

**IN THE SUPREME COURT OF CANADA
(On Appeal from the Court of Appeal for the Province of British Columbia)**

BETWEEN:

FREDERICK MOORE on behalf of JEFFREY P. MOORE

Appellant
(Appellant)

- and -

**HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA
AS REPRESENTED BY THE MINISTRY OF EDUCATION and BOARD OF EDUCATION
SCHOOL DISTRICT No.44 (NORTH VANCOUVER) formerly known as THE BOARD OF
SCHOOL TRUSTEES OF SCHOOL DISTRICT No.44 (NORTH VANCOUVER)**

Respondents
(Respondents)

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CARING SOCIETY and BRITISH COLUMBIA HUMAN RIGHTS TRIBUNAL**

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TABLE OF CONTENTS

I. OVERVIEW AND STATEMENT OF FACTS	1
A. Overview	1
B. Statement of Facts	3
II. POSITION ON THE APPELLANT’S QUESTIONS IN ISSUE	3
III. STATEMENT OF ARGUMENT	3
A. Interpreting Human Rights Legislation in the Context of its Remedial Nature 3	
1) The Correct Approach to Interpreting Human Rights Legislation.....	3
2) The Court of Appeal Failed to Consider the Goal of Substantive Equality5	
B. A Formal Comparator Group Is Not Required	5
1) The Goal of the Comparison: Evidence of Discrimination.....	5
2) This Court’s Recent Decision in Withler	7
3) A Formal Comparator Group Requirement Excludes Certain Groups from Human Rights Protections, Including First Nations Peoples.....	8
4) Other Decisions Have Concluded that a Comparator Group is Not Required	9
IV. COSTS	10
V. NATURE OF ORDER SOUGHT.....	10
VI. TABLE OF AUTHORITIES	12
VII. STATUTES	14
A. <i>Canadian Human Rights Act</i> , R.S.C., 1985, c. H-6, as amended	
B. <i>Human Rights Code</i> (British Columbia), RSBC 1996, Chapter 210	

I. OVERVIEW AND STATEMENT OF FACTS

A. Overview

1. The Intervener, First Nations Child and Family Caring Society (the “Caring Society”) is the only national organization with the specific mandate to promote the welfare of First Nations children and families, providing research, training and policy development in the field of First Nations child welfare and child rights. The Caring Society files this factum to address a single issue raised on this appeal: whether the analysis of *prima facie* discrimination under British Columbia’s *Human Rights Code* (the “Code”) requires the identification and use of a mirror comparator group. The Caring Society respectfully submits that the majority of the British Columbia Court of Appeal erred in requiring such a mirror comparator group, and that this Honourable Court ought to prefer the approach of Rowles J.A. in dissent, who recognized that use of a mirror comparator group is not a requirement of human rights legislation, but only one of many evidentiary tools that may be used to assess and establish discrimination.

2. This Court has recently held that it is unnecessary to pinpoint a particular comparator group to establish discrimination under s. 15 of the *Charter*.¹ This approach ought to be equally applied to the *Code* and other Canadian human rights codes (such as the *Canadian Human Rights Act*), statutes that on their face do not require the use of a comparator group to establish discrimination. To read a requirement for such a comparator group into the legislation thwarts the goals and purposes of human rights legislation and has the effect of denying legitimate discrimination claims in cases where a perfect “mirror” comparator may not be possible.

3. The case of the Appellant, whose particular educational needs may make comparison to other groups difficult, is one such case. However, the potential impact of this appeal extends beyond this Appellant to others whose situation makes comparisons difficult if not impossible.

4. In particular, First Nations peoples are another important and significant example of a group for whom identification of a mirror comparator may in many cases be difficult if not impossible. Given the unique constitutional and historical status of First Nations peoples, individuals who allege they have been discriminated against because they are First Nations may be unable to identify a comparator group that corresponds precisely to the complainant except for the personal characteristic that grounds the discrimination claim.

¹ *Withler v. Canada (Attorney General)*, 2011 SCC 12, [2011] 1 S.C.R. 396, at para. 63, Authorities, Tab 16.

5. This concern is not simply academic: it has directly resulted in the recent dismissal of a human rights complaint brought by the Caring Society on behalf of First Nations children and families living on reserve. In February 2007, the Caring Society and the Assembly of First Nations filed a joint complaint with the Canadian Human Rights Commission, alleging that the Government of Canada discriminates in providing child welfare services to First Nations children living on reserve by providing inequitable and inadequate funding to on-reserve child welfare agencies.

6. The Canadian Human Rights Tribunal (the “Tribunal”) dismissed the Caring Society’s complaint based on its conclusion that the *Canadian Human Rights Act* requires a comparison between the complainant and a comparator group receiving the same service from the same service provider. Since child welfare services for First Nations children on reserve – as with other services such as education and policing – are provided by the federal government rather than the provincial governments that provide such services to other Canadians, there is by definition no such perfect mirror comparator group. The Tribunal held that this meant no discrimination could be made out, and dismissed the Caring Society’s complaint on this basis.²

7. The Caring Society respectfully submits that while the use of a comparator group may provide ready evidence that there has been discrimination on a prohibited ground, the absence of such a perfect “mirror” does not mean that a person is not the victim of discrimination: they may still be denied service, or get lesser or poorer service than they would have received had they been of a different race, ethnic origin, religion, sex or ability. The approach of the majority of the British Columbia Court of Appeal, in which a mirror comparator group is required in order to make a discrimination finding, risks perpetuating the very disadvantage that human rights legislation means to address, including those experienced by First Nations peoples.

8. If this approach were adopted, First Nations peoples would, in effect, be automatically excluded from access to the human rights protections available to other Canadians. This resulting exclusion of some groups from the protections of human rights legislation runs counter to the purposes underlying human rights legislation, the principles espoused by this Honourable Court in *Withler v. Canada (Attorney General)* and the basic values guiding the *Charter*.

² *First Nations Child and Family Caring Society et al. v. Attorney General of Canada*, 2011 CHRT 4, at paras. 113-141, Authorities, Tab 7. The Caring Society, the Assembly of First Nations and the Canadian Human Rights Commission each sought judicial review of the Tribunal’s decision. These applications for judicial review were heard by the Federal Court on February 13-15, 2012 and are currently under reserve.

9. The Caring Society therefore respectfully asks this Court to consider the potential impact of its interpretation of the *Code* on uniquely situated groups such as First Nations peoples in rendering its decision on this issue. The Caring Society also seeks this Honourable Court's permission to present ten minutes of oral argument at the hearing at this appeal.

B. Statement of Facts

10. The Caring Society takes no position with respect to the Appellant's Statement of Facts or with respect to the factual aspects of this appeal and defers to the parties on the factual record.

II. POSITION ON THE APPELLANT'S QUESTIONS IN ISSUE

11. The Caring Society takes a position only on Issue (C) raised by the Appellant: whether the Court of Appeal erred in its application of the comparator analysis as part of the *prima facie* test for discrimination. The Caring Society submits that the Court of Appeal did err in requiring a mirror comparator group as part of the discrimination analysis.

III. STATEMENT OF ARGUMENT

A. Interpreting Human Rights Legislation in the Context of its Remedial Nature

1) *The Correct Approach to Interpreting Human Rights Legislation*

12. This Honourable Court has recently reaffirmed that in applying the modern approach to statutory interpretation to human rights legislation, this "quasi-constitutional" legislation should receive a broad, liberal and purposive interpretation to reflect the fact that it expresses fundamental values and pursues fundamental goals.³

13. The overarching goal of human rights legislation is to promote and safeguard substantive equality, achieved by preventing discriminatory practices based on legislated enumerated grounds. In order to fulfill this purpose, the impact and the result of the impugned activity must be examined. This Honourable Court recently described substantive equality as follows:

Substantive equality, unlike formal equality, rejects the mere presence or absence of difference as an answer to differential treatment. It insists on going behind the façade of similarities and differences. It asks not only what characteristics the different treatment is predicated upon, but also whether those characteristics are

³ *Canada (Canadian Human Rights Commission) v. Canada (Attorney General)*, 2011 SCC 53, [2011] 3 S.C.R. 471, Authorities, Tab 4, at paras. 33-34, 62; see also *University of British Columbia v. Berg*, [1993] 2 S.C.R. 353, at p. 370, Board of Education Authorities, Tab 34.

relevant considerations under the circumstances. The focus of the inquiry is on the actual impact of the impugned law, taking full account of social, political, economic and historical factors concerning the group.⁴ [Emphasis added]

14. Closely connected to the goal of substantive equality is the remedial nature of human rights legislation. Often protections afforded pursuant to human rights legislation are the “final refuge of the disadvantaged and the disenfranchised” and “the last protection of the most vulnerable members of society”.⁵ It follows that a strict grammatical analysis of human rights legislation may be subordinated to the remedial purposes of the law.⁶

15. When interpreting human rights legislation, “courts should strive for an interpretation that is consistent with the interpretation accorded to similar human rights provisions in other jurisdictions”.⁷ For example, the *Code* defines discrimination in the following terms:

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, sexual orientation or age of that person or class of persons. [emphasis added]

16. Similarly, the *Canadian Human Rights Act* defines discrimination as follows:

5. 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. [emphasis added]

17. While the language in the two statutes is not identical, the purpose of both is clear on its face: to prevent and protect citizens from discrimination, by preventing “adverse differential treatment” based on enumerated grounds.⁸ A consistent approach to such legislation is therefore appropriate to avoid differences in protection based on irrelevant grammatical differences.

⁴ *Withler*, *supra* note 1, at para. 39, Authorities, Tab 16; *Canadian National Railway v. Canada (Human Rights Commission)*, [1987] 1 S.C.R. 1114, at pp. 1134-1136, Authorities, Tab 5.

⁵ *Zurich Insurance Co. v. Ontario (Human Rights Commission)*, [1992] S.C.R. 321, at p. 339, Authorities, Tab 17.

⁶ *New Brunswick (Human Rights Commission) v. Potash Corp. of Saskatchewan Inc.*, 2008 SCC 45, [2008] 2 S.C.R. 604, at paras. 67, 69, *per* McLachlin C.J., concurring.

⁷ *Potash*, *supra* note 6, at para. 68, *per* McLachlin C.J., concurring, Authorities, Tab 12.

⁸ Court of Appeal Reasons, Appeal Record, Vol. 3, Tab 7, at paras. 113, 124, *per* Rowles J.A., para. 175 *per* Low J.A.

2) *The Court of Appeal Failed to Consider the Goal of Substantive Equality*

18. The analysis of the majority of the Court of Appeal on the comparator group issue fails to consider essential factors in furthering the goal of substantive equality, including the intersecting realities and historical disadvantages facing children with severe disabilities.⁹ Adopting this approach can similarly result in the discounting of social, political, economic and historical realities facing other groups and complainants seeking redress in the future, including First Nations peoples. For First Nations peoples this includes a consideration for the legacy of stereotyping and prejudice facing the community, the historical trajectory of the social and economic realities facing First Nations peoples, as well the political, economic and social parameters created by the *Indian Act*, section 91(24) of the *Constitution Act, 1867* and section 35(1) of the *Constitution Act, 1982*.¹⁰

19. The Court of Appeal's interpretation of the *Code* forecloses a consideration of these realities and instead imposes rigid and strict formulas that do not accord with the fundamental goal of substantive equality, thwarts its remedial purpose, and potentially denies otherwise legitimate claimants from human rights protections.

B. A Formal Comparator Group Is Not Required

1) *The Goal of the Comparison: Evidence of Discrimination*

20. A complainant under human rights legislation is seeking to establish that he or she has been discriminated against on the basis of a prohibited ground. The fundamental question is whether the evidence before the trier of fact, if believed, is complete and sufficient to justify a verdict in the complainant's favour in the absence of an answer from the respondent.¹¹ The starting point is therefore not whether there is an appropriate comparator group but rather, whether the evidence advanced by the complainant is sufficient to show discrimination.

21. The goal of conducting a comparison under human rights legislation – and the purpose of undertaking a comparator group analysis – is to assess whether an individual has been discriminated against on a prohibited ground. While reference to a comparator group may be

⁹ Court of Appeal Reasons, Appeal Record, Vol. 3, Tab 7, at paras. 178-181.

¹⁰ *Lovelace v. Ontario*, 2000 SCC 37, [2000] 1 S.C.R. 950, at para. 69, Authorities, Tab 10.

¹¹ *Ontario (Human Rights Commission) v. Simpson-Sears Ltd.*, [1985] 2 S.C.R. 536 (“*O'Malley*”), at pp. 558-559, British Columbia Authorities, Tab 30; See also *Morris v. Canada (Canadian Armed Forces)*, 2005 FCA 154, at paras. 25-26, Authorities, Tab 11.

useful evidence of such discrimination, insisting on a mirror comparator group in every case may stand in the way of determining whether discrimination exists, as noted by Rowles J.A. of the British Columbia Court of Appeal in her dissenting reasons:

Here the complainant seeks equal access to a provided benefit or service. Requiring a comparison with another disability group, who may be suffering from a lack of accommodation, risks perpetuating the very disadvantage and exclusion from mainstream society the Code is intended to remedy. The fact that there may have been same treatment of some groups is irrelevant if the end result is that the complainant receives unequal access to the benefit or service. Rather, I agree with Andrea Wright that the proper, substantive equality advancing approach focuses on the gravamen of the complaint and asks what position the complainant would have been in had he or she not been disabled.¹² [Emphasis added]

22. The Caring Society submits that this Honourable Court ought to adopt as the appropriate analysis the “comparison” identified by Rowles J.A.: a comparison between the position of the complainant and the position they would have been in had they not been a member of the enumerated group. This assessment may be made in some cases by comparing the complainant’s position to those who are not in the enumerated group, *i.e.*, to those in a comparator group. However, the use of a comparator group is but one evidentiary tool in the adjudicator’s toolkit and should not act as a barrier where a complaint is unique and legitimate.

23. There are any number of ways in which discrimination can be demonstrated, without reliance solely on a mirror comparator group. Evidence that focuses on the differential treatment at the heart of the discrimination complaint can include expert evidence regarding relative treatment, direct evidence regarding a service provider’s intention, and comparative evidence outside the traditional scope, including the same service provided by different service providers. From this evidence, a trier of fact can infer and determine how a complainant would have been treated had they not been a member of the enumerated group. Moreover, this approach allows for multidimensional grounds for discrimination and promotes the goal of substantive equality by ensuring that groups and claimants who cannot demonstrate a perfect “mirror” comparator group remain protected by human rights legislation.¹³

¹² Court of Appeal Reasons, Appeal Record, Vol. 3, Tab 7, at para. 121, *per* M.A. Rowles J.A., dissenting; see also *Singh (Re)*, [1989] 1 F.C. 430 (C.A.), at para. 22.

¹³ See, *e.g.*, *Falkiner v Ontario (Ministry of Community and Social Services, Income Maintenance Branch)* (2002), 59 OR (3d) 481 (CA) at paras 71-72, *lv. to app. ref’d* [2002] SCCA No. 297, Authorities, Tab 6, where the Ontario Court of Appeal allowed the claimants to advance three comparator groups, none of which adhered to the traditional requirements of a “similarly situated” group, on the basis of the unique circumstances of the case.

2) ***This Court's Recent Decision in Withler***

24. This Honourable Court recently considered the value of a comparator group analysis in *Withler*, a case dealing with an equality claim under s. 15(1) of the *Charter*. While cases brought pursuant to section 15(1) of the *Charter* had previously included a mirror comparator group requirement, the Court noted that applying a strict comparator approach is detrimental to the goal of substantive equality and to the discrimination analysis:

It is unnecessary to pinpoint a particular group that precisely corresponds to the claimant group except for the personal characteristic or characteristics alleged to ground the discrimination. Provided that the claimant establishes a distinction based on one or more enumerated or analogous grounds, the claim should proceed to the second step of the analysis. This provides the flexibility required to accommodate claims based on intersecting grounds of discrimination. It also avoids the problem of eliminating claims at the outset because no precisely corresponding group can be posited.¹⁴ [Emphasis added]

25. This Court in *Withler* recognized that equality is a comparative concept, necessarily invoking some element of comparison. However, to say that some level of *comparison* may be “inevitable” is not to say that a *rigid comparator group* analysis is inevitable. This Court warned that comparison must be approached with caution, and concluded that a comparator group is not a necessary component of the analysis.¹⁵

26. The equality analysis under s. 15 of the *Charter* and the discrimination analysis under human rights legislation is not identical. However, s. 15 is aimed at the same thing that human rights legislation is aimed at, namely “preventing discrimination on grounds such as race, age and sex.”¹⁶

27. The *Charter* equality standard is in fact a more stringent one than that in human rights legislation, and the comparator group analysis is a product of s. 15 *Charter* jurisprudence.¹⁷ This Honourable Court’s reasoning in *Withler* is thus all the more applicable: if comparator groups are not required under the *Charter*, to require them in the analysis under human rights legislation would subject claimants to a higher standard than those asserting constitutional claims.

¹⁴ *Withler*, *supra* note 1, at para. 63, Authorities, Tab 16.

¹⁵ *Withler*, *supra* note 1, at paras. 41-43, Authorities, Tab 16.

¹⁶ *Alberta (Aboriginal Affairs and Northern Development) v. Cunningham*, 2011 SCC 37, [2011] 2 S.C.R. 670, at para. 39, Authorities, Tab 2; *O'Malley*, *supra* note 11, at para. 12, British Columbia Authorities, Tab 30.

¹⁷ Court of Appeal Reasons, Appeal Record, Vol. 3, Tab 7, at para. 112, *per* Rowles J.A., dissenting.

3) ***A Formal Comparator Group Requirement Excludes Certain Groups from Human Rights Protections, Including First Nations Peoples***

28. In considering whether to apply the reasoning in *Withler* to the context of human rights legislation, it is respectfully submitted that this Honourable Court ought to consider the potential impact that requiring a comparator group would have on other groups beyond the Appellant in this appeal. In the case of First Nations peoples, their unique status is such that there may be no mirror group of other individuals receiving the same services from the same provider. This ought not to have the effect of excluding them from the protections of human rights legislation.

29. It is axiomatic that First Nations peoples face unique social, political, economic and historical realities. In addition to the historical and political realities experienced by the First Nations community, First Nations peoples are engaged in a *sui generis* relationship governed by the federal Crown's obligation to act in a fiduciary capacity towards First Nations peoples, including those living on-reserve.¹⁸ The "recognition and affirmation" of First Nations rights in section 35(1) of the *Constitution Act, 1982* incorporates this fiduciary duty, giving it constitutional force as a "restraint on the exercise of sovereign power".¹⁹

30. As a result of this unique position, First Nations peoples receive numerous services from the federal government through agencies funded and controlled by Aboriginal Affairs and Northern Development Canada ("AANDC"), rather than from the provinces or territories, which provide and/or fund such services for other Canadians. Child welfare and education to on-reserve First Nations children and youth are two such examples.

31. Where it is alleged that the provision of such a service to First Nations peoples by the federal government is discriminatory, by definition there exists no mirror comparator group of other individuals receiving the same service from the same service provider. As a result, a strict comparator group requirement would exclude First Nations peoples from the purview of human rights protections. Such an interpretation is not consistent with the goal of substantive equality, the *Charter* or *Charter* values.

32. For some groups, including First Nations peoples, their lived reality is an essential component to understanding their interaction in Canadian society. Failing to afford federal

¹⁸ *Guerin v. Canada*, [1984] 2 S.C.R. 335, at paras. 104, 108, Authorities, Tab 8.

¹⁹ *R. v. Sparrow*, [1990] 1 S.C.R. 1075, at para. 62, Authorities, Tab 13.

human rights protections to First Nations peoples would further marginalize a community that has already been affected by a legacy of stereotyping and prejudice, and who already face serious social disadvantages.²⁰ Conversely, an interpretation of human rights legislation that recognizes that different approaches to assessing claims of discrimination are necessary depending on the social context of the claim is consistent with and promotes *Charter* values.

33. The Caring Society submits that it cannot have been the intent of legislatures across Canada to exclude groups such as First Nations peoples from the protections of human rights legislation simply on the basis of an inability to identify a perfect mirror comparator group.

4) *Other Decisions Have Concluded that a Comparator Group is Not Required*

34. This is the conclusion that has been reached in decisions of certain lower courts as well as the Canadian Human Rights Tribunal. In *ADGA Group Consultants Inc. v. Lane*,²¹ Mr. Lane was diagnosed with Bipolar 1 Disorder and was ultimately terminated as a result of his manic behaviour. He filed a complaint alleging that ADGA discriminated against him on the basis of disability. The Tribunal found the discrimination complaint valid, concluding that ADGA had failed to accommodate Mr. Lane. ADGA appealed the decision, arguing, *inter alia*, that the Tribunal failed to establish a correct comparator group.

35. In upholding the Tribunal's finding of discrimination, the Ontario Divisional Court concluded that it is not always necessary or appropriate to establish a comparator group, as a person with a disability who seeks accommodation does not seek to be treated exactly the same as others are treated and therefore no comparison is necessary.²² The Court thus recognized that the particular facts of a case will require a flexible approach to assessing discrimination:

I agree with the submissions of the Respondent Commission. In cases of disability in the employee termination context, it is not necessary or appropriate to have to establish a comparator group.

Disability cases bring with them particular and individualized situations. Once it is established that the termination of the employee was because of, or in part because of, the disability, the claimant has established a *prima facie* case of discrimination. The onus then shifts to the employer to establish that it met its duty of procedural fairness to the point of undue hardship.²³

²⁰ *Lovelace*, *supra* note 10, at para. 69, Authorities, Tab 9; *Vriend v. Alberta*, [1998] 1 S.C.R. 493, at para. 99, Authorities, Tab 15. See also *Arzem v. Ontario (Ministry of Community & Social Services)*, 2006 HRTO 17, Authorities, Tab 3.

²¹ *ADGA Group Consultants Inc. v. Lane* (2008), 91 O.R. (3d) 649 (Div.Ct.), at para. 77, Authorities, Tab 1.

²² *ADGA v. Lane*, *supra* note 22, at paras. 88 and 94, Authorities, Tab 1.

²³ *ADGA v. Lane*, *supra* note 22, at paras. 95-96, Authorities, Tab 1.

36. A similar result was reached in *Lavoie v. Canada (Treasury Board of Canada)*, where the Canadian Human Rights Tribunal squarely addressed the need for a comparator group under the *Canadian Human Rights Act* and determined that it is not a pre-requisite to a finding of *prima facie* discrimination. Ms. Lavoie alleged that the Treasury Board's maternity policy discriminated on the basis of sex, as it refused to count the period of maternity leave in determining eligibility for an employment opportunity. The Tribunal agreed. On the issue of the comparator group, the Tribunal concluded that "it is not always necessary to determine a comparator group. In this case, it is my opinion that for maternity leave, determining a comparator group appears pointless since only women take maternity leave".²⁴

37. The majority of the Court of Appeal in this case failed to consider the particular and individualized situations facing Jeffrey Moore and other children living with severe learning disabilities. The Caring Society submits that this approach is flawed as it ignores the fact that the very condition that results in discrimination may also by definition preclude the identification of a perfect mirror comparator group. The approach of this Court in *Withler* and of Rowles J.A. in the Court of Appeal, which recognizes comparator groups as one of many potential evidentiary tools in assessing discrimination, is to be preferred, as it ensures that those individuals and groups most in need of protection – whether children with learning disabilities or First Nations children on reserve – are not automatically excluded from human rights protection simply by virtue of the legal analysis employed.

IV. COSTS

38. The Caring Society does not seek costs, and asks that no costs be awarded against it.

V. NATURE OF ORDER SOUGHT

39. The Caring Society takes no position on the outcome of these appeals, but respectfully requests that this Honourable Court conclude that the identification of a comparator group is not an essential element of the discrimination analysis under human rights legislation. The Caring Society respectfully requests leave to present ten minutes of oral argument at the hearing of the within appeals addressing the issues raised above.

²⁴ *Lavoie v. Canada (Treasury Board of Canada)*, 2008 CHRT 27, at para. 143, Authorities, Tab 9. See also *Morris*, *supra* note 11, at para. 27, Authorities, Tab 11.

ALL OF WHICH IS RESPECTFULLY SUBMITTED



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First Nations Child and Family Caring
Society of Canada

VI. TABLE OF AUTHORITIES

<u>Tab</u>	<u>Authority</u>	<u>Referred to at paras.</u>
1.	<i>ADGA Group Consultants Inc. v. Lane</i> (2008), 91 O.R. (3d) 649 (Div.Ct.)	34, 35
2.	<i>Alberta (Aboriginal Affairs and Northern Development) v. Cunningham</i> , 2011 SCC 37, [2011] 2 S.C.R. 670	26
3.	<i>Arzem v. Ontario (Ministry of Community & Social Services)</i> , 2006 HRTO 17	20
4.	<i>Canada (Canadian Human Rights Commission) v. Canada (Attorney General)</i> , 2011 SCC 53, [2011] 3 S.C.R. 471	12
5.	<i>Canadian National Railway v. Canada (Canadian Human Rights Commission)</i> , [1987] 1 S.C.R. 1114	13
6.	<i>Falkiner v Ontario (Ministry of Community and Social Services, Income Maintenance Branch)</i> (2002), 59 O.R. (3d) 481 (C.A.)	23
7.	<i>First Nations Child and Family Caring Society et al. v. Attorney General of Canada</i> , 2011 CHRT 4	6
8.	<i>Guerin v. Canada</i> , [1984] 2 S.C.R. 335	29
British Columbia Authorities, Tab 30	<i>Ontario (Human Rights Commission) v. Simpsons-Sears Ltd.</i> , [1985] 2 S.C.R. 536	20, 26
9.	<i>Lavoie v. Canada (Treasury Board of Canada)</i> , 2008 CHRT 27	36
10.	<i>Lovelace v. Ontario</i> , 2000 SCC 37, [2000] 1 S.C.R. 950	18, 32
11.	<i>Morris v. Canada (Canadian Armed Forces)</i> , 2005 FCA 154	20, 36
12.	<i>New Brunswick (Human Rights Commission) v. Potash Corp. of Saskatchewan Inc.</i> , 2008 SCC 45, [2008] 2 S.C.R. 604	14
13.	<i>R. v. Sparrow</i> , [1990] 1 S.C.R. 1075	29
14.	<i>Singh (Re)</i> , [1989] 1 F.C. 430 (C.A.)	21

<u>Tab</u>	<u>Authority</u>	<u>Referred to at paras.</u>
Board of Education Authorities, Tab 34	<i>University of British Columbia v. Berg</i> , [1993] 2 S.C.R. 353	12
15.	<i>Vriend v. Alberta</i> , [1998] 1 S.C.R. 49	32
16.	<i>Withler v. Canada (Attorney General)</i> , 2011 SCC 12, [2011] 1 S.C.R. 396	2, 8, 13, 24-25, 27-28, 37
17.	<i>Zurich Insurance Co. v. Ontario (Human Rights Commission)</i> , [1992] S.C.R. 321	14

VII. STATUTES

- A. *Canadian Human Rights Act*, R.S.C., 1985, c. H-6, as amended
- B. *Human Rights Code* (British Columbia), RSBC 1996, Chapter 210



CANADA

CONSOLIDATION

CODIFICATION

Canadian Human Rights Act

Loi canadienne sur les droits de la personne

R.S.C., 1985, c. H-6

L.R.C., 1985, ch. H-6

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R.S.C., 1985, c. H-6

L.R.C., 1985, ch. H-6

An Act to extend the laws in Canada that proscribe discrimination

Loi visant à compléter la législation canadienne en matière de discrimination

SHORT TITLE

TITRE ABRÉGÉ

Short title

1. This Act may be cited as the *Canadian Human Rights Act*.
1976-77, c. 33, s. 1.

1. *Loi canadienne sur les droits de la personne*.
1976-77, ch. 33, art. 1.

Titre abrégé

PURPOSE OF ACT

OBJET

Purpose

2. The purpose of this Act is to extend the laws in Canada to give effect, within the purview of matters coming within the legislative authority of Parliament, to the principle that all individuals should have an opportunity equal with other individuals to make for themselves the lives that they are able and wish to have and to have their needs accommodated, consistent with their duties and obligations as members of society, without being hindered in or prevented from doing so by discriminatory practices based on race, national or ethnic origin, colour, religion, age, sex, sexual orientation, marital status, family status, disability or conviction for an offence for which a pardon has been granted.
R.S., 1985, c. H-6, s. 2; 1996, c. 14, s. 1; 1998, c. 9, s. 9.

2. La présente loi a pour objet de compléter la législation canadienne en donnant effet, dans le champ de compétence du Parlement du Canada, au principe suivant : le droit de tous les individus, dans la mesure compatible avec leurs devoirs et obligations au sein de la société, à l'égalité des chances d'épanouissement et à la prise de mesures visant à la satisfaction de leurs besoins, indépendamment des considérations fondées sur la race, l'origine nationale ou ethnique, la couleur, la religion, l'âge, le sexe, l'orientation sexuelle, l'état matrimonial, la situation de famille, la déficience ou l'état de personne graciée.
L.R. (1985), ch. H-6, art. 2; 1996, ch. 14, art. 1; 1998, ch. 9, art. 9.

Objet

PART I

PARTIE I

PROSCRIBED DISCRIMINATION

MOTIFS DE DISTINCTION ILLICITE

GENERAL

DISPOSITIONS GÉNÉRALES

Prohibited grounds of discrimination

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

3. (1) Pour l'application de la présente loi, les motifs de distinction illicite sont ceux qui sont fondés sur la race, l'origine nationale ou ethnique, la couleur, la religion, l'âge, le sexe, l'orientation sexuelle, l'état matrimonial, la situation de famille, l'état de personne graciée ou la déficience.

Motifs de distinction illicite

Idem	<p>(2) Where the ground of discrimination is pregnancy or child-birth, the discrimination shall be deemed to be on the ground of sex.</p> <p>R.S., 1985, c. H-6, s. 3; 1996, c. 14, s. 2.</p>	<p>(2) Une distinction fondée sur la grossesse ou l'accouchement est réputée être fondée sur le sexe.</p> <p>L.R. (1985), ch. H-6, art. 3; 1996, ch. 14, art. 2.</p>	Idem
Multiple grounds of discrimination	<p>3.1 For greater certainty, 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.</p> <p>1998, c. 9, s. 11.</p>	<p>3.1 Il est entendu que les actes discriminatoires comprennent les actes fondés sur un ou plusieurs motifs de distinction illicite ou l'effet combiné de plusieurs motifs.</p> <p>1998, ch. 9, art. 11.</p>	Multiplicité des motifs
Orders regarding discriminatory practices	<p>4. A discriminatory practice, as described in sections 5 to 14.1, may be the subject of a complaint under Part III and anyone found to be engaging or to have engaged in a discriminatory practice may be made subject to an order as provided in sections 53 and 54.</p> <p>R.S., 1985, c. H-6, s. 4; 1998, c. 9, s. 11.</p>	<p>4. Les actes discriminatoires prévus aux articles 5 à 14.1 peuvent faire l'objet d'une plainte en vertu de la partie III et toute personne reconnue coupable de ces actes peut faire l'objet des ordonnances prévues aux articles 53 et 54.</p> <p>L.R. (1985), ch. H-6, art. 4; 1998, ch. 9, art. 11.</p>	Ordonnances relatives aux actes discriminatoires
DISCRIMINATORY PRACTICES		ACTES DISCRIMINATOIRES	
Denial of good, service, facility or accommodation	<p>5. It is a discriminatory practice in the provision of goods, services, facilities or accommodation customarily available to the general public</p> <p>(a) to deny, or to deny access to, any such good, service, facility or accommodation to any individual, or</p> <p>(b) to differentiate adversely in relation to any individual,</p> <p>on a prohibited ground of discrimination.</p> <p>1976-77, c. 33, s. 5.</p>	<p>5. Constitue un acte discriminatoire, s'il est fondé sur un motif de distinction illicite, le fait, pour le fournisseur de biens, de services, d'installations ou de moyens d'hébergement destinés au public :</p> <p>a) d'en priver un individu;</p> <p>b) de le défavoriser à l'occasion de leur fourniture.</p> <p>1976-77, ch. 33, art. 5.</p>	Refus de biens, de services, d'installations ou d'hébergement
Denial of commercial premises or residential accommodation	<p>6. It is a discriminatory practice in the provision of commercial premises or residential accommodation</p> <p>(a) to deny occupancy of such premises or accommodation to any individual, or</p> <p>(b) to differentiate adversely in relation to any individual,</p> <p>on a prohibited ground of discrimination.</p> <p>1976-77, c. 33, s. 6.</p>	<p>6. Constitue un acte discriminatoire, s'il est fondé sur un motif de distinction illicite, le fait, pour le fournisseur de locaux commerciaux ou de logements :</p> <p>a) de priver un individu de leur occupation;</p> <p>b) de le défavoriser à l'occasion de leur fourniture.</p> <p>1976-77, ch. 33, art. 6.</p>	Refus de locaux commerciaux ou de logements
Employment	<p>7. It is a discriminatory practice, directly or indirectly,</p> <p>(a) to refuse to employ or continue to employ any individual, or</p> <p>(b) in the course of employment, to differentiate adversely in relation to an employee,</p>	<p>7. Constitue un acte discriminatoire, s'il est fondé sur un motif de distinction illicite, le fait, par des moyens directs ou indirects :</p> <p>a) de refuser d'employer ou de continuer d'employer un individu;</p> <p>b) de le défavoriser en cours d'emploi.</p> <p>1976-77, ch. 33, art. 7; 1980-81-82-83, ch. 143, art. 3.</p>	Emploi

HUMAN RIGHTS CODE

[RSBC 1996] CHAPTER 210

Purposes

3 The purposes of this Code are as follows:

- (a) to foster a society in British Columbia in which there are no impediments to full and free participation in the economic, social, political and cultural life of British Columbia;
- (b) to promote a climate of understanding and mutual respect where all are equal in dignity and rights;
- (c) to prevent discrimination prohibited by this Code;
- (d) to identify and eliminate persistent patterns of inequality associated with discrimination prohibited by this Code;
- (e) to provide a means of redress for those persons who are discriminated against contrary to this Code;
- (f) and (g) [Repealed 2002-62-2.]

...

Discrimination in accommodation, service and facility

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, sexual orientation or age of that person or class of persons.

(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 or age, if the discrimination relates to the determination of premiums or benefits under contracts of life or health insurance.