
HUMAN RIGHTS CODE AMENDMENT ACT, 2018

CHAPTER 48

Assented to November 27, 2018

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of British Columbia, enacts as follows:

1 *Section 1 of the Human Rights Code, R.S.B.C. 1996, c. 210, is amended*

(a) by adding the following definition:

“**commissioner**” means the Human Rights Commissioner appointed under section 47.01; , *and*

(b) by repealing the definition of “intervenor” and substituting the following:

“**intervenor**” means the commissioner entitled, or other person allowed, under section 22.1 to intervene in a complaint; .

2 *Section 1 is amended by repealing the definition of “discrimination” and substituting the following:*

“**discrimination**” includes the conduct described in sections 7, 8 (1) (a), (9) (a) and (b), 10 (1) (a), 11, 13 (1) (a) and (2), 14 (a) and (b), 43 and 47.21; .

3 *Sections 5 and 6 are repealed.*

4 *Section 22 (1) and (2) is amended by striking out “6 months” and substituting “one year”.*

5 *Section 22.1 is repealed and the following substituted:*

Commissioner and other intervenors

22.1 (1) The commissioner may, at any time after a complaint is filed, intervene in the complaint on terms a member or panel may determine having regard to the role and mandate of the commissioner under this Code.

(2) A member or panel may, at any time after a complaint is filed and on the terms specified by the member or panel, allow any other person or group of persons to intervene in the complaint, whether or not that person or group of persons would be affected by an order made by the member or panel under section 37.

6 *Section 27 (1) (g) is amended by striking out “6 months” and substituting “one year”.*

7 *Section 27.3 (2) (l) is repealed.*

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8 Section 42 is amended

- (a) *in subsection (3) by striking out* “the chair, or a member or panel designated by the chair,” *and substituting* “the commissioner”, *and*
- (b) *in subsection (4) by striking out* “is deemed not to be” *and substituting* “is not”.

9 The following sections are added:**Human Rights Commissioner**

- 47.01** (1) The Legislative Assembly may, by resolution, appoint as the Human Rights Commissioner a person who has been unanimously recommended for the appointment by a special committee of the Legislative Assembly.
- (2) The commissioner is an officer of the Legislature.
- (3) Subject to section 47.02, the commissioner holds office for a term of 5 years.
- (4) The commissioner may be reappointed, in the manner referred to in subsection (1) of this section, for one additional term of up to 5 years as specified in the reappointment resolution.

Resignation, suspension or removal of commissioner

- 47.02** (1) In this section, “**standing committee**” means the select standing committee of the Legislative Assembly that has been designated for the purposes of subsection (4).
- (2) The commissioner may resign at any time by giving written notice to the Speaker of the Legislative Assembly or, if there is no Speaker or the Speaker is absent from British Columbia, to the Clerk of the Legislative Assembly.
- (3) By a resolution passed by at least 2/3 of the members present, the Legislative Assembly may, for cause or incapacity, suspend the commissioner, with or without salary, or remove the commissioner from office.
- (4) If the Legislative Assembly is not sitting and will not be sitting within 5 days, the standing committee, by unanimous resolution, may, for cause or incapacity, suspend the commissioner, with or without salary, for a period that must be set by the standing committee to end not later than on the expiry of a further 20 sitting days of the Legislative Assembly.

Acting commissioner

- 47.03** (1) In this section, “**standing committee**” means the select standing committee of the Legislative Assembly that has been designated for the purposes of subsections (2), (3) and (4).
- (2) If the commissioner is suspended or temporarily absent because of illness or another reason, or if the office of commissioner is vacant, the Legislative Assembly, on the recommendation of the standing committee, may appoint an

acting commissioner to exercise the powers and perform the duties of the commissioner until whichever of the following is the case and occurs first:

- (a) the suspension ends;
 - (b) the commissioner returns to office after the temporary absence;
 - (c) a person is appointed under section 47.01.
- (3) If the commissioner is suspended or temporarily absent because of illness or another reason, or if the office of commissioner is vacant, and the Legislative Assembly is not sitting and will not be sitting within 5 days, the standing committee may appoint an acting commissioner to exercise the powers and perform the duties of the commissioner until whichever of the following is the case and occurs first:
- (a) the suspension ends;
 - (b) the commissioner returns to office after the temporary absence;
 - (c) a person is appointed under section 47.01.
- (4) If the commissioner is suspended or temporarily absent because of illness or another reason, or if the office of commissioner is vacant, and the Legislative Assembly is not sitting and will not be sitting within 5 days and the standing committee has not been established, the Lieutenant Governor in Council may make the appointment referred to in subsection (3) of this section.

Salary, expenses and benefits of commissioner

- 47.04** (1) A commissioner appointed under section 47.01 or 47.03 is entitled
- (a) to be paid compensation as may be set by the Lieutenant Governor in Council, and
 - (b) to be reimbursed for reasonable travel and out-of-pocket expenses personally incurred in exercising the powers and performing the duties of the office.
- (2) The public service plan as defined in section 1 (1) of the *Public Sector Pension Plans Act* applies to the commissioner.

Oath of commissioner

- 47.05** Before taking office, a commissioner appointed under section 47.01 or 47.03 must make an oath or solemn affirmation before the Clerk of the Legislative Assembly to faithfully and impartially exercise the powers and perform the duties of the office.

Staff of commissioner

- 47.06** (1) The commissioner may appoint, in accordance with the *Public Service Act*, employees necessary to enable the commissioner to exercise the powers and perform the duties of the office.
- (2) The commissioner may engage or retain consultants or specialists the commissioner considers necessary to exercise the powers and perform the duties

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of the office and may determine their remuneration and other terms and conditions of their engagement or retainers.

- (3) The *Public Service Act* does not apply in respect of a person engaged or retained under subsection (2) of this section.

Delegation by commissioner

- 47.07** (1) The commissioner may, in writing, delegate to any person employed, engaged or retained by the commissioner any power or duty of the commissioner under this Code, except the power
- (a) to delegate under this section, and
 - (b) to make an annual report under section 47.23.
- (2) A delegation may be made subject to any terms the person delegating considers appropriate.
- (3) A delegation made under this section may be revoked, and does not prevent the person who delegated the power or duty from exercising that power or performing that duty.
- (4) If the person who delegated the power or duty ceases to hold office, the delegation continues in effect so long as the delegate continues in office or until the delegation is revoked by the person who succeeds the person who delegated the power or duty.
- (5) A person purporting to exercise a power or perform a duty through a delegation must, when requested to do so, produce evidence of the delegation.

Advisory council

- 47.08** (1) The human rights advisory council is established.
- (2) On recommendation by the commissioner, the Lieutenant Governor in Council may appoint members of the human rights advisory council and may set the terms and conditions of office of the members appointed.
- (3) The role of the human rights advisory council is to advise the commissioner on issues respecting human rights and to perform any other function specified by the commissioner.

Restrictions on disclosure by commissioner and staff

- 47.09** Except in the proper exercise of powers or performance of duties under this Code, the commissioner, and anyone acting for or under the direction of the commissioner, must not disclose any information received in the course of exercising those powers or performing those duties.

Non-compellability of commissioner and staff

- 47.10** (1) Subject to subsection (2), the commissioner, and anyone acting for or under the direction of the commissioner, must not be compelled to give evidence in court

or in any other proceedings respecting any information received in the course of exercising powers or performing duties under this Code.

- (2) The commissioner, and anyone acting for or under the direction of the commissioner, may be compelled to give evidence in a prosecution of an offence under this Code.

Personal liability protection of commissioner and staff

- 47.11** (1) Subject to subsection (2), no legal proceeding for damages lies or may be commenced or maintained against the commissioner, or against a person acting for or under the direction of the commissioner, because of anything done or omitted
- (a) in the exercise or intended exercise of any power under this Code, or
 - (b) in the performance or intended performance of any duty under this Code.
- (2) Subsection (1) does not apply to a person referred to in that subsection in relation to anything done or omitted by that person in bad faith.

Powers of commissioner

- 47.12** (1) The commissioner is responsible for promoting and protecting human rights, including by doing any of the following:
- (a) identifying, and promoting the elimination of, discriminatory practices, policies and programs;
 - (b) developing resources, policies and guidelines to prevent and eliminate discriminatory practices, policies and programs;
 - (c) publishing reports, making recommendations or using other means the commissioner considers appropriate to prevent or eliminate discriminatory practices, policies and programs;
 - (d) developing and delivering public information and education about human rights;
 - (e) undertaking, directing and supporting research respecting human rights;
 - (f) examining the human rights implications of any policy, program or legislation, and making recommendations respecting any policy, program or legislation that the commissioner considers may be inconsistent with this Code;
 - (g) consulting and cooperating with individuals and organizations in order to promote and protect human rights;
 - (h) establishing working groups for special assignments respecting human rights;
 - (i) promoting compliance with international human rights obligations;
 - (j) intervening in complaints under section 22.1 and in any proceeding in any court.

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- (2) The commissioner may not file a complaint with the tribunal under section 21 but may assist a person or group of persons with any aspect of a complaint.

10 *Section 47.12 (1) is amended by adding the following paragraphs:*

- (k) approving a program or activity under section 42;
- (l) initiating inquiries under sections 47.14 and 47.15.

11 *The following sections are added:*

Provision of tribunal records to commissioner

- 47.13** On request by the commissioner, the tribunal must provide to the commissioner copies of complaints and responses filed with the tribunal and may provide to the commissioner other records in its custody or control.

Referrals

- 47.14** (1) The Legislative Assembly or any of its committees may at any time refer a matter to the commissioner for inquiry and report.
- (2) If the commissioner accepts a referral, the commissioner must
- (a) inquire into the matter referred, and
 - (b) make a written report to the Legislative Assembly.
- (3) If the commissioner does not accept a referral, the commissioner must provide written reasons to the Legislative Assembly for not accepting the referral.

Commissioner's inquiry

- 47.15** (1) If the commissioner is of the opinion that an inquiry into a matter would promote or protect human rights, the commissioner may inquire into the matter.
- (2) An inquiry may be conducted in public.

Commissioner's order powers for inquiries

- 47.16** (1) For the purpose of conducting an inquiry, the commissioner may make an order, in writing, requiring a person to do one or more of the following:
- (a) attend, in person or by electronic means, before the commissioner and answer questions on oath or solemn affirmation or in any other manner;
 - (b) produce to the commissioner a record or other thing in the person's custody or control;
 - (c) record physical dimensions, or take photographs, video recordings or audio recordings, of premises or vehicles, and produce the records, photographs, video recordings and audio recordings to the commissioner.
- (2) An order under subsection (1), (3) or (6) must be served in accordance with the regulations.

- (3) The commissioner, on the commissioner's own initiative, may, by written order, confirm, vary or rescind an order.
- (4) A person subject to an order under subsection (1), (3) or (6) may apply to the commissioner to vary or rescind the order.
- (5) A request for variation or rescission must be made in the prescribed form and manner.
- (6) After considering a request for variation or rescission, the commissioner may
 - (a) reject the request, or
 - (b) by written order, confirm, vary or rescind the order.
- (7) The commissioner must provide written reasons for an order under subsection (3) or (6).
- (8) An order under subsection (1), (3) or (6) is not suspended during the period of the commissioner's consideration of a request under subsection (4) unless the commissioner, in writing, suspends it.
- (9) At the conclusion of an inquiry, the commissioner must return any record or other thing produced in the inquiry to the person who produced it.

Expenses reimbursement

- 47.17** If a person incurs expenses in complying with an order of the commissioner under section 47.16, the commissioner may reimburse the person for reasonable expenses.

Cabinet information protected

- 47.18** (1) The commissioner must not require any information or answer to be given or any record or other thing to be produced if the Attorney General certifies that giving the information, answering the question or producing the record or other thing might
 - (a) interfere with or impede the investigation or detection of an offence,
 - (b) result in or involve the disclosure of deliberations of the Executive Council, or
 - (c) result in or involve the disclosure of proceedings of the Executive Council or a committee of it, relating to matters of a secret or confidential nature, and that the disclosure would be contrary or prejudicial to the public interest.
- (2) The commissioner must report each certificate of the Attorney General to the Legislative Assembly not later than in the commissioner's next annual report.

Enforcement of commissioner's orders

- 47.19** (1) The commissioner may file a copy of an order made under section 47.16 (1), (3) or (6) with the Supreme Court.

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- (2) An order filed under subsection (1) of this section has the same force and effect, and all proceedings may be taken on it, as if it were a judgment of the Supreme Court.

Commissioner's inquiry reports

- 47.20** (1) At the conclusion of an inquiry under section 47.15, the commissioner may make a written report containing any recommendations the commissioner considers appropriate.
- (2) The commissioner may publish a report referred to in subsection (1) and provide the report to the Speaker of the Legislative Assembly.
 - (3) If a report referred to in subsection (1) of this section or section 47.14 contains a recommendation made to a person, the commissioner may require the person to notify the commissioner, within a specified period of time, of steps taken, or intended to be taken, to address the recommendation.
 - (4) On request by a person who is subject to a notification requirement under subsection (3), the commissioner may extend the period of time for the notification, either before or after that period of time has expired.
 - (5) If the commissioner considers that a person has not, within the original or extended period of time, adequately addressed a recommendation, the commissioner may make a written report about the person's failure to adequately address the recommendation.
 - (6) The commissioner may publish a report referred to in subsection (5) and provide the report to the Speaker of the Legislative Assembly.
 - (7) If the commissioner provides a report to the Speaker under subsection (2) or (6), the Speaker must lay the report before the Legislative Assembly as soon as practicable.

Protection

- 47.21** A person must not evict, discharge, suspend, expel, intimidate, coerce, impose any pecuniary or other penalty on, deny a right or benefit to or otherwise discriminate against a person because that person participates in or might participate in an inquiry under this Code.

Offences

- 47.22** (1) A person who wilfully does any of the following commits an offence:
- (a) makes a false statement to, or misleads or attempts to mislead, the commissioner in the exercise of powers or performance of duties under this Code;
 - (b) obstructs the commissioner in the exercise of powers or performance of duties under this Code.

- (2) A person who commits an offence under this section is liable,
 - (a) for a first offence, to a fine of not more than \$25 000, and
 - (b) for a second or subsequent offence, to a fine of not more than \$100 000.

12 *The following sections are added:*

Annual report of commissioner

- 47.23** (1) The commissioner must submit to the Speaker of the Legislative Assembly an annual report on the activities of the commissioner's office.
- (2) The Speaker must lay the report before the Legislative Assembly as soon as practicable.

Special reports of commissioner

- 47.24** (1) The commissioner may, at any time, make a special report to the Speaker of the Legislative Assembly respecting any of the following:
- (a) the exercise of the commissioner's powers or performance of the commissioner's duties;
 - (b) research that has been undertaken, directed or supported by the commissioner;
 - (c) human rights in British Columbia.
- (2) The Speaker must lay a report made under subsection (1) before the Legislative Assembly as soon as practicable.

13 *Section 49 (2) is amended by adding the following paragraphs:*

- (g.1) respecting the service under section 47.16 of orders made under that section;
- (g.2) respecting applications under section 47.16 for variance or rescission of orders made under that section.

14 *The following section is added:*

Review of sections 47.01 to 47.24

- 50.1** (1) At least once every 5 years, a special committee of the Legislative Assembly must begin a comprehensive review of sections 47.01 to 47.24 of this Code and must submit a report respecting those sections to the Legislative Assembly within one year after the date of the appointment of the special committee.
- (2) A report submitted under subsection (1) of this section may include any recommended amendments to sections 47.01 to 47.24.
- (3) For the purposes of subsection (1), the first 5-year period begins on the date that this section comes into force.

Transitional Provisions and Repeal

Transition – section 42 approvals

- 15** If, before section 8 of this Act comes into force, an approval of a program or activity under section 42 of the *Human Rights Code* is given by the chair or a member or panel designated by the chair, the approval is valid as if it had been given by the commissioner after section 8 of this Act comes into force.

Transition – complaint time limits

- 16** A complaint filed
- (a) before the date that this section comes into force,
 - (b) after the expiry of the time limit in section 22 (1) or (2) of the *Human Rights Code* as it read immediately before this section comes into force, and
 - (c) about which a member or panel has not yet made a decision under
 - (i) section 22, or
 - (ii) section 27 (1) (g),
- is subject to sections 22 and 27 of the *Human Rights Code* as amended by this Act.

Repeal

- 17** The Human Rights Code Regulation, B.C. Reg. 373/96, is repealed.

Consequential Amendments

Freedom of Information and Protection of Privacy Act

- 18** *Schedule 1 of the Freedom of Information and Protection of Privacy Act, R.S.B.C. 1996, c. 165, is amended in the definition of “officer of the Legislature” by adding “the Human Rights Commissioner,” after “the Information and Privacy Commissioner.”*
- 19** *Schedule 2 of the Freedom of Information and Protection of Privacy Act is amended by adding the following:*

Public Body: Office of the Human Rights Commissioner
Head: Human Rights Commissioner .

Commencement

- 20** The provisions of this Act referred to in column 1 of the following table come into force as set out in column 2 of the table:

Item	Column 1 Provisions of Act	Column 2 Commencement
1	Anything not elsewhere covered by this table	The date of Royal Assent
2	Section 2	By regulation of the Lieutenant Governor in Council
3	Sections 7 and 8	By regulation of the Lieutenant Governor in Council
4	Sections 10 and 11	By regulation of the Lieutenant Governor in Council
5	Sections 13 to 15	By regulation of the Lieutenant Governor in Council