

B.C. CIVIL LIBERTIES ASSOCIATION

BILL 27 - HUMAN RIGHTS ACT - SUMMARY FACT SHEET

Bill 27, the Human Rights Act of 1983 makes major changes in the enforcement of human rights. This summary compares the provisions of the Bill with the existing Human Rights Code.

A. Elimination of reasonable cause provisions

Effect is to remove protection against discrimination due to grounds such as age (except for those between 45 and 65), sexual orientation, language ability, and any other ground not explicitly named.

There is also a serious question whether discrimination based on pregnancy is covered.

B. Proof of intent to discriminate.

Bill 27 will cover only intentional discrimination. Policies having a discriminatory effect would not be covered. For example, height and weight restrictions would no longer be considered sex discrimination unless it could be proved the purpose was to exclude women. Similarly, the absence of a ramp would not be discrimination against those in wheel-chairs unless intent could be proved, and a requirement that employees be clean shaven would not be discrimination against those whose religion requires otherwise.

C. Discriminatory advertisements and application forms.

The section of the existing Code prohibiting discriminatory advertisements and application forms is not included in Bill 27. Therefore, it would be no violation for newspapers to divide advertisements into "help wanted - men" and "help wanted - women" columns, or even "help wanted - whites" for that matter.

D. Enforcement Agencies.

Human Rights Commission and Human Rights Branch abolished. New Council of Human Rights established with more restricted functions and with no explicit provision for staff. Educational programs apparently ended.

E. Complaints.

Complaints of violations will be filed with the Council, which will be in charge of investigating them and will decide whether they should proceed. As is now the case, unsettled cases will be referred to the Minister of Labour who will decide whether to appoint a Board of Inquiry. The following summarizes some of the changes that have been made within this framework:

Complaints must be filed by the person discriminated against; community groups and the enforcement agency can no longer commence complaints.

E. Complaints (continued):

Council of Human Rights can dismiss complaint before any investigation if it is deemed frivolous, vexatious, in bad faith or could "more appropriately be dealt with under another Act." The last provision could require that all other possibilities such as labour grievance arbitration be completed before a human rights investigation would even commence.

After investigation, Council can discontinue complaint at its discretion. The Bill provides no guidelines regarding discontinuance.

Human rights agencies apparently will no longer appear at boards of inquiry to assist the complainant. Complainants will have to supply and presumably pay for their own lawyer or argue the case themselves.

Boards of inquiry can no longer award damages for humiliation or loss of self-respect caused by the discrimination. Damages will be awarded only for out-of-pocket loss. For example, if racial minorities were excluded from a restaurant in an insulting fashion, the board could award no damages at all since there would be no out-of-pocket loss.

No right of appeal from the decision of a board of inquiry for either side, though the proceedings could sometimes be challenged under the Judicial Review Procedure Act.

F. Criminal Penalty.

No right to lay criminal charges in court for violations of the Act. Therefore, if the Minister refused a board of inquiry, as he has the right to do, there is no alternative way of proceeding.

G. Protection of those with physical and mental disabilities.

The Bill gives explicit protection to people with physical and mental disabilities. In cases involving the sale or rental of property, protection is strengthened. However, in cases involving public facilities and employment, the practical effect is likely to be to give less protection than was given by the reasonable cause provisions of the existing Code. Therefore, although it looks as if these groups benefit from the Bill, the net effect may well be to lessen protection.

CONCLUSION

It is hard to avoid the conclusion that the Bill is designed to make it much more difficult to bring a human rights complaint and to strictly limit the function of human rights agencies. Taken together, the changes mean that only clear cases brought by people with financial resources enough to take a case forward on their own are likely to succeed, and even they are subject to the discretion of the Council and the Minister to discontinue a case without a hearing.