, assented to on 12 February 1987.

²¹² S 6.

No person may discriminate when offering or providing services, goods, or facilities to the public; in connection with any aspect of employment or application for employment; in connection with any aspect of membership in or representation by any trade union, trade association, occupational association, or professional association; in connection with any aspect of the occupancy, possession, lease, or sale of property offered to the public; or in the negotiation or performance of any contract that is offered to or for which offers are invited from the public.²¹³

The Act prohibits indirect discrimination as well.²¹⁴

The Act contains a number of sector-specific defences:

- sex discrimination is permitted relating to accommodation, services and facilities in order to respect the privacy of the people to whom the accommodation, service or facility is offered;²¹⁵
- religious, charitable, educational, social, cultural or athletic organisations may give preference to its members or to people the organisation exists to serve;²¹⁶
- people may give preference to family members;²¹⁷
- an occupant of a private home may discriminate in choosing the boarder or tenant who will share part of the home;²¹⁸
- “special programs”²¹⁹ and “affirmative action programs”;²²⁰ and
- a number of employment-specific defences.²²¹

The Act also contains a general “reasonable cause” defence:

²¹³ S 8.

²¹⁴ S 11 is headed “systemic discrimination” and reads “any conduct that results in discrimination is discrimination”.

²¹⁵ S 9(c).

²¹⁶ S 10(1).

²¹⁷ S 10(2).

²¹⁸ S 10(3).

²¹⁹ Defined as “programs designed to prevent disadvantages that are likely to be suffered by any group identified by reference to a prohibited ground of discrimination”. S 12(1).

²²⁰ Defined as “programs designed to reduce disadvantages resulting from discrimination suffered by a group identified by reference to a prohibited ground of discrimination”. S 12(1).

²²¹ S 9(a); 9(b) and 10(3)(a).



9. It is not discrimination if treatment is based on
...
(d) other factors establishing reasonable cause for the discrimination.

Individuals have a duty in terms of the Act to reasonably provide for the special needs of people with physical disabilities, unless making such provisions would cause undue hardship. “Undue hardship” is determined “by balancing the advantages and disadvantages of the provisions by reference to factors such as (i) safety; (ii) disruption to the public; (iii) effect on contractual obligations; (iv) financial cost; (v) business efficiency”.²²²

The Act also prohibits harassment²²³ and retaliation.²²⁴

²²² S 7.

²²³ S 13(1)(a) and 13(2).

²²⁴ S 13(1)(b).

Annexure D: Profile of decisions – Canadian anti-discrimination tribunals 1996 – 2003

D.1 Canadian Human Rights Tribunal

Bader v Department of National Health and Welfare TD 1/96 1996/01/12

Profile of complainant:	White male.
Profile of respondent:	Government agency with a mandate to protect the health of the general public.
Prohibited ground:	(Caucasian) race and ethnic origin.
Brief description of merits:	The respondent treated Chinese herb and botanical dealers more favourably than white dealers in the enforcement of the Food and Drugs Act.
Outcome:	Complaint dismissed but reversed on appeal (<i>Bader v Department of National Health and Welfare</i> TD 2/98 1998/03/11).

Baptiste v Correctional Service Canada TD 12/01 2001/11/06

Profile of complainant:	Black female.
Profile of respondent:	Government agency.
Prohibited ground:	Race
Brief description of merits:	Employment discrimination; complainant alleged that her job performance was unfairly evaluated.
Outcome:	Complaint dismissed but respondent's management advised not to tolerate the use of racially derogatory epithets.

Bernard v Waycobah Board of Education TD 2/99 1999/06/11

Profile of complainant:	First Nation female.
Profile of respondent:	Committee composed of the chief of the Wycobah First Nation, six Band Councillors and a few people elected from the community at large.



Prohibited ground: (Perceived) disability.
Brief description of merits: Employment discrimination; complainant's employment terminated based on her (perceived) mental disability.
Outcome: Complaint upheld and a wide range of remedies ordered.

Butler v Nenqayni Treatment Centre Society TD 12/02 2002/10/28

Profile of complainant: Female (ethnic origin unknown).
Profile of respondent: Day care centre.
Prohibited ground: Disability.
Brief description of merits: Employment discrimination; the complainant was fired because of her disability – she was injured in a dirt bike accident and crushed two vertebrae.
Outcome: Complaint dismissed; the ability to lift children being found a *bona fide* occupational requirement.

Canadian Union of Public Employees (Airline Division) v Canadian Airlines International Limited and Air Canada TD 9/98 1998/12/15

Profile of complainant: Employee's union on behalf of female flight attendants
Profile of respondent: Airline company
Prohibited ground: Sex
Brief description of merits: Employment-related discrimination; lower wages paid to female flight attendants than male First Officers and Second Officers; salary structure different for females in that it takes longer to reach the maximum; pension benefits differ as well.
Outcome: Complaint did not succeed on technical grounds.

Carter v Canadian Armed Forces TD 2/00 2000/03/02

Profile of complainant: Male (ethnic origin unknown.)
Profile of respondent: Government agency.
Prohibited ground: Age.

Brief description of merits: Employment discrimination relating to a compulsory retirement requirement.

Outcome: Complaint upheld on technical grounds.

Chander and Joshi v Department of National Health and Welfare TD 5/96 1996/04/09

Profile of complainant: Male (ethnic origin unknown.)

Profile of respondent: Government agency.

Prohibited ground: Unclear.

Brief description of merits: Employment discrimination relating to denied promotion.

Outcome: Complaint upheld; respondent ordered to pay lost wages.

Chilliwack Anti-Racism Project Society v Pastor Charles Scott and the Church of Christ in Israel TD 6/96 1996/04/30

Profile of complainant: Non-governmental organisation. (“A corporation established with the stated purpose of developing informed and collective action against prejudice and discrimination on the basis of race and ethnicity within the community”.)

Profile of respondent: White male; private religious institution.

Prohibited ground: Colour, national or ethnic origin, race and religion.

Brief description of merits: Hate speech complaint; the respondent’s telephone message *inter alia* claimed that “the Church of Christ in Israel is laying the groundwork for a revolution which will return power to the white race”.

Outcome: Complaint upheld; respondent ordered to cease communicating the message.

Chopra v Department of National Health and Welfare TD 3/96 1996/03/08

Profile of complainant: Male, born in India.

Profile of respondent: Government agency.

Prohibited ground: Race, colour, national or ethnic origin.



Brief description of merits: Employment discrimination; the complainant alleged that he was treated in an adverse manner relating to his performance appraisals.

Outcome: Complaint initially dismissed; the complainant applied to the Federal Court of Canada which ruled that the tribunal had erred in not allowing the complainant to adduce evidence of a systemic problem of discrimination at the specific hospital, and referred the matter back to the original tribunal. On rehearing the matter the complaint was upheld (*Chopra v Department of National Health and Welfare* TD 10/01 2001/08/13.)

Cizungu v Human Resources Development Canada TD 9/01 2001/07/31

Profile of complainant: Black male originally from Zaire.

Profile of respondent: Corporation.

Prohibited ground: Race, colour, national or ethnic origin.

Brief description of merits: Employment discrimination; the complainant alleged that he was discriminated against when the respondent refused to extend his contract of employment. On the complainant's version, his accent was the reason he was not rehired.

Outcome: Complaint dismissed.

Conte v Rogers Cablesystems Ltd TD 4/99 1999/11/10

Profile of complainant: Female (ethnic origin unknown.)

Profile of respondent: Corporation.

Prohibited ground: Disability.

Brief description of merits: Employment discrimination; the complainant was employed as a telephone consultant but had a persistent voice problem and her employment was terminated a week before the end of her probationary period.

Outcome: Complaint upheld based on the respondent's failure to reasonably accommodate the complainant.

Cramm v Canadian National Railway Company (Terra Transport) and Brotherhood of Maintenance of Way Employees TD 97 1997/10/16

Profile of complainant:	Male (ethnic origin unknown.)
Profile of respondent:	Corporation.
Prohibited ground:	Disability.
Brief description of merits:	Employment discrimination; the complainant argued that the respondents had formulated a policy that discriminated against temporary disabled individuals in the calculation of “continuous cumulative service” which determined rights to employment security on retrenchment.
Outcome:	Complaint originally upheld but dismissed on appeal (<i>Canadian National Railway (Terra Transport) v Cramm</i> TD 5/98 1998/06/23.)

Cranston et al v Her Majesty the Queen in right of Canada TD 1/97 1997/01/10

Profile of complainants:	20 pilots and six flight attendants (sex and ethnic origin unknown).
Profile of respondent:	Government.
Prohibited ground:	Age.
Brief description of merits:	Employment discrimination; the complainants alleged that the respondent pursued a policy that deprived them of an employment opportunity.
Outcome:	Complaint upheld.

Crouse v Canadian Steamship Lines Inc TD 7/01 2001/06/18

Profile of complainant:	Male (ethnic origin unknown.)
Profile of respondent:	Corporation.
Prohibited ground:	(Perceived) disability.
Brief description of merits:	Employment discrimination; the claimant alleged that the respondent refused to hire the complainant as a permanent relief electrician based on his alcohol dependence.



Outcome: Complaint dismissed.

Daniels v Myron TD 08/01 2001/07/16

Profile of complainant: Female (ethnic origin unknown.)

Profile of respondent: Male (ethnic origin unknown.)

Prohibited ground: Sex.

Brief description of merits: Harassment; the complainant alleged that the respondent discriminated against her based on sex as he did not provide her with an environment free of harassment. The respondent did not appear at the hearing.

Outcome: Complaint upheld.

Dhanjal v Air Canada TD 4/96 1996/04/04

Profile of complainant: Male Sikh.

Profile of respondent: Corporation.

Prohibited ground: Race and religion.

Brief description of merits: Employment-related discrimination; the complainant alleged that his immediate supervisor harassed him and differentiated adversely against him in such a way that he was forced to resign.

Outcome: Complaint dismissed.

Dumont v Transport Jeannot Gagnon Inc TD 2/02 2002/02/01

Profile of complainant: Male (ethnic origin unknown.)

Profile of respondent: Corporation.

Prohibited ground: (Perceived) disability.

Brief description of merits: Employment-related discrimination; the complainant alleged that the respondent refused to employ him any further after he suffered a pneumothorax of the left lung.

Outcome: Complaint upheld; the respondent did not base his defence on a *bona fide* occupational requirement.

Dumont-Ferlatte et al and Gauthier et al v Canada Employment and Immigration Commission, Department of National Revenue (Taxation), Treasury Board and Public Service Alliance of Canada TD 9/96 1996/07/16

Profile of complainants: 105 women.
Profile of respondent: Government agencies.
Prohibited ground: Sex.
Brief description of merits: Employment-related discrimination. The complainants alleged that they were discriminated against by the respondents as they were not credited with annual leave and sick leave while they were on maternity leave; and by negotiating a collective agreement under which they could not receive annual and sick leave credits while absent on maternity leave.
Outcome: Complaints dismissed.

Eyerley v Seaspan International Limited TD 10/02 2002/07/11

Profile of complainant: Male (ethnic origin unknown.)
Profile of respondent: Corporation.
Prohibited ground: Disability.
Brief description of merits: Employment-related discrimination. The complainant was employed as a cook/deckhand. He developed work-related carpal tunnel syndrome. He was absent from work 83% of the time, mainly as a result of his injury. He was dismissed due to non-culpable absenteeism.
Outcome: Complaint upheld; the respondent did not accommodate the complainant to the point of undue hardship. In a subsequent hearing (*Eyerley v Seaspan International Limited* TD 18/01 2001/12/21) the tribunal urged the parties to cooperate in giving effect to the tribunal's order.

Franke v Canadian Armed Forces TD 4/98 1998/05/15

Profile of complainant: Female (ethnic origin unknown.)



Profile of respondent: Government agency.
Prohibited ground: Sex.
Brief description of merits: Harassment complaint.
Outcome: Complaint upheld.

Gagnon v Canadian Armed Forces TD 04/02 2002/02/14

Profile of complainant: Male (ethnic origin unknown.)
Profile of respondent: Government agency.
Prohibited ground: Marital status.
Brief description of merits: Harassment; the complainant alleged that because of a sexual and personal harassment complaint lodged by his wife, also a member of the Canadian Armed Forces, he was the victim of several incidents of discrimination by his superiors.
Outcome: Complaint partly upheld.

Goyette and Tourville v Voyageur Colonial Limitée TD 8/97 1997/10/14

Profile of complainant: Female (ethnic origin unknown.)
Profile of respondent: Employee's Union.
Prohibited ground: Sex.
Brief description of merits: Employment-related discrimination; the complainant argued that the departmental seniority regime set up by collective agreements signed in 1981 and 1989 systemically discriminated against a particular group of employees – telephone operators, of whom the majority were women. The collective agreement prevented them from becoming eligible for a ticketing office position; a position that offered better working conditions.
Outcome: Complaint upheld and confirmed in *Goyette v Syndicat Des Employé(es) De Terminus De Voyageur Colonial Limitée (CSN)* TD 14/01 2001/11/16.

Green v Public Service Commission of Canada, Treasury Board and Human Resources Development Canada TD 6/98 1998/06/26

Profile of complainant: Female (ethnic origin unknown.)
Profile of respondent: Government agency.
Prohibited ground: Disability.
Brief description of merits: Employment-related discrimination; the complainant alleged that the respondent had discriminated against her by putting a policy in place that deprived people in her situation of employment opportunities. She suffered from dyslexia in auditory processes.
Outcome: Complaint upheld; the respondent did not meet its duty to accommodate.

Hewstan v Auchinleck TD 7/97 1997/09/27

Profile of complainant: Female (ethnic origin unknown.)
Profile of respondent: Male co-employee and co-host (ethnic origin unknown.)
Prohibited ground: Sex.
Brief description of merits: Harassment complaint. The complainant alleged that the respondent sexually harassed her and thereafter sabotaged her work as a result of her complaint. The radio station for which they worked dismissed both the complainant and respondent.
Outcome: Complaint dismissed.

Irvine v Canadian Armed Forces TD 15/01 2001/11/23

Profile of complainant: Male (ethnic origin unknown.)
Profile of respondent: Government agency.
Prohibited ground: (Perceived) disability.
Brief description of merits: Employment-related discrimination; the complainant was an air force aviation technician when he suffered a heart attack. The respondent reviewed his medical condition and ruled that he was no longer fit to be employed.



Outcome: Complaint upheld; the respondent failed to establish a *bona fide* occupational requirement.

Jacobs and Jacobs v Mohawk Council of Kahnawake TD 3/98 1998/03/11

Profile of complainants: Peter Jacobs, of black and Jewish descent, was adopted by two Mohawks as a baby. His wife, Trudy Jabobs, was a Mohawk from Kahnawake who lost her Kahnawake status after marrying Peter.

Profile of respondent: First Nations Council.

Prohibited ground: Race, colour, national or ethnic origin, and family status.

Brief description of merits: Discrimination in the provision of services; the complainants alleged that the respondent refused them residency, land allotment and land rights, housing, medication and dental privileges. Peter and Judy were not on the Mohawk List of Kahnawake and were not considered members of the community as they did not satisfy the membership criteria.

Outcome: Complaint upheld; declaratory order furnished. (The respondent had indicated during the hearing that it would ignore an adverse order. The complainants asked for an order that the respondent recognise that they are Mohawks.)

Kavanagh v Attorney General of Canada TD 11/01 2001/08/31

Profile of complainant: Female (ethnic origin unknown.)

Profile of respondent: Government agency.

Prohibited ground: Disability.

Brief description of merits: The complainant suffered from Gender Identity Disorder. She was born as a male but had a subjective identity of herself as a woman. She was convicted of second degree murder. At the time she was living as a woman, had been taking female hormones and had been conditionally approved for sex reassignment surgery. She was held in a male prison. Her initial complaint against the respondent was settled; what remained was

a challenge against the respondent's policy relating to the placement of pre-operative transsexual inmates and its policy relating to the availability of sex reassignment surgery to imprisoned individuals.

Outcome: Complaint upheld; respondent ordered to formulate an appropriate policy in consultation with the Canadian Human Rights Commission.

Koepfel v Department of National Defence TD 5/97 1997/06/04

Profile of complainant: Female (ethnic origin unknown.)

Profile of respondent: Government agency.

Prohibited ground: Disability.

Brief description of merits: Employment-related discrimination; the claimant alleged that the respondent could have accommodated her hearing disability by having co-workers answer all telephone calls. She was employed as a central registry clerk whose main duties entailed mail sorting and filing, and telephone answering.

Outcome: Complaint upheld; respondent's defences based on *bona fide* occupational requirement and reasonable accommodation having failed.

Laessoe v Air Canada and Airline Division, Canadian Union of Public Employees TD 10/96 1996/09/13

Profile of complainant: Homosexual male (ethnic origin unknown.)

Profile of respondent: Government agency.

Prohibited ground: Family status, marital status and sexual orientation.

Brief description of merits: Employment-related discrimination; the complainant alleged that the respondent pursued a policy which limited spousal benefit coverage to heterosexual married and common law couples.

Outcome: Complaint dismissed; at that time sexual orientation was not a prohibited ground under the Canadian Human Rights Act; marital



status and family status are inextricably linked to the complainant's sexual orientation and no discrimination exists unless discrimination on the basis of sexual orientation was found.

Lagacé v Canadian Armed Forces TD 11/96 1996/10/17

Profile of complainant: Male (ethnic origin unknown.)
Profile of respondent: Government agency.
Prohibited ground: Marital status and family status.
Brief description of merits: Employment-related discrimination; the complainant alleged that he was discriminated against when he applied for officer candidate training, when his application was not supported by his superior nor forwarded to higher authority for consideration, as he was living in a common law relationship. He had made a previous complaint to the Human Rights Commission when he was denied permanent married quarters. He alleged that he was thereafter seen as a "troublemaker" and his career adversely affected.
Outcome: Complaint upheld; an act of complaining to the Human Rights Commission on a prohibited ground is in itself a prohibited ground of discrimination.

Larente v Canadian Broadcasting Corporation TD 08/02 2002/04/23

Profile of complainant: Female (ethnic origin unknown.)
Profile of respondent: Government agency.
Prohibited ground: Age.
Brief description of merits: Employment-related discrimination; the complainant's employment was terminated.
Outcome: Complaint upheld; on the evidence the tribunal found it more probable that the respondent based its decision on the complainant's age rather than her alleged inability to fill the position.

Laslo v The Gordon Band Council TD 12/96 1996/12/04

Profile of complainant:	First Nations female.
Profile of respondent:	First Nations council.
Prohibited ground:	Sex, marital status and race.
Brief description of merits:	The complainant alleged that the respondent denied her residential accommodation on the reserve. She married a non-Native and lost her status as member of the band.
Outcome:	The tribunal held that the complainant established a <i>prima facie</i> case of discrimination; however the respondent could show that its decision was made in terms of section 20 of the Indian Act, which excluded the case from the application of the Canadian Human Rights Act (via section 67 of the latter Act.) The complaint was consequently dismissed.

Lawrence v Department of National Revenue (Customs and Excise) TD 2/97 1997/02/17

Profile of complainant:	Male (ethnic origin unknown.)
Profile of respondent:	Government agency.
Prohibited ground:	Not stated; presumably disability.
Brief description of merits:	On alighting from an airplane after an overseas visit the complainant was asked to submit himself to an inspection. The complainant alleged that after he was forced to admit that he had AIDS, the customs officer put on latex gloves before proceeding to body search him.
Outcome:	Complaint dismissed; the tribunal held that the officer put on the latex gloves before learning of the complainant's AIDS status and acted in the performance of his duties as required of him when searching a traveler entering Canada.

Levac v Canadian Armed Forces TD 13/96 1996/12/13

Profile of complainant:	Male (ethnic origin unknown.)
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Profile of respondent: Government agency.
Prohibited ground: Disability.
Brief description of merits: Employment-related discrimination; the complainant was released from the Canadian Armed Forces on medical grounds nine years before his contract of employment would have expired.
Outcome: Complaint upheld.

Lincoln v Bay Ferries Ltd TD 05/02 2002/02/20

Profile of complainant: Male, born in Trinidad.
Profile of respondent: Corporation.
Prohibited ground: Race and colour.
Brief description of merits: Employment-related discrimination; the complainant alleged that the respondent refused to employ him because of his colour and West Indian origin.
Outcome: Complaint dismissed; the complainant could not establish a *prima facie* case.

Marinaki v Human Resources Development Canada TD 3/00 2000/06/29

Profile of complainant: Female of Greek origin.
Profile of respondent: Government agency.
Prohibited ground: Sex, national or ethnic origin.
Brief description of merits: Employment-related discrimination; the complainant alleged that her manager sexually and ethnically harassed her and that the respondent did not respond to her complaints appropriately and retaliated against her for raising the complaint. The complainant started to suffer from depression during her employment and during the hearing she was suffering from major depression.
Outcome: Complaint dismissed. The tribunal noted that had the case been brought as a complaint of discrimination based on disability the result may well have been different.

Martin v Saulteux Band Government TD 07/02 2002/04/18

Profile of complainant: Female (ethnic origin unknown.)
Profile of respondent: First Nations Council.
Prohibited ground: Sex (pregnancy.)
Brief description of merits: Employment-related discrimination; the complainant alleged that the respondent did not renew her school teaching contract for the following year upon learning that she was pregnant and intended taking maternity leave.
Outcome: Complaint upheld and a wide range of remedies ordered.

McAllister-Windsor v Human Resources Development Canada TD 2/01 2001/03/09

Profile of complainant: Female (ethnic origin unknown.)
Profile of respondent: Government agency.
Prohibited ground: Sex and disability.
Brief description of merits: The complainant argued that Federal Employment Insurance legislation had a discriminatory effect on her. The legislation limited to 30 weeks for which an individual may receive maternity, sickness and parental benefits. She suffered from an incompetent cervix which made it difficult for her to carry a child to term. After she had suffered two miscarriages she was advised to remain in bed for the duration of her third pregnancy. Because of the legislative limit she did not receive parental benefits.
Outcome: Complaint upheld; the respondent was ordered to stop applying the relevant provision in the Unemployment Insurance Act. The order was suspended for 12 months to allow the respondent to consult with the Canadian Human Rights Commission to put appropriate measures in place to prevent similar problems from occurring again.

McAvinn v Strait Crossing Bridge Limited TD 13/01 2001/11/15

Profile of complainant: Female (ethnic origin unknown.)



Profile of respondent: Corporation.
Prohibited ground: Sex.
Brief description of merits: Employment-related discrimination; the complainant alleged that she was discriminated against because she was hired as a bridge patroller by the respondent.
Outcome: Complaint upheld; the respondent was ordered to provide the complainant at the first available opportunity a position as bridge controller and in the mean time to pay her the difference between what she is currently earning and what she would have been earning had she been employed as a bridge controller.

Mills v Via Rail Canada Inc TD 7/96 1996/05/16

Profile of complainant: Male (ethnic origin unknown.)
Profile of respondent: Corporation.
Prohibited ground: Disability.
Brief description of merits: Employment-related discrimination; the complainant alleged that the respondent refused to continue to employ him because of a back injury.
Outcome: Complaint upheld.

Moore & Akerstrom v Treasury Board, Department of Foreign Affairs & International Trade, Canada Employment and Immigration Commission, Public Service Alliance of Canada and Professional Association of Foreign Service Officers and Professional Institute of the Public Service of Canada TD 8/96 1996/06/13

Profile of complainants: Homosexual males (ethnic origin unknown.)
Profile of respondent: Government.
Prohibited ground: Marital status, family status and sexual orientation.
Brief description of merits: Employment-related discrimination; the complainants alleged that the respondents pursued a policy or practice that tended to deprive a class of individuals (gay members) of employment

opportunities. The complaint focused on the denial of employment benefits to same-sex spouses.

Outcome: Complaint upheld on the basis of sexual orientation.

Morris v Canadian Armed Forces TD 17/01 2001/12/20

Profile of complainant: Male (ethnic origin unknown.)

Profile of respondent: Government agency.

Prohibited ground: Age.

Brief description of merits: Employment-related discrimination; the complainant alleged that he was not promoted from the rank of warrant officer to master warrant officer because of his age. When he completed the prerequisite course for the promotion he was 46 years old.

Outcome: Complaint upheld; the respondent did not provide a reasonable explanation for the discriminatory acts.

National Capital Alliance on Race Relations v Her Majesty the Queen as represented by Health and Welfare Canada, the Public Service Commission and the Treasury Board and Professional Institute of the Public Service of Canada TD 3/97 1997/03/19

Profile of complainant: Non-profit organisation with the mandate to fight discrimination and racism through political action, education and, where appropriate, legal action.

Profile of respondent: Government.

Prohibited ground: Race, colour and ethnic origin.

Brief description of merits: Employment-related discrimination; the complainant alleged that the respondent discriminated against visible minorities as evidenced by the extremely low number of permanent visible minority employees in senior management positions, in the Administration and in the Foreign Service category, and the concentration of visible minorities in lower level positions, and the failure to promote them on an equitable basis.



Outcome: Complaint upheld; the tribunal ordered the respondent to adopt and implement a special corrective measures programme.

Nijjar v Canada 3000 Airlines Limited TD 3/99 1999/07/09

Profile of complainant: Male; initiated member of the Khalsa order of the Sikh faith.
Profile of defendant: Corporation.
Prohibited ground: Religion.
Brief description of merits: Discrimination in the provision of a service; the complainant was denied permission to board an airplane because he carried a ceremonial dagger. (Such a dagger is carried by initiated members of the Sikh faith.)

Outcome: Complaint dismissed; the respondent could establish that the presence of ceremonial daggers with a greater offensive capacity than the airline's dinner knives would present a sufficient risk to passenger safety so as to constitute an undue hardship on the side of the respondent. The tribunal urged Transport Canada to consult with the airline industry, the Sikh community and experts to develop a uniform standard that would meet the needs of the Sikh community and meet airline passenger safety standards.

Nkwazi v Correctional Service Canada TD 1/01 2001/02/05

Profile of complainant: Black female born in Zimbabwe and emigrated to Canada in 1983.
Profile of respondent: Government agency.
Prohibited ground: Race and colour.
Brief description of merits: Employment-related discrimination; the complainant alleged that she was subjected to discrimination in the course of her employment with the respondent.

Outcome: Complaint upheld; the respondent failed to mitigate or avoid the effect of the actions of the complainant's supervisor.

Oster v International Longshoremen's & Warehousemen's Union, Local 400 TD 4/00 2000/08/09

Profile of complainant: Female (ethnic origin unknown.)
Profile of respondent: Corporation.
Prohibited ground: Sex.
Brief description of merits: Employment-related discrimination; the complaint related to an incident where the complainant was advised that she would not be acceptable as a cook/deckhand on a shipping vessel as separate sleeping accommodation was not available on the vessel.
Outcome: Complaint upheld. On the evidence the tribunal accepted that she would not have been appointed as she lacked the necessary experience; lost wages were therefore not awarded. The tribunal awarded special compensation of \$3000,00 and interest.

Pelletier and Dorais v Canadian Armed Forces TD 10/97 1997/10/24

Profile of complainants: Males (ethnic origin unknown.)
Profile of respondent: Government agency,
Prohibited ground: Age.
Brief description of merits: Employment-related discrimination; the complainants alleged that their contracts were not renewed because the respondent thought they were too old.
Outcome: Complaints dismissed.

Popaleni and Janssen v Human Resources Development Canada TD 3/01 2001/03/09

Profile of complainants: Female (ethnic origin unknown.)
Profile of respondent: Government agency.
Prohibited ground: Sex (pregnancy) and family status.
Brief description of merits: Discrimination in the provision of benefits. Ms Popaleni argued that her award of regular benefits under federal employment insurance legislation would have been 36 weeks instead of 11 weeks had she not been pregnant. Ms Janssen argued that the



respondent discriminated against her by requiring that she had to combine her regular employment insurance benefits with her maternity and parental benefits.

Outcome: Complaints dismissed.

Premakumar v Air Canada TD 03/02 2002/02/04

Profile of complainant: Male Tamil, originally from Sri Lanka.

Profile of respondent: Government agency.

Prohibited ground: Race, colour, national or ethnic origin.

Brief description of merits: Employment-related discrimination; the complainant alleged that the respondent discriminated against him in their decision not to hire him. The respondent alleged that he did not have the “soft skills” necessary to fill the position.

Outcome: Complaint upheld.

Public Service Alliance of Canada v Government of the Northwest Territories File No T470/1097

Profile of complainant: Union for government employees.

Profile of respondent: Government.

Prohibited ground: Sex.

Brief description of merits: Employment-related discrimination; government employees in female dominated occupational groups received lower wages than employees in male dominated occupational groups performing work of equal value.

Outcome: The matter was settled between the parties; they agreed on a wage and payment calculation method to provide redress to the affected employees. The settlement was made an order of the tribunal. (See *Public Service Alliance of Canada v Government of the Northwest Territories* Memorandum of Agreement 2002/06/25.) (Also see *Public Service Alliance of Canada v Treasury Board* TD 2/96 1996/02/15 and *Public Service Alliance of Canada v Treasury Board* TD 7/98 1998/07/29.)

Quigley v Ocean Construction Supplies TD 06/02 2002/04/03

Profile of complainant:	Male (ethnic origin unknown.)
Profile of respondent:	Corporation.
Prohibited ground:	Disability.
Brief description of merits:	Employment-related discrimination; the complainant alleged that the respondent discriminated against him based on his thoracic outlet syndrome, when it refused his request for a work trial as a deckhand. The complainant suffered from various disabilities that prevented him from working regularly. Between 1991 and 1996 he took five disability leaves.
Outcome:	Complaint dismissed; the complainant established a <i>prima facie</i> case of discrimination but the respondent had accommodated the complainant to the point of undue hardship.

Rampersadsingh v Wignall TD 13/02 2002/11/26

Profile of complainant:	Black female originally from Trinidad and East Indian extraction.
Profile of respondent:	Black male originally from Jamaica.
Prohibited ground:	National or ethnic origin and sex.
Brief description of merits:	The complainant alleged that the respondent, a co-worker, had harassed her. He <i>inter alia</i> referred to her as a “paki-coolie”, Boy-George look-alike” and “bitch”.
Outcome:	Complaint dismissed. Although the respondent’s remarks were offensive, the conduct was not repetitive enough nor of sufficient severity to fall within the Act.

Randhawa v Government of the Yukon Territory TD 11/97 1997/10/31

Profile of complainant:	Male (ethnic origin unknown.)
Profile of respondent:	Government.
Prohibited ground:	Race.



Brief description of merits: Employment-related discrimination; the complainant alleged that he was racially harassed and denied promotion thrice based on his race.

Outcome: Complaint upheld.

Schnell v Machiavelli and Associates Emprize Inc and Micka TD 11/02 2002/08/20

Profile of complainant: Homosexual male (ethnic origin unknown.)

Profile of respondents: Corporation; male.

Prohibited ground: Sexual orientation.

Brief description of merits: The complainant argued that the respondents discriminated against him by communicating hate messages on a website, targeted at gays.

Outcome: The tribunal ordered the respondents to stop communicating messages on the website that associate homosexuality with pedophilia, bestiality and the sexual predation of children and that associate gays and lesbians with having an agenda to lure and sexually abuse children and having an agenda to legalise pedophilia.

Singh v Statistics Canada TD 8/98 1998/11/06

Profile of complainant: Male born in India.

Profile of respondent: Government agency.

Prohibited ground: Age, national or ethnic origin.

Brief description of merits: Employment-related discrimination; the complainant argued that his efforts at advancement had been adversely affected.

Outcome: Complaint upheld.

Stevenson v Canadian Security Intelligence Service TD 16/01 2001/12/05

Profile of complainant: Male (ethnic origin unknown.)

Profile of respondent: Corporation.

Prohibited ground: Disability.

Brief description of merits: Employment-related discrimination; the complainant argued that the respondent discriminated against him because of his mental disability. He requested stress leave which led to his discharge on medical grounds.

Outcome: Complaint upheld; the respondent's policy not adequately addressing the issue of accommodation when an employee suffers from a health related disability.

Vlug v Canadian Broadcasting Corporation TD 6/00 2000/11/15

Profile of complainant: Male (ethnic origin unknown.)

Profile of respondent: Government agency.

Prohibited ground: Disability.

Brief description of merits: The complainant asked for an order that the respondent make all of its English language network and Newsworld television programmes accessible to the deaf and hard-of-hearing.

Outcome: Complaint upheld; the respondent was ordered to caption all of their television programming at the first reasonable occasion and was strongly encouraged to consult with representatives of the deaf and hard-of-hearing community on an ongoing basis relating to the provision of captioning services. The respondent was ordered to pay \$10 000,00 to the complainant for pain and suffering for the sense of exclusion and marginalisation that he felt as a result of being unable to access the television programming.

Vollant v Health Canada and Parenteau and Bouchard TD 4/01 2001/04/06

Profile of complainant: Female, native Innu.

Profile of respondent: Government agency.

Prohibited ground: National or native ethnic origin.

Brief description of merits: Employment-related discrimination; the complainant alleged that her employer tolerated harassment towards her.



Outcome: Complaint dismissed; the respondent acted promptly to resolve the dispute.

Wachal v Manitoba Pool Elevators TD 5/00 2000/09/27

Profile of complainant: Female (ethnic origin unknown.)
Profile of respondent: Corporation.
Prohibited ground: Disability.
Brief description of merits: Employment-related discrimination; the complainant alleged that she was fired because the respondent failed to accommodate her disability (allergies and asthmatic reactions caused by renovations to the offices). She was absent from work for 11 days on six separate occasions during four months.
Outcome: Complaint dismissed; the complainant could not prove that her absences were due to her disability.

Wall v Kitigan Zibi Education Council TD 6/97 1997/07/11

Profile of complainant: Female (ethnic origin unknown.)
Profile of respondent: First Nations Council.
Prohibited ground: Sex and family status.
Brief description of merits: Employment-related discrimination; the complainant alleged that her employment teaching contract was not extended when she informed the respondent that she fell pregnant and would require maternity leave.
Outcome: Complaint dismissed; the respondent offered a reasonable, non-discriminatory explanation of the events.

Wignall v Department of National Revenue (Taxation) TD 5/01 2001/06/08

Profile of complainant: Male (ethnic origin unknown.)
Profile of respondent: Government agency.
Prohibited ground: Disability.

Brief description of merits: The complainant was a deaf student that attended classes at the University of Manitoba. The university agreed to provide him with sign language interpreters for lectures free of charge but also requested him to explore funding opportunities. He applied for and received a Special Opportunities Grant for Students with Permanent Disabilities of \$3000, which he turned over to the university to cover part of the costs of the interpreter services. He received an advice from the respondent that the grant was seen as a bursary and was subject to taxation. The complainant argued that the respondent discriminated against him.

Outcome: Complaint dismissed.

Wilson v Canadian National Railways Company TD 1/00 2000/01/31

Profile of complainant: Female (ethnic origin unknown.)
Profile of respondent: Corporation.
Prohibited ground: Family status.
Brief description of merits: Employment-related complaint. No further details available.
Outcome: Complaint dismissed.

Woiden, Falk, Yeary and Curle v Lynn TD 09/02 2002/06/17

Profile of complainants: Females (ethnic origin unknown.)
Profile of respondent: Male (ethnic origin unknown.)
Prohibited ground: Sex, family status.
Brief description of merits: The complainants alleged that the respondent, the senior manager at their previous place of employment, harassed them on the basis of sex. The respondent did not participate in the hearing. The respondent was apparently a foul-mouthed bad-tempered man who did not treat his employees with dignity or respect. He regularly addressed the staff as “fucking bitches”, “fucking idiots”, “sluts”, “cunts” and “fags”.

Outcome: Complaint upheld and a wide range of remedies ordered.



Wong v Royal Bank of Canada TD 06/01 2001/06/15

Profile of complainant: Female of Chinese origin.
Profile of respondent: Corporation.
Prohibited ground: Race, national or ethnic origin and disability.
Brief description of merits: Employment-related complaint; the complainant applied for a training programme with her employer (the respondent) but was not accepted. She returned to a previous employer. She was diagnosed as suffering from depression and went on short term disability with the respondent. When the respondent learnt that the complainant had been working for a previous employer while collecting disability benefits from the respondent, it terminated the complainant's employment. The complainant argued that the respondent refused her job opportunities and refused to accommodate her disability (stress and depression).
Outcome: Complaint dismissed.

D.2 Alberta

Al-Saidi v Bio Beverages Inc Complaint File No N9811290

Profile of complainant: Male of Arab descent.
Profile of respondent: Corporation.
Prohibited ground: Physical disability.
Brief description of merits: Employment-related discrimination; the complainant was employed as a general ground worker. He was involved in a motor vehicle accident that led him to being absent from work for seven months. His employment was terminated some time after he returned to work when he again fell ill.
Outcome: Complaint dismissed.

Anderson et al v Alberta Health and Wellness 2002/12/04

Profile of complainants: Gay men and lesbian women.

Profile of respondent: Government agency.
Prohibited ground: Sexual orientation.
Brief description of merits: The complaint related to discrimination in the provision of health care services; Alberta Health Care did not cover same-sex partnerships in terms of the definition of “dependants” in the relevant legislation.
Outcome: Complaint upheld.

Berry v Farm Meats Canada Ltd Complaint File No S9712178

Profile of complainant: Male (ethnic origin unknown.)
Profile of respondent: Corporation.
Prohibited ground: Disability.
Brief description of merits: Employment-related complaint; the complainant was employed as sales manager for western Canada. He suffered a mild heart attack that required hospitalisation. He believed that his employment was terminated on the basis of his heart condition.
Outcome: Complaint upheld.

Bingham v Magnum Cat Contractors Ltd 2000/11/17

Profile of complainant: Male (ethnic origin unknown.)
Profile of respondent: Corporation.
Prohibited ground: Disability.
Brief description of merits: Employment-related discrimination; the complainant alleged that his employment was terminated because of his speech impediment.
Outcome: Complaint dismissed; the tribunal held that the complainant was dismissed because of his work habits.

Browne v Dan Dekort and Temple Hair Design Complaint S95030236

Profile of complainant: Female (ethnic origin unknown.)
Profile of respondent: Male; business.



Prohibited ground: Sex.
Brief description of merits: Sexual harassment; the complainant alleged that she was sexually harassed by the respondent and when she reported it, her employment was terminated. The Commission dismissed the complaint and the complainant requested a review.
Outcome: On review the complaint was dismissed again.

Cazeley v Intercare Corporate Group Inc Complaints File No S9707093, S9707094, S9707095

Profile of complainant: Female black.
Profile of respondent: Corporation.
Prohibited ground: Race, colour, age, ancestry and place of origin.
Brief description of merits: Employment-related complaint. The complainant alleged that the respondent's staff discriminated against her.
Outcome: Complaint dismissed.

Chartrand v Vanderwell Contractors (1971) Ltd Complaint N9806077

Profile of complainant: Female mother of two (ethnic origin unknown.)
Profile of respondent: Corporation.
Prohibited ground: Sex.
Brief description of merits: Employment-related complaint of sexual harassment. The complainant alleged that her shift supervisor harassed her.
Outcome: Complaint upheld. The tribunal found that the supervisor's conduct was not welcomed at all times and that his conduct was sexual in nature on many occasions. The work environment at the respondent was somewhat hostile to a female employee desiring to lay a sexual harassment complaint. The respondent knew or should have known about the harassment and did not take action to stop the harassment.

Chase v Condic Complaint S0009145

Profile of complainant: Female (ethnic origin unknown.)

Profile of respondent: Male (ethnic origin unknown.)
Prohibited ground: Sex.
Brief description of merits: Employment-related sexual harassment. The complainant commenced employment with the respondent as babysitter and on the same day the incidents complained of occurred.
Outcome: Complaint upheld; the respondent sexually harassed the complainant through a number of persistent comments and behaviours.

Chow v Mobil Oil Canada Complaint S9607103

Profile of complainant: Female (ethnic origin unknown.)
Profile of respondent: Corporation.
Prohibited ground: Sex (pregnancy.)
Brief description of merits: Employment-related discrimination; the complainant alleged that her pregnancy and subsequent maternity leave had a large influence on the respondent's decision to terminate her employment.
Outcome: Complaint dismissed; the tribunal did note that the ranking, validation, leveling and selection process could have been applied more fairly and objectively but nothing in the process discriminated against the complainant on the ground of pregnancy.

Elliot v Auto Stop Car Wash (1996) Ltd Complaint S9707091

Profile of complainant: Female (ethnic origin unknown.)
Profile of respondent: Corporation.
Prohibited ground: Sex (pregnancy.)
Brief description of merits: Employment-related discrimination; the complainant's employment was terminated ten days after she informed her supervisor that she was pregnant.



Outcome: Complaint dismissed; on the evidence the tribunal held that the complainant was fired because she could not manage staff and labour costs at a time when the respondent was facing an increase in costs due to the start of lease payments.

Ensign v The Board of Trustees of Clearview Regional School Division #24; Hanrahan and LaValley v Larson and Northern Gateway Regional Division 1999/02/19

Profile of complainants: Male (ethnic origin unknown.)
Profile of respondent: School board.
Prohibited ground: Age.
Brief description of merits: Employment-related discrimination; the complainants alleged that the school board's policy that required bus drivers to retire at 65 years was discriminatory.

Outcome: Complaint dismissed; the respondent could show that the age requirement was reasonably necessary to ensure the efficient and economical performance of the job without endangering the employee, co-workers or the public; that it was impossible to screen 65+ drivers to remove unsafe drivers; and that the policy was reasonably necessary to eliminate a real risk of serious damage to the public.

Fiddler (Loyer) v Grant MacEwan Community College Complaint N9504007

Profile of complainant: Female First Nations.
Profile of respondent: Training college.
Prohibited ground: Race, gender and ancestry.
Brief description of merits: The complainant registered for a Life Management Skills Leader training programme at the respondent. She did not receive a certificate at the conclusion of the programme. She alleged that she failed because of the hostile environment.

Outcome: Complaint upheld; the tribunal found it encouraging that the respondent had suspended the programme until changes could be made to take the First Nations perspective into account.

Ganser v Rosewood Estates Condominium Corporation Complaint S9908179

Profile of complainant: Eighty-seven year old disabled woman suffering from several ailments.

Profile of respondent: Building management.

Prohibited ground: Disability.

Brief description of merits: When the complainant bought a flat in a building she was allocated a parking bay. She did not use the bay but her caretakers did which offered convenient, safe and assured parking close to the complainant's home. The respondent amended its rule relating to parking to the effect that a resident owner must hold a driver's license. The complainant consequently lost her bay. She did receive notice of the proposed vote on the rule but as she was blind she did not become aware of the proposal until after it was adopted.

Outcome: Complaint upheld; the respondent could not show that accommodating the complaint would be impossible because of undue hardship. The respondent was ordered to provide a parking space to the complainant forthwith.

Gwinner et al v The Crown in right of Alberta as represented by The Minister responsible for Alberta Human Resources and Employment (Formerly Alberta Family and Social Services)
2001/01/31

Profile of complainants: Females; divorced or single parents.

Profile of respondent: Government.

Prohibited ground: Marital status.

Brief description of merits: The complainants argued that the Widow's Pension Act was discriminatory towards divorced and single people as the pension



provided for in the Act provided substantial benefits to widows and widowers in the 55-64 age group.

Outcome:

The tribunal held that a *prima facie* case of discrimination had been made out but that the discrimination was reasonable and justifiable in the circumstances. The purpose of the Act was to provide a temporary bridge for disrupted dependency resulting from the death of a spouse until the age when benefits under a seniors benefit programme start to pay out. The tribunal did however request the Alberta government to review the Act with a view to expanding the programme and to more closely and accurately tie disrupted dependency to eligibility.

Hudec v Larko and The Big Muffin 1997/11

Profile of complainant: Female (ethnic origin unknown.)

Profile of respondent: Male; business.

Prohibited ground: Disability.

Brief description of merits: Employment-related discrimination; the complainant alleged that her employment as counter helper was terminated because of her hearing impairment.

Outcome: Complaint upheld.

Husien v OPSCO Energy Industries Ltd Complaint S0005042

Profile of complainant: Male (ethnic origin unknown.)

Profile of respondent: Corporation.

Prohibited ground: Disability.

Brief description of merits: Employment-related discrimination; the complainant alleged that the respondent did not accommodate his injury.

Outcome: Complaint dismissed; the tribunal held that on the evidence the respondent accommodated the complainant to the point of undue hardship. It took the complainant's complaints seriously, assigned him light duties on several occasions, let him rest in the

lunchroom and regularly monitored his progress. Other employees performed the complainant's regular duties.

Jahelka v Fort McMurray Catholic Board of Education Complaint No N9904004

Profile of complainant: Female (ethnic origin unknown.)
Profile of respondent: Board of education.
Prohibited ground: Sex (pregnancy.)
Brief description of merits: Employment-related discrimination; the complainant applied for the position of vice principal but was not interviewed or considered. The complainant argued that this happened because of her pregnancy.
Outcome: Complaint upheld.

Joshi v Borys Professional Corporation Complaint N9509155

Profile of complainant: Female of East Indian origin.
Profile of respondent: Clinic.
Prohibited ground: Race and colour.
Brief description of merits: Employment-related discrimination; the complainant alleged that her employer repeatedly subjected her to discrimination.
Outcome: On the evidence the tribunal accepted that racial discrimination of an insidious and concealed nature occurred. The tribunal referred to incidents where fun was made of the complainant about the way in which the pronounced patients' surnames; co-workers used the word "Paki" behind her back and her direct supervisor said to her "I never liked people like you". The employer had sufficient reason to discriminate against her on performance grounds but racial discrimination contributed to the complainant's decision to leave. The respondent was ordered to pay \$1000 to the complainant for injury to her dignity, and was ordered to pursue discussions with employee and put in place a policy that



emphasised the importance of recognising and respecting human rights.

JR and SS v Kamaledline and 288508 Alberta Ltd operating as Burger Baron Complaints N9409094 & N9410103

Profile of complainants: Underage females.
Profile of respondent: Male of Lebanese origin.
Prohibited ground: Sex.
Brief description of merits: The complainants filed complaints that their employer sexually harassed them. As a result of the harassment they were forced to quit.
Outcome: Complaint upheld. The respondent was ordered to pay \$5000 to JR and \$3000 to SS for injury to their dignity and self respect. The respondent also had to attend a session on gender harassment as approved by the Alberta Human Rights and Citizenship Commission.

Kane and The Jewish Defence League of Canada v Alberta Report, Byfield et al Complaint No S9805008

Profile of complainant: Organisation founded to promote the interests of Jewish people.
Profile of respondent: Magazine.
Prohibited ground: Not explicitly stated in the judgment.
Brief description of merits: The complaint related to an article about an American promoter and a Canadian builder, two Jews, that reflected a negative stereotype about Jewish people.
Outcome: The tribunal held that the caricature contained in the article invited discrimination against Jewish people. The stereotype was not a continuous or repetitive type of message and the respondent offered space in the magazine to the complainant in which the impact of the article could be addressed. The tribunal did not make an additional order.

Kane and The Jewish Defence League of Canada v Papez et al and The Silver Bullet Complaint

File No S9509094

Profile of complainant:	Organisation founded to promote the interests of Jewish people.
Profile of respondent:	Individuals who published and distributed pamphlets under the name of the “Silver Bullet”.
Prohibited ground:	Race and religion.
Brief description of merits:	The complaint related to material contained in the “Silver Bullet” that <i>inter alia</i> referred to a “Jewish Mafia”, “Jewish gang” and contained a superimposed swastika over the Canadian flag.
Outcome:	The tribunal held the “Silver Bullet” to indicate discrimination or an intention to discriminate and ordered the respondents to pay \$2500,00 in general damages for pain and suffering.

Kennedy v Save-On-Auto Limited and First Class Limo Service Limited Complaint N0003267

Profile of complainant:	Female (ethnic origin unknown.)
Profile of respondent:	Business.
Prohibited ground:	Sex.
Brief description of merits:	The complainant alleged that the managing director and owner of the respondent sexually harassed her. When she complained her wages were decreased and her hours lengthened. She resigned.
Outcome:	Complaint upheld; \$4000 awarded as compensation for pain, anguish and suffering.

King v Rick St Denis and Universal Maps of Canada Inc 1999/10/04

Profile of complainant:	Female (ethnic origin unknown.)
Profile of respondent:	Male; Corporation.
Prohibited ground:	Gender.
Brief description of merits:	The complainant’s complaint related to sexual harassment. After she called the perpetrator “a pig” on a few occasions she was fired.



Outcome: Complaint upheld. When the respondent is in a position of authority, the burden rests with him to demonstrate that the conduct was welcome. As the perpetrator was the president and owner of the business, the business was also held liable.

L'Archeveque v City of Calgary Complaint S9904039

Profile of complainant: Female (ethnic origin unknown.)
Profile of respondent: Municipality.
Prohibited ground: Disability.
Brief description of merits: Employment-related discrimination; the complainant alleged that the respondent did not accommodate her repetitive strain injury in both arms and neck.
Outcome: Complaint upheld; the tribunal held that the respondent did not meet its duty to accommodate the complainant to the point of undue hardship.

Lalonde v Hamid, Al Sultan Restaurant, 576013 Alberta Ltd and Albacha Restaurant Ltd Complaint N9403265

Profile of complainant: Female (ethnic origin unknown.)
Profile of respondent: Male (ethnic origin unknown.)
Prohibited ground: Sex.
Brief description of merits: The complainant alleged that she was sexually harassed and was consequently forced to quit her job. The respondent did not appear at the hearing.
Outcome: Complaint upheld; \$2500 awarded for injury to the complainant's dignity and self-respect.

Lavimizadeh v Factotum Steel Industries Inc Complaint File No N9709210

Profile of complainant: Male (ethnic origin unknown.)
Profile of respondent: Corporation.
Prohibited ground: Disability.

Brief description of merits: Employment-related complaint; the complainant argued that he was discriminated against based on a back condition that he re-injured.

Outcome: Complaint dismissed.

Lays v Daryl Remus Professional Corporation File #N9812334

Profile of complainant: Female (ethnic origin unknown.)

Profile of respondent: Optometrist's practice.

Prohibited ground: Sex.

Brief description of merits: The complainant alleged that the office manager sexually harassed her. When she complained to her employer he advised that he could not fire the office manager as he had no verification or proof of the allegations. She then quit. Her employer testified that he put the office manager on probation the next day.

Outcome: Complaint upheld.

Masters v Willow Butte Cattle Co Ltd Complaint S9904017

Profile of complainant: Female (ethnic origin unknown.)

Profile of respondent: Corporation.

Prohibited ground: Disability.

Brief description of merits: Employment-related discrimination. The complainant was employed as a pen-rider. While working her horse tripped, felled and roller on her and she sustained a lower back injury. The complainant's employment was terminated some time later.

Outcome: Complaint upheld; it would not have been beyond undue hardship to reinstate the complainant. Her replacement was still on his three-month trial period when she returned from hospital and his employment could have been terminated with a minimum or no severance payable.

Mattern and Russell v Spruce Bay Resort Complaints S9808102 and S9907174



Profile of complainants:	Unmarried males.
Profile of defendant:	Resort.
Prohibited ground:	Family status.
Brief description of merits:	The complainants were refused accommodation at the resort as they did not fall under the respondent's definition of family. (It was a so-called "family resort".)
Outcome:	Complaint dismissed; the panel held that a <i>prima facie</i> case of discrimination was made out but that the discrimination was reasonable and justifiable based on sound business practice.

McDonald v Don Logan and Audit and Special Investigations, Student Finance, Alberta Learning
Complaint N0002235

Profile of complainant:	First Nations female.
Profile of respondent:	Male; private chartered accountants firm.
Prohibited ground:	Race.
Brief description of merits:	The complainant never saw white people as a child, did not understand white society and spoke no English. Only in 1996 did she start to attend a vocational institute. By 1998 she could read and write English stories at grade 4-5 level. She received financial assistance from the government. An audit programme was developed for such skill development programmes. The government contracted the respondent to do the audit. Ten students were interviewed to verify information the student had put on their application forms for financial assistance. These students were either audited previously or students whom the government had received complaints about. The complainant argued that her cultural background and linguistic ability were not taken into account in the interviews.
Outcome:	Complaint dismissed. It appeared that the complainant wanted the hearing to establish who was responsible for the closure of the school and that what she wanted to accomplish was different

from the case advanced on her behalf. The panel found the interview style to have been considerate and respectful.

McLeod v Bronzart Casting Ltd Complaint S9501222

Profile of complainant: Female.
Profile of respondent: Corporation.
Prohibited ground: Sex.
Brief description of merits: Employment-related sexual harassment; the complainant's working hours were reduced from 40 to four after she objected to a poster of a scantily clad, seductive female displayed in the workplace and asked that it be removed.
Outcome: Complaint upheld.

Miller v 409205 Alberta Ltd & VOCO Property Group Complaint No N9911159

Profile of complainant: Male (ethnic origin unknown.)
Profile of respondent: Property owner.
Prohibited ground: Disability.
Brief description of merits: The complainant suffered from bipolar affective disorder that prevented him from pursuing employment. He received a rental subsidy from the Capital Region Housing Corporation. As a consequence of a number of run-ins with the landlord mainly relating to the number of cats in the complainant's flat, the landlord did not apply for the subsidy again (it had to be renewed annually), which meant that the complainant had to pay the difference from his own pocket.
Outcome: Complaint upheld and the respondent was ordered to *inter alia* take the necessary steps to have the subsidy reinstated.

Orth v Diner's Spot Restaurant and Kourletis File N9503238

Profile of complainant: Female (ethnic origin unknown.)
Profile of respondent: Business (restaurant.)



Prohibited ground: Sex (pregnancy.)
Brief description of merits: Employment-related discrimination; the complainant worked as a waitress. She informed her supervisor that she was pregnant. A few months later she was laid off due to a shortage of hours.
Outcome: Complaint upheld; her pregnancy was a causative factor in her dismissal.

Paul v PowerComm Inc Complaint N9712301

Profile of complainant: Female (ethnic origin unknown.)
Profile of respondent: Corporation.
Prohibited ground: Sex.
Brief description of merits: Employment-related complaint; the complainant argued that the respondent failed to pay her at a rate equal to a male employee performing substantially similar work.
Outcome: Complaint dismissed.

Starzynski et al v Canada Safeway Limited and United Food & Commercial Workers Local 401
Complaint File N9401218

Profile of complainants: Males and females.
Profile of respondent: Corporation; Employees' union.
Prohibited ground: Disability.
Brief description of merits: Employment-related discrimination; the complainants complained that the eligibility terms of a Buyout Programme with the employer ("full and part time employees in all Alberta locations excluding Lloydminster and Hinton, whose base rate of pay as of January 30 1993 is at or exceeds \$10/hour, and who have worked some hours over the past 52 weeks") had the effect of excluding disabled employees.
Outcome: Complaint upheld; not all reasonable ways of accommodating the group was considered.

Timleck v Habib Monaghi, Radio Guide Complaint File N9705053

Profile of complainant: Female (ethnic origin unknown.)
Profile of respondent: Male; small business.
Prohibited ground: Gender, marital status.
Brief description of merits: The complaint related to workplace sexual harassment. The respondent only employed single females who did not have children and sexually harassed the complainant on a continual basis over a period of ten days.
Outcome: Complaint upheld.

Weitmann v City of Calgary Electric System Complaint S9610182

Profile of complainant: Male (ethnic origin unknown.)
Profile of respondent: Municipality.
Prohibited ground: Disability.
Brief description of merits: Employment-related discrimination. The complainant suffered from dysthymia, seasonal affective disorder, major depressive episodes and obsessive-compulsive personality traits.
Outcome: Complaint upheld; the panel held that the respondent could have accommodated him without undue hardship.

Woo v Fort McMurray Catholic Board of Education Complaint N9810230

Profile of complainant: Female (ethnic origin unknown.)
Profile of respondent: Board of education.
Prohibited ground: Sex (pregnancy.)
Brief description of merits: Employment-related discrimination. When the complainant fell pregnant her probationary contract was ended on her last day of work and she was offered maternity leave.
Outcome: Complaint upheld.

Yurkowski v MJT Food Service Ltd and Garden Court Restaurant Complaint N9907080

Profile of complainant: Female (ethnic origin unknown.)



Profile of respondent:	Restaurant.
Prohibited ground:	Marital status.
Brief description of merits:	Employment-related complaint. The complainant alleged that she was denied a raise and earned less money than the other waitresses, who were married.
Outcome:	Complaint dismissed; the panel held that the wage differential was based on the employer's perception of her job performance and work ethic.

D.3 British Columbia

Abrams v North Shore Free Press Ltd doing business as "North Shore News" & Collins 1999/02/02

Profile of complainant:	Jewish male.
Profile of respondent:	Newspaper.
Prohibited ground:	Race, religion and ancestry.
Brief description of merits:	The complainant argued that a number of articles that appeared in the "North Shore News" written by Collins, were likely to expose Jewish people to hatred or contempt.
Outcome:	Complaint upheld. The tribunal held that one their own and taken out of context the articles would not have reached the <i>Code's</i> high threshold, but that they did collectively.

Akiyama v Judo BC 2002 BCHRT 27

Profile of complainant:	Female born and raised in Japan who did not raise her children to any particular religious belief.
Profile of respondent:	Organisation for judo in British Columbia.
Prohibited ground:	Religion.
Brief description of merits:	The complainant argued that the respondent required participants in competitions to perform certain bows, which contravened the <i>Code's</i> prohibition against religion-based discrimination.
Outcome:	Complaint dismissed; the tribunal held that no religious dimension to the bow in judo exists.

Alquire v Warnaar Steel-Tech Ltd 2002 BCHRT 34

Profile of complainant: Male (ethnic origin unknown.)
Profile of respondent: Corporation.
Prohibited ground: Age and physical disability.
Brief description of merits: The complainant injured himself while at work. He alleged that the respondent refused to continue to employ him.
Outcome: Complaint dismissed; the respondent could not in any way accommodate the complainant.

Armstrong, Chapman, Haywood and Streeter v Liu doing business as 'Casa Lucinda' and/or Zucchini Restaurant Ltd doing business as 'Casa Lucinda' and/or Liu and/or Liu 1998/02/17

Profile of complainants: Females (ethnic origin unknown.)
Profile of respondent: Business (restaurant.)
Prohibited ground: Sex.
Brief description of merits: Employment-related complaint; the complainants alleged that the restaurant's owner sexually harassed them.
Outcome: Complaint upheld.

Atkin v Mogul Ventures Corp doing business as "Pemberton Hotel" and Harman 1997/06/23

Profile of complainant: Female (ethnic origin unknown.)
Profile of respondent: Corporation; male.
Prohibited ground: Sex.
Brief description of merits: Employment-related complaint; the complainant alleged that her supervisor sexually harassed her.
Outcome: Complaint upheld.

Avery v Her Majesty the Queen in right of the Province of British Columbia as represented by the Ministry of Transportation and Highways, Motor Vehicle Branch 1999/10/08

Profile of complainant: Male (ethnic origin unknown.)
Profile of respondent: Government.



Prohibited ground: Physical disability.
Brief description of merits: The complainant argued that the respondent discriminated against him by requiring a yearly medical exam to have his class three or class five licence renewed. He suffered from cardiovascular disease.
Outcome: Complaint dismissed; the requirement is a *bona fide* and reasonable justification in the interests of public safety.

Baeza v Blenz Coffee and Gardner 2000 BCHRT 29

Profile of complainant: Female (ethnic origin unknown.)
Profile of respondent: Business; male.
Prohibited ground: Sex.
Brief description of merits: Employment-related complaint; the complainant alleged that her supervisor sexually harassed her at work and at social events and that her rebuffing of his advances caused the termination of her employment.
Outcome: Complaint upheld.

Barrett et al v Cominco et al 2001 BCHRT 46

Profile of complainants: Representative claim of all of the respondent's employees between 46 and 55 years of age with more than 20 years of service.
Profile of respondent: Corporation; employees' union.
Prohibited ground: Age.
Brief description of merits: Employment-related complaint (retrenchment). The severance benefits were calculated according to age at date of retrenchment and years of service.
Outcome: Complaint dismissed; the agreement had no adverse impact on the complainants.

Beale v Gambell and Gambell, registered owners of 11908 Bond Road, Winfeld BC 1998/10/08

Profile of complainant: Female (ethnic origin unknown.)
Profile of respondent: Property owner.
Prohibited ground: Mental disability.
Brief description of merits: The complainant alleged that her son was discriminated against when the respondents refused him as a tenant.
Outcome: Complaint upheld; the son's mental disability was one of the reasons taken into account in not renting out the mobile home to him.

Bellefleur v District of Campbell River Fire Department 2002 BCHRT 12

Profile of complainant: Male (ethnic origin unknown.)
Profile of respondent: City fire department.
Prohibited ground: Family status.
Brief description of merits: Employment-related complaint. The complainant alleged that he was not hired as a full-time firefighter because the fire station's chief disliked his father and that the respondent had an unwritten policy of not hiring the sons of firefighters.
Outcome: Complaint upheld.

Bennett v Classy Car Care Inc 1998/12/23

Profile of complainant: Male (ethnic origin unknown.)
Profile of respondent: Business.
Prohibited ground: Age.
Brief description of merits: Employment-related complaint; the complainant alleged that when he applied for a position as car cleaner, he was told that he was too old.
Outcome: Complaint upheld; \$1600 awarded.

Beznouchuk v Spruceland Terminals Limited 1999/08/05

Profile of complainant: Male (ethnic origin unknown.)
Profile of respondent: Corporation.



Prohibited ground: Disability.

Brief description of merits: Employment-related complaint. The complainant's employment was terminated because he could not perform his duties any longer as a result of chronic back pain.

Outcome: Complaint dismissed; despite the respondent's reasonable efforts to accommodate the complainant, it was not able to do so.

Birchall v Guardian Properties Ltd 2000 BCHRT 36

Profile of complainant: Female (ethnic origin unknown.)

Profile of respondent: Property owner.

Prohibited ground: Marital status, family status.

Brief description of merits: The complainant, a single mother, was denied tenancy after the landlord enquired whether she had a boyfriend and after being informed that she received governmental disability benefits.

Outcome: Complaint upheld.

Bitonti et al v College of Physicians & Surgeons et al 1999/12/08

Profile of complainants: Graduates from foreign medical schools.

Profile of respondent: Government.

Prohibited ground: Place of origin.

Brief description of merits: Foreign-trained doctors may practise in British Columbia pending on where they graduated; graduates from "Category II" countries had to comply with a number of additional requirements.

Outcome: Complaint upheld against the College; complaints against other respondents dismissed.

Boire v Beant Logging & Investments Ltd doing business as MacKenzie Place 1999/07/07

Profile of complainant: Female (ethnic origin unknown.)

Profile of respondent: Business (sports bar.)

Prohibited ground: Sex.

Brief description of merits: Employment-related complaint (sexual harassment.)

Outcome: Complaint upheld.

Breau v ARA Manufacturing Company Ltd doing business as "ARA Sales", Marzara and Goodarzi
1998/11/18

Profile of complainant: Female (ethnic origin unknown.)
Profile of respondent: Corporation; two males.
Prohibited ground: Sex.
Brief description of merits: Employment-related complaint (sexual harassment.)
Outcome: Complaint dismissed (on the evidence presented.)

Briggs v BC (Min of Water, Land & Air Protection) 2002 BCHRT 17

Profile of complainant: Female (ethnic origin unknown.)
Profile of respondent: Government.
Prohibited ground: Sex.
Brief description of merits: Employment-related complaint; the complainant alleged that she was forced to accept a lower-paying position in 1993/4 and was not offered a position in 1995 because of her sex.
Outcome: Complaint upheld relating to 1993/4; dismissed relating to 1995.

Brimacombe v Northland Road Services Ltd 1998/06/17

Profile of complainant: Male (ethnic origin unknown.)
Profile of respondent: Corporation.
Prohibited ground: Physical disability.
Brief description of merits: Employment-related complaint. The complainant suffered from easy fatigue, dizziness, headaches and unsteadiness.
Outcome: Complaint dismissed; the tribunal held that the respondent took reasonable efforts to the point of undue hardship to accommodate the complainant.

Buck v Honda Centre 2001 BCHRT 31

Profile of complainant: Male (ethnic origin unknown.)



Profile of respondent: Corporation.
Prohibited ground: Family status.
Brief description of merits: Employment-related complaint. The complainant alleged that he requested leave after the birth of his child, which was denied. He then took the time off without permission. His employment was terminated on his return to work. The respondent alleged that he was fired for insubordination.
Outcome: Complaint dismissed; on the evidence the respondent did not unreasonably deny parental leave.

Bushek et al v Registered Owners of Lot SL1, Plan LMS13, District Lot 384A, New Westminster Land District at 1180 Pinetree Way in Coquitlam and NRS Quay Pacific Management Ltd
1997/02/07

Profile of complainants: A family (father; mother; two teenage children.)
Profile of respondent: Property owner.
Prohibited ground: Family status.
Brief description of merits: The complainants alleged that the respondents did not want children in the building and put most families on the lower floors in the building; that they were restricted to two entrance keys; that they were followed and questioned; that they were denied use of the billiard room unfairly and that they had their kitchen hot water turned off.
Outcome: Complaint dismissed on the evidence.

C v Dr A, Dr B and Dr C 2002 BCHRT 23

Profile of complainant: Female (ethnic origin unknown.)
Profile of respondent: Medical practice.
Prohibited ground: Religion.
Brief description of merits: Employment-related complaint. The complainant alleged that her employment was terminated because Dr A was uncomfortable

with her pro-life views. The respondents alleged that she was fired because she was uncooperative, and to control costs.

Outcome: Complaint dismissed; the tribunal held that her pro-life views did not play a role in the termination of her employment.

C L v Mohinder Badyal doing business as Amrit Investments & Bob 1998/12/11

Profile of complainant: Lesbian female (ethnic origin unknown.)
 Profile of respondent: Business (restaurant.)
 Prohibited ground: Sexual orientation.
 Brief description of merits: The complainant complained about the treatment she and her partner received, *inter alia* being told “these fucking dykes don’t belong here”.
 Outcome: Complaint upheld; \$1200 awarded for injury to dignity.

Cajee v St Leonard's Youth and Family Services Society 1997/01/21

Profile of complainant: Female (ethnic origin unknown.)
 Profile of respondent: Youth centre.
 Prohibited ground: Sex.
 Brief description of merits: Employment-related complaint (sexual harassment.)
 Outcome: Complaint upheld. However, the tribunal found no link between the sexual harassment and the termination of employment, and consequently did not award damages for lost income.

Campbell v Fereidoun Shahrestani 2001 BCHRT 36

Profile of complainant: Female (ethnic origin unknown.)
 Profile of respondent: Male.
 Prohibited ground: Sex (pregnancy) and family status.
 Brief description of merits: Employment-related complaint. The complainant alleged that the respondent discontinued her employment based on her pregnancy. The respondent argued that she was fired because of her work performance.



Outcome: Complaint upheld. The tribunal held that the complainant was entitled to be allowed to return to the position she filled prior to her maternity leave.

Canadian Jewish Congress v North Shore Free Press Ltd operating as North Shore News and Collins 1998/12/11

Profile of complainant: Non-governmental organisation.
Profile of respondent: Newspaper; journalist.
Prohibited ground: Race, religion, ancestry.
Brief description of merits: The complainant alleged that an opinion column in the “North Shore News” written by Collins was likely to expose Jewish persons to hatred or contempt.
Outcome: Complaint dismissed; the tribunal held that the article itself did not express hatred or contempt, although the article would likely make it more acceptable for others to express hatred or contempt against Jewish persons.

Carpenter (now Jack) v Limelight Entertainment Ltd doing business as “Limit Night Club” 1999/09/07

Profile of complainant: First Nations female.
Profile of respondent: Business (night club.)
Prohibited ground: Race, colour, ancestry.
Brief description of merits: The complainant argued that she was refused entry into the club because of her ancestry, and that the owner made a racially offensive remark to her. The respondent alleged that she was refused entry because she asked the respondent’s employees for protection against her violent ex-boyfriend.
Outcome: Complaint upheld; \$3500 awarded.

Chipperfield v Her Majesty in Right of the Province of British Columbia, as represented by the Ministry of Social Services and The Deputy Chief Commissioner of the BC Human Rights Commission 1997/02/20

Profile of complainant: Female (ethnic origin unknown.)

Profile of respondent: Government.

Prohibited ground: Disability.

Brief description of merits: The complainant was injured and disabled in a motor accident. She was designated as “handicapped” under the *Guaranteed Available Income for Need Act (GAIN)*. In terms of this legislation, she claimed the repair costs of a vehicle she had bought after she became disabled. The respondent declined, on the basis that car repairs are not a “medical benefit” in terms of the Act.

Outcome: Complaint upheld; the tribunal held that “the Ministry has discriminated against Ms Chipperfield by failing to provide her with a level of general transportation subsidy for the ongoing costs of operating her personal vehicle that is equivalent to the level of general transportation subsidy that is provided to GAIN recipients whose disabilities permit the use of taxis and public transit”.

Collins v Suleman Meats et al 2001 BCHRT 41

Profile of complainant: White female.

Profile of respondent: Business.

Prohibited ground: Race, colour, sex.

Brief description of merits: Employment-related complaint. The complainant alleged that she was discriminated against and eventually fired based on her race and sex. (She referred to being called “the white woman”, “the blonde”, “white Punjab”, “stupid white girl” and “little white Punjab”.)

Outcome: Complaint as to use of racial pejoratives dismissed; the tribunal did hold however that her employment was terminated because



she filed a complaint with the Human Rights Commission and awarded \$5040 in lost income and \$1500 as compensation for loss of dignity.

Cooke v Vancouver Island Aids Society owners and/or operators of Aids Vancouver Island
1999/02/10

Profile of complainant: Male (ethnic origin unknown.)
 Prohibited ground: Perceived disability.
 Brief description of merits: Employment-related complaint. The complainant alleged that his employment was terminated because he was perceived as an intravenous drug user, while in reality he was a Hepatitis C sufferer.
 Outcome: Complaint dismissed; the tribunal held that the symptoms were sufficiently indeterminate that it was unlikely that the respondent would be aware of them. His Hepatitis C status could therefore not be linked to his dismissal

Critch and Mitten v Lone Star Energy Corp and Johansen 1999/04/14

Profile of complainants: Two females.
 Profile of respondent: Corporation; male.
 Prohibited ground: Sex.
 Brief description of merits: Employment-related complaint of sexual harassment. The harassment consisted of verbal remarks and physical touching.
 Outcome: Complaint upheld; \$1300 awarded to Critch and \$1500 to Mitten.

Dame v South Fraser Health Region 2002 BCHRT 22

Profile of complainant: Homosexual male (ethnic origin unknown.)
 Profile of respondent: Mental health clinic.
 Prohibited ground: Sexual orientation.
 Brief description of merits: The complainant suffered from fibromyalgia and bi-polar disorder. After a suicide attempt his treating psychiatrist referred him to

group therapy at the respondent clinic. He had to attend an entry interview with the group's facilitator. The facilitator then held a "barometer reading" with the group. One member of the group objected to a gay man joining the group. The facilitator informed the complainant. He became angry and refused further treatment.

Outcome: Complaint dismissed.

Davis v Western Star Trucks Inc et al 2001 BCHRT 29

Profile of complainant: Female (ethnic origin unknown.)

Profile of respondent: Corporation; male.

Prohibited ground: Sex.

Brief description of merits: Employment-related complaint of sexual harassment (verbal comments.)

Outcome: Complaint dismissed.

Day v Cruickshank and Cruickshank 1999/05/27

Profile of complainant: Female (ethnic origin unknown.)

Profile of respondent: Property owner.

Prohibited ground: Family status.

Brief description of merits: The complainant argued that she was denied the opportunity to rent a flat because she had a child. She was told that the building was a "heritage" site and not available to families with children.

Outcome: Complaint upheld; \$2000 awarded.

Day v Poon 2000 BCHRT 4

Profile of complainant: Male (ethnic origin unknown.)

Profile of respondent: Restaurant owner.

Prohibited ground: Retaliation.

Brief description of merits: The complainant saw the kitchen manager harassing a co-worker for being gay. The complainant intervened and later filed a



complaint with the Human Rights Commission. The respondent allegedly sent faxes to the complainant to the effect that if he wished to keep his job, he would drop the complaint.

Outcome: Complaint upheld; \$1000 awarded.

DeGuerre v Pony's Holdings Ltd doing business as "Pony's Cabaret" & Cox 1999/07/12

Profile of complainant: Homosexual male.

Profile of respondent: Business (restaurant.)

Prohibited ground: Sexual orientation.

Brief description of merits: Employment-related complaint. The complainant alleged that his employer made crude jokes relating to the complainant's sexual orientation. When the complainant told his employer that he was going to file a complaint, his employment was terminated.

Outcome: Complaint upheld; \$1200 awarded.

De Leon v Teachers Qualification Service 2000 BCHRT 35

Profile of complainant: Female educated in the Philippines.

Profile of respondent: Government.

Prohibited ground: Place of origin.

Brief description of merits: Employment-related complaint. The complainant argued that she had been underpaid for 20 years because of the application of a scheme under which educational credentials were assessed.

Outcome: Complaint dismissed.

Denison v Badacki Holding Ltd doing business as "Heritage Millwork" 1999/10/27

Profile of complainant: Female (ethnic origin unknown.)

Profile of respondent: Corporation.

Prohibited ground: Sex.

Brief description of merits: Employment-related complaint of sexual harassment (touching of the complainant with a broom handle; lewd and rude gestures; profane language.)

Outcome: Complaint upheld; \$6000 awarded.

Denison v Woolworth Canada Inc also known as "The Bargain Shop" doing business as Northern Reflections 1999/09/02

Profile of complainant: Female (ethnic origin unknown.)
Profile of respondent: Corporation.
Prohibited ground: Sex (pregnancy.)
Brief description of merits: Employment-related complaint. The complainant alleged that she was demoted to assistant manager because of her pregnancy. The respondent alleged that she was demoted because she was not performing at a level expected of a manager.
Outcome: Complaint dismissed.

DesRosiers v Manhas 2000 BCHRT 23

Profile of complainant: First Nations female.
Profile of respondent: Property owner.
Prohibited ground: Race, colour, ancestry, place of origin, lawful source of income.
Brief description of merits: The complainant argued that she was denied tenancy because she was not white. She alleged that the respondent said "I don't rent to Indians" and "all you people are drunks" and "all you do is drink beer and pass out on the lawn".
Outcome: Complaint upheld; \$2000 awarded.

Dhillon v Her Majesty in Right of the Province of British Columbia as represented by the Ministry of Transportation and Highways, Motor Vehicle Branch 1999/05/11

Profile of complainant: Male of Sikh religion.
Profile of respondent: Government.
Prohibited ground: Religion.
Brief description of merits: Section 218 of the *Motor Vehicle Act* made it an offence for a passenger on a motorcycle to not wear a safety helmet. The Act did not exempt Sikhs who wear turbans.



Outcome: Complaint upheld.

Drobot v Royal Diamond Casinos et al 2000 BCHRT 44

Profile of complainant: Female (ethnic origin unknown.)

Profile of respondent: Business.

Prohibited ground: Sex (pregnancy.)

Brief description of merits: Employment-related complaint; the complainant alleged that after she returned from maternity leave she was offered a lower position than the position she held prior to her leave.

Outcome: Complaint dismissed.

Dyke v Circa Industries Ltd 2000 BCHRT 14

Profile of complainant: Male (ethnic origin unknown.)

Profile of respondent: Business.

Prohibited ground: Sex.

Brief description of merits: Employment-related complaint. The complainant's homosexual supervisor harassed the complainant. He alleged that his employment was terminated because he filed a complaint.

Outcome: Complaint relating to harassment upheld and \$800 awarded.
Complaint relating to retaliatory dismissal rejected.

Earle v Vernon and District Women's Centre Society 1998/11/25

Profile of complainant: First Nations female.

Profile of respondent: Government.

Prohibited ground: Race, colour, ancestry.

Brief description of merits: Employment-related complaint. The complainant alleged that she was discriminated against in the workplace, and that her employment was terminated based on prohibited grounds.

Outcome: Complaint dismissed.

Eleason v Wanke Developments Ltd operating Lakewood Park Mall 1997/05/07

Profile of complainant: Male (ethnic origin unknown.)
Profile of respondent: Business.
Prohibited ground: Disability.
Brief description of merits: Employment-related discrimination. The complainant injured his left shoulder while at work. His employment was terminated 6 months later.
Outcome: Complaint upheld.

Ellis v Interstate Security Patrol Ltd 1997/07/24

Profile of complainant: Female (ethnic origin unknown.)
Profile of respondent: Business.
Prohibited ground: Sex (pregnancy) and family status.
Brief description of merits: Employment-related complaint. The complainant alleged that the respondent did not employ her because of her pregnancy.
Outcome: Complaint dismissed.

English v Sihota 2000 BCHRT 19

Profile of complainant: Male (ethnic origin unknown.)
Profile of respondent: Business (restaurant.)
Prohibited ground: Age.
Brief description of merits: Employment-related complaint. The complainant alleged that his employment was terminated because of his age. (The complainant alleged that the respondent made a comment that he was “going for a younger look”.)
Outcome: Complaint upheld; the tribunal held that the complainant had proved that it was more likely than not that age was a factor in the termination of his employment.

Ericson v Collagen Canada Ltd 1999/02/25

Profile of complainant: Female (ethnic origin unknown.)
Profile of respondent: Business.



Prohibited ground: Disability.

Brief description of merits: Employment-related complaint. The complainant injured her back while unloading supplies. She was absent from work for a month. She was fired a few days later.

Outcome: Complaint dismissed. On the evidence the tribunal held that the complainant was fired for a longstanding failure to meet her sales budget.

Farina v Old Caboose Restaurant Ltd 1999/03/12

Profile of complainant: Male (ethnic origin unknown.)

Profile of respondent: Business (restaurant.)

Prohibited ground: Disability.

Brief description of merits: Employment-related complaint; the complainant alleged that after he was hospitalised when he had an epileptic seizure, the respondent terminated his employment. The respondent alleged that the complainant was still on probation and had not performed to satisfaction.

Outcome: The tribunal found the timing of the hospitalisation and dismissal suspicious but dismissed the complaint.

Feldman v Westfair Foods Ltd doing business as "The Real Canadian Superstore" 1997/06/11

Profile of complainant: Female (ethnic origin unknown.)

Profile of respondent: Business (grocery store.)

Prohibited ground: Disability.

Brief description of merits: The complainant was blind and used a guide dog. The respondent's employee refused to allow the dog into the store.

Outcome: Complaint upheld; \$2500 awarded.

Ferguson v Muench Works Ltd and Northwest Diesel Guard Ltd and 330656 British Columbia Ltd doing business as "Cummins British Columbia" 1997/08/27

Profile of complainant: Female (ethnic origin unknown.)

Profile of respondent: Business.
Prohibited ground: Sex.
Brief description of merits: Employment-related complaint of sexual harassment.
Outcome: Complaint upheld.

Ferguson v Turner, Meakin & Co Limited 1999/02/11

Profile of complainant: Female (ethnic origin unknown.)
Profile of respondent: Business.
Prohibited ground: Sex (pregnancy.)
Brief description of merits: Employment-related complaint; the complainant alleged that her employment was terminated because she fell pregnant.
Outcome: Complaint dismissed; the tribunal held that the person who made the decision to terminate her employment did not know she was pregnant; and that she was dismissed because of her work performance.

Fernandes v Multisun Movies Ltd and/or Suresh Jogia 1998/09/02

Profile of complainant: Female (ethnic origin unknown.)
Profile of respondent: Business; male.
Prohibited ground: Sex.
Brief description of merits: Employment-related complaint of sexual harassment.
Outcome: Complaint upheld; \$3500 awarded.

Ferris v Office and Technical Employees Union, Local 15, and Deputy Chief Commissioner, B.C. Human Rights Commission 1999/10/15

Profile of complainant: Transsexual female.
Profile of respondent: Business.
Prohibited ground: Sex, disability.
Brief description of merits: Employment-related complaint. A complaint was lodged when the complainant used the women's washrooms, which led to further adverse treatment.



Outcome: Complaint upheld; \$5000 awarded.

Fianza v Ladco Investments Inc doing business as "Combo Restaurant" 1999/05/27

Profile of complainant: Male (ethnic origin unknown.)
Profile of respondent: Business (restaurant.)
Prohibited ground: Family status.
Brief description of merits: Employment-related complaint. The complainant alleged that his employment was terminated because the respondent was angry with his brother.
Outcome: Complaint upheld.

Fiebelkom v Poly-Con Industries Ltd and Cowderoy 2000 BCHRT 54

Profile of complainant: Female (ethnic origin unknown.)
Profile of respondent: Business; male.
Prohibited ground: Sex.
Brief description of merits: Employment-related complaint of sexual harassment (comments of a sexual nature; sexual jokes.)
Outcome: Complaint upheld.

Forgues v Stinka & Moxies Restaurant 2001 BCHRT 07

Profile of complainant: Female (ethnic origin unknown.)
Profile of respondent: Male.
Prohibited ground: Sex.
Brief description of merits: Employment-related complaint of sexual harassment (gestures; comments.)
Outcome: Complaint upheld.

Fraser v The Keg Restaurant 2000 BCHRT 12

Profile of complainant: Female (ethnic origin unknown.)
Profile of respondent: Business (restaurant.)
Prohibited ground: Sex (pregnancy.)

Brief description of merits: Employment-related complaint. The complainant argued that she was dismissed because of her pregnancy.

Outcome: Complaint upheld; the tribunal found that the complainant's pregnancy played a part in the termination of her employment.

Garand v KE Gastlin Enterprises Ltd 2002 BCHRT 8

Profile of complainant: Female (ethnic origin unknown.)

Profile of respondent: Corporation.

Prohibited ground: Sex.

Brief description of merits: Employment-related complaint; the complainant alleged that she was discriminated against relating to her terms of employment.

Outcome: Complaint upheld; the tribunal found that the respondent had treated the complainant poorly throughout her employment, and that this treatment was related at least in part to her sex.

Gareau v Sandpiper Pub et al 2001 BCHRT 11

Profile of complainant: Female (ethnic origin unknown.)

Profile of respondent: Business (restaurant.)

Prohibited ground: Sex (pregnancy.)

Brief description of merits: Employment-related complaint. The complainant alleged that when she fell pregnant she was requested to work as bartender instead of server and when she refused, she was asked to sign a disclaimer. When she refused to sign, her shift schedule was changed.

Outcome: Complaint upheld.

Geyer v Young 1997/06/12

Profile of complainant: Unmarried female with two children (ethnic origin unknown)

Profile of respondent: Property owner.

Prohibited ground: Marital status.



Brief description of merits: The complainant alleged that when she informed her prospective landlord that she was not married, she was refused tenancy.

Outcome: Complaint upheld.

Gill and Maher, Murray and Popoff v Ministry of Health 2001 BCHRT 34

Profile of complainants: Lesbian females.

Profile of respondent: Government.

Prohibited ground: Sex, sexual orientation, family status.

Brief description of merits: The complainants were not allowed to register the same sex partner of the birth mother on the birth registration form as she had no biological relationship to the child.

Outcome: Complaint upheld; the respondent had not shown that it would cause undue hardship for the birth registration process to be amended.

Gill v Satnam Education Society of BC 2002 BCHRT 13

Profile of complainant: Female (ethnic origin unknown.)

Profile of respondent: Education society.

Prohibited ground: Sex, marital status, family status.

Brief description of merits: Employment-related complaint. The complainant alleged that her refusal to perform *langar sewar* (voluntary work) and the fact that her husband was not a baptised Sikh led to her dismissal.

Outcome: Complaint dismissed; the tribunal held that she was dismissed because she complained about her working conditions and other aspects of her employment.

Glass v Green River Log Sales Ltd 2000 BCHRT 50

Profile of complainant: Male (ethnic origin unknown.)

Profile of respondent: Corporation.

Prohibited ground: Physical disability.

Brief description of merits: Employment-related complaint. The complainant hurt his back while working and to take leave of absence intermittently. He returned to work but the respondent thought he would be able to work again by December 1996. The complainant alleged that he had not heard from the respondent since then. The respondent alleged that it attempted to contact the respondent but couldn't.

Outcome: Complaint dismissed. The tribunal held that the respondent was not legally obliged to attempt to get hold of the complainant in any other way but by telephone (which it did try to do.)

Godin v Kledo Construction Ltd 2001 BCHRT 14

Profile of complainant: Female raised in Quebec; French being her primary language.

Profile of respondent: Business.

Prohibited ground: Place of origin, ancestry.

Brief description of merits: Employment-related complaint. The complainant alleged that the respondent discriminated against her in the workplace, and ultimately dismissed her.

Outcome: Complaint dismissed; the tribunal held that she was dismissed because of her work performance.

Gordy v Painter's Lodge 2000 BCHRT 16

Profile of complainant: Male (ethnic origin unknown.)

Profile of respondent: Business.

Prohibited ground: Physical or mental disability.

Brief description of merits: Employment-related complaint. The complainant developed bipolar affective disorder and was hospitalised. The complainant alleged that the respondent said it would not accept him back as fishing guide; the respondent alleged that it was willing to accept him back by 17 July 1995 but that the complainant wanted to return immediately and therefore walked away from the offer.

Outcome: Complaint upheld.

*Guthrie v Levitt* 1999/08/18

Profile of complainant: Female (ethnic origin unknown.)
Profile of respondent: Male (doctor.)
Prohibited ground: Sex.
Brief description of merits: Employment-related complaint of sexual harassment (allegations of “lingering looks”, inappropriate behaviour, physical touching.)
Outcome: Complaint upheld; \$4000 awarded.

Guzman v Dr and Mrs T 1997/01/14

Profile of complainant: Female Filipino who emigrated to Canada in 1991.
Profile of respondent: Korean family.
Prohibited ground: Sex.
Brief description of merits: Employment-related complaint of sexual harassment. The respondents employed the complainant as a live-in nanny. At the time Dr T lived in Korea and Mrs T would visit him from time to time. On such a visit their teenage son behaved inappropriately towards the complainant. She resigned. The respondents argued that they were not liable for their son’s conduct and that they took appropriate, sufficient and effective action to prevent further harassment.
Outcome: Complaint upheld; the tribunal held the parents liable for their child’s conduct and awarded \$6500.

Gyger v AA Ecologica Ltd 1998/08/13)

Profile of complainant: Female (ethnic origin unknown.)
Profile of respondent: Business.
Prohibited ground: Sex.
Brief description of merits: Employment-related complaint of sexual harassment. The respondent did not attend the hearing.
Outcome: Complaint upheld; \$3000 awarded.

Hadzic v Pizza Hut Canada, a division of Pepsi-Cola Canada Ltd doing business as Pizza Hut
1999/07/29

Profile of complainant:	Male Bosnian Muslim.
Profile of respondent:	Business (fast food outlet.)
Prohibited ground:	Race, ancestry, place of origin, religion.
Brief description of merits:	Employment-related complaint. The complainant alleged that a Serbian co-worker threatened him and used offensive words. He also alleged that his employment was terminated on prohibited grounds.
Outcome:	Complaint upheld.

Hallam (formerly Kilshaw) and Kilshaw v Insurance Corporation of British Columbia 1999/05/25

Profile of complainants:	Married couple.
Profile of respondent:	Government.
Prohibited ground:	Family status.
Brief description of merits:	The complainants were seriously injured in a motorcycle accident. Both complainants purchased Underinsured Motorist Protection (UMP) coverage. They sued the underinsured motorist. When Mrs Kilshaw claimed UMP benefits, she was denied cover. An arbitrator ruled that in terms of Regulation 110 of the <i>Insurance (Motor Vehicle) Act</i> , she could not access her own UMP cover because she was a passenger on a vehicle owned by her spouse with whom she was living.
Outcome:	Complaint dismissed; family status was not a protected ground in human rights legislation when the collision occurred.

Hannaford v Douglas College 2000 BCHRT 25

Profile of complainant:	Female (ethnic origin unknown.)
Profile of respondent:	Educational facility.
Prohibited ground:	Disability.



Brief description of merits: The complainant, who suffered from Graves' disease, had limited field of vision, had double vision and was light-sensitive. She took medicine on a daily basis. The disease and medicine caused her to have a decreased reading speed. She also had a cognitive learning disability. She alleged that the respondent did not accommodate her disability.

Outcome: Complaint dismissed. The respondent did accommodate her relating to her decreased reading speed. As to the learning disability, the symptoms were not apparent and the respondent was not informed of this disability.

Harris v Camosun College 2000 BCHRT 51

Profile of complainant: Female (ethnic origin unknown.)

Profile of respondent: Educational facility.

Prohibited ground: Disability.

Brief description of merits: The complainant suffered from sensitivity to various chemicals in the environment such as oil-based paints, varnishes, chip boards, gas fumes, desk materials, plastics and carpets. This made it difficult for her to attend lectures in some lecture rooms. She alleged that she was not accommodated with respect to three of her courses. The respondent alleged that the complainant did not provide adequate or timeous medical reports to support her requests for assistance.

Outcome: Complaint dismissed.

Harrison v School District #48 (Kamloops) 1999/01/07

Profile of complainant: Female (ethnic origin unknown.)

Profile of respondent: School.

Prohibited ground: Age and sex.

Brief description of merits: Employment-related complaint. The complainant alleged that she was refused employment on more than 100 occasions and that it was not possible to apply for so many positions without success.

Outcome: Complaint dismissed. The tribunal accepted that in more than 90% of the positions the complainant applied for, more senior personnel, in accordance with a collective agreement, filled the posts.

Hart v Coast Tractor 2001 BCHRT 5

Profile of complainant: Male (ethnic origin unknown.)

Profile of respondent: Business.

Prohibited ground: Disability.

Brief description of merits: Employment-related complaint. The respondent knew that the complainant had a disability (injury to his right wrist) when they appointed him. The complainant alleged that his employment was terminated because of the disability. The respondent said he was dismissed for reasons unrelated to the disability.

Outcome: Complaint dismissed.

Haynes v Coltart 1998/10/19

Profile of complainant: Female caregiver (ethnic origin unknown.)

Profile of respondent: Male quadriplegic.

Prohibited ground: Sex.

Brief description of merits: Employment-related complaint of sexual harassment (verbal remarks; physical touching.)

Outcome: Complaint upheld; \$5911,64 awarded in lost wages and \$4000 for loss of dignity.

Hayward v Stinka & Moxies Restaurant 2001 BCHRT 09

Profile of complainant: Female (ethnic origin unknown.)

Profile of respondent: Male; business (restaurant.)



Prohibited ground: Sex.
Brief description of merits: Employment-related complaint of sexual harassment. The respondents did not appear at the hearing.
Outcome: Complaint upheld; \$5000 awarded.

Hill v Dan Barclay Enterprises Ltd doing business as The Tool Palace 1999/10/27

Profile of complainant: Male (ethnic origin unknown.)
Profile of respondent: Business.
Prohibited ground: Sex, sexual orientation.
Brief description of merits: Employment-related complaint of sexual harassment. The complainant alleged that his employer sexually harassed him and caused him to resign.
Outcome: Complaint upheld; \$16500 awarded in lost wages and \$2500 for loss of dignity.

Hill v Luykx and Mortgage Network of Canada Ltd 1998/04/06

Profile of complainant: Female (ethnic origin unknown.)
Profile of respondent: Corporation.
Prohibited ground: Disability.
Brief description of merits: Employment-related complaint. The complainant alleged that she had to undergo surgery for ovarian cancer. While recuperating she was dismissed. The respondent did not appear at the hearing.
Outcome: Complaint upheld.

Holness (previously Dreidger) v South Alder Farms & Mann 1999/01/25

Profile of complainant: Female (ethnic origin unknown.)
Profile of respondent: Business; male.
Prohibited ground: Sex.
Brief description of merits: Employment-related complaint of sexual harassment (verbal comments and physical touching.)

Outcome: Complaint upheld; \$2000 awarded for loss of dignity.

Honey v Board of School Trustees, School District #43 (Coquitlam) and Deputy Chief Commissioner, BC Human Rights Commission 1999/03/30

Profile of complainant: Female (ethnic origin unknown.)

Profile of respondent: School governing body.

Prohibited ground: Retaliation.

Brief description of merits: The complainant rented space from the respondent for a fitness class. She experienced problems with a soccer class that rented the same space and filed a complaint with the Human Rights Commission. The complaint was dismissed. Some time afterwards she received a letter from the respondent's attorneys demanding reimbursement of expenses, failing which legal proceedings would be commenced. She filed a new complaint with the Human Rights Commission.

Outcome: Complaint upheld; \$2000 awarded.

Hooper v City of Victoria 2001 BCHRT 22

Profile of complainant: Male (ethnic origin unknown.)

Profile of respondent: City.

Prohibited ground: Physical disability.

Brief description of merits: Employment-related complaint; the complainant alleged that the respondent failed to accommodate him after December 1995. He fractured the radial head of his right elbow in 1991 and developed osteo-arthritis.

Outcome: Complaint dismissed; the tribunal held that the respondent had acted reasonably.

Hopkins v Jakes Turtles Bar and Grill Inc 1999/01/12

Profile of complainant: Female (ethnic origin unknown.)

Profile of respondent: Business (restaurant.)



Prohibited ground: Sex.
Brief description of merits: Employment-related complaint of sexual harassment (verbal and physical conduct.) The respondent did not attend the hearing.
Outcome: Complaint upheld; \$3500 awarded for loss of dignity.

Huhn v Joey's Only Seafood Restaurant 2002 BCHRT 18

Profile of complainant: Female (ethnic origin unknown.)
Profile of respondent: Business.
Prohibited ground: Sex.
Brief description of merits: Employment-related complaint of sexual harassment.
Outcome: Complaint upheld; \$900 awarded.

Hussey v Her Majesty in Right of the Province of British Columbia as represented by the Ministry of Transportation and Highways 1999/12/03

Profile of complainant: Male (ethnic origin unknown.)
Profile of respondent: Government.
Prohibited ground: Disability.
Brief description of merits: The complainant applied for a class 4 license but was informed that as he was profoundly deaf, he did not meet the required hearing standard.
Outcome: The tribunal held that the evidence of risk was sufficient to justify a hearing guideline for class 4 licenses, but that the complainant could have been accommodated without undue hardship.

Ikeda v FTI Magna Lighting Ltd 1997/08/12

Profile of complainant: Female (ethnic origin unknown.)
Profile of respondent: Corporation.
Prohibited ground: Sex.
Brief description of merits: Employment-related complaint; the complainant alleged that she was paid less than male employees doing similar or substantially similar work.

Outcome: Complaint upheld; \$2984 awarded in lost income.

J v London Life Insurance Company 1999/06/21

Profile of complainant: Male (ethnic origin unknown.)
Profile of respondent: Life insurance company.
Prohibited ground: Physical disability and marital status.
Brief description of merits: The complainant's wife was HIV positive and as a result his application for life insurance was turned down. He subsequently obtained life insurance from another company.
Outcome: Complaint upheld; \$3000 awarded.

Jack v Nichol 1999/06/04

Profile of complainant: First Nations female.
Profile of respondent: Male.
Prohibited ground: Ancestry, colour, race.
Brief description of merits: Employment-related complaint; the complainant alleged that the respondent told her she did not need an education as he could get pregnant, find a boyfriend, and live on the reserve for the rest of her life. He also referred to her as a "little native girl" and "little Indian girl".
Outcome: Complaint upheld; \$2000 awarded.

Jacob v Reed and Mingles Holdings Ltd 2002 BCHRT 37

Profile of complainant: Full-time bartender and waitress.
Profile of respondent: Business.
Prohibited ground: Sex.
Brief description of merits: Employment-related complaint of sexual harassment. The respondents did not appear at the hearing.
Outcome: Complaint upheld; \$37272.24 awarded in lost income and \$4000 for loss of dignity.



Johnman v Chilliwack Furniture World Ltd 1999/02/22

Profile of complainant: Male (ethnic origin unknown.)
Profile of respondent: Business.
Prohibited ground: Physical disability.
Brief description of merits: Employment-related complaint. The complainant suffered from a work-related back injury with a L5/S1 nerve irritation.
Outcome: Complaint upheld; the tribunal held that the respondent did not offer a *bona fide* occupational requirement for failing to offer an alternative position to the complainant.

Johnson v Haverland Installations Ltd 1998/02/02

Profile of complainant: Female (ethnic origin unknown.)
Profile of respondent: Business.
Prohibited ground: Sex.
Brief description of merits: Employment-related complaint. The complainant alleged that she was paid less than a male apprentice electrician and that she was dismissed and replaced with a less-qualified male.
Outcome: Complaint upheld.

Johnson v Super Valu 2002 BCHRT 7

Profile of complainant: First Nations female.
Profile of respondent: Grocery store.
Prohibited ground: Race, colour, ancestry.
Brief description of merits: The complainant alleged that she was asked to leave the store. The respondent alleged that the complainant's son behaved in a mischievous and inappropriate manner and that was the reason she was asked to leave.
Outcome: Complaint dismissed.

Jones v CHE Pharmacy Inc et al 2001 BCHRT 1

Profile of complainant: Male Jehovah's Witness.

Profile of respondent: Business.
Prohibited ground: Religion.
Brief description of merits: The complainant does not celebrate Christmas. His supervisor requested him to put up poinsettias as part of Christmas decorations. He refused and was dismissed. The respondent alleged that he was dismissed because he showed disrespect for his superiors.
Outcome: Complaint upheld; \$3500 awarded for loss of dignity and \$4710 in lost income.

Jubran v Board of Trustees 2002 BCHRT 10

Profile of complainant: Male (ethnic origin unknown.)
Profile of respondent: School governing body.
Prohibited ground: Sexual orientation.
Brief description of merits: The complainant does not identify himself as homosexual but during his five years at the respondent school, he was taunted with homophobic remarks and physically assaulted. The complainant alleged that the school board knew about other students' behaviour but failed to provide a safe learning environment.
Outcome: Complaint upheld; \$4000 awarded for loss of dignity.

Jusiak v Mr Cool Ice Cream Ltd 1997/11/13

Profile of complainant: Male of Polish descent.
Profile of respondent: Business.
Prohibited ground: Race, ancestry, place of origin.
Brief description of merits: Employment-related complaint relating to non-payment of a bonus.
Outcome: Complaint dismissed.

Kawaguchi v Ingledew's Kelowna Ltd doing business as Ingledew's 1998/06/29



Profile of complainant: Female (ethnic origin unknown.)
Profile of respondent: Business.
Prohibited ground: Sex (pregnancy.)
Brief description of merits: Employment-related complaint; the complainant alleged that her employment was terminated based on her pregnancy.
Outcome: Complaint dismissed.

Kayle v T & V Enterprises et al 2000 BCHRT 57

Profile of complainant: Female (ethnic origin unknown.)
Profile of respondent: Business.
Prohibited ground: Sex.
Brief description of merits: Employment-related complaint of sexual harassment.
Outcome: Complaint upheld.

Keeping v Royal City Jewellers & Loans Ltd 1997/03/27

Profile of complainant: Female (ethnic origin unknown.)
Profile of respondent: Business.
Prohibited ground: Disability.
Brief description of merits: Employment-related complaint. The complainant alleged that he could not continue working, as the respondent did not accommodate her chronic back pain. The respondent alleged that she was dismissed because she did not accept the authority of her supervisor.
Outcome: Complaint partly upheld; \$1000 awarded for loss of dignity but the tribunal did not award damages for lost income as it found that the complainant would have been dismissed for cause within a matter of weeks in any event.

Kennedy v British Columbia (Ministry of Energy and Mines) (No 4) 2000 BCHRT 60

Profile of complainant: Male of Italian/Jordanian ancestry.
Profile of respondent: Government.

Prohibited ground: Race, colour, ancestry.
Brief description of merits: Employment-related complaints (staffing, classification of his position, severe disciplinary measures and dismissal.)
Outcome: Complaint dismissed.

Kennedy v Design Sportswear Ltd 2002 BCHRT 15

Profile of complainant: Female (ethnic origin unknown.)
Profile of respondent: Business.
Prohibited ground: Family status, disability.
Brief description of merits: Employment-related complaint. The complainant's daughter, also an employee of the respondent, went on leave and committed suicide (she suffered from seasonal affective disorder.) The complainant became depressed that led to difficulties at work and her eventual dismissal.
Outcome: Complaint dismissed; the tribunal held that the respondent's owner dismissed her because he believed (unfoundedly) she or her son assaulted him after her daughter's funeral.

Ketabchi v Future Shop Ltd 2002 BCHRT 39

Profile of complainant: Female (ethnic origin unknown.)
Profile of respondent: Business.
Prohibited ground: Disability.
Brief description of merits: Employment-related complaint. The complainant suffered from fibromyalgia. She alleged that the respondent did not accommodate her disability.
Outcome: Complaint dismissed; the tribunal held that the respondent accommodated her to the point of undue hardship.

Kharoud v Valle-Reyes et al 2000 BCHRT 40

Profile of complainant: Female (ethnic origin unknown.)
Profile of respondent: Corporation.



Prohibited ground: Sex.
Brief description of merits: Employment-related complaint of sexual harassment (verbal comments; physical conduct.)
Outcome: Complaint upheld; \$1800 awarded.

Knight v Vancouver Ticket Centre Ltd doing business as Ticketmaster 1998/09/16

Profile of complainant: Female (ethnic origin unknown.)
Profile of respondent: Business.
Prohibited ground: Physical disability.
Brief description of merits: Employment-related complaint. The complainant alleged that she was dismissed because she was visually impaired, and that the respondent made no attempt to accommodate her disability.
Outcome: Complaint upheld; \$22873.80 awarded in lost income and \$4000 for loss of dignity.

Korcz v Mr Cool Ice Cream Ltd 1998/01/05

Profile of complainant: Female (ethnic origin unknown.)
Profile of respondent: Business.
Prohibited ground: Ancestry, place of origin, religion.
Brief description of merits: Employment-related complaint. The complainant alleged that when she started working for the respondent, it was agreed that she would not work on Sundays to observe her religion. She was later asked to work on Sundays. She also alleged that her employer made fun of the way she talked.
Outcome: Complaint upheld relating to Sunday work; \$1000 awarded.

Korthe v Hillstrom Oil Company Limited 1997/12/22

Profile of complainant: Female (ethnic origin unknown.)
Profile of respondent: Corporation.
Prohibited ground: Alleged conviction on a criminal charge.

Brief description of merits: Employment-related complaint. The complainant alleged that she was dismissed because of an alleged conviction. The respondent alleged that she was dismissed because she had difficulty learning the shift cut-off procedure performed by cashiers.

Outcome: Complaint upheld.

Lanteigne v Sam's Sports Bar Limited doing business as G.G.'s Sports Bar 1998/07/23

Profile of complainant: Female (ethnic origin unknown.)

Profile of respondent: Business.

Prohibited ground: Sex.

Brief description of merits: Employment-related complaint of sexual harassment. A regular customer grabbed the complainant's breast when he left the bar. She immediately reported the incident to the manager. At two subsequent staff meetings she raised the issue of sexual harassment and the need for a sexual harassment policy. Three days after the meeting she was dismissed.

Outcome: Complaint upheld; \$3000 awarded.

Larsen v Michel Country Inn 2000 BCHRT 6

Profile of complainant: Female (ethnic origin unknown.)

Profile of respondent: Hotel.

Prohibited ground: Sex.

Brief description of merits: Employment-related complaint of sexual harassment. The complainant alleged that the harassment caused her to resign.

Outcome: Complaint upheld.

Larson v Graham and Phaneuf 1999/04/12

Profile of complainant: Female (ethnic origin unknown.)

Profile of respondent: Property owner.

Prohibited ground: Physical or mental disability, age, source of income.



Brief description of merits: The complainant and her boyfriend shared a flat. When their relationship terminated, she looked for a new tenant to share the rent. Neither of the proposed tenants met with the respondents' approval and the complainant was forced to vacate the premises.

Outcome: Complaint upheld relating to source of income; the respondents denied tenancy because the prospective tenant was a student on social assistance.

Latsos v Levy Enterprises Ltd operating as Trees Organic Coffee 1999/11/29

Profile of complainant: Female (ethnic origin unknown.)

Profile of respondent: Business.

Prohibited ground: Sex (pregnancy.)

Brief description of merits: Employment-related complaint. The complainant alleged that she was dismissed because she fell pregnant; the respondent alleged that she was dismissed because of poor job performance and rudeness.

Outcome: Complaint dismissed; the tribunal held that her pregnancy was not a factor in the decision to dismiss her.

Lavigne v BMC Enterprises Ltd doing business as Subway, 100 Mile House 1999/11/03

Profile of complainant: Female (ethnic origin unknown.)

Profile of respondent: Business.

Prohibited ground: Sex (pregnancy.)

Brief description of merits: Employment-related complaint; the complainant alleged that she was not appointed because she was pregnant.

Outcome: Complaint dismissed; the tribunal held that the complainant did not apply for the position; alternatively that her pregnancy was not a factor in the decision.

LeBlanc v Dan's Hardware et al 2001 BCHRT 32

Profile of complainant: Female (ethnic origin unknown.)

Profile of respondent: Business.
Prohibited ground: Sex.
Brief description of merits: Employment-related complaint of sexual harassment (repeated sexual comments, sexual questions and sexual touching.)
Outcome: Complaint upheld; \$3500 awarded as compensation and \$6286 in lost income.

Leeder v O'Cana Enterprises doing business as "Alisa Japanese Restaurant" 1999/01/05

Profile of complainant: Female (ethnic origin unknown.)
Profile of respondent: Business (restaurant.)
Prohibited ground: Sex (pregnancy.)
Brief description of merits: Employment-related complaint; the complainant alleged that she was dismissed because she fell pregnant.
Outcome: Complaint upheld.

Lengert v Samuel and the Port Alberni Native Friendship Centre 1999/08/26

Profile of complainant: Female (ethnic origin unknown.)
Profile of respondent: Male; non-governmental organisation.
Prohibited ground: Sex.
Brief description of merits: Employment-related sexual harassment; the complainant alleged that a co-worker sexually harassed her (physical touching.)
Outcome: Complaint upheld; \$5000 awarded as compensation and \$8336 in lost wages.

Lord v Catholic Schools of Victoria Diocese File 940566

Profile of complainant: Female (ethnic origin unknown.)
Profile of respondent: School.
Prohibited ground: Family status, mental or physical disability.
Brief description of merits: Employment-related complaint. The complainant's son was arrested for murder whereafter the complainant took leave for post-traumatic stress disorder, anxiety and depression. At the



trial she gave false evidence; she was not tried for perjury however. As a result, her employment was terminated.

Outcome: Complaint dismissed.

Luschnat v Kotyk 2002 BCHRT 4

Profile of complainant: Female (ethnic origin unknown.)

Profile of respondent: Male.

Prohibited ground: Sex and physical disability.

Brief description of merits: Employment-related complaint. The complainant alleged that after she returned to work from a pregnancy-related illness, her working hours were reduced and her conditions of employment were changed which left her with no alternative but to resign.

Outcome: Complaint upheld.

Machata v Stewart's Drugs Ltd doing business as "Pharmsave" 1998/08/14

Profile of complainant: Female (ethnic origin unknown.)

Profile of respondent: Business.

Prohibited ground: Sex (pregnancy.)

Brief description of merits: Employment-related complaint; the complainant alleged that she was dismissed after she became pregnant.

Outcome: The tribunal held that the respondent could have treated the complainant more fairly but nevertheless dismissed the complaint.

Mager v Louisiana-Pacific Canada Ltd 1998/06/29

Profile of complainant: Female (ethnic origin unknown.)

Profile of respondent: Corporation.

Prohibited ground: Physical and/or mental disability (depression.)

Brief description of merits: Employment-related complaint.

Outcome: Complaint upheld. The tribunal held that the respondent "proposed a technological change lay-off to the complainant in circumstances where he ought to have known that she was not

medically fit and without taking any steps to ensure her comprehension” and “by entering into this agreement without ensuring the complainant’s comprehension of the consequences of such a lay-off as well as the other options which were available to her to address her need for time away from work, the respondent discriminated against the complainant because of her mental disability”.

Mahmoodi v The University of British Columbia, Faculty of Arts, Department of Psychology and Dr Donald Dutton 1999/10/26

Profile of complainant: Female (ethnic origin unknown.)
Profile of respondent: University.
Prohibited ground: Sex.
Brief description of merits: The complainant alleged that her professor sexually harassed her and that the university did not adequately respond to her concerns about the professor’s behaviour.
Outcome: Complaint upheld; \$4000 awarded as compensation, \$5200 as counseling expenses, \$3200 for lost income and the cost of the complainant’s tuition and books.

Maller v “The Keg Restaurant” 2000 BCHRT 8

Profile of complainant: Female (ethnic origin unknown.)
Profile of respondent: Business (restaurant.)
Prohibited ground: Sex (pregnancy.)
Brief description of merits: Employment-related discrimination; the complainant alleged that she was dismissed because she became pregnant.
Outcome: Complaint upheld; the tribunal found that her pregnancy was a factor in the decision to terminate her employment.

Mamela v Vancouver Lesbian Connection 1999/09/08



Profile of complainant: Transgendered person who has identified as a lesbian female who is transsexual.

Profile of respondent: Non-governmental organisation.

Prohibited ground: Sex.

Brief description of merits: The complainant alleged that the respondent initially denied her membership because she had been raised as a boy. She was later banned from the respondent's centre and her membership was suspended for a year.

Outcome: Complaint dismissed relating to employment discrimination; complaint upheld as to the provision of services and \$3000 awarded as compensation.

Marc v Fletcher Challenge Canada Limited 2001 BCHRT 3

Profile of complainant: Female (ethnic origin unknown.)

Profile of respondent: Corporation.

Prohibited ground: Sex, physical disability, perceived mental disability.

Brief description of merits: Employment-related complaint. The complainant alleged that she was discriminated against when her foreman refused to let her "sleep it off" when she reported to work drunk; when he refused to allow her to switch jobs on a shift with another worker; and when an argument ensued between them regarding her failure to take over from another worker who went home ill.

Outcome: Complaint dismissed.

Martin v Carter Chevrolet Oldsmobile 2001 BCHRT 37

Profile of complainant: Female (ethnic origin unknown.)

Profile of respondent: Business.

Prohibited ground: Physical disability.

Brief description of merits: Employment-related complaint; the complainant alleged that she was dismissed because of a hip condition. The respondent

alleged that she was dismissed because she did not meet the required performance standards.

Outcome: Complaint upheld; \$1000 awarded as compensation and \$2219.73 in lost income.

Martin v The Grove Mobile Home Park 2000 BCHRT 45

Profile of complainant: Male (ethnic origin unknown.)

Profile of respondent: Business (mobile home park.)

Prohibited ground: Age.

Brief description of merits: The complainant alleged that the respondent discriminated against him when it attempted to have him ejected from his mother's home in the park. He was 28 at the time and the park ostensibly designated for 55+ seniors.

Outcome: Complaint upheld; the tribunal held that the complainant's age was a factor in the respondent's demand that the complainant vacate the park. \$2500 awarded in compensation.

Mayer v Selkirk Springs (Canada) Corporation 1997/10/07

Profile of complainant: Male (ethnic origin unknown.)

Profile of respondent: Corporation.

Prohibited ground: Age.

Brief description of merits: Employment-related complaint; the complainant alleged that he was dismissed because of his age. He was 52 at the time and assigned to operate a forklift.

Outcome: Complaint upheld; the tribunal found that the complainant's age was a factor in the decision to dismiss him.

Mazuelos v Clark 2000 BCHRT 1

Profile of complainant: Female (ethnic origin unknown.)

Profile of respondent: Male.

Prohibited ground: Sex (pregnancy.)



Brief description of merits: Employment-related complaint. The complainant alleged that the respondent breached his promise that she would be able to remain as a live-in nanny while she was pregnant.

Outcome: Complaint upheld; the tribunal held that the respondent did not make a serious effort to objectively establish whether the complainant could meet the standard of caring for two active young boys.

McCarthy v Venetis Pizza Ltd 1999/08/10

Profile of complainant: Female (ethnic origin unknown.)

Profile of respondent: Business (fast food outlet.)

Prohibited ground: Sex (pregnancy.)

Brief description of merits: Employment-related complaint. The complainant alleged that the respondent changed her employment status from “regular” to “on-call” after she suffered pregnancy-related complications, and that this forced her to resign.

Outcome: Complaint dismissed; the tribunal found that no change of conditions of employment took place before and after her pregnancy-related complications.

McDermid v Key Lease Canada 2000 BCHRT 34

Profile of complainant: Female (ethnic origin unknown.)

Profile of respondent: Business.

Prohibited ground: Sex.

Brief description of merits: Employment-related complaint. The complainant alleged that the respondent telephonically advised her that women would not be considered for a salesperson position.

Outcome: Complaint upheld.

McLaughlan v Fletcher Challenge Canada Limited 1998/12/01

Profile of complainant: Male (ethnic origin unknown.)

Profile of respondent: Corporation.

Prohibited ground: Criminal conviction.

Brief description of merits: Employment-related complaint. The complainant alleged that the respondent dismissed him because of a criminal conviction unrelated to his employment. He was convicted of touching a person under 14 for a sexual purpose and sentenced to a year imprisonment. While in prison he was dismissed.

Outcome: Complaint dismissed; the tribunal held that an employee's inability to report to work because he is in prison renders the complainant's conviction *related* to his employment.

McLean v Hutchinson doing business as The Avalon Hotel 1998/02/26

Profile of complainant: Female (ethnic origin unknown.)

Profile of respondent: Male; business.

Prohibited ground: Sex and pregnancy.

Brief description of merits: Employment-related complaints. The complainant alleged that the respondent sexually harassed her and that her work responsibilities and benefits were reduced because of her pregnancy.

Outcome: The tribunal held that the complainant did not establish her complaints on a balance of probabilities.

McLellan v Lawson 1998/04/23

Profile of complainant: Female (ethnic origin unknown.)

Profile of respondent: Male.

Prohibited ground: Sex.

Brief description of merits: The complainant worked for Comcare Ltd, a corporation that provided home care for disabled and elderly people. She was instructed to look after the respondent, a blind man with a severe drinking problem. She alleged that he sexually harassed her on numerous occasions.



Outcome: Complaint upheld; \$3500 awarded.

McLoughlin v Her Majesty the Queen in Right of the Province of British Columbia as represented by the Ministry of Environment, Lands and Parks 1999/08/24

Profile of complainant: Male.

Profile of respondent: Government.

Prohibited ground: Disability.

Brief description of merits: The complainant suffers from a disability and hunts from an all-terrain vehicle. In terms of the *Wildlife Act* he is prohibited from hunting in this way. He therefore applied for an exemption in terms of the Act and paid the \$10 fee. The Ministry allowed him to hunt from his vehicle but denied him access to areas closed off to all-terrain vehicles in order to conserve sensitive terrain or wildlife.

Outcome: Complaint upheld. The tribunal held that the respondent should have advised the complainant to re-apply in a more time- and place-specific manner and that it should have considered a more limited exemption. It also held that the imposition of the \$10 fee was discriminatory.

Merchant v Chartwell Construction Ltd 2000 BCHRT 33

Profile of complainant: Indo-Canadian male.

Profile of respondent: Property owner.

Prohibited ground: Race, colour, ancestry, place of origin.

Brief description of merits: The complainant responded to a referral for a vacant flat and inspected the flat in the landlord's presence. He phoned the following day to enquire about the flat's availability and was told that it had been rented. The day after the complainant and a friend were looking for a flat in the vicinity of the other complex when they saw that a flat was still being advertised. The complainant's white friend went inside and was told the flat was

available. The respondent alleged that the flat had become available again after the complainant's telephonic enquiry.

Outcome: Complaint dismissed.

Micallef v Glacier Park Lodge 1998/04/21

Profile of complainant: Male.

Profile of respondent: Business (restaurant.)

Prohibited ground: Family status.

Brief description of merits: The complainant, his wife and three children entered the respondent's dining room when they were told that parents traveling with children were better suited in the cafeteria as dining room patrons did not like being disturbed by children. They inspected the cafeteria, did not like it, and returned to the dining room where they were served. The complainant alleged that the service they received were unsatisfactory.

Outcome: Complaint dismissed relating to service in the dining room; complaint upheld relating to being directed to the cafeteria. \$1200 awarded in compensation.

Middlemiss v Norske Canada Ltd 2002 BCHRT 5

Profile of complainant: Male (ethnic origin unknown.)

Profile of respondent: Corporation.

Prohibited ground: (Perceived) physical or mental disability.

Brief description of merits: The complainant alleged that he was instructed to leave the respondent's property and not to return because he violated its drug and alcohol policy. He argued that he was perceived to be an alcoholic.

Outcome: Complaint dismissed. The tribunal held that the respondent did not perceive the complainant to have a disability and that the policy itself also did not contain an indication that the respondent



regarded those who contravened its policy, to be addicted to alcohol or drugs and therefore disabled.

Miele v Famous Players Inc 2000 BCHRT 5

Profile of complainant: Male (ethnic origin unknown.)
Profile of respondent: Business (movie theatre.)
Prohibited ground: Physical disability.
Brief description of merits: The complainant complained about the respondent's policy that people in wheelchairs could only gain access to the premises by a locked and unstaffed entrance and that that entrance was used exclusively for people in wheelchairs.
Outcome: Complaint upheld.

Moni v Ferguson and Bentley Leathers Inc 2002 BCHRT 41

Profile of complainant: Female (ethnic origin unknown.)
Profile of respondent: Business.
Prohibited ground: Family status.
Brief description of merits: Employment-related complaint. The complainant alleged that she was dismissed because the respondent knew her brother-in-law had been convicted of theft. The respondent alleged that she was dismissed because she dressed inappropriately despite several verbal warnings.
Outcome: Complaint dismissed.

Moon and Birston v Sears Canada Inc 1998/04/30

Profile of complainants: Females (ethnic origin unknown.)
Profile of respondent: Corporation.
Prohibited ground: Age.
Brief description of merits: Employment-related complaint. The complainants alleged that they were dismissed because of their age (60 and 55 respectively.)

Outcome: Complaint dismissed. The tribunal held that the complainants had not made out a *prima facie* case; alternatively the respondent had shown that it had embarked on a national reorganisation for reasons of business necessity.

Nault v Khowutzun Pipeline Constructors Corp 1997/08/15

Profile of complainant: First Nations male.
Profile of respondent: Joint venture.
Prohibited ground: Race, ancestry, place of origin.
Brief description of merits: Employment-related complaint. The joint venture agreement set out that a progressive percentage of the workforce would be qualified members of the Cowichan Band. The complainant was hired in 1993 but retrenched in 1994. He alleged that this happened because he did not have a native status card; the respondent alleged that he was dismissed because of poor work performance.
Outcome: Complaint dismissed.

Neale v Princeton Place Apts Ltd 2001 BCHRT 6

Profile of complainant: Female (ethnic origin unknown.)
Profile of respondent: Property owner.
Prohibited ground: Family status, source of income.
Brief description of merits: The complainant alleged that the respondent denied her tenancy when she affirmed that she was on social assistance in response to a question by the respondent.
Outcome: Complaint upheld; \$1500 awarded.

Neufeld (formerly Sabanski) v Her Majesty in Right of the Province of British Columbia as represented by the Ministry of Social Services 1999/04/22

Profile of complainant: Female (ethnic origin unknown.)
Profile of respondent: Government.



Prohibited ground: Sex, family status.

Brief description of merits: The complainant argued that the maintenance exemption in section 14(1) of Schedule B of the former *Guaranteed Available Income for Need Regulations BC Reg 316/92* was discriminatory: (a) The failure to increase the exemption since its introduction in 1976, compared to other exemptions and allowances. (b) The maintenance exemption does not vary according to family size.

Outcome: Complaint dismissed.

Nixon v Vancouver Rape Relief Society 2002 BCHRT 1

Profile of complainant: Post-operative male to female transsexual.

Profile of respondent: Non-governmental organisation.

Prohibited ground: Sex.

Brief description of merits: The complainant argued that the respondent's policy of not allowing transgendered women to become volunteer rape counselors was discriminatory.

Outcome: Complaint upheld; \$7500 awarded.

O'Connor v Town Taxi 2000 BCHRT 9

Profile of complainant: Male (ethnic origin unknown.)

Profile of respondent: Business.

Prohibited ground: Disability.

Brief description of merits: Employment-related complaint; the complainant alleged that he was dismissed because of a slight speech impediment.

Outcome: Complaint upheld; the tribunal held that it was more probable than not that the disability was a factor in the decision to dismiss the complainant.

O'Lane v Rossnagel doing business as "Tradewind Construction" 1999/08/10

Profile of complainant: Female (ethnic origin unknown.)

Profile of respondent: Business.

Prohibited ground:	Sex.
Brief description of merits:	Employment-related complaint. The complainant argued that she was discriminated against in that she was told not to swear, while male workers were permitted to do so; she was not allowed to do carpentry work while less-qualified male workers were allowed to do carpentry; and she was dismissed because she complained of differential treatment.
Outcome:	Complaint dismissed; the tribunal held that on the evidence the respondent would have dismissed a male employee in the same situation as well. The tribunal hinted at an unfair dismissal, but not on prohibited grounds.

Okanagan Rainbow Coalition v City of Kelowna 2000 BCHRT 21

Profile of complainant:	Non-governmental organisation.
Profile of respondent:	City.
Prohibited ground:	Sexual orientation.
Brief description of merits:	The current mayor's predecessor proclaimed 30 June 1996 as "lesbian and gay pride day". The complainant asked that the new mayor similarly proclaim 28 June 1997 but he proclaimed it as "lesbian and gay day". The respondent alleged that had he proclaimed it as "lesbian and gay pride day", it would have sent a message that he endorsed homosexuality and that his decision not to send a false message was <i>bona fide</i> and reasonable.
Outcome:	Complaint upheld; the tribunal ordered the mayor to "treat requests for proclamations from the coalition the same way he treats requests from proclamations from all other groups".

Oxley v British Columbia Institute of Technology doing business as BCIT 2002 BCHRT 33

Profile of complainant:	First Nations male.
Profile of respondent:	Business.
Prohibited ground:	Race, colour, ancestry.



Brief description of merits: Employment-related complaint. The complainant alleged that the respondent discriminated against him in not appointing him as an iron worker instructor.

Outcome: Complaint dismissed. The tribunal found that the successful candidates were better qualified and that the complainant's race did not influence the respondent's decision.

Paisley v 392011 BC Ltd operating as "Newhaven Construction" and Cyril Morrison 1999/05/13

Profile of complainant: Female (ethnic origin unknown.)

Profile of respondent: Business.

Prohibited ground: Sex.

Brief description of merits: Employment-related complaint; the complainant alleged that the respondent refused to employ her because of her sex; the respondent alleged that she did not formally apply for a position; alternatively that she was not interested in the positions for which she qualified, as they did not pay enough.

Outcome: Complaint upheld.

Pannu v Skeena Cellulose 2000 BCHRT 56

Profile of complainant: Male Sikh.

Profile of respondent: Business.

Prohibited ground: Religion.

Brief description of merits: Employment-related complaint. The Workers' Compensation Board (WCB) found out that the complainant was responsible for performing an emergency shut down after a gas leak but that he was contravening the WCB's safety regulations regarding the wearing of a beard and the use of a self-contained breathing apparatus. The WCB ordered the respondent to comply with its regulations and the respondent removed the complainant from his position.

Outcome: Complaint upheld; the tribunal held that it was likely than not that to have accommodated the complainant would have caused undue hardship.

Parnell v 4 Seasons Electrical et al 2001 BCHRT 35

Profile of complainant: Female (ethnic origin unknown.)
Profile of respondent: Business.
Prohibited ground: Sex (pregnancy.)
Brief description of merits: Employment-related complaint. The complainant alleged that after she told her employer of her pregnancy, their work relationship worsened. Prior to this, she was promised to be promoted.
Outcome: Complaint dismissed.

Pastoral v Phoenix Catering Ltd doing business as Kowloon Restaurant and Bruce Alistair Cameron 1999/12/10

Profile of complainant: Female (ethnic origin unknown.)
Profile of respondent: Business (restaurant.)
Prohibited ground: Sex.
Brief description of merits: Employment-related complaint of sexual harassment; the co-owner and manager allegedly grabbed the complainant's buttocks. Comments of a sexual nature were also made.
Outcome: Complaint upheld; \$2000 awarded.

Pastoukh v John Russel, JR Hair Design Ltd 1999/07/14

Profile of complainant: Single mother originally from the Ukraine.
Profile of respondent: Business.
Prohibited ground: Sex.
Brief description of merits: Employment-related complaint of sexual harassment (verbal remarks; physical conduct.)



Outcome: Complaint upheld; \$750 awarded in lost income and \$3750 in compensation.

Peebles v Tri Spike Cedar Ltd doing business as Data Secured Limited and Wayne Sequin
1998/10/29

Profile of complainant: Female (ethnic origin unknown.)
Profile of respondent: Business.
Prohibited ground: Sex.
Brief description of merits: Employment-related complaint of sexual harassment.
Outcome: Complaint upheld; \$13600 awarded in lost income and \$4500 in compensation.

Poirier v Her Majesty the Queen in right of the Province of British Columbia as represented by the Ministry of Municipal Affairs, Recreation and Housing 1997/07/30

Profile of complainant: Female (ethnic origin unknown.)
Profile of respondent: Government.
Prohibited ground: Sex.
Brief description of merits: Employment-related complaint; the complainant alleged that the respondent did not allow her to continue to breast-feed her child at work or at seminars presented by the respondent.
Outcome: Complaint upheld but no remedy was provided as the respondent had already taken steps to ensure that it accommodate the needs of lactating mothers.

Poonja-Jiwany v Bernard Haldane Associates 2002 BCHRT 24

Profile of complainant: Female of East Indian origin; Ismailia Muslim.
Profile of respondent: Business.
Prohibited ground: Race, colour, ancestry, place of origin, religion.
Brief description of merits: Employment-related complaint. The complainant alleged that she was discriminated against in the workplace and dismissed on prohibited grounds. She alleged that she was paid less than a

Caucasian woman who previously performed the same job but had fewer duties and worked fewer hours, and that the general manager discriminated against her during two arguments.

Outcome: Complaint dismissed regarding pay differential; complaint upheld relating to two arguments and \$800 awarded.

Potter and Benson v College of Physicians and Surgeons of British Columbia 1999/06/03

Profile of complainants: A lesbian couple.
Profile of respondent: Overseeing body of medical profession.
Prohibited ground: Sexual orientation, political belief.
Brief description of merits: Dr Korn refused artificial insemination to the complainants. The complainants complained to the respondent, who found that he had the right to refuse to accept them as patients. The former British Columbia Council of Human Rights found that Dr Korn had discriminated against the complainants based on sexual orientation. This complaint related to the respondent's decision to dispose of the complaint against Dr Korn.
Outcome: Complaint dismissed.

Poulin v Quintette Operating Corporation 2000 BCHRT 48

Profile of complainant: Male (ethnic origin unknown.)
Profile of respondent: Business.
Prohibited ground: Disability.
Brief description of merits: Work-related complaint. The complainant injured his left arm, elbow, shoulder and neck at work. He argued that the respondent did not accommodate him to the extent required by the *Code*.
Outcome: Complaint upheld.

Pressney v Parkside Bridal Boutique Ltd 1997/11/17

Profile of complainant: Female (ethnic origin unknown.)
Profile of respondent: Business.



Prohibited ground: Disability.

Brief description of merits: The complainant suffered a spinal cord injury and wears leg braces. She visited a bridal shop with friends, where everybody was requested to take off their shoes. She has extreme difficulty in removing her shoes and the respondent asked her to remain on the mat at the entrance.

Outcome: Complaint dismissed; the tribunal held that the respondent did not know that the complainant was disabled until after they had left the shop.

Prpich v Pacific Shores Nature Resort Ltd 2001 BCHRT 26

Profile of complainant: Female (ethnic origin unknown.)

Profile of respondent: Business.

Prohibited ground: Sex.

Brief description of merits: Employment-related complaint. The complainant argued that she was paid less than males who performed the same or substantially the same work.

Outcome: Complaint dismissed.

Quigley v Wolfie's Restaurant Limited doing business as "Cielo Restaurant" (unreported; file 941205)

Profile of complainant: Female (ethnic origin unknown.)

Profile of respondent: Business (restaurant.)

Prohibited ground: Age.

Brief description of merits: Employment-related complaint. The complainant alleged that the respondent did not want to employ her as he wanted a younger image for the restaurant. She was 49 years old at that time.

Outcome: Complaint dismissed on the available evidence.

Radloff v Stox Broadcast Corporation 1999/06/21

Profile of complainant: Female (ethnic origin unknown.)

Profile of respondent: Business.
Prohibited ground: Sex.
Brief description of merits: Employment-related complaint of sexual harassment (verbal comments, marriage proposal, continued efforts to contact her while absent due to illness).
Outcome: Complaint upheld; \$1500 awarded in compensation and \$3000 in lost income.

Rafuse v British Columbia (Ministry of Tourism) 2000 BCHRT 42

Profile of complainant: Male (ethnic origin unknown.)
Profile of respondent: Government.
Prohibited ground: Disability (respiratory difficulties caused by exposure to asbestos.)
Brief description of merits: Employment-related complaint; the complainant argued that the respondent discriminated against him relating to his conditions of employment.
Outcome: Complaint upheld.

Rainbow Committee of Terrace v City of Terrace 2002 BCHRT 26

Profile of complainant: Non-governmental organisation.
Profile of respondent: City.
Prohibited ground: Sexual orientation.
Brief description of merits: The complainant argued that the respondent discriminated against its membership by not proclaiming “Gay Pride” day.
Outcome: Complaint upheld.

Reid et al v Vancouver (City) et al (No 5) 2000 BCHRT 30

Profile of complainants: Female communications operators within the Vancouver Police Department.
Profile of respondent: City.
Prohibited ground: Sex.



Brief description of merits: Employment-related discrimination; the complainants alleged that the communication operators, almost exclusively female, perform the same or similar duties as the fire dispatchers (all male) but are paid less.

Outcome: Complaint dismissed; the tribunal held that the fire dispatchers and complainants did not have the same employer.

Rogal v Dalglish 2000 BCHRT 22

Profile of complainant: Male (ethnic origin unknown.)

Profile of respondent: Business (amusement park.)

Prohibited ground: Physical disability.

Brief description of merits: Employment-related complaint. The complainant alleged that the respondent refused to employ him because he was “too big and too heavy” for the carnival’s “fast-paced lifestyle” and there were no uniforms large enough to fit him.

Outcome: Complaint upheld; \$3500 awarded in compensation and \$7749.31 in lost wages.

Romaine v E & B Cheung Restaurant 2000 BCHRT 31

Profile of complainant: Male (ethnic origin unknown.)

Profile of respondent: Business (restaurant.)

Prohibited ground: Sex.

Brief description of merits: Employment-related complaint; the complainant alleged that the respondent did not employ him as a waiter as they wanted a woman.

Outcome: Complaint upheld; \$2500 awarded in compensation and \$1019 in lost income.

Rozon v Barry Marine 2000 BCHRT 15

Profile of complainant: Male (ethnic origin unknown.)

Profile of respondent: Business.

Prohibited ground: Disability (back injury.)

Brief description of merits: Employment-related complaint; the complainant alleged that he was discriminated against in his conditions of employment and that he was dismissed because of his disability.

Outcome: Complaint partly upheld; \$800 awarded in compensation but no award made for lost income as the tribunal held that the respondent would not have been able to accommodate the complainant as all positions at the respondent entailed hard physical labour.

Ryane v Krieger and Microzip Data 2000 BCHRT 41

Profile of complainant: Female (ethnic origin unknown.)

Profile of respondent: Business.

Prohibited ground: Sex.

Brief description of merits: Employment-related complaint of sexual harassment (sexual jokes, comments about the complainant's appearance and requests for a sexual relationship.) The complainant alleged that she was eventually dismissed after raising a complaint.

Outcome: Complaint upheld; \$4000 awarded for loss of dignity and \$9000 awarded in lost income.

Schellenberg v Abbotsford Vitamin Centre 1999/10/26

Profile of complainant: Female (ethnic origin unknown.)

Profile of respondent: Business.

Prohibited ground: Marital status.

Brief description of merits: Employment-related complaint; the complainant alleged that the respondent's behaviour towards her changed for the worse after her marriage.

Outcome: Complaint dismissed.

Segin v Chung 2002 BCHRT 42



Profile of complainant: Female (ethnic origin unknown.)
Profile of respondent: Property owner.
Prohibited ground: Sex (pregnancy), family status.
Brief description of merits: The complainant alleged that she was refused tenancy after the respondent found out that she was pregnant.
Outcome: Complaint upheld; \$850 awarded in compensation.

Signoret v British Columbia Rehabilitation Society Operating GF Strong Centre 1999/03/18

Profile of complainant: Black male born in Trinidad who immigrated to Canada in 1958.
Profile of respondent: Business.
Prohibited ground: Race, colour, ancestry, place of origin.
Brief description of merits: Employment-related complaint. The complainant alleged that the respondent's termination of his employment and the union's refusal to proceed to arbitration on the dismissal was based on his race.
Outcome: Complaint dismissed.

Sharp v BC School Sports 2000 BCHRT 49

Profile of complainant: Male (ethnic origin unknown.)
Profile of respondent: Government.
Prohibited ground: Religion.
Brief description of merits: The complainant, a devout Christian, changed schools and started to attend a Christian school as his values were different from students and teachers at the previous school. Because of the respondent's transfer policy, he was not allowed to train with his selected track and field club.
Outcome: Complaint dismissed.

Sheridan v Sanctuary Investments Ltd doing business as "BJ's Lounge" 1999/01/08

Profile of complainant: Transsexual who had sexual reassignment surgery.
Profile of respondent: A nightclub that catered for the gay and lesbian community.

Prohibited ground: Sex, gender, physical or mental disability.

Brief description of merits: The complainant alleged that she was not allowed to use the women's washrooms in the club and on a second occasion was refused admission to the club because her photo in her identification book differed from her current appearance.

Outcome: Complaint upheld relating to the use of the washrooms and \$200 awarded in compensation. The tribunal held that she had ample time to obtain a new identification book and could not reasonably have expected to have been accommodated by the nightclub.

Shouldice (now Dickinson) v Stevens doing business as "Just Repairs" and Just Repairs Ltd
1999/05/20

Profile of complainant: Female (ethnic origin unknown.)

Profile of respondent: Business.

Prohibited ground: Sex.

Brief description of merits: Employment-related complaint of sexual harassment that led to the complainant's dismissal.

Outcome: Complaint upheld; \$1000 awarded in compensation and \$1000 in lost income.

Sidhu v Broadway Gallery 2002 BCHRT 9

Profile of complainant: Female (ethnic origin unknown.)

Profile of respondent: Business.

Prohibited ground: Sex (pregnancy.)

Brief description of merits: Employment-related complaint. The complainant alleged that she was dismissed because she became pregnant.

Outcome: Complaint upheld; the tribunal held that the respondent did not meet its duty to accommodate the complainant to the point of undue hardship.

Simon v Paul Simpson and Med Grill Ltd 2001 BCHRT 24



Profile of complainant: Female (ethnic origin unknown.)
Profile of respondent: Business (restaurant.)
Prohibited ground: Sex.
Brief description of merits: Employment-related complaint of sexual harassment.
Outcome: Complaint upheld; \$5000 awarded for loss of dignity and \$16084.62 in lost income.

Singleton v Chrysler Canada Ltd 2001 BCHRT 10

Profile of complainant: Male (ethnic origin unknown.)
Profile of respondent: Corporation.
Prohibited ground: Disability (poor vision in the left eye making it impossible to undertake quick repetitive eye movements with accuracy beyond a certain point.)
Brief description of merits: Employment-related complaint; the complainant alleged that the respondent did not accommodate his disability.
Outcome: Complaint dismissed. The tribunal held that the respondent could not accommodate the respondent without undue hardship.

Skytte v Danroth 2000 BCHRT 61

Profile of complainant: Female (ethnic origin unknown.)
Profile of respondent: Male.
Prohibited ground: Sex (pregnancy.)
Brief description of merits: Employment-related complaint; the complainant alleged that she was dismissed when the respondent learnt that she was pregnant.
Outcome: Complaint upheld; the tribunal held that it was reasonable to infer that the complainant's pregnancy was a factor in the decision to dismiss her.

Slim v Gold Holdings Ltd 2000 BCHRT 20

Profile of complainant: Male (ethnic origin unknown.)

Profile of respondent: Property owner.
Prohibited ground: Sex.
Brief description of merits: The complainant alleged that the respondent refused to rent a one bedroom flat to him because it preferred a female.
Outcome: Complaint upheld; monitoring order issued.

Smith v Zenith Security 2002 BCHRT 25

Profile of complainant: Female (ethnic origin unknown.)
Profile of respondent: Business.
Prohibited ground: Sex.
Brief description of merits: Employment-related complaint of sexual harassment. The complainant also alleged that she was dismissed when she complained about the harassment.
Outcome: Complaint upheld; \$10838 awarded in lost income and \$3000 for loss of dignity.

Stacey v Kenneth Campbell et al 2002 BCHRT 35

Profile of complainant: Homosexual male.
Profile of respondent: Evangelist.
Prohibited ground: Sexual orientation.
Brief description of merits: The complainant argued that a newspaper advertisement written and paid for by the respondent indicated discrimination or an intention to discriminate against the complainant or a group of persons because of their sexual orientation.
Outcome: Complaint dismissed; the tribunal held that the advertisement no doubt offended many readers but that it did not fall within section 7(1)(a) of the *Code*. The tribunal did not consider whether the advertisement was likely to expose the complainant to hatred, as it was not properly argued.

Stewart v Sameuls et al 2001 BCHRT 18



Profile of complainant: White male.
Profile of respondent: First Nations male.
Prohibited ground: Race, colour, ancestry.
Brief description of merits: Employment-related complaint of harassment; the complainant alleged that he was racially harassed by a co-worker. (He was allegedly referred to as a “fucking white dog”.)
Outcome: Complaint upheld; \$1000 awarded.

Sullivan v Prince Rupert Fisherman's Co-operative Association 1999/01/22

Profile of complainant: Male (ethnic origin unknown.)
Profile of respondent: Business.
Prohibited ground: Disability (deafness.)
Brief description of merits: Employment-related complaint. The complainant alleged that his application for employment was not accepted because of his disability.
Outcome: Complaint upheld; the tribunal held that the complainant's deafness was at least one of the factors considered by the respondent when it decided not to hire him.

Sylvester v BC Society of Male Survivors of Sexual Abuse 2002 BCHRT 14

Profile of complainant: Female (ethnic origin unknown.)
Profile of respondent: Non-governmental organisation.
Prohibited ground: Disability (depression.)
Brief description of merits: Employment-related discrimination; the complainant alleged that she was dismissed because of her disability. The respondent alleged that it was not aware of the complainant's disability.
Outcome: Complaint upheld; \$1200 awarded in compensation and one month's lost wages.

Tanchak v Locke Property Management Ltd 1997/12/03

Profile of complainant: Female (ethnic origin unknown.)

Profile of respondent: Business.
Prohibited ground: (Perceived) disability.
Brief description of merits: Employment-related complaint; the complainant alleged that the respondent perceived her to be an alcoholic and therefore terminated her employment.
Outcome: Complaint dismissed.

Tannis et al v Calvary Publishing Corp and Robbins 2000 BCHRT 47

Profile of complainants: Female employees.
Profile of respondent: Business; male.
Prohibited ground: Sex.
Brief description of merits: Employment-related complaints of sexual harassment. The complainants alleged that they were dismissed pursuant to the harassment. The respondents did not appear at the hearing.
Outcome: Complaints upheld; \$4500 awarded to three of the complainants and \$5000 to the fourth complainant for loss of dignity.

Tasker v Beneficial Canada Inc 1998/08/08

Profile of complainant: Female (ethnic origin unknown.)
Profile of respondent: Corporation.
Prohibited ground: Sex (pregnancy.)
Brief description of merits: Employment-related discrimination. The complainant alleged that she was discriminated against when she was hired, when she went on maternity leave and when she was dismissed.
Outcome: Complaint dismissed.

Thomson v Eurocan Pulp & Paper Company 2002 BCHRT 32

Profile of complainant: Female (ethnic origin unknown.)
Profile of respondent: Business.
Prohibited ground: Family status.



Brief description of merits: Employment-related complaint. The respondent had a summer vacation employment programme in place that gave preference to children of the respondent's employees. The complainant unsuccessfully applied for summer employment.

Outcome: Complaint upheld. The tribunal held that the hiring policy did not constitute a *bona fide* occupational requirement.

Tilsley v Subway Sandwiches & Salads 2001 BCHRT 2

Profile of complainant: Female (ethnic origin unknown.)

Profile of respondent: Business.

Prohibited ground: Sex (pregnancy.)

Brief description of merits: Employment-related complaint. The complainant had a miscarriage and did not report for work, whereafter she was fired.

Outcome: Complaint upheld; the tribunal held that pregnancy was one of the reasons why the complainant was dismissed.

Tozer v British Columbia (Motor Vehicle Branch) 2000 BCHRT 3

Profile of complainant: Female (ethnic origin unknown.)

Profile of respondent: Government.

Prohibited ground: Disability.

Brief description of merits: Employment-related complaint. After the complainant suffered a brain aneurysm and stroke, the respondent put her on medical leave and prohibited her from returning to work until she was pronounced fit. She was never allowed to return to work. She filed a human rights complaint based on disability.

Outcome: Complaint upheld; the respondent could not show that the complainant could not be accommodated without undue hardship.

Turmel v Slocan Forest Products Ltd 1999/05/17

Profile of complainant: Female (ethnic origin unknown.)

Profile of respondent: Business.

Prohibited ground: Sex, family status.
Brief description of merits: Employment-related complaint. The complainant alleged that she was not hired “because she did not need the job”. (The implication being that her husband made enough money.)
Outcome: Complaint dismissed.

Vandenberg v Tony Frustaci doing business as “Sharkey’s Bar & Grill” 1998/10/08

Profile of complainant: Female (ethnic origin unknown.)
Profile of respondent: Business (restaurant.)
Prohibited ground: Sex.
Brief description of merits: Employment-related complaint of sexual harassment. (References to the kitchen as the “Boys’ Zone”; jokes with sexual innuendo.)
Outcome: Complaint dismissed.

Varga v Bentley’s Sandwich Heaven 2001 BCHRT 08

Profile of complainant: Female (ethnic origin unknown.)
Profile of respondent: Business (fast food outlet.)
Prohibited ground: Sex.
Brief description of merits: Employment-related complaint of sexual harassment. (Inappropriate questions of a sexual nature; physical contact.) No one appeared on behalf of the respondent.
Outcome: Complaint upheld; \$4500 awarded in compensation.

Vestad v Seashell Ventures Inc 2001 BCHRT 38

Profile of complainant: Female (ethnic origin unknown.)
Profile of respondent: Business (restaurant.)
Prohibited ground: Sex (pregnancy.)
Brief description of merits: Employment-related complaint; the complainant alleged that she was forced to resign based on pregnancy-related discrimination.



Outcome: Complaint upheld; the tribunal found that a link existed between her pregnancy and the change in employment duties.

Watkins v Cypriot 2000 BCHRT 13

Profile of complainant: Female (ethnic origin unknown.)

Profile of respondent: Property owner.

Prohibited ground: Family status.

Brief description of merits: The complainant alleged that her lease was not renewed when she informed the respondent that her two stepsons would be moving in with her.

Outcome: Complaint upheld; the tribunal held that it was more likely than not that the complainant's stepsons was a factor in the decision not to renew the lease; \$1500 awarded in compensation.

Willis v Blencoe 2001 BCHRT 12

Profile of complainant: Female (ethnic origin unknown.)

Profile of respondent: Government (Minister of Government Services and Minister responsible for Commonwealth Games.)

Prohibited ground: Sex.

Brief description of merits: Employment-related complaint of sexual harassment. The respondent did not appear.

Outcome: Complaint upheld; \$5000 awarded in compensation.

Windover v High Output Sports 2000 BCHRT 39

Profile of complainant: Female (ethnic origin unknown.)

Profile of respondent: Business.

Prohibited ground: Sex.

Brief description of merits: Employment-related complaint; the complainant alleged that she was being paid less than male employees doing similar or substantially similar work.

Outcome: Complaint dismissed.

Wollstonecroft v Crellin et al 2000 BCHRT 37

Profile of complainant:	Female (ethnic origin unknown.)
Profile of respondent:	Business.
Prohibited ground:	Sex.
Brief description of merits:	Employment-related complaint of sexual harassment (explicit comments about the respondent's and his wife's sexual conduct and needs.)
Outcome:	Complaint upheld; \$2000 awarded in compensation and \$1800 in lost income.

Worrall (Madsen) v Boca Homes Ltd doing business as Monogram Building and Design and Michael Brealy 1998/07/03

Profile of complainant:	Female (ethnic origin unknown.)
Profile of respondent:	Business.
Prohibited ground:	Sex.
Brief description of merits:	Employment-related complaint of sexual harassment.
Outcome:	Complaint upheld; \$3000 awarded as compensation and \$12000 in lost income.

Wu v Ellery Manufacturing 2000 BCHRT 53

Profile of complainant:	Male (ethnic origin unknown.)
Profile of respondent:	Business.
Prohibited ground:	Disability.
Brief description of merits:	Employment-related complaint. The complainant suffered a workplace-related injury and was permanently disabled. He was dismissed two months later.
Outcome:	Complaint upheld; the tribunal held that the respondent did not determine whether it could reasonably accommodate the complainant; \$1500 awarded for loss of dignity.



Wust v Lai's Chinese Restaurant (1990) Ltd, doing business as TJ's Chinese Restaurant 2002
BCHRT 36

Profile of complainant:	Female (ethnic origin unknown.)
Profile of respondent:	Business (restaurant.)
Prohibited ground:	Sex (pregnancy.)
Brief description of merits:	Employment-related complaint; the complainant alleged that she was dismissed after becoming pregnant.
Outcome:	Complaint upheld; the tribunal held that the complainant established a <i>prima facie</i> case and that the respondent did not make any attempt to show a <i>bona fide</i> occupational requirement related to the complainant's job or the pregnancy.

D.4 Manitoba

Advisory opinion issued to Health Sciences Centre

Profile of applicant:	Health care business.
Profile of respondent:	NA.
Prohibited ground:	Sex.
Brief description of merits:	The applicant wished to put in place a preferential hiring system for males in its in-patient unit of child and adolescent mental health programme; it wanted to accomplish a 30-70 ratio of male to female nurses. The applicant argued that such a gender balance would better reflect the gender distribution of patients in the unit. It had explored alternatives but these strategies had not been cost effective and had not been effective in meeting therapeutic goals.
Outcome:	The commission advised the applicant that such a preferential hiring policy would not contravene the Human Rights Code.

Advisory opinion issued to Manitoba Liquor Control Commission File 99-AD-07

Profile of complainant:	Statutory corporation regulating the sale of alcohol in Manitoba.
Profile of respondent:	NA.

Prohibited ground: Age.

Brief description of merits: The applicant enquired whether liquor stores may deny entry based on age of majority, may ask for identification verifying age, may deny entry to minors not accompanied by a parent, spouse or guardian and may evict a minor not so accompanied.

Outcome: The commission advised that the proposed action would not amount to unreasonable discrimination. Such a policy complies with the strong public policy established in the Liquor Control Act.

Bourier v Phil-Can Services Limited and Caron 1999/01/08

Profile of complainant: Female.

Profile of respondent: Business; Male.

Prohibited ground: Sex.

Brief description of merits: Sexual harassment in the course of an employment interview; the interviewer asked the complainant if she would sleep with him for the job offered.

Outcome: Complaint upheld.

Budge v Thorvaldson Care Homes Ltd 2002/03/19

Profile of complainant: Female (ethnic origin unknown.)

Profile of respondent: Business.

Prohibited ground: Sex.

Brief description of merits: Sexual harassment; the complainant alleged that the maintenance man had on an ongoing basis acted objectionably. She reported the problem, to no avail.

Outcome: Complaint upheld. The respondent was ordered to adopt a written company policy on sexual harassment. The commission also issued a monitoring order, and awarded compensation for lost income and general damages.

Morriseau v Wall and Wall operating as Paisley Park 2000/12/12



Profile of complainant: Female.
Profile of respondent: Antique store.
Prohibited ground: Family status and gender.
Brief description of merits: Alleged discrimination in the provision of a service. The complainant breastfed her child in the shop but was asked to go to into the courtyard.
Outcome: Complaint dismissed; the accommodation offered was reasonable.

Schroen v Steinbach Bible College

Profile of complainant: Female (ethnic origin unknown) of the Mormon faith.
Profile of respondent: Institution of religious instruction.
Prohibited ground: Religion.
Brief description of merits: Employment discrimination; the respondent hired the complainant as accounting clerk but when it found out that the respondent was not of the Anabaptist Evangelical faith, terminated her employment.
Outcome: The commission held that a *prima facie* case of discrimination was made out but that the impugned requirement constituted a *bona fide* and reasonable requirement for employment. Complaint dismissed.

Vogel and North v Government of Manitoba 1997/11/21

Profile of complainants: Two gay males.
Profile of respondent: Government.
Prohibited ground: Sexual orientation.
Brief description of merits: The complainants had been in a longtime relationship since 1972. Vogel brought an earlier complaint but at that time the complaint was dismissed because sexual orientation had not been added to the list of prohibited grounds. Vogel argued that he and North

were entitled to certain employment benefits, being in a same-sex spousal relationship.

Outcome: Complaint upheld relating to the Government's employees dental plan; ambulance, hospital and semi-private plan; the extended health care plan and the group life insurance plan.

Werestiuk v Small Business Services Inc et al 1998/10/30

Profile of complainant: Female (ethnic origin unknown.)
Profile of respondent: Business.
Prohibited ground: Sex.
Brief description of merits: Sexual harassment complaint. The respondents did not attend.
Outcome: Complaint upheld.

D.5 Nova Scotia

Blanchard v Labourers' International Union, Local 1115 and Serroul and MacMaster 2002/06/29

Profile of complainant: Male (ethnic origin unknown.)
Profile of respondent: Employees' Union.
Prohibited ground: Disability (multiple sclerosis.)
Brief description of merits: Employment-related discrimination; the complainant argued that the union failed to facilitate employment at a construction site.
Outcome: Complaint dismissed. The commission held that the nature and extent of the complainant's disability reasonably precluded the performance of jobs to which the complainant sought referrals; the respondent's denial of a referral was based on *bona fide* occupational qualifications primarily related to safety; and the respondent accommodated the complainant to the point of undue hardship.

Christie v Halifax Student Housing Society 1999/11/01

Profile of complainant: Male (ethnic origin unknown.)
Profile of respondent: Student housing society.



Prohibited ground: Not explicitly stated.

Brief description of merits: The complainant and his common law companion were evicted as they violated the respondent's housing rules that prohibited unmarried adults from living together.

Outcome: Complaint upheld; \$12058.87 awarded in total (general damages, rent differential, electrical power, cable television and moving costs.)

Coleman v Manto Holdings Ltd (Pizza Delight) 1999/05

Profile of complainant: Female (ethnic origin unknown.)

Profile of respondent: Business (fast food outlet.)

Prohibited ground: Disability.

Brief description of merits: Employment-related discrimination; the complainant injured her leg when she pulled a heavy table in June 1994. Her condition worsened gradually. Her doctor put her off work from July 1995 indefinitely. By October 1995 she informed the respondent that she was ready to return to work. The respondent gave her notice and terminated her employment.

Outcome: Complaint dismissed. The respondent's financial situation was such that to hire back the complainant at the relevant time would have constituted an undue hardship.

Daniels v Annapolis Valley Regional School Board 2002/09

Profile of complainant: Female (ethnic origin unknown.)

Profile of respondent: School governing body.

Prohibited ground: Sex.

Brief description of merits: Employment-related discrimination; the complainant argued that she applied for a position as maintenance foreman but was not interviewed. The respondent argued that she was not qualified for the position.

Outcome: Complaint upheld. The commission held that candidates with the same or fewer qualifications were short listed and interviewed and the complainant should have been interviewed. The commission did not award lost wages as a better qualified applicant obtained the position, but did award general damages of \$5000.

Ibrahim v Dartmouth Volkswagen 04-98-0118

Profile of complainant: Male of East Indian ancestry who had resided in Nova Scotia for 35 years.

Profile of respondent: Corporation.

Prohibited ground: Ethnic and/or social origin.

Brief description of merits: Employment-related discrimination; the complainant alleged that he was harassed and eventually fired because of his ethnic and/or social origin.

Outcome: Complaint upheld. The commission found that the offered reasons for firing the complainant were a pretext.

Patterson v Gladburg Holdings Limited and/or Gladwin 4/12/2000

Profile of complainant: Female (race not stated)

Profile of respondent: Business

Prohibited ground: Sex (pregnancy)

Brief description of merits: Very little information provided. The complainant alleged sex discrimination on the basis that the respondent terminated her employment because she missed time because of complications relating to her pregnancy.

Outcome: The matter was settled prior to the hearing. No further particulars provided.

Redden v Saberi and Atlantic Construction Services Management Ltd 1999/11/22

Profile of complainant: Female (ethnic origin unknown.)

Profile of respondent: Corporation.



Prohibited ground:	Sex and/or family status (pregnancy.)
Brief description of merits:	Employment-related discrimination; the complainant alleged that her employment was terminated after 13 months because she fell pregnant.
Outcome:	Complaint upheld. The commission also noted that a “significant cluster” of pregnancy-related complaints have been brought in the real estate business in Canada and suggested that Real Estate Boards educate their members about their responsibilities as employers under the <i>Human Rights Act</i> .

Thibodeau v Tuskett Sales and Service Limited and Hubert 16/6/2000

Profile of complainant:	Male (race not stated)
Profile of respondent:	Business
Prohibited ground:	Disability
Brief description of merits:	Very little information provided. The complainant alleged that the respondent terminated his employment because of a mental disability.
Outcome:	The parties settled the matter on the basis that the respondent paid \$4500 general damages to the complainant without admitting liability, as well provide a positive reference letter to the complainant.

Wigg v Harrison and/or Art Pro Litho 16/8/1999

Profile of complainant:	Female (race not stated)
Profile of respondent:	Business and business owner
Prohibited ground:	Sex (sexual harassment)
Brief description of merits:	The complainant alleged that the respondent propositioned and requested sex from her. She clearly rejected the offer. The respondent repeated a similar request a week later.
Outcome:	The tribunal held that the complaint was proved and ordered the respondents to apologise. It ordered Harrison to undergo

sensitivity training. It also ordered the respondents to file a sexual harassment policy within six months of the date of the order with the Nova Scotia Human Rights Commission. It also awarded \$3800 general damages and \$1200 in lost wages.

D.6 Ontario

Abdolalipour and Murad v Allied Chemical 1996/09/18

Profile of complainant: The first complainant was a male of Arab ancestry and born in Iraq; the second complainant was a female originally from Iran.

Profile of respondent: Corporation.

Prohibited ground: Race and sex.

Brief description of merits: Employment-related complaints. The complainants were not made aware of vacancies in career opportunities they were interested in. The second complainant also complained of a poisoned work environment; *inter alia* being exposed to pornographic pictures.

Outcome: Complaints upheld.

Abouchar v Metropolitan Toronto School Board et al 1998/03/27, 1999/04/23, 1999/05/11

Profile of complainant: Male francophone born in Egypt of Lebanese origin.

Profile of respondent: School governing body.

Prohibited ground: Race, place of origin, ethnic origin.

Brief description of merits: Employment-related complaint; the complainant alleged that the respondents failed to employ him as manager on two occasions because of their preference for Franco-Ontarians over immigrants.

Outcome: Complaint upheld relating to the first occasion; dismissed relating to the second occasion.

Anderson and O'Neill v The YMCA of Barrie 2000/12/06

Profile of complainants: Two females.



Profile of respondent: Members' club.
Prohibited ground: Sex.
Brief description of merits: The complainants complained that while they could become regular members of the respondent, they could not buy premium memberships. Men in the premium category used a separate change facility with many amenities not available to regular members.
Outcome: Complaint upheld. The board ordered the respondent to build a women's facility of comparable size and with comparable facilities within eight months, and awarded \$18000 in general damages.

Andrews v Ptaszyk 1998/03/05

Profile of complainant: Female (ethnic origin unknown.)
Profile of respondent: Property owner.
Prohibited ground: Family status.
Brief description of merits: The complainant argued that she, her husband and child had been denied a flat in a building. The respondent informed them that the building was cramped and in an area unsafe for children.
Outcome: Complaint upheld; the board held that the comments were intended to discourage applications from prospective tenants with children.

Belford & Grace v Mercedes Homes Inc 1995/06/07

Profile of complainants: Homosexual males.
Profile of respondent: Property owner.
Prohibited ground: Sexual orientation.
Brief description of merits: The complainants alleged that they were the victims of a "gay bashing". They argued that the respondent should have evicted the alleged assaulter's girlfriend, who rented a flat in the same apartment as the complainants. They also alleged discriminated when they were evicted.

Outcome: Complaint dismissed on the evidence.

Brady v City of Toronto Fire Department 2001/08/09

Profile of complainant: Male (ethnic origin unknown.)

Profile of respondent: City fire department.

Prohibited ground: Disability.

Brief description of merits: Employment-related complaint. The complainant lacked stereopsis (a form of depth perception). Because of this, he failed the fitness part of his application for a position as firefighter. He was however capable of operating a crane as he used other methods to gauge depth.

Outcome: Settled; the respondent agreed to use a more accurate test of depth perception where the ordinary test indicates a lack of stereopsis.

Brillinger and the Canadian Lesbian and Gay Archives v Imaging Excellence Inc et al 1999/09/29, 2000/02/24

Profile of complainant: Homosexual male.

Profile of respondent: Business.

Prohibited ground: Sexual orientation.

Brief description of merits: The complainant requested the respondent to print envelopes, letterheads and business cards for the Canadian Lesbian and Gay Archives. The respondent's president denied the service because of his religious belief that homosexuality is contrary to Christian teaching.

Outcome: Complaint upheld. The board directed the respondent to provide the requested printing services.

Brock v Tarrant Film Factory Ltd 2000/04/04

Profile of complainant: Male (teenage boy.)

Profile of respondent: Movie theatre.



Prohibited ground: Disability (muscular atrophy.)
Brief description of merits: The complainant often visited a movie theatre where he would be carried into the theatre by staff. As his condition worsened he started to use a wheelchair and he could no longer be carried. At this time staff directed him to the back door where they would let him in, after waiting for some time. In the theatre he had to sit at an angle. His wheelchair was in the path of other patrons and they would frequently bump into him.
Outcome: Complaint upheld; the respondent had not shown that making the premises accessible would cause undue hardship.

Chandan v Emix Ltd (The Furniture Mall) et al 1996/02/20

Profile of complainant: Male (ethnic origin unknown.)
Profile of respondent: Business.
Prohibited ground: Race.
Brief description of merits: Employment-related complaint of racial harassment.
Outcome: Settled in complainant's favour.

Collins v The Etobicoke Board of Education et al 1996/07/03

Profile of complainant: Female (ethnic origin unknown.)
Profile of respondent: School governing body.
Prohibited ground: Race and ethnic origin.
Brief description of merits: Employment-related complaints of harassment and differential treatment. The respondent did its own internal investigation and came to the conclusion that the complainant would have to be transferred.
Outcome: Complaint settled in complainant's favour.

Crabtree v Econoprint and Price 1996/11/06

Profile of complainant: Female (ethnic origin unknown.)
Profile of respondent: Corporation.

Prohibited ground: Disability (muscular atrophy.)

Brief description of merits: Employment-related discrimination; the interviewer at the job interview repeatedly asked questions to the complainant about her disability. She was not hired.

Outcome: Complaint upheld; the respondent could have accommodated the complainant without undue hardship.

Croal v Pembroke Civic Hospital and Mae Ziebell 1996/05/21

Profile of complainant: Female (ethnic origin unknown.)

Profile of respondent: Hospital.

Prohibited ground: Age, (perceived) disability.

Brief description of merits: Employment-related complaint. The head nurse told the complainant that she would be losing her job because of her alleged hearing difficulties. The complainant was offered retirement at an early age or accepting an alternate, less attractive job than the one she then filled. She chose retirement and was adversely affected.

Outcome: Complaint upheld; \$20 000 awarded in general damages; \$18500 legal fees; and the respondent agreed to pay \$47556 into the complainant's retirement fund.

Crook v Ontario Treatment and Research Foundation and Regional Cancer Centre 1996/08/26; 1997/12/18

Profile of complainant: Female (ethnic origin unknown.)

Profile of respondent: Business.

Prohibited ground: Sex.

Brief description of merits: Employment-related complaint; the complainant was denied sick leave benefits during the period immediately prior to and after the birth of her child.

Outcome: Complaint upheld and confirmed on appeal to the Divisional Court.



Curling v The Victoria Tea Company Ltd., Torimiro and The Torimiro Corporation 1999/12/22;
2000/10/03

Profile of complainant: Female (ethnic origin unknown.)
Profile of respondent: Business; male.
Prohibited ground: Sex.
Brief description of merits: Complaint of sexual harassment; the respondent persistently pursued a relationship with the complainant.
Outcome: Complaint upheld.

Drummond v Tempo Paint and Varnish Co et al 1998/06/18

Profile of complainant: Female (ethnic origin unknown.)
Profile of respondent: Business.
Prohibited ground: Sex.
Brief description of merits: The complainant alleged that she was subjected to sexual harassment and sexual solicitation.
Outcome: Complaint upheld.

Duong v Garai carrying on business as Langstaff Auto Repairs 2000/09/26

Profile of complainant: Male of Asian origin.
Profile of respondent: Business.
Prohibited ground: Race, place of origin, ethnic origin.
Brief description of merits: The complainant said that the respondent failed to repair his car, threatened him, and used racial pejoratives.
Outcome: Complaint partly upheld. The board found that the respondent did meet his obligations as service provider. The board held that the *Code* did not guarantee the right to be free from harassment in the provision of services. The board ordered \$2000 in damages.

Dwyer and Sims v The Municipality of Metropolitan Toronto and The Attorney General for Ontario
1996/09/27

Profile of complainants: Homosexual man and woman.
Profile of respondent: City.
Prohibited ground: Sexual orientation.
Brief description of merits: The complainants challenged their employers' pension benefits, insured health benefits and uninsured employment benefit plans for excluding same sex spousal relationships.
Outcome: Complaint upheld.

Entrop v Imperial Oil 1998/02/11

Profile of complainant: Male (ethnic origin unknown.)
Profile of respondent: Corporation.
Prohibited ground: (Perceived) disability.
Brief description of merits: Employment-related complaint. The complainant had an alcohol abuse problem but had overcome it. The respondent forced him to disclose it. He was then reassigned and out through a reinstatement process.
Outcome: Complaint upheld; the treatment was not reasonably necessary considering the period (7 years) since the complainant had conquered his previous problem.

Fuller v Daoud and Desquilbet 2001/08/17

Profile of complainant: Black male.
Profile of respondent: Property owner.
Prohibited ground: Race.
Brief description of merits: After the complainant rented a flat in a building, he was subjected to unauthorised entries into his flat, racial pejoratives and his ceiling stomped upon. When one of the respondents shouted "you will see white power", the complainant phoned the police. The police arrived and the respondent accused the complainant of threatening rape and death. The police arrested the complainant, strip-searched him and left him naked in a jail cell.



The charges were dropped but in the meantime the respondents had him evicted.

Outcome: Complaint upheld and \$29719,82 awarded. A monitoring order was also made and the respondents were also ordered to attend a training programme.

Gallagher v The Regional Municipality of Hamilton-Wentworth et al 1996/06/17

Profile of complainant: Female (ethnic origin unknown.)
Profile of respondent: City.
Prohibited ground: Marital status.
Brief description of merits: Employment-related complaint. The complainant developed a relationship with, and then married, a co-employee. The respondents applied their “nepotism policy” and transferred the complainant to another department.
Outcome: Complaint dismissed because of the definition of “marital status”.

Garbett v Fisher 1996/04/18

Profile of complainant: Female (ethnic origin unknown.)
Profile of respondent: Property owner.
Prohibited ground: Age.
Brief description of merits: The complainant applied for a flat. She was refused because she was in receipt of public assistance. The respondent argued that he did this because she would not have been able to pre-pay the last month’s rent.
Outcome: Complaint upheld.

Geiger v Barboutsis v London Monenco Consultants Limited 1996/11/29

Profile of complainant: Unknown.
Profile of respondent: Corporation.
Prohibited ground: Marital status.

Brief description of merits: Employment-related complaint; the respondent flew married employees home every three weeks at the respondent's expense but did not do the same for unmarried staff.

Outcome: The board dismissed the complaint but it was upheld by the Ontario Court of Appeal.

Harold & Johnston v Levin & Midtown Hotel Ltd carrying on business as Gord's Shooters et al
1996/01/31

Profile of complainant: Male.

Profile of respondent: Business.

Prohibited ground: Disability.

Brief description of merits: The complainant had an unstable gait and had to wear a leg brace as a result of polio. He also had a severe speech impediment. When he and his wife entered the hotel to have coffee, the proprietor advised that they would not be served as he believed the complainant was drunk.

Outcome: Complaint upheld; \$250 awarded to the complainant.

Hazlett v York Region Board of Education 1997/03/24

Profile of complainant: Female (ethnic origin unknown.)

Profile of respondent: Government.

Prohibited ground: Disability.

Brief description of merits: The complainant suffered from Parkinson's disease. She alleged that she was capable of working during the time that the respondent did not allow her to work.

Outcome: Settled. The respondent paid \$11000 in general damages and agreed to arrange a workshop for its administrators on accommodating the rights of disabled employees. The complainant's position was kept open for a further three years to allow for the possibility of returning to work, and allowed her to purchase group insurance.



Henderson/Pirri v Peel Condominium Corp No 291 et al 1996/04/02

Profile of complainant: Unknown.
Profile of respondent: Property owner.
Prohibited ground: Family status.
Brief description of merits: The respondents' rules prohibited children from using the whirlpool, sauna or exercise room facilities, and only allowed children in the billiard room if accompanied by an adult.
Outcome: Complaint upheld.

Hudler v City of London & Mayor Dianne Haskett 1997/10/07

Profile of complainant: Homosexual male.
Profile of respondent: City.
Prohibited ground: Sexual orientation.
Brief description of merits: The complainant brought a claim against the respondent after the mayor refused to grant a municipal proclamation of Pride Weekend, alleging discrimination based on sexual orientation.
Outcome: Complaint upheld. \$10000 awarded. The city was also ordered to proclaim any future requests for Pride Day/Weekend and to commit to the investigation of ways to improve relationships with the gay, lesbian and bisexual communities of the city.

Jeppesen v Corporation of the Town of Ancaster, Fire and Emergency Services et al 2001/01/02

Profile of complainant: Male (ethnic origin unknown.)
Profile of respondent: City fire department.
Prohibited ground: Disability.
Brief description of merits: Employment-related complaint. The complainant, a part time firefighter, was diagnosed with histoplasmosis, a fungal disease that lead to the complainant losing central vision in his left eye. The respondent advertised for full-time firefighters and insisted on the ability to drive an ambulance, for which one needs a class F

license. The complainant could not obtain a class F license because of his vision impairment and asked to be accommodated through the provision of straight firefighting duties. His request was refused.

Outcome: Complaint upheld. The boards held that the complainant could have been accommodated short of undue hardship.

Jerez & Rivera v Cando Property Management Limited 1996/01/24

Profile of complainants: Two females of Philippine origin.
Profile of respondent: Property owner.
Prohibited ground: Race.
Brief description of merits: The superintendent of a building treated the complainants discourteously when they tried to sublet a flat from a friend of theirs. They alleged that the respondent enforced a discriminatory rental policy.

Outcome: Settled in favour of complainants.

Jodoin v CIRO's Jewellers (Mayfair) Inc et al 1996/01/04

Profile of complainant: Female (ethnic origin unknown.)
Profile of respondent: Business.
Prohibited ground: Sex (pregnancy) and family status.
Brief description of merits: Employment-related discrimination. The complainant was fired as store manager. She argued that it was because she fell pregnant; the respondent argued that she was fired because of incompetence.

Outcome: Complaint upheld; on the evidence she was at least in part fired because of her pregnancy and no efforts were made to accommodate the complainant.

LaRush v York Professional Fire Fighters Association, Local 411 1997/05/02

Profile of complainant: Female (ethnic origin unknown.)



Profile of respondent: Employees' union.

Prohibited ground: Sex.

Brief description of merits: Employment-related complaint. The complainant was the first female fire fighter in the city's fire department. She alleged that she was sexually harassed by the male staff, and treated differentially. Her employment was eventually terminated. The complainant alleged that the union did not properly represent her interests in her dealings with management.

Outcome: Settled; the union agreed to implement a non-discrimination and anti-harassment policy.

Lavender v Cochrane Station Inn Restaurant & Polizogopoulos 1998/09/01

Profile of complainant: Female (ethnic origin unknown.)

Profile of respondent: Business.

Prohibited ground: Sex (pregnancy.)

Brief description of merits: Employment-related complaint; two months after she commenced employment the complainant was informed that she was pregnant and told to take complete bed rest for a week. She then had a miscarriage and asked a further ten days off work. When she returned to work, her employment was terminated.

Outcome: Complaint upheld; the board held that but for the pregnancy the complainant's employment would not have been terminated.

Leonis v Metropolitan Toronto Condominium Corporations 1998/06/10

Profile of complainant: Male (ethnic origin unknown.)

Profile of respondent: Property owner.

Prohibited ground: Family status.

Brief description of merits: The body corporate's rules prohibited children under 16 from using some of the facilities and restricted access to other facilities. The complainant argued that the rules prohibited him from using

the whirlpool and fitness room with his daughter and could only use the swimming pool at the times set out in the rules.

Outcome: Complaint upheld; the board held that the rules had an adverse impact on people in parent-child relationships. However, unrestricted access to all amenities would have placed an undue hardship on the respondent. The board ordered the respondent to make available on its recreation committee at least one owner with a child under 16.

Lewis and Steiner v Leeds and Grenville Board of Education

Profile of complainant: Unknown.
Profile of respondent: School governing body.
Prohibited ground: Religion.
Brief description of merits: Employment related complaint; non-Christian employees did not get paid when absent on days of religious observance, compared to Christian employees.
Outcome: Complaint settled in favour of the complainants.

McCallum v Toronto Transit Commission and the Attorney General of Ontario 1997/09/16

Profile of complainant: Homosexual male.
Profile of respondent: Government.
Prohibited ground: Sexual orientation.
Brief description of merits: The case was adjourned pending a decision in *Dwyer & Sims v Municipality of Metropolitan Toronto & Attorney General of Ontario*. After that decision, the respondent extended its employment benefits to same-sex couples.
Outcome: The board awarded \$2500 in general damages.

McKinnon v Ministry of Correctional Services et al 1998/04/28; 1999/05/07

Profile of complainant: First Nations male.
Profile of respondent: Government.



Prohibited ground: Race.
Brief description of merits: Employment-related harassment and poisoned work environment. The complainant alleged that officers used racial pejoratives, posted caricatured pictures of the complainant on the bulletin board, and that management singled him out for severer treatment.
Outcome: Complaint upheld against individual perpetrators and the ministry. (The complainant subsequently made further allegations of harassment and retaliation.)

Medeiros v Hornepayne Community Hospital and Morley 1996/05/16

Profile of complainant: First Nations female.
Profile of respondent: Hospital; male nurse.
Prohibited ground: Race, ancestry.
Brief description of merits: While in hospital the complainant felt a nurse did not treat her with respect. When she complained, the nurse told her that the hospital “did not give any special treatment to natives”.
Outcome: Complaint upheld.

Mendelson v Canadian Friends of Bar-Ilan University et al 1996/01/05

Profile of complainant: Female (ethnic origin unknown.)
Profile of respondent: Corporate.
Prohibited ground: Sex.
Brief description of merits: Complaint relating to sexual harassment and solicitation in the workplace. When the complainant complained to the second respondent, a member of the board of directors of the first respondent, no action was taken.
Outcome: Settled in favour of complainant; \$12000 paid.

Metsala v Falconbridge Ltd, Kidd Creek Division 2001/02/15

Profile of complainant: Female (ethnic origin unknown.)

Profile of respondent:	Corporation.
Prohibited ground:	Disability (depression and chronic fatigue.)
Brief description of merits:	Employment-related complaint. The complainant was promoted to payroll clerk after spending some 16 years with the respondent. The new position involved significant overtime work and more pressure. She asked for a transfer because of the stress. A year after the request was denied she went on sick leave, being diagnosed with reactive depression and chronic fatigue. For a while she received disability benefits but this eventually terminated. She did not seek other employment as she did not want to forfeit her significant service recognition credits.
Outcome:	Complaint upheld. The board held that the respondent did not take any steps to find out the true nature of the complainant's medical condition and did not offer her contract positions based on assumptions and stereotypes.

Moffatt v Kinark Child and Family Services 1999/11/02; 2000/05/26

Profile of complainant:	Homosexual male.
Profile of respondent:	Children's agency.
Prohibited ground:	Sexual orientation.
Brief description of merits:	Employment-related complaint. The complainant disclosed that he was gay and sometime thereafter entered into a fostering relationship with a child. When his employment was terminated, the complainant alleged that this happened because of his sexual orientation and because of his employer's belief that he had AIDS.
Outcome:	Complaint upheld. The board found that the ultimate decision to fire the complainant was not based on discriminatory reasons. However, the complainant's work environment was poisoned because of rumours about his sexual orientation and speculation about a sexually exploitative relationship with his foster son. The



board also found that the respondent did not take adequate steps to investigate and address the complainant's concerns.

Naraine v Ford Motor Company of Canada Ltd et al 1996/07/25; 1996/12/09; 1997/03/11; 1999/06/23; 1999/10/08

Profile of complainant: Male East Indian originally from Guyana.
Profile of respondent: Corporation.
Prohibited ground: Race, colour, place of origin, ethnic origin.
Brief description of merits: Employment-related discrimination. The complainant alleged that during his work environment was poisoned by racist graffiti, racist verbal comments, inferior work assignments and training. He was also subjected to progressive disciplinary measures, eventually resulting in his employment being terminated.
Outcome: Complaint upheld. The board ordered reemployment and awarded \$30000 in general damages. The Divisional Court dismissed an appeal, and so did the Court of Appeal.

Nelson v Durham Board of Education & Peel 1998/08/28

Profile of complainant: Black male.
Profile of respondent: School governing body.
Prohibited ground: Race, colour.
Brief description of merits: Employment-related complaint. The complainant, the first black vice-principal in the school board, was not successful in his applications for the position as principal.
Outcome: Complaint upheld; the board found discrimination in a number of instances during his employment.

Ontario Human Rights Commission v A 2000/11/14

Profile of complainant: The complainant (A) was an employee of a company of which B was vice-president and manager. B was A's brother-in-law and

direct supervisor. C was the company's owner, also a brother of A's wife.

Profile of respondent:	Corporation.
Prohibited ground:	Family status; marital status.
Brief description of merits:	Employment-related complaint. A had been working for the company for 26 years without incident. His daughter uncovered a memory in therapy that she had been molested as a child by B. A's wife and daughter confronted B over a weekend. The next Monday A's employment was terminated.
Outcome:	The board held that these facts constituted discrimination based on marital or family status. The Divisional Court disagreed. The Court of Appeal allowed the appeal and confirmed the board's initial finding.

Pollard v Condie Napanee Limited 1996/01/18

Profile of complainant:	Female (ethnic origin unknown.)
Profile of respondent:	Business (car dealers.)
Prohibited ground:	Sex and marital status.
Brief description of merits:	The complainant was the respondent's receptionist. When her husband, who had been working for a car dealership in a different town, changed jobs and became the manager of a used car dealership in the same town where the complainant worked, the respondent fired the complainant, as it feared that she would send customers to her husband.
Outcome:	Settled in favour of the complainant.

Redden et al v Bryant Press Ltd et al & Graphic Comm. Int'l Union et al 1996/01/04

Profile of complainant:	Unknown.
Profile of respondent:	Business.
Prohibited ground:	Sex.



Brief description of merits: Employment-related complaints as to unequal practices (promotions, training, duties.)

Outcome: Settled in favour of the complainants.

Reed v Cattolica Investments Ltd et al 1996/03/26

Profile of complainant: Female (ethnic origin unknown.)

Profile of respondent: Business.

Prohibited ground: Sex.

Brief description of merits: The complainant was the respondent's owner's employee and tenant. The owner sexually harassed her whereafter she quit, but remained a tenant. He then initiated a campaign to have her evicted from the building.

Outcome: Complaint upheld; \$1500 awarded in special damages and \$7000 in general damages.

Rheaume v Leroux & Rencar Construction Ltd

Profile of complainant: Female (ethnic origin unknown.)

Profile of respondent: Property owner.

Prohibited ground: Receipt of public assistance.

Brief description of merits: The respondent did not consider the complainant as a tenant because she was on "mother's allowance.

Outcome: The board upheld the complaint; an appeal to the Divisional Court was dismissed (2-1)

Roosma & Weller v Ford Motor Company of Canada and the CAW Local 707 1995/07/14

Profile of complainants: Unknown.

Profile of respondent: Corporation.

Prohibited ground: Religion.

Brief description of merits: Employment-related discrimination; the complainants were members of the Wordwide Church of God which prohibited work

from Friday at sunset to Saturday at sunset. The complainants were progressively disciplined from missing Friday night shifts.

Outcome:

The board found a *prima facie* case of discrimination had been established, but that the respondent could not accommodate the complainants without undue hardship.

Rubio v A Voz-Portuguese Canadian Newspaper Ltd et al 1997/03/26

Profile of complainant: Female (ethnic origin unknown.)

Profile of respondent: Corporation.

Prohibited ground: Sex.

Brief description of merits: Sexual harassment in the workplace.

Outcome: Complaint upheld; the board held that the complainant was constructively dismissed and awarded \$3000 in general damages.

Thomson v Fleetwood Ambulance Service and OPSEU 1996/10/09

Profile of complainant: Male (ethnic origin unknown.)

Profile of respondent: Business; employees' union.

Prohibited ground: Disability.

Brief description of merits: Employment-related complaint; the collective agreement between the respondents reduced an employee's vacation for each full month that an employee was absent from work. The complainant was absent due to an injury (for which he received compensation).

Outcome: Complaint upheld; the employer was ordered to stop applying the impugned provision.

Turnbull v 539821 Ontario Ltd, Andre's Restaurant et al 1996/06/21

Profile of complainant: Female (ethnic origin unknown.)

Profile of respondent: Business.

Prohibited ground: Sex (pregnancy.)



Brief description of merits: Employment-related complaint; the complainant alleged that her working hours were reduced and then fired because she told her employer she was pregnant.

Outcome: Complaint upheld.

Vander Schaaf v M & R Property Management Ltd 2000/09/06

Profile of complainant: Female (ethnic origin unknown.)

Profile of respondent: Property owner.

Prohibited ground: Marital status.

Brief description of merits: The complainant alleged that she and her roommate were repeatedly discouraged from applying for a flat and that the landlord said the flat was better suited for a couple. The respondent argued that they were rejected because neither of them satisfied the rent-to-income ratio of 25%.

Outcome: Complaint upheld. The board held that landlords may use “income information” but may not apply rent-to-income ratios. The board ordered the respondent to stop preferring tenants based on marital status.

Watson v Antunes 1998/04/08

Profile of complainants: Two black females, mother and daughter.

Profile of respondent: Landlord.

Prohibited ground: Race.

Brief description of merits: After seeing a flat, the mother telephoned to accept it for rent. She was told that the flat was no longer available. She suspected race discrimination and asked a friend to telephone as well. The friend was told that the flat was still available.

Outcome: Complaint upheld.

Wight v Office of the Legislative Assembly 1998/07/13

Profile of complainant: Female (ethnic origin unknown.)

Profile of respondent: Government.

Prohibited ground: Family status, sex (pregnancy), disability.

Brief description of merits: Employment-related complaints. The complainant alleged that she was fired because she refused to return to work until she had secured adequate day care arrangements for her child; her probationary period was extended by the six months that she was away from work due to her pregnancy; short-term illness benefits were denied; and maternity and extended leave were denied.

Outcome: Most of the complaints were dismissed; the complaint relating to the extension of her probationary period was upheld.

Wilcox v Belmont Properties, Brenda Joergensen 1996/06/19

Profile of complainant: Female (ethnic origin unknown.)

Profile of respondent: Property owner.

Prohibited ground: Family status, marital status and sex.

Brief description of merits: The respondents allegedly refused to rent a flat to the complainant because she was a single mother that received family benefits assistance.

Outcome: Resolved at mediation in complainant's favour.

D.7 Prince Edward Island

Craig v Prince Edward Island 1983/03/15

Profile of complainant: Male (ethnic origin unknown.)

Profile of respondent: Government.

Prohibited ground: Political belief.

Brief description of merits: Employment-related complaint; the complainant alleged that, being a Liberal, his employment was terminated by the new Conservative government when it came to power.

Outcome: Complaint dismissed.

Deighan v Prince Edward Island Unit 2 School Board 1978/11/20



Profile of complainant: Female (ethnic origin unknown.)
Profile of respondent: School governing body.
Prohibited ground: Age.
Brief description of merits: Employment-related complaint; the complaint was allegedly retrenched because of her age.
Outcome: Complaint dismissed.

Gaudet v Government of Prince Edward Island File #1057-99

Profile of complainant: Female (ethnic origin unknown.)
Profile of respondent: Government.
Prohibited ground: Disability.
Brief description of merits: Accessibility of the Prince County courthouse to wheelchairs.
Outcome: Complaint upheld; the respondent was ordered to “cease discriminating” (apparently ordering the respondent to ensure wheelchair accessibility).

Kickham v Charlottetown (City) 1986/03/26

Profile of complainant: Female (ethnic origin unknown.)
Profile of respondent: City.
Prohibited ground: Sex.
Brief description of merits: Employment-related discrimination. The complainant was the only female applicant for the position as a probationary constable. She was granted an interview. The interview committee did not have a set of questions, had no determination of how the successful candidate should be chosen and had no requirement to indicate to the respondent upon which a recommendation for employment should be granted. During the interview she was asked that, if she had a problem at her home, who would she rather have attend, a 200 pound male police officer or a 120 pound female police officer. She was not appointed.

Outcome: Complaint upheld and the respondent ordered to offer the complainant a position as probationary constable.

MacDonald v Prince Edward Island School Unit No 1 1992/03/02

Profile of complainant: Male (ethnic origin unknown.)
Profile of respondent: School.
Prohibited ground: Age.
Brief description of merits: Employment-related complaint; the respondent did not rehire the complainant as a bus driver as he was then older than 65.
Outcome: Complaint dismissed. The commission held that the age requirement was reasonably necessary to ensure the efficient and economical performance of the job without endangering the public, that it was not possible to screen employees to remove the unsafe driver, and that the requirement was reasonably necessary to eliminate a real risk of serious damage to the public.

Magill v Atlantic Turbines Inc 1997/01/30

Profile of complainant: Female (ethnic origin unknown.)
Profile of respondent: Corporation.
Prohibited ground: Sex.
Brief description of merits: Employment-related complaint. The complainant referred to a large number of incidents where the female employees were treated in an adverse manner, compared to the male employees. The workforce was overwhelmingly male.
Outcome: Complaint upheld relating to a single incident of sexual harassment. The respondent was held liable for failing to provide a harassment-free workplace. The commission was not persuaded that the harassment was a factor in the loss of employment but that she was fired because of excessive absenteeism and a disputed refusal to work overtime. The commission awarded \$2500 in compensation and ordered the



respondent to develop and implement a sexual harassment policy within 90 days.

Silliphant v Wakim carrying on business as Lunch Bar and Dining Room 1986/03/03

Profile of complainant: Male (ethnic origin unknown.)
Profile of respondent: Business (restaurant.)
Prohibited ground: Sex.
Brief description of merits: Employment discrimination; the complainant alleged that he was refused employment as a waiter as the respondent “wanted a girl”.
Outcome: Complaint upheld; \$250 awarded.

Stevenson v All-Can Travel Inc 1990/07/12

Profile of complainant: Male (ethnic origin unknown.)
Profile of respondent: Business.
Prohibited ground: Sex.
Brief description of merits: Employment-related complaint. The complainant applied for a position as travel consultant but was informed that men were not considered, as the public believed that women could better serve the customer. The complainant had no experience in the travel industry trade.
Outcome: Complaint upheld. The commission held that the complainant would in any event not have been hired but that he had suffered humiliation and a loss of self-respect and awarded \$500.

Taylor v Testori Americas Corporation File #1001-99

Profile of complainant: Female (ethnic origin unknown.)
Profile of respondent: Corporation.
Prohibited ground: Sex (pregnancy.)
Brief description of merits: Employment-related complaint. The complainant alleged that she her employment was terminated during her maternity leave and

that she did not receive health benefits during her employment leave.

Outcome: Complaint upheld relating to the failure to provide health benefits.

Trainor v Prince Edward Island (Department of Transportation) 1991/04/30

Profile of complainant: Male (ethnic origin unknown.)

Profile of respondent: Government.

Prohibited ground: (Associated) political belief.

Brief description of merits: Employment-related complaint. The complainant was laid off in the later half of 1985. A provincial general election was held in 1986 which the Liberal Party won. The applicant submitted a job application to the respondent but received no response. He alleged that at the time he believed in the tenets of the Progressive Conservative Party.

Outcome: Complaint dismissed.

Annexure E: Australian anti-discrimination legislation

Since its inception in Australia the basic structure of anti-discrimination legislation has remained the same. Specialist bodies were set up with its main focus on conciliation of individual complaints.¹ An individual must lodge a written complaint with the specialist body, usually a commission. A commissioner then undertakes an initial investigation to establish if the commission has jurisdiction and whether the complaint is meritorious. If the ruling is that the matter should proceed, conciliation must be attempted. If conciliation fails the matter may be referred to a tribunal hearing. It is possible to appeal from a tribunal to a court.²

E.1 Australian Capital Territories

The Australian Capital Territories *Discrimination Act 1991* prohibits discrimination on the grounds of sex; sexuality;³ transsexuality; marital status;⁴ status as a parent or carer; pregnancy; race;⁵ religious or political conviction; impairment;⁶ membership or non-membership of an association or organisation of employers or employees; age; profession, trade, occupation or calling; and association (whether as a relative or otherwise) with a person identified by reference to the prohibited grounds.⁷

¹ Bailey and Devereux in Kinley (ed) (1998) 292.

² Bailey and Devereux in Kinley (ed) (1998) 300.

³ "Sexuality" is defined as "heterosexuality, homosexuality (including lesbianism) or bisexuality".

⁴ "Marital status" is defined as "the status or condition of being (a) single; (b) married; (c) married but living separately and apart from one's spouse; (d) divorced; (e) widowed; or (f) the *de facto* spouse of another person". "*De facto* spouse" is defined as "in relation to a person, means a person of the opposite sex to the firstmentioned person who lives with the firstmentioned person as the husband or wife of that person on a *bona fide* domestic basis although not legally married to that person".

⁵ "Race" is defined as including "(a) colour, descent, ethnic and national origin and nationality; and (b) any 2 or more distinct races which are collectively referred to or known as race".

⁶ "Impairment" is defined as "(a) total or partial loss of a bodily function; (b) total or partial loss of a part of the body; (c) malfunction of a part of the body; (d) malformation or disfigurement of a part of the body; (e) the presence in the body of organisms that cause or are capable of causing disease; (f) an illness or condition which impairs a person's thought processes, perception of reality, emotions or judgment or which results in disturbed behaviour; or (g) an intellectual disability or developmental delay".

⁷ S 7(1). S 7(2) states that "A reference in this Act to an attribute that is referred to in subsection (1) shall be read as including a reference to— (a) a characteristic that persons with that attribute generally have; (b) a characteristic that persons with that attribute are generally presumed to have; (c) such an attribute that a person is presumed to have; and (d) such an attribute that the person had in the past but no longer has".

“Discrimination” is defined as follows in section 8(1):

For the purposes of this Act, a person discriminates against another person if—

- (a) the person treats or proposes to treat the other person unfavourably because the other person has an attribute referred to in section 7; or
- (b) the person imposes or proposes to impose a condition or requirement that has, or is likely to have, the effect of disadvantaging persons because they have an attribute referred to in section 7.⁸

Section 8(2) and 8(3) contain a general defence based on “reasonableness”:

- (2) Paragraph (1) (b) does not apply to a condition or requirement that is reasonable in the circumstances.
- (3) In determining whether a condition or requirement is reasonable in the circumstances, the matters to be taken into account include—
 - (a) the nature and extent of the resultant disadvantage;
 - (b) the feasibility of overcoming or mitigating the disadvantage; and
 - (c) whether the disadvantage is disproportionate to the result sought by the person who imposes or proposes to impose the condition or requirement.

The Act prohibits discrimination in the following sectors: work (including applicants for employment and employees,⁹ commission agents,¹⁰ contract workers,¹¹ partnerships,¹² professional or trade organizations,¹³ qualifying bodies¹⁴ and employment agencies¹⁵); education;¹⁶ access to premises;¹⁷ goods, services and facilities;¹⁸ accommodation¹⁹ and clubs.²⁰

⁸ S 7 contains the list of prohibited grounds.

⁹ Ss 10 and 11.

¹⁰ S 12.

¹¹ S 13.

¹² S 14: “(1) It is unlawful for any persons who are proposing to form themselves into a partnership to discriminate against a person— (a) in determining who should be invited to become a partner in the partnership; or (b) in the terms or conditions on which the person is invited to become a partner in the partnership. (2) It is unlawful for a partner in a partnership to discriminate against a person— (a) in determining who should be invited to become a partner in the partnership; or (b) in the terms or conditions on which the person is invited to become a partner in the partnership. (3) It is unlawful for a partner in a partnership to discriminate against another partner in the partnership— (a) by denying the partner access, or limiting the partner’s access, to any benefit arising from being a partner in the partnership; (b) by expelling the partner from the partnership; or (c) by subjecting the partner to any other detriment”.

¹³ S 15: “(1) In this section— “organisation” means an association or organisation of employers or employees. (2) It is unlawful for an organisation, the committee of management of an organisation or a member of the committee of management of an organisation to discriminate against a person who is not a member of the organisation— (a) by refusing or failing to accept the person’s application for membership; or (b) in the terms or conditions on which the organisation is prepared to admit the person to membership. (3) It is unlawful for an organisation, the committee of management of an organisation or a member of the committee of management of an organisation to discriminate



against a member of the organisation— (a) by denying the member access, or limiting the member's access, to any benefit provided by the organisation; (b) by depriving the member of membership or varying the terms of membership; or (c) by subjecting the member to any other detriment”.

¹⁴ S 16: “It is unlawful for an authority or body that is empowered to confer, renew, extend, revoke or withdraw an authorisation or qualification that is needed for or facilitates the practice of a profession, the carrying on of a trade or the engaging in of an occupation to discriminate against a person— (a) by refusing or failing to confer, renew or extend the authorisation or qualification; (b) in the terms or conditions on which it is prepared to confer, renew or extend the authorisation or qualification; (c) by revoking or withdrawing the authorisation or qualification or varying the terms or conditions on which it is held; or (d) by subjecting the person to any other detriment”.

¹⁵ S 17.

¹⁶ S 18: “(1) It is unlawful for an educational authority to discriminate against a person— (a) by refusing or failing to accept the person's application for admission as a student; or (b) in the terms or conditions on which it is prepared to admit the person as a student. (2) It is unlawful for an educational authority to discriminate against a student— (a) by denying the student access, or limiting the student's access, to any benefit provided by the authority; (b) by expelling the student; or (c) by subjecting the student to any other detriment”.

¹⁷ S 19: “It is unlawful for a person to discriminate against another person— (a) by refusing to allow the other person access to, or the use of, any premises that the public or a section of the public is entitled or allowed to enter or use (whether for payment or not); (b) in the terms or conditions on which the discriminator is prepared to allow the other person access to, or the use of, any such premises; (c) in relation to the provision of means of access to such premises; (d) by refusing to allow the other person the use of any facilities in such premises that the public or a section of the public is entitled or allowed to use (whether for payment or not); (e) in the terms or conditions on which the discriminator is prepared to allow the other person the use of any such facilities; or (f) by requiring the other person to leave such premises or cease to use such facilities”.

¹⁸ S 20: “It is unlawful for a person who (whether for payment or not) provides goods or services, or makes facilities available, to discriminate against another person— (a) by refusing to provide those goods or services or make those facilities available to the other person; (b) in the terms or conditions on which the firstmentioned person provides those goods or services or makes those facilities available to the other person; or (c) in the manner in which the firstmentioned person provides those goods or services or makes those facilities available to the other person”. “Services” are defined as including “(a) services relating to banking, insurance or the provision of grants, loans, credit or finance; (b) services relating to entertainment, recreation or refreshment; (c) services relating to transport or travel; (d) services of any profession, trade or business; (e) services provided by a government, a government authority, a local government body or a company or other body corporate in which a government has a controlling interest; and (f) the provision of scholarships, prizes or awards”.

¹⁹ S 21: “(1) It is unlawful for a person (whether as principal or agent) to discriminate against another person— (a) by refusing the other person's application for accommodation; (b) in the terms or conditions on which accommodation is offered to the other person; or (c) by deferring the other person's application for accommodation or according to the other person a lower order of precedence in any list of applicants for that accommodation. (2) It is unlawful for a person (whether as principal or agent) to discriminate against another person— (a) by denying the other person access, or limiting the other person's access, to any benefit associated with accommodation occupied by the other person; (b) by evicting the other person from accommodation occupied by the other person; or (c) by subjecting the other person to any other detriment in relation to accommodation occupied by the other person”.

²⁰ S 22: “(1) It is unlawful for a club, the committee of management of a club or a member of the committee of management of a club to discriminate against a person who is not a member of the club— (a) by refusing or failing to accept the person's application for membership; or (b) in the terms or conditions on which the club is prepared to admit the person to membership. (2) It is unlawful for a club, the committee of management of a club or a member of the committee of management of a club to discriminate against a member of the club— (a) in the terms or conditions of membership that are afforded to the member; (b) by refusing or failing to accept the member's application for a particular class or type of membership; (c) by denying the member access, or limiting the member's access, to any benefit provided by the club; (d) by depriving the member of membership or varying the terms of membership; or (e) by subjecting the member to any other detriment”.

The Act contains a bewildering array of exceptions to unlawful discrimination. Division 1 contains a number of general exceptions; division 2 deals with exceptions relating to sex, marital status or pregnancy, division 3 with race; division 4 with religious or political convictions, division 5 with impairment, division 6 with age and division 7 with exceptions relating to profession, trade, occupation or calling. I only deal with those defences not related to employment:

General exceptions relate to adoption,²¹ domestic accommodation,²² measures intended to achieve equality,²³ insurance,²⁴ superannuation,²⁵ acts done under statutory authority,²⁶ voluntary bodies,²⁷ religious bodies²⁸ and educational institutions conducted for religious purposes.²⁹

²¹ S 25A: “Nothing in this Act prevents the Director of Family Services from discriminating against a person in making a decision— (a) under paragraph 16 (1) (a) of the *Adoption Act 1993* in relation to the inclusion of the person’s name in the register of persons seeking the placement of a child for the purposes of adoption; (b) under paragraph 16 (1) (b) of the *Adoption Act 1993* in relation to the placement of a child in the custody of that person; or (c) under subsection 17 (4) of the *Adoption Act 1993* confirming or varying a decision under paragraph 16 (1) (a) of that Act”.

²² S 26: “Nothing in section 21 renders unlawful discrimination in relation to— (a) the provision of accommodation if— (i) the person who provides or proposes to provide the accommodation or a near relative of that person resides, and intends to continue to reside, on those premises; and (ii) the accommodation provided in those premises is for no more than 6 persons other than the person referred to in subparagraph (i) or near relatives of such a person; (b) the provision of accommodation by a religious body for members of a relevant class of persons; or (c) the provision of accommodation by a charitable or voluntary body for members of a relevant class of persons”.

²³ S 27: “Nothing in Part III renders it unlawful to do an act a purpose of which is— (a) to ensure that members of a relevant class of persons have equal opportunities with other persons; or (b) to afford members of a relevant class of persons access to facilities, services or opportunities to meet their special needs”.

²⁴ S 28: “Nothing in Part III renders it unlawful for a person to discriminate against another person with respect to the terms on which an annuity or a policy of insurance is offered to, or may be obtained by, the other person, if the discrimination is reasonable in the circumstances, having regard to any actuarial or statistical data on which it is reasonable for the firstmentioned person to rely”.

²⁵ S 29: “(1) Nothing in Part III renders it unlawful for a person to discriminate against another person in the terms or conditions relating to a superannuation or provident fund or scheme. (2) In the case of discrimination on the ground of age, subsection (1) only applies where— (a) the discrimination is due to the application of a standard in force under the *Superannuation (Excluded Funds) Taxation Act 1987* of the Commonwealth; (b) the discrimination is for the purpose of— (i) complying with; (ii) avoiding a penalty under; or (iii) obtaining a benefit under; any other Act of the Commonwealth; (c) the discrimination is— (i) based on actuarial or statistical data on which it is reasonable to rely; and (ii) reasonable having regard to the data and any other relevant factors; (d) if there are no actuarial or statistical data on which it is reasonable to rely—the discrimination is— (i) based on other data on which it is reasonable to rely; and (ii) reasonable having regard to that data and any other relevant factors; or (e) if there are no data at all on which it is reasonable to rely—the discrimination is reasonable having regard to any other relevant factors. (3) Subsection (2) applies in relation to a new superannuation fund condition irrespective of— (a) whether the fund was in existence immediately before the commencement date; and (b) when the person to whom the discrimination relates became a member of the fund. (4) Subsection (2) does not apply in relation to an existing superannuation fund condition where the person to whom the discrimination relates became a member of the fund before, or not later than 12 months after, the commencement date. (5) In this section— “commencement date” means the date of commencement of the *Discrimination (Amendment) Act 1994*; “existing superannuation fund condition” means a superannuation fund condition in existence immediately before the commencement date; “new superannuation fund condition” means— (a) a superannuation fund condition that came into existence on or after the commencement date; or (b) an alteration made on or after the commencement date to an existing superannuation fund condition”.



Exceptions dealing with sex, marital status and pregnancy relate to educational institutions for members of one sex,³⁰ rights and privileges in connection with pregnancy or childbirth,³¹ services

²⁶ S 30: '(1) Nothing in this Act renders unlawful anything done necessarily for the purpose of complying with a requirement of— (a) a law of the Territory; (b) a determination or direction made under a law of the Territory; (c) an order of a court; or (d) an order made by the Tribunal under Division 4 of Part VIII. (2) Paragraphs (1) (a) and (b) cease to have effect on a day (not earlier than 2 years after the commencement of this section) fixed by the Minister by notice in the *Gazette*'.

²⁷ S 31: "Nothing in Part III renders it unlawful for a voluntary body to discriminate against a person in connection with— (a) the admission of persons as members of the body; or (b) the provision of benefits, facilities or services to persons, whether those persons are members of the body or otherwise".

²⁸ S 32: "Nothing in Part III applies in relation to— (a) the ordination or appointment of priests, ministers of religion or members of any religious order; (b) the training or education of persons seeking ordination or appointment as priests, ministers of religion or members of a religious order; (c) the selection or appointment of persons to perform duties or functions for the purposes of, or in connection with, any religious observance or practice; or (d) any other act or practice of a body established for religious purposes, being an act or practice that conforms to the doctrines, tenets or beliefs of that religion and is necessary to avoid injury to the religious susceptibilities of adherents of that religion".

²⁹ S 33: "(1) Nothing in section 10 or 13 renders it unlawful for a person to discriminate against another person in connection with— (a) employment as a member of the staff of an educational institution; or (b) a position as a contract worker that involves the doing of work in an educational institution; being an institution that is conducted in accordance with the doctrines, tenets, beliefs or teachings of a particular religion or creed, if the firstmentioned person so discriminates in good faith in order to avoid injury to the religious susceptibilities of adherents of that religion or creed. (2) Nothing in section 18 renders it unlawful for a person to discriminate against another person in connection with the provision of education or training by an educational institution that is conducted in accordance with the doctrines, tenets, beliefs or teachings of a particular religion or creed, if the firstmentioned person so discriminates in good faith in order to avoid injury to the religious susceptibilities of adherents of that religion or creed".

³⁰ S 36: "Nothing in section 18 renders unlawful discrimination on the ground of sex in relation to a refusal or failure to accept a person's application for admission as a student at an educational institution that is conducted solely for students of the opposite sex to that of the applicant".

³¹ S 37: "Nothing in Part III renders it unlawful for a person to discriminate against a man on the ground of sex by reason only of the fact that the firstmentioned person grants to a woman rights or privileges in connection with pregnancy or childbirth".

for members of one sex,³² students at an educational institution,³³ clubs for members of one sex³⁴ and sport.³⁵

Clubs for members of one race are allowed under particular circumstances.³⁶

(1) Nothing in section 22 renders unlawful discrimination on the ground of race in relation to a club that has as its principal object the provision of benefits for persons of a specified race if those persons are described otherwise than—

- (a) by reference to colour; or
- (b) in a manner which has the effect of excluding some members of that race on the basis of colour.

(2) In determining whether the principal object of a club is as referred to in subsection (1), regard shall be had to—

- (a) the essential character of the club;
- (b) whether the persons primarily enjoying the benefits of membership are of the race specified in the principal object; and
- (c) any other relevant circumstance.

The Act also contains an exception relating to religious educational institutions.³⁷

“Unjustifiable hardship” is a disability-specific defence. It is defined as follows:³⁸

³² S 38: “Nothing in Part III renders unlawful discrimination on the ground of sex in relation to the provision of services the nature of which is such that they can only be provided to members of one sex”.

³³ S 39(2): “Nothing in Part III renders unlawful discrimination on the ground of sex in relation to the provision of accommodation where the accommodation is provided solely for persons of one sex who are students at an educational institution”.

³⁴ S 40: “(1) Nothing in section 22 renders it unlawful to discriminate against a person on the ground of that person’s sex if membership of the relevant club is available only to persons of the opposite sex. (2) Nothing in paragraph 22 (1) (b) or subsection 22 (2) renders it unlawful to discriminate against a person on the ground of sex if the discrimination occurs in relation to the use or enjoyment of any benefit provided by the relevant club where— (a) it is not practicable for the benefit to be used or enjoyed, either simultaneously or to the same extent, by both men and women; and (b) either— (i) the same, or an equivalent, benefit is provided for the use of men and women separately from each other; or (ii) men and women are each entitled to a fair and reasonable proportion of the use and enjoyment of the benefit. (3) In determining any matter relating to the application of subsection (2), regard shall be had to— (a) the purposes for which the club is established; (b) the membership of the club, including any class or type of membership; (c) the nature of the benefits provided by the club; (d) the opportunities for the use and enjoyment of those benefits by men and women; and (e) any other relevant circumstances”.

³⁵ S 41: “(1) Nothing in Part III renders unlawful discrimination on the ground of sex in relation to the exclusion of persons of one sex from participation in any competitive sporting activity in which the strength, stamina or physique of competitors is relevant. (2) Subsection (1) does not apply in relation to the exclusion of persons from participation in— (a) the coaching of persons engaged in any sporting activity; (b) the umpiring or refereeing of any sporting activity; (c) the administration of any sporting activity; or (d) any prescribed sporting activity”.

³⁶ S 43.

³⁷ S 46: “Nothing in section 18 renders unlawful discrimination on the ground of religious conviction in relation to a refusal or failure to accept a person’s application for admission as a student at an educational institution that is conducted solely for students having a religious conviction other than that of the applicant”.

In determining what constitutes unjustifiable hardship for the purposes of this Division, all relevant circumstances of the particular case shall be taken into account, including the nature of the benefit or detriment likely to accrue or be suffered by all persons concerned, the nature of the impairment of the person concerned and the financial circumstances of, and the estimated amount of expenditure required to be made by, the person claiming unjustifiable hardship.

This defence applies to discrimination by educational institutions,³⁹ in access to premises,⁴⁰ in the provision of goods and services,⁴¹ concerning accommodation⁴² and by clubs.⁴³

The Act also contains a number of other impairment-related exceptions relating to discrimination by qualifying bodies,⁴⁴ by educational institutions,⁴⁵ by clubs,⁴⁶ in public health⁴⁷ and in sport.⁴⁸

³⁸ S 47.

³⁹ S 51(2): "Nothing in section 18 renders unlawful discrimination on the ground of impairment in relation to a refusal or failure to accept an application by a person who has an impairment for admission as a student at an educational institution where the person, if so admitted, would require services or facilities that are not required by students who do not have an impairment, the provision of which would impose unjustifiable hardship on the relevant educational authority".

⁴⁰ S 52: "(1) Nothing in section 19 renders unlawful discrimination on the ground of impairment in relation to the provision of access to premises if— (a) the premises are so designed or constructed as to be inaccessible to a person who has an impairment; and (b) any alteration of the premises to provide such access would impose unjustifiable hardship on the person who would have to provide that access. (2) Subsection (1) does not apply in relation to a building the construction of which commences on or after a date fixed by the Minister for the purposes of this section by notice published in the *Gazette*. (3) For the purposes of this section, the construction of a building shall be taken to commence on the day on which a building approval in respect of the erection of the building is granted under the *Building Act 1972*".

⁴¹ S 53: "(1) Nothing in section 20 renders unlawful discrimination on the ground of impairment in relation to the provision of goods, services or facilities where— (a) because of a person's impairment, the goods, services or facilities would have to be provided in a special manner; and (b) their provision in that manner would impose unjustifiable hardship on the person providing, or proposing to provide, the goods, services or facilities. (2) In subsection (1), a reference to services shall be taken to include a reference to services provided by an employment agency".

⁴² S 54: "Nothing in section 21 renders unlawful discrimination on the ground of impairment in relation to the provision of accommodation to a person who has an impairment if special services or facilities are, or would be, required by the person and their provision would impose unjustifiable hardship on the person providing or proposing to provide the accommodation".

⁴³ S 55(3): "(3) Nothing in section 22 renders it unlawful to discriminate against a person on the ground of impairment if the discrimination occurs in relation to the enjoyment of any benefit provided by a club where— (a) because of the person's impairment, the benefit would have to be provided to the person in a special manner; and (b) the provision of the benefit in that manner would impose unjustifiable hardship on the club".

⁴⁴ S 50: "Nothing in section 16 renders unlawful discrimination by an authority or body against a person on the ground of impairment if the authority or body believes on reasonable grounds that, because of an impairment, the person is, or would be, unable to carry out work that is essential to the position concerned".

⁴⁵ S 51(1): "(1) Nothing in section 18 renders unlawful discrimination on the ground of impairment in relation to a refusal or failure to accept a person's application for admission as a student at an educational institution that is conducted solely for students who have an impairment which the applicant does not have".

Exemptions dealing with age discrimination relate to minimum age admission requirements to educational institutions,⁴⁹ legal capacity,⁵⁰ benefits and concessions,⁵¹ health and safety considerations relating to goods and services,⁵² recreational tours and accommodation,⁵³ clubs⁵⁴ and sport.⁵⁵

⁴⁶ S 55(1) and (2): “(1) Nothing in section 22 renders unlawful discrimination on the ground of impairment in relation to a club that has as its principal object the provision of benefits to persons who have a particular impairment. (2) In determining whether the principal object of a club is as referred to in subsection (1), regard shall be had to— (a) the essential character of the club; (b) whether the persons primarily enjoying the benefits of membership have the particular impairment; and (c) any other relevant circumstance”.

⁴⁷ S 56: “Nothing in Part III renders unlawful discrimination against a person on the ground of impairment if the discrimination is necessary and reasonable to protect public health”.

⁴⁸ S 57: “(1) Nothing in Part III renders unlawful discrimination on the ground of impairment in relation to the exclusion of a person from participation in any competitive sporting activity if— (a) the person has an impairment and the activity requires physical or intellectual attributes that the person does not possess; or (b) where the activity is conducted wholly or mainly for persons who have a particular kind of impairment—the person does not have an impairment of that kind. (2) Subsection (1) does not apply in relation to the exclusion of persons from participation in— (a) the coaching of persons engaged in any sporting activity; (b) the umpiring or refereeing of any sporting activity; (c) the administration of any sporting activity; or (d) any prescribed sporting activity”.

⁴⁹ S 57E: “(1) Nothing in section 18 renders it unlawful to discriminate against a person on the ground of age in respect of the admission of the person to an educational institution where the level of education or training sought is provided only for students older than a particular age. (2) Nothing in section 18 renders it unlawful to refuse or fail to accept an application for admission as a student at an educational institution under a mature age admission scheme, where the application is made by a person whose age is below the minimum age fixed under that scheme for admission”.

⁵⁰ S 57G: “Nothing in Part III renders it unlawful to discriminate against a person on the ground of age in relation to any transaction where the person is subject to a legal incapacity due to his or her age which is relevant to that transaction”.

⁵¹ S 57H: “Nothing in Division 2 of Part III renders it unlawful to discriminate against a person in relation to the provision of bona fide benefits, including concessions, to another person by reason of his or her age”.

⁵² S 57J: “(1) Nothing in section 19 or 20 renders it unlawful to discriminate against a person on the ground of age in relation to the provision of goods, services or facilities where that discrimination is practised in order to comply with reasonable health and safety requirements relevant to such provision. (2) In determining for the purposes of subsection (1) what health and safety requirements are reasonable, regard shall be had to all the relevant circumstances of the particular case, including the effects of the discrimination on the person discriminated against”.

⁵³ S 57K: “Nothing in section 20 or 21 renders it unlawful to discriminate against a person on the ground of age in relation to the provision of a recreational tour or recreational accommodation”.

⁵⁴ S 57L: “(1) Nothing in section 20 or 22 renders it unlawful for a club to discriminate against a person on the ground of age where the club’s principal object is the provision of benefits for persons belonging to a particular age group. (2) In determining whether the principal object of a club is as referred to in subsection (1), regard shall be had to— (a) the essential character of the club; (b) whether the persons primarily enjoying the benefits of membership belong to the particular age group specified in the club’s objects; and (c) any other relevant circumstance”.

⁵⁵ S 57M: “(1) Nothing in Part III renders it unlawful to discriminate against a person on the ground of age by his or her exclusion from participation in any competitive sporting activity where competition is only permitted between persons belonging to a particular age group. (2) Subsection (1) does not apply in relation to the exclusion of persons from participation in— (a) the coaching of persons engaged in any sporting activity; (b) the umpiring or refereeing of any sporting activity; (c) the administration of any sporting activity; or (d) any sporting activity prescribed by the Regulations”.



The Act contains a “relevant and reasonable” exception relating to discrimination in profession, trade, occupation or calling.⁵⁶

It is also possible to apply to the Discrimination Commissioner to be exempted from a particular provision of the Act.⁵⁷

The burden of establishing the exception, excuse, qualification or exemption rests on the person who relies on it.⁵⁸

The Act prohibits sexual harassment,⁵⁹ racial vilification,⁶⁰ victimization⁶¹ and unlawful advertising.⁶²

E.2 New South Wales

The New South Wales *Anti-Discrimination Act 1977* follows a somewhat jumbled approach. The Act does not contain a general definition of discrimination and does not contain a single list of prohibited grounds. Instead the Act is divided into a number of parts, each dealing with a singular ground, and each of the parts are divided into a number of divisions. Part 2 deals with racial discrimination. Division 1 contains a definition of discrimination based on race,⁶³ division 2 relates

⁵⁶ S 57N: “Nothing in Part III renders it unlawful to discriminate against a person on the ground of the profession, trade, occupation or calling of the person in relation to any transaction where profession, trade, occupation or calling is relevant to that transaction and the discrimination is reasonable in those circumstances”.

⁵⁷ S 109.

⁵⁸ S 71(2).

⁵⁹ Ss 58-64.

⁶⁰ Ss 65-67.

⁶¹ S 68.

⁶² S 69.

⁶³ S 7: “(1) A person (the perpetrator) discriminates against another person (the aggrieved person) on the ground of race if, on the ground of the aggrieved person's race or the race of a relative or associate of the aggrieved person, the perpetrator: (a) treats the aggrieved person less favourably than in the same circumstances, or in circumstances which are not materially different, the perpetrator treats or would treat a person of a different race or who has such a relative or associate of a different race, or (b) segregates the aggrieved person from persons of a different race or from persons who have such a relative or associate of a different race, or (c) requires the aggrieved person to comply with a requirement or condition with which a substantially higher proportion of persons not of that race, or who have such a relative or associate not of that race, comply or are able to comply, being a requirement which is not reasonable having regard to the circumstances of the case and with which the aggrieved person does not or is not able to comply. (2) For the purposes of subsection (1) (a) and (b), something is done on the ground of a person's race if it is done on the ground of the person's race, a characteristic that appertains generally to persons of that race or a characteristic that is generally imputed to persons of that race”.

to discrimination in work,⁶⁴ division 3 deals with discrimination in education,⁶⁵ the provision of goods and services,⁶⁶ accommodation⁶⁷ and registered clubs.⁶⁸ Division 3A prohibits racial vilification and division 4 contains two exceptions. Part 2A prohibits sexual harassment. Part 3 prohibits sex discrimination. Division 1 contains a general definition of sex discrimination;⁶⁹ division

⁶⁴ This division relates to applicants for employment and employees, commission agents, contract workers, partnerships consisting of 6 or more partners, local government councillors, industrial organisations, qualifying bodies and employment agencies. Ss 8-16.

⁶⁵ S 17: "(1) It is unlawful for an educational authority to discriminate against a person on the ground of race: (a) by refusing or failing to accept the person's application for admission as a student, or (b) in the terms on which it is prepared to admit the person as a student. (2) It is unlawful for an educational authority to discriminate against a student on the ground of race: (a) by denying the student access, or limiting the student's access, to any benefit provided by the educational authority, or (b) by expelling the student or subjecting the student to any other detriment. (3) Nothing in this section applies to or in respect of a prescribed educational authority in relation to such circumstances, if any, as may be prescribed".

⁶⁶ S 19: "It is unlawful for a person who provides (whether or not for payment) goods or services to discriminate against another person on the ground of race: (a) by refusing to provide the person with those goods or services, or (b) in the terms on which the other person is provided with those goods or services".

⁶⁷ S 20: "(1) It is unlawful for a person, whether as principal or agent, to discriminate against another person on the ground of race: (a) by refusing the person's application for accommodation, (b) in the terms on which the person offers the person accommodation, or (c) by deferring the person's application for accommodation or according the person a lower order of precedence in any list of applicants for that accommodation. (2) It is unlawful for a person, whether as principal or agent, to discriminate against another person on the ground of race: (a) by denying the person access, or limiting the person's access, to any benefit associated with accommodation occupied by the person, or (b) by evicting the person or subjecting the person to any other detriment. (3) Nothing in this section applies to or in respect of the provision of accommodation in premises if: (a) the person who provides or proposes to provide the accommodation or a near relative of that person resides, and intends to continue to reside, on those premises, and (b) the accommodation provided in those premises is for no more than 6 persons".

⁶⁸ S 20A: "(1) It is unlawful for a registered club to discriminate against a person who is not a member of the registered club on the ground of race: (a) by refusing or failing to accept the person's application for membership, or (b) in the terms on which it is prepared to admit the person to membership. (2) It is unlawful for a registered club to discriminate against a person who is a member of the registered club on the ground of race: (a) by denying the person access, or limiting the person's access, to any benefit provided by the registered club, (b) by depriving the person of membership or varying the terms of the person's membership, or (c) by subjecting the person to any other detriment. (3) Nothing in subsection (1) or (2) applies to or in respect of a registered club if the principal object of the registered club is to provide benefits for persons of a specified race defined otherwise than by reference to: (a) colour, or (b) a description which has the effect of excluding persons of that race who are of a different colour from those persons, or the majority of those persons, who do not come within that description. (4) In determining whether the principal object of a registered club is as referred to in subsection (3), regard shall be had to: (a) the essential character of the registered club, (b) the extent to which the affairs of the registered club are so conducted that the persons primarily enjoying the benefits of membership are of the race specified in the principal object, and (c) any other relevant circumstance".

⁶⁹ S 24: "(1) A person (the perpetrator) discriminates against another person (the aggrieved person) on the ground of sex if, on the ground of the aggrieved person's sex or the sex of a relative or associate of the aggrieved person, the perpetrator: (a) treats the aggrieved person less favourably than in the same circumstances, or in circumstances which are not materially different, the perpetrator treats or would treat a person of the opposite sex or who does not have such a relative or associate of that sex, or (b) requires the aggrieved person to comply with a requirement or condition with which a substantially higher proportion of persons of the opposite sex, or who do not have such a relative or associate of that sex, comply or are able to comply, being a requirement which is not reasonable having regard to the circumstances of the case and with which the aggrieved person does not or is not able to comply. (1A) For the purposes of subsection (1) (a), something is done on the ground of a person's sex if it is done on the ground of the person's sex, a characteristic that appertains generally to persons of that sex or a characteristic that is generally imputed to persons of that sex. (1B) For the purposes of this section, but without limiting the generality of this section,



2 relates to discrimination in work,⁷⁰ division 3 relates to discrimination in education,⁷¹ the provision of goods and services,⁷² accommodation⁷³ and registered clubs⁷⁴ and division 4 contains a number

the fact that a woman is or may become pregnant is a characteristic that appertains generally to women. (2) For the purposes of subsection (1), the circumstances in which a person treats or would treat another person of the opposite sex are not materially different by reason of the fact that the persons between whom the discrimination occurs: (a) are a woman who is pregnant and a man, or (b) are not of the same marital status”.

⁷⁰ The division relates to applicants for employment and employees, commission agents, contract workers, partnerships, local government councillors, industrial organisation, qualifying bodies and employment agencies. Ss 25-30.

⁷¹ S 31A: “(1) It is unlawful for an educational authority to discriminate against a person on the ground of sex: (a) by refusing or failing to accept the person’s application for admission as a student, or (b) in the terms on which it is prepared to admit the person as a student. (2) It is unlawful for an educational authority to discriminate against a student on the ground of sex: (a) by denying the student access, or limiting the student’s access, to any benefit provided by the educational authority, or (b) by expelling the student or subjecting the student to any other detriment. (3) Nothing in this section applies to or in respect of: (a) a private educational authority, or (b) a refusal or failure to accept a person’s application for admission as a student by an educational authority where the educational authority administers a school, college, university or other institution which is conducted solely for students of the opposite sex to the sex of the applicant. (4) The admission into any such school, college, university or other institution of a transgender person as referred to in Part 3A who identifies with the sex of persons for whom the school, college, university or other institution is conducted does not, for the purposes of subsection (3) (b), affect its status as a school, college, university or other institution conducted solely for students of the same sex”.

⁷² S 33: “(1) It is unlawful for a person who provides, for payment or not, goods or services to discriminate against another person on the ground of sex: (a) by refusing to provide the person with those goods or services, or (b) in the terms on which he or she provides the person with those goods or services. (2) Where a skill is commonly exercised in a different way in relation to men and women, a person does not contravene subsection (1) by exercising the skill in relation to men only, or women only, in accordance with the person’s normal practice”.

⁷³ S 34: “(1) It is unlawful for a person, whether as principal or agent, to discriminate against another person on the ground of sex: (a) by refusing the person’s application for accommodation, (b) in the terms on which he or she offers the person accommodation, or (c) by deferring the person’s application for accommodation or according to the person a lower order of precedence in any list of applicants for that accommodation. (2) It is unlawful for a person, whether as principal or agent, to discriminate against another person on the ground of sex: (a) by denying the person access, or limiting the person’s access, to any benefit associated with accommodation occupied by the person, or (b) by evicting the person or subjecting the person to any other detriment. (3) Nothing in this section applies to or in respect of the provision of accommodation in premises if: (a) the person who provides or proposes to provide the accommodation or a near relative of that person resides, and intends to continue to reside, on those premises, and (b) the accommodation provided in those premises is for no more than 6 persons.

⁷⁴ S 34A: “(1) It is unlawful for a registered club to discriminate against a person who is not a member of the registered club on the ground of sex: (a) by refusing or failing to accept the person’s application for membership, or (b) in the terms on which it is prepared to admit the person to membership. (2) It is unlawful for a registered club to discriminate against a person who is a member of a registered club on the ground of sex: (a) by denying the person access, or limiting the person’s access, to any benefit provided by the registered club, (b) by depriving the person of membership or varying the terms of the person’s membership, or (c) by subjecting the person to any other detriment. (3) Nothing in subsection (1) or (2) renders unlawful discrimination by a registered club against a person on the ground of sex if membership of the registered club is available to persons of the opposite sex only. (3A) The admission into any such registered club of a transgender person as referred to in Part 3A who identifies with the sex of persons for whom membership of the registered club is available does not, for the purposes of subsection (3), affect its status as a registered club the membership of which is available to persons of the same sex only. (4) Nothing in subsection (1) (paragraph (a) excepted) or subsection (2) renders unlawful discrimination by a registered club against a person on the ground of sex if the discrimination occurs in relation to the use or enjoyment of any benefit provided by the registered club where: (a) it is not practicable for the benefit to be used or enjoyed: (i) simultaneously, or (ii) to the same extent, by both men and women, and (b) either: (i) the same, or an equivalent, benefit is provided for the use of men and women separately from each other, or (ii) men and women are each entitled to a fair and reasonable proportion of the use and enjoyment of the benefit. (5) In determining any matter relating to the application of subsection (4), regard

of exceptions relating to benefits in connection with pregnancy or childbirth,⁷⁵ superannuation,⁷⁶ insurance⁷⁷ and sport.⁷⁸ Part 3A prohibits discrimination on transgender grounds. Division 1 contains a general definition,⁷⁹ division 2 relates to work discrimination,⁸⁰ division 3 prohibits discrimination in education,⁸¹ goods and services,⁸² accommodation⁸³ and registered clubs,⁸⁴

shall be had to: (a) the purposes for which the registered club is established, (b) the membership of the registered club, including any class or type of membership, (c) the nature of the benefits provided by the registered club, (d) the opportunities for the use and enjoyment of those benefits by men and women, and (e) any other relevant circumstance.

⁷⁵ S 35: "Nothing in this Part renders unlawful discrimination by a person against a man on the ground of sex by reason only of the fact that that person grants to a woman rights or privileges in connection with pregnancy or childbirth".

⁷⁶ S 36: "Nothing in this Part renders unlawful discrimination on the ground of sex in the terms or conditions appertaining to a superannuation or provident fund or scheme, where: (a) the terms or conditions: (i) are based upon actuarial or statistical data on which it is reasonable to rely, and (ii) are reasonable having regard to the data and any other relevant factors, or (b) in a case where no such actuarial or statistical data is available and cannot reasonably be obtained--the terms or conditions are reasonable having regard to any other relevant factors, and the source on which any data referred to in paragraph (a) is based is disclosed to the Tribunal, where the Tribunal so requires, and any other relevant factors to which regard has been had as referred to in paragraph (a) or (b) are disclosed to the Tribunal, where the Tribunal so requires".

⁷⁷ S 37: "Nothing in this Part renders unlawful discrimination on the ground of sex with respect to the terms on which an annuity, a life assurance policy, an accident or insurance policy or other policy of insurance is offered or may be obtained where: (a) the discrimination is: (i) based upon actuarial or statistical data from a source on which it is reasonable to rely, and (ii) reasonable having regard to the data and any other relevant factors, and (b) the source on which the actuarial or statistical data referred to in paragraph (a) (i) is based is disclosed to the Tribunal, where the Tribunal so requires".

⁷⁸ S 38: "Nothing in this Part renders unlawful the exclusion of persons of the one sex from participation in any sporting activity not being the coaching of persons engaged in any sporting activity, the administration of any sporting activity or any prescribed sporting activity".

⁷⁹ S 38B: "(1) A person (the perpetrator) discriminates against another person (the aggrieved person) on transgender grounds if, on the ground of the aggrieved person being transgender or a relative or associate of the aggrieved person being transgender, the perpetrator: (a) treats the aggrieved person less favourably than in the same circumstances (or in circumstances which are not materially different) the perpetrator treats or would treat a person who he or she did not think was a transgender person or who does not have such a relative or associate who he or she did not think was a transgender person, or (b) requires the aggrieved person to comply with a requirement or condition with which a substantially higher proportion of persons who are not transgender persons, or who do not have a relative or associate who is a transgender person, comply or are able to comply, being a requirement which is not reasonable having regard to the circumstances of the case and with which the aggrieved person does not or is not able to comply, or (c) treats the aggrieved person, being a recognised transgender person, as being of the person's former sex or requires the aggrieved person, being a recognised transgender person, to comply with a requirement or condition with which a substantially higher proportion of persons of the person's former sex comply or are able to comply, being a requirement or condition which is not reasonable having regard to the circumstances of the case and with which the aggrieved person does not or is not able to comply. (2) For the purposes of subsection (1) (a), something is done on the ground of a person being transgender if it is done on the ground of the person being transgender, a characteristic that appertains generally to transgender persons or a characteristic that is generally imputed to transgender persons.

⁸⁰ The division relates to applicants for employment and employees, commission agents, contract workers, partnerships, local government councillors, industrial organisations, qualifying bodies and employment agencies. Ss 38C-38J.

⁸¹ S 38K: "(1) It is unlawful for an educational authority to discriminate against a person on transgender grounds: (a) by refusing or failing to accept the person's application for admission as a student, or (b) in the terms on which it is prepared to admit the person as a student. (2) It is unlawful for an educational authority to discriminate against a student on transgender grounds: (a) by denying the student access, or limiting the student's access, to any benefit provided by the educational authority, or (b) by expelling the student or subjecting the student to any other detriment. (3) Nothing in this section applies to or in respect of a private educational authority".



division 4 contains exceptions relating to sport⁸⁵ and superannuation,⁸⁶ and division 5 prohibits transgender vilification. Part 4 prohibits discrimination based on marital status. Division 1 contains a general definition,⁸⁷ division 2 relates to work discrimination,⁸⁸ division 3 prohibits discrimination in education,⁸⁹ goods and services,⁹⁰ accommodation⁹¹ and registered clubs⁹² and division 4

⁸² S 38M: "It is unlawful for a person who provides (whether or not for payment) goods or services to discriminate against another person on transgender grounds: (a) by refusing to provide the person with those goods or services, or (b) in the terms on which the other person is provided with those goods or services".

⁸³ S 38N: "(1) It is unlawful for a person, whether as principal or agent, to discriminate against another person on transgender grounds: (a) by refusing the person's application for accommodation, or (b) in the terms on which he or she offers the person accommodation, or (c) by deferring the person's application for accommodation or giving the person a lower order of precedence in any list of applicants for that accommodation. (2) It is unlawful for a person, whether as principal or agent, to discriminate against another person on transgender grounds: (a) by denying the person access, or limiting the person's access, to any benefit associated with accommodation occupied by the person, or (b) by evicting the person or subjecting the person to any other detriment. (3) Nothing in this section applies to or in respect of the provision of accommodation in premises if: (a) the person who provides or proposes to provide the accommodation or a near relative of that person resides, and intends to continue to reside, in those premises, and (b) the accommodation provided in those premises is for no more than 6 persons".

⁸⁴ S 38O: "(1) It is unlawful for a registered club to discriminate on transgender grounds against a person who is not a member of the registered club: (a) by refusing or failing to accept the person's application for membership of the club, or (b) in the terms on which it is prepared to admit the person to membership of the club. (2) It is unlawful for a registered club to discriminate on transgender grounds against a member of the registered club: (a) by denying the member access, or limiting the members' access, to any benefit provided by the club, or (b) by depriving the member of membership or varying the terms of his or her membership, or (c) by subjecting the member to any other detriment".

⁸⁵ S 38P: "(1) Nothing in this Part renders unlawful the exclusion of a transgender person from participation in any sporting activity for members of the sex with which the transgender person identifies. (2) Subsection (1) does not apply: (a) to the coaching of persons engaged in any sporting activity, or (b) to the administration of any sporting activity, or (c) to any sporting activity prescribed by the regulations for the purposes of this section".

⁸⁶ S 39Q: "A person does not discriminate against a transgender person (whether or not a recognised transgender person) on transgender grounds if, in the administration of a superannuation or provident fund or scheme, the other person treats the transgender person as being of the opposite sex to the sex with which the transgender person identifies.

⁸⁷ S 39: "(1) A person (the perpetrator) discriminates against another person (the aggrieved person) on the ground of marital status if, on the ground of the aggrieved person's marital status or the marital status of a relative or associate of the aggrieved person, the perpetrator: (a) treats the aggrieved person less favourably than in the same circumstances, or in circumstances which are not materially different, the perpetrator treats or would treat a person of a different marital status or who does not have such a relative or associate of that marital status, or (b) requires the aggrieved person to comply with a requirement or condition with which a substantially higher proportion of persons of a different marital status, or who do not have such a relative or associate of that marital status, comply or are able to comply, being a requirement which is not reasonable having regard to the circumstances of the case and with which the aggrieved person does not or is not able to comply. (1A) For the purposes of subsection (1) (a), something is done on the ground of a person's marital status if it is done on the ground of the person's marital status, a characteristic that appertains generally to persons of that marital status or a characteristic that is generally imputed to persons of that marital status. (2) For the purposes of subsection (1), the circumstances in which a person treats or would treat another person of a different marital status are not materially different by reason of the fact that the persons between whom the discrimination occurs are not of the same sex".

⁸⁸ The division relates to applicants for employment and employees, commission agents, contract workers, partnerships, local government councillors, industrial organisations, qualifying bodies and employment agencies. Ss 40-46.

⁸⁹ S 46A: "(1) It is unlawful for an educational authority to discriminate against a person on the ground of marital status: (a) by refusing or failing to accept the person's application for admission as a student, or (b) in the terms on which it is prepared to admit the person as a student. (2) It is unlawful for an educational authority to discriminate against a

contains an exception relating to superannuation.⁹³ Part 4A prohibits disability discrimination. Division 1 contains a general definition.⁹⁴ All the other divisions in one or the other way refer to “unjustifiable hardship”. The concept is defined as follows:⁹⁵

student on the ground of marital status: (a) by denying the student access, or limiting the student's access, to any benefit provided by the educational authority, or (b) by expelling the student or subjecting the student to any other detriment. (3) Nothing in this section applies to or in respect of a private educational authority”.

⁹⁰ S 47: “(1) It is unlawful for a person who provides, for payment or not, goods or services to discriminate against a person on the ground of marital status: (a) by refusing to provide the person with those goods or services, or (b) in the terms on which he or she provides the person with those goods or services”.

⁹¹ S 48: “(1) It is unlawful for a person, whether as principal or agent, to discriminate against another person on the ground of marital status: (a) by refusing the person's application for accommodation, (b) in the terms on which he or she offers the person accommodation, or (c) by deferring the person's application for accommodation or according the person a lower order of precedence in any list of applicants for that accommodation. (2) It is unlawful for a person, whether as principal or agent, to discriminate against another person on the ground of marital status: (a) by denying the person access, or limiting the person's access, to any benefit associated with accommodation occupied by the person, or (b) by evicting the person or subjecting the person to any other detriment. (3) Nothing in this section applies to or in respect of the provision of accommodation in premises if: (a) the person who provides or proposes to provide the accommodation or a near relative of that person resides, and intends to continue to reside, on those premises, and (b) the accommodation provided in those premises is for no more than 6 persons”.

⁹² S 48A: “(1) It is unlawful for a registered club to discriminate against a person who is not a member of the registered club on the ground of marital status: (a) by refusing or failing to accept the person's application for membership, or (b) in the terms on which it is prepared to admit the person to membership. (2) It is unlawful for a registered club to discriminate against a person who is a member of the registered club on the ground of marital status: (a) by denying the person access, or limiting the person's access, to any benefit provided by the registered club, (b) by depriving the person of membership or varying the terms of the person's membership, or (c) by subjecting the person to any other detriment”.

⁹³ S 49: “Nothing in this Part renders unlawful discrimination on the ground of marital status in the terms or conditions appertaining to a superannuation or provident fund or scheme, where: (a) the terms or conditions: (i) are based upon actuarial or statistical data on which it is reasonable to rely, and (ii) are reasonable having regard to the data and any other relevant factors, or (b) in a case where no such actuarial or statistical data is available and cannot reasonably be obtained--the terms or conditions are reasonable having regard to any other relevant factors, and the source on which any data referred to in paragraph (a) is based is disclosed to the Tribunal, where the Tribunal so requires, and any other relevant factors to which regard has been had as referred to in paragraph (a) or (b) are disclosed to the Tribunal, where the Tribunal so requires”.

⁹⁴ S 49B: “(1) A person (the perpetrator) discriminates against another person (the aggrieved person) on the ground of disability if, on the ground of the aggrieved person's disability or the disability of a relative or associate of the aggrieved person, the perpetrator: (a) treats the aggrieved person less favourably than in the same circumstances, or in circumstances which are not materially different, the perpetrator treats or would treat a person who does not have that disability or who does not have such a relative or associate who has that disability, or (b) requires the aggrieved person to comply with a requirement or condition with which a substantially higher proportion of persons who do not have that disability, or who do not have such a relative or associate who has that disability, comply or are able to comply, being a requirement which is not reasonable having regard to the circumstances of the case and with which the aggrieved person does not or is not able to comply. (2) For the purposes of subsection (1) (a), something is done on the ground of a person's disability if it is done on the ground of the person's disability, a characteristic that appertains generally to persons who have that disability or a characteristic that is generally imputed to persons who have that disability. (3) For the purposes of, but without limiting, this section, the fact that a person who has a disability of or relating to vision, hearing or mobility has, or may be accompanied by, a dog which assists the person in respect of that disability, is taken to be a characteristic that appertains generally to persons who have that disability, but nothing in this Act affects the liability of any such person for any injury, loss or damage caused by the dog. (4) A reference in this section to persons who have a disability (“the particular disability”) is a reference to persons who have the particular disability or who have a disability that is substantially the same as the particular disability”.

⁹⁵ S 49C.



In determining what constitutes unjustifiable hardship for the purposes of this Part, all relevant circumstances of the particular case are to be taken into account including:

- (a) the nature of the benefit or detriment likely to accrue or be suffered by any persons concerned, and
- (b) the effect of the disability of a person concerned, and
- (c) the financial circumstances and the estimated amount of expenditure required to be made by the person claiming unjustifiable hardship.

Division 2 prohibits work discrimination⁹⁶ and division 3 relates to discrimination in education,⁹⁷ goods and services,⁹⁸ accommodation⁹⁹ and registered clubs.¹⁰⁰ Division 4 contains a number of

⁹⁶ The division relates to applicants for employment and employees, commission agents, contract workers, partnerships, local government councillors, industrial organisations, qualifying bodies, and employment agencies. Ss 49D-49K.

⁹⁷ S 49L: "(1) It is unlawful for an educational authority to discriminate against a person on the ground of disability: (a) by refusing or failing to accept his or her application for admission as a student, or (b) in the terms on which it is prepared to admit him or her as a student. (2) It is unlawful for an educational authority to discriminate against a student on the ground of disability: (a) by denying him or her access, or limiting his or her access, to any benefit provided by the educational authority, or (b) by expelling him or her, or (c) by subjecting him or her to any other detriment. (3) Nothing in this section applies to or in respect of: (a) a private educational authority, or (b) a refusal or failure to accept a person's application for admission as a student by an educational authority where the educational authority administers a school, college, university or other institution which is conducted solely for students who have a disability which is not the same as that of the applicant. (4) Nothing in subsection (1) (a) or (2) (b) renders it unlawful to discriminate against a person on the ground of disability where, because of the person's disability, the person requires services or facilities that are not required by students who do not have a disability and the provision of which would impose unjustifiable hardship on the educational authority. (5) Nothing in subsection (2) (a) renders it unlawful to discriminate against a person on the ground of disability where, because of the person's disability, the person requires the benefit to be provided in a special manner and the benefit cannot without unjustifiable hardship be so provided by the educational authority".

⁹⁸ S 49M: "(1) It is unlawful for a person who provides, for payment or not, goods or services to discriminate against a person on the ground of disability: (a) by refusing to provide the person with those goods or services, or (b) in the terms on which he or she provides the person with those goods or services. (2) Nothing in this section renders it unlawful to discriminate against a person on the ground of the person's disability if the provision of the goods or services would impose unjustifiable hardship on the person who provides the goods or services".

⁹⁹ S 49N: "(1) It is unlawful for a person, whether as principal or agent, to discriminate against a person on the ground of disability: (a) by refusing the person's application for accommodation, or (b) in the terms on which the person is offered accommodation, or (c) by deferring the person's application for accommodation or according the person a lower order of precedence in any list of applicants for that accommodation. (2) It is unlawful for a person, whether as principal or agent, to discriminate against a person on the ground of disability: (a) by denying the person access, or limiting the person's access, to any benefit associated with accommodation occupied by the person, or (b) by evicting the person, or (c) by subjecting the person to any other detriment. (3) Nothing in this section applies to or in respect of the provision of accommodation in premises if: (a) the person who provides or proposes to provide the accommodation or a near relative of that person resides, and intends to continue to reside, on those premises, and (b) the accommodation provided in those premises is for no more than 6 persons. (4) Nothing in this section applies to the provision of accommodation in premises where special services or facilities would be required by the person with a disability and the provision of such special services or facilities would impose unjustifiable hardship on the person providing or proposing to provide the accommodation whether as principal or agent. (5) Nothing in this section applies to the provision of accommodation to persons who have a particular disability by a charitable body or other body that does not distribute its profits to members. (6) Nothing in subsection (2) (a) renders it unlawful to discriminate against a

exceptions relating to public health,¹⁰¹ persons addicted to prohibited drugs,¹⁰² superannuation and insurance,¹⁰³ and sport.¹⁰⁴ Part 4B prohibits discrimination on the ground of a person's responsibilities as a carer. This prohibition only applies relating to employment discrimination.¹⁰⁵ Part 4C prohibits discrimination based on homosexuality. Division 1 contains a general definition,¹⁰⁶ division 2 prohibits work discrimination,¹⁰⁷ division 3 prohibits discrimination in

person on the ground of disability where, because of the person's disability, the person requires the benefit to be provided in a special manner and the benefit cannot without unjustifiable hardship be so provided by the person who provides the accommodation”.

¹⁰⁰ S 49O: “(1) It is unlawful for a registered club to discriminate against a person who is not a member of the registered club on the ground of disability: (a) by refusing or failing to accept the person's application for membership, or (b) in the terms on which it is prepared to admit the person to membership. (2) It is unlawful for a registered club to discriminate against a person who is a member of the registered club on the ground of disability: (a) by denying the person access, or limiting the person's access, to any benefit provided by the registered club, or (b) by depriving the person of membership or varying the terms of the person's membership, or (c) by subjecting the person to any other detriment. (3) Nothing in subsection (1) or (2) applies to or in respect of a registered club if the principal object of the registered club is to provide benefits only for persons who have a particular disability specified in the principal object. (4) In determining whether the principal object of a registered club is as referred to in subsection (3), regard is to be had to: (a) the essential character of the registered club, and (b) the extent to which the affairs of the registered club are so conducted that the persons primarily enjoying the benefits of membership are persons who have the particular disability specified in the principal object, and (c) any other relevant circumstance. (5) Nothing in subsection (2) (a) renders it unlawful to discriminate against a person on the ground of disability where, because of the person's disability, the person requires the benefit to be provided in a special manner and the benefit cannot without unjustifiable hardship be so provided by the registered club”.

¹⁰¹ S 49P: “Nothing in this Part renders unlawful discrimination against a person on the ground of disability if the disability concerned is an infectious disease and the discrimination is reasonably necessary to protect public health”.

¹⁰² S 49PA. This exception only applies relating to employment discrimination.

¹⁰³ S 49Q: “Nothing in this Part renders unlawful discrimination against a person on the ground of disability in the terms or conditions appertaining to a superannuation or provident fund or scheme or with respect to the terms on which an annuity, a life assurance policy, an accident or insurance policy or other policy of insurance is offered or may be obtained, where: (a) the terms or conditions: (i) are based upon actuarial or statistical data on which it is reasonable to rely, and (ii) are reasonable having regard to the data and any other relevant factors, or (b) in a case where no such actuarial or statistical data is available and cannot reasonably be obtained—the terms or conditions are reasonable having regard to any other relevant factors, and the source on which any data referred to in paragraph (a) is based is disclosed to the Tribunal, where the Tribunal so requires, and any other relevant factors to which regard has been had as referred to in paragraph (a) or (b) are disclosed to the Tribunal, where the Tribunal so requires”.

¹⁰⁴ S 49R: “Nothing in this Part renders unlawful discrimination against a person on the ground of disability, being discrimination consisting of the exclusion of the person from a sporting activity: (a) if the person is not reasonably capable of performing the actions reasonably required in relation to the sporting activity, or (b) if the persons who participate or are to participate in the sporting activity are selected by a method which is reasonable on the basis of their skills and abilities relevant to the sporting activity and relative to each other, or (c) if the sporting activity is conducted only for persons who have a particular disability and the person does not have that disability”.

¹⁰⁵ Ss 49V-49ZC relate to discrimination against applicants for employment and employees, against commission agents, against contract workers, by partnerships, by local government councillors, industrial organisations, qualifying bodies and employment agencies.

¹⁰⁶ S 49ZG: “(1) A person (the perpetrator) discriminates against another person (the aggrieved person) on the ground of homosexuality if, on the ground of the aggrieved person's homosexuality or the homosexuality of a relative or associate of the aggrieved person, the perpetrator: (a) treats the aggrieved person less favourably than in the same circumstances, or in circumstances which are not materially different, the perpetrator treats or would treat a person who he or she did not think was a homosexual person or who does not have such a relative or associate who he or she thinks was a homosexual person, or (b) requires the aggrieved person to comply with a requirement or condition with

education,¹⁰⁸ goods and services,¹⁰⁹ accommodation¹¹⁰ and registered clubs,¹¹¹ and division 4 prohibits homosexual vilification. Part 4E relates to compulsory retirement from employment based on age. Part 4F prohibits HIV/AIDS vilification. Part 4G relates to age discrimination. Division 1 contains a general definition,¹¹² division 2 prohibits work discrimination,¹¹³ division 3 prohibits

which a substantially higher proportion of persons who are not homosexual persons, or who do not have such a relative or associate who is a homosexual person, comply or are able to comply, being a requirement which is not reasonable having regard to the circumstances of the case and with which the aggrieved person does not or is not able to comply. (2) For the purposes of subsection (1) (a), something is done on the ground of a person's homosexuality if it is done on the ground of the person's homosexuality, a characteristic that appertains generally to homosexual persons or a characteristic that is generally imputed to homosexual persons".

¹⁰⁷ The division relates to applicants for employment and employees, commission agents, contract workers, partnerships, local government councillors, industrial organisations, qualifying bodies and employment agencies. Ss 49ZH-49ZN".

¹⁰⁸ S 49ZO: "(1) It is unlawful for an educational authority to discriminate against a person on the ground of homosexuality: (a) by refusing or failing to accept the person's application for admission as a student, or (b) in the terms on which it is prepared to admit the person as a student. (2) It is unlawful for an educational authority to discriminate against a student on the ground of homosexuality: (a) by denying the student access, or limiting the student's access, to any benefit provided by the educational authority, or (b) by expelling the student or subjecting the student to any other detriment. (3) Nothing in this section applies to or in respect of a private educational authority".

¹⁰⁹ S 49ZP: "It is unlawful for a person who provides, for payment or not, goods or services to discriminate against another person on the ground of homosexuality: (a) by refusing to provide the person with those goods or services, or (b) in the terms on which he or she provides the person with those goods or services".

¹¹⁰ S 49ZQ: "(1) It is unlawful for a person, whether as principal or agent, to discriminate against another person on the ground of homosexuality: (a) by refusing the person's application for accommodation, (b) in the terms on which he or she offers the person accommodation, or (c) by deferring the person's application for accommodation or according the person a lower order of precedence in any list of applicants for that accommodation. (2) It is unlawful for a person, whether as principal or agent, to discriminate against another person on the ground of homosexuality: (a) by denying the person access, or limiting the person's access, to any benefit associated with accommodation occupied by the person, or (b) by evicting the person or subjecting the person to any other detriment. (3) Nothing in this section applies to or in respect of the provision of accommodation in premises if: (a) the person who provides or proposes to provide the accommodation or a near relative of that person resides, and intends to continue to reside, on those premises, and (b) the accommodation provided in those premises is for no more than 6 persons".

¹¹¹ S 49ZR: "(1) It is unlawful for a registered club to discriminate against a person who is not a member of the registered club on the ground of homosexuality: (a) by refusing or failing to accept the person's application for membership, or (b) in the terms on which it is prepared to admit the person to membership. (2) It is unlawful for a registered club to discriminate against a person who is a member of the registered club on the ground of homosexuality: (a) by denying the person access, or limiting the person's access, to any benefit provided by the registered club, (b) by depriving the person of membership or varying the terms of the person's membership, or (c) by subjecting the person to any other detriment".

¹¹² S 49ZYA: "(1) A person (the perpetrator) discriminates against another person (the aggrieved person) on the ground of age if, on the ground of the aggrieved person's age or the age of a relative or associate of the aggrieved person, the perpetrator: (a) treats the aggrieved person less favourably than in the same circumstances, or in circumstances which are not materially different, the perpetrator treats or would treat a person who is not of that age or age group or who does not have such a relative or associate who is that age or age group, or (b) requires the aggrieved person to comply with a requirement or condition with which a substantially higher proportion of persons who are not of that age or age group, or who do not have such a relative or associate who is that age or age group, comply or are able to comply, being a requirement which is not reasonable having regard to the circumstances of the case and with which the aggrieved person does not or is not able to comply. (2) For the purposes of subsection (1) (a), something is done on the ground of a person's age if it is done on the ground of the person's age or age group, a characteristic that appertains generally to persons who are that age or age group or a characteristic that is generally imputed to persons who are of that age or age group. (3) In this section: associate of a person means any person with whom he or she

discrimination in education,¹¹⁴ goods and services,¹¹⁵ accommodation¹¹⁶ and registered clubs¹¹⁷ and division 4 contains a number of exceptions relating to legal capacity and welfare of children,¹¹⁸

associates, whether socially or in business or commerce, or otherwise. relative of a person means: (a) any person to whom the person is related by blood, marriage, affinity or adoption, or (b) any person who is wholly or mainly dependent on, or a member of the household of, the person”.

¹¹³ The division relates to applicants for employment and employees, commission agents, contract workers, partnerships, industrial organisations, qualifying bodies, employment agencies and junior employees. Ss 49ZYB-49ZYK.

¹¹⁴ S 49ZYL: “(1) It is unlawful for an educational authority to discriminate against a person on the ground of age: (a) by refusing or failing to accept the person’s application for admission as a student, or (b) in the terms on which it is prepared to admit the person as a student. (2) It is unlawful for an educational authority to discriminate against a student on the ground of age: (a) by denying or limiting access to any benefit provided by the educational authority, or (b) by expelling the student or subjecting the student to any other detriment. (3) Nothing in this section applies to or in respect of: (a) the admission of, or the refusal of admission to, a person to a school, college, university or other institution if the level of education or training sought by the person is provided only for students above a particular age, or (b) a private educational authority, or (c) an education authority prescribed by the regulations in relation to such circumstances (if any) as may be so prescribed. (4) Nothing in this section applies to or in respect of a refusal by an educational authority to enrol at a government school or registered non-government school a child who is not of or above the age of 6 years. In this subsection, registered non-government school has the same meaning as in the *Education Reform Act 1990*. (5) Nothing in this section applies to or in respect of benefits, including concessions, provided in good faith to a student by reason of his or her age”.

¹¹⁵ S 49ZYN: “(1) It is unlawful for a person who provides, for payment or not, goods or services to discriminate against another person on the ground of age: (a) by refusing to provide the other person with those goods or services, or (b) in the terms on which the other person is provided with those goods or services. (2) Nothing in subsection (1) applies to or in respect of: (a) benefits, including concessions, provided in good faith to a person by reason of his or her age, or (b) holiday tours offered or provided to persons who are of a particular age or age group. (3) Nothing in this section renders it unlawful for a person to discriminate against a person on the ground of age in disposing of goods, or in providing services, by gift or will or in accordance with the terms of a gift or will”.

¹¹⁶ S 49ZYO: “(1) It is unlawful for a person, whether as principal or agent, to discriminate against another person on the ground of age: (a) by refusing the person’s application for accommodation, or (b) in the terms on which the principal or agent offers the other person accommodation, or (c) by deferring the other person’s application for accommodation or according the other person a lower order of precedence in any list of applicants for that accommodation. (2) It is unlawful for a person, whether as principal or agent, to discriminate against a person for whom accommodation has been provided on the ground of age: (a) in the terms or conditions on which accommodation is provided, or (b) by denying or limiting access to any benefit associated with accommodation, or (c) by evicting the person or subjecting the person to any other detriment. (3) Nothing in this section applies to or in respect of the provision of accommodation in premises if: (a) the person who provides or proposes to provide the accommodation or a near relative of that person resides, and intends to continue to reside, in those premises, and (b) the accommodation provided in those premises is for no more than 6 persons, and (c) the accommodation is provided with a concession provided in good faith to a person by reason of the person’s age”.

¹¹⁷ S 49ZYP: “(1) It is unlawful for a registered club to discriminate against a person (not being a person under the age of 18 years) on the ground of age: (a) by refusing or failing to accept the person’s application for membership of the club, or (b) in the terms on which it is prepared to admit the person to membership of the club. (2) It is unlawful for a registered club to discriminate against a member of the registered club on the ground of age: (a) by denying or limiting access to any benefit provided by the club, or (b) by depriving the member of membership of the club or varying the terms of that membership, or (c) by subjecting the member to any other detriment. (3) Nothing in subsection (1) or (2) applies to or in respect of a registered club: (a) that has as its principal object the provision of benefits for persons who are of a particular age or age group, or (b) so as to prevent the retention by the club of different categories of membership for members of different ages or age groups. (4) In determining whether the principal object of a registered club is as referred to in subsection (3) (a), regard is to be had to: (a) the essential character of the club, and (b) the extent to which the affairs of the club are so conducted that the persons primarily enjoying the benefits of membership are of the relevant age or age group, and (c) any other relevant circumstance”.

special needs programmes,¹¹⁹ superannuation,¹²⁰ insurance,¹²¹ credit applications,¹²² safety procedures,¹²³ sport¹²⁴ and prescribed lawful activities.¹²⁵ Part 5 prohibits victimization and discriminatory advertisements. Part 6 contains the following general exceptions that relate to more

¹¹⁸ S 49ZYQ: “Nothing in this Part: (a) affects the operation of a law that relates to the legal capacity or the legal entitlements, obligations or disqualifications of persons who are under 18 years of age, or (b) affects the operation of a law the object of which is to protect the welfare of those persons, including provisions of the criminal law that are designed to protect them”.

¹¹⁹ S 49ZYR: “Nothing in this Part applies to or in respect of anything done to afford persons who are of a particular age or age group access to facilities, services or opportunities to meet their special needs or to promote equal or improved access for them to facilities, services and opportunities”.

¹²⁰ S 49ZYS: “(1) Nothing in this Part renders unlawful discrimination against a person on the ground of age in the terms or conditions appertaining to a superannuation or provident fund or scheme if, subject to subsection (2), one or more of the following apply: (a) the discrimination occurs because of the application of a standard in force under the *Occupational Superannuation Standards Act 1987*, or a requirement under the *Superannuation Industry (Supervision) Act 1993*, of the Commonwealth, (b) the discrimination is required in order to comply with, or obtain a benefit of, or avoid a penalty under, any other Act of the Commonwealth, (c) the discrimination is based on actuarial or statistical data from a source on which it is reasonable to rely, (d) if there is no data of a kind referred to in paragraph (c), the discrimination is based on such other data as may be available and on which it is reasonable to rely, (e) if none of the above apply, the discrimination is reasonable having regard to any other relevant factors, (f) the discrimination is based on an existing condition and relates to a person who became a member of the fund or scheme before the commencement of this section or not more than 12 months after that commencement, or happens not more than 12 months after that commencement. (2) An exemption under subsection (1) (c)-(e) is available only if the sources on which the data are based and those relevant factors (if any) are disclosed to the Tribunal, if the Tribunal so requires. (3) This section has effect despite section 54 (1) (d)”.

¹²¹ S 49ZYT: “Nothing in this Part renders unlawful discrimination on the ground of age the terms on which any annuity, life assurance policy or accident or insurance policy or any other kind of insurance is offered or may be obtained if: (a) those terms: (i) are based on actuarial or statistical data from a source on which it is reasonable to rely or, if there are no such data, on such other data as may be available, and (ii) are reasonable having regard to the data and any other relevant factors, and (b) the sources on which the data are based and those relevant factors (if any) are disclosed to the Tribunal, if the Tribunal so requires”.

¹²² S 49ZYU: “Nothing in this Part renders unlawful discrimination against a person on the ground of age with respect to the criteria on which an application for credit is assessed or the terms on which credit is offered or may be obtained if: (a) those criteria or terms: (i) are based on actuarial or statistical data from a source on which it is reasonable to rely or, if there are no such data, on such other data as may be available, and (ii) are reasonable having regard to the data and any other relevant factors, and (b) the sources on which the data are based and those relevant factors (if any) are disclosed to the Tribunal, if the Tribunal so requires”.

¹²³ S 49Zyv: “Nothing in this Part renders unlawful discrimination against a person on the ground of age with respect to: (a) the manner in which fitness to control a vehicle or a class of vehicle is assessed, or (b) the terms and conditions on which and the length of time during which a licence to drive or ride a vehicle is provided or made available, as the case requires, if that manner is, or those terms and conditions and length of time are, imposed in order to meet safety considerations that are reasonable in the circumstances”.

¹²⁴ S 49ZYw: “(1) Nothing in this Part renders unlawful the exclusion of persons of particular ages from participation in any sporting activity. (2) Subsection (1) does not apply: (a) to the coaching of persons engaged in any sporting activity, or (b) to the administration of any sporting activity, or (c) to any sporting activity prescribed by the regulations for the purposes of this section”.

¹²⁵ S 49ZYx: “Nothing in this Part renders unlawful any activity or matter declared to be lawful by regulation made for the purposes of this Part”.

than one part of the Act: Acts done under statutory authority,¹²⁶ charities,¹²⁷ religious bodies,¹²⁸ voluntary bodies¹²⁹ and establishments providing housing accommodation for aged persons.¹³⁰

The burden of proof relating to the exceptions rests upon the respondent.¹³¹

E.3 Northern Territory

The Northern Territory *Anti-Discrimination Act* recognises the following prohibited grounds: race;¹³² sex; sexuality;¹³³ age; marital status;¹³⁴ pregnancy;¹³⁵ parenthood; breastfeeding; impairment;¹³⁶ trade

¹²⁶ S 54: “(1) Nothing in this Act renders unlawful anything done by a person if it was necessary for the person to do it in order to comply with a requirement of: (a) any other Act, whether passed before or after this Act, (b) any regulation, ordinance, by-law, rule or other instrument made under any such other Act, (c) an order of the Tribunal, (d) an order of any court, not including an order or award of a court or tribunal having power to fix minimum wages and other terms and conditions of employment, or (e) (repealed)”.

¹²⁷ S 55: “(1) Nothing in this Act affects: (a) a provision of a deed, will or other instrument, whether made before or after the day appointed and notified under section 2 (2), that confers charitable benefits or enables charitable benefits to be conferred on persons of a class identified by reference to any one or more of the grounds of discrimination referred to in this Act, or (b) an act which is done in order to give effect to such a provision. (2) In this section, charitable benefits means benefits for purposes that are exclusively charitable according to the law in force in any part of Australia”.

¹²⁸ S 56: “Nothing in this Act affects: (a) the ordination or appointment of priests, ministers of religion or members of any religious order, (b) the training or education of persons seeking ordination or appointment as priests, ministers of religion or members of a religious order, (c) the appointment of any other person in any capacity by a body established to propagate religion, or (d) any other act or practice of a body established to propagate religion that conforms to the doctrines of that religion or is necessary to avoid injury to the religious susceptibilities of the adherents of that religion”.

¹²⁹ S 57: “(1) In this section, body means a body, the activities of which are carried on otherwise than for profit and which is not established by an Act, but does not include: (a) a co-operative registered under the *Co-operatives Act 1992* or a society under the *Friendly Societies Act 1989*, or (b) a friendly society registered under the *Friendly Societies Act 1989*, or (c) a building society or credit union registered under the *Financial Institutions (NSW) Code*, or (d) a co-operative housing society registered under the *Co-operative Housing and Starr-Bowkett Societies Act 1998*, or (e) a registered club. (2) Nothing in this Act affects: (a) any rule or practice of a body which restricts admission to membership of that body, or (b) the provision of benefits, facilities or services to members of that body”.

¹³⁰ S 59: “Nothing in this Act affects any rule or practice of an establishment which provides housing accommodation for aged persons, whether by statute or otherwise, whereby admission to the establishment is restricted to persons of a particular sex, marital status or race”.

¹³¹ S 109.

¹³² “Race” includes “(a) the nationality, ethnic or national origin, colour, descent or ancestry of a person; and (b) that a person is or has been an immigrant”.

¹³³ “Sexuality” is defined as “the sexual characteristics or imputed sexual characteristics of heterosexuality, homosexuality, bisexuality or transsexuality”.

¹³⁴ “Marital status” is defined as “whether a person is – (a) single; (b) married; (c) married but living separately and apart from the person’s spouse; (d) married, or has been married, to a particular person; (e) divorced; (f) widowed; (g) a de facto partner, or (h) the de facto partner, or was the de facto partner, of a particular person”.

¹³⁵ Pregnancy includes child bearing capacity.

¹³⁶ “Impairment” is defined as including “(a) the total or partial loss of a bodily function; (b) the presence in the body of an organism which has caused or is capable of causing disease; (c) the presence in the body of organisms impeding, capable of impeding or which may impede the capacity of the body to combat disease; (d) total or partial loss of a part of the body; (e) the malfunction or dysfunction of a part of the body; (f) the malformation or disfigurement of a part of the body; (g) reliance on a guide dog, wheelchair or other remedial device; (h) physical or intellectual disability; (j)



union or employer association activity; religious belief or activity;¹³⁷ political opinion, affiliation or activity; irrelevant medical record; irrelevant criminal record;¹³⁸ association with a person who has, or is believed to have, an attribute referred to in these listed grounds.

The Act defines discrimination as follows:¹³⁹

- (1) For the purposes of this Act, discrimination includes–
 - (a) any distinction, restriction, exclusion or preference made on the basis of an attribute that has the effect of nullifying or impairing equality of opportunity; and
 - (b) harassment on the basis of an attribute,
 in an area of activity referred to in Part 4.
- (2) Without limiting the generality of subsection (1), discrimination takes place if a person treats or proposes to treat another person who has or had, or is believed to have or had –
 - (a) an attribute;
 - (b) a characteristic imputed to appertain to an attribute; or
 - (c) a characteristic imputed to appertain generally to persons with an attribute,
 less favourably than a person who has not, or is believed not to have, such an attribute.
- (3) For discrimination to take place, it is not necessary that –
 - (a) the attribute is the sole or dominant ground for the less favourable treatment; or
 - (b) the person who discriminates regards the treatment as less favourable.
- (4) The motive of a person alleged to have discriminated against another person is, for the purposes of this Act, irrelevant.

psychiatric or psychological disease or disorder, whether permanent or temporary; and (k) a condition, malfunction or dysfunction which results in a person learning more slowly than another person without that condition, malfunction or dysfunction”.

¹³⁷ Religious belief or activity includes Aboriginal spiritual belief or activity.

¹³⁸ “Irrelevant criminal record” is defined as “(a) a spent record within the meaning of the *Criminal Records (Spent Convictions) Act*; or (b) a record relating to arrest, interrogation or criminal proceedings where – (i) no further action was taken in relation to the arrest, interrogation or charge of the person; (ii) no charge has been laid; (iii) the charge was dismissed; (iv) the prosecution was withdrawn; (v) the person was discharged, whether or not on conviction; (vi) the person was found not guilty; (vii) the person's finding of guilt was quashed or set aside; (viii) the person was granted a pardon; or (ix) the circumstances relating to the offence for which the person was found guilty are not directly relevant to the situation in which the discrimination arises”.

¹³⁹ S 20.

Part 4 of the Act sets out the following “areas of activity” to which the Act applies: education;¹⁴⁰ work;¹⁴¹ accommodation;¹⁴² goods, services and facilities;¹⁴³ clubs;¹⁴⁴ and insurance and superannuation.¹⁴⁵

¹⁴⁰ S 29 sets out the following prohibitions: “(1) An educational authority shall not discriminate – (a) by failing or refusing to accept a person's application for admission as a student; (b) in refusing or rejecting a person's admission as a student; (c) in the way in which a person's application is processed; (d) in the arrangements made for, or the criteria used in, deciding who should be offered admission as a student; or (e) in the terms and conditions on which a person is admitted as a student. (2) An educational authority shall not discriminate – (a) in any variation of the terms and conditions of a student's enrolment; (b) by failing or refusing to grant, or limiting, access to any benefit arising from the enrolment that is supplied by the authority; (c) by excluding a student; or (d) by treating a student less favourably in any way in connection with the student's training or instruction”. The following exemptions are listed in s 30: “An educational authority that operates, or proposes to operate, an educational institution wholly or mainly for students of a particular sex or religion, or who have a general or specific impairment, may exclude applicants who – (a) are not of the particular sex or religion; or (b) do not have a general or specific impairment”.

¹⁴¹ Ss 31-37 relate to applicants for employment and employees, professional and trade organisations, qualifying bodies, employment agencies, and exemptions relating to age and sexuality.

¹⁴² S 38 and 39 set out the following prohibitions: “38. (1) A person shall not discriminate against another person – (a) by failing or refusing to accept an application for accommodation; (b) by failing or refusing to supply accommodation; (c) by failing or refusing to renew or extend the supply of accommodation; (d) in the way in which an application for accommodation is processed; or (e) in the terms and conditions on which accommodation is offered, renewed or extended. (2) A person shall not discriminate against a person to whom accommodation is supplied – (a) in any variation of the terms and conditions on which the accommodation is supplied; (b) in failing or refusing to grant, or limiting, access to any benefit associated with the accommodation; (c) in evicting the person from the accommodation; or (d) by treating the person less favourably in any way in connection with the accommodation. 39. A person shall not discriminate against a person with an impairment by failing or refusing to allow the person to alter accommodation to meet the person's special needs if – (a) the alteration is at the expense of that person; (b) the alteration does not require an alteration to the accommodation of another person; (c) the restoration of the accommodation to its previous condition is reasonably practicable; and (d) the person undertakes at his or her expense to restore the accommodation to its previous condition before leaving it, and it is reasonably likely that the person will do so”. S 40 contains the following exemptions: “(1) A person may discriminate against a person in deciding who is to reside in accommodation that forms part of, and is intended to continue to form part of, the main home of the person or a near relative of the person. (2) An educational authority that operates, or proposes to operate, an educational institution wholly or mainly for students of a particular sex or religion, or who have a general or specific impairment, may provide accommodation wholly or mainly for – (a) students of the particular sex or religion; or (b) students who have a general or specific impairment. (3) A person may discriminate against a person with respect to a matter that is otherwise prohibited under this Division if – (a) the accommodation concerned is under the direction or control of a body established for religious purposes; and (b) the discrimination – (i) is in accordance with the doctrine of the religion concerned; and (ii) is necessary to avoid offending the religious sensitivities of people of the religion. (4) A person may discriminate against a person with respect to a matter that is otherwise prohibited under this Division if – (a) the accommodation concerned is under the direction or control of a body established for a charitable purpose; and (b) the discrimination is in accordance with the particular purpose for which the accommodation was established by the body”.

¹⁴³ S 41 contains the following prohibitions: “(1) A person who supplies goods, services or facilities (whether or not for reward or profit) shall not discriminate against another person – (a) by failing or refusing to supply the goods, services or facilities; (b) in the terms and conditions on which the goods, services or facilities are supplied; (c) in the way in which the goods, services or facilities are supplied; or (d) by treating the other person less favourably in any way in connection with the supply of the goods, services or facilities. (2) Subsection (1) does not apply to a person who supplies goods, services or facilities for or on behalf of an association that – (a) is established for social, literary, cultural, political, sporting, athletic, recreational or community service purposes or other similar lawful purposes; and (b) does not carry out its purposes for the purpose of making a profit”. Ss 42-45 contain number of exemptions: “42. Nothing in this Division applies to or in relation to the provision of a service the nature of which is such that it can only be provided to members of one sex. 43. A person may restrict access to land, a building or place of cultural or religious significance by people who are not of a particular sex, age, race or religion if the restriction – (a) is in



accordance with the culture or the doctrine of the religion; and (b) is necessary to avoid offending the cultural or religious sensitivities of people of the culture or religion. 44. A person may supply benefits and concessions on the basis of age with respect to a matter that is otherwise prohibited under this Division. 45. A person may require, as a term of supplying goods, services or facilities to a child, that the child be accompanied by an adult if there is a reasonable risk that a child could cause a disruption or endanger himself or herself, or others, if not accompanied by an adult”.

¹⁴⁴ S 46 contains the following prohibitions: “(1) A club, the committee of management of a club or a member of the committee of management shall not discriminate against a person who is not a member of the club – (a) by failing or refusing to accept the person’s application for membership of the club; (b) in refusing or rejecting a person’s membership of the club; or (c) in the terms and conditions on which the club is prepared to admit the person to membership of the club. (2) A club, the committee of management of a club or a member of the committee of management shall not discriminate against a member of the club – (a) in the terms and conditions of membership that are afforded to the member; (b) by failing or refusing to accept the member’s application for a particular class or type of membership of the club; (c) by failing or refusing to grant the member access, or limiting the member’s access, to any benefit provided by the club; (d) by depriving the member of membership or varying the terms and conditions of membership of the club; or (e) by treating the member less favourably in any way in connection with membership of the club”. S 47 lists the following exemptions: “(1) A club, the committee of management of a club or a member of the committee of management may exclude applicants for membership of the club who are not members of the group of people with an attribute for whom the club was established if the club operates wholly or mainly – (a) to preserve a minority culture; or (b) to prevent or reduce disadvantage suffered by people of that group. (2) A club, the committee of management of a club or a member of the committee of management may discriminate against a person on the ground of age in membership of the club if the club provides association wholly or mainly for people of a specific age or age group. (3) A club, the committee of management of a club or a member of the committee of management may discriminate against a person on the ground of sex – (a) in membership of the club if the club provides association wholly or mainly for people of one sex; or (b) if the discrimination occurs in relation to the use or enjoyment of a benefit provided by the club where – (i) it is not practicable for the benefit to be used or enjoyed simultaneously, or to the same extent, by both men and women; and (ii) either the same or an equivalent benefit is provided for the use of men and women separately from each other, or men and women are each entitled to a fair and reasonable proportion of the use and enjoyment of the benefit. (4) In determining a matter relating to the application of subsection (3)(b) regard shall be had to – (a) the purposes for which the club is established; (b) the membership of the club, including any class or type of membership; (c) the nature of the benefits provided by the club; (d) the opportunities for the use and enjoyment of those benefits by men and women; and (e) any other relevant circumstances”.

¹⁴⁵ S 48 lists the following prohibitions: “(1) A person shall not discriminate – (a) by failing or refusing to supply insurance or superannuation; (b) in the terms and conditions on which insurance or superannuation is supplied; or (c) in the way in which insurance or superannuation is supplied. (2) A person shall not discriminate against another person seeking work with the person in the terms and conditions of work that is offered that relate to insurance or superannuation. (3) A person shall not discriminate against a worker employed by the person – (a) in any variation of the terms and conditions of employment of the worker that relate to insurance or superannuation; (b) in failing or refusing to grant the worker access, or limiting the worker’s access, to any benefit that relates to insurance or superannuation; or (c) by treating the worker less favourably in any way in connection with insurance or superannuation. S 49 contains a number of exemptions: “(1) A person may discriminate against a person with respect to a matter that is otherwise prohibited under this Division if one or more of the following is applicable – (a) the discrimination happens because of the application of a standard in force under the *Occupational Superannuation Standards Act 1987* of the Commonwealth; (b) the discrimination is permitted under the *Sex Discrimination Act 1984* of the Commonwealth; (c) the discrimination happens in order to comply with or obtain the benefits of, or to avoid penalties under, any other Act of the Commonwealth; (d) the discrimination is based on reasonable actuarial or statistical data from a source on which it is reasonable to rely and the discrimination is reasonable having regard to that data and other relevant factors; (e) if there is no reasonable actuarial or statistical data on which it is reasonable to rely, the discrimination is based on other data on which it is reasonable to rely and the discrimination is reasonable having regard to the data and any other relevant factors; (f) if there is no reasonable actuarial, statistical or other data on which it is reasonable to rely, the discrimination is reasonable having regard to any other relevant factors. (2) A person may discriminate in the area of superannuation to the extent that the discrimination is based on an existing superannuation fund condition and relates to a person who became a member of the fund before the commencement

The Act also contains a number of general exemptions that cut across all the areas of activity, relating to legal incapacity,¹⁴⁶ religious bodies,¹⁴⁷ charities,¹⁴⁸ acts done in compliance with legislation,¹⁴⁹ privileges in connection with pregnancy or childbirth,¹⁵⁰ public health,¹⁵¹ sport,¹⁵² special measures¹⁵³ and an “unreasonableness” defence relating to accommodating special need.¹⁵⁴

of this Act or not more than 12 months after that commencement. (3) In this section, “existing superannuation fund condition” means a superannuation fund condition in existence at the commencement of this Act”.

¹⁴⁶ S 50: “A person may discriminate against another person who is subject to a legal incapacity if that incapacity is relevant to the transaction in which they are involved”.

¹⁴⁷ S 51: “This Act does not apply to or in relation to – (a) the ordination or appointment of priests, ministers of religion or members of a religious order; (b) the training or education of people seeking ordination or appointment as priests, ministers of religion or members of a religious order; (c) the selection or appointment of people to perform functions in relation to, or otherwise participate in, any religious observance or practice; or (d) an act by a body established for religious purposes if the act – (i) is in accordance with the doctrine of the religion concerned; and (ii) is necessary to avoid offending the religious sensitivities of people of the religion”.

¹⁴⁸ S 52: “(1) A person – (a) may include in a will, deed or other instrument a discriminatory provision that provides for charitable benefits; and (b) may do an act that is required to give effect to a provision referred to in paragraph (a). (2) In this section, “charitable benefits” means benefits for purposes that are exclusively charitable according to the law in force in any part of Australia”.

¹⁴⁹ S 53: “Notwithstanding anything to the contrary in this Act, a person may do an act that is necessary to comply with, or is specifically authorised by – (a) an Act or regulation of the Territory; (b) an Act or regulation of the Commonwealth; (c) an order of a court or tribunal; (d) an order or award of a court or tribunal having power to fix minimum wages and other terms and conditions of employment; (e) an industrial agreement in existence at the commencement of this Act; (f) an order of the Commissioner under this Act; (g) a guideline or code of practice prepared and published by the Commissioner under this Act; or (h) advice given by the Commissioner under this Act”.

¹⁵⁰ S 54: “Nothing in this Act makes it unlawful for a person to discriminate against a man on the ground of sex by reason only of the fact that that person grants to a woman rights or privileges in connection with pregnancy or childbirth”.

¹⁵¹ S 55: “A person may discriminate against a person on the ground of impairment if the discrimination is reasonably necessary to protect public health”.

¹⁵² S 56: “(1) A person may restrict participation in a competitive sporting activity – (a) to either men or women, if the restriction is reasonable having regard to the strength, stamina or physique requirements of the activity; (b) to people who can effectively compete; (c) to people of a specified age or age group; or (d) to people with a general or specific impairment. (2) Subsection (1)(a) does not apply to a sporting activity for children who have not attained 12 years of age. (3) In this section, “competitive sporting activity” does not include – (a) the coaching of people engaged in a sporting activity; (b) the umpiring or refereeing of a sporting activity; (c) the administration of a sporting activity; or (d) a prescribed sporting activity”.

¹⁵³ S 57: “(1) A person may discriminate against a person in a program, plan or arrangement designed to promote equality of opportunity for a group of people who are disadvantaged or have a special need because of an attribute. (2) Subsection (1) applies only until equality of opportunity has been achieved”.

¹⁵⁴ S 58: “(1) A person may discriminate against another person who has a special need with respect to a matter that is otherwise prohibited under this Act if – (a) the other person would require special services or facilities; and (b) it is unreasonable to require the person to supply the special services or facilities. (2) Whether it is unreasonable to require a person to supply special services or facilities depends on the relevant circumstances of the case including, but not limited to – (a) the nature of the special services or facilities; (b) the cost of providing the special services or facilities and the number of people who would benefit or be disadvantaged; (c) the financial circumstances of the person; (d) the disruption that providing the special services or facilities may cause; and (e) the nature of any benefit or detriment to all persons concerned”.



It is also possible to apply to the Anti-Discrimination Commissioner to be exempted from the Act.¹⁵⁵

The Act prohibits sexual harassment,¹⁵⁶ victimisation,¹⁵⁷ discriminatory advertising¹⁵⁸ and the failure to accommodate a special need.¹⁵⁹ The complainant must prove that the prohibited conduct is substantiated and the respondent must prove that an exemption applies.¹⁶⁰

E.4 Queensland

The Queensland *Anti-Discrimination Act* 1991 prohibits discrimination on the grounds of sex, marital status,¹⁶¹ pregnancy, breastfeeding,¹⁶² age, race,¹⁶³ impairment,¹⁶⁴ religion, political belief or activity, trade union activity, lawful sexual activity and association with or relation to a person identified on the basis of these attributes.¹⁶⁵

The Act follows a somewhat convoluted approach to defining discrimination:

Meaning of discrimination on the basis of an attribute

8. Discrimination on the basis of an attribute includes direct and indirect discrimination on the basis of

- (a) a characteristic that a person with any of the attributes generally has; or

¹⁵⁵ S 59.

¹⁵⁶ S 22.

¹⁵⁷ S 23.

¹⁵⁸ S 25.

¹⁵⁹ S 24.

¹⁶⁰ S 91.

¹⁶¹ "Marital status" is defined as "whether a person is (a) single; or (b) married; or (c) married but living separately and apart from the person's spouse; or (d) divorced; or (e) widowed; or (f) a de facto spouse". "De facto spouse" is defined as "a person who lives with a person of the opposite sex as a husband or wife of the person on a genuine domestic basis, although not legally married to the person".

¹⁶² Breastfeeding is only a prohibited ground in relation to the provision of goods and services. S 7(2).

¹⁶³ "Race" includes "(a) colour; and (b) descent or ancestry; and (c) ethnicity or ethnic origin; and (d) nationality or national origin".

¹⁶⁴ "Impairment" is defined as "(a) the total or partial loss of the person's bodily functions, including the loss of a part of the person's body; or (b) the malfunction, malformation or disfigurement of a part of the person's body; or (c) a condition or malfunction that results in the person learning more slowly than a person without the condition or malfunction; or (d) a condition, illness or disease that impairs a person's thought processes, perception of reality, emotions or judgment or that results in disturbed behaviour; or (e) the presence in the body of organisms capable of causing illness or disease; or (f) reliance on a guide dog, wheelchair or other remedial device; whether or not arising from an illness, disease or injury or from a condition subsisting at birth, and includes an impairment that (g) presently exists; or (h) previously existed but no longer exists".

¹⁶⁵ S 7(1).

- (b) a characteristic that is often imputed to a person with any of the attributes; or
- (c) an attribute that a person is presumed to have, or to have had at any time, by the person discriminating; or
- (d) an attribute that a person had, even if the person did not have it at the time of the discrimination.

Discrimination of certain types prohibited

9. The Act prohibits the following types of discrimination

- (a) direct discrimination;
- (b) indirect discrimination.

Meaning of direct discrimination

10.(1) Direct discrimination on the basis of an attribute happens if a person treats, or proposes to treat, a person with an attribute less favourably than another person without the attribute is or would be treated in circumstances that are the same or not materially different.

(2) It is not necessary that the person who discriminates considers the treatment is less favourable.

(3) The person's motive for discriminating is irrelevant.

(4) If there are 2 or more reasons why a person treats, or proposes to treat, another person with an attribute less favourably, the person treats the other person less favourably on the basis of the attribute if the attribute is a substantial reason for the treatment.

(5) In determining whether a person treats, or proposes to treat a person with an impairment less favourably than another person is or would be treated in circumstances that are the same or not materially different, the fact that the person with the impairment may require special services or facilities is irrelevant.

Meaning of indirect discrimination

11.(1) Indirect discrimination on the basis of an attribute happens if a person imposes, or proposes to impose, a term

- (a) with which a person with an attribute does not or is not able to comply; and
- (b) with which a higher proportion of people without the attribute comply or are able to comply; and
- (c) that is not reasonable.

(2) Whether a term is reasonable depends on all the relevant circumstances of the case, including, for example

- (a) the consequences of failure to comply with the term; and
- (b) the cost of alternative terms; and
- (c) the financial circumstances of the person who imposes, or proposes to impose, the term.

(3) It is not necessary that the person imposing, or proposing to impose, the term is aware of the indirect discrimination.

(4) In this section

term includes condition, requirement or practice, whether or not written.



The Act prohibits discrimination in the following areas: work and work-related areas;¹⁶⁶ education;¹⁶⁷ goods and services;¹⁶⁸ superannuation (goods and services,¹⁶⁹ prework,¹⁷⁰ work,¹⁷¹ pre-partnership¹⁷² and partnership¹⁷³); insurance (goods and services,¹⁷⁴ prework,¹⁷⁵ work,¹⁷⁶ pre-partnership¹⁷⁷ and partnership¹⁷⁸); disposition of land;¹⁷⁹ accommodation (pre-accommodation,¹⁸⁰

¹⁶⁶ Ss 13-36 relate to pre-work; work; proposed partnership; partnership; industrial, professional, trade or business organisation in pre-member and member area; qualifying body in pre-qualification and qualification area, and employment agency; and a number of employment-related exemptions.

¹⁶⁷ Ss 38 and 39: "38. An educational authority must not discriminate (a) in failing to accept a person's application for admission as a student; or (b) in the way in which a person's application is processed; or (c) in the arrangements made for, or the criteria used in, deciding who should be offered admission as a student; or (d) in the terms on which a person is admitted as a student. 39. An educational authority must not discriminate (a) in any variation of the terms of a student's enrolment; or (b) by denying or limiting access to any benefit arising from the enrolment that is supplied by the authority; or (c) by excluding a student; or (d) by treating a student unfavourably in any way in connection with the student's training or instruction".

¹⁶⁸ S 46(1): "A person who supplies goods or services (whether or not for reward or profit) must not discriminate against another person (a) by failing to supply the goods or services; or (b) in the terms on which goods or services are supplied; or (c) in the way in which goods or services are supplied; or (d) by treating the other person unfavourably in any way in connection with the supply of goods and services".

¹⁶⁹ S 53: "A person must not discriminate (a) by failing to supply superannuation; or (b) in the terms on which superannuation is supplied; or (c) in the way in which superannuation is supplied".

¹⁷⁰ S 54.

¹⁷¹ S 55.

¹⁷² S 56: "A person must not discriminate against another person, who is invited to become a partner of the person in a partnership that consists, or will consist, of 6 or more people, in the terms relating to superannuation on which the other person is invited to become a partner".

¹⁷³ S 57: "A partner in a partnership that consists of 6 or more people must not discriminate against another partner (a) in any variation of the terms of the partnership that relate to superannuation; or (b) in denying or limiting the other partner's access to any benefit arising from the partnership that relates to superannuation; or (c) by treating the other partner unfavourably in any way in connection with superannuation".

¹⁷⁴ S 67: "A person must not discriminate (a) by failing to supply insurance; or (b) in the terms on which insurance is supplied; or (c) in the way in which insurance is supplied".

¹⁷⁵ S 68.

¹⁷⁶ S 69.

¹⁷⁷ S 70: "A person must not discriminate against another person, who is invited to become a partner of the person in a partnership that consists, or will consist, of 6 or more people, in the terms relating to insurance on which the other person is invited to become a partner".

¹⁷⁸ S 71: "A partner in a partnership that consists of 6 or more people must not discriminate against another partner (a) in any variation of the terms of the partnership that relate to insurance; or (b) in denying or limiting the other partner's access to any benefit arising from the partnership that relates to insurance; or (c) by treating the other partner unfavourably in any way in connection with insurance".

¹⁷⁹ S 77: "A person must not discriminate against another person (a) by failing to dispose of an interest in land to the other person; or (b) in the terms on which an interest in land is offered to the other person".

¹⁸⁰ S 82: "A person must not discriminate against another person (a) by failing to accept an application for accommodation; or (b) by failing to renew or extend the supply of accommodation; or (c) in the way in which an application is processed; or (d) in the terms on which accommodation is offered, renewed or extended".

accommodation,¹⁸¹ refusing to allow reasonable alterations,¹⁸² refusing to allow guide dog¹⁸³); club membership and affairs;¹⁸⁴ and administration of state laws and programmes.¹⁸⁵

The Act contains sector-specific exemptions in employment; education (single sex or single religion institutions;¹⁸⁶ non-state school authorities;¹⁸⁷ age-based admission schemes;¹⁸⁸ special services or facilities required¹⁸⁹); goods and services (particular kinds of associations;¹⁹⁰ sites of cultural or

¹⁸¹ S 83: "A person must not discriminate against another person (a) in any variation of the terms on which accommodation is supplied; or (b) in denying or limiting access to any benefit associated with the accommodation; or (c) in evicting the other person from the accommodation; or (d) by treating the other person unfavourably in any way in connection with the accommodation".

¹⁸² S 84: "A person must not discriminate by refusing to allow another person with an impairment to alter accommodation to meet the other person's special needs if (a) the alteration is at the expense of the other person; and (b) the alteration does not require an alteration to the premises of another occupier; and (c) the action required to restore the accommodation to its previous condition is reasonably practicable; and (d) the other person undertakes to restore the accommodation to its previous condition before leaving it, and it is reasonably likely that the other person will do so".

¹⁸³ S 85: "(1) A person must not discriminate by doing any of the following (a) refusing to rent accommodation to another person with a visual, hearing or mobility impairment because the other person has a dog to assist the other person in relation to the impairment; (b) requiring the other person to keep the dog elsewhere; (c) requesting or requiring the other person to pay an extra charge because the dog lives at the accommodation. (2) This section does not affect the liability of the person with the dog for any damage caused by the dog".

¹⁸⁴ Ss 94 and 95: "94. A club must not discriminate (a) in determining the terms of a particular category or type of membership of the club; or (b) in failing to accept a person's application for membership of the club; or (c) in the way in which a person's application is processed; or (d) in the arrangements made for deciding who should be offered membership; or (e) in the terms on which a person is admitted as a member. 95. A club must not discriminate (a) in any variation of the terms of membership of the club; or (b) in failing to accept a member's application for a different category or type of membership; or (c) by denying or limiting access to any benefit, arising from membership, that is supplied by the club; or (d) in depriving a member of membership; or (e) by treating a member unfavourably in any way in connection with the membership or the affairs of the club".

¹⁸⁵ Ss 101 and 102: "101. A person who (a) performs any function or exercises any power under State law or for the purposes of a State Government program; or (b) has any other responsibility for the administration of State law or the conduct of a State Government program; must not discriminate in (c) the performance of the function; or (d) the exercise of the power; or (e) the carrying out of the responsibility. 102. (1) A member of a local authority must not discriminate against another member in the performance of official functions. (2) Subsection (1) does not apply to discrimination on the basis of political belief or activity".

¹⁸⁶ S 41: "An educational authority that operates, or proposes to operate, an educational institution wholly or mainly for students of a particular sex or religion, or who have a general or specific impairment may exclude (a) applicants who are not of the particular sex or religion; or (b) applicants who do not have a general, or the specific, impairment".

¹⁸⁷ S 42: "(1) It is not unlawful for a non-State school authority to discriminate against a person with respect to a matter that is otherwise prohibited under subdivision 1. (2) Subsection (1) does not apply to discrimination on the basis of race or impairment".

¹⁸⁸ S 43: "An educational authority may select students for an education program on the basis of an admission scheme that has a minimum qualifying age".

¹⁸⁹ S 44: "(1) Subject to the *Education (General Provisions) Act 1989*, it is not unlawful for an educational authority to discriminate on the basis of impairment against a person with respect to a matter that is otherwise prohibited under subdivision 1 if (a) the person would require special services or facilities; and (b) the supply of special services or facilities would impose unjustifiable hardship on the educational authority. (2) Whether the supply of special services or facilities would impose unjustifiable hardship depends on the circumstances set out in section 5".



religious significance;¹⁹¹ age-based benefits;¹⁹² children to be accompanied by adult;¹⁹³ special services or facilities¹⁹⁴); superannuation (exemption based on sex or marital status,¹⁹⁵ retention of existing superannuation fund conditions based on age or impairment,¹⁹⁶ new superannuation fund conditions based on age or impairment,¹⁹⁷ occupational superannuation standard¹⁹⁸ and

¹⁹⁰ S 46(2): “In this section, a reference to a person who supplies goods and services does not include an association that (a) is established for social, literary, cultural, political, sporting, athletic, recreational, community service or any other similar lawful purposes; and (b) does not carry out its purposes for the purpose of making a profit”.

¹⁹¹ S 48: “A person may restrict access to land or a building of cultural or religious significance by people who are not of a particular sex, age, race or religion if the restriction (a) is in accordance with the culture concerned or the doctrine of the religion concerned; and (b) is necessary to avoid offending the cultural or religious sensitivities of people of the culture or religion”.

¹⁹² S 49: “A person may supply benefits and concessions on the basis of age with respect to a matter that is otherwise prohibited under Subdivision 1”.

¹⁹³ S 50: “A person may require, as a term of supplying goods and services to a minor, that a minor be accompanied by an adult if there would be a reasonable risk that a minor may cause a disruption or endanger himself or herself or others if not accompanied by an adult”.

¹⁹⁴ S 51: “(1) It is not unlawful for a person to discriminate on the basis of impairment against another person with respect to a matter that is otherwise prohibited under Subdivision 1 if (a) the other person would require special services or facilities; and (b) the supply of special services or facilities would impose unjustifiable hardship on the person supplying the goods or services. (2) Whether the supply of special services or facilities would impose unjustifiable hardship depends on the circumstances set out in section 5”.

¹⁹⁵ S 59: “It is not unlawful to discriminate on the basis of sex or marital status with respect to a matter that is otherwise prohibited under Subdivision 1 if the discrimination is permitted under the *Sex Discrimination Act 1984* (Cwlth)”.

¹⁹⁶ S 60: “(1) It is not unlawful to discriminate on the basis of age or impairment by retaining an existing superannuation fund condition in relation to a person who became a member of the fund before the commencement of section 53. (2) In this section existing superannuation fund condition means a superannuation fund condition in existence at the commencement of section 53”.

¹⁹⁷ Ss 61-63: “61. It is not unlawful for a person to discriminate on the basis of age or impairment by imposing a superannuation fund condition after the commencement of section 53 in relation to another person, irrespective of (a) whether the superannuation fund was in existence before the commencement of section 53; and (b) when the other person became, or becomes, a member of the fund; if (c) the condition is based on reasonable actuarial or statistical data from a source on which it is reasonable for the person to rely; and (d) the condition is reasonable having regard to the data and any other relevant factors. 62. It is not unlawful for a person to discriminate on the basis of age or impairment by imposing a superannuation fund condition after the commencement of section 53 in relation to another person, irrespective of (a) whether the superannuation fund was in existence before the commencement of section 53; and (b) when the other person became, or becomes, a member of the fund; if (c) there is no reasonable actuarial or statistical data from a source on which it is reasonable for the person to rely; and (d) the condition is based on other reasonable data from a source on which it is reasonable for the person to rely; and (e) the condition is reasonable having regard to the other data and any other relevant factors. 63. It is not unlawful for a person to discriminate on the basis of age or impairment by imposing a superannuation fund condition after the commencement of section 53 in relation to another person, irrespective of (a) whether the superannuation fund was in existence before the commencement of section 53; and (b) when the other person became, or becomes, a member of the fund; if (c) there is no reasonable actuarial, statistical or other data from a source on which it is reasonable for the person to rely; and (d) the condition is reasonable having regard to any other relevant factors”.

¹⁹⁸ S 64: “It is not unlawful to discriminate on the basis of age or impairment with respect to a matter that is otherwise prohibited under subdivision 1 if the discrimination happens because of the application of a standard prescribed under the *Occupational Superannuation Standards Act 1987* (Cwlth) or *Superannuation Industry (Supervision) Act 1993* (Cwlth)”.

compliance with commonwealth legislation¹⁹⁹); insurance (sex,²⁰⁰ age and impairment²⁰¹) ; disposition of land (disposition by gift or will,²⁰² sites of cultural or religious significance²⁰³); accommodation (shared accommodation,²⁰⁴ accommodation for workers,²⁰⁵ accommodation for students,²⁰⁶ accommodation with religious purposes,²⁰⁷ accommodation with charitable purposes²⁰⁸ and unjustifiable hardship²⁰⁹) and club membership and affairs (minority cultures or disadvantaged

¹⁹⁹ S 65: "It is not unlawful to discriminate on the basis of age or impairment with respect to a matter that is otherwise prohibited under subdivision 1 if the discrimination happens in order (a) to comply with a Commonwealth Act (other than the *Occupational Superannuation Standards Act 1987* or *Superannuation Industry (Supervision) Act 1993*); or (b) to obtain a benefit or avoid a penalty under such an Act".

²⁰⁰ S 73: "It is not unlawful to discriminate on the basis of sex with respect to a matter that is otherwise prohibited under subdivision 1 if the discrimination is permitted under the *Sex Discrimination Act 1984* (Cwlth)".

²⁰¹ Ss 74 and 75: "74. It is not unlawful for a person to discriminate on the basis of age or impairment with respect to a matter that is otherwise prohibited under subdivision 1 if the discrimination (a) is based on reasonable actuarial or statistical data from a source on which it is reasonable for the person to rely; and (b) is reasonable having regard to the data and any other relevant factors. 75. It is not unlawful for a person to discriminate on the basis of age or impairment with respect to a matter that is otherwise prohibited under subdivision 1 if (a) there is no reasonable actuarial or statistical data from a source on which it is reasonable for the person to rely; and (b) the discrimination is reasonable having regard to any other relevant factors".

²⁰² S 79: "It is not unlawful to discriminate with respect to a matter that is otherwise prohibited under subdivision 1 if the discrimination is by way of a testamentary disposition or gift".

²⁰³ S 80: "It is not unlawful to discriminate on the basis of sex, age, race or religion with respect to a matter that is otherwise prohibited under subdivision 1 if (a) the relevant interest in land is an interest in land or a building of cultural or religious significance; and (b) the discrimination (i) is in accordance with the culture concerned or the doctrine of the religion concerned; and (ii) is necessary to avoid offending the cultural or religious sensitivities of people of the culture or religion".

²⁰⁴ S 87: "It is not unlawful for a person to discriminate in deciding who is to reside in accommodation that (a) forms part of, and is intended to continue to form part of, the main home of the person or a near relative; and (b) is for no more than 3 people other than a person mentioned in paragraph (a) or near relatives of such a person".

²⁰⁵ S 88.

²⁰⁶ S 89: "An educational authority that operates, or proposes to operate, an educational institution wholly or mainly for students of a particular sex or religion, or who have a general or specific impairment, may provide accommodation wholly or mainly for (a) students of the particular sex or religion; or (b) students who have a general, or the specific, impairment".

²⁰⁷ S 90: "It is not unlawful to discriminate with respect to a matter that is otherwise prohibited under Subdivision 1 if (a) the accommodation concerned is under the direction or control of a body established for religious purposes; and (b) the discrimination (i) is in accordance with the doctrine of the religion concerned; and (ii) is necessary to avoid offending the religious sensitivities of people of the religion".

²⁰⁸ S 91: "It is not unlawful to discriminate on the basis of sex, marital status or age with respect to a matter that is otherwise prohibited under Subdivision 1 if (a) the accommodation concerned is under the direction or control of a body established for charitable purposes; and (b) the discrimination is in accordance with the particular purposes for which the accommodation was established by the body".

²⁰⁹ S 92: "(1) A person may discriminate on the basis of impairment against another person with respect to a matter that is otherwise prohibited under Subdivision 1 if (a) the other person would require special services or facilities; and (b) the supply of special services or facilities would impose unjustifiable hardship on the first person. (2) Whether the supply of special services or facilities would impose unjustifiable hardship depends on the circumstances set out in section 5".



people,²¹⁰ reasonable sex discrimination,²¹¹ reasonable risk of injury²¹² and unjustifiable hardship²¹³), as well as general exemptions that applies to all the sectors relating to welfare measures,²¹⁴ equal opportunity measures,²¹⁵ acts done in compliance with legislation,²¹⁶ compulsory retirement age,²¹⁷ public health,²¹⁸ workplace health and safety,²¹⁹ religious bodies,²²⁰ charities,²²¹ sport²²² and legal incapacity.²²³

²¹⁰ S 97: "A club may exclude applicants for membership of the club who are not members of the group of people with an attribute for whom the club was established if the club operates wholly or mainly (a) to preserve a minority culture; or (b) to prevent or reduce disadvantage suffered by people of that group".

²¹¹ S 98: "It is not unlawful for a club to discriminate on the basis of sex by limiting access to any benefit, arising from membership, that is provided by the club if (a) it is not practicable for males and females to enjoy the benefit at the same time; and (b) either of the following subparagraphs apply (i) access to the same or an equivalent benefit is supplied for the use of males and females separately; or (ii) access arrangements offer males and females a reasonably equivalent opportunity to enjoy the benefit".

²¹² S 99: "A club may exclude an applicant for membership who is a minor if there is a reasonable risk of injury to a minor or other people".

²¹³ S 100: "(1) It is not unlawful for a club to discriminate on the basis of impairment in failing to accept a person's application for membership if (a) the person would require special services or facilities; and (b) the supply of special services or facilities would impose unjustifiable hardship on the club. (2) Whether the supply of special services or facilities would impose unjustifiable hardship depends on the circumstances set out in section 5".

²¹⁴ S 104: "A person may do an act to benefit the members of a group of people with an attribute for whose welfare the act was designed if the purpose of the act is not inconsistent with this Act".

²¹⁵ S 105: "(1) A person may do an act to promote equal opportunity for a group of people with an attribute if the purpose of the act is not inconsistent with this Act. (2) Subsection (1) applies only until the purpose of equal opportunity has been achieved".

²¹⁶ S 106: "(1) A person may do an act that is necessary to comply with, or is specifically authorised by (a) an existing provision of another Act; or (b) an order of a court; or (c) an existing provision of an order or award of a court or tribunal having power to fix minimum wages and other terms of employment; or (d) an existing provision of an industrial agreement; or (e) an order of the Anti-Discrimination Tribunal. (2) In this section existing provision means a provision in existence at the commencement of this section".

²¹⁷ S 106A.

²¹⁸ S 107: "A person may do an act that is reasonably necessary to protect public health".

²¹⁹ S 108: "A person may do an act that is reasonably necessary to protect the health and safety of people at a place of work".

²²⁰ S 109: "The Act does not apply in relation to (a) the ordination or appointment of priests, ministers of religion or members of a religious order; or (b) the training or education of people seeking ordination or appointment as priests, ministers of religion or members of a religious order; or (c) the selection or appointment of people to perform functions in relation to, or otherwise participate in, any religious observance or practice; or (d) unless section 29 (Educational or health-related institution with religious purposes) or section 90 (Accommodation with religious purposes) applies an act by a body established for religious purposes if the act is (i) in accordance with the doctrine of the religion concerned; and (ii) necessary to avoid offending the religious sensitivities of people of the religion".

²²¹ S 110: "A person may include a discriminatory provision in a document that provides exclusively for charitable benefits, and may do an act that is required to give effect to such a provision".

²²² S 111: "(1) A person may restrict participation in a competitive sporting activity (a) to either males or females, if the restriction is reasonable having regard to the strength, stamina or physique requirements of the activity; or (b) to people who can effectively compete; or (c) to people of a specified age or age group; or (d) to people with a specific or general impairment. (2) Subsection (1)(a) does not apply to a sporting activity for children who are less than 12 years of age. (3) In this section competitive sporting activity does not include (a) the coaching of people engaged in a sporting activity; or (b) the umpiring or refereeing of a sporting activity; or (c) the administration of a sporting activity; or (d) a sporting activity prescribed by regulation".

The complainant must prove that the respondent contravened the Act.²²⁴ In cases of indirect discrimination the respondent must prove that the discrimination was reasonable.²²⁵ The respondent must prove that a particular exemption applies.²²⁶

The Act prohibits sexual harassment,²²⁷ requesting and encouraging contravention of the Act,²²⁸ unlawful requests for information,²²⁹ incitement to racial or religious hatred,²³⁰ discriminatory advertising²³¹ and victimisation.²³²

E.5 South Australia

The South Australia *Equal Opportunity Act* 1984 prohibits discrimination on the basis of sex, sexuality,²³³ marital status,²³⁴ pregnancy, race,²³⁵ impairment²³⁶ and age. The Act is divided into a number of parts. Part III relates to sex, sexuality, marital status and pregnancy; part IV to race; part V to impairment and part VA to age. Each of the parts contains a number of divisions that relate to the definition of discrimination in that part, the sectors to which the prohibition applies (employment, associations, trade unions, qualifying bodies, educational authorities, disposing of an

²²³ S 112: "A person may discriminate against another person because the other person is subject to a legal incapacity if the incapacity is relevant to the transaction in which they are involved".

²²⁴ S 204.

²²⁵ S 205. A "reasonableness" defence does not seem to exist in cases of direct discrimination.

²²⁶ S 206.

²²⁷ Ss 117-120.

²²⁸ Ss 122 and 123.

²²⁹ S 124.

²³⁰ S 126.

²³¹ Ss 127 and 128.

²³² S2 129-131.

²³³ Sexuality means heterosexuality, homosexuality, bisexuality or transsexuality.

²³⁴ "Marital status" is defined as "the status or condition of (a) being single; (b) being married; (c) being married but living separately and apart from one's spouse; (d) being divorced; (e) being widowed; or (f) cohabiting with a person of the opposite sex as a de facto husband or wife".

²³⁵ "Race" is defined as "the nationality, country of origin, colour or ancestry of the person or of any other person with whom he or she resides or associates".

²³⁶ "Impairment" includes intellectual impairment and physical impairment. "Intellectual impairment" is defined as the "permanent or temporary loss or imperfect development of mental faculties (except where attributable to mental illness) resulting in reduced intellectual capacity". "Physical impairment" is defined as the "(a) the total or partial loss of any function of the body; (b) the total or partial loss of any part of the body; (c) the malfunctioning of any part of the body; or (d) the malformation or disfigurement of any part of the body, whether permanent or temporary, but does not include intellectual impairment or mental illness".



interest in land, goods and services, accommodation and superannuation) and general exemptions from the particular part.

Part III contains separate (and repetitive) definitions of “discriminate” in relation to sex,²³⁷ sexuality,²³⁸ marital status²³⁹ and pregnant women.²⁴⁰ Division II (employment) prohibits discrimination against applicants for employment and employees, commission agents, contract workers and within partnerships.²⁴¹ Division III prohibits discrimination by associations,²⁴² trade

²³⁷ S 29(2): “For the purposes of this Act, a person discriminates on the ground of sex- (a) if he or she treats another person unfavourably because of the other’s sex; (b) if he or she treats another unfavourably because the other does not comply, or is not able to comply, with a particular requirement and- (i) the nature of the requirement is such that a substantially higher proportion of persons of the opposite sex complies, or is able to comply, with the requirement than of those of the other’s sex; and (ii) the requirement is not reasonable in the circumstances of the case; or (c) if he or she treats another person unfavourably on the basis of a characteristic that appertains generally to persons of the other’s sex, or on the basis of a presumed characteristic that is generally imputed to persons of that sex”.

²³⁸ S 29(3) and (4): “(3) Subject to subsection (4), for the purposes of this Act, a person discriminates on the ground of sexuality- (a) if he or she treats another person unfavourably because of the other’s sexuality, or a presumed sexuality; (b) if he or she treats another person unfavourably because the other does not comply, or is not able to comply, with a particular requirement and - (i) the nature of the requirement is such that a substantially higher proportion of persons of a different sexuality complies, or is able to comply, with the requirement than of those of the other’s sexuality; and (ii) the requirement is not reasonable in the circumstances of the case; or (c) if he or she treats another person unfavourably on the basis of a characteristic that appertains generally to persons of the other’s sexuality, or presumed sexuality, or on the basis of a presumed characteristic that is generally imputed to persons of that sexuality. (4) Where- (a) a person discriminates against another on the basis of appearance or dress; (b) that appearance or dress is characteristic of, or an expression of, that other person’s sexuality; but (c) the discrimination is reasonable in all the circumstances, the discrimination will not, for the purposes of Division II, be taken to be discrimination on the ground of sexuality”.

²³⁹ S 29(5): “For the purposes of this Act, a person discriminates on the ground of marital status- (a) if he or she treats another person unfavourably because of the other’s marital status; (b) if he or she treats another person unfavourably because the other does not comply, or is not able to comply, with a particular requirement and- (i) the nature of the requirement is such that a substantially higher proportion of persons of a different marital status complies, or is able to comply, with the requirement than of those of the other’s marital status; and (ii) the requirement is not reasonable in the circumstances of the case; or (c) if he or she treats another person unfavourably on the basis of a characteristic that appertains generally to persons of that marital status, or on the basis of a presumed characteristic that is generally imputed to persons of that marital status”.

²⁴⁰ S 29(6): “For the purposes of this Act, a person discriminates against a pregnant woman- (a) if he or she treats the woman unfavourably because of her pregnancy; (b) if he or she treats the woman unfavourably because she does not comply, or is not able to comply, with a particular requirement and- (i) the nature of the requirement is such that a substantially higher proportion of women who are not pregnant complies, or is able to comply, with the requirement than of those who are pregnant; and (ii) the requirement is not reasonable in the circumstances of the case; or (c) if he or she treats the woman unfavourably on the basis of a characteristic that appertains generally to pregnant women, or on the basis of a presumed characteristic that is generally imputed to pregnant women”.

²⁴¹ S 33: “(1) It is unlawful for a firm, or a person promoting the formation of a firm, to discriminate against a person (otherwise than on the ground of sexuality) in determining, or in the course of determining, who should be offered a position as partner in the firm. (2) It is unlawful for a firm, or a person promoting the formation of a firm, to discriminate against a person on the ground of sexuality in determining, or in the course of determining, who should be offered a position as partner in the firm, unless the firm consists, or is to consist, of less than six members. (3) It is unlawful for a firm, or a person promoting the formation of a firm, to discriminate against a person in the terms or conditions on which that person is offered a position as partner in the firm. (4) It is unlawful for a firm to discriminate against a partner- (a) in the terms or conditions of membership of the firm; (b) by denying or limiting access to any benefit arising from

unions and employer bodies²⁴³ and qualifying bodies.²⁴⁴ Division IV prohibits discrimination by educational authorities.²⁴⁵ Division V prohibits discrimination by persons disposing of an interest in land,²⁴⁶ in the provision of goods and services²⁴⁷ and in accommodation.²⁴⁸ Division VI deals with

membership of the firm; (c) by expelling the partner from the firm; or (d) by subjecting the partner to any other detriment”.

²⁴² S 35(1) and (3): “(1) It is unlawful for an association that has both male and female members to discriminate- (a) against an applicant for membership on the ground of sex, marital status or pregnancy- (i) by refusing or failing to admit the applicant to membership, or to a particular class of membership, of the association; or (ii) in the terms on which the applicant is, or may be, admitted to membership, or a particular class of membership; or (b) against a member of the association on the ground of sex, marital status or pregnancy- (i) by refusing or failing to provide a particular service or benefit to that member; (ii) in the terms on which a particular service or benefit is provided to that member; or (iii) by expelling that member from the association or subjecting him or her to any other detriment. (3) Without limiting the generality of this section, an association discriminates against a member of a particular class in the association if, upon application by that member to join a different class of membership in the association, the association accords the member a lower order of precedence on the list of applicants for that class of membership than that accorded to an applicant who is not a member of the association”.

²⁴³ S 35A: “(1) It is unlawful for an association to which this section applies to discriminate- (a) against an applicant for membership on the ground of sexuality- (i) by refusing or failing to admit the applicant to membership, or to a particular class of membership, of the association; or (ii) in the terms on which the applicant is, or may be, admitted to membership or a particular class of membership; or (b) against a member of the association on the ground of sexuality- (i) by refusing or failing to provide a particular service or benefit to that member; (ii) in the terms on which a particular service or benefit is provided to that member; or (iii) by expelling the member from the association or subjecting him or her to any other detriment. (2) Without limiting the generality of subsection (1), an association to which this section applies discriminates against a member of a particular class in the association if, on application by the member to join a different class of membership in the association, the association accords the member a lower order of precedence on the list of applicants for that class of membership than that accorded to an applicant who is not a member of the association. (3) In this section- "association to which this section applies" means- (a) an association registered under Part IX of the Industrial Conciliation and Arbitration Act, 1972; (b) an organization registered under the Industrial Relations Act 1988 of the Commonwealth; (c) any other association formed to promote the interests of employers or employees”.

²⁴⁴ S 36: “It is unlawful for an authority or body empowered to confer an authorization or qualification that is needed for, or facilitates, the practice of a profession, or the carrying on or engaging in of a trade or occupation, to discriminate against a person- (a) by refusing or failing to confer or renew that authorization or qualification; (b) in the terms or conditions on which it confers or renews the authorization or qualification; or (c) by withdrawing the authorization or qualification, or varying the terms or conditions upon which it is held”.

²⁴⁵ S 37(1) and (2): “(1) It is unlawful for an educational authority to discriminate against a person- (a) by refusing or failing to accept an application for admission as a student; or (b) in the terms or conditions on which it offers to admit the person as a student. (2) It is unlawful for an educational authority to discriminate against a student- (a) in the terms or conditions on which it provides the student with training or education; (b) by denying or limiting access to any benefit provided by the authority; (c) by expelling the student; or (d) by subjecting the student to any other detriment”.

²⁴⁶ S 38(1): “It is unlawful for a person to discriminate against another- (a) by refusing or failing to dispose of an interest in land to the other person; or (b) in the terms or conditions on which an interest in land is offered to the other person”.

²⁴⁷ S 39(1): “It is unlawful for a person who offers or provides- (a) goods; or (b) services to which this Act applies, (whether for payment or not) to discriminate against another- (c) by refusing or failing to supply the goods or perform the services; or (d) in the terms or conditions on which or the manner in which the goods are supplied or the services are performed”.

²⁴⁸ S 40(1) and (2): “(1) It is unlawful for a person to discriminate against another- (a) in the terms or conditions on which accommodation is offered; (b) by refusing an application for accommodation; or (c) by deferring such an application or according the applicant a lower order of precedence on any list of applicants for that accommodation. (2) It is unlawful for a person to discriminate against a person for whom accommodation has been provided- (a) in the terms or conditions on which accommodation is provided; (b) by denying or limiting access to any benefit connected with the accommodation; (c) by evicting the person; or (d) by subjecting the person to any other detriment”.



superannuation.²⁴⁹ Most of the divisions contain sector-specific exemptions (ie, employment, associations,²⁵⁰ educational authorities,²⁵¹ persons disposing of an interest in land,²⁵² goods and services,²⁵³ accommodation²⁵⁴ and superannuation.²⁵⁵) Division VII contains general exemptions

²⁴⁹ Ss 42(1) and (2); 43: “42. (1) Subject to this Division, it is unlawful for a person who provides an employer subsidized superannuation scheme to discriminate against a person- (a) by providing a scheme that discriminates or, if the other person were to become a member of the scheme, would discriminate, or require or authorize discrimination, against the other person; or (b) in the manner in which the scheme is administered. (2) Subsection (1) is subject to the following qualifications: (a) it applies only in relation to an employer subsidized superannuation scheme under which a greater number of the members (not including members who are no longer employed by an employer who participates in the scheme) reside in this State than in any other single State or Territory; and (b) such other qualifications as may be prescribed. 43. It is unlawful for a person who provides a superannuation scheme or provident fund (not being an employer subsidized superannuation scheme) to discriminate against a person- (a) by providing a scheme or fund that discriminates or, if the other person were to become a member of the scheme or fund, would discriminate, or require or authorize discrimination, against the other person; or (b) in the manner in which the scheme or fund is administered, except where the discrimination- (c) is based upon actuarial or statistical data from a source on which it is reasonable to rely; and (d) is reasonable having regard to that data”.

²⁵⁰ S 35(2): “This section does not apply to discrimination on the ground of sex in relation to the use or enjoyment of a service or benefit provided by an association- (a) where it is not practicable for the service or benefit to be used or enjoyed simultaneously by both men and women, but the same, or an equivalent, service or benefit is provided for the use or enjoyment of men and women separately from each other or at different times; or (b) where it is not practicable for the service or benefit to be used or enjoyed to the same extent by both men and women, but both men and women are entitled to a fair and reasonable proportion of the use or enjoyment of the service or benefit”.

²⁵¹ S 37(3): “This section does not apply to discrimination on the ground of sex in respect of- (a) admission to a school, college, university or institution established wholly or mainly for students of the one sex; (b) the admission of a person to a school, college or institution (not being a tertiary level school, college or institution) where the level of education or training sought by the person is provided only for students of the one sex; or (c) the provision at a school, college, university or institution of boarding facilities for students of the one sex”.

²⁵² S 38(2): “This section does not apply to the disposal of an interest in land by way of, or pursuant to, a testamentary disposition or gift”.

²⁵³ S 39(2): “Where the nature of a skill varies according to whether it is exercised in relation to men or to women, a person does not contravene this section by exercising the skill in relation to men only, or women only, in accordance with the person’s normal practice”.

²⁵⁴ S 40(3) and (4): “(3) This section does not apply to discrimination in relation to the provision of accommodation if- (a) the person who provides, or proposes to provide, the accommodation, or a near relative of that person, resides, and intends to continue to reside, on the premises; and (b) accommodation is provided on the premises for no more than six persons apart from that person and his or her family. (4) This section does not apply to discrimination on the ground of sex or marital status in relation to the provision of accommodation by an organization that does not seek to secure a pecuniary profit for its members, where the accommodation is provided only for persons of the one sex, or of a particular marital status, as the case may be”.

²⁵⁵ Ss 42(3) and (4); 44(1): “42. (3) This section does not render unlawful discrimination on the ground of sex in the rates upon which a pension payable to a member under an employer subsidized superannuation scheme may, at the member’s option, be converted to a lump sum or a lump sum payable under the scheme may, at the member’s option, be converted to a pension, where the discrimination- (a) is based upon actuarial or statistical data from a source upon which it is reasonable to rely; and (b) is reasonable having regard to that data. (4) This section does not render unlawful discrimination on the ground of sex in the benefits payable under an employer subsidized superannuation scheme, where- (a) the contributions payable by both the employer and the employee are fixed by the terms of the scheme; and (b) the benefits that will accrue to the employee are derived from the accumulation of those contributions less any insurance premiums paid under the scheme in respect of the employee, to the extent only that the discrimination is based upon a lawful difference in those insurance premiums. 44. (1) For the purposes of this Division, a superannuation scheme or provident fund does not discriminate on the ground of marital status by reason only of the fact- (a) that it provides for the payment of benefits to the surviving spouses of members; or (b) that it does not provide

relating to charities,²⁵⁶ benefits to pregnant women,²⁵⁷ measures intended to achieve equality,²⁵⁸ sport,²⁵⁹ insurance²⁶⁰ and religious bodies.²⁶¹

Division I of Part IV contains a definition of race discrimination.²⁶² Division II prohibits discrimination in employment (applicants and employees, commission agents, contract workers and partnerships²⁶³). Division III prohibits discrimination by associations,²⁶⁴ and qualifying

benefits for the surviving de facto spouses of members, or provides less favourable benefits for surviving de facto spouses than it does for the surviving spouses of members”.

²⁵⁶ S 45: “This Part does not- (a) affect a provision in a charitable instrument for conferring benefits wholly or mainly upon- (i) persons of the one sex; (ii) persons of a particular sexuality; (iii) persons of a particular marital status; or (iv) pregnant women; or (b) render unlawful any act done to give effect to such a provision”.

²⁵⁷ S 46: “This Part does not render unlawful the granting to women of rights or privileges in connection with pregnancy or childbirth”.

²⁵⁸ S 47: “This Part does not render unlawful an act done for the purpose of carrying out a scheme or undertaking intended to ensure that persons of the one sex, or of a particular marital status, have equal opportunities with persons of the other sex, or of another marital status, in any of the circumstances to which this Part applies”.

²⁵⁹ S 48: “This Part does not render unlawful the exclusion of persons of the one sex from participation in a competitive sporting activity in which the strength, stamina or physique of the competitor is relevant”.

²⁶⁰ S 49: “This Part does not render unlawful discrimination on the ground of sex in the terms on which an annuity, life assurance, accident insurance or any other form of insurance is offered or may be obtained, where the discrimination- (a) is based upon actuarial or statistical data from a source on which it is reasonable to rely; and (b) is reasonable having regard to that data”.

²⁶¹ S 50: “(1) This Part does not render unlawful discrimination in relation to- (a) the ordination or appointment of priests, ministers of religion or members of a religious order; (b) the training or education of persons seeking ordination or appointment as priests, ministers of religion or members of a religious order; or (c) any other practice of a body established for religious purposes that conforms with the precepts of that religion or is necessary to avoid injury to the religious susceptibilities of the adherents of that religion. (2) Where an educational or other institution is administered in accordance with the precepts of a particular religion, discrimination on the ground of sexuality that arises in the course of the administration of that institution and is founded on the precepts of that religion is not rendered unlawful by this Part”.

²⁶² S 51: “For the purposes of this Act, a person discriminates on the ground of race- (a) if he or she treats another person unfavourably by reason of the other’s race; (b) if he or she treats another person unfavourably because the other does not comply, or is not able to comply, with a particular requirement and- (i) the nature of the requirement is such that a substantially higher proportion of persons of a different race complies, or is able to comply, with the requirement than of those of the other’s race; and (ii) the requirement is not reasonable in the circumstances of the case; or (c) if he or she treats another person unfavourably on the basis of a characteristic that appertains generally to persons of the other’s race, or on the basis of a presumed characteristic that is generally imputed to persons of that race”.

²⁶³ S 55: “(1) It is unlawful for a firm consisting of one or more members, or for one or more persons promoting the formation of a firm, to discriminate against a person on the ground of race- a) in determining, or in the course of determining, who should be offered a position as partner in the firm; or b) in the terms or conditions on which that person is offered a position as partner in the firm. (2) It is unlawful for a firm consisting of two or more partners to discriminate against a partner on the ground of race- (a) in the terms or conditions of membership of the firm; (b) by denying or limiting access to any benefit arising from membership of the firm; (c) by expelling the partner from the firm; or (d) by subjecting the partner to any other detriment”.

²⁶⁴ S 57(1): “It is unlawful for an association to discriminate- (a) against an applicant for membership on the ground of race- (i) by refusing or failing to admit the applicant to membership, or to a particular class of membership, of the association; or (ii) in the terms on which the applicant is, or may be, admitted to membership, or to a particular class of membership; or (b) against a member of the association on the ground of race- (i) by refusing or failing to provide a



bodies.²⁶⁵ Division IV targets educational authorities.²⁶⁶ Division V deals with people disposing of an interest in land,²⁶⁷ goods and services²⁶⁸ and accommodation.²⁶⁹ Division VI prohibits discrimination by superannuation schemes and provident funds.²⁷⁰ Some of the divisions contain area-specific exemptions (employment, associations,²⁷¹ and land²⁷²) and division VII contains general exemptions relating to charities²⁷³ and benefits for people of a particular race.²⁷⁴

particular service or benefit to that member; (ii) in the terms on which a particular service or benefit is provided to that member; or (iii) by expelling that member from the association or subjecting him or her to any other detriment”.

²⁶⁵ S 58: “(1) It is unlawful for an authority or body empowered to confer an authorization or qualification that is needed for, or facilitates, the practice of a profession, or the carrying on or engaging in of a trade or occupation, to discriminate against a person on the ground of race- (a) by refusing or failing to confer or renew that authorization or qualification; (b) in the terms or conditions on which it confers the authorization or qualification; or (c) by withdrawing the authorization or qualification, or varying the terms or conditions upon which it is held. (2) Without limiting the generality of subsection (1), an authority or body discriminates against a person on the ground of race if the authority or body- (a) fails to take reasonable steps to inform itself sufficiently on the adequacy or appropriateness of qualifications or experience gained outside of Australia by the person; and (b) in consequence of that failure, refuses to confer on the person an authorization or qualification for which the person has applied”.

²⁶⁶ S 59: “(1) It is unlawful for an educational authority to discriminate against a person on the ground of race- (a) by refusing or failing to accept an application for admission as a student; or (b) in the terms or conditions on which it offers to admit the person as a student. (2) It is unlawful for an educational authority to discriminate against a student on the ground of race- (a) in the terms or conditions on which it provides the student with education or training; (b) by denying or limiting access to any benefit provided by the authority; (c) by expelling the student; or (d) by subjecting the student to any other detriment”.

²⁶⁷ S 60(1): “It is unlawful for a person to discriminate against another on the ground of race- (a) by refusing or failing to dispose of an interest in land to the other person; or (b) in the terms or conditions on which an interest in land is offered to the other person”.

²⁶⁸ S 61: “It is unlawful for a person who offers or provides- (a) goods; or (b) services to which this Act applies, (whether for payment or not) to discriminate against another on the ground of race- (c) by refusing or failing to supply the goods or perform the services; or (d) in the terms or conditions on which or the manner in which the goods are supplied or the services are performed”.

²⁶⁹ S 62: “(1) It is unlawful for a person to discriminate against another on the ground of race- (a) in the terms or conditions on which accommodation is offered; (b) by refusing an application for accommodation; or (c) by deferring such an application or according the applicant a lower order of precedence on any list of applicants for that accommodation. (2) It is unlawful for a person to discriminate against a person for whom accommodation has been provided on the ground of race- (a) in the terms or conditions on which accommodation is provided; (b) by denying or limiting access to any benefit connected with the accommodation; (c) by evicting the person; or (d) by subjecting the person to any other detriment”.

²⁷⁰ S 63(1): “It is unlawful for a person who provides a superannuation scheme or provident fund to discriminate against a person on the ground of race- (a) by providing a scheme or fund that discriminates or, if the other person were to become a member of the scheme or fund, would discriminate, or require or authorize discrimination, against the other person; or (b) in the manner in which the scheme or fund is administered”.

²⁷¹ S 57(2): “This section does not apply to a club established principally for the purpose of promoting social intercourse between the members of a particular racial or ethnic group”.

²⁷² S 60(2): “This section does not apply to the disposal of an interest in land by way of, or pursuant to, a testamentary disposition or gift”.

²⁷³ S 64: “This Part does not- (a) affect a provision in a charitable instrument for conferring benefits wholly or mainly upon persons of a particular race; or (b) render unlawful any act done to give effect to such a provision”.

²⁷⁴ S 65: “This Part does not render unlawful an act done for the purpose of carrying out a scheme or undertaking for the benefit of persons of a particular race”.

Division I of Part V contains a definition of discrimination based on impairment.²⁷⁵ Division II targets employment (applicants and employees, commission agents, contract workers and partnerships²⁷⁶). Division II relates to associations²⁷⁷ and qualifying bodies.²⁷⁸ Division IV prohibits discrimination in education.²⁷⁹ Division V deals with land,²⁸⁰ goods and services²⁸¹ and

²⁷⁵ S 66: "For the purposes of this Act, a person discriminates on the ground of impairment- (a) if he or she treats another unfavourably because of the other's impairment, or a past or presumed impairment; (b) if he or she treats another unfavourably because the other does not comply, or is not able to comply, with a particular requirement and- (i) the nature of the requirement is such that a substantially higher proportion of persons who do not have such an impairment complies, or is able to comply, with the requirement than of those persons who have such an impairment; and (ii) the requirement is not reasonable in the circumstances of the case; (c) if he or she treats another unfavourably on the basis of a characteristic that appertains generally to persons who have such an impairment, or on the basis of a presumed characteristic that is generally imputed to persons who have such an impairment; (d) if, in circumstances where it is unreasonable to do so- (i) he or she fails to provide special assistance or equipment required by a person in consequence of the person's impairment; or (ii) he or she treats another unfavourably because the other requires special assistance or equipment as a consequence of the other's impairment; (e) if he or she treats a person who is blind or deaf, or partially blind or deaf, unfavourably because the person possesses, or is accompanied by, a guide dog, or because of any related matter (whether or not it is his or her normal practice to treat unfavourably any person who possesses, or is accompanied by, a dog)".

²⁷⁶ S 70: "(1) It is unlawful for a firm consisting of one or more members, or for one or more persons promoting the formation of a firm, to discriminate against a person on the ground of impairment- (a) in determining, or in the course of determining, who should be offered a position as partner in the firm; or (b) in the terms or conditions on which that person is offered a position as partner in the firm. (2) It is unlawful for a firm consisting of two or more partners to discriminate against a partner on the ground of impairment- (a) in the terms or conditions of membership of the firm; (b) by denying or limiting access to any benefit arising from membership of the firm; (c) by expelling the partner from the firm; or (d) by subjecting the partner to any other detriment".

²⁷⁷ S 72: "(1) It is unlawful for an association to discriminate- (a) against an applicant for membership on the ground of impairment- (i) by refusing or failing to admit the applicant to membership, or to a particular class of membership, of the association; or (ii) in the terms on which the applicant is, or may be, admitted to membership, or to a particular class of membership; or (b) against a member of the association on the ground of impairment- (i) by refusing or failing to provide a particular service or benefit to that member; (ii) in the terms on which a particular service or benefit is provided to that member; or (iii) by expelling that member from the association or subjecting him or her to any other detriment".

²⁷⁸ S 73(1): "It is unlawful for an authority or body empowered to confer an authorization or qualification that is needed for, or facilitates, the practice of a profession, or the carrying on or engaging in of a trade or occupation, to discriminate against a person on the ground of impairment- (a) by refusing or failing to confer or renew that authorization or qualification; (b) in the terms or conditions on which it confers the authorization or qualification; or (c) by withdrawing the authorization or qualification, or varying the terms or conditions upon which it is held".

²⁷⁹ S 74(1) and (2): "(1) It is unlawful for an educational authority to discriminate against a person on the ground of impairment- (a) by refusing or failing to accept an application for admission as a student; or (b) in the terms or conditions on which it offers to admit the person as a student. (2) It is unlawful for an educational authority to discriminate against a student on the ground of impairment- (a) in the terms or conditions on which it provides the student with education or training; (b) by denying or limiting access to any benefit provided by the authority; (c) by expelling the student; or (d) by subjecting the student to any other detriment".

²⁸⁰ S 75(1): "It is unlawful for a person to discriminate against another on the ground of impairment- (a) by refusing or failing to dispose of an interest in land to the other person; or (b) in the terms or conditions on which an interest in land is offered to the other person".

²⁸¹ S 76(1): "It is unlawful for a person who offers or provides- (a) goods; or (b) services to which this Act applies, (whether for payment or not) to discriminate against another on the ground of impairment- (c) by refusing or failing to supply the goods or perform the services; or (d) in the terms or conditions on which or the manner in which the goods are supplied or the services are performed".



accommodation.²⁸² Division VI targets superannuation and provident funds.²⁸³ Most of the divisions contain area-specific exemptions (employment, qualifying bodies,²⁸⁴ education,²⁸⁵ land,²⁸⁶ goods and services²⁸⁷ and superannuation²⁸⁸) and division VII contains general exemptions

²⁸² S 77: "(1) It is unlawful for a person to discriminate against another on the ground of impairment- (a) in terms or conditions on which accommodation is offered; (b) by refusing an application for accommodation; or (c) by deferring such an application or according the applicant a lower order of precedence on any list of applicants for that accommodation. (2) It is unlawful for a person to discriminate against a person for whom accommodation has been provided on the ground of impairment- (a) in the terms or conditions on which accommodation is provided; (b) by denying or limiting access to any benefit connected with the accommodation; (c) by evicting the person; or (d) by subjecting the person to any detriment".

²⁸³ S 78(1): "Subject to subsection (2), it is unlawful for a person who provides a superannuation scheme or provident fund to discriminate against a person on the ground of impairment- (a) by providing a scheme or fund that discriminates or, if the other person were to become a member of the scheme or fund, would discriminate, or require or authorize discrimination, against the other person; or (b) in the manner in which the scheme or fund is administered, except to the extent that- (c) the discrimination- (i) is based upon actuarial or statistical data from a source upon which it is reasonable to rely; and (ii) is reasonable having regard to the data and any other relevant factors; or (d) where no such actuarial or statistical data is available, the discrimination is reasonable having regard to any other relevant factors".

²⁸⁴ S 73(2): "This section does not apply to discrimination against a person on the ground of impairment where, in consequence of that impairment, the person is not, or would not be, able to practise the profession, or carry on or engage in the trade or occupation, adequately or safely".

²⁸⁵ S 74(3): "This section does not apply to discrimination on the ground of impairment in respect of admission to a school, college or institution established wholly or mainly for students who have a particular impairment".

²⁸⁶ S 75(2): "This section does not apply to the disposal of an interest in land by way of, or pursuant to, a testamentary disposition or gift".

²⁸⁷ S 76(2) and (3): "(2) Where the nature of a skill varies according to whether it is exercised in relation to persons who have a particular impairment or to those who do not have such an impairment, a person does not contravene subsection (1) by exercising the skill in relation to only those persons who have a particular impairment, or only those who do not have such an impairment, in accordance with the person's normal practice. (3) This section does not apply to discrimination against a person on the ground of impairment in relation to the performance of a service where, in consequence of the impairment, that person requires the service to be performed in a special manner and the person performing the service- (a) cannot reasonably be expected to perform the service in that manner; or (b) cannot reasonably be expected to perform the service in that manner except on more onerous terms than would otherwise apply".

²⁸⁸ S 78(2): "Subsection (1) does not apply in relation to a superannuation scheme or provident fund provided for employees- (a) to which the employer makes contributions; and (b) under which a greater number of the members (not including members who are no longer employed by an employer who participates in the scheme or fund) reside in any one other State or Territory than reside in this State".

relating to salaries,²⁸⁹ charities,²⁹⁰ sport,²⁹¹ benefits for people with impairments,²⁹² physical inaccessibility²⁹³ and insurance.²⁹⁴

Division I of Part VA contains a definition of discrimination based on age.²⁹⁵ The focus of Division II is employment (applicants and employees, commission agents, contract workers and partnerships²⁹⁶). Division III targets associations²⁹⁷ and qualifying bodies.²⁹⁸ Division IV prohibits

²⁸⁹ S 79: "This Part does not render unlawful discriminatory rates of salary, wages or other remuneration payable to persons who have impairments".

²⁹⁰ S 80: "This Part does not- (a) affect a provision in a charitable instrument for conferring benefits wholly or mainly upon persons who have a particular impairment; or (b) render unlawful any act done to give effect to such a provision".

²⁹¹ S 81: "This Part does not render unlawful the exclusion of a person who has an impairment from participation in a sporting activity- (a) if the activity requires physical or intellectual attributes that the person does not possess; or (b) if, in the case of a sporting activity conducted wholly or mainly for persons who have a particular impairment, the person's impairment is not of that kind".

²⁹² S 82: "This Part does not render unlawful an act done for the purpose of carrying out a scheme or undertaking for the benefit of persons who have a particular impairment".

²⁹³ S 84: "This Part does not render unlawful discrimination against a person on the ground of physical impairment where the discrimination arises out of the fact- (a) that premises, or a part of premises, is so constructed as to be inaccessible to that person; or (b) that the owner or occupier of premises fails to ensure that every part, or a particular part, of the premises is accessible to that person".

²⁹⁴ S 85: "This Part does not render unlawful discrimination on the ground of impairment in the terms on which an annuity, life assurance, accident insurance or any other form of insurance is offered or may be obtained, where- (a) the discrimination- (i) is based upon actuarial or statistical data from a source on which it is reasonable to rely; and (ii) is reasonable having regard to that data and any other relevant factors; or (b) where no such actuarial or statistical data is available, the discrimination is reasonable having regard to any other relevant factors".

²⁹⁵ S 85A: "For the purposes of this Act, a person discriminates on the ground of age- (a) if he or she treats another person unfavourably because of the other's age; (b) if he or she treats another person unfavourably because the other does not comply, or is not able to comply, with a particular requirement and- (i) the nature of the requirement is such that a substantially higher proportion of persons of a different age or age group complies, or is able to comply, with the requirement than of those of the other's age or age group; and (ii) the requirement is not reasonable in the circumstances of the case; or (c) if he or she treats another person unfavourably on the basis of a characteristic that appertains generally to persons of the other's age or age group, or on the basis of a presumed characteristic that is generally imputed to persons of that age or age group".

²⁹⁶ S 85E: "(1) It is unlawful for a firm consisting of one or more members, or for one or more persons promoting the formation of a firm, to discriminate against a person on the ground of age- (a) in determining, or in the course of determining, who should be offered a position as partner in the firm; or (b) in the terms or conditions on which that person is offered a position as partner in the firm. (2) It is unlawful for a firm consisting of two or more partners to discriminate against a partner on the ground of age- (a) in the terms or conditions of membership of the firm; (b) by denying or limiting access to any benefit arising from membership of the firm; (c) by expelling the partner from the firm; or (d) by subjecting the partner to any other detriment".

²⁹⁷ S 85G(1): "After the expiration of one year from the commencement of this Part, it will be unlawful for an association to discriminate- (a) against an applicant for membership on the ground of age- (i) by refusing or failing to admit the applicant to membership, or to a particular class of membership, of the association; or (ii) in the terms on which the applicant is, or may be, admitted to membership, or a particular class of membership; or (b) against a member of the association on the ground of age- (i) by refusing or failing to provide a particular service or benefit to that member; (ii) in the terms on which a particular service or benefit is provided to that member; or (iii) by expelling that member from the association or subjecting him or her to any other detriment".

²⁹⁸ S 85H(1): "It is unlawful for an authority or body empowered to confer an authorization or qualification that is needed for, or facilitates, the practice of a profession, or the carrying on or engaging in of a trade or occupation, to discriminate

discrimination in education.²⁹⁹ Division V prohibits discrimination in land,³⁰⁰ goods and services³⁰¹ and accommodation.³⁰² Most of the divisions contain sector-specific exemptions (employment, associations,³⁰³ qualifying bodies,³⁰⁴ education,³⁰⁵ goods and services³⁰⁶ and accommodation,³⁰⁷)

against a person on the ground of age- (a) by refusing or failing to confer or renew that authorization or qualification; or (b) by withdrawing the authorization or qualification”.

²⁹⁹ S 85I(1) and (2): “(1) It is unlawful for an educational authority to discriminate against a person on the ground of age- (a) by refusing or failing to accept an application for admission as a student; or (b) in the terms or conditions on which it offers to admit the person as a student. (2) It is unlawful for an educational authority to discriminate against a student on the ground of age- (a) in the terms or conditions on which it provides the student with training or education; (b) by denying or limiting access to any benefit provided by the authority; (c) by expelling the student; or (d) by subjecting the student to any other detriment”.

³⁰⁰ S 85J: “It is unlawful for a person to discriminate against another on the ground of age- (a) by refusing or failing to dispose of an interest in land to the other person; or (b) in the terms or conditions on which an interest in land is offered to the other person”.

³⁰¹ S 85K(1) and (2): “(1) It is unlawful for a person who offers or provides- (a) goods; or (b) services to which this Act applies, (whether for payment or not) to discriminate against another on the ground of age- (c) by refusing or failing to supply the goods or to perform the services; or (d) in the terms or conditions on which or the manner of which the goods are supplied or the services are performed. (2) It is unlawful for a person who offers or provides- (a) goods; or (b) services to which this Act applies, (whether for payment or not) to refuse or fail to supply the goods or to perform the services to another on the ground that the other person is accompanied by a child”.

³⁰² S 85L(1)-(3): “(1) It is unlawful for a person to discriminate against another on the ground of age- (a) in terms or conditions on which accommodation is offered; (b) by refusing an application for accommodation; or (c) by deferring such an application or according the applicant a later order of precedence on any list of applicants for that accommodation. (2) It is unlawful for a person- (a) to refuse an application for accommodation; or (b) to defer such an application or accord the applicant a late order of precedence on any list of applicants for that accommodation, on the ground that the applicant intends to share that accommodation with a child. (3) It is unlawful for a person to discriminate against a person for whom accommodation has been provided on the ground of age- (a) in the terms or conditions on which accommodation is provided; (b) by denying or limiting access to any benefit connected with the accommodation; (c) by evicting the person; or (d) by subjecting the person to any detriment”.

³⁰³ S 85G(2)-(4): “(2) Subsection (1)(a) does not apply to discrimination on the ground of age where the association has, on a genuine and reasonable basis, established different classes of membership for persons of different ages, or age groups. (3) Subsection (1)(b)(i) and (ii) does not apply to discrimination on the ground of age where it is reasonable that the association discriminate in relation to the provision of a particular service or benefit to members of a particular age, or age group. (4) This section does not apply to an association established wholly or mainly for- (a) the promotion of the interests of persons of a particular age group; (b) the organization or provision of services for persons of a particular age group; or (c) the organization or provision of activities for persons of a particular age group”.

³⁰⁴ S 85H(2) and (3): “(2) This section does not apply to discrimination on the ground of age- (a) by or on account of the imposition of a reasonable and appropriate minimum age under which an authorization or qualification will not be conferred; or (b) in respect of the terms or conditions on which an authority or body confers or renews an authorization or qualification. (3) This section does not apply to discrimination against a person on the ground of age where, in consequence of his or her age, the person is not, or would not be, able to practise the profession, or carry on or engage in the trade or occupation, adequately or safely”.

³⁰⁵ S 85I(3): “This section does not apply to discrimination on the ground of age in respect of the admission of a person to a school, college or institution where the level of education or training sought by the person is provided only for students above a particular age”.

³⁰⁶ S 85K(3): “This section does not apply to discrimination on the ground of age in relation to- (a) the charging of a fee or fare; or (b) the terms or conditions on which- (i) a ticket is issued; or (ii) admission is allowed to any place, where those terms or conditions are imposed on a genuine and reasonable basis”.

³⁰⁷ S 85L(4) and (5): “(4) This section does not apply to discrimination on the ground of age in relation to the provision of accommodation by an organization that does not seek to secure a pecuniary profit for its members, where the accommodation is provided only for persons of a particular age group. (5) This section does not apply- (a) in relation to the provision of accommodation for recreational purposes where the use of that accommodation is limited, on a

and division VI contains general exemptions relating to legal capacity,³⁰⁸ charities,³⁰⁹ testamentary dispositions,³¹⁰ benefits to people of a particular age group,³¹¹ sport³¹² and insurance.³¹³

The Act prohibits victimisation,³¹⁴ sexual harassment,³¹⁵ separating blind or deaf persons from their guide dog³¹⁶ and aiding unlawful acts.³¹⁷

It is possible to apply to the Tribunal to be exempted from any of the Act's provisions.³¹⁸

E.6 Victoria

The *Victoria Equal Opportunity Act*³¹⁹ prohibits discrimination based on age, breastfeeding,³²⁰ gender identity,³²¹ impairment,³²² industrial activity,³²³ lawful sexual activity,³²⁴ marital status,³²⁵

genuine and reasonable basis, to persons of a particular age group; (b) in relation to the provision of accommodation in the principal place of residence of the owner of the accommodation; or (c) in relation to the provision of accommodation in premises that adjoin premises where the owner of the accommodation or any person appointed to manage the accommodation resides if the provision of the accommodation would be subject to the Residential Tenancies Act, 1978".

³⁰⁸ S 85M: "Nothing in this Part derogates from the operation of a law that relates to the juristic capacity of children".

³⁰⁹ S 85N: "This Part does not- (a) affect a provision in a charitable instrument for conferring benefits wholly or mainly on persons of a particular age, or age group; or (b) render unlawful any act done to give effect to such a provision".

³¹⁰ S 85O: "This Part does not apply to the disposal of an interest in land or goods, or the provision of services, by way of, or pursuant to, a testamentary disposition or gift".

³¹¹ S 85P: "This Part does not render unlawful an act done for the purpose of carrying out a scheme or undertaking for the benefit of persons of a particular age or age group in order to meet a need that arises out of, or that is related to, the age or ages of those persons".

³¹² S 85Q: "This Part does not render unlawful the exclusion of persons of particular age groups from participation in a competitive sporting activity".

³¹³ S 85R: "(1) This Part does not render unlawful discrimination on the ground of age- (a) in the terms on which an annuity or life insurance is offered or may be obtained; or (b) - (i) in the terms on which a person may become a member of a superannuation scheme or provident fund; or (ii) in the manner in which a superannuation scheme or provident fund may be administered. (2) This Part does not render unlawful discrimination on the ground of age in the terms on which accident insurance or any other form of insurance (other than life insurance) is offered or may be obtained where the discrimination- (a) is based on actuarial or statistical data from a source on which it is reasonable to rely; and (b) is reasonable having regard to the data".

³¹⁴ S 86.

³¹⁵ S 87.

³¹⁶ S 88.

³¹⁷ S 90.

³¹⁸ S 92.

³¹⁹ Act 42 of 1995.

³²⁰ Breastfeeding includes the act of expressing milk.

³²¹ "Gender identity" is defined as "(a) the identification on a bona fide basis by a person of one sex as a member of the other sex (whether or not the person is recognised as such)-- (i) by assuming characteristics of the other sex, whether by means of medical intervention, style of dressing or otherwise; or (ii) by living, or seeking to live, as a member of the other sex; or (b) the identification on a bona fide basis by a person of indeterminate sex as a member of a particular

parental status³²⁶ or status as a carer,³²⁷ physical features, political belief or activity,³²⁸ pregnancy, race,³²⁹ religious belief or activity,³³⁰ sex, sexual orientation³³¹ and personal association (whether as a relative or otherwise) with a person who is identified by reference to any of the above attributes.

The Act defines “discrimination” as follows:

7. Meaning of discrimination

- (1) Discrimination means direct or indirect discrimination on the basis of an attribute.
- (2) Discrimination on the basis of an attribute includes discrimination on the basis--
 - (a) that a person has that attribute or had it at any time, whether or not he or she had it at the time of the discrimination;
 - (b) of a characteristic that a person with that attribute generally has;
 - (c) of a characteristic that is generally imputed to a person with that attribute;
 - (d) that a person is presumed to have that attribute or to have had it at any time.

8. Direct discrimination

- (1) Direct discrimination occurs if a person treats, or proposes to treat, someone with an attribute less favourably than the person treats or would treat someone without that attribute, or with a different attribute, in the same or similar circumstances.

sex (whether or not the person is recognised as such)-- (i) by assuming characteristics of that sex, whether by means of medical intervention, style of dressing or otherwise; or (ii) by living, or seeking to live, as a member of that sex”.

³²² “Impairment” is defined as “(a) total or partial loss of a bodily function; (b) the presence in the body of organisms that may cause disease; (c) total or partial loss of a part of the body; (d) malfunction of a part of the body, including-- (i) a mental or psychological disease or disorder; (ii) a condition or disorder that results in a person learning more slowly than people who do not have that condition or disorder; (e) malformation or disfigurement of a part of the body”.

³²³ “Industrial activity” is defined as “(a) being or not being a member of, or joining, not joining or refusing to join, an industrial organisation; (b) participating in, not participating in or refusing to participate in a lawful activity organised or promoted by an industrial organisation”.

³²⁴ “Lawful sexual activity” is defined as “engaging in, not engaging in or refusing to engage in a lawful sexual activity”.

³²⁵ “Marital status” is defined as “a person's status of being-- (a) single; (b) married; (c) a domestic partner; (d) married but living separately and apart from his or her spouse; (e) divorced; (f) widowed”.

³²⁶ “Parental status” is defined as “the status of being a parent or not being a parent”.

³²⁷ “Carer” is defined as “a person on whom another person is wholly or substantially dependent for ongoing care and attention, other than a person who provides that care and attention wholly or substantially on a commercial basis”.

³²⁸ “Political belief or activity” is defined as “(a) holding or not holding a lawful political belief or view; (b) engaging in, not engaging in or refusing to engage in a lawful political activity”.

³²⁹ “Race” includes “(a) colour; (b) descent or ancestry; (c) nationality or national origin; (d) ethnicity or ethnic origin; (e) if 2 or more distinct races are collectively referred to as a race-- (i) each of those distinct races; (ii) that collective race”.

³³⁰ “Religious belief or activity” is defined as “(a) holding or not holding a lawful religious belief or view; (b) engaging in, not engaging in or refusing to engage in a lawful religious activity”.

³³¹ “Sexual orientation” is defined as “homosexuality (including lesbianism), bisexuality or heterosexuality”.

- (2) In determining whether a person directly discriminates it is irrelevant--
- (a) whether or not that person is aware of the discrimination or considers the treatment less favourable;
 - (b) whether or not the attribute is the only or dominant reason for the treatment, as long as it is a substantial reason.

9. Indirect discrimination

- (1) Indirect discrimination occurs if a person imposes, or proposes to impose, a requirement, condition or practice--
- (a) that someone with an attribute does not or cannot comply with; and
 - (b) that a higher proportion of people without that attribute, or with a different attribute, do or can comply with; and
 - (c) that is not reasonable.
- (2) Whether a requirement, condition or practice is reasonable depends on all the relevant circumstances of the case, including--
- (a) the consequences of failing to comply with the requirement, condition or practice;
 - (b) the cost of alternative requirements, conditions or practices;
 - (c) the financial circumstances of the person imposing, or proposing to impose, the requirement, condition or practice.
- (3) In determining whether a person indirectly discriminates it is irrelevant whether or not that person is aware of the discrimination.

10. Motive is irrelevant to discrimination

In determining whether or not a person discriminates, the person's motive is irrelevant.

11. Discrimination by acting with others and by not acting

It is irrelevant whether discrimination occurs by a person--

- (a) acting alone or in association with any other person;
- (b) doing an act or omitting to do an act.

The Act prohibits discrimination in the following sectors: employment,³³² employment-related areas,³³³ education,³³⁴ the provision of goods and services and disposal of land,³³⁵ accommodation,³³⁶ clubs and club members,³³⁷ sport,³³⁸ and local government.³³⁹

³³² Ss 13-28.

³³³ Ss 30-36.

³³⁴ Ss 37-41.

³³⁵ Ss 42-48.

³³⁶ Ss 49-58.



The Act contains a vast array of exceptions relating to the same sectors listed above. As to division 3 of the Act (education), the Act contains exceptions related to institutions for particular groups,³⁴⁰ special services or facilities,³⁴¹ standards of dress and behaviour,³⁴² and age-based admission schemes and age quotas.³⁴³ Division 4 (goods and services and disposal of land) includes exceptions related to insurance,³⁴⁴ credit providers,³⁴⁵ supervision of children,³⁴⁶ special manner of providing a service,³⁴⁷ and disposal by will or gift.³⁴⁸ In division 5 (accommodation) the

³³⁷ Ss 59-63.

³³⁸ Ss 64-66.

³³⁹ Ss 67-68.

³⁴⁰ S 38: "An educational authority that operates an educational institution or program wholly or mainly for students of a particular sex, race, religious belief, age or age group or students with a general or particular impairment may exclude-- (a) people who are not of the particular sex, race, religious belief, age or age group; or (b) people who do not have a general, or the particular, impairment-- from that institution or program".

³⁴¹ S 39: "An educational authority may discriminate against a person on the basis of impairment if-- (a) in order to participate or continue to participate in, or to derive or continue to derive substantial benefit from, the educational program of the authority-- (i) the person requires or would require special services or facilities; and (ii) it is not reasonable in the circumstances for those special services or facilities to be provided; or (b) the person could not participate or continue to participate in, or derive or continue to derive substantial benefit from, the educational program even after the provision of special services or facilities".

³⁴² S 40: "(1) An educational authority may set and enforce reasonable standards of dress, appearance and behaviour for students. (2) In relation to a school, without limiting the generality of what constitutes a reasonable standard of dress, appearance or behaviour, a standard must be taken to be reasonable if the educational authority administering the school has taken into account the views of the school community in setting the standard".

³⁴³ S 41: "An educational authority may select students for an educational program on the basis of an admission scheme-- (a) that has a minimum qualifying age; or (b) that imposes quotas in relation to students of different ages or age groups".

³⁴⁴ S 43: "(1) An insurer may discriminate against another person by refusing to provide an insurance policy to the other person, or in the terms on which an insurance policy is provided, if-- (a) the discrimination is permitted under the Sex Discrimination Act 1984 or the Disability Discrimination Act 1992 of the Commonwealth; or (b) the discrimination is based on-- (i) actuarial or statistical data on which it is reasonable for the insurer to rely; or (ii) if there is no such data, on other data on which it is reasonable to rely-- and is reasonable having regard to that data and any other relevant factors; or (c) if neither of the above paragraphs applies, the discrimination is reasonable having regard to any relevant factors. (2) In this section-- "insurance policy" includes an annuity, a life assurance policy, an accident insurance policy and an illness insurance policy; "insurer" means a person who is in the business of providing insurance policies".

³⁴⁵ S 44: "(1) A credit provider may discriminate against an applicant for credit on the basis of age by refusing to provide credit, or on the terms on which credit is provided, if the criteria for refusal or the terms imposed-- (a) are based on-- (i) actuarial or statistical data on which it is reasonable for the credit provider to rely; or (ii) if there is no such data, on other data on which it is reasonable to rely; and (b) are reasonable having regard to that data and any other relevant factors. (2) In this section "credit provider" means a person who provides credit in the course of a business carried on by that person".

³⁴⁶ S 45: "A person may require, as a term of providing goods or services to a child, that the child be accompanied or supervised by an adult if there is a reasonable risk that, if unaccompanied or unsupervised, the child may-- (a) cause a disruption; (b) endanger himself or herself or any other person".

³⁴⁷ S 46: "A person may refuse to provide a service, or set reasonable terms for the provision of a service, to another person if the service would be required to be provided in a special manner because of the other person's impairment or physical features and-- (a) the person cannot reasonably provide the service in that manner; or (b) the person can only reasonably provide the service in that manner on more onerous terms than the person could reasonably provide the service to a person without that impairment or those physical features".

following exceptions may apply: accommodation unsuitable for children,³⁴⁹ shared accommodation,³⁵⁰ welfare measures,³⁵¹ accommodation for students,³⁵² and accommodation for commercial sexual services.³⁵³ As to division 6 of the Act (clubs), the Act contains exceptions related to disadvantaged people or minority cultures,³⁵⁴ particular age group-related clubs and benefits,³⁵⁵ and separate access to benefits for men and women.³⁵⁶ Division 7 (sport) contains an exception related to competitive sporting activities.³⁵⁷ By necessity, section 68 of division 8 (local government) provides that municipal councillors may discriminate against another councillor in the performance of his or her public functions on the basis of political belief or activity.

³⁴⁸ S 48: "A person may discriminate against another person in the disposal of land by will or as a gift".

³⁴⁹ S 53: "A person may refuse to provide accommodation to a child or a person with a child if the premises, because of their design or location, are unsuitable or inappropriate for occupation by a child".

³⁵⁰ S 54: "A person may discriminate in deciding who is to occupy residential accommodation-- (a) in which the person or a relative of the person lives and intends to continue to live; and (b) that is for no more than 6 people in addition to the people referred to in paragraph (a)".

³⁵¹ S 55: "A person may refuse to provide accommodation to another person in a hostel or similar institution established wholly or mainly for the welfare of persons of a particular sex, age, race or religious belief if the other person is not of that sex, age, race or religious belief".

³⁵² S 56: "An educational authority that operates an educational institution wholly or mainly for students of a particular sex, race, religious belief, age or age group, or students with a general or particular impairment may provide accommodation wholly or mainly for-- (a) students of that sex, race, religious belief, age or age group; or (b) students with a general, or the particular, impairment".

³⁵³ S 57: "A person may refuse to provide accommodation to another person if the other person intends to use the accommodation for, or in connection with, a lawful sexual activity on a commercial basis".

³⁵⁴ S 61: "A club, or a member of the committee of management or other governing body of a club, may exclude from membership a person who is not a member of the group of people with an attribute for whom the club was established if the club operates principally-- (a) to prevent or reduce disadvantage suffered by people of that group; or (b) to preserve a minority culture".

³⁵⁵ S 62: "(1) A club, or a member of the committee of management or other governing body of a club, may exclude a person from membership if-- (a) the club exists principally to provide benefits for people of a particular age group; and (b) the person is not in that age group. (2) A club, or a member of the committee of management or other governing body of a club, may restrict a benefit to members who are members of a particular age group, if it is reasonable to do so in the circumstances".

³⁵⁶ S 63: "A club, or a member of the committee of management or other governing body of a club, may limit a member's access to a benefit on the basis of the member's sex if-- (a) it is not practicable for men and women to enjoy the benefit at the same time; and (b) either-- (i) access to the same or an equivalent benefit is provided for men and women separately; or (ii) men and women are each entitled to a reasonably equivalent opportunity to enjoy the benefit".

³⁵⁷ S 66: "(1) A person may exclude people of one sex or with a gender identity from participating in a competitive sporting activity in which the strength, stamina or physique of competitors is relevant. (2) A person may restrict participation in a competitive sporting activity-- (a) to people who can effectively compete; (b) to people of a specified age or age group; (c) to people with a general or particular impairment. (3) Sub-section (1) does not apply to a sporting activity for children under the age of 12 years".



Part 4 of the Act contains general (ie, not sector-specific) exceptions from the prohibition of discrimination: things done with statutory authority,³⁵⁸ things done to comply with orders of courts and tribunals,³⁵⁹ pensions,³⁶⁰ superannuation (existing³⁶¹ and new³⁶² fund conditions), charities,³⁶³ religious bodies,³⁶⁴ religious schools,³⁶⁵ religious beliefs or principles,³⁶⁶ private

³⁵⁸ S 69: "(1) A person may discriminate if the discrimination is necessary to comply with, or is authorised by, a provision of-- (a) an Act, other than this Act; (b) an enactment, other than an enactment under this Act. (2) For the purpose of sub-section (1), it is not necessary that the provision refer to discrimination, as long as it authorises or necessitates the relevant conduct that would otherwise constitute discrimination. (3) Section 47(3) and 58(1) prevail over this section to the extent of any inconsistency between them".

³⁵⁹ S 70: "A person may discriminate if the discrimination is necessary to comply with-- (a) an order of the Tribunal; (b) an order of any other tribunal or any court".

³⁶⁰ S 71: "Nothing in Part 3 affects discriminatory provisions relating to pensions".

³⁶¹ S 72: "(1) A person may discriminate by retaining an existing superannuation fund condition in relation to a person who-- (a) is a member of that fund at the commencement of this section; or (b) becomes a member of that fund within a period of 12 months after the commencement of this section. (2) In this section "existing superannuation fund condition" means, in relation to a superannuation fund, a condition of the fund, or of membership of the fund, that is in operation at the commencement of this section".

³⁶² S 73: "(1) A person may discriminate against another person on the basis of age by imposing conditions in relation to a superannuation fund if-- (a) the discrimination occurs in the application of prescribed standards under the Superannuation Entities (Taxation) Act 1987 or Superannuation Industry (Supervision) Act 1993 of the Commonwealth; or (b) the discrimination is required to comply with, obtain benefits, or avoid penalties under any other Commonwealth Act; or (c) the discrimination is based on-- (i) actuarial or statistical data on which it is reasonable to rely; or (ii) if there is no such data, on other data on which it is reasonable to rely-- and is reasonable having regard to that data and any other relevant factors; or (d) if none of the above paragraphs applies, the discrimination is reasonable having regard to any relevant factors. (2) A person may discriminate against another person-- (a) on the basis of sex or marital status, by imposing conditions in relation to a superannuation fund if the discrimination is permitted under the Sex Discrimination Act 1984 of the Commonwealth; (b) on the basis of impairment, by imposing conditions in relation to a superannuation fund if the discrimination is permitted under the Disability Discrimination Act 1992 of the Commonwealth".

³⁶³ S 74: "(1) Nothing in Part 3 (including sections 47 and 58)-- (a) affects a provision of a deed, will or other instrument that confers charitable benefits, or enables charitable benefits to be conferred; (b) prohibits anything that is done in order to give effect to such a provision. (2) This section applies to an instrument made before, on or after the commencement of this section. (3) In this section "charitable benefits" means benefits exclusively charitable according to Victorian law".

³⁶⁴ S 75: "(1) Nothing in Part 3 applies to-- (a) the ordination or appointment of priests, ministers of religion or members of a religious order; (b) the training or education of people seeking ordination or appointment as priests, ministers of religion or members of a religious order; (c) the selection or appointment of people to perform functions in relation to, or otherwise participate in, any religious observance or practice. (2) Nothing in Part 3 applies to anything done by a body established for religious purposes that-- (a) conforms with the doctrines of the religion; or (b) is necessary to avoid injury to the religious sensitivities of people of the religion. (3) Without limiting the generality of its application, sub-section (2) includes anything done in relation to the employment of people in any educational institution under the direction, control or administration of a body established for religious purposes".

³⁶⁵ S 76: "(1) This section applies to a person or body (other than a body established for religious purposes) that-- (a) establishes an educational institution to be conducted in accordance with religious beliefs or principles; or (b) directs, controls or administers an educational institution conducted in accordance with religious beliefs or principles. (2) Nothing in Part 3 applies to anything done by a person or body to which this section applies in the course of establishing, directing, controlling or administering the educational institution (including the employment of people in the institution) that is in accordance with the relevant religious beliefs or principles".

³⁶⁶ S 77: "Nothing in Part 3 applies to discrimination by a person against another person if the discrimination is necessary for the first person to comply with the person's genuine religious beliefs or principles".

clubs,³⁶⁷ legal incapacity and age of majority,³⁶⁸ protection of health, safety and property,³⁶⁹ age benefits and concessions,³⁷⁰ and welfare measures and special needs.³⁷¹

The Victorian Civil and Administrative Tribunal may, on application of a person whose interests, in the opinion of the Tribunal, are or may be affected by the exemption, or on the Tribunal's own initiative, grant, renew or revoke an exemption from any of the provisions in the Act.³⁷²

The Act also prohibits sexual harassment,³⁷³ victimisation,³⁷⁴ authorising or assisting discrimination³⁷⁵ and discriminatory requests for information,³⁷⁶ and establishes vicarious liability for employers and principals.³⁷⁷

³⁶⁷ S 78: "(1) Nothing in Part 3 applies to the exclusion of people from a private club or from any part of the activities or premises of a private club. (2) In this section, "private club" means a social, recreational, sporting or community service club or a community service organisation, other than one that-- (a) occupies any Crown land; or (b) directly or indirectly receives any financial assistance from the State or a municipal council".

³⁶⁸ S 79: "(1) Nothing in this Act is intended to affect the law in relation to the legal capacity or incapacity of any person or the age of majority. (2) A person may discriminate against another person who is subject to a legal incapacity that is relevant to the transaction or activity in which they are involved".

³⁶⁹ S 80: "(1) A person may discriminate against another person on the basis of impairment or physical features if the discrimination is reasonably necessary-- (a) to protect the health or safety of any person (including the person discriminated against) or of the public generally; (b) to protect the property of any person (including the person discriminated against) or any public property. (2) A person may discriminate against another person on the basis of pregnancy if the discrimination is reasonably necessary to protect the health or safety of any person (including the person discriminated against)".

³⁷⁰ S 81: "A person may provide benefits, including concessions, to another person based on age".

³⁷¹ S 82: "(1) Nothing in Part 3 applies to anything done in relation to the provision to people with a particular attribute of special services, benefits or facilities that are designed-- (a) to meet the special needs of those people; or (b) to prevent or reduce a disadvantage suffered by those people in relation to their education, accommodation, training or welfare. (2) Without limiting the generality of sub-section (1)-- (a) a person may grant a woman any right, privilege or benefit in relation to pregnancy or childbirth; (b) a person may provide, or restrict the offering of, holiday tours to people of a particular age or age group".

³⁷² Ss 83-84.

³⁷³ Ss 85-95.

³⁷⁴ Ss 96-97.

³⁷⁵ Ss 98-99.

³⁷⁶ Ss 100-101.

³⁷⁷ Ss 102-103.



Annexure F: Profile of early equality court cases – Telephone survey (60 pilot equality courts); newspaper reports

F.1 The 60 pilot courts as at September 2005¹

F.1.1 Limpopo

Mapulaneng

TEL: (013) 799 0211

REF: Mr Mthethwa

¹ 47 pilot courts are listed on the Department of Justice's website at http://www.doj.gov.za/2004dojsite/eqact/eqc_eqc%20structures.htm (accessed 2006-08-18). 60 pilot courts are listed in a booklet entitled "Equality for All" published under the auspices of the Department of Justice and Constitutional Development. I arranged the sequence of courts in this Annexure as they appear in the booklet. The SAHRC conducted a survey of equality courts in 2005 and 2006 and where comparable figures are available I refer to these in footnotes below. (This survey was distributed at the "Equality Indaba Two Workshop" held at the SAHRC's premises on 23 November 2006 and is in my possession. Hereafter I refer to this source as the "SAHRC survey"). In some cases (eg Pretoria and Witbank) there are huge discrepancies in my figures and those of the SAHRC, which tends to suggest that record keeping at at least some equality courts is not functioning as it should be. The relevant official at the Department of Justice admitted as much to me in an email dated 20 July 2004: "I must mention that it is extremely difficult to glean information from magistrates' courts. The Department is required to build capacity substantially by training dedicated, specialist Equality Courts Clerks who will enable the Department to fully comply with the requirements of the Act (see s 25(3)(c) of the Act". A "progress report on the implementation of PEPUDA" (hand delivered to me on 2007-07-07), drafted by the Department of Justice and Constitutional Development, notes at para 3.7 that not all equality courts submitted statistics, that some courts submitted statistics to the regional offices and that these statistics were not forwarded to the head office and that the sub-directorate responsible for the equality courts does not have the capacity to manage the collection of statistics or to follow up on courts that do not submit data. As at 27 July 2004, the Department of Justice reported via email to the author that 75 cases had been brought to the equality courts since 16 May 2003, of which 7 had been finalised. Annexure F ("statistics") of the progress report referred to above contains the following information. For the period January 2006 to January 2007, the following number of cases had been brought to equality courts in the following provinces: Gauteng – 35; Mpumalanga – 54; KwaZulu-Natal – 26; Western Cape – 15; Eastern Cape – 3. The Northern Cape, North West, Free State and Limpopo submitted "nil reports". In October 2006 a Parliamentary Joint Committee held hearings on the impact of the Act. Joint Monitoring Committee on the Improvement of the Status of Youth, Children and People with Disabilities; Joint Monitoring Committee on Quality of Life and Status of Women and Portfolio Committee on Justice and Constitutional Development; 16 October 2006 to 19 October 2006. <http://www.pmg.org.za/viewminute.php?id=8330>; <http://www.pmg.org.za/viewminute.php?id=8349>; <http://www.pmg.org.za/viewminute.php?id=8373> and <http://www.pmg.org.za/viewminute.php?id=8378> (accessed 2007-05-15). During these hearings, the Chief Director: Policy, Research, Coordination and Monitoring reported that at that stage, less than 700 complaints had been lodged with equality courts since the inception of the Act. Gauteng had recorded 146 complaints and KwaZulu-Natal 95. Apparently no complaints had been received in the Free State. 253 of the reported cases related to racism or hate speech.

No cases reported. Reason(s) advanced by clerk: Lack of awareness of the Act; the area is remote and vulnerable; therefore, people don't know they can approach the court for relief; people think that you can't approach the courts for something "as simple as" discrimination or hate speech; discrimination is prevalent in the area because there are different ethnic groups, including foreigners.

Mokerong

TEL: (015) 483 0302

REF: Ms Ledwaba

The clerk of the equality court provided the following information: Nine complaints had been received by June 2005. One case related to disability discrimination (dismissed), one case was referred to the family court (the complainant wished to have access to his child born out of wedlock), four cases related to hate speech and three cases related to harassment. Of the four hate speech cases, one case settled, one was dismissed, one judgment was granted (R10 000) and in the last case the respondent had not yet been located. The harassment cases were either dismissed or referred to alternative fora.

Bela-Bela (Warmbaths)

TEL: (014) 736 2231

REF: Mrs Smith

No cases reported. Reason(s) advanced by clerk: Lack of awareness of the courts.

Ritavi

TEL: (015) 303 1721

REF: Mr Mthetho / Ms Malesa

No cases reported. (Complaints received but "not followed up".²) Reason(s) advanced by clerk: Residents don't think hate speech spoken by their superiors qualifies as an offence; lack of information, confusion between domestic violence and the Act.

² The SAHRC survey indicates that three complaints had been received by this court but that all three complaints had been withdrawn.



Makhado (Louis Trichardt)

TEL: (015) 516 0181

REF: Mr Mhlanga

One case reported; no information forthcoming.³ Reason(s) advanced by clerk: Lack of awareness of the courts.

Polokwane (Pietersburg)

TEL: (015) 291 2804

REF: Mr Mangena

Case No 1

Profile of complainant: Black men and women.

Profile of respondent: Local government.

Prohibited ground: Race.

Brief description of merits: The complainants alleged unfair discrimination based on race because they do not have electricity.⁴

F.1.2 Gauteng

Pretoria

TEL: (012) 319 4001

REF: Ms Ballakistan

Eight cases; no additional information forthcoming.⁵

Wonderboom

TEL: (012) 521 1000

REF: Ms Geyer

³ The SAHRC survey seems to indicate that two discrimination complaints had been received, one based on gender and one based on sexual orientation.

⁴ The SAHRC survey indicates that the Polokwane equality court had not received any complaints.

⁵ The SAHRC survey indicates that the "Pretoria Central" equality court had received 77 cases of which 45 had been referred to alternative forums.

No cases reported. Reason(s) advanced by clerk: The residents are mostly white, therefore they are “more civilised (sic)”. There were advertisements and media coverage. Residents respect each other and maybe they are afraid of the consequences of the Act.

Johannesburg

TEL: (011) 491 5000

REF: Mr Mandelstam

No information forthcoming.⁶

Kempton Park

TEL: (011) 975 0313

REF: Ms Madunise

Two complaints received based on sexual harassment and discrimination (no additional information forthcoming).⁷

Germiston

TEL: (011) 873 0500

REF: Ms Ntuli

No information forthcoming.⁸

Randburg

TEL: (011) 789 2600

REF: Mr Rekotze

No cases reported.⁹

⁶ The SAHRC survey indicates that the Johannesburg equality court had received 54 complaints. When my survey was conducted the relevant member of staff refused to provide me with any information and argued that any such request for information should be channeled via the Magistrate Commission.

⁷ The SAHRC survey indicates that the Kempton Park equality court had received six cases of which three had been referred to an alternative forum.

⁸ The SAHRC survey indicates that the Germiston equality court had received three cases of which one had been referred to an alternative forum.

⁹ The SAHRC survey does not list the Randburg court as an equality court.



F.1.3 Mpumalanga

Nsikazi

TEL: (013) 796 0261

REF: Mr Nkosi

No cases reported.¹⁰ Reason(s) advanced by clerk: Lack of awareness of the courts and lack of education.

Eerstehoek

TEL: (017) 883 0090

REF: Mr Thabethe

No cases reported.¹¹ Reason(s) advanced by clerk: Lack of awareness; lack of education.

Evander

TEL: (017) 632 2204

REF: Mr Scholtz

No cases reported.¹² Reason(s) advanced by clerk: Lack of awareness; discrimination does not occur on wide scale or if it does take place it is of minor nature and therefore unnecessary to bring the complaint to court.

Middelburg

TEL: (013) 282 5345

REF: Ms Rossouw

Two complaints received; one relating to hate speech (no information provided) and one relating to discrimination.¹³

Case No 1

Profile of complainant: Black male.

Profile of respondent: White male shop-owner.

¹⁰ The SAHRC survey does not list this court as an equality court.

¹¹ The SAHRC survey does not list this court as an equality court.

¹² The SAHRC survey indicates that one complaint had been received that was later withdrawn.

¹³ The SAHRC survey indicates that eight complaints had been received of which seven had been withdrawn.

Prohibited ground: Race.
Brief description of merits: The complainant wanted to buy various items, but was denied entry because the shops lights were off (apparently because of a power failure). The complainant subsequently withdrew the complaint.

Barberton

TEL: (013) 712 2104

REF: Ms Masuko

Two complaints have been received, one relating to hate speech based on HIV/AIDS and the other relating to discrimination but neither complainants pursued these matters.¹⁴

Reason(s) advanced by clerk: Lack of education.

Nelspruit

TEL: (013) 753 2574

REF: Ms Nkuna

The clerk of the equality court provided the following information: Six cases had been brought relating to discrimination, six relating to harassment and five relating to hate speech.¹⁵ Of the discrimination cases, three seemed to be related to hate speech as the complaints revolved around the applicants "having been called names" by their employer. The fourth and fifth discrimination cases revolved around the same incident. The applicants were the chairperson and maintenance manager respectively of a body corporate. It seems as if they asked a resident to turn down the volume on his radio which he was apparently playing too loudly and in contravention of the body corporate rules. It seems as if he ignored the request. In the sixth matter the applicant handed her ID document to the respondent so that he could make a photocopy thereof. When he returned her ID document her own photo had been replaced by that of a monkey.

¹⁴ The SAHRC survey indicates that 12 complaints had been received of which two had been withdrawn.

¹⁵ The SAHRC survey indicates that the Nelspruit equality court had not received any complaints.



Witbank

TEL: (013) 656 2221

REF: Ms Fourie

The clerk of the equality court provided the following information: Ten cases had been received of which four related to discrimination, five to hate speech and one to harassment. Of the prohibited grounds implicated, five cases involved race, two cases involved culture (witchcraft), and one involved gender (the harassment case). The clerk did not provide any information relating to the merits of the cases. She volunteered that “few cases have real merits; three cases had been withdrawn by the complainants”. Three decisions had been finalised, in one case R2500 was awarded as a “fine” and two decisions were referred to the CCMA.¹⁶

Mdutjana

TEL: (013) 973 1228

REF: Mr Gama

No cases reported.¹⁷ Reason(s) advanced by clerk: The area is semi-rural and the residents are not aware of such processes.

F.1.4 North West

Potchefstroom

TEL: (018) 293 0701

REF: Ms Masedi

Seven complaints have been received; three relating to harassment (no information provided), one relating to hate speech (the use of the word “kaffir”) and three cases relating to discrimination:¹⁸

Case No 1

Profile of complainant: Black male.

Profile of respondent: White female.

¹⁶ The SAHRC survey indicates that 120 complaints had been received of which eight had been withdrawn and of which 16 had been referred to alternative forums.

¹⁷ The SAHRC survey does not list this court as an equality court.

¹⁸ The SAHRC survey indicates that 37 complaints had been received of which 18 had been withdrawn.

Prohibited ground: Race.
Brief description of merits: The complainant wanted to register his daughter at a school for girls. He was “treated badly” by the respondent. The situation deteriorated and the police became involved.

Case No 2

Profile of complainant: Black male.
Profile of respondent: White male.
Prohibited ground: Race.
Brief description of merits: The complainant wanted to enter an entertainment club, but was denied access.

Case No 3

Profile of complainant: Male (race not stated).
Profile of respondent: Male (race not stated).
Prohibited ground: Sexual orientation.
Brief description of merits: The complainant was recruited by an employment agency. On his first day of work the respondent dismissed him because he didn't want the “complainants' kind” at his business.

Bafokeng

TEL: (014) 565 4206

REF: Ms Mokojoa

No information forthcoming.¹⁹

Vryburg

TEL: (053) 927 3841

REF: Mr Noge

Two complaints had been received, one relating to hate speech and the other to discrimination.²⁰

¹⁹ The SAHRC survey indicates that three cases had been lodged in 2006. The survey notes that the clerk had a new register for 2006 and that no records existed for 2004 and 2005.

²⁰ The SAHRC survey indicates that no complaints had been received.



Case No 1

Profile of complainant: Black female.
Profile of respondent: White male.
Prohibited ground: Race (“racism”).
Brief description of merits: The respondent called the complainant “kaffir”. The parties settled and the matter was withdrawn.

F.1.5 Northern Cape

Fraserburg

TEL: (023) 741 1008

REF: Ms Smith

No cases reported. Reason(s) advanced by clerk: No discrimination, or harassment, or hate speech occurs in the area.

Springbok

TEL: (027) 712 1215 (number does not exist).²¹

Kuruman

TEL: (053) 712 1081

REF: Ms Koekemoer

No cases reported. Reason(s) advanced by clerk: Lack of awareness; “posters all around the court”.

De Aar

TEL: (053) 631 2184

REF: Mr Makandula

One complaint was laid:²²

²¹ The SAHRC survey does not list this court as an equality court.

²² The SAHRC survey indicates that two complaints had been lodged.

Case No 1

Profile of complainant: African female.
Profile of respondent: Coloured female (counterclaimed).
Prohibited ground: Not stated (presumably race).
Brief description of merits: They parties had accused each other of name calling. The matter was subsequently withdrawn.

Kimberley

TEL: (053) 832 2201

REF: Ms Taljaard

Two pending cases in which (a) payment of damages and (b) unconditional apology were asked for. No additional information provided.²³

Upington

TEL: (054) 331 1007 (Number does not exist).²⁴

F.1.6 Western Cape

Kuils River

TEL: (021) 903 1161

REF: Ms Barker

No information forthcoming.²⁵

Worcester

TEL: (023) 342 2325

REF: Ms Pace

Two complaints were received; one relating to housing discrimination and the other with sexual harassment. Both matters were referred to alternative forums.²⁶

²³ The SAHRC survey indicates that four cases had been withdrawn but does not indicate the number of lodged complaints.

²⁴ The SAHRC survey indicates that 17 complaints had been received of which four had been withdrawn.

²⁵ The SAHRC survey does not list this court as an equality court.

²⁶ The SAHRC survey indicates that no complaints had been received.



George

TEL: (044) 802 5800

REF: Ms Mangengelele

Case No 1

Profile of complainant: Coloured male hawker.
Profile of respondent: Local government.
Prohibited ground: Not stated.
Brief description of merits: The complainant alleged that the police official who arrested him had discriminated against him because a female who had also sold goods without a permit was not arrested. The court dismissed the claim.

Atlantis

TEL: (021) 572 1003

REF: Ms Phillips

Case No 1 (Mkhize / Ferreira and others; Case No 01/03)²⁷

Profile of complainant: Black female.
Profile of respondent: Local government.
Prohibited ground: Race.
Brief description of merits: Racially motivated assault by respondents on complainant.

Case No 2 (Jacobs / Radio Atlantis and Van den Berg)

Profile of complainant: Coloured male.
Profile of respondent: Radio station; station manager.
Prohibited ground: Religion, culture and belief.
Brief description of merits: The complainant's affidavit was not particularly clear. It seems as if he wished to have a complaint against his employer publicised

²⁷ See *Mkhize / Ferreira; Shaw; Edgemoed High School* under F.2.2 below.

via an interview on Radio Atlantis, but that the station manager refused. The matter was referred to the Broadcasting Complaints Commission of South Africa.

F.1.7 Eastern Cape

Port Elizabeth

TEL: (041) 394 4582

No information forthcoming.²⁸

Somerset East

TEL: (042) 243 1107

REF: Mr Van Rooyen

No cases reported.²⁹

Zwelitsha

TEL: (040) 654 2255

REF: Mr Veliso

No cases reported; no trained officials available.

Aliwal North

TEL: (051) 633 2224 (Number does not exist).³⁰

Umzimkhulu

TEL: (039) 259 0309

REF: Mr Mhlongo

No information forthcoming.³¹

²⁸ The SAHRC survey does not list this court as an equality court.

²⁹ The SAHRC survey does not list this court as an equality court.

³⁰ The SAHRC survey does not list this court as an equality court.

³¹ The SAHRC survey does not list this court as an equality court.



Elliotdale

TEL: (045) 931 1013

REF: Ms Ngwuenye

No cases reported.³²

Ngqeleni

TEL: (047) 568 0002

REF: Ms Mapoloba

Case No 1

Profile of complainant: Black female.

Profile of respondent: Black female.

Prohibited ground: Not stated.

Brief description of merits: The respondent (the complainant's stepmother) allegedly refused to associate with the complainant because of "her status".

F.1.8 Free State

Bethlehem

TEL: (058) 303 5386

REF: Ms Knobel

One complaint laid; referred to an alternative forum.³³

Odendaalsrus

TEL: (057) 354 1294

REF: Mr Huisen

No cases reported despite "vigorous publication and awareness campaigns".³⁴

³² The SAHRC survey does not list this court as an equality court.

³³ The SAHRC survey indicates that no complaints had been laid.

³⁴ The SAHRC survey does not list this court as an equality court.



Kroonstad

TEL: (056) 212 4161

REF: Mr Makhongoane

No cases reported. Reason(s) advanced by clerk: Lack of awareness.

Jagersfontein

TEL: (051) 724 0002

No information forthcoming.³⁵

Bloemfontein

TEL: (051) 506 1389

REF: Mr Khaile

Three complaints were received before the commencement date of the Act (ie 16 June 2003). One case was withdrawn and the other two complainants did not come back.³⁶

Reason(s) advanced by clerk: Lack of awareness of the courts.

Botshabelo

TEL: (051) 534 1078

REF: Mr Schmidt

No cases reported.³⁷ Reason(s) advanced by clerk: Lack of awareness; language barriers; illiteracy.

Edenburg

TEL: (051) 743 1102

REF: Ms Patterton

One complaint was received relating to discrimination. The matter was withdrawn "because it dealt with crimen iniuria".

³⁵ The SAHRC survey does not list this court as an equality court.

³⁶ The SAHRC survey indicates that the Bloemfontein equality court had received 17 complaints.

³⁷ The SAHRC survey does not list this court as an equality court.



Phuthaditjaba

TEL: (058) 713 0071

REF: Mr Morake

No cases reported. Reason(s) advanced by clerk: The equality court had not been launched yet; trained officials not available.

Ladybrand

TEL: (051) 924 3210

REF: Ms Bezuidenhout

No cases reported.

Thaba Nchu

TEL: (051) 873 2242

REF: Ms Seekoei

One complaint was received but because the clerk had not yet received training, the complainant was asked to return at a latter date. The complainant did not return.

Rouxville

TEL: (051) 663 0003

REF: Ms De Roubaix

No cases reported. Reason(s) advanced by clerk: Insufficient staff; staff not trained.

Harrismith

TEL: (058) 623 0627

REF: Mr Mahlato

No cases reported. Reason(s) advanced by clerk: Lack of awareness of the courts.

Ficksburg

TEL: (051) 933 2201

REF: Ms Mgudlwa

No cases reported. Reason(s) advanced by clerk: Lack of awareness and lack of information.

F.1.9 KwaZulu Natal

Hlanganani

TEL: (039) 832 0016

REF: Ms Mnguni

No cases reported. Reason(s) advanced by clerk: Lack of awareness; pamphlets only available in English.

Newcastle

TEL: (034) 312 1166

REF: Mr Van Staden

No cases reported. Reason(s) advanced by clerk: Equality court had not yet been established.

Pietermaritzburg

TEL: (033) 345 8211

REF: Mr Ngobo

Case No 1³⁸

Profile of complainant:	Black male court interpreter.
Profile of respondent:	Three females (two white; one Indian).
Prohibited ground:	Race.
Brief description of merits:	The respondents had allegedly thrown away the jug, from which the complainant had drunk. ³⁹

Ngutu

TEL: (034) 271 0045

REF: Mr Madonsela

No cases reported. Reason(s) advanced by clerk: Lack of awareness; no information campaigns being planned.

³⁸ Also see *Malinga / Chetty, Goosen and Du Toit* under F.2.1 below.

³⁹ The SAHRC survey indicates that the Pietermaritzburg equality court had received five cases of which one complaint had been withdrawn.



Ladysmith

TEL: (036) 637 6771

REF: Ms Deburam

Case No 1

Profile of complainant: Coloured male.
Profile of respondent: Private Security Industrial Regulations Authority.
Prohibited ground: Race.
Brief description of merits: The complainant had applied for a position after the respondent had advertised a vacancy in the company, but was refused. The matter was referred to an alternative forum (presumably the Labour Court).⁴⁰

Durban

TEL: (031) 302 4111

REF: Mr Ntombela

The equality court presiding officer emailed four of his typed judgments to me, all of which related to hate speech.

Case No 1 (Khoza / Saeed & Essay; case no 07/05)

Profile of complainant: Black male.
Profile of respondent: Indian male; Indian female.
Prohibited ground: Race.
Brief description of merits: The complainant alleged that the second respondent called him a “pig” and a “kaffir” while he alleged that the first respondent telephoned him and asked him whether he still denied that he was a “kaffir”. The court dismissed the complaint against the first

⁴⁰ The SAHRC survey indicates that no complaints had been lodged.

respondent and held that the complaint against the second respondent was proved. The court awarded R3000 in damages.

Case No 2 (Mdladla / Smith; case no 40/05)

Profile of complainant: Black female.
Profile of respondent: White male.
Prohibited ground: Race.
Brief description of merits: The complainant alleged that the respondent had come to her to complain about the noise coming from her home and said “Fikile, you are a kaffir bitch. You must go and stay in Umlazi with the other kaffirs like you”. The respondent’s version was that he had said “lower your fucking pitch”. The court held in favour of the complainant. It took into account that the respondent had been found guilty in criminal court relating to the same incident and was sentenced to “an extremely heavy fine”. (The amount was not stated). The court therefore ordered the respondent to make a written apology to the complainant.

Case No 3 (Gumede / Mkhwanazi; case no 58/05)

Profile of complainant: Black male.
Profile of respondent: Black male.
Prohibited ground: (Perceived) sexual orientation.
Brief description of merits: The complainant alleged that the respondent said that the complainant was a homosexual. The court held that it was not proven that this was said of the complainant and dismissed the case.

Case No 4 (Magubane / Smith, case no 01/06)

Profile of complainant: Black female.
Profile of respondent: White male.
Prohibited ground: Race.



Brief description of merits: The complainant alleged that the respondent told her “kaffir, what are you looking at”. The court found in favour of the complainant and ordered the respondent to make a written apology to the complainant. The court seemed to take the respondent’s “personal and financial position” into account in deciding not to award damages to the complainant.

Because of the number of complaints lodged with this equality court (approximately 150 cases for the period July 2004 to March 2006), perhaps understandably the clerk of the court could not provide me with detailed information relating to the nature of the merits of each of the cases.⁴¹ He emailed a table of cases to me containing the following headings: “nature of complaint and relief sought”, “race, sex and age of respondent”, “duration of the case” and “nature of the order in terms of section 21(2) of the Act” for the period July 2004 to March 2006. The following information could be extracted from this table of cases:

Approximately 150 cases have been lodged with this court for the period July 2004 to March 2006. 99 of the cases related to hate speech, 43 to harassment and only 9 to discrimination. 64 of the cases were pending by March 2006. Of the finalised cases (about 81), 29 were dismissed, 13 were withdrawn, six were referred to an alternative forum, five were settled, and one case was referred to the South African Police Service. Judgment was granted in favour of the complainant in 27 of the cases (a “success rate” of 33% for complainants; ie in about a third of the cases that were pursued judgment was granted in favour of the complainant). 52% of the complaints were either dismissed or withdrawn. Of the nine discrimination complaints, one case was withdrawn, one complaint was dismissed, one case was referred to an alternative forum, an interim order was granted in one case and five complaints were pending by March 2006. In 23 of the 99 hate speech complaints (almost a quarter of the complaints), the complainants merely wished for the court to order that the respondent apologise to the complainant.

Nongoma

TEL: (035) 831 0302

⁴¹ The SAHRC survey indicates that no information was available for the Durban equality court.

REF: Mr Gumede

No cases reported although the Act “was successfully publicised”.

F.2 Newspaper reports

F.2.1 Discrimination

Bhola / University of KwaZulu-Natal⁴²

Profile of complainant:	Indian female.
Profile of respondent:	University.
Prohibited ground:	Not stated (presumably culture).
Brief description of merits:	The complainant alleged that the respondent refused to excuse her from a year-end examination so that she could attend a family ceremony to unveil her mother’s tombstone and also refused to allow her to write a make-up examination early in the new year.

Black / Broederstroom Vakansieoord⁴³

Profile of complainant:	Family, friends and black friends of first complainant’s children.
Profile of respondent:	Holiday resort.
Prohibited ground:	Race.
Brief description of merits:	The respondents were confronted and told to “get out” by the owners of the resort. The SAHRC joined the proceedings and asked the court to order that the resort adopt a non-discriminatory policy, to apologise to Black or have its license revoked and to pay R20 000 to a charity of Black’s choice.

Black employees / Durban company⁴⁴

Profile of complainants:	221 black employees.
Profile of respondent:	Large Durban-based company (further detail not provided).

⁴² *Legalbrief Today* 7 July 2006.

⁴³ http://www.sahrc.org.za/sahrc cms/publish/printer_138.shtml (accessed 2005-08-31); *Sunday Times* (2005-03-13) 6.

⁴⁴ *Daily News* (2004-03-15) 5.



Prohibited ground: Race.
Brief description of merits: The complainants alleged that they had been forced into a new pension scheme while workers of other races were given the option to remain with the existing fund.

Bosch / Minister of Safety and Security and Minister of Public Works⁴⁵

Profile of complainant: White male.
Profile of respondent: State.
Prohibited ground: Disability.
Brief description of merits: The complainant asked that the Kabega Park police station be fitted with a lift, that no building under the auspices of public works be built or leased without disability access to all storeys, and all existing buildings owned or leased by public works be renovated within five years to be fully accessible to disabled people.

Charles / Kopanong hospital; Gauteng department of health⁴⁶

Profile of complainant: Theatre nurse.
Profile of respondent: Hospital.
Prohibited ground: Religious belief.
Brief description of merits: The complainant argued that she was constructively dismissed when she refused to further assist in performing abortions. (The matter was referred to the Labour Court after argument).

Disabled man / Block of flats in Smith Street, Durban⁴⁷

Profile of complainant: Disabled male (further detail not provided).
Profile of respondent: Security guards; supervisor (further detail not provided).
Prohibited ground: Disability.

⁴⁵ *Weekend Post* (2005-12-03) 2.

⁴⁶ *Beeld* (2005-08-17) 5; *Rapport (Gauteng-Nuus)* (2004-11-07) 3; *Beeld* (2004-12-08) 9; *Sowetan* (2005-03-17) 9; <http://www.legalbrief.co.za/article.php?story=20070711153631678> (accessed 2007-07-16).

⁴⁷ *Daily News* (2004-03-15) 5.

Brief description of merits: For years the security guards at the block of flats where the complainant lived helped him to open the security gate but after a verbal altercation the supervisor instructed the guards not to help him anymore. The complainant was left stranded. The court ordered the supervisor to instruct the guards to assist the complainant.

Du Preez, Goosen, Herselman & Pretorius / Department of Justice⁴⁸

Profile of complainant: Four white magistrates; three males and one female.
Profile of respondent: State.
Prohibited ground: Race.
Brief description of merits: The complainants challenged the appointment of two female black magistrates as regional magistrates. The complainants applied for the same positions but were not appointed. The High Court held that unfair discrimination had been established.

Gore / Nationwide Airlines⁴⁹

Profile of complainant: Male; Member of Parliament.
Profile of respondent: Airline.
Prohibited ground: Disability.
Brief description of merits: The complainant alleged that he had to pay an additional R658 for his flight from Cape Town to Johannesburg because he had to be assisted on boarding and leaving the plane.

Gweba / Weideman⁵⁰

Profile of complainant: Black female journalist.
Profile of respondent: White female editor.

⁴⁸ http://www.eherald.co.za/herald/2005/04/18/news/n07_18042005.htm (accessed 2005-04-21); http://www.eherald.co.za/herald/news/n03_19042006.htm (accessed 2006-04-24); http://www.eherald.co.za/herald/news/n03_13062006.htm (accessed 2006-06-19); *The Herald* (2005-6-21) 6; *Business Day* (2005-06-11) 1; *The Star* (2006-04-20) 5; *The Herald* (2005-04-18) 5.

⁴⁹ *Beeld* (2004-09-23) 11; *Legalbrief Today* 21 October 2004; *Beeld* (2006-05-18) 21.

⁵⁰ *Die Burger* (2004-03-20) 4; *Cape Argus* (2005-03-05) 3; *Cape Argus* (2004-03-22) 2.



Prohibited ground: Race.
Brief description of merits: The complainant alleged that the respondent insulted her when her command of English was criticised in a key performance appraisal meeting. The respondent allegedly said that she was sick and tired of people using the excuse of being disadvantaged and allegedly attributed the complainant's unhappiness at the magazine to the fact that the magazine was too sophisticated and that she found white faces so overwhelming. The court referred the matter to the CCMA.

Herselman / Southern Sun Elangeni & Hurricanes Rugby Union⁵¹

Profile of complainant: White female and her daughter.
Profile of respondent: Hotel; New Zealand-based rugby union.
Prohibited ground: Not stated.
Brief description of merits: The complainants alleged that they were banned from two hotels where the "Hurricanes" rugby players were staying during their tour to South Africa. They alleged that they had been discriminated against and harassed and demanded damages and an apology.

Hopf / Build It (division of Spar)⁵²

Profile of complainant: White female.
Profile of respondent: Business.
Prohibited ground: Sex / gender.
Brief description of merits: The complainant argued that she had been systematically discriminated against. She joined the respondent as "national buyer" but was allegedly treated and graded as "buying administration controller". She also alleged that she was the only female in the management team, was patronised and treated "as

⁵¹ *Legalbrief Today* 29 March 2006; http://www.iol.co.za/general/news/newsprint.php?art_id=vn20060511042705479C45924 (accessed 2006-05-15).

⁵² *Legalbrief Today* 2 August 2005.

a girl in a man's environment". (The matter was referred to the Labour Court after argument).

Jenecke⁵³

Profile of complainant: Black ("coloured") male.
Profile of respondent: Not stated; presumably Law Society of South Africa.
Prohibited ground: Race.
Brief description of merits: The complainant alleged that he was unfairly discriminated against based on race. He had failed the attorneys' admission examination a number of times and asked to be admitted as attorney despite having failed the examination. The application failed.

King / Department of Justice and Constitutional Development⁵⁴

Profile of complainant: White male.
Profile of respondent: State.
Prohibited ground: Race and sex.
Brief description of merits: The complainant applied for one of 14 advertised posts for regional magistrate but was not shortlisted despite 23 years' experience.

Kok / NUMSA; Chosane⁵⁵

Profile of complainant: Female; race not stated.
Profile of respondent: Union.
Prohibited ground: Not stated.
Brief description of merits: The complainant argued that the respondents unfairly blocked her from being nominated for a post as one of two national vice presidents. The case was dismissed on technical reasons.

⁵³ *Beeld* (2006-06-23) 4.

⁵⁴ *Beeld* (2006-06-06) 6; http://www.iol.co.za/general/news/newsprint.php?art_id=vn20060606022159568C34124 (accessed 2006-06-07).

⁵⁵ *This Day* (2004-09-22) 3.



Kollapen / Manshaarsalon⁵⁶

Profile of complainant: Indian male (chairperson of the Human Rights Commission).
Profile of respondent: Hair salon.
Prohibited ground: Race.
Brief description of merits: The respondent's staff refused to cut the complainant's hair because they ostensibly "could not cut coloured people's hair". The court ordered that the respondent pay R10 000 to charity and train his staff to cut all types of hair. The training had to be completed within two months and a report submitted to court. The court also ordered the SAHRC to liaise with the Hairdressing Bargaining Council to determine the feasibility of insisting that all hairdressing courses should equip trainees to cut the hair of all South Africans.

Kuypers; Solidariteit / Nedbank⁵⁷

Profile of complainant: White male.
Profile of respondent: Bank.
Prohibited ground: Race.
Brief description of merits: The complainants considered court action against the respondent when the bank introduced a shares scheme for blacks. The complainants argue that an income-based test should have been devised instead of a race-based test. The bank argued that it limited participation in the scheme to R100 000 to prevent the scheme being abused by the rich.

Language & Malan / Department of Justice⁵⁸

Profile of complainant: Two white magistrates.

⁵⁶ *Sunday Times* (2005-04-03) 18; *Beeld* (2005-03-30) 3; http://www.sahrc.org.za/sahrc/cms/publish/printer_133.shtml (accessed 2005-08-31); *Sunday Independent* (2005-04-03) 2; *Pretoria News* (2005-03-30) 1.

⁵⁷ *Rapport* (2005-10-23) 6.

⁵⁸ *Legalbrief Today* 26 October 2005; *Legalbrief Today* 15 July 2005; *Legalbrief Today* 17 March 2006.

Profile of respondent: State (Department of Justice).
Prohibited ground: Race.
Brief description of merits: The complainants alleged that they had been consistently overlooked for promotion.

Malinga / Chetty, Goosen and Du Toit⁵⁹

Profile of complainant: Black male court interpreter.
Profile of respondent: Three females; two magistrates and a clerk.
Prohibited ground: Race.
Brief description of merits: The complainant alleged that a jug from which he had drunk water had been discarded in a rubbish bin and demanded R300 000 (R100 000 from each respondent) in damages. The respondents argued that the complainant was abusing the equality court process. They argued that the jug was thrown out with another as they were old, stained and unhygienic. The respondents lodged a counterclaim.

Manong and Associates / Gauteng department of transport and public works⁶⁰

Profile of complainant: Described as “civil engineering company” and “black-owned advertising and marketing company” and “engineering specialists”.
Profile of respondent: State.
Prohibited ground: Race.
Brief description of merits: In one report it was said that the complainant argued that the respondent had not adhered to its affirmative procurement policy. Another report mentioned that the complainant argued that the respondent’s procurement policy was unfair in that it merely listed consultants’ names and awarded work to them in turn, without

⁵⁹ *Legalbrief Today* 31 August 2005; *Daily News* (2005-08-31) 2; *Natal Witness* (2005-08-31) 3.

⁶⁰ *Mail & Guardian* (2004-06-02) 13; *Mail & Guardian* (2004-06-18) 6; *Legalbrief Today* 19 October 2004.



due regard being given to the advancement of persons disadvantaged by unfair discriminatory practices of the past.

Manong and Associates / City of Cape Town and Futuregrowth Property Development Company⁶¹

Profile of complainant: Described as “civil engineering company” and “black-owned advertising and marketing company” and “engineering specialists”.

Profile of respondent: State; private enterprise company.

Prohibited ground: Race.

Brief description of merits: The complainant argued that its exclusion from a R87 million Khayelitsha retail development was motivated by racial discrimination. The respondents claimed that the complainant was abusing the court process. The complainant subsequently withdrew the court action and agreed to pay the respondents’ legal costs.

Mixed race couple / restaurant owner⁶²

Profile of complainant: Mixed race couple.

Profile of respondent: Restaurant owner.

Prohibited ground: Race.

Brief description of merits: The complainants wished to dine out at the respondent restaurant. The owner assaulted the couple and threw them out of his establishment. The court ordered payment of R10 000 in damages and ordered the respondent to allow the couple to eat at his restaurant if they so wished.

Muller; SAHRC / Department of Public Works and Department of Justice⁶³

⁶¹ *Cape Argus* (2005-06-21) 9; *Cape Argus* (2005-03-17) 7.

⁶² *Sowetan* (2005-03-18) 18; further detail not provided in the newspaper report.

⁶³ *Rapport* (2004-09-19) 23; *Legalbrief Today* 27 November 2003; *Beeld* (2004-02-23) 10; *Beeld* (2004-09-16) 13; http://www.thestar.co.za/general/print_article.php?ArticleId=2216561&fSectionId=1 (accessed 2004-09-15);

Profile of complainant: White disabled female attorney.
Profile of respondent: State departments.
Prohibited ground: Disability.
Brief description of merits: The complainant argued that she was discriminated against because not all the magistrates' courts she frequented regularly were accessible to disabled. The court made the settlement agreement an order of court. The respondents undertook to alter all courts in South Africa within 3-5 years so as to make the courts accessible to disabled. The respondents had to submit a plan of action to the court and the SAHRC within six months of the order, and progress reports thereafter on a six monthly basis.

Nehal / First National Bank⁶⁴

Profile of complainant: Indian male.
Profile of respondent: Bank.
Prohibited ground: Race.
Brief description of merits: The complainant alleged that the respondent bank had acted in a racist manner when it refused to grant his father a long-term loan of R200 000. He alleged that the bank at no point provided reasons for failing to grant a loan.

Ntuli / Tewary⁶⁵

Profile of complainant: Black male.
Profile of respondent: Indian male.
Prohibited ground: Race.
Brief description of merits: RT, the majority share owner of a building, asked the complainant to take care of the apartment and it was agreed that the complainant would pay his portion of the electricity and water bill.

http://www.sahrc.org.za/sahrc/cms/publish/printer_150.shtml (accessed 2005-08-31); *The Star* (2003-10-08) 2; *Citizen* (2004-09-17) 6.

⁶⁴ http://www.iol.co.za/news/newsprint.php?art_id=vn20050512073034625C89 (accessed 2005-05-16).

⁶⁵ *Daily News* (2005-01-24) 3.



The respondent (RT's uncle), who lived next door, had the complainant's electricity and water disconnected. The complainant alleged that the respondent had told him that he "did not want kaffirs living on his property". The complainant secured an interdict against the respondent preventing him from abusing, insulting or harassing the complainant or interfering with his lawful occupation of the premises.

Pickard; Brown / British Airways⁶⁶

Profile of complainants: Gay male couple.
Profile of respondents: Airline company.
Prohibited ground: Sexual orientation.
Brief description of merits: After having bought two economy tickets to London, on the day of their trip the complainants enquired about using the gentlemen's seats, double seats situated at the front of the aeroplane. The respondent informed them that their tickets were not upgradeable and that should they wish to upgrade they would have to purchase new tickets and forfeit the original tickets. The complainants argue that the respondent was "doing everything in their power not to have us sit alone, together".

Pillay / Durban Girls' High School⁶⁷

Profile of complainant: Indian female.
Profile of respondent: Educational facility (high school).
Prohibited ground: Religion, cultural belief.

⁶⁶ *Sunday Tribune* (2006-11-19) 3.

⁶⁷ http://www.witness.co.za/content/2005_09/37602.htm (accessed 2005-10-04); *Beeld* (2006-07-16) 3; http://www.themercury.co.za/general/print_article.php?ArticleId=2952587&fSection (accessed 2005-10-19); http://www.news24.com/News24/South_Africa/News/0,,2-7-1442_1821094,00.html (accessed 2005-10-24); *Legalbrief Today* 26 August 2005; *Legalbrief Today* 19 July 2005; *Legalbrief Today* 28 July 2005; *Legalbrief Today* 31 August 2005; *Beeld* (2006-07-07) 3; *Daily News* (2005-08-31) 2. An appeal has been noted to the Constitutional Court - *Beeld* (2006-08-21) 5.

Brief description of merits: The respondent did not allow the complainant to wear a nose stud. The complainant argued that she wore the nose stud in accordance with Hindu custom. The trial court dismissed the claim. On appeal the High Court held that the school's prohibition amounted to unfair discrimination. The complainant represented herself; the school was represented by senior counsel. The trial court found in favour of the respondent; on appeal to the High Court the finding was reversed. The Constitutional Court confirmed the High Court ruling.⁶⁸

Pillay / Sliver Club; Cronjé and Coetzer⁶⁹

Profile of complainant: Male coloured.
 Profile of respondent: Night club.
 Prohibited ground: Race.
 Brief description of merits: Two "bouncers" at the respondent night club refused entry to the complainant but allowed his white partner to enter the club. The ostensible reason for not allowing the complainant to enter was that he was not appropriately dressed. After an exchange of words, the complainant and his partner, a law lecturer, were severely assaulted. The court awarded R10 000 damages (to be paid to Siyazenzela, an organisation established to fight homophobia and racism) and the respondent apologised to the complainant. The two bouncers also donated R1500 each to the NGO. The complainant then withdrew all criminal charges.

Rajah / Merry Pebbles⁷⁰

Profile of complainant: Black female (she described herself as an African of Indian descent).

⁶⁸ *MEC for Education: KwaZulu-Natal and others v Pillay* CCT 51/06 (unreported).

⁶⁹ *Die Burger* (2004-02-12) 13; *Daily News* (2004-02-16) 5; *Die Burger* (2004-02-26) 19; *Cape Argus* (2004-02-11) 2; *The Star* (2004-02-11) 3.

⁷⁰ *Sunday Times* (2005-04-17) 8; *Sunday Times* (2005-11-20) 5.



Profile of respondent: Holiday resort.
Prohibited ground: Race.
Brief description of merits: The complainant was told that she resort was fully booked. When her white friend called the resort a short while later, he was offered accommodation. The resort agreed to pay R7500 in damages.

Ramkless / Department of Education⁷¹

Profile of complainant: Indian male.
Profile of respondent: State.
Prohibited ground: Conscience.
Brief description of merits: The complainant alleged that the respondent has claimed that it had problems with the complainant's "attitude and demeanour" and therefore dismissed him. He argued that the allegation that his attitude was unreasonable implied that the respondent expected him to act in some way contrary to his deeply held convictions. The respondent argued that the complainant had a long and complex history marked by allegations of dissatisfaction, conspiracy theories and victimisation.

Reiners / Western Cape Department of Education⁷²

Profile of complainant: Coloured male (race not stated).
Profile of respondent: State.
Prohibited ground: Religious belief.
Brief description of merits: The complainant alleged that he was dismissed because he continued to perform corporal punishment. The court held that he was dismissed because he refused to apply "curriculum 2005" and did not hand in marks timeously.

⁷¹ *Daily News* (2004-05-28) 1.

⁷² *Beeld* (2005-06-15) 19; *Cape Argus* (2005-06-07) 1; *Cape Argus* (2005-06-14) 8.

SAHRC / SANBTS⁷³

Profile of complainant:	SAHRC.
Profile of respondent:	SANBTS.
Prohibited ground:	Sexual orientation.
Brief description of merits:	The complainant considered instituting action against the respondent to make the point that the respondent could be asked to explain its blood donation policy to a court. In terms of its policy, gay men may not donate blood.

Strydom / Dutch Reformed Church, Moreleta Park congregation⁷⁴

Profile of complainant:	Gay organist.
Profile of respondent:	Church congregation.
Prohibited ground:	Sexual orientation.
Brief description of merits:	The respondent suspended the complainant's services (provision of music lessons at the congregation's school of music) after it was informed of the complainant's sexual orientation. The respondent argued that it "had to act in line with the Scriptures".

Turino and Nongoma community / Health Department⁷⁵

Profile of complainant:	Cuban male.
Profile of respondent:	State.
Prohibited ground:	Presumably citizenship/nationality.
Brief description of merits:	The complainant brought the action after his contract with the respondent had not been renewed.

Travers / National Prosecuting Authority⁷⁶

Profile of complainant:	White male.
Profile of respondent:	State.

⁷³ *Die Burger* (2006-01-21) 7.

⁷⁴ http://www.news24.com/News24/South_Africa/News/0,,2-7-1442_1747855,00.html (accessed 2005-08-03).

⁷⁵ *Natal Witness* (2004-04-14) 3.

⁷⁶ *Rapport* (2004-03-07) 13.



Prohibited ground: Disability.
Brief description of merits: The complainant considered court action against the respondent after it decided not to place any new cases before the complainant. The complainant suffers from muscle dystrophy and writes very slowly.

Vallie / Woodways Timber Suppliers⁷⁷

Profile of complainant: Coloured male.
Profile of respondent: Business.
Prohibited ground: Religious belief.
Brief description of merits: The respondent's employee asked the complainant to remove his fez before they would assist him. The respondent argued that it was a Christian business and that it was their policy to ask clients to remove their headgear. The court ordered the respondent to provide an unconditional apology and pay the complainant R2000 in damages.

Vosloo / Jan van Riebeeck High School⁷⁸

Profile of complainant: Bisexual art teacher.
Profile of respondent: Educational institution.
Prohibited ground: Sexual orientation.
Brief description of merits: The complainant alleged that he was discriminated against in his interview for a position as teacher at the respondent school.

F.2.2 Hate speech

Concerned Persons Against Racism in the Western Cape / Ngoro⁷⁹

Profile of complainant: Civil society organisation.

⁷⁷ *Naweek-Beeld* (2005-04-16) 5; *Die Burger* (2005-04-16) 11; *Cape Argus* (2006-02-24) 1.

⁷⁸ http://www.news24.com/News24/South_Africa/News/0,,2-7-1442_1608498,00.html (accessed 2004-10-25).

⁷⁹ *Cape Times* (2005-07-22) 1; *Beeld* (2005-05-10) 2; http://www.news24.com/News24/South_Africa/Politics/0,,2-7-12_1743801,00.html (accessed 2005-07-27); *Cape Times* (2005-10-05) 1; *Cape Argus* (2005-10-05) 6; *Cape Argus* (2005-08-24) 5.

Profile of respondent: Media advisor of the mayor of Cape Town.

Prohibited ground: Race (hate speech).

Brief description of merits: The respondent used derogatory words relating to the coloured community in an editorial on his website. He said that all coloured people are drunkards; Africans were superior to coloureds; the coloured community required transformation and had not yet realised that the time to be cheerleaders for the white race was long past. The then Cape Town mayor, the city council and the ANC distanced itself from his views and he was dismissed. As part of the settlement agreed to, Ngoro apologised for the racist remarks.

Durban engineering firm (names of parties withheld by order of the court)⁸⁰

Profile of complainant: Engineering firm supervisor.

Profile of respondent: Colleague of complainant.

Prohibited ground: Race.

Brief description of merits: It was alleged that the respondent had said “Look at your government now. That government is a real monkey government and does not provide anything for you. Thabo Mbeki is the greatest baboon, controlling the other monkeys like Jacob Zuma who is stealing his money”. The complainant admitted to having said that the government was a “monkey government”. The court ordered the complainant to write an unconditional apology.

Faasen / Die Burger⁸¹

Profile of complainant: White male, describing himself as an Afrikaner.

Profile of respondent: A daily Afrikaans newspaper.

Prohibited ground: Race.

⁸⁰ http://www.themercury.co.za/general/print_article.php?fArticleId=2099926&fSection (accessed 2005-04-25).

⁸¹ *Sunday Times* (2007-03-25) 11.



Brief description of merits: The complainant approached the Cape Town equality court, asking for an order to prevent the newspaper from ever publishing the word “boesman” (“bushman”) again.

Fishman / Barkhuizen⁸²

Profile of complainant: Jewish male.

Profile of respondent: White male.

Prohibited ground: Religion.

Brief description of merits: The respondent painted anti-Semitic graffiti on the complainant’s house’s walls. He painted a swastika and a phrase which meant “spiteful Jewish bastard”. The SAHRC helped the complainant to prepare for his case. The court awarded R2000 in damages and ordered the respondent to apologise to the complainant.

Mkhize / Ferreira; Shaw; Edgemoad High School⁸³

Profile of complainant: Black female; schoolgirl.

Profile of respondent: White schoolmate; the schoolmate’s boyfriend and her mother; school at which the attack occurred.

Prohibited ground: Race.

Brief description of merits: The complainant (assisted by the SAHRC) alleged that the respondents assaulted her and shouted racial insults at her. The court case focused on the alleged use of racially insulting words only. The court ordered that the respondents apologise to the complainant; that they attend a diversity and racial sensitisation course under the SAHRC’s auspices and that they donate R10 000 to a township crèche. The school, without admitting liability, agreed to an independent audit of its policies and practices

⁸² http://www.iol.co.za/general/news/newsprint.php?art_id=vn20060618091213192C74698 (accessed 2006-06-19); *The Sunday Argus* (2006-07-09) 6; *Sunday Independent* (2005-08-21) 3.

⁸³ http://www.iol.co.za/general/news/newsprint.php?art_id=qw107046324190B263&sf= (accessed 2003-12-05); http://www.sahrc.org.za/sahrc/cms/publish/printer_146.shtml (accessed 2005-08-31); *Rapport* (2004-04-11) 23; *Cape Argus* (2004-07-06) 5; *The Star* (2003-12-04) 2; *This Day* (2004-04-08) 3.

relating to race. The criminal charges against the three respondents were subsequently withdrawn.

Mqadi / Lakhi⁸⁴

Profile of complainant: Black male; journalist and law student.
Profile of respondent: Head of ICD, KZN.
Prohibited ground: Race.
Brief description of merits: The complainant alleged that the respondent had told him that she was “tired of Africans who invaded her office” and that junior investigators could deal with him. The respondent said that the complainant’s appointment was with someone else in the office and when she told him this, the complainant began to shout and became threatening.

Ncusane / Neo⁸⁵

Profile of complainant: Black female.
Profile of respondent: White female.
Prohibited ground: Race.
Brief description of merits: The complainant was seeking a property to rent. The respondent told her to “go back to the township where you belong”. The court ordered the respondent to pay R2000 in compensation and to submit a letter of apology.

Pretorius & Sikakane / Petzer⁸⁶

Profile of complainant: Not stated.
Profile of respondent: White male and his daughter.
Prohibited ground: Race.

⁸⁴ *Legalbrief Today* 25 November 2005; *Legalbrief Today* 23 January 2006; *Natal Witness* (2006-01-21) 5; *Natal Witness* (2006-02-02) 5; *Natal Witness* (2005-11-24) 5.

⁸⁵ *Legalbrief Today* 6 May 2005.

⁸⁶ http://www.iol.co.za/general/news/newsprint.php?art_id=vn20060223100236575C71 (accessed 2006-02-24); http://www.iol.co.za/general/news/newsprint.php?art_id=vn20060116131233511C46 (accessed 2006-02-03); *Daily News* (2006-01-16) 6.



Brief description of merits: The complainants alleged that the respondents swore at them and hurled racial abuse at them. (It was alleged that the words used were to the effect that “bushman, you and your kaffir boys will get fuck all”.) The respondents denied being racist. The daughter admitted to having said that Pretorius was “the child of the devil”. The court ordered the first respondent to pay R4000 in damages and ordered the second respondent to write an apology.

Prince / white neighbours⁸⁷

Profile of complainant: Coloured male and his son.
Profile of respondent: White males (the complainants’ neighbours).
Prohibited ground: Race.
Brief description of merits: The complainants alleged that the respondents racially abused and attacked them. They were allegedly kicked, hit and beaten with a cricket bat while respondents shouted “moer die kaffers”. The respondents were also charged with assault with intent to do grievous bodily harm, common assault and crimen iniuria. The SAHRC said that it would be monitoring the case closely. The respondents asked for a order for damages, an order restraining the neighbours from discriminating against them, harassing them or saying anything amounting to hate speech, and an unconditional apology.

Visagie / Roller⁸⁸

Profile of complainant: Coloured male.
Profile of respondent: White female.
Prohibited ground: Race.

⁸⁷ *Cape Times* (2005-01-17) 3; *Cape Times* (2005-01-18) 3; *Cape Times* (2005-02-02) 3; *Cape Times* (2005-01-21) 3; *Cape Argus* (2005-01-21) 3.

⁸⁸ *Die Burger* (2005-05-10) 6.

Brief description of merits: The complainant alleged that the respondent told him to leave her office and told him “ek sê mos hotnotprokureur, verlaat my kantoor. Ek het lankal genoeg gehad van jou kak”.



Annexure G: Schedule of selected documents pertaining to the drafting history of the Act and the initial training programmes of equality court personnel

This schedule contains a list of documents that I relied on in drafting the thesis. The Schedule refers to the following documents: Submissions to the joint ad hoc committee on the Promotion of Equality and Prevention of Unfair Discrimination Bill during November 1999; Equality Legislation Education and Training Unit documents; and Department of Justice and Constitutional Development Reports.

Aids Law Project Submission on the Promotion of Equality and Prevention of Unfair Discrimination Bill, dated 17 November 1999, drafted by F Hassan

Banking Council Submission on the Promotion of Equality and Prevention of Unfair Discrimination Bill, dated 17 November 1999

“Briefing on the Equality Courts Project and Progress in the Implementation of the Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000”, presented to the Joint Monitoring Committee on the Improvement of the Status of Youth, Children and People with Disabilities; Joint Monitoring Committee on Quality of Life and the Status of Women and Portfolio Committee on Justice and Constitutional Development, Impact of the Promotion of Equality and Prevention of Unfair Discrimination Act, 16 October 2006. <http://www.pmg.org.za/viewminute.php?id=8330> (accessed 2007-05-15)

Business Plan, “Capacity Building (through training & public education) for effective implementation of the Promotion of Equality and Prevention of Unfair Discrimination Act, 2000”, undated (presumably finalised during August 2000), drafted by or on behalf of Chief Director: Transformation & Equity

Business South Africa Submission on the Promotion of Equality and Prevention of Unfair Discrimination Bill, dated 17 November 1999

Commission on Gender Equality Submission to the ad hoc Parliamentary Committee on the Promotion of Equality and Prevention of Unfair Discrimination Bill

COSATU Submission on the Equality Bill, dated 26 November 1999

Document, “Budget: National Symposium for Equality Court Judicial Educators”, undated, prepared by Equality Legislation Education and Training Unit

Document, “Proposed Immediate Action to be Undertaken by Zulman JA in connection with the Regional Training of Judicial Officers in terms of the Equality Act”, dated 20 August 2001, drafted by Judge R Zulman

Document, “Categorised Financial Report as from November 2002 to Mid January 2002 & the Schedule of Activities, Expenditure, Existing & Original Budgets”, undated, prepared by Equality Legislation Education and Training Unit

Document, “Schedule of Activities & Budget Feb 2002 – Jan 2003”, undated, prepared by Equality Legislation Education and Training Unit

Document, “Schedule of Activities & Budget Feb 2003 – Jan 2004”, undated, prepared by Equality Legislation Education and Training Unit

Document, “Seminars Organized under Equality Legislation Education and Training Programme [2001-2002]”, undated, prepared by Equality Legislation Education and Training Unit

“Draft Equality Review Report”, issued from the office of the chairperson: Portfolio Committee on Justice and Constitutional Development, dated 23 March 2007.

<http://www.pmg.org.za/docs/2007/070327review.pdf> (accessed 2007-05-15)

Draft Policy Directives on Training of Equality Court Presiding Officers, Court Clerks and Auxiliary Personnel, dated 16 October 2000, drafted by Professor S Gutto and Judge R Zulman

Draft Project Plan, "Implementation of the Promotion of Equality and Prevention of Unfair Discrimination Legislation", undated, prepared by Chief Director: Transformation and Equity and Chief Director: Legislation, Department of Justice and Constitutional Development

Equality Alliance Submission on the Promotion of Equality and Prevention of Unfair Discrimination Bill

Executive Summary Report & Evaluation, National Seminar for Equality Court Judicial Educators, Aloe Ridge Hotel, Gauteng, April 16-21, 2001, drafted by project manager, Equality Legislation Education and Training Unit, dated June 2001

Financial Services Board Submission on the Promotion of Equality and Prevention of Unfair Discrimination Bill, drafted on behalf of RG Cottrell, Executive Officer

Framework for an Outcomes-based Training Programme / Teaching and Learning Materials Development, first draft, August 2000

Gender Project, Community Law Centre Submission to the ad hoc Joint Committee on the Promotion of Equality and Prevention of Unfair Discrimination Bill, dated 17 November 1999

Gender Research Project, Centre for Applied Legal Studies Submission to the ad hoc Joint Committee on the Promotion of Equality and Prevention of Unfair Discrimination Bill, dated 17 November 1999

Human Rights Committee Submission to the ad hoc Joint Committee on the Promotion of Equality and Prevention of Unfair Discrimination Bill, dated 16 November 1999, prepared by F Jenkins, Researcher (Legislation)

IDASA Submission to the ad hoc Joint Committee on the Promotion of Equality and Prevention of Unfair Discrimination Bill

Institute of Retirement Funds of Southern Africa Submission to the ad hoc Joint Committee on the Promotion of Equality and Prevention of Unfair Discrimination Bill, dated 17 November 1999

Interview with Professor SBO Gutto, conducted by the author of the thesis, on 27 March 2003, at the Centre for Applied Legal Studies, University of the Witwatersrand

Letter, "A Brief Critique of Phase Two of the Judicial Training Programme", addressed to Chief Magistrate J Raulinga, Ms T Madonsela and Judge R Zulman, undated, drafted by Durban Magistrate G Abrahams

Letter, addressed to all chairpersons of Equality Education Coordinating Committees, dated 13 August 2002, relating to allocation of funds to the committees, drafted by Project Manager, Equality Legislation Education and Training Unit

Letter, addressed to all Judge Presidents, dated 27 September 2001, relating to Allocation of Funds to Provinces: Equality Courts Training Programme, drafted by Project Manager, Equality Legislation Education and Training Unit

Letter, addressed to all Judge Presidents, dated 8 August 2001, relating to Equality Court Judicial Education Model Business Plan, drafted by Project Manager, Equality Legislation Education and Training Unit

Letter, addressed to the Minister of Justice and Constitutional Development, confirming project implementation (training of justice officials), dated 2 October 2000, drafted by Team Leader, Democracy and Governance, United States Agency for International Development

Letter, addressed to the Minister of Justice and Constitutional Development, dated 23 April 2001, relating to certain suggested amendments to the Promotion of Equality and Prevention of Unfair Discrimination Act, drafted by Judge I Farlam in his capacity as chairperson of the Equality Legislation Training Management Team

Letter, addressed to the Project Manager, Equality Legislation Education and Training Unit, dated 9 July 2001, reporting on the trainers' seminar for clerks and registrars that took place from 11-15 June 2001, drafted by Prof Mbao, University of North West

Letter, invitation to attend a meeting to plan the implementation of judicial training, dated 14 August 2000, drafted on behalf of Director-General, Department of Justice and Constitutional Development

Life Offices' Association of South Africa Submission to the ad hoc Joint Committee on the Promotion of Equality and Prevention of Unfair Discrimination Bill, dated 17 November 1999

Memorandum, addressed to all Equality Court Education Coordinators and Cluster Heads, dated 27 August 2002, relating to handling of allocated funds by the provincial education committees, drafted by Project Manager, Equality Legislation Education and Training Unit

Memorandum, addressed to chairperson of Training Management Board, dated 8 October 2002, relating to progress report on the training of clerks and registrars, drafted by Mr Behari, Justice College

Memorandum, addressed to the Director-General and the Minister of Justice and Constitutional Development, dated 11 June 2001, relating to the first national training seminar and relating to amendments suggested by the judiciary as to the designation of judicial officers, drafted by the Project Manager, Equality Legislation Education and Training Unit

Memorandum, addressed to the Director-General of the Ministry of Justice and Constitutional Development, dated 20 September 2001, relating to briefing the Director-General on progress

made to date and immediate challenges faced by the Equality Legislation Education and Training Unit, drafted by the Project Manager, Equality Legislation Education and Training Unit

Memorandum, addressed to the Director-General of the Ministry of Justice and Constitutional Development, dated 13 December 2001, relating to the approval of the business plan for phase II of the implementation of Equality Legislation, drafted by the Project Manager, Equality Legislation Education and Training Unit

National Coalition for Gay and Lesbian Equality Submission to the ad hoc Joint Committee on the Promotion of Equality and Prevention of Unfair Discrimination Bill, dated 17 November 1999, prepared by the Equal Rights Project

Policy Directives on Training of Equality Court Presiding Officers, Court Clerks and Auxiliary Personnel, undated, drafted by Professor S Gutto and Judge R Zulman on behalf of the Minister of Justice and Constitutional Development

“Progress Report on the Implementation of the Provisions of PEPUDA”, undated, drafted by the Department of Justice and Constitutional Development; Chief Directorate Promotion of the Rights of Vulnerable Groups; hand delivered to the author on 2007-07-07. The report includes a number of annexures. Annexure “A” contains a list of designated equality courts; Annexure “B” contains a list of courts that is to be designated as equality courts; Annexure “C” contains a list of designated equality court magistrates; Annexure “D” contains a list of trained judges; Annexure “E” contains a list of trained and appointed equality court clerks and Annexure “F” contains statistics of equality court complaints lodged for the period January 2006 to January 2007

Project Manager’s Report, 12th Planning Meeting, Equality Legislation Training Management Team, 7 November 2001

Project Manager’s Report, 13th Planning Meeting, Equality Legislation Training Management Team, 12 December 2001

Project Manager's Report, 14th Planning Meeting, Equality Legislation Training Management Board, 27 February 2002

Project Manager's Report, 15th Planning Meeting, Equality Legislation Training Management Board, 19 June 2002

Project Manager's Report, 16th Planning Meeting, Equality Legislation Training Management Board, 21 August 2002

Project Manager's Report, 17th Planning Meeting, Equality Legislation Training Management Board, 8 October 2002

"Project Plan Implementation Report, Promotion of Equality and Prevention of Unfair Discrimination Act 2000 (Act No 4 of 2000) as amended by Act No 52 of 2002", dated April 2004, drafter not stated in report, emailed to author by R Skosana, Department of Justice and Constitutional Development on 19 July 2004

Proposed Annual Work Plan, "Implementation Plan for Capacity Building Project (Equality Legislation Implementation" February 2001 – January 31 2002, undated (presumably finalised during September 2001), prepared by Project Manager, Equality Legislation Education and Training Unit

Report on Decentralised Training, dated 20 August 2002, drafted by Judge R Zulman

Report on Decentralised Training, dated 5 November 2001, drafted by Judge R Zulman

Report on Decentralised Training, dated 7 October 2002, drafted by Judge R Zulman

Report to Equality Legislation Education and Training Unit on "train the trainers phase II symposium – Helderfontein Estates 24 to 27 July 2001", dated 20 August 2001, drafted by Judge R Zulman

Report, "Chief Directorate Transformation & Equity Second Status Report on Implementation of the Equality Legislation", dated 31 January 2001, drafted by Chief Director: Transformation & Equity

South African Council of Churches Legislative Submission to the ad hoc Joint Committee on the Promotion of Equality and Prevention of Unfair Discrimination Bill, dated 17 November 1999

South African Insurance Association Submission to the ad hoc Joint Committee on the Promotion of Equality and Prevention of Unfair Discrimination Bill, dated 17 November 1999, drafted on behalf of B Scott, Chief Executive

Summary Minute, Equality Review Committee, 3 February 2001 (contained in a memorandum from the Deputy Director-General: Legal Services to the Director-General, Department of Justice and Constitutional Development, dated 6 February 2001)

Summary Minute, 1st Planning Meeting of the Interim Training Management Team, Equality Legislation Implementation Project, 23 August 2000

Summary Minute, 2nd Planning Meeting of the Interim Training Management Team, Equality Legislation Implementation Project, 6 September 2000

Summary Minute, 3rd Planning Meeting of the Interim Training Management Team, Equality Legislation Implementation Project, 18 October 2000

Summary Minute, 4th Planning Meeting of the Interim Training Management Team, Equality Legislation Implementation Project, 15 November 2000

Summary Minute, 5th Planning Meeting of the Interim Training Management Team, Equality Legislation Implementation Project, 20 December 2000

Summary Minute, 6th Planning Meeting of the Interim Training Management Team, Equality Legislation Implementation Project, 14 February 2001

Summary Minute, 7th Planning Meeting of the Training Management Team, Equality Legislation Implementation Project, 28 March 2001

Summary Minute, 8th Planning Meeting of the Training Management Team, Equality Legislation Implementation Project, 28 May 2001

Summary Minute, 9th Planning Meeting of the Training Management Team, Equality Legislation Implementation Project, 4 July 2001

Summary Minute, 10th Planning Meeting of the Training Management Team, Equality Legislation Implementation Project, 21 August 2001

Summary Minute, 11th Planning Meeting of the Training Management Team, Equality Legislation Implementation Project, 17 September 2001

Summary Minute, 12th Planning Meeting of the Training Management Team, Equality Legislation Implementation Project, 7 November 2001

Summary Minute, 13th Planning Meeting of the Training Management Team, Equality Legislation Implementation Project, 12 December 2001

Summary Minute, 14th Planning Meeting of the Training Management Board, Equality Legislation Implementation Project, 27 February 2002

Summary Minute, 15th Planning Meeting of the Training Management Board, Equality Legislation Implementation Project, 19 June 2002

Summary Minute, 16th Planning Meeting of the Training Management Board, Equality Legislation Implementation Project, 21 August 2002

Summary Minute, 17th Planning Meeting of the Training Management Board, Equality Legislation Implementation Project, 8 October 2002

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