
They're Your Rights to Know

A Guide to the PEI *Human Rights Act*



PEI
Human Rights
Commission



Commission
des droits
de la personne
de l'Î.-P.-É.

“It is recognized in Prince Edward Island as a fundamental principle that all persons are equal in dignity and human rights without regard to age, color, creed, ethnic or national origin, family status, marital status, disability, political belief, race, religion, sex, sexual orientation or source of income (Preamble, *Human Rights Act*)”.

Purpose of this Guide

They're Your Rights to Know: A Guide to the PEI Human Rights Act was developed to increase public awareness and understanding of Prince Edward Island's human rights legislation.

This guide is intended to serve as a general information tool. The fact scenarios help explain when the *Human Rights Act* might apply, but they do not include all possible scenarios.

Individuals who are concerned about their rights should contact the PEI Human Rights Commission for further information. This guide, as well as the *Human Rights Act*, are available through the Commission's website at www.peihumanrights.ca.

If you require more information, you can also contact us:

In Person:

53 Water Street, Charlottetown, PEI

By Mail:

PEI Human Rights Commission

PO Box 2000

Charlottetown PE C1A 7N8

By Telephone:

(902) 368-4180 or 1-800-237-5031 (Toll Free in PEI only)

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(902) 368-4236

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www.peihumanrights.ca

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PART I: AN INTRODUCTION TO HUMAN RIGHTS ON PEI

OVERVIEW OF THE PEI *HUMAN RIGHTS ACT*

The PEI *Human Rights Act* states that every person is free and equal in dignity and rights. In order to promote this principle, the *Act* prohibits discrimination on PEI in certain **areas**, such as employment, public services and accommodations, on the basis of certain characteristics or **grounds**, such as age, race, sex and disability. The *Act* became law on September 11, 1976.

PEI HUMAN RIGHTS COMMISSION

The PEI Human Rights Commission is an independent body mandated to administer and enforce the PEI *Human Rights Act* by dealing with complaints of discrimination. Another role of the Commission is to develop programs of public information and education about human rights through seminars, publications and responses to general inquiries. The Commission can also advise the government on suggestions, recommendations and requests made by private organizations and individuals.

The *Act* provides for the appointment of at least three but not more than nine Commissioners, one of whom is designated as Chairperson. The Commissioners perform administrative duties, and one or more Commissioners form a human rights panel to adjudicate complaints.

The Commission is staffed by an Executive Director, a Human Rights Officer, and an Administrative/Intake Officer.

AREAS COVERED BY THE PEI *HUMAN RIGHTS ACT*

On PEI, regardless whether you are a resident or a visitor, you are protected from discrimination in the following areas or situations:



Accommodations

examples: staying at a hotel, motel, inn or bed and breakfast, or renting a campsite or an apartment



Employment

examples: applying for a job, working on the job, being paid, being dismissed from a job or attending work-related social activities



Lease or Sale of Property

examples: renting land or buying/selling a home



Membership in Professional, Business or Trade Associations and Employee Organizations

example: being a member of a union



Publications, Broadcasts, Public Displays, and Advertisements

examples: posting hate symbols in public places, broadcasting hate propaganda, or printing discriminatory ads



Services and Facilities Available to the Public

examples: using public transportation, dining at a restaurant, attending school or accessing a provincial government service



Volunteer Work

examples: applying to volunteer, volunteering, or being asked to step down from a volunteer position

PROHIBITED GROUNDS OF DISCRIMINATION UNDER THE *ACT*

On PEI, discrimination on the basis of the following grounds is against the law:

- Age
- Association (with another ground of discrimination)
- Colour, Race and Ethnic or National Origin
- Creed or Religion
- Criminal Conviction (in Employment only)
- Disability
- Family Status
- Marital Status
- Political Belief
- Sex or Gender (including Sexual Harassment and Pregnancy)
- Sexual Orientation
- Source of Income
- Having Filed a Complaint or Given Evidence/Assistance under the PEI *Human Rights Act*

Complaints of discrimination must indicate both an area and a prohibited ground in order to fall under the PEI *Human Rights Act*.

HUMAN RIGHTS LAWS ACROSS CANADA

Every Canadian province and territory has human rights legislation similar to the PEI *Human Rights Act*. However, there are some differences in human rights laws across the country and how they are applied.

There are circumstances when other human rights laws would apply to you, even when you are on PEI. For example, if you work or obtain a service from a federal government department, agency or Crown corporation, or any federally regulated organization, your rights would be protected under the Canadian *Human Rights Act*. Some examples of federally regulated bodies include: First Nations, chartered banks, airlines, television and radio stations. If you experience discrimination while obtaining a service under another province's jurisdiction, your rights would fall under that province's legislation.

Similarly, if you are a visitor to PEI and you experience discrimination while obtaining a service under PEI provincial jurisdiction, your rights are protected under the PEI *Human Rights Act*.

A full list of provincial human rights commissions is available through our website at www.peihumanrights.ca.

National Office of the Canadian Human Rights Commission
344 Slater Street, 8th Floor
Ottawa, Ontario K1A 1E1
Telephone: (613) 995-1151 Toll Free: 1-888-214-1090
TTY: 1-888-643-3304 Fax: (613) 996-9661

Eastern Regional Office
425 de Maisonneuve West suite 903
Montreal, Quebec H3A 3G5
Telephone: (514) 496-1819 Toll Free: 1-800-214-1090
TTY: 1-888-643-3304 Fax: (514) 283-1869
Website: www.chrc-ccdp.ca

PART II: COMMON CONCEPTS IN HUMAN RIGHTS LAW

WHAT IS DISCRIMINATION?

Discrimination is unequal, prejudicial treatment of persons based on a personal characteristic. Discrimination can be a difference in treatment such as a punishment, a denial of a service or employment, or harassing someone because he or she belongs to a certain group. At the same time, discrimination is not always about treating everyone exactly the same. It can also mean failing to treat someone differently by not accommodating their needs. In all human rights cases, the effect of the treatment on the individual claiming discrimination is deemed important, rather than the intent of whoever may be doing the discrimination. Also, the discrimination must be tied to one of the prohibited grounds of discrimination in order to fall under the PEI *Human Rights Act*. The following is a list of examples of possible cases of discrimination under the *Act*:

- You are dismissed from your job because you are pregnant.
- You are refused an apartment because you have children.
- You are not hired because of a disability.
- You are denied admission to a club, hotel or guest home because of your sexual orientation.
- You are harassed on the basis of sex or race at work.
- You are denied employment because of a criminal conviction that is unrelated to the job.
- You are given a warning at work because you needed time off for a sick child.

INTENTIONAL VS. UNINTENTIONAL DISCRIMINATION

The law applies even if the discrimination is not intentional. Under most circumstances, the previous examples listed would be classified as *direct* or *intentional* discrimination.

There are many labels given to other types of discrimination such as *indirect*, *unintentional*, *systemic*, and *adverse effect*. These types of discrimination refer to situations where the system, rules, regulations, policies or arrangements have not taken into account the needs of a group protected under the law, or the system has not evolved with our changing society.

One prominent example of unintentional discrimination is older buildings that were built without a ramp for people who use wheelchairs. Another example might be an employer administering the same, long-standing standardized test to a new immigrant to Canada, particularly if the test has a cultural bias that does not reflect essential skills needed to perform the job. In the above examples, the service provider or employer did not necessarily intend to discriminate. Yet, according to the law, discrimination has taken place because of the effect on the protected groups. In these examples, the individuals were faced with an unfair disadvantage due to the protected characteristics of disability and ethnic or national origin.

DUTY TO ACCOMMODATE AND UNDUE HARDSHIP

Employers, service providers and property owners must accommodate the needs of individuals or groups protected by the *Human Rights Act* to the point of *undue hardship*. Sometimes it is necessary to adjust policies and procedures or modify physical surroundings to accommodate the special needs of protected individuals or groups in order to provide fair or equitable

treatment. While the duty to accommodate applies to all areas and grounds covered under the *Act*, it arises most often in employment regarding the grounds of disability, religion, and sex (pregnancy). To successfully accommodate someone an employer must implement whatever means necessary (up to the point of undue hardship) to allow that person to work to the best of their ability. Some examples of accommodation in employment include:

- purchasing or modifying equipment to meet the needs of persons with disabilities
- allowing time off for parents to attend a child's appointment
- modifying job duties to match an employee's capabilities
- transferring an employee to a more suitable position
- allowing time off for an employee to participate in an addiction rehabilitation program

Accommodation can only be denied if a rule, standard or practice is based on a bona fide occupational requirement (also called a genuine occupational requirement), or on a bona fide justification. This means that an employer or service provider can only deny accommodation if it does something in good faith for a purpose connected to the job or service being offered, and where changing that practice to accommodate someone would cause undue hardship to the employer or service provider.

Undue hardship means that accommodating the special needs of protected individuals or groups imposes an unreasonable burden on employers, service providers, property owners, etc. What constitutes undue hardship will vary in each case, as will the factors taken into consideration.

Undue hardship for employers can include:

- unreasonable financial costs
 - ▶ cost must affect the very survival of the organization or business or threaten to change its essential nature
- health and safety concerns
 - ▶ if accommodating a person would pose an undue risk to the health and safety of that person, or others, then an employer or service provider may be able to establish undue hardship
- problems of employee morale
- disruptions of a collective agreement
- the size of an enterprise limiting the interchangeability of the workplace

Both the person requiring the accommodation and the person or organization providing the accommodation should discuss accommodation needs and how they can be met. The person requiring accommodation should make his or her needs known and both parties should be open to working out an arrangement.

EMPLOYMENT EQUITY AND DIVERSITY PROGRAMS

The PEI Human Rights Commission can approve certain programs of government, private organizations or persons that promote the welfare of any class of individuals, including employment equity and diversity programs.

Over the past few decades, federal and provincial governments have looked at ways to help certain groups overcome the barriers they face in finding and retaining employment. The theory behind employment equity and diversity programs is to achieve *equality of result*, rather than just *equality in treatment*. The word equality refers to *equal* or *same*, whereas the word equity

refers to *fair*. As is explained under the previous section “Duty to Accommodate and Undue Hardship,” sometimes we must treat people differently in order to treat them fairly and achieve equality of result. Under human rights law, employment equity programs are not considered to be what some people refer to as *reverse discrimination*.

There is a difference between employment equity programs and diversity programs. Employment equity refers to a policy or legislation that requires employers to be pro-active in making the workplace more representative of society. Usually, there are designated groups such as visible minorities, Aboriginals, people with disabilities and women in non-traditional roles. Some examples of pro-active measures in employment equity programs are:

- examining the workplace for ways to improve access for people with disabilities
- examining benefit plans to ensure they do not discriminate
- creating policies to ensure an harassment free workplace
- examining hiring and recruiting practices for discrimination

Sometimes, as with the Federal Government, the employment equity programs require employers to meet targets and report on the number of employees in the designated groups.

Diversity programs are usually policies that promote respect for all peoples and lifestyles in the workplace. While diversity programs also emphasize the pro-active measures already listed, they do not require employers to meet mandatory numbers of employees that fall into the four designated groups. They are generally more inclusive by incorporating sexual orientation, age, and cultural background.

Requests to approve equity and diversity programs must be made in writing to the PEI Human Rights Commission.

DISCRIMINATION IN PAY VS. PAY EQUITY

The PEI *Human Rights Act* prohibits paying different rates of pay based on any of the grounds of discrimination, which is different from what is commonly referred to as *pay equity*.

The *Act* states that an employer shall not discriminate between employees by paying one employee less than another employee for substantially the same work that requires the same level of education, skill, experience, effort and responsibility, and which is performed under similar working conditions. When the jobs are *substantially the same*, the employer must pay the same rate of pay without regard to age, sex, or any other prohibited ground of discrimination.

Pay equity refers to equal pay for work of equal value, in terms of skill, effort, responsibility, and working conditions of occupations, whether the type of work is substantially the same or not. Pay equity deals with the concept that occupations traditionally held by women often have lower wages than occupations traditionally held by men, even though the jobs are of equal value to a company.

On PEI, pay equity does not fall under the *Human Rights Act*, it falls under the *Pay Equity Act* and only applies to public sector employees.

Consider this scenario on Discrimination in Pay:

Steve and Jack work on the production line at a local lobster plant. Both men were hired at the same time for the same position, and both men are paid by the hour. Steve is

eighteen years old and will be attending his last year of high school in the Fall. Jack is 28 years old and does not attend any school. Steve is paid at a rate of \$3 per hour less than Jack. When Steve questions his boss, he tells Steve that the plant has always paid high school students less.

Steve could be experiencing discrimination in his rate of pay on the basis of age under the *Human Rights Act*. Steve's human rights complaint would fall under the area of employment.

Compared to this scenario on Pay Equity:

Company XYZ has been in business for over 60 years. When the company first started, all of the warehouse staff were men and the clerical staff were women. Warehouse staff were paid a higher wage than clerical staff. Today, there are a few women working in the warehouse on the same pay scale as the men, as well as a few men in the office on the same pay scale as the women. The wages for the warehouse staff continue to be significantly higher than the clerical staff.

If both the warehouse and clerical positions have been deemed to be of overall equal value in terms of skill, effort, responsibility, and working conditions, this scenario would go against the principles of pay equity and would not fall under the *Human Rights Act*.

When are different rates of pay acceptable under the PEI *Human Rights Act*?

Employers **can** pay employees different rates of pay for substantially the same work if it is in accordance with a:

Seniority System: Employees who have been employed with the employer longer or have more experience may receive higher pay.

Merit System: Employees may be rewarded for their work through a pay raise.

Quantity or Quality System: Wages may be based on the quantity or quality of production or performance.

HARASSMENT AND BULLYING: WHAT IS COVERED?

Harassment under Human Rights Law

Harassment can range from unwelcome comments and offensive jokes or pictures, to unwelcome physical contact. Most human rights laws, including the PEI *Human Rights Act*, only cover harassment if the unwelcome behaviour can be linked to a prohibited ground of discrimination. The most common form of harassment that is covered under human rights law is sexual harassment. Under human rights law, sexual harassment is considered discrimination based on sex or gender. Harassment can also be based on the other grounds of discrimination, such as sexual orientation, race, age, and disability.

Harassment may involve threats of adverse consequences, such as job loss, if the victim attempts to end the harassment. The more common type of harassment involves jokes or attitudes that are sexist, racist, homophobic or derogatory towards other groups. This type of harassment can cause a *poisoned work environment* that discriminates against certain groups, even if they are not included in the jokes or conversations.

Consider these scenarios on Sexual Harassment:

Scenario 1:

Marie and Sally work in an office setting. They are the administrative staff for six males. Over the years, Marie has exchanged crude jokes and viewed pornographic materials with the men in the office. Marie enjoys viewing the photos and listening to the jokes. She mentions to Sally that the office would be a boring place if it were not for the men. Sally does not enjoy this type of entertainment. She does not know what to do as her boss is one of the men involved. She is not included in the jesting but is forced to listen because of the positioning of her desk.

Scenario 2:

Rob works at a call centre as a customer service representative. The majority of his shifts are spent with the same group of six co-workers of which he is the only man. When calls are slow, the conversation has often turned to the women's personal lives and their relationships. At first, Rob just ignored the conversations. Lately though, a couple of the women have been making comments such as "all men are pigs," "men just don't have a sweet clue," and "men are really only good for one thing."

Sally and Rob could be experiencing sexual harassment, or discrimination on the basis of sex or gender in the area of employment. Although they are not participating in the sexual talk, they are uncomfortable because the jesting is going on around them and creating a poisoned work environment. According to the law, Sally and Rob do not have to endure this type of behaviour. Marie, on the other hand, is not experiencing sexual harassment if she is enjoying the jesting.

As in the scenarios above, both women and men can be victims as well as perpetrators of sexual harassment. Women and men can also be sexually harassed by individuals of the same sex. Sexual harassment can occur in all types of workplaces, and at all levels of any company, institution or organization.

Bullying or Personal Harassment

Bullying, sometimes called psychological or personal harassment, is harassment that cannot be tied to a prohibited ground of discrimination. Since there is no prohibited ground of discrimination, bullying is not covered under the PEI *Human Rights Act*.

Consider this scenario on Bullying:

Jill and Mike work as servers in a busy bar and restaurant that employs a total of fifteen servers, six men and nine women. Jill and Mike feel that the new manager has been treating them differently from the rest of the staff. Even though they seem to make the same number of mistakes as the other staff, she is constantly pointing out their mistakes or criticizing them while mostly leaving the other servers alone. On more than one occasion, the manager has yelled profanities at Mike and Jill in front of customers and other staff. The other servers have even noticed that they have been treated differently. Mike and Jill are not sure what the manager's problem is with them.

Mike and Jill could be experiencing workplace bullying. Everyone notices that Mike and Jill are being treated differently, but there is no related ground of discrimination. Although the PEI *Human Rights Act* does not deal with workplace bullying, this type of behaviour has the same devastating effects as harassment based on a ground of discrimination. Some of the effects of harassment and bullying include:

-
- low employee morale
 - high turnover and training costs
 - low productivity
 - increase in absenteeism
 - damage to public image
 - violence

On PEI, the *Employment Standards Act* requires every employer to have and post a sexual harassment policy. The policy should include procedures for reporting sexual harassment. Many employers are now including bullying or personal harassment in their workplace harassment policies. Employees should check with their employer on what their workplace harassment policy includes.

If you experience harassment, it is important to inform the harasser that his or her behaviour is unwelcome. If the harassment occurs at work, report the harassment to a superior. If the harassment occurs where you rent accommodations or receive services, report the harassment to the property or business owner. Also, keep notes of every act of harassment with times, dates, descriptions, witnesses and feelings. Written notes will help you to remember details if you decide to file a complaint with your employer or service provider. In any case of harassment that is related to a ground of discrimination, you can also file a complaint with the Human Rights Commission.

PART III: INFORMATION ON THE PROHIBITED GROUNDS OF DISCRIMINATION

AGE



Although some provincial human rights laws protect individuals in a certain age range, the PEI *Human Rights Act* does not dictate a lower or upper limit on the protection against age discrimination.

Consider these scenarios:

Scenario 1:

Joseph is an insurance agent with a local insurance company. The company has a mandatory retirement policy. Joseph has been told that he will no longer be employed after his 65th birthday.

Scenario 2:

Beth and her friends, all age 20, decide to go camping. The campground requires that they submit a \$100 damage deposit for their site. Beth notices that the teller did not require a damage deposit from the older couple who were in front of them.

In scenario one, Joseph may be experiencing discrimination based on age in the area of employment.

In scenario two, Beth and her friends may be experiencing discrimination based on age in the area of accommodations.

EXCEPTIONS:

Genuine Occupational Qualification

There are some jobs where being a certain age is essential to the job. This is referred to as a genuine occupational qualification. For example, a bar owner must ensure that a bartender is of legal drinking age in order to serve alcoholic beverages.

Pensions and Insurance

The *Act* states that the prohibition against age discrimination does not apply to the operation of any genuine retirement or pension plan, or any genuine group or employee insurance plan. For example, most pension plans will not begin to provide benefits until the recipient reaches a certain age. Also, some group insurance plans place restrictions on the age at which you can enter into the plan. However, you cannot be denied employment if you are not eligible to enroll in an employee benefit plan because of your age.

Special Programs

The Commission may approve programs of government, private organizations or individuals designed to promote the welfare of certain age groups, such as programs designed to promote youth employment or provide housing for seniors. Requests to approve programs must be made in writing to the Commission.

Other Provincial Laws

The *Act* allows for provincial laws that restrict accommodations, services or facilities on the basis of age. For example, you must be 16 years of age or older to obtain a driver's license under the PEI *Highway Safety Act*.

ASSOCIATION



Discrimination on the basis of association occurs when you are discriminated against because you associate with an individual or a group of individuals that identifies with one of the other prohibited grounds of discrimination.

In order to file a complaint based on association, a complainant must provide another ground of discrimination. The *Act* does not cover a difference in treatment based solely on a personality conflict or long held dispute between two people.

Consider these scenarios:

Scenario 1:

Jason views an apartment that has been advertised for rent. The landlord seems to react negatively when he learns that Jason is friends with two men that the landlord knows to be gay. When Jason calls the landlord to indicate that he is interested in renting the apartment, the landlord tells him that he thinks it has already been rented. Jason is suspicious.

The next day, his friend, Mary, calls to inquire about the apartment and is told it is still available.

Scenario 2:

Sherry considers herself to be non political but is married to a well-known political activist for a political party. Sherry works at the private business of a well-known supporter of another political party. When some of the staff members discover who her husband is, she notices that her shifts are cut back. Sherry goes to see her boss who tells her that they are not in the business of funding her husband's party.

Jason and Sherry could be experiencing discrimination in the areas of accommodations and employment on the basis of association with one of the other prohibited grounds of discrimination. The landlord may be denying Jason the apartment because of his association with sexual orientation, while Sherry's boss may be punishing her because of her association with political belief.

However, if Jason and Sherry were treated differently because of a long held personality conflict between Jason's friends and the landlord, or between Sherry's husband and her boss, and there was no evidence that the treatment was tied to a prohibited ground of discrimination, neither scenario would fall under the PEI *Human Rights Act*.

COLOUR, RACE AND ETHNIC OR NATIONAL ORIGIN



Colour, race, and ethnic or national origin are related concepts. Race usually refers to physical characteristics of a group of people. The colour of a person's skin can be one of those characteristics. Ethnic or national origin refers to a common ancestry that is often characterized by a shared language and culture. Two people may have the same colour of skin but have different ethnic backgrounds.

Consider these scenarios:

Scenario 1:

Andrew is a computer programmer at a local company. Andrew is Aboriginal. His supervisor is always criticizing his work. He often tells Andrew that he is a “free-loader” and that “his kind” are lazy.

Scenario 2:

Shireen is originally from Pakistan. At a local restaurant she notices that the server is rude to her and provides poor service, but is friendly and efficient with the other customers.

In scenario one Andrew may be experiencing discrimination based on colour, race, and/or ethnic or national origin in the area of employment.

In scenario two, Shireen could be experiencing discrimination on the basis of colour, race, or ethnic or national origin in the area of services.

EXCEPTIONS:

Employment and Volunteering

The provisions of the *Act* that prohibit discrimination in employment on the basis of colour, race, and ethnic or national origin do not always apply to ethnic non-profit organizations that are operated primarily to foster the welfare of a particular ethnic group. The organization must establish that being of a certain colour, race, and ethnic or national origin is a genuine occupational qualification. For example, a non-profit organization that provides employment counselling to Aboriginal persons may be permitted to recruit Aboriginal employees.

Displays or Publications

The provisions of the *Act* that prohibit discrimination in publications and displays do not apply to the publication or display of notices, signs, symbols, emblems or other representations that indicate membership in non-profit ethnic organizations, such as a sign for the PEI Lebanese Association. However, the provisions do apply to the publications or displays of organizations that promote hate.

Special Programs

The Commission may approve programs of government, private organizations or individuals designed to promote the welfare of ethnic groups, such as programs designed to ensure employment opportunities for visible minorities. Requests to approve programs must be made in writing to the Commission.

CREED OR RELIGION



Creed or religion refers to a shared belief system or faith but may not cover personal, moral, ethical or political views.

Consider these scenarios:

Scenario 1:

Ravinder practices the Sikh religion and wears a turban. He recently applied for a position at a local fast food restaurant where employees wear sun visors as part of the uniform. Ravinder was told on his first day that he would have to remove his turban in order to wear the sun visor.

Scenario 2:

Haleema is Muslim and requests a day off from work to celebrate an important Islamic holiday. Her employer refuses the request, telling her that if they give her the day off, then they will have to start giving everyone the day off. Haleema is the only Muslim person at her workplace.

Ravinder and Haleema could be experiencing discrimination in the area of employment on the basis of their creed or religion. Employers have the duty to accommodate the religious beliefs of their employees to the point of undue hardship.

EXCEPTIONS:

Employment and Volunteering

The provisions of the *Act* that prohibit discrimination in employment on the basis of creed or religion do not always apply to religious non-profit organizations that are operated primarily to foster the welfare of a particular religious group. However, the organization must establish that being of a certain creed or religion is required for the job. For example, a non-profit organization that provides services to members of a certain faith may be permitted to hire only employees of that faith. Religious non-profit organizations may also require volunteers to be of a certain religion.

Special Programs

The Commission may approve programs of government, private organizations or individuals designed to promote the welfare of members of a particular religion, such as scholarship programs. Request to approve programs must be made in writing to the Commission.

CRIMINAL CONVICTION



The PEI *Human Rights Act* states that an individual, company or organization cannot dismiss or refuse to employ an individual because he or she has been convicted of a criminal or summary conviction offence that is unrelated to the position. Under the PEI *Human Rights Act*, the conviction does not have to be pardoned to be considered a prohibited ground of discrimination. However, under the *Canadian Human Rights Act* and some provincial human rights laws, the conviction does have to be pardoned.

The PEI *Human Rights Act* prohibits discrimination based on a criminal conviction **only** in the area of employment. This ground is not protected under the other areas of the *Act* such as volunteer work or public services.

Consider this scenario:

Angela was once convicted of impaired driving. She recently graduated from the Culinary Institute and is now applying for a position as a chef at a local restaurant. During the interview, Barbara, the interviewer, asks if she has ever been convicted of a criminal offence. Angela does not think this information is relevant but tells Barbara about her conviction. Barbara then ends the interview and tells her that the restaurant does not employ anyone with a criminal record.

Angela could be experiencing discrimination in the area of employment on the basis of criminal conviction. A conviction for impaired driving is not relevant to Angela's ability to work as a chef. However, if Angela sought employment as a long-haul truck driver, her conviction may be considered relevant to that position. Therefore, a trucking company may not be discriminating against her if they refuse to hire her because of her conviction of impaired driving.

DISABILITY

(INCLUDING ADDICTION AND ALCOHOL/DRUG TESTING)



Under the PEI *Human Rights Act*, a disability is a previous or existing condition that may result from an injury, an illness or a birth defect. Some examples of disabilities include blindness, amputated limbs, back injuries, epilepsy, cancer, developmental disorders, learning disabilities and emotional or mental illnesses such as depression. Alcohol and drug addiction are also considered disabilities under human rights law. Common, temporary illnesses such as a cold or flu are not covered under disability. If a temporary condition, such as pain, recurs as a part of a medical condition, it may be considered a disability.

Consider these scenarios:

Scenario 1:

Peter has been diagnosed with depression. His doctor has recommended that he take a leave of absence for three months for treatment and recovery. His employer tells him that his job will not be held for him.

Scenario 2:

Margaret's legs are paralyzed and she uses a wheelchair. When she tries to visit a new store, she cannot go in because the entrance has steps with no wheelchair ramp.

In scenario one, Peter may be experiencing discrimination based on disability in the area of employment while in scenario two, Margaret may be experiencing discrimination on the ground of disability in the area of services.

Employers, property owners and others that offer accommodations or services to the public must accommodate persons with disabilities to the point of undue hardship. Refer to the section entitled "Duty to Accommodate and Undue Hardship" on page 6 of this guide for more information.

EXCEPTIONS:

Genuine Occupational Qualification

There may be some jobs where a disability is a reasonable disqualification. For example, a person who uses a wheelchair may not be able to be employed as a construction labourer.

Pensions and Insurance

The *Act* states that the prohibition against discrimination on the basis of disability **does not apply** to the operation of any genuine retirement or pension plan or any genuine group or employee insurance plan. For example, insurers may take a disability into consideration when offering health insurance. However, you cannot be refused employment because you do not qualify for a group benefit package due to a disability.

Special Programs

The Commission may approve programs of government, private organizations or individuals designed to promote the welfare of persons with disabilities, such as programs designed to promote employment or provide housing for persons with disabilities. Requests to approve programs must be made in writing to the Commission.

ADDICTION / SUBSTANCE DEPENDENCE

Under human rights law, drug or alcohol addiction is considered a disability. When an employee has an alcohol or drug addiction that is affecting job performance, the duty to accommodate still applies. Accommodation usually includes the employer granting the employee leave to seek treatment and allowing them to return to the position. The employee must be willing to get help for an addiction problem. Reasonable accommodation does not include the employer allowing a worker to be on the job while under the influence, or continuing to employ an employee who refuses to do anything about his or her addiction.

ALCOHOL AND DRUG TESTING

This area of human rights law is still developing. The PEI *Human Rights Act* does not contain specific provisions regarding

drug and alcohol testing. Recent human rights legal decisions have held that:

- Random testing for alcohol use is acceptable for employees in safety-sensitive positions **only**.
- Random testing for drug use is **never** acceptable. Drugs can be detected in a person's system long after consumption. Therefore, a positive drug test does not necessarily mean that your performance is impaired.
- Alcohol and drug testing is acceptable in situations where there is just cause to believe an employee is under the influence at work or if an incident occurs, such as an accident that may have been a result of alcohol or drug use.

Courts have held that sanctions for a positive test must accommodate the employee. Therefore, automatic dismissal may be discriminatory.

FAMILY OR MARITAL STATUS



Family Status refers to the status of being in a parent and child relationship. *Marital Status* is defined in the *Act* as “the status of being married, single, widowed, divorced, separated, or living with a person in a conjugal relationship.”

Consider these scenarios:

Scenario 1:

Audrey has three children. A less experienced, less qualified woman in her company is promoted. She is single with no children. Audrey believes that she was overlooked for the promotion because company officials concluded that she would not be as dedicated to the job because she has children.

Scenario 2:

Richard and Jennifer have reservations to stay at a bed and breakfast. When they arrive, the proprietor notices that they have different last names. He indicates that he has a policy that unmarried couples cannot share a room in his home.

In scenario one, Audrey could be experiencing discrimination in the area of employment on the basis of family status.

In scenario two, Richard and Jennifer could be experiencing discrimination in the area of accommodations on the basis of marital status.

EXCEPTIONS:

Employment and Volunteering

The provisions of the *Act* that prohibit discrimination in employment on the basis of marital status do not always apply to religious or ethnic non-profit organizations that are operated primarily to foster the welfare of a particular religious or ethnic group.

Also, employers may not be discriminating if they refuse to hire a family member of an existing employee where the employee is in a position to influence the hiring or the working relationship would create a conflict of interest.

Special Programs

The Commission may approve programs of government, private organizations or individuals designed to promote the welfare of certain groups, such as programs to assist families with children. Requests to approve programs must be made in writing to the Commission.

POLITICAL BELIEF



The *Act* defines political belief as a belief in a political party registered under Section 24 of the *Election Act*. Registered political parties include, but are not limited to: Prince Edward Island Liberal Association Inc., the Progressive Conservative Association of Prince Edward Island, the Island Party of PEI, Island New Democrats and the Green Party of Prince Edward Island. In order to claim discrimination under political belief, the person making the complaint is required to show evidence of:

- 1) a membership of or contribution to a registered political party, **or**
- 2) open and active participation in the affairs of a registered political party.

Under the *Act*, political belief does **not** include a lack of participation or belief in a political party. If, for example, someone who does not belong or associate with a political party was not hired for a job, while another individual who does belong to a political party does get hired, the non-political individual could not claim discrimination under the PEI *Human Rights Act*.

Consider these scenarios:

Scenario 1:

Chantal has just started working for a restaurant owned by a well known supporter of the provincial governing party. There is an upcoming provincial election and Chantal has been campaigning for another political party by attending rallies and going door to door. Her picture even appeared on the front of the local newspaper showing her support for the opposition. After returning from a rally, Chantal's supervisor tells her that she is no longer needed. When she questions why she is being let go, the supervisor says that her political activism is not good for business because of the clientele they serve.

Scenario 2:

Kevin has been employed at a provincial park for five years. Recently, he found out that he is not being offered a position at the park this year. Two months ago, there was a provincial election and the governing party changed. Kevin worked for the opposition party during the election campaign. Kevin believes that he is not being called back to work because of his involvement with the opposition party.

Chantal and Kevin could be experiencing discrimination in the area of employment on the basis of political belief. However, if Chantal or Kevin did not associate with or participate in a registered political party, their complaints would not fall under the PEI *Human Rights Act*.

EXCEPTIONS:**Genuine Occupational Qualification**

There may be some jobs where having certain political beliefs may be a genuine occupational requirement. For example, it may not be discriminatory for a political organization to hire advisors who share the organization's political beliefs. On the other hand, political belief is not relevant to an employee's ability to work on a highway paving crew.

SEX

(INCLUDING SEXUAL HARASSMENT AND PREGNANCY)



This ground refers to a person’s biological sex, as well as gender. *Gender* is a broader notion that includes the social characteristics associated with each sex. The PEI Human Rights Commission has a policy to provide protection on the basis of gender expression and gender identity under the ground “sex”. The *Act* protects against discrimination based on society’s expectations of how women or men “should” dress, behave or act, and includes protection for people who are transgendered and transsexual. *Transgendered* is commonly used as an umbrella term to describe people who may have been born with the physical characteristics of one sex, but who identify emotionally, psychologically and/or physically with the opposite gender.

Pregnancy (see page 39) and sexual harassment (see page 38) are also included under the ground of sex or gender.

Consider these scenarios:

Scenario 1:

Tara is captain of her high school girls' basketball team. Every year, the girls' league has to play in the first time slot for the finals. This year, Tara goes to her principal to see about having the times slots alternate each year between the boys' team and the girls' team. The principal tells her that such a set up would probably not be good for the girls' team. He explains to her that the crowds prefer to see the boys' team last because their games are usually more exciting. He says that if the boys play first, the girls' team may not get the same crowds as they do now.

Scenario 2:

John has recently started as an administrative assistant in an office. All the other administrative assistants are women. Two of the men in supervisory roles have been teasing John. Every morning, they come in and address all the assistants by saying "hello ladies" while looking specifically at John.

In scenario one, Tara could be experiencing discrimination on the basis of sex in the area of services.

In scenario two, John could be experiencing discrimination on the basis of sex in the area of employment.

SEXUAL HARASSMENT

Sexual harassment is any unwanted conduct, comment, gesture or contact of a sexual nature that is known or should reasonably be known to cause offense. For more information on sexual harassment, refer to the section "Harassment and Bullying: What is Covered?" on page 12 of this guide.

PREGNANCY

Discrimination on the basis of pregnancy is included under the ground of sex or gender, and occurs most often in employment. Pregnancy includes the pre and post delivery period, pregnancy related illness, as well as the possibility of becoming pregnant.

Consider these scenarios:

Scenario 1:

Rose had a baby six months ago and took maternity leave. When Rose returns to work, she is surprised to find that her previous position has been filled permanently. She has been placed in a lower paying position with less responsibility than she had before.

Scenario 2:

Patricia is a waitress. She is five months pregnant. The manager advises her that they will be laying her off shortly because she is getting “too big” to do her job.

Rose and Patricia could be experiencing discrimination in the area of employment on the basis of sex or gender (pregnancy).

Employers cannot dismiss or refuse to hire a woman because she is pregnant or may become pregnant. If a pregnant woman becomes ill, she is entitled to sick leave and health and/or short-term disability benefits the same as any other employee. Under the PEI *Employment Standards Act*, women who have worked for an employer for 20 continuous weeks are entitled to take unpaid maternity leave and parental leave for up to a year. A woman is entitled to return to the same or a comparable employment position to the one she had prior to taking maternity/parental leave.

Employers must accommodate pregnant women to the point of undue hardship. Accommodation may include allowing frequent washroom breaks, modifying duties, or providing a place for the woman to breastfeed upon her return to work. Refer to the section on “Duty to Accommodate and Undue Hardship” on page 6 of this guide for more information.

EXCEPTIONS:

Rental Accommodations

The *Act* permits some rental accommodations to be restricted to individuals of the same sex, such as a university dormitory or a rooming house. Also, the *Act* may allow an owner of a house to restrict renting a room to someone of a specific sex, when the occupant has access to the house by sharing common rooms or entryways with the owner. However, the *Act* does apply to any commercially operated business or tourist home, and to any self-contained apartment that is attached to a family house but has its own entryway.

Genuine Occupational Qualification

There may be some employment positions where being of a certain sex is a genuine occupational qualification. For example, a women’s rape and sexual assault crisis centre may require a female counsellor to assist female clients.

Religious and Ethnic Non-Profit Organizations

The provisions of the *Act* that prohibit discrimination in employment on the basis of sex do not always apply to religious or ethnic non-profit organizations that are operated primarily to foster the welfare of the group. The organization must establish that being of a certain sex is a genuine occupational qualification. For example, a religious order of women may want to hire a woman if the job requires the employee to live at the convent.

Social, Philanthropic and Other Service Groups

Social clubs that limit their membership on the basis of sex are allowed under the *Act*. The group does not have to be tied to a religion or a common ethnicity.

Special Programs

The Commission may approve programs of government, private organizations or individuals designed to promote the welfare of a class of individuals based on sex, such as an employment re-entry program for teenage mothers. Requests to approve programs must be made in writing to the Commission.

SEXUAL ORIENTATION



This ground protects all types of sexual orientation, including homosexuality, bisexuality and heterosexuality.

Consider these scenarios:

Scenario 1:

Susan works for an advocacy group for gay, lesbian and bisexual persons. The group wants to print flyers advertising a fundraising event. A local printing company refuses to print the flyers because the owner says he objects to homosexuality.

Scenario 2:

The company Martin works for provides health benefits to the married or common-law spouses of heterosexual employees. Martin and his partner, Gary, have been in a common-law relationship for five years. However, the company refuses to provide Gary with health benefits.

Susan may be experiencing discrimination on the ground of sexual orientation in services and Martin and Gary may be experiencing discrimination based on their sexual orientation and/or marital status in the area of employment.

SOURCE OF INCOME



Source of income refers to where or how you obtain your income and usually applies to people receiving income from sources other than employment. Some examples include but are not limited to:

- Social Assistance
- Employment Insurance
- Canada Pension
- Old Age Security

There is an important difference between **source** of income and **amount or level** of income. For example, a landlord may decide not to rent to someone that does not have the amount of income necessary to make monthly rental payments. However, a landlord should not base a rental decision on where the income comes from.

Consider these scenarios:

Scenario 1:

Samantha is receiving social assistance. She applies to rent an apartment but is turned down. The landlord tells her that he does not rent to “people on social assistance.”

Scenario 2:

Albert and Edith are retired. Their income comes from government pension funds and RRSP's. When Albert and Edith purchase a new car, they want to finance it through the car dealer. However, the finance company turns down their application because they are receiving a pension.

In scenario one, Samantha may be experiencing discrimination based on her source of income in the area of accommodation.

In scenario two, Albert and Edith may be experiencing discrimination based on their source of income in the area of services.

As long as Samantha can pay her rent, and Albert and Edith can make their car payments, **where** their income comes from is irrelevant.

EXCEPTIONS

The Government of Prince Edward Island, Crown agencies, and regional health authorities can require that persons be receiving social assistance benefits in order to qualify for access to certain accommodations, services, programs, or facilities established to assist persons who are receiving social assistance benefits, such as employment training programs.

HAVING FILED A COMPLAINT OR GIVEN EVIDENCE/ASSISTANCE UNDER THE PEI *HUMAN RIGHTS ACT*

HUMAN RIGHTS COMPLAINT FORM PAGE 1



PEI Human Rights Commission Complaint Form

For Office Use Only
Date Received

Send your original signed form to the PEI Human Rights Commission. Refer to the *Complaint Form Guide* or contact the Commission if you require assistance in completing this form.

A Who is the making the complaint? [the Complainant]

Name

B Who is the complaint against? [the Respondent(s)]

Name of business, organization, association or individual			Name of business, organization, association or individual		
Mailing Address			Mailing Address		
Town/City	Prov/Terr	Postal Code	Town/City	Prov/Terr	Postal Code
Telephone # (area code) ()			Telephone # (area code) ()		

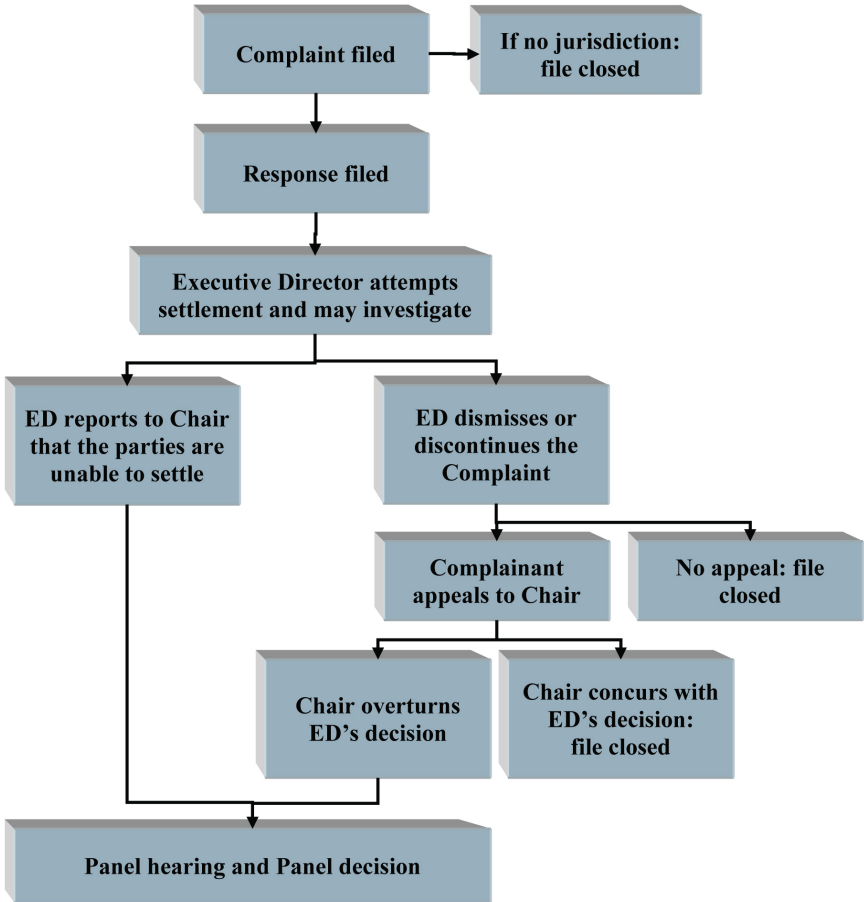
This ground offers protection against discrimination to individuals who have filed complaints or assisted anyone else in filing a complaint with the PEI Human Rights Commission. This ground also protects individuals who have given evidence during an investigation or at a human rights panel hearing.

Consider this scenario:

Carrie and Laura work together as administrative assistants in an office setting. Carrie has been sexually harassed by her boss and has asked Laura if she could put her name as a witness on the PEI Human Rights Commission's complaint form. Laura agrees. Later, Laura's direct supervisor tells her that she will get much further ahead in the company if she keeps to her own affairs.

Laura could be experiencing discrimination in the area of employment on the basis of giving evidence under the PEI *Human Rights Act*.

PART IV: THE COMPLAINT PROCESS



At any time, the complaint may be withdrawn or the complaint may be settled through mediation or mutual agreement: file closed

COSTS ASSOCIATED WITH THE COMPLAINT PROCESS

There is no cost to file a complaint, respond to a complaint, or to participate in an investigation, settlement negotiations or a panel hearing. Parties are not required to have legal representation. However, both the person making a complaint, the **Complainant**, and the person or organization a complaint is against, the **Respondent**, may hire lawyers at their own expense.

FILING A COMPLAINT

Anyone, except the Commission or an employee of the Commission, who has reasonable grounds for believing that a person has contravened the PEI *Human Rights Act*, may make a complaint to the Commission. The *Act* also allows for someone to make a complaint on behalf of another person, if that person consents.

A complaint must:

1. Be made in writing in a form acceptable to the Commission.
2. Be made within **one year** after the alleged discrimination occurred and indicate when the discrimination occurred.
3. Indicate both an **area** and a prohibited **ground** of discrimination covered under the *Act*.
4. Name the Respondent(s).

The Respondent(s) may be an individual, a business, an organization or an association. If the complaint does not fall under an area or a prohibited ground listed in the *Act*, the complaint may not fall under the *Human Rights Act*.

The Commission staff cannot offer opinions on what the outcome of a complaint will be, or if the Complainant will be successful. However, staff can advise as to what the law states and how it may apply to a given situation.

It is helpful if the Complainant provides dates, places and the full names of any persons involved. Any documents, such as employment records or medical records, that the Complainant thinks are relevant to the complaint should be attached to the complaint form.

The complaint form asks the Complainant to suggest how the complaint could be best resolved. Some examples of what the Complainant may seek are:

- a letter of apology
- a letter of reference
- an education session on the PEI *Human Rights Act* provided to the Respondent by a Commission staff member
- an indication that the Respondent will not discriminate in the manner complained of in the future
- monetary compensation for injury to dignity and hurt feelings, lost wages, and expenses incurred due to the discrimination
- reinstatement to an employment position
- provision of the service or accommodation that was denied

The Complainant must sign and date the complaint form. Complaints cannot be made anonymously.

When the complaint is filed, Commission staff may contact the Complainant to clarify any issues raised in the complaint. If the complaint does not fall under the *Human Rights Act*, Commission staff will notify the Complainant and the complaint will be closed. Otherwise, the complaint moves to the step, "Responding to a Complaint".

RESPONDING TO A COMPLAINT

After the complaint is filed and accepted by the Commission, the Administrative/Intake Officer sends a copy of the complaint and a response form to the Respondent. The Respondent has **30 calendar days** to file a written response to the complaint with the Commission.

The Respondent should address the allegations set out in the complaint. It is helpful if the Respondent provides dates, places, and the full names of anyone involved. The response form asks the Respondent to suggest how the complaint could be best resolved. The Respondent must sign and date the response form. Any documents that the Respondent feels are relevant to the complaint may be attached to the response form.

When the Administrative/Intake Officer receives a response to the complaint, a copy of the response is sent to the Complainant. The Complainant has **30 calendar days** to submit comments in reply to the response. Again, Commission staff are available to answer questions on the *Act* or on the complaint process, but not on the outcome of the complaint.

SETTLEMENT

It is generally less costly and more effective if the Complainant and the Respondent develop their own solution through discussion instead of having a resolution imposed on them. A settlement may be agreed upon at any time before a human rights panel has made a ruling on the complaint.

The Commission will attempt to assist the Complainant and the Respondent to resolve the complaint through settlement whenever possible. The Commission has a trained mediator on staff who can provide mediation to the parties of a complaint.

INVESTIGATION

The *Act* states that the Executive Director shall investigate and attempt to settle a complaint. However, the *Act* also states that, at any time, the Executive Director may dismiss or discontinue a complaint. Therefore, not all complaints will be investigated. Refer to the next section "Executive Director's Decision" for more information on why a complaint is dismissed or discontinued.

If the Executive Director decides that more information is needed on a complaint, the Executive Director will conduct an investigation. The investigation usually includes interviews with the parties, witnesses and/or experts, and the gathering of other materials. When the investigation has been completed, the Executive Director may prepare an investigation report detailing the complaint, the response and the information gathered during the investigation. This report is sent to both parties who have 30 calendar days to submit any further comments.

EXECUTIVE DIRECTOR'S DECISION

Section 22 (4) of the *Act* states that the Executive Director may, at any time:

- (a) dismiss a complaint if the Executive Director considers that the complaint is without merit;
- (b) discontinue further action on the complaint if, in the opinion of the Executive Director, the Complainant has refused to accept a proposed settlement that is fair and reasonable;

-
- (c) discontinue further action on the complaint if it could be dealt with more appropriately by an alternate method of resolution under any other Act, or if grievance or other review procedures have not been exhausted; or
 - (d) report to the Chairperson of the Commission that the parties are unable to settle the complaint.

The Commission notifies the parties in writing of the Executive Director's decision.

REVIEWING THE EXECUTIVE DIRECTOR'S DECISION

If the Executive Director dismisses or discontinues the complaint, the Complainant has the option of asking the Chairperson of the Commission to review the Executive Director's decision. The Chairperson reviews the request and either upholds the Executive Director's decision or decides to send the complaint to a public panel hearing.

If the Chairperson agrees with the Executive Director's decision to dismiss or discontinue the complaint, the Complainant has 30 days from the date of the decision to file an application with the Supreme Court of Prince Edward Island Trial Division to have a judicial review of the Chairperson's decision.

HUMAN RIGHTS PANEL HEARINGS

The Chairperson appoints a human rights panel consisting of one or more Commissioners of the PEI Human Rights Commission to deal with a complaint if:

- (1) the Executive Director reports to the Chair that the parties are unable to settle; or

-
- (2) the Chair decides to send the complaint to a panel hearing after reviewing a decision by the Executive Director to dismiss or discontinue the complaint.

Panel hearings are open to the public, unless the Panel determines that the hearing should be held in private. Prior to the hearing, each party must submit any documents and written submissions on fact and law that they intend to rely on at the hearing. Neither party is required to have legal counsel for a panel hearing. If they wish, they can seek legal counsel at their own expense. At the hearing, each party may call witnesses and make oral submissions. The proceedings at human rights panel hearings are more relaxed than in a court room.

When the hearing is completed, the Panel reviews the submissions and completes a written decision that is final and binding on both parties. If the Panel finds that the complaint is without merit, it may dismiss the complaint. If the Panel finds that the complaint has merit, in whole or in part, the Panel may order the Respondent to do any or all of the following:

- to cease the discrimination;
- to refrain in the future from committing the same or any similar discrimination;
- to make available to the Complainant, or other person dealt with contrary to this *Act*, the rights, opportunities or privileges that the person was denied contrary to this *Act*;
- to compensate the Complainant for wages or lost income or expenses incurred;
- to take any other action the Panel considers appropriate to place the Complainant in the position he or she would have been in had the contravention not occurred.

The Human Rights Panel has the power to file an order with the Supreme Court of Prince Edward Island that is enforceable by law.

Either party has 30 days from the date of the Panel decision to file an application with the Supreme Court of PEI, if they wish to have a judicial review of the decision.

WITHDRAWING A COMPLAINT

A Complainant may withdraw his or her complaint at any time up until a human rights panel has made a ruling on the complaint, either by filing a notice of withdrawal form or by writing a letter to the Commission. If the Commission is unable to reach the Complainant after several attempts and some time has lapsed, the complaint will be considered withdrawn. In such cases, the Commission will attempt to notify the Complainant and the Respondent in writing that the complaint is considered withdrawn.

Notes

Notes



The Prince Edward Island
Human Rights Commission
is an independent body.
The Commission investigates,
attempts to settle and makes rulings
on complaints of discrimination
that fall under the PEI *Human Rights Act*

The Commission is also mandated to develop
a program of public information and education
in the field of human rights.

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