

2011

CHAPTER 17

An Act to amend *The Saskatchewan Human Rights Code* and to make consequential amendments to *The Labour Standards Act*

(Assented to May 18, 2011)

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

Short title

1 This Act may be cited as *The Saskatchewan Human Rights Code Amendment Act, 2011*.

S.S. 1979, c.S-24.1 amended

2 *The Saskatchewan Human Rights Code* is amended in the manner set forth in this Act.

Section 2 amended

3 The following clause is added after clause 2(1)(c):

“(c.1) ‘**court**’ means the Court of Queen’s Bench”.

Section 23 amended

4 Subsection 23(3) is repealed and the following substituted:

“(3) The commission may pay any witness fees and allowances that may be provided for pursuant to *The Queen’s Bench Act, 1998*”.

Section 25 amended

5 Section 25 is amended by adding the following after clause (g):

“(h) promote and pursue measures to prevent and address systemic patterns of discrimination; and

“(i) promote and pursue alternative dispute resolution methods in resolving complaints”.

New sections 25.1 and 25.2

6 The following sections are added after section 25:

“Financial requirements

25.1 The commission:

(a) shall prepare and submit annually to the minister, in any form that the minister may require, an estimate of its financial requirements for the following fiscal year; and

(b) may, to the extent that funds are provided to the commission, dedicate the resources of the commission in the way the commission considers necessary and advisable to carry out the purposes of this Act.

“Provision of services

25.2 To carry out the purposes of this Act, the minister may provide services to the commission”.

New section 26.1**7 The following section is added after section 26:****“Delegation of powers**

26.1(1) The Chief Commissioner may, in writing, delegate to a member or any employee of the commission any of his or her powers pursuant to this Act other than the power of delegation pursuant to this section.

(2) A delegation may be made to:

- (a) a specified member or employee or class of employees of the commission; or
- (b) the holder of a specified office for as long as he or she holds that office.

(3) Every delegation is revocable at will, and no delegation prevents the exercise of any power by the Chief Commissioner.

(4) A delegation may be made subject to any restrictions and conditions that the Chief Commissioner considers appropriate and may be made either generally or in relation to a particular case or matter or class of cases or matters.

(5) Until a delegation is revoked, it continues in force, and if the Chief Commissioner who made the delegation ceases to hold office, the delegation continues to have effect as if it were made by his or her successor.

(6) If the Chief Commissioner has delegated a power pursuant to this section, the person to whom the power is delegated shall, when required to do so, produce evidence of his or her authority to exercise the power.

(7) If the Chief Commissioner is of the opinion that there is a conflict of interest respecting the exercise of his or her powers, the Chief Commissioner may delegate his or her powers pursuant to subsection (1) to an individual who is not a member or an employee of the commission”.

Section 27 amended**8(1) Subsection 27(1) is repealed and the following substituted:**

“(1) A person may file with the commission a complaint in the form prescribed by the commission if:

- (a) the complaint falls within the jurisdiction of the commission; and
- (b) the person provides sufficient evidence that reasonable grounds exist for believing that any person has contravened a provision of this Act, or any other Act administered by the commission, with respect to a person or class of persons”.

(2) Subsections 27(5) and (6) are repealed and the following substituted:

“(5) Subject to subsection (6), but notwithstanding any other provision of this Act, the commission shall refuse to accept a complaint and shall not initiate a complaint if the complaint is made more than one year after the person making the complaint became aware, or should have been aware, of the alleged act of discrimination.

“(6) The commission may accept a complaint or initiate a complaint after the one-year period mentioned in subsection (5) if in the opinion of the Chief Commissioner it is appropriate in the circumstances to do so”.

Section 27.1 amended

9 Subsection 27.1(2) is amended:

(a) **in the portion preceding clause (a) by striking out “, or person designated by the Chief Commissioner,”;**

(b) **in clause (f) by adding “or further investigation” after “investigation”; and**

(c) **by repealing clause (g) and substituting the following:**

“(g) having regard to all the circumstances of the complaint, a hearing of the complaint is not warranted”.

Section 28 amended

10(1) Subsection 28(1) is amended in the portion preceding clause (a) by striking out “, or any person designated by the Chief Commissioner,”.

(2) Subsection 28(2) is repealed.

(3) Subsection 28(3) is amended by striking out “by a human rights tribunal”.

Section 28.1 amended

11 Subsection 28.1(1) is amended in the portion following clause (b) by striking out “inquiry” and substituting “investigation”.

Sections 29 to 29.4 repealed

12 Sections 29 to 29.4 are repealed.

New sections 29.5 to 29.8

13 The following sections are added before section 30:

“Mediation

29.5(1) If the Chief Commissioner determines that there are no grounds to dismiss a complaint pursuant to subsection 27.1(2), he or she may, before making an application to the court pursuant to section 29.6, require the parties to enter into mediation.

(2) If the parties reach a settlement during the mediation entered into pursuant to subsection (1), the complaint shall be considered settled for the purposes of this Act.

(3) If, during the mediation entered into pursuant to subsection (1), the person against whom the complaint is made proposes an offer of settlement that the Chief Commissioner considers fair and reasonable but that the complainant rejects, the Chief Commissioner may dismiss the complaint.

“Application for hearing

29.6(1) At any time after a complaint is filed or initiated pursuant to section 27, the Chief Commissioner may apply to the court for a hearing of the complaint at the judicial centre nearest to the place where the subject-matter of the complaint arose.

(2) If the Chief Commissioner applies for a hearing pursuant to subsection (1), the Chief Commissioner shall serve the person against whom the complaint was made with a copy of the application.

“Hearing

29.7(1) Subject to subsection (2), on the receipt of an application for a hearing pursuant to subsection 29.6(1), the court shall fix a date, time and place for the hearing.

(2) Before setting a hearing date, the court may direct the parties to participate in a pre-hearing conference.

(3) Except where modified by this Act, *The Queen’s Bench Rules* apply to a hearing pursuant to this section.

(4) The court is entitled to receive and accept evidence led for the purpose of establishing a pattern or practice of resistance to or disregard or denial of any of the rights secured by this Act, and the court is entitled to place any reliance that it considers appropriate on the evidence and on any pattern or practice disclosed by the evidence in arriving at its decision.

“Costs

29.8 Neither the court nor the Court of Appeal may award costs to any party unless the court or the Court of Appeal considers that there has been vexatious, frivolous or abusive conduct on the part of any party”.

Section 30 amended

14(1) Subsection 30(1) is amended:

(a) by striking out the portion preceding clause (a) and substituting the following:

“The parties to a hearing with respect to any complaint are:”; and

(b) by repealing clause (e) and substituting the following:

“(e) any other person specified by the court, on any notice that the court may determine and after the person has been given an opportunity to be heard against the adding of the person as a party”.

(2) The following subsections are added after subsection 30(2):

“(3) A party mentioned in clause (1)(b), (c), (d) or (e) may be represented at a hearing by counsel at that party’s expense.

“(4) If the court considers it appropriate in the circumstances, and subject to any conditions that the court considers necessary, a party mentioned in clause (1)(b), (c), (d) or (e) may appear at a hearing with the assistance of a third party other than counsel”.

Sections 31 and 31.1 repealed

15 Sections 31 and 31.1 are repealed.

Section 31.2 amended

16 Section 31.2 is amended:

(a) by striking out the portion preceding clause (a) and substituting the following:

“The court shall dismiss a complaint if the court finds that:”; **and**

(b) by repealing clause (a) and substituting the following:

“(a) the complaint is not substantiated”.

New sections 31.3 and 31.4

17 Sections 31.3 and 31.4 are repealed and the following substituted:

“Orders by court

31.3(1) If the court finds that there has been a contravention of any provision of this Act, or any other Act administered by the commission, the court may, subject to section 31.5, order any person to do any act or thing that in the opinion of the court constitutes full compliance with that provision and to rectify any injury caused to any person and to make compensation for that injury, including:

(a) requiring that person to cease contravening that provision and to take measures, including adoption of a program mentioned in section 47, to prevent the same or a similar contravention occurring in the future;

(b) requiring that person to make available to any person injured by that contravention, on the first reasonable occasion, any rights, opportunities or privileges that, in the opinion of the court, are being or were being denied the injured person, and including reinstatement in employment;

(c) requiring that person to compensate any person injured by that contravention for any or all of the wages and other benefits of which the injured person was deprived and any expenses incurred by the injured person as a result of the contravention;

(d) requiring that person to pay any compensation that the court considers appropriate, to any person injured by that contravention, for any or all additional costs of obtaining alternative goods, services, facilities or accommodations and any expenses incurred by the injured person as a result of the contravention; and

(e) requiring that person, if the complaint is based on disability and the premises, facilities or services of the person complained against impede physical access or lack proper amenities, to make the premises, facilities or services accessible or to provide the proper amenities but only if that requirement would not cause an undue hardship.

(2) On making an order pursuant to subsection (1), the court may direct the commission to supervise the measures undertaken by the person against whom the order is made for the purpose of ensuring that proper measures are taken and that the order is being complied with by the person against whom the order is made.

(3) If the measures taken by the person against whom an order pursuant to subsection (1) is made are not satisfactory to the commission, the commission may apply to the court for an order directing compliance with the order made pursuant to subsection (1).

(4) On an application pursuant to subsection (3), the court may grant an order directing compliance and may make any other order that the court considers appropriate.

“Order respecting compensation

31.4 The court may, in addition to any other order the court may make pursuant to section 31.3, order the person who has contravened or is contravening that provision to pay any compensation to the person injured by that contravention that the court may determine, to a maximum of \$10,000, if the court finds that:

- (a) a person has wilfully and recklessly contravened or is wilfully and recklessly contravening any provision of this Act or any other Act administered by the commission; or
- (b) the person injured by a contravention of any provision of this Act or any other Act administered by the commission has suffered with respect to feeling, dignity or self-respect as a result of the contravention”.

Section 31.6 repealed

18 Section 31.6 is repealed.

New section 32

19 Section 32 is repealed and the following substituted:

“Appeals

32(1) A decision or order of the court pursuant to section 31.2, 31.3 or 31.4 may be appealed to the Court of Appeal.

(2) The minister is entitled to be heard, by counsel or otherwise, on the argument of an appeal mentioned in subsection (1)”.

Section 33 repealed

20 Section 33 is repealed.

New section 34

21 Section 34 is repealed and the following substituted:

“Immunity

34 None of the minister, the commission, a member of the commission, an employee of the commission or an individual mentioned in subsection 26.1(7) is liable for any loss or damage suffered by any person by reason of any thing done or omitted to be done in good faith pursuant to or in the exercise or supposed exercise of the powers conferred by this Act”.

Section 38 amended

22(1) Subsection 38(1) is amended by:

- (a) **striking out “Court of Queen’s Bench” and substituting “court”; and**
- (b) **striking out “he” and substituting “the judge”.**
- (2) **Subsection 38(2) is amended by striking out “Court of Queen’s Bench” and substituting “court”.**
- (3) **Subsection 38(3) is amended in the portion preceding clause (a) by striking out “bring action in Her Majesty’s Court of Queen’s Bench for Saskatchewan” and substituting “commence an action in the court”.**

Section 47 amended

23 Subsection 47(2) is amended in the portion preceding clause (a) by striking out “a human rights tribunal” and substituting “the court”.

New section 48

24 Section 48 is repealed and the following substituted:**“Reasonable and justifiable measures**

48(1) Subject to subsection (2), it is not a contravention of this Act for a person to adopt or implement a reasonable and justifiable measure:

- (a) designed to prevent disadvantages that are likely to be suffered by, or to eliminate or reduce disadvantages that are suffered by, any group of individuals if those disadvantages would be or are based on or related to one or more prohibited grounds; and
- (b) that achieves or is reasonably likely to achieve that object.

(2) If a program has been approved or ordered pursuant to section 47, a measure mentioned in subsection (1) must comply with the terms and conditions of that program”.

Section 49 amended

25 Subsection 49(1) is amended:

- (a) **by repealing clauses (a) to (c);**
- (b) **by striking out “and” before clause (d); and**
- (c) **by adding the following before clause (d):**
 “(c.1) the commission’s business for the preceding fiscal year; and”.

Transitional

26(1) In this section, **“former provisions”** means the provisions of *The Saskatchewan Human Rights Code* as that Act read before the coming into force of this Act.

- (2) Notwithstanding the coming into force of this Act or any other Act or law:
 - (a) a human rights tribunal remains in place for the purposes of completing any inquiry or review that commenced pursuant to the former provisions and that is not completed on the day on which this Act comes into force; and

- (b) the human rights tribunal mentioned in clause (a):
 - (i) shall continue and complete an inquiry or review mentioned in clause (a) in accordance with the former provisions; and
 - (ii) may exercise any powers given to, and shall fulfil any duties imposed on, the human rights tribunal pursuant to the former provisions.
- (3) If a human rights tribunal mentioned in subsection (2) determines on a review that an inquiry should be ordered:
 - (a) the human rights tribunal shall set the terms of the inquiry; and
 - (b) the inquiry shall be conducted, with any necessary modification, in accordance with the former provisions.
- (4) The former provisions remain in force for the purposes of completing an inquiry or review mentioned in clause (2)(a) or an inquiry mentioned in subsection (3).

R.S.S. 1978, c.L-1, new sections 19 and 20

27 Sections 19 and 20 of *The Labour Standards Act* are repealed and the following substituted:

“Appointment of adjudicator

19(1) If the officer appointed pursuant to section 18 is unable to effect a settlement respecting the matter mentioned in that section, the minister may appoint an adjudicator to conduct an inquiry into that matter.

(2) Nothing in subsection (1) prohibits the prosecution of an employer alleged to have violated section 17.

“Powers on inquiry

20(1) An adjudicator appointed pursuant to section 19 shall conduct the inquiry and, for that purpose, the adjudicator has the powers of a commissioner pursuant to *The Public Inquiries Act*.

(2) If an adjudicator is appointed pursuant to section 19, the adjudicator may exercise the powers given to the Court of Queen’s Bench pursuant to sections 31.2 to 32 of *The Saskatchewan Human Rights Code*, and those sections apply, with any necessary modification, to the adjudicator and the inquiry”.

Coming into force

28 This Act comes into force on proclamation.