

Human Rights Complaints and Discrimination Prevention

Canadian Human Rights Commission

January 2005

What we will look at

- The Legislation & Jurisdiction
- The Human Rights Complaint
- Prohibited Grounds and Definitions
- Stages in the Complaints Process
- Anti-Discrimination Provisions
- Sections 40 and 41; Defences
- The Human Rights Tribunal
- Discrimination Prevention

The Legislation & Jurisdiction

- s.2: “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 without discrimination on the basis of a prohibited ground...”

The Legislation & Jurisdiction

- Federal departments and agencies
- Crown corporations
- Federally regulated business
 - Inter-provincial transport
 - Railways, ferries, airlines
 - Chartered banks
 - Broadcasting and telecommunications
 - Some mining operations (uranium, Hudson Bay Mining and Smelting),
 - Prairie grain elevators

The Legislation & Jurisdiction

Act does NOT cover:

- The Commission is NOT responsible for rights under the Canadian Charter of Rights and Freedoms
- Charter rights, such as the freedom of thought and of association, are administered by the courts

The Human Rights Complaint

- Commission administers two laws:
 - *Canadian Human Rights Act* and
 - *Employment Equity Act* ;
- Commission can:
 - Investigate complaints of discrimination and of pay inequity between men and women
 - Audit and take action to ensure compliance with the *Employment Equity Act*

The Human Rights Complaint

Filing a Complaint

- If you believe your rights have been infringed because of a ground, you can file a complaint under the Canadian Human Rights Act.
- Person must be legally entitled to be in Canada;
- Person or organization complained about must be within federal jurisdiction

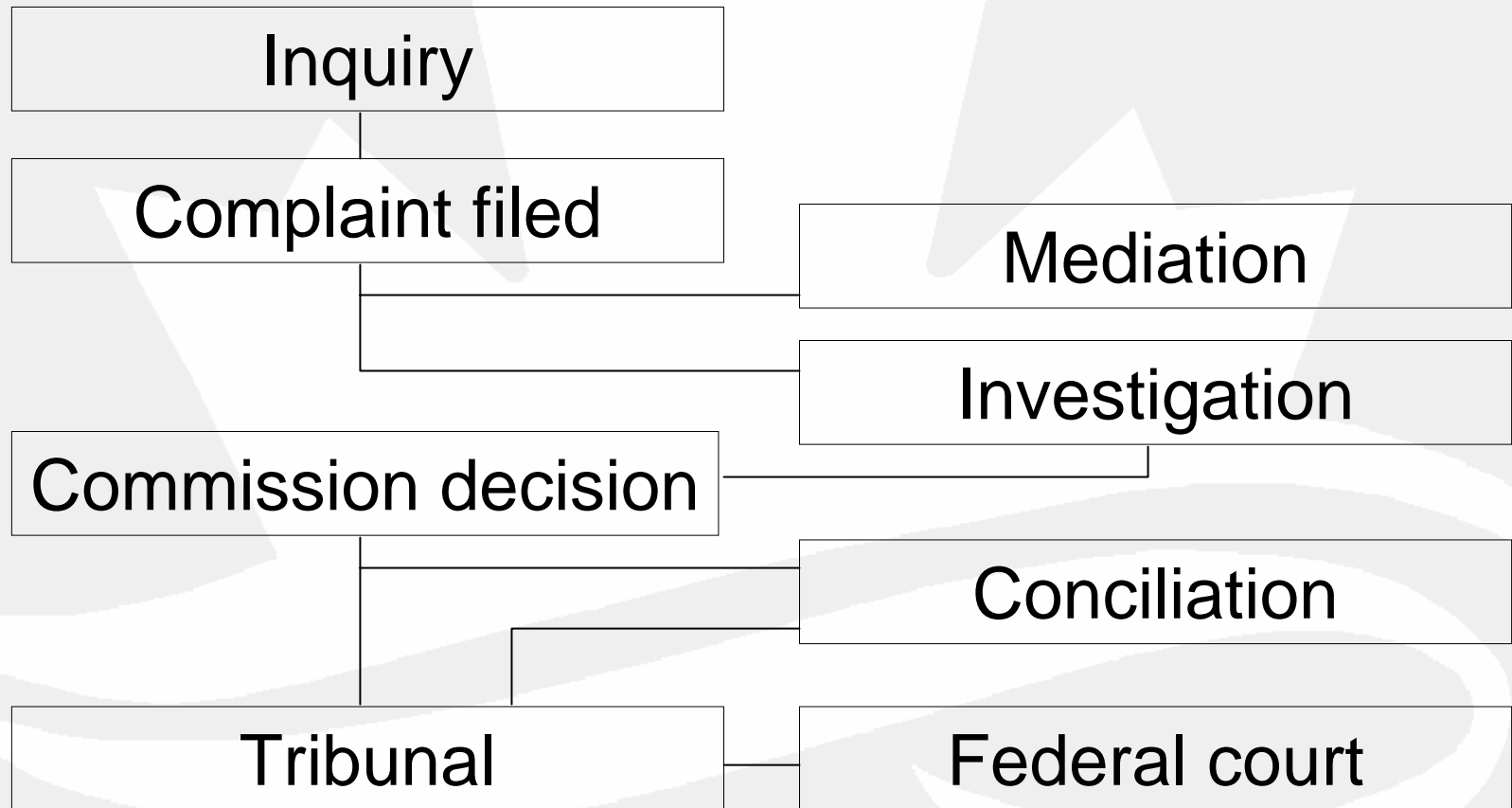
Prohibited grounds and Definitions

- Race
- Colour
- **National or ethnic origin**
- **Sex (includes pregnancy)**
- Marital status
- **Family status**
- **Age**
- Religion
- Sexual Orientation
- Pardoned Conviction
- **Disability** (physical or mental, including drug or alcohol dependence)

Prohibited Grounds and Definitions

- Discrimination: adverse differential treated based on a ground in the Act.
- Harassment: Comment or conduct that is both:
 - unwelcome, and known to be so; and
 - based on a ground
 - If a person ought reasonably to have known that the comment or behaviour was unwelcome, then no defence to say that no victim ever complained

Stages in the Complaints Process



Stages in the Complaints Process

- Prima facie case: a set of allegations which, if true, would amount to discrimination
- In the absence of any defense by the person or organization complained about

Anti-Discrimination Provisions

- s. 5 - prohibits discrimination in services to the public;
- s. 7 – prohibits discrimination in connection with employment
- s. 10 – prohibits discriminatory policies or practices;
- s. 11 – pay equity provision
- s. 14 – anti-harassment

Anti-Discrimination Provisions

Discrimination, Harassment and Failure to Accommodate

- The Act includes protection from harassment based on a prohibited ground , section 14
- Also s. 14(1), which talks about failure to accommodate

Anti-Discrimination Provisions

Protection from retaliation

- Commission can investigate and deal with complaints of retaliation against persons who file a complaint.
- May also be a criminal offence for anyone to threaten, intimidate or discriminate against a complainant or witness.

Complaints and Sections 40/41

- CHRC may choose not to deal with a complaint
 - Outside the Commission's jurisdiction
 - Out of time
 - Frivolous, vexatious, made in bad faith (rarely used)
 - Subject to another law or remedy (e.g., grievance)

Defences to a complaint

- Bona fide occupational requirement
- Bona fide justification
- Special Program – section 16 of the Act.

Defences

Decision-Making Body

- Commissioners make the decision to either:
 - Refuse to deal with complaints over one year old or out of jurisdiction
 - Appoint conciliators to resolve complaints
 - Refer complaint to the Human Rights Tribunal
 - Dismiss if not enough evidence

Defences

What about confidentiality?

- All files are confidential and property of the Commission when a complaint is filed
- Once cases go to Tribunal, they become a matter of public interest.

Human Rights Tribunal

- Works like a court of law but it only hears cases relating to discrimination.
- More flexibility than regular courts - Allows those who appear before it a chance to tell their stories more fully.
- Main goal: to ensure that the Canadian Human Rights Act is applied fairly and impartially at all hearings.

Human Rights Tribunal

- Commission appears as a party representing the public interest
- Tribunals can order:
 - discrimination to stop
 - reinstatement of employment
 - compensation for lost wages
 - monetary damages for hurt feelings
 - adoption of special programs

Discrimination Prevention Program

- Objective: to equip employers and service providers to better:
- prevent discrimination by ensuring all managers are aware of their rights and responsibilities under the CHRA,
- ensure inclusive and non-discriminatory policies and practices, and
- more effectively and expeditiously deal with human rights concerns, reducing the number of formal complaints filed internally and with the CHRC.