**Human Rights:**

Rights are central to the understanding of our legal system and our notion of justice. No matter what legal issue or case we examine, sooner or later the concept of rights will be mentioned. Understanding the rights that we have as Canadians and the key sources of those rights is critical to understanding our legal system.

The history of rights legislation in Canada progressed from no laws that specifically encompassed rights, to several key documents that delineated our rights. As a former colony of Britain, Canada based its rights legislation on British law. Until the latter half of the twentieth century, the British approach to human rights dictated the Canadian approach. Human rights based on the British system held the premise that a person had the freedom to do whatever the law did not prohibit. Thus, until the latter half of the twentieth century, when Canada started passing its own rights legislation, Canadians did not have a single legal document to look at in order to understand their rights. To do so required a legal expert, someone familiar with many laws and court cases.

Not until the 1960's did specific human rights legislation become law in Canada. The 1960's saw virtually all the provinces in Canada pass their own human rights legislation. As well, the federal government enacted the *Canadian Bill of Rights* in 1960. This era of drafting, organizing, and implementing specific rights legislation reached an important point in 1982 with the inclusion of the *Canadian Charter of Rights and Freedoms* as part of our patriated constitution.

Speaking of the Constitution and rights, it is important for you to remember the division of powers in Canada. The provincial government has the authority to pass rights legislation pertaining to activities and agencies under its authority. The federal government has the same right with regard to federal agencies and powers. The *Charter of Rights and Freedoms*, as part of the *Constitution Act*, is part of the supreme law of Canada and applies to all levels of government.

Key questions to ask about rights.

* What is a “right”?
* Why types of rights are there?
* Should rights be restricted?
* How did we develop the rights we now have?
* Where do we find our specific rights as Canadian citizens?

**Types of Rights**

The notion of a “*right*” is an intellectual and philosophical concept. Rights are concepts of freedoms or entitlements which we feel belong to us. In fact, we feel very strongly about the rights we believe we are entitled to have.

Where did the notion of rights come from? The simple answer is that our notion of rights developed over many centuries, and is shaped by various cultures, political systems, and theorists. You saw in the first unit that legal concepts, including those dealing with rights, go back to ancient civilizations and to the Bible. Societies, both ancient and contemporary, constantly struggled trying to find a harmonious balance between individual rights and the orderly functioning of society.

“When do the rights of an individual create imbalance or disorder in the wider society?”

Rights stem from the two main philosophical schools of law we learned about earlier: natural and positive law. If you recall, natural law theory argues that there is an ideal, unchanging set of rules and morals that should apply at all times in all circumstances, and from which all human law should originate. Positive law theory, on the other hand, simply suggests that the law is what political authorities or law-makers say it is. The same perspectives apply to the notion of our rights. Natural law theory believes that rights are enduring, universal, and should be subject to minimal or no limitations.

Natural rights theorists see our rights as flowing from universal, unalterable moral norms. Positive law theory argues that rights are merely the product of political authorities and law-makers. They feel that rights are merely abstract philosophical notions until law-makers in a given jurisdiction confirm them by writing them into enforceable legislation. The English political theorist Jeremy Bentham summed up this notion when he remarked: “Right is a child of law: from real laws come real rights ... natural rights is simple nonsense ...”. Thus, in a debate about a legal issue, a natural rights advocate would likely see rights as absolute and inviolable, while a positive law advocate would say any and all rights may be restricted depending on the authorities and their purposes and the way they draft their legislation. Think about how this applies to you. When considering a difficult legal or social issue, are you a positive rights advocate or a natural rights supporter?

Rights can be further classified beyond merely being natural or positive. Usually rights are thought to be closely related to freedoms or liberties. The implication is that in order for an individual to exercise their rights, interference from other individuals or groups must be prevented.

In Canada, we use the term civil liberties to identify rights we regard as being exercisable without interference from the government. These civil liberties may be further subdivided into various types: political, legal, economic, and egalitarian. Political civil liberties are things such as freedom of association, freedom of assembly, freedom of speech, and freedom of the press. Legal civil liberties are things such as the freedom from arbitrary arrest, the freedom from arbitrary search and seizure, and the right to a fair and impartial trial. Economic civil liberties include things such as a free market and the right to form collective groups to bargain for wages and working conditions. Egalitarian civil liberties include the notion of the right to equality.

The term civil rights is often used interchangeably when discussing civil liberties, although there is an important distinction between the two. Civil liberties refer to rights we regard as being exercisable without interference from government or other agencies of the state. Civil rights are more precisely rights pertaining to private matters between individuals (e.g. contracts) and are generally what we mean when we refer to human rights.

**Canadian Human Rights Act**

The *Canadian Human Rights Act* is a statute originally passed by the Canadian government in 1977. Important excerpts of the *Canadian Human Rights Act* are listed below. If you would like to view the entire Act, use the links listed under resources. You will need to read the excerpts from this Act in order to complete the assignment for this activity. You may find it easier to print this resource so you can mark and highlight key words and sections.

***The Canadian Human Rights Act***

**PURPOSE OF ACT**

*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.

PART I

**PROSCRIBED DISCRIMINATION**

*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.

*Idem*

(2) Where the ground of discrimination is pregnancy or child-birth, the discrimination shall be deemed to be on the ground of sex.

*Multiple grounds of discrimination*

**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.

*Orders regarding discriminatory practices*

**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.

**DISCRIMINATORY PRACTICES**

*Denial of good, service, facility or accommodation*

**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.

**6.** It is a discriminatory practice in the provision of commercial premises or residential accommodation

(a) to deny occupancy of such premises or accommodation to any individual, or

(b) to differentiate adversely in relation to any individual, on a prohibited ground of discrimination.

*Employment*

**7**. It is a discriminatory practice, directly or indirectly,

(a) to refuse to employ or continue to employ any individual, or

(b) in the course of employment, to differentiate adversely in relation to an employee, on a prohibited ground of discrimination. Employment applications, advertisements

**8.** It is a discriminatory practice

(a) to use or circulate any form of application for employment, or

(b) in connection with employment or prospective employment, to publish any advertisement or to make any written or oral inquiry that expresses or implies any limitation, specification or preference based on a prohibited ground of discrimination.

*Employee organizations*

**9.**(1) It is a discriminatory practice for an employee organization on a prohibited ground of discrimination

(a) to exclude an individual from full membership in the organization;

(b) to expel or suspend a member of the organization; or

(c) to limit, segregate, classify or otherwise act in relation to an individual in a way that would deprive the individual of employment opportunities, or limit employment opportunities or otherwise adversely affect the status of the individual, where the individual is a member of the organization or where any of the obligations of the organization pursuant to a collective agreement relate to the individual.

*Exception*

(2) Notwithstanding subsection (1), it is not a discriminatory practice for an employee organization to exclude, expel or suspend an individual from membership in the organization because that individual has reached the normal age of retirement for individuals working in positions similar to the position of that individual.

*Discriminatory policy or practice*

**10.** It is a discriminatory practice for an employer, employee organization or employer organization

(a) to establish or pursue a policy or practice, or

(b) to enter into an agreement affecting recruitment, referral, hiring, promotion, training, apprenticeship, transfer or any other matter relating to employment or prospective employment, that deprives or tends to deprive an individual or class of individuals of any employment opportunities on a prohibited ground of discrimination.

*Equal wages*

**11.**(1) It is a discriminatory practice for an employer to establish or maintain differences in wages between male and female employees employed in the same establishment who are performing work of equal value.

*Assessment of value of work*

(2) In assessing the value of work performed by employees employed in the same establishment, the criterion to be applied is the composite of the skill, effort and responsibility required in the performance of the work and the conditions under which the work is performed. Separate establishments

(3) Separate establishments established or maintained by an employer solely or principally for the purpose of establishing or maintaining differences in wages between male and female employees shall be deemed for the purposes of this section to be the same establishment.

*Different wages based on prescribed reasonable factors*

(4) Notwithstanding subsection (1), it is not a discriminatory practice to pay to male and female employees different wages if the difference is based on a factor prescribed by guidelines, issued by the Canadian Human Rights Commission pursuant to subsection 27.(2), to be a reasonable factor that justifies the difference.

(5) For greater certainty, sex does not constitute a reasonable factor justifying a difference in wages.

*No reduction of wages*

(6) An employer shall not reduce wages in order to eliminate a discriminatory practice described in this section.

*Definition of "wages"*

(7) For the purposes of this section, "wages" means any form of remuneration payable for work performed by an individual and includes

(a) salaries, commissions, vacation pay, dismissal wages and bonuses;

(b) reasonable value for board, rent, housing and lodging;

(c) payments in kind;

(d) employer contributions to pension funds or plans, long-term disability plans and all forms of health insurance plans; and (e) any other advantage received directly or indirectly from the individual’s employer.

*Publication of discriminatory notices, etc.*

**12.** It is a discriminatory practice to publish or display before the public or to cause to be published or displayed before the public any notice, sign, symbol, emblem or other representation that

(a) expresses or implies discrimination or an intention to discriminate, or

(b) incites or is calculated to incite others to discriminate if the discrimination expressed or implied, intended to be expressed or implied or incited or calculated to be incited would otherwise, if engaged in, be a discriminatory practice described in any of sections 5 to 11 or in section 14.

*Hate messages*

**13.**(1) It is a discriminatory practice for a person or a group of persons acting in concert to communicate telephonically or to cause to be so communicated, repeatedly, in whole or in part by means of the facilities of a telecommunication undertaking within the legislative authority of Parliament, any matter that is likely to expose a person or persons to hatred or contempt by reason of the fact that that person or those persons are identifiable on the basis of a prohibited ground of discrimination.

(2) For greater certainty, subsection (1) applies in respect of a matter that is communicated by means of a computer or a group of interconnected or related computers, including the Internet, or any similar means of communication, but does not apply in respect of a matter that is communicated in whole or in part by means of the facilities of a broadcasting undertaking.

(3) For the purposes of this section, no owner or operator of a telecommunication undertaking communicates or causes to be communicated any matter described in subsection (1) by reason only that the facilities of a telecommunication undertaking owned or operated by that person are used by other persons for the transmission of that matter.

*Harassment*

**14.**(1) It is a discriminatory practice,

(a) in the provision of goods, services, facilities or accommodation customarily available to the general public,

(b) in the provision of commercial premises or residential accommodation, or

(c) in matters related to employment, to harass an individual on a prohibited ground of discrimination.

*Sexual harassment*

(2) Without limiting the generality of subsection (1), sexual harassment shall, for the purposes of that subsection, be deemed to be harassment on a prohibited ground of discrimination.

*Retaliation*

**14.1** It is a discriminatory practice for a person against whom a complaint has been filed under Part III, or any person acting on their behalf, to retaliate or threaten retaliation against the individual who filed the complaint or the alleged victim.

*Exceptions*

**15.**(1) It is not a discriminatory practice if

(a) any refusal, exclusion, expulsion, suspension, limitation, specification or preference in relation to any employment is established by an employer to be based on a bona fide occupational requirement;

(b) employment of an individual is refused or terminated because that individual has not reached the minimum age, or has reached the maximum age, that applies to that employment by law or under regulations, which may be made by the

Governor in Council for the purposes of this paragraph;

(c) an individual’s employment is terminated because that individual has reached the normal age of retirement for employees working in positions similar to the position of that individual;

(d) the terms and conditions of any pension fund or plan established by an employer, employee organization or employer organization provide for the compulsory vesting or locking-in of pension contributions at a fixed or determinable age in accordance with sections 17 and 18 of the Pension Benefits Standards Act, 1985;

(e) an individual is discriminated against on a prohibited ground of discrimination in a manner that is prescribed by guidelines, issued by the Canadian Human Rights Commission pursuant to subsection 27(2), to be reasonable;

(f) an employer, employee organization or employer organization grants a female employee special leave or benefits in connection with pregnancy or child-birth or grants employees special leave or benefits to assist them in the care of their children; or

(g) in the circumstances described in section 5 or 6, an individual is denied any goods, services, facilities or accommodation or access thereto or occupancy of any commercial premises or residential accommodation or is a victim of any adverse differentiation and there is bona fide justification for that denial or differentiation.

*Accommodation of needs*

(2) For any practice mentioned in paragraph (1)(a) to be considered to be based on a bona fide occupational requirement and for any practice mentioned in paragraph (1)(g) to be considered to have a bona fide justification, it must be established that accommodation of the needs of an individual or a class of individuals affected would impose undue hardship on the person who would have to accommodate those needs, considering health, safety and cost.

*Regulations*

(3) The Governor in Council may make regulations prescribing standards for assessing undue hardship.

*Publication of proposed regulations*

(4) Each regulation that the Governor in Council proposes to make under subsection (3) shall be published in the Canada Gazette and a reasonable opportunity shall be given to interested persons to make representations in respect of it.

*Special programs*

**16.**(1) It is not a discriminatory practice for a person to adopt or carry out a special program, plan or arrangement 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 when those disadvantages would be based on or related to the prohibited grounds of discrimination, by improving opportunities respecting goods, services, facilities, accommodation or employment in relation to that group.

*Advice and assistance*

(2) The Canadian Human Rights Commission, may

(a) make general recommendations concerning desirable objectives for special programs, plans or arrangements referred to in subsection (1); and

(b) on application, give such advice and assistance with respect to the adoption or carrying out of a special program, plan or arrangement referred to in subsection (1) as will serve to aid in the achievement of the objectives the program, plan or arrangement was designed to achieve.

*Collection of information relating to prohibited grounds*

(3) It is not a discriminatory practice to collect information relating to a prohibited ground of discrimination if the information is intended to be used in adopting or carrying out a special program, plan or arrangement under subsection (1).

*Commission established*

**26.**(1) A commission is hereby established to be known as the Canadian Human Rights Commission, in this Part and Part III referred to as the "Commission", consisting of a Chief Commissioner, a Deputy Chief Commissioner and not less than three or more than six other members, to be appointed by the Governor in Council.

*Powers, duties and functions*

**27.**(1) In addition to its duties under Part III with respect to complaints regarding discriminatory practices, the Commission is generally responsible for the administration of this Part and Parts I and III and

(a) shall develop and conduct information programs to foster public understanding of this Act and of the role and activities of the Commission thereunder and to foster public recognition of the principle described in section 2;

(b) shall undertake or sponsor research programs relating to its duties and functions under this Act and respecting the principle described in section 2;

(c) shall maintain close liaison with similar bodies or authorities in the provinces in order to foster common policies and practices and to avoid conflicts respecting the handling of complaints in cases of overlapping jurisdiction;

(d) shall perform duties and functions to be performed by it pursuant to any agreement entered into under subsection 28(2);

(e) may consider such recommendations, suggestions and requests concerning human rights and freedoms as it receives from any source and, where deemed by the Commission to be appropriate, include in a report referred to in section 61 reference to and comment on any such recommendation, suggestion or request;

(f) shall carry out or cause to be carried out such studies concerning human rights and freedoms as may be referred to it by the Minister of Justice and include in a report referred to in section 61 a report setting out the results of each such study together with such recommendations in relation thereto as it considers appropriate;

(g) may review any regulations, rules, orders, by-laws and other instruments made pursuant to an Act of Parliament and, where deemed by the Commission to be appropriate, include in a report referred to in section 61 reference to and comment on any provision thereof that in its opinion is inconsistent with the principle described in section 2; and

(h) shall, so far as is practical and consistent with the application of Part III, try by persuasion, publicity or any other means that it considers appropriate to discourage and reduce discriminatory practices referred to in sections 5 to 14.1.

*Establishment of Tribunal*

**48.1**(1) There is hereby established a tribunal to be known as the Canadian Human Rights Tribunal consisting, subject to subsection (6), of a maximum of fifteen members, including a Chairperson and a Vice-chairperson, as may be appointed by the Governor in Council.

*Qualifications for appointment of members*

(2) Persons appointed as members of the Tribunal must have experience, expertise and interest in, and sensitivity to, human rights.

*Legal qualifications*

(3) The Chairperson and Vice-chairperson must be members in good standing of the bar of a province or the *Chambre des notaires du Québec* for at least ten years and at least two of the other members of the Tribunal must be members in good standing of the bar of a province or the *Chambre des notaires du Québec*.

**Ontario Human Rights Code**

The *Ontario Human Rights Code* is a provincial law that seeks to protect rights and to end discriminatory behaviour in a number of specific areas. Important excerpts from the *Ontario Human Rights Code* are listed below. You will need to read these in order to complete one of the assignments for this activity. You may find it easier to print the excerpts so you can highlight them in order to identify key points.

You can also look at the entire *Ontario Human Rights Code* by using the links provided in the resource section.

**THE ONTARIO HUMAN RIGHTS CODE**

**Preamble**

Whereas recognition of the inherent dignity and the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world and is in accord with the Universal Declaration of Human Rights as proclaimed by the United Nations;

And Whereas it is public policy in Ontario to recognize the dignity and worth of every person and to provide for equal rights and opportunities without discrimination that is contrary to law, and having as its aim the creation of a climate of understanding and mutual respect for the dignity and worth of each person so that each person feels a part of the community and able to contribute fully to the development and well-being of the community and the Province;

And Whereas these principles have been confirmed in Ontario by a number of enactments of the Legislature and it is desirable to revise and extend the protection of human rights in Ontario;

Therefore, Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

**PART I**

**FREEDOM FROM DISCRIMINATION**

*Services*

1. Every person has a right to equal treatment with respect to services, goods and facilities, without discrimination because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, age, marital status, family status or disability.

*Accommodation*

2.(1) Every person has a right to equal treatment with respect to the occupancy of accommodation, without discrimination because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, age, marital status, family status, disability or the receipt of public assistance.

*Harassment in accommodation*

(2) Every person who occupies accommodation has a right to freedom from harassment by the landlord or agent of the landlord or by an occupant of the same building because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, age, marital status, family status, disability or the receipt of public assistance.

*Contracts*

3. Every person having legal capacity has a right to contract on equal terms without discrimination because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, age, marital status, family status or disability.

*Accommodation of person under eighteen*

4.(1) Every sixteen or seventeen year old person who has withdrawn from parental control has a right to equal treatment with respect to occupancy of and contracting for accommodation without discrimination because the person is less than eighteen years old.

(2) A contract for accommodation entered into by a sixteen or seventeen year old person who has withdrawn from parental control is enforceable against that person as if the person were eighteen years old.

*Employment*

5.(1) Every person has a right to equal treatment with respect to employment without discrimination because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, age, record of offences, marital status, family status or disability.

*Harassment in employment*

(2) Every person who is an employee has a right to freedom from harassment in the workplace by the employer or agent of the employer or by another employee because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, age, record of offences, marital status, family status or disability.

*Vocational associations*

6. Every person has a right to equal treatment with respect to membership in any trade union, trade or occupational association or self-governing profession without discrimination because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, age, marital status, family status or disability.

**Sexual harassment**

*Harassment because of sex in accommodation*

7.(1) Every person who occupies accommodation has a right to freedom from harassment because of sex by the landlord or agent of the landlord or by an occupant of the same building.

*Harassment because of sex in workplaces*

(2) Every person who is an employee has a right to freedom from harassment in the workplace because of sex by his or her employer or agent of the employer or by another employee.

*Sexual solicitation by a person in position to confer benefit, etc.*

(3) Every person has a right to be free from,

(a) a sexual solicitation or advance made by a person in a position to confer, grant or deny a benefit or advancement to the person where the person making the solicitation or advance knows or ought reasonably to know that it is unwelcome; or

(b) a reprisal or a threat of reprisal for the rejection of a sexual solicitation or advance where the reprisal is made or threatened by a person in a position to confer, grant or deny a benefit or advancement to the person.

**PART II**

**INTERPRETATION AND APPLICATION**

*Definitions re: Parts I and II*

10. (1) In Part I and in this Part,

“age” means an age that is 18 years or more; “disability” means,

(a) any degree of physical disability, infirmity, malformation or disfigurement that is caused by bodily injury, birth defect or illness and, without limiting the generality of the foregoing, includes diabetes mellitus, epilepsy, a brain injury, any degree of paralysis, amputation, lack of physical co-ordination, blindness or visual impediment, deafness or hearing impediment, muteness or speech impediment, or physical reliance on a guide dog or other animal or on a wheelchair or other remedial appliance or device,

(b) a condition of mental impairment or a developmental disability,

(c) a learning disability, or a dysfunction in one or more of the processes involved in understanding or using symbols or spoken language,

(d) a mental disorder, or

(e) an injury or disability for which benefits were claimed or received under the insurance plan established under the

*Workplace Safety and Insurance Act*, 1997; (“handicap”)

“equal” means subject to all requirements, qualifications and considerations that are not a prohibited ground of discrimination; (“égal”)

“family status” means the status of being in a parent and child relationship; (“état familial”)

“group insurance” means insurance whereby the lives or well-being or the lives and well-being of a number of persons are insured severally under a single contract between an insurer and an association or an employer or other person; (“assurance-groupe”)

“harassment” means engaging in a course of vexatious comment or conduct that is known or ought reasonably to be known to be unwelcome; (“harcèlement”)

“marital status” means the status of being married, single, widowed, divorced or separated and includes the status of living with a person in a conjugal relationship outside marriage; (“état matrimonial”)

“record of offences” means a conviction for,

(a) an offence in respect of which a pardon has been granted under the Criminal Records Act (Canada) and has not been revoked, or

(b) an offence in respect of any provincial enactment; (“casier judiciaire”)

“services” does not include a levy, fee, tax or periodic payment imposed by law; (“services”)

“spouse” means the person to whom a person is married or with whom the person is living in a conjugal relationship outside marriage.

*Pregnancy*

2. The right to equal treatment without discrimination because of sex includes the right to equal treatment without discrimination because a woman is or may become pregnant.

*Past and presumed disabilities*

3. The right to equal treatment without discrimination because of disability includes the right to equal treatment without discrimination because a person has or has had a disability or is believed to have or to have had a disability.

*Constructive discrimination*

11.(1) A right of a person under Part I is infringed where a requirement, qualification or factor exists that is not discrimination on a prohibited ground but that results in the exclusion, restriction or preference of a group of persons who are identified by a prohibited ground of discrimination and of whom the person is a member, except where,

(a) the requirement, qualification or factor is reasonable and bona fide in the circumstances; or

(b) it is declared in this Act, other than in section 17, that to discriminate because of such ground is not an infringement of a right.

(2) The Commission, the Tribunal or a court shall not find that a requirement, qualification or factor is reasonable and bona fide in the circumstances unless it is satisfied that the needs of the group of which the person is a member cannot be accommodated without undue hardship on the person responsible for accommodating those needs, considering the cost, outside sources of funding, if any, and health and safety requirements, if any.

(3) The Commission, the Tribunal or a court shall consider any standards prescribed by the regulations for assessing what is undue hardship.

*Discrimination because of association*

12. A right under Part I is infringed where the discrimination is because of relationship, association or dealings with a person or persons identified by a prohibited ground of discrimination.

*Announced intention to discriminate*

13.(1) A right under Part I is infringed by a person who publishes or displays before the public or causes the publication or display before the public of any notice, sign, symbol, emblem, or other similar representation that indicates the intention of the person to infringe a right under Part I or that is intended by the person to incite the infringement of a right under Part I.

*Opinion*

(2) Subsection (1) shall not interfere with freedom of expression of opinion.

*Special programs*

14.(1) A right under Part I is not infringed by the implementation of a special program designed to relieve hardship or economic disadvantage or to assist disadvantaged persons or groups to achieve or attempt to achieve equal opportunity or that is likely to contribute to the elimination of the infringement of rights under Part I.

*Age sixty-five or over*

15. A right under Part I to non-discrimination because of age is not infringed where an age of sixty-five years or over is a requirement, qualification or consideration for preferential treatment.

*Canadian Citizenship*

16.(1) A right under Part I to non-discrimination because of citizenship is not infringed where Canadian citizenship is a requirement, qualification or consideration imposed or authorized by law.

*Idem*

(2) A right under Part I to non-discrimination because of citizenship is not infringed where Canadian citizenship or lawful admission to Canada for permanent residence is a requirement, qualification or consideration adopted for the purpose of fostering and developing participation in cultural, educational, trade union or athletic activities by Canadian citizens or persons lawfully admitted to Canada for permanent residence.

Disability

17.(1) A right of a person under this Act is not infringed for the reason only that the person is incapable of performing or fulfilling the essential duties or requirements attending the exercise of the right because of disability.

*Accommodation*

(2) The Commission, the Tribunal or a court shall not find a person incapable unless it is satisfied that the needs of the person cannot be accommodated without undue hardship on the person responsible for accommodating those needs, considering the cost, outside sources of funding, if any, and health and safety requirements, if any.

*Special interest organizations*

18. The rights under Part I to equal treatment with respect to services and facilities, with or without accommodation, are not infringed where membership or participation in a religious, philanthropic, educational, fraternal or social institution or organization that is primarily engaged in serving the interests of persons identified by a prohibited ground of discrimination is restricted to persons who are similarly identified.

*Separate school rights preserved*

19.(1) This Act shall not be construed to adversely affect any right or privilege respecting separate schools enjoyed by separate school boards or their supporters under the *Constitution Act*, 1867 and the *Education Act*.

*Restriction of facilities by sex*

20.(1) The right under section 1 to equal treatment with respect to services and facilities without discrimination because of sex is not infringed where the use of the services or facilities is restricted to persons of the same sex on the ground of public decency.

*Minimum drinking age*

(2) The right under section 1 to equal treatment with respect to services, goods and facilities without discrimination because of age is not infringed by the provisions of the *Liquor Licence Act* and the regulations under it relating to providing for and enforcing a minimum drinking age of nineteen years.

*Recreational clubs*

(3) The right under section 1 to equal treatment with respect to services and facilities is not infringed where a recreational club restricts or qualifies access to its services or facilities or gives preferences with respect to membership dues and other fees because of age, sex, marital status or family status.

*Tobacco and young persons*

(4) The right under section 1 to equal treatment with respect to goods without discrimination because of age is not infringed by the provisions of the Smoke-Free Ontario Act and the regulations under it relating to selling or supplying tobacco to persons who are, or who appear to be, under the age of 19 years or 25 years, as the case may be.

*Employment*

23.(1) The right under section 5 to equal treatment with respect to employment is infringed where an invitation to apply for employment or an advertisement in connection with employment is published or displayed that directly or indirectly classifies or indicates qualifications by a prohibited ground of discrimination.

*Application for employment*

(2) The right under section 5 to equal treatment with respect to employment is infringed where a form of application for employment is used or a written or oral inquiry is made of an applicant that directly or indirectly classifies or indicates qualifications by a prohibited ground of discrimination.

*Special employment*

24.(1) The right under section 5 to equal treatment with respect to employment is not infringed where,

(a) a religious, philanthropic, educational, fraternal or social institution or organization that is primarily engaged in serving the interests of persons identified by their race, ancestry, place of origin, colour, ethnic origin, creed, sex, age, marital status or disability employs only, or gives preference in employment to, persons similarly identified if the qualification is a reasonable and *bona fide* qualification because of the nature of the employment;

(b) the discrimination in employment is for reasons of age, sex, record of offences or marital status if the age, sex, record of offences or marital status of the applicant is a reasonable and *bona fide* qualification because of the nature of the employment;

(c) an individual person refuses to employ another for reasons of any prohibited ground of discrimination in section 5, where the primary duty of the employment is attending to the medical or personal needs of the person or of an ill child or an aged, infirm or ill spouse or other relative of the person;

(d) an employer grants or withholds employment or advancement in employment to a person who is the spouse, child or parent of the employer or an employee;

**Reasonable accommodation**

(2) The Commission, the Tribunal or a court shall not find that a qualification under clause (1)(b) is reasonable and *bona fide* unless it is satisfied that the circumstances of the person cannot be accommodated without undue hardship on the person responsible for accommodating those circumstances considering the cost, outside sources of funding, if any, and health and safety requirements, if any.

**PART III**

**THE ONTARIO HUMAN RIGHTS COMMISSION**

*The Commission*

27.(1) *The Ontario Human Rights Commission* is continued under the name *Ontario Human Rights Commission* in English and Commission *ontarienne des droits de la personne* in French and shall be composed of such persons, being not fewer than seven, as are appointed by the Lieutenant Governor in Council.

*Responsible to Minister*

(2) The Commission is responsible to the Minister for the administration of this Act. Chair (3) The Lieutenant Governor in Council shall designate a member of the Commission as chair, and a member as vice-chair.

*Race relations division*

28.(1) The Lieutenant Governor in Council shall designate at least three members of the Commission to constitute a race relations division of the Commission and shall designate one member of the race relations division as Commissioner for Race Relations.

*Functions*

(2) It is the function of the race relations division of the Commission to perform any of the functions of the Commission under clause 29 (f), (g) or (h) relating to race, ancestry, place of origin, colour, ethnic origin or creed that are referred to it by the Commission and any other function referred to it by the Commission.

*Function of Commission*

29. It is the function of the Commission,

(a) to forward the policy that the dignity and worth of every person be recognized and that equal rights and opportunities be provided without discrimination that is contrary to law;

(b) to promote an understanding and acceptance of and compliance with this Act;

(c) to recommend for consideration a special plan or program designed to meet the requirements of subsection 14(1), subject to the right of a person aggrieved by the implementation of the plan or program to request the Commission to reconsider its recommendation and section 37 applies with necessary modifications;

(d) to develop and conduct programs of public information and education and undertake, direct and encourage research designed to eliminate discriminatory practices that infringe rights under this Act;

(e) to examine and review any statute or regulation, and any program or policy made by or under a statute and make recommendations on any provision, program or policy, that in its opinion is inconsistent with the intent of this Act;

(f) to inquire into incidents of and conditions leading or tending to lead to tension or conflict based upon identification by a prohibited ground of discrimination and take appropriate action to eliminate the source of tension or conflict;

(g) to initiate investigations into problems based upon identification by a prohibited ground of discrimination that may arise in a community, and encourage and co-ordinate plans, programs and activities to reduce or prevent such problems;

(h) to promote, assist and encourage public, municipal or private agencies, organizations, groups or persons to engage in programs to alleviate tensions and conflicts based upon identification by a prohibited ground of discrimination;

(i) to enforce this Act and orders of the Tribunal;

(j) to perform the functions assigned to it by this or any other Act.

Answer the following questions:

1. What are “rights”? Why are they important in contemporary Canadian society?
2. Discuss the difference between natural rights theory and positive rights theory. Which one best reflects your personal view? Provide an example to illustrate your personal stance.
3. What is a “civil liberty”? Distinguish among three different sub-categories of civil liberties.
4. Explain the evolution of Canadian human rights legislation. Focus on the following items in your explanation:

* British Common Law
* The *Canadian Bill of Rights* (1960)
* The *Canadian Charter of Rights and Freedoms* (1982)

1. Discuss each of the following points.
   1. Where are rights found?
   2. How easy would it be for a citizen to find and learn about their rights?
   3. What are the limitations of protecting rights in this way?
   4. What are the strengths of protecting rights in this way?
   5. Why are your rights as a Canadian citizen better protected now than ever before in Canadian history?