



Ontario
Human Rights Commission
Commission ontarienne des
droits de la personne

Ontario Human Rights Commission

Submission to

Ministry of Labour Changing Workplace Review

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OVERVIEW	2
DISADVANTAGED GROUPS	2
Women	3
Pregnancy	4
Transgender individuals	5
Families	5
People with disabilities	6
Older workers	7
Indigenous peoples	8
Racialized and religious communities	9
Foreign trained workers	10
Migrant workers	10
Negative impact of police records	11
EMPLOYMENT STANDARDS ACT	11
Non-standard work	11
Wages / compensation	12
Pay Equity	13
Exemptions	13
Hours of work and eating periods	15
Public holidays and Sundays: Right to refuse work	15
Vacation leave	16
Pregnancy and parental leaves	17
Family and personal emergency leaves	17
Other leave for Code related reasons	19
Benefits	19
Compliance	20
LABOUR RELATIONS ACT	21
Human Rights Code references	21
Exemptions	22
Unfair practices	22
EDUCATION AND TRAINING	23

OVERVIEW

The Ontario government is consulting on the changing nature of the modern workplace and considering how the Employment Standards Act and the Labour Relations Act could be amended to best protect workers, especially historically under-represented groups. The Ontario Human Rights Commission (OHRC) makes this submission in accordance with its mandate to promote and advance human rights under Ontario's Human Rights Code.¹

The Code exists to help address the historic and ongoing disadvantage experienced by certain groups and individuals. It sets out that everyone has the right to be free from discrimination and harassment in employment as well as in membership in vocational associations because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, gender identity, gender expression, age, marital status, family status, disability, and record of offences (in relation to employment).

Rights and obligations under the Code should also be interpreted in light of Canada's commitment under the United Nations International Covenant on Economic, Social and Cultural Rights² (ICESCR).³ Matters within provincial competence are the obligation of the provincial government⁴ and include: the right to work under article 6, the right to the enjoyment of just and favourable conditions of work under article 7, the right to form and join trade unions under article 8, and these rights are to be enjoyed without discrimination of any kind under article 2.

The OHRC has published a number of interpretive policies and guides⁵ based on the Code, case law and international norms to help workers, employers and vocational associations understand everyone's rights and obligations under the Code.

The government's review of employment standards and labour relations legislation, and any amendments, as well as interpretation and application of the legislation, should have regard for human rights law and OHRC policies accordingly. Where there is a conflict between rights under the Code and rights under other legislation, the Code has primacy unless the other legislation says the Code does not.

The balance of this submission is divided into three parts. It first examines the nature of human rights disadvantage and discrimination experienced by groups historically under-represented in the labour force. The submission then makes comments and recommendations regarding the Employment Standards Act and the Labour Relations Act.

DISADVANTAGED GROUPS

The government's consultation guide appropriately identifies "equity" as one of the objectives for its legislative review. The consultation guide says employers will be competing for talent and greater integration of historically under-represented groups

including women, workers from racialized groups, Indigenous people, and people with disabilities. It also recognizes that the changing economy will increase the challenges associated with workplace diversity but can also offer significant benefits.

Similarly, Ontario's Poverty Reduction Act recognizes these groups face a heightened risk of poverty but are also a source of "untapped potential... that needs to be drawn upon by building and establishing supports for, and eliminating barriers to, full participation by all people in Ontario's economy and society and, in particular, persons who face discrimination...."⁶

The Law Commission of Ontario, in its 2012 report, *Vulnerable Workers and Precarious Work*,⁷ also recognizes that the nature of employment is evolving and more work is precarious. Precarious work is characterized by job instability, lack of benefits, low wages and degree of control over the process. Examples include temporary agency work, self-employment, part-time, casual or temporary migrant work. The LCO report identifies women, single parents, racialized persons, newcomers and established immigrants, temporary migrant workers, persons with disabilities, youth, Indigenous peoples and non-status workers may be more likely to be "vulnerable workers" engaged in precarious work. The report also says that laws like Ontario's Human Rights Code are relevant to considering the issues.

The OHRC agrees. Achieving equal opportunity and benefit in a changing economy starts with understanding the nature of the disadvantage and discrimination that these vulnerable groups face. But it also requires applying a human rights lens to employment standards and labour relations legislation, policies and practices.

Women

Data from Statistics Canada shows that women continue to experience disadvantage in the labour force.⁸

- The labour market participation rate for women over age 15 was 61% in 2014 compared to 70% for men of the same age
- Women are more likely to be in part-time work (i.e., less than 30 hours per week) and casual work (i.e., hours that vary from one week to the next). Nearly 70% of part-time workers in 2013 were women, a proportion that has not changed significantly over the past three decades
- In 2011, women had sole-ownership of 14% of small businesses and only 4% of medium-sized businesses.
- In 2012, 55% of all jobs in the services sector were occupied by women, but only 22% of all jobs in the goods-producing sector were occupied by women. Overall, women represent roughly 5% of all skilled trades workers in Canada
- Catalyst Canada found that in 2013, the percentage of women directors in FP500 companies sat at 15.9%. Among FP500 companies, 40% had no women directors in 2013, and only 26% of these companies have women CEOs in 2014

- The gender wage gap in Canada is related to the prevalence of part-time work for women and labour market segmentation, which tends to concentrate women in lower-wage occupations.
- Women's average annual earnings have been approximately 71% of men's since the early 1990s. When factoring gender differences in industry, occupation, education, age, job tenure, province of residence, marital status, and union status, women's annual wages amounted to 92% of men's in 2011.

Cases before the Human Rights Tribunal of Ontario and other courts show that women continue to face discrimination in employment. They encounter negative stereotypes about being outspoken or high performers, receive less pay for work of equal value or hit glass ceilings when trying to move into higher positions of responsibility. They are exposed to sexual and gender-based harassment that can poison the entire work environment.

Female workers also face unique intersecting forms of discrimination and harassment tied to their race, creed marital status and disability among other grounds that can have an even greater negative impact.

For more information see the OHRC's publication *Human Rights at Work*⁹ and its Policy on preventing sexual and gender-based harassment.¹⁰

Pregnancy

Pregnant women are confronted with negative stereotypes that they will not be able to work productively, accommodations will be onerous, maternity leave will be disruptive and they will generally not return afterward.

Women experience various forms of discrimination from employers who refuse to hire them because they were, are or might become pregnant. They might not be assigned major projects, are docked time for using the washroom or denied sick leave benefits. Promotion or training opportunities might be limited or withheld, or they are not informed about major developments and workplace opportunities while they are on maternity leave. Needs related to pregnancy including breastfeeding may not be accommodated. Employers might outright terminate pregnant employees without legitimate reason or constructively dismiss them through harassment, demotions, unwanted transfers, excessive criticism of their work, or other negative treatment.

The Code recognizes the ground of sex includes pregnancy. The OHRC's Policy on discrimination because of pregnancy explains that "pregnancy" covers pre-conception fertility treatment, miscarriage, abortion, complications during pregnancy, pre-term birth, complications that continue after childbirth, recovery from childbirth and breastfeeding.

Subject to bona fide reasonable requirements, denying or restricting a woman's employment opportunities because she is, was or may become pregnant, or because she has had a baby, is a violation of the Code.

For more information, see the OHRC's Policy on preventing discrimination because of pregnancy and breastfeeding.¹¹

Transgender individuals

Following the addition in 2012 of gender identity and gender expression to the Human Rights Code, in 2013, the OHRC undertook research, including a survey, of discrimination experienced by trans people.¹² In 2014, the OHRC revised and released its Policy on preventing discrimination because of gender identity and gender expression.¹³ The Policy recognizes the disadvantage and discrimination trans people face in employment and other areas.

A survey conducted by the Ontario-based Trans PULSE Project,¹⁴ found:

- 18% of survey respondents said they were turned down for a job because of their trans identity
- 13% said they were fired from their job or constructively dismissed because they were trans¹⁵

Discrimination is often based on unfounded stereotypes or negative assumptions such as: trans people will make other co-workers and clients uncomfortable; they will not be a good "fit" for the workplace; or, they have accommodation needs that will be difficult and expensive.

The Code prohibits discrimination and harassment against transgender¹⁶ individuals in employment and membership in vocational associations. Protections apply at all stages of employment from hiring, to retention, pay and benefits and dress codes, to training and promotion, performance management and termination, and includes the duty to accommodate needs related to gender identity and gender expression.

Families

The OHRC's Policy and guidelines on discrimination because of family status¹⁷ reports that persons with caregiving responsibilities are disproportionately likely to find themselves in part-time, casual or other non-standard work. This is particularly true for women. Those in non-standard work are unlikely to have access to pensions and health-related benefits. This has long-term consequences for the economic security of caregivers and has the effect of disadvantaging persons identified by family status, particularly as it intersects with the ground of sex. The OHRC reported these concerns in its submission to Ontario's social assistance review.¹⁸

A Status of Women Canada fact sheet on economic security¹⁹ also indicates that employees in caregiving roles, especially women, experience disadvantage in employment:

- In 2010, the average total time women spent caring for children under 5 was 6.5 hours per day, while men spent just over 3 hours.
- Employed women caregivers of elderly or ill loved ones are more likely than their male counterparts to report negative employment consequences or the need to make workplace adjustments as a result of their caregiving responsibilities.

Employees and job applicants experience prejudice and discrimination because of their family status and caregiving role. They might be perceived as less competent, committed, intelligent and ambitious than others. Female employees who are mothers might be passed over for promotions, learning opportunities and recognition. Lesbian, gay, bi-sexual and transgender persons might not be seen as having “real” families and related responsibilities. Inflexible, excessive, or unpredictable work hours may pose barriers to persons with caregiving responsibilities.

For more information, also see the OHRC’s publication, *The cost of caring: Report on the consultation on discrimination on the basis of family status.*²⁰

People with disabilities

People with disabilities, particularly people with mental health and addiction disabilities, experience significant socio-economic disadvantage and face unique challenges and barriers to employment.

Physical barriers and attitudinal barriers (ableism) affect the ability of people with disabilities to compete equally often excluding them from the job market. Once employed, people with disabilities may not be able to fully take part in the workplace due to stereotypes and prejudice, lack of accommodation and other forms of discrimination. Stigma, especially towards people with mental health and addiction disabilities, can make a workplace stressful and may trigger or worsen an employee’s condition.

In its 2011 consultation findings, *Minds that Matter*,²¹ the OHRC reported that when people with mental health disabilities do enter the workforce they are often relegated to low-wage jobs that result in cycling back and forth between social assistance and unstable work.

Unpublished data prepared by the OHRC, based on data from Statistics Canada’s 2012 Canadian Survey on Disability, show that:

- In 2011, 54% of Ontarians with mental health and addiction disabilities between the ages of 15 and 64, were not in the labour force, compared to 42.9% of people with other disabilities and 21% of people without disabilities

- The unemployment rate of Ontarians aged 15-64 with mental health or addiction disabilities in 2011 (22.6%) was more than twice as high as Ontarians with other disabilities (9%), and more than three times higher than Ontarians without disabilities (7.7%)
- In 2010, the median income of people with mental health and addiction disabilities was lower (\$21,565) than other people with disabilities (\$25,422) and people without disabilities (\$34,578)
- Many people with disabilities perceive they have experienced discrimination in employment, regardless of disability type. A higher proportion of Ontarians with mental health and addiction disabilities report workplace discrimination compared to Ontarians with other disabilities
- A greater proportion of people with mental health and addiction disabilities report that they require workplace accommodation (54.3%) than people with other disabilities (39%)
- Overall, over 70% of people with disabilities who requested accommodation received it

A 2012 report prepared by the Canadian Human Rights Commission based on Statistics Canada data also shows that:²²

- Proportionally more people with disabilities who work part time want to work full time compared to people without disabilities
- Proportionally fewer men with disabilities report that their job is “closely related” to their educational specialization than do men without disabilities.

The OHRC also heard during its public consultation on human rights and rental housing²³ that Ontario has no legislation requiring employers to provide benefits to part-time employees on a pro-rated basis and the practice of employers is mixed. The result is that many workers and their families are denied any protection from sudden loss of income due to disability, placing them at a much higher risk of needing social assistance or becoming homeless.

Older workers

The Code prohibits discrimination because of age defined as 18 years or more. Most claims of age discrimination in employment relate to older employees.

Ageism is a socially constructed way of thinking about people based on negative stereotypes and a tendency to structure society as though everyone is the same age. For example, older persons may experience age discrimination in employment where they are perceived to have less “career potential” than younger applicants or employees. Younger workers might be belittled and treated with less dignity because they are viewed as expendable resources.

Older workers should be assessed on their own merits instead of on presumed group characteristics and offered the same opportunities as everyone else in hiring, training

and promotion. They should normally work under the same performance management practices as every other worker. Where, however, an older person has in fact slowed down due to age-related health or disability concerns, an employer may have to provide some form of accommodation. Age should not be a factor in decisions about layoff or termination. The decision should be based on the person's actual merits, capacities and circumstances.

For more information see the OHRC's report, *Time for Action: Advancing Human Rights for Older Ontarians*,²⁴ as well as its *Policy on Discrimination against Older Persons because of Age*.²⁵

Indigenous peoples

The OHRC's Policy and guidelines on racism and racial discrimination²⁶ recognizes the long history of paternalistic and assimilationist policies and practices toward Indigenous peoples in Canada have had a devastating impact on their socio-economic rights. Many Indigenous persons experience profound disadvantage in all spheres of life including employment, housing, health and education.

The 2015 Summary Report of the Truth and Reconciliation Commission of Canada states that poor educational achievement has led to the chronic unemployment or under-employment, poverty, poor housing, substance abuse, family violence, and ill health that many former students of residential schools have suffered as adults.²⁷

The Canadian Human Rights Commission's Report on Equality of Aboriginal People²⁸ identifies that Aboriginal people have lower median after-tax income, are more likely to experience unemployment, and are more likely to collect employment insurance and social assistance benefits. The proportion of Aboriginal men holding permanent employment is lower than non-Aboriginal men. Proportionally less Aboriginal men than non-Aboriginal men had access to employer-sponsored pension plans and life/disability insurance.

Ontario's Human Rights Code protects Indigenous peoples from discrimination and harassment in employment. Similarly, article 17 of the United Nations Declaration of the Rights of Indigenous Peoples says that "Indigenous individuals have the right not to be subjected to any discriminatory conditions of labour and, inter alia, employment or salary." Article 21 recognizes that "Indigenous peoples have the right, without discrimination, to the improvement of their economic and social conditions, including in the areas of education, employment, vocational training and retraining, housing, sanitation, health and social security." It also says that "States shall take effective measures and, where appropriate, special measures to ensure continuing improvement of their economic and social conditions."

Racialized and religious communities

Ontario's Human Rights Code has prohibited racial discrimination for more than half a century. Yet racialized and Indigenous communities, including creed groups, continue to experience racism and related socio-economic disparity reflected in labour force statistics.

Statistics Canada's 2011 National Household Survey shows that unemployment rates for Ontarians age 15 and over were higher for individuals who identify as visible minorities²⁹ (10.5%) or who indicate their ethnic origin³⁰ to be First Nations (13.0%), Métis (10.2%) and Inuit (12.3%) compared to the overall population (8.3%).

For individuals who were in the labour force working full time, the median employment income was lower for visible minority (\$44,521), First Nations (\$43,876) and Métis (\$47,582) populations, though higher for the Inuit population (\$51,844), compared to the overall population (\$50,116).

Similarly, the prevalence of low income was higher for visible minority (20.1%), First Nations (21.9%), Métis (16.0%) and Inuit (16.5%) populations compared to the overall Ontario population (13.9%).

A report by the Canadian Centre for Policy Alternatives and The Wellesley Institute, *Colour Coded Labour Market*, makes similar findings.³¹ It examines the gap for racialized workers using Statistics Canada census data and confirms that despite years of unprecedented economic growth and an increasingly diverse population, racialized Canadians earn only 81.4 cents for every dollar paid to non-racialized Canadians. This income gap stems from disparities in the distribution of good-paying, more secure jobs. They have higher unemployment rates despite and the work they're able to attain is much more likely to be insecure, temporary, and low paying. During periods of economic growth, non-racialized Canadians make income gains while the income of racialized Canadians declined. The gaps persist for first and second generation racialized Canadians. The report makes the links between low-income jobs, the racialization of poverty, and the impacts both have on the health of racialized Canadians. The report also highlights some differences across different racialized groups.

Discrimination based on race and related grounds can overlap or "intersect" with various other forms of discrimination, including discrimination based on creed. Some studies suggest that people of certain religious backgrounds (Muslims in particular) are particularly vulnerable to low income and unemployment across generations, in spite of their generally higher education levels.³²

Foreign trained workers

The OHRC's Policy on eliminating the Canadian experience barrier³³ has raised concern that recent immigrants to Canada face high rates of both underemployment and unemployment.

Statistics Canada reported³⁴ that between 1991 and 2006, "the proportion of immigrants with a university degree in jobs with low educational requirements (such as clerks, truck drivers, salespersons, cashiers, and taxi drivers) increased." Even after being in Canada for fifteen years, "immigrants with a university degree are still more likely than the native-born to be in low-skilled jobs."

Responses to an OHRC survey prior to releasing its Policy showed that many newcomers turn to unpaid work (e.g. volunteering or internships) or "survival jobs" – low-skill work outside of their field of expertise – to meet the requirement for Canadian experience.

The Policy identifies a number of barriers immigrant groups experience in finding jobs that correspond to their education, skills and experience. These include: employers not recognizing foreign credentials and experience, arbitrary requirements for Canadian work experience, being seen as "overqualified" and outright discrimination.

The OHRC's position is that a strict requirement for Canadian work experience, education or training is discriminatory unless employers and regulatory bodies can meet the legal test for bona fide and reasonable requirements.

Migrant workers

Migrant workers are protected from discrimination under Ontario's Human Rights Code.

In 2014, the OHRC made a submission to the Office of the Independent Police Review Director about allegations that the Ontario Provincial Police had engaged in racial profiling when requesting DNA samples from migrant workers as part of a sexual assault investigation.³⁵ The OHRC was concerned that the migrant workers were disproportionately targeted because of racial stereotypes. The requests were coercive because migrant workers are vulnerable and rarely seek to assert their rights for fear of being sent home.

The OHRC also raised concern about discrimination on the basis of sex in recruitment for the Seasonal Agricultural Workers Program.³⁶ It had come to the OHRC's attention that employers in Ontario are hiring almost exclusively men to work on their farms as part of the Seasonal Agricultural Worker Program (SAWP). Research shows that each year, less than 4% of the workers that come to Ontario through the SAWP are women.³⁷

The Code applies to Ontario employers, including farmers who recruit temporary foreign workers through federal programs, including the Seasonal Agricultural Workers Program and administrators and recruiters who operate in Ontario. An employer cannot use an employment agency or administrator to hire employees based on preferences related to sex or other Code grounds unless these are genuine job requirements.

Negative impact of police records

In a 2015 submission to government, the OHRC raised concern about the negative impact police record checks can have on groups protected under Ontario's Human Rights Code, particularly Indigenous peoples and racialized communities and people with disabilities, causing a barrier to accessing employment, housing and other services.

A 2014 report by the John Howard Society of Ontario³⁸ found that young Ontarians from marginalized populations – Aboriginal peoples, racialized/immigrant communities, individuals with mental illness and addictions or developmental disabilities, etc. – are more likely to come into contact with the police and justice system, and thus, have a police record, which in turn is one of the most significant barriers to employment and employability. A 2014 report from the Canadian Civil Liberties Association raised similar concerns.³⁹

The government's intent to legislate standards for police record checks,⁴⁰ while important and necessary, will not be enough to address these concerns. Organizations have called for changes to Ontario's Human Rights Code to help support these objectives and bring a better balance to human rights, privacy, offender rehabilitation, crime prevention and public safety.

The OHRC has also raised concern about police perception of people with mental health disabilities and addictions, Indigenous peoples and racialized communities and how these perceptions impact on use of force and other interactions with these groups. The concerns extend to what information is collected about them; how it is used in policing; and, how all this may negatively impact these groups who subsequently undergo police record checks for employment or other purposes.⁴¹

EMPLOYMENT STANDARDS ACT

Non-standard work

The government's consultation guide shows that Ontario's workforce is changing and becoming even more diverse. However, these changes may be reinforcing historical disadvantage for certain groups.

The increase in non-standard working relationships such as lower pay temporary jobs, involuntary part-time work, and self-employment is negatively impacting vulnerable groups including Indigenous and racialized communities, women, youth and older workers, as well as persons with disabilities who are over represented in these types of jobs. The Employment Standards Act (ESA) does not necessarily treat these types of non-standard work the same.

Recommendation 1: In general, employment standards provisions should apply equally and proportionately to part-time, casual and temporary workers as much as possible where appropriate. Improvements to wage protection, hours of work, leaves and benefits, employment training, and minimizing exemptions, are all needed to address the adverse impact on vulnerable groups identified by grounds under the Human Rights Code.

This is important to meet the government's stated objectives of equity and workplace diversity. It can also help make sure non-standard work arrangements offer everyone viable options for balancing work and family responsibilities rather than hinder the standard of living for certain groups.

Wages / compensation

In its 2012 submission regarding the government's review of social assistance in Ontario, the OHRC relayed concerns that the current minimum wage is not a living wage; that women comprise a large portion of people who are working part-time, in many cases because of care-giving responsibilities; and that women in general are in great need of access to a decent living wage. Many have called for raising social assistance rates and the minimum wage to levels that would allow families to secure proper housing even in the private market. Others recommended improving mechanisms to help social assistance recipients transition from receipt of benefits to employment, or to reduce the deductions from other income received by people on social assistance.

The ESA provides for an adjusted minimum wage on an annual basis based on the Consumer Price Index.

Recommendation 2: The Ministry of Labour should continue to explore options for how the base minimum wage might better reflect the essential costs of living.

The OHRC has also heard of situations where employers will deduct the cost of disability related accommodation or other Code related accommodations from an employee's wages. Human rights law is clear that the duty to accommodate is borne by the organization responsible.

Recommendation 3: The ESA should expressly prohibit employers from deducting costs from employee wages respecting the duty to accommodate under the Human Rights Code.

Pay Equity

Section 42 of Ontario's ESA deals with equal pay for equal work but only based on sex. Saskatchewan's Employment Act⁴² provides broader protection. In addition to section 2-21(3) dealing with unequal pay based on sex, section 2-21(5) of that Act further provides that, "No employer shall pay an employee a different rate of pay on the basis of any prohibited ground, as defined in The Saskatchewan Human Rights Code, unless The Saskatchewan Human Rights Code permits the different rate of pay."

Section 4-6(4) of the Saskatchewan Employment Act also provides that an adjudicator, after conducting an appeal hearing and concluding a breach of section 2-21 has happened, may order remedies, including special and general damages, pursuant to the Saskatchewan Human Rights Code.⁴³

These provisions of that Act allows employment standards officers and arbitrators to deal with pay equity issues based on any ground of discrimination rather than having employees file complaints with the Saskatchewan Human Rights Commission.

Recommendation 4: Section 42 of the ESA on equal pay for equal work, which currently only applies based on sex, should be expanded to cover all prohibited grounds of discrimination in reference to Ontario's Human Rights Code.

Recommendation 5: The Ministry of Labour should consult on whether the ESA should expressly provide the Ontario Labour Relations Board with the power to order remedies respecting section 42 of the ESA, pursuant to section 45.2 and 45.3 of the Human Rights Code.

Exemptions

In 1986, an exception in the ESA that said people with disabilities could be paid less than minimum wage was repealed. However, in some cases this practice continues.

In *Garrie v. Janus Joan Inc.*, (2014 HRTO 272)⁴⁴ the Human Rights Tribunal of Ontario found that for many years an employer had paid an employee with a developmental disability less than minimum wage and less than other workers without disabilities for performing substantially similar work. The Tribunal ordered the employer to pay approximately \$162,000 in lost wages and \$25,000 for violation of the person's human rights. The Vice-chair who heard the case wrote that in his view, "workers who receive less than the statutory minimum wage tend to be members of disadvantaged groups in society, and often have Code ground-related personal characteristics, such as a disability or a lack of immigration status."

During its consultation into mental health discrimination,⁴⁵ the OHRC heard about situations where people with psychiatric disabilities and addictions were paid a nominal

amount, lower than minimum wage, for activities they did while they were in hospital. These types of programs might be exempt under section 3(5)6 of the current ESA which says that, “The Act does not apply... to an individual who performs work in a simulated job or working environment if the primary purpose in placing the person in the job or environment is his or her rehabilitation.”

People raised questions during the OHRC’s consultation about the point at which paid work done by consumer/survivors becomes employment that should be subject to the same standards as other work.

A survey⁴⁶ of adults with intellectual and developmental disabilities, who were benefit recipients under the Ontario Disability Support Program, indicated that 30% had worked for less than minimum wage during their lifetime. The authors of the study said it was not clear whether sheltered or alternative forms of paid work rather than a regular wage were being used as a bridge to employment, or if they are ongoing arrangements agreed to and/or preferred by some families and individuals.

The ESA and its regulations exclude some other groups completely from the Act, such as judges, politicians and inmates. Other employees, industries and occupations such as students, construction workers and certain professions have exceptions for some of the standards. Regulation 285/01,⁴⁷ for example, says that certain provisions of the ESA dealing with hours of work, overtime pay, minimum wage, public holidays and vacation with pay, do not apply to certain groups of workers such as lawyers, engineers, accountants, doctors, teachers, IT professionals, students, salespersons on commission, managers, gardeners and individuals employed on farms, etc.

Some of these exclusions might have implications under the Human Rights Code.

Recommendation 6: The Ministry of Labour should review all exceptions excluding particular groups of workers from the ESA having regard for the potential adverse effect on historically disadvantaged groups based on sex, place of origin, citizenship, Aboriginal or other ancestry, ethnic origin, race, etc., who are over represented in certain industrial or occupational categories such as domestic workers, migrant workers, agricultural workers and hunters and trappers.

Recommendation 7: In addition, employees may have a need for accommodation under the Human Rights Code based on their family status and creed, or other enumerated ground, that may intersect with ESA standards such as hours of work, public holidays and various leaves. Exceptions for excluding groups from the ESA as well as interpretive policies and education resources should be conceived, understood and explained in light of these Code related obligations.

Hours of work and eating periods

The ESA sets out standards for how many hours workers can work in a day or week (generally 8 hours per day or 48 hours a week), breaks (30 minutes after 5 hours), and when overtime must be paid (after 44 hours in a week), etc.

Part VII of the ESA provides some flexibility for exceeding the number of hours of work in a given period where both the employer and employee agree, with limitations. Part VIII allows for averaging hours of work over periods of a specified number of weeks, with limitations. These provisions may be particularly beneficial to employees who seek out such agreements because they have a need for accommodation because of their creed-based beliefs or practices in accordance with the Human Rights Code.

Section 20 under Part VII of the ESA has very little flexibility for eating periods. It requires that employees have a 30 minute break at least every five hours, or where the employer and employee agrees, two breaks totaling 30 minutes in each consecutive five hour period. This can potential cause a barrier for some employees based on creed, for example, where the employer might otherwise agree for an employee to accumulate breaks and leave early because they are fasting for religious observance.

Recommendation 8: Section 20 of the ESA should be amended to allow, where an employer and employee agree, for an employee to accumulate the required 30 minute break period(s) and take that time at the end of the working day if for reasons of accommodating creed-based beliefs or observances.

Public holidays and Sundays: Right to refuse work

The ESA sets out when workers can take a day off work with pay to observe a public holiday. There are nine public holidays including the two holidays that coincide with significant Christian days of worship: Christmas and Good Friday.

Under section 73(1) of the ESA, an employee working in a retail business establishment may refuse to work on a public holiday. Public holidays prescribed in the ESA include two significant Christian religious days of worship: Christmas and Good Friday.

Under section 73(2) of the ESA, an employee may also refuse to work on a Sunday. Section 10 of Regulation 285/01 further provides that:

- (1) Despite section 73 of the Act, an employee in a retail business establishment shall not refuse to work on a Sunday if he or she agreed, at the time of being hired, to work on Sundays.
- (2) Subsection (1) does not apply to an employee who declines to work on a Sunday for reasons of religious belief or religious observance.

(3) The employer shall not make an employee's agreement to work on Sundays a condition of being hired if the condition would be contrary to section 11 of the Human Rights Code.

The section 73 provisions of the ESA and related provisions under Regulation 285/01 are particularly beneficial to employees of Christian-based faiths: Christmas and Good Friday are significant annual days of worship that are also statutory public holidays; and, Sunday is the weekly day of worship.

Part X of the ESA provides flexibility for employees in certain types of workplaces who might seek to work on a statutory holiday in exchange for another day off. This flexibility is particularly beneficial for employees who, for religious reasons, might wish to work the statutory holidays of Christmas and Good Friday, in exchange for two other days off to coincide with their own significant days of worship.

However, the ESA does not appear to provide flexibility for employees of other creeds with weekly days of worship that do not coincide with the 'Sunday' provisions of the Act and regulations.

Recommendation 9: Section 73(2) of the ESA should be amended to allow an employee to refuse to work on any one day of the week, not just Sunday as the ESA currently provides, if for reasons of accommodating creed-based beliefs or observances. Section 10 of Regulation 285/01 should be amended accordingly.

In accordance with section 72(2) of the ESA, the provisions under section 73 do not apply with respect to a retail business that sells prepared meals; rents living accommodation; is open to the public for educational, recreational or amusement purposes; or sells goods or services incidental to these types of businesses.

In addition to the requirements of the ESA, under the Human Rights Code, an employer has a duty to consider and provide creed-based accommodation requests such as time off for religious observances, unless it would cause undue hardship.

Vacation leave

Section 35.2 of the ESA provides that vacation shall be a two-week period or two periods of one week each, unless the employee requests in writing that the vacation be taken in shorter periods and the employer agrees to that request.

Recommendation 10: The ESA, its regulations and/or interpretive policies and guides should clarify that employees may seek employer agreement that vacation time be taken in shorter periods and on specific dates in order to accommodate needs related to creed, family status or possibly other enumerated ground in accordance with the Human Rights Code, unless it would cause undue hardship.

Pregnancy and parental leaves

Under section 46(1) of the ESA, a pregnant employee is entitled to a leave of absence without pay unless her due date falls fewer than 13 weeks after she commenced employment.

Under the Human Rights Code, a woman has the right to equal treatment without discrimination in employment, among other areas, because she is or may become pregnant. Section 11 of the Code provides for an exception only if an employer can show a bona fide and reasonable requirement, and accommodating the person's needs would amount to undue hardship.

The OHRC wonders to what extent the minimum 13-week employment requirement in the ESA is bona fide and reasonable.

Recommendation 11: The Ministry of Labour should review and report on whether the 13-week restriction on pregnancy leave under section 46(1) of the ESA is bona fide and reasonable in accordance with the Human Rights Code and the related jurisprudence.

The ESA also entitles parents to take parental leave when a child is born or comes into their care, control and custody for the first time. Both parents may take parental leave.

The duty to accommodate under the Code operates alongside employment standards entitlements. For example, the Code may require employers to provide leaves of absence greater than those outlined in the ESA, where there is a valid pregnancy-related reason.

More information about the relationship between employment standards and human rights is available in the OHRC's Policy on preventing discrimination because of pregnancy and breastfeeding.⁴⁸

Family and personal emergency leaves

The ESA provides for various unpaid days off when an employee's family member has a serious medical condition or a crime-related death or disappearance of a child has occurred.

The ESA's personal emergency leave also allows for 10 unpaid days off because of the personal illness, injury or medical emergency of the employee or of their family member, which can include the death of that member or an urgent matter concerning that member. This leave, however, is limited to employees whose employer regularly employs 50 or more employees. In contrast, section 239 of the Canada Labour Code provides for sick leave with no minimum number of employees employed by an employer.⁴⁹

In addition to these minimum standards, employees and employers may have other rights and obligations under the Human Rights Code. Employees may be entitled to absences as part of the duty to accommodate disability, family status, and potentially other enumerated grounds under the Code.

Sometimes employees with disabilities have a need for a short-term absence from the workplace because of reasons related to their disability. For example, an employee might require time off for disability-related medical treatment or therapy, or because of an illness related to their disability. An employee might require long-term absences from work for reasons related to their disability as well. Employers, regardless of the number of workers they employ, have a duty to accommodate such disability-related absences under the Code unless it would cause undue hardship because of cost, health or safety.

The Code and human rights case law⁵⁰ do not prescribe any specific number of days absent that might amount to undue hardship. It will depend on the individual circumstances of the employee and their workplace.

The Code also prohibits discrimination by an employer who perceives an employee absent due to illness as having a disability whether or not in fact they do.

Nobody should lose their job or face reprimand for legitimately being away sick. It is also a matter of public health. The Ontario Medical Association has said that employers should encourage workers to stay home when sick and not require sick notes which has a discouraging effect and forces patients into the doctor's offices where germs can easily spread.⁵¹

While the family leave provisions of the ESA are generally limited to certain family members with serious medical conditions, the duty to accommodate family status under the Code is usually associated with caregiving responsibilities more broadly.

Family status is defined in the Code as being in a parent and child relationship⁵². The OHRC's Policy and guidelines on discrimination because of family status⁵² explains that Code protection also extends to persons providing eldercare for aging parents, or others in a "parent-type" relationship with the caregiver. It includes non-biological parent-and-child relationships, such as families formed through adoption, step-parent relationships, foster families as well as LGBTQ parents. It covers lone-parent and blended families, common-law partnerships and care relationships between adult children and people who stand in parental relationship to them.

Recommendation 12: The OHRC supports the 2012 recommendation of the Law Commission of Ontario to extend the personal emergency leave provisions to workplaces with fewer than 50 employees.

Recommendation 13: The ESA, its regulations and/or interpretive policies and guides should clarify that an "illness" or sickness need not be an "emergency",

nor need it be a disability, in order to qualify under personal emergency medical leave provisions.

Recommendation 14: A “personal urgent matter” should be added to the reasons for personal leave under section 50(1)1 of the ESA.

Recommendation 15: The list of individuals to which the various family leaves apply should be broadened in keeping with a progressive understanding of family status and family relationships emerging under human rights law. More specifically, the family related leaves should be available if the employee is the legal guardian of the individual, and/or the individual is in a relationship of social dependence with the employee, and/or is dependent on the employee for care or assistance, regardless of the individual’s age.

Other leave for Code related reasons

The ESA does not provide leave for other personal reasons beyond illness, medical emergency, death, disappearance or other urgent matters.

Yet under the Human Rights Code, employers may have to provide time off for other reasons such as broader caregiver responsibilities under the duty to accommodate family status as well as accommodation of creed based beliefs and practices, as discussed above.

Benefits

In Part XIII of the ESA, section 44(1) prohibits benefits plans that treat people differently because of age, sex or marital status except as prescribed by regulation.⁵³ Nothing in the legislation requires employers to provide benefits to employees whether employed on a full or part-time basis.

Section 25(2) of the Code says that benefit plans do not violate the equal treatment provisions of the Code with respect to age, sex, marital status or family status, as long as they comply with the ESA and its Regulations.

ESA Regulation 286/01 defines age as “any age of 18 years or more and less than 65 years” for the purposes of Part XIII of the Act. This means that pension and benefit plans that differentiate based on age 65 cannot be challenged under the Human Rights Code. The OHRC has publicly expressed its concerns regarding these provisions and recommended legislative change.⁵⁴

In *Talos v. Grand Erie District School Board*, a teacher whose benefits ceased upon reaching the age of 65 while still working alleges that the benefit scheme was discriminatory and contrary to the Code. The HRTO found that the Code does not prohibit discrimination in benefit plans with respect to employees who are over the age

of 65. However, However, Mr. Talos is challenging the constitutionality of subsection 25(2.1) of the Code. The Charter challenge is now before the HRTO and the OHRC is intervening.⁵⁵

Generally, employees should not find themselves disadvantaged in the provision of benefits as compared to other employees because of factors related to a prohibited ground of discrimination under the Human Rights Code.

In *Alberta Hospital Association v. Parcels*,⁵⁶ the Alberta Court of Queen's Bench found that, where an employer provided benefits to employees for health or disability-related absences, it was discriminatory not to provide similar benefits to employees who were absent for reasons related to pregnancy.

A Divisional Court decision, *Crook v. Ontario Cancer Treatment and Research Foundation*, confirmed a Board of Inquiry's decision that sick leave benefits should be available, for health-related reasons, to a woman who has recently given birth when she has chosen not to go on maternity leave under the ESA.⁵⁷

In a more recent case, the Supreme Court of Canada⁵⁸ upheld a British Columbia arbitration decision that found a provision of a collective agreement limiting birth mothers to wage "top-up" benefits available for pregnancy leave while denying them parental top-up benefits only available to birth fathers and adoptive parents for parental leave to be discriminatory.

Recommendation 16: The ESA, its regulations and/or interpretive policies and guides should clarify that an employee has the same right to the health and disability benefits given to other employees if the person is unable to work for health reasons related to the person's pregnancy and childbirth.

Recommendation 17: The ESA should provide that for employers that choose to offer employee benefits, if they are offered to full time employees, they shall also be offered to part-time employees at least on a pro-rated basis.

Compliance

An employee can file a complaint with the Ministry of Labour if they believe an employer has not complied with the ESA. An employment standards officer may investigate the complaint and may make orders against an employer. The Ministry of Labour has a number of other options to enforce the ESA and can order an employer to comply, to pay back monies, to reinstate or financially compensate a worker, and/or pay a fine. An order or a refusal to make an order can be reviewed by the Ontario Labour Relations Board.

The Ministry can issue an order, for example, if an employee is not given proper notice of termination or termination pay or severance pay under Part XV of the ESA. This part provides that employees have these entitlements even if they are constructively

dismissed. Protections for constructive dismissal are also found under the pregnancy and parental leave provisions of the ESA (failing to return someone to their job after leave). Constructive dismissal can in some cases involve discrimination under the Human Rights Code.⁵⁹

Section 74 of the ESA prohibits reprisal. It says employers, or anyone acting on their behalf, shall not intimidate, dismiss or otherwise penalize an employee or threaten to do so because the employee, for example, intends to take a leave, asks the employer to comply with the ESA, inquires about their rights, or files a complaint with the Ministry of Labour. Reprisal can also in some cases involve discrimination under the Code.

Employers might fail to comply with any part of the ESA and sometimes the reasons might amount to discrimination based on one or more enumerated grounds under the Human Rights Code. Employment standards officers should have regard for the Human Rights Code in these situations. The Ontario Labour Relations Board has the ability to consider and apply the Human Rights Code.

LABOUR RELATIONS ACT

The Labour Relations Act sets out, among other things, rules for the establishment of unions and bargaining rights; negotiation, content and operation of collective agreements; strikes; enforcement, including grievances and arbitration boards, powers of the Ontario Labour Relations Board (OLRB) and its officers to deal with complaints; as well as separate provisions for the construction industry.

Grievance arbitrators, the OLRB and its officers can interpret and apply the Human Rights Code, despite any conflict between the Code and the terms of the collective agreement. The courts have said that the substantive rights and obligations of the Code are deemed to be part of each collective agreement.⁶⁰ Both the Ontario Labour Relations Act and the Code may apply to a particular situation as the two laws are not mutually exclusive.⁶¹ The Code prohibits discrimination in employment as well as in vocational associations including trade unions.

Human Rights Code references

The LRA makes reference to the Human Rights Code in several provisions. Sections 15 and 134 provide that the OLRB shall not certify a union or accredit an employers' organization if the organization discriminates against any person contrary to the Human Rights Code or the Canadian Charter of Rights and Freedoms.

Similarly, with respect to the operation of a collective agreement, section 54 says a collective agreement must not discriminate against any person if the discrimination is contrary to the Human Rights Code or the Canadian Charter of Rights and Freedoms.

There is no such clause referencing the Code in the part of the ESA dealing with “contents of a collective agreement” (sections 45 through 52).

Recommendation 18: The Ministry should consider whether the part of the ESA dealing with “contents of collective agreements” might benefit from having an express requirement that collective agreements include, or at least be deemed to include, a provision prohibiting discrimination contrary to the Human Rights Code.⁶²

Also, under section 52(1) of the LRA, the OLRB can excuse an employee who may wish not to join a union or pay dues because of their religious conviction or belief provided that an amount equal to the dues is paid to a charitable organization.

Exemptions

As the Ministry of Labour’s consultation guide explains, similar to the ESA, the LRA also excludes several types of workers such as agricultural workers firefighters, and migrant who are covered by other labour relations legislation. Other excluded workers including domestic workers and professional groups such as architects and independent contractors are not covered by other labour relations legislation.

Recommendation 19: The Ministry of Labour should review all exceptions to the LRA having regard for the potential adverse effect on historically disadvantaged groups based on sex, place of origin, citizenship, Aboriginal or other ancestry, ethnic origin, race, etc., who are over represented in certain industrial or occupational categories such as domestic workers, migrant workers, agricultural workers and hunters and trappers.

Unfair practices

Sections 74 and 75 of the LRA provide that a union shall not act in a discriminatory manner in the representation or referral of employees.

Recommendation 20: The LRA should also provide that a union or an employer shall not act in a discriminatory manner in the establishment of bargaining rights by certification and negotiation of collective agreements.

The OHRC has raised concern in the past that strikes and other forms of job action may in some situations have an adverse effect on vulnerable groups identified by a ground of discrimination under the Code. In 2007, the OHRC published a fact sheet⁶³ taking the position that employers, employees and unions share responsibility to ensure strikes and work stoppages do not result in a denial of equal treatment to students with disabilities. The OHRC recommended the preparation of a contingency plan as a best practice to meet the needs of students with disabilities during a strike. Other situations

like picketing in front of group homes for seniors or persons with disabilities⁶⁴ may adversely affect the rights of these individuals as well.

Recommendation 21: The LRA should require the employer to prepare a contingency plan for ensuring the rights of persons with disabilities are not adversely affected because of their disability in the case of a strike or related job action.

Recommendation 22: Essential services agreement provisions under labour legislation in Ontario should have regard for adverse effect on vulnerable groups identified by prohibited grounds of discrimination under the Code.⁶⁵

EDUCATION AND TRAINING

Year after year over 70% of the complaints made to the Human Rights Tribunal of Ontario involve employment. This reinforces the need for all parties and the public to have access to education and training on the on the interrelationship of rights and obligations between the ESA, LRA and the Human Rights Code.

Recommendation 23: Employment standards officers, arbitrators and labour relations officers along with other staff and members of the OLRB and the Ministry of Labour should receive training (or augment existing training) specifically on:

- Ministry and OLRB responsibility to interpret and apply the Human Rights Code
- Employee rights and employer obligations with respect to freedom from discrimination and harassment and the duty to accommodate under the Code
- The complementary and hierarchical relationship of the Code with respect to the ESA and the LRA
- The nature of discrimination faced by groups identified by enumerated grounds under the Code; particularly the disadvantaged groups outlined in the second part of this submission.

Recommendation 24: The Ministry should develop education and training materials (or augment existing materials) for its staff and members of the OLRB as well as for employers and employees and the general public, with input from the OHRC.

¹ <http://www.ontario.ca/laws/statute/90h19>

² www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx

³ The Supreme Court of Canada has said that domestic law (which includes the Code and the Charter) should be interpreted to be consistent with Canada's international commitments (see *Baker v. Canada* (Minister of Citizenship and Immigration), [1999] 2 S.C.R. 817 at para. 69).

⁴ ICESCR Article 28: The provisions of the present Covenant shall extend to all parts of federal States without any limitations or exceptions.

⁵ See for example, Human Rights at Work, online: <http://www.ohrc.on.ca/en/human-rights-work-2008-third-edition>

⁶ Poverty Reduction Act: <http://www.ontario.ca/laws/statute/09p10>. Covenant Economic, Social and Cultural Rights has also commented about the high rates of poverty for marginalized people in Canada (see The United Nations Committee that oversees the International Concluding Observations of the UN Committee on Economic, Social and Cultural Rights, E/C.12/CAN/CO/5/ (2006) at paras 11(c), (f), 18, 20, 23 and 28).

⁷ <http://www.lco-cdo.org/en/vulnerable-workers-final-report>

⁸ See Fact Sheet: Economic Security, Status of Women Canada, online: <http://www.swc-cfc.gc.ca/initiatives/wesp-sepf/fs-fi/es-se-eng.html>

⁹ <http://www.ohrc.on.ca/en/human-rights-work-2008-third-edition>

¹⁰ <http://www.ohrc.on.ca/en/policy-preventing-sexual-and-gender-based-harassment-0>

¹¹ <http://www.ohrc.on.ca/en/policy-preventing-discrimination-because-pregnancy-and-breastfeeding>

¹² <http://www.ohrc.on.ca/en/backgrounder-%E2%80%93talking-about-gender-identity-and-gender-expression>

¹³ <http://www.ohrc.on.ca/en/policy-preventing-discrimination-because-gender-identity-and-gender-expression>

¹⁴ <http://transpulseproject.ca/research/workplace-discrimination-and-employment-challenges-for-trans-people-in-ontario/>

¹⁵ G. Bauer et al., Who are Trans People in Ontario? Trans PULSE e-Bulletin, 20 July, 2010, 1(1), online: Trans PULSE www.transpulseproject.ca.

¹⁶ **Trans** or **transgender** is an umbrella term referring to people with diverse gender identities and expressions that differ from stereotypical gender norms. It includes but is not limited to people who identify as transgender, trans woman (male-to-female), trans man (female-to-male), transsexual, cross-dresser, gender non-conforming, gender variant or gender queer. See OHRC policy online: <http://www.ohrc.on.ca/en/policy-preventing-discrimination-because-gender-identity-and-gender-expression>

¹⁷ <http://www.ohrc.on.ca/en/policy-and-guidelines-discrimination-because-family-status>

¹⁸ <http://www.ohrc.on.ca/en/ontario-human-rights-commission-submission-regarding-interim-reports-commission-review-social>

¹⁹ <http://www.swc-cfc.gc.ca/initiatives/wesp-sepf/fs-fi/es-se-eng.html>

²⁰ <http://www.ohrc.on.ca/en/cost-caring-report-consultation-discrimination-basis-family-status>

²¹ <http://www.ohrc.on.ca/en/minds-matter-report-consultation-human-rights-mental-health-and-addictions>

²² http://www.chrc-ccdp.ca/sites/default/files/rerpd_rdepad-eng.pdf

²³ Right at home: Report on the consultation on human rights and rental housing in Ontario:

<http://www.ohrc.on.ca/en/right-home-report-consultation-human-rights-and-rental-housing-ontario>

²⁴ <http://www.ohrc.on.ca/en/time-action-advancing-human-rights-older-ontarians>

²⁵ <http://www.ohrc.on.ca/en/policy-discrimination-against-older-people-because-age>

²⁶ <http://www.ohrc.on.ca/en/policy-and-guidelines-racism-and-racial-discrimination>

²⁷ http://www.trc.ca/websites/trcinstitution/File/2015/Exec_Summary_2015_06_25_web_o.pdf

²⁸ http://www.chrc-ccdp.gc.ca/sites/default/files/equality_aboriginal_report.pdf

²⁹ See Statistics Canada 2011 National Household Survey labour force and income characteristics by visible minority: <http://www12.statcan.gc.ca/nhs-enm/2011/dp-pd/dt-td/Rp-eng.cfm?LANG=E&APATH=3&DETAIL=0&DIM=0&FL=A&FREE=0&GC=0&GID=0&GK=0&GRP=1&PID=107749&PRID=0&PTYPE=105277&S=0&SHOWALL=0&SUB=0&Temporal=2013&THEME=95&VID=0&VNAMEE=&VNAMEF>

³⁰ See Statistics Canada 2011 National Household Survey labour force and income characteristics by ethnic origin: <http://www12.statcan.gc.ca/nhs-enm/2011/dp-pd/dt-td/Rp-eng.cfm?LANG=E&APATH=3&DETAIL=0&DIM=0&FL=A&FREE=0&GC=0&GID=0&GK=0&GRP=1&PID=107647&PRID=0&PTYPE=105277&S=0&SHOWALL=0&SUB=0&Temporal=2013&THEME=95&VID=0&VNAMEE=&VNAMEF>

³¹ http://www.wellesleyinstitute.com/wp-content/uploads/2011/03/Colour_Coded_Labour_MarketFINAL.pdf

³² For example, Peter Beyer's (2005) study shows that Muslim Canadians have the second highest

educational attainment in Canada (after Jewish Canadians), which is 10% above the Canadian average. Despite this, “Muslims quite clearly earn less for their level of education” (cited in Seljak et al., 2007). This appears to remain the case for well-educated second-generation Muslims (see also Model and Lin, 2002) study of 1991 census data, which reached similar conclusions; cited in Seljak et al. (2007). Model and Lin, 2002, p. 12 conducted a research study focusing on employment occupation and labour participation rates, and more broadly, “indicators of relative economic well-being of Canada’s religious minorities suggests that Muslims are the most handicapped, with Sikhs not far behind” (p.1083). Beyer, P. (2005). Religious Identity and Educational Attainment among Recent Immigrants to Canada: Gender, Age and 2nd Generation. *Journal of International Migration and Integration*, 6(2), 177-99.

³³ <http://www.ohrc.on.ca/en/policy-removing-%E2%80%9Ccanadian-experience%E2%80%9D-barrier>

³⁴ Statistics Canada, “Immigrants’ Education and Required Job Skills,” available online at:

www.statcan.gc.ca/pub/75-001-x/2008112/pdf/10766-eng.pdf

³⁵ http://www.ohrc.on.ca/en/news_centre/allegations-racial-profiling-migrant-workers-troubling-ohrc

³⁶ http://www.ohrc.on.ca/en/news_centre/position-statement-%E2%80%93discrimination-basis-sex-recruitment-seasonal-agricultural-workers-program

³⁷ See for example: Kerry Preibisch & Evelyn Encalada Grez (2013) Between hearts and pockets: locating the outcomes of transnational homemaking practices among Mexican women in Canada's temporary migration programmes, *Citizenship Studies*, 17:6-7, 785-802

³⁸ Help Wanted: Reducing Barriers for Ontario’s Youth with Police Record. John Howard Society of Ontario (2014): <http://www.johnhoward.on.ca/wp-content/uploads/2014/07/johnhoward-ontario-help-wanted.pdf>

³⁹ False Promises, hidden costs: The case for reframing employment and volunteer police record check practices in Canada. Canadian Civil Liberties Association (2014):

<http://www.ccla.org/recordchecks/falsepromises>

⁴⁰ http://www.ontla.on.ca/web/bills/bills_detail.do;jsessionid=c72d607930da6c666b2e8d6e4dfab97ac4c87f853489.e3eRb3iNcheNe34Sb3aRch0Qch50n6jAmljGr5XDqQLvpAe?locale=en&BillID=3416&isCurrent=false&ParlSessionID=

⁴¹ See OHRC submission to the Ombudsman’s Investigation into the direction provided to police by the Ministry of Community Safety and Correctional Services for de-escalating conflict situations (July 2014): <http://www.ohrc.on.ca/en/submission-ohrc-ombudsman%E2%80%99s-investigation-direction-provided-police-ministry-community-safety-and>. Also see, “OHRC praises jury recommendations in Jardine-Douglas, Klibingaitis and Eligon inquest, calls for action” (February 2014), online: http://www.ohrc.on.ca/en/news_centre/ohrc-praises-jury-recommendations-jardine-douglas-klibingaitis-and-eligon-inquest-calls-action. Also see OHRC’s Submission to the Ministry of Community Safety and Correctional Services on street checks (August 2015): <http://www.ohrc.on.ca/en/ohrc-submission-ministry-community-safety-and-correctional-services-street-checks>

⁴² <http://www.qp.gov.sk.ca/documents/English/Statutes/Statutes/S15-1.pdf>

⁴³ <http://www.qp.gov.sk.ca/documents/English/Statutes/Statutes/S24-1.pdf>

⁴⁴ <http://canlii.ca/t/g609z>

⁴⁵ See OHRC report, Minds that Matter: <http://www.ohrc.on.ca/en/minds-matter-report-consultation-human-rights-mental-health-and-addictions>

⁴⁶ Rosemary Lysaght, Jami Petner-Arrey, Virginie Cobigo, H el ene Ouellette-Kuntz. Work Preparation and Participation in Ontario for Persons with Intellectual and Developmental Disabilities – A Cross-Region Analysis.

Journal of Developmental Disabilities, Vol.20, No.2, 2014: http://www.oadd.org/docs/41018_JoDD_20-2_v10f_34-43_lysaght_et_al.pdf

⁴⁷ <http://www.ontario.ca/laws/regulation/010285>

⁴⁸ <http://www.ohrc.on.ca/en/policy-preventing-discrimination-because-pregnancy-and-breastfeeding>

⁴⁹ <http://laws-lois.justice.gc.ca/eng/acts/l-2/page-111.html#h-95>

⁵⁰ See for example, *Hydro-Qu ebec v. Syndicat des employ e-s de techniques professionnelles et de bureau d'Hydro-Qu ebec* 2008 SCC

⁵¹ <https://www.oma.org/Mediaroom/PressReleases/Pages/PleaseStayHome.aspx>

⁵² <http://www.ohrc.on.ca/en/policy-and-guidelines-discrimination-because-family-status>

⁵³ Regulation 286/01 under the ESA permits distinctions for benefit plans in accordance with the Pension Benefits Act; or, based on age, sex and marital status on an actuarial basis, in order to provide equal

benefits, to confer benefits to spouses and dependents, or in respect of contributions of an employee to a voluntary employee-pay-all plan: <http://www.ontario.ca/laws/regulation/010286>

⁵⁴ See the OHRC's Submission to the Standing Committee on Justice Policy on Bill 211, the Ending Mandatory Retirement Amendment Act, dated November 23, 2005: <http://www.ohrc.on.ca/en/bill-211-ending-mandatory-retirement-statute-law-amendment-act>

⁵⁵ <http://canlii.ca/t/g21ts>

⁵⁶ *Alberta Hospital Association v. Parcels* (1992), 17 C.H.R.R. D/167 at para. 23 (Alta. Q.B.)

⁵⁷ *Ontario Cancer Treatment & Research Foundation v. Ontario (Human Rights Commission)* (1998), 34 C.C.E.L. (2d) 56, 108 O.A.C. 289 (Ont. Div. Ct.); upholding *Crook v. Ontario Cancer Treatment & Research Foundation* (No. 3) (1996), 30 C.H.R.R. D/104 (Ont. Bd. of Inq.).

⁵⁸ *British Columbia Teachers' Federation v. British Columbia Public School Employers' Association*, [2014] 3 SCR 492, 2014 SCC 70 (CanLII).

⁵⁹ See for example, *Islam v. Big Inc. (Le Papillon on the Park)* 2013 HRTO 2009 (CanLII), <http://canlii.ca/t/g2bws>

⁶⁰ See for example *Parry Sound (District) Social Services Administration Board v. O.P.S.E.U., Local 324*, [2003] 2 S.C.R. 157 (Parry Sound).

⁶¹ OHRC publication *Human Rights at Work* (2008), Appendix B – Human rights in the workplace: which laws? <http://www.ohrc.on.ca/en/human-rights-work-2008-third-edition/appendix-b-%E2%80%93-human-rights-workplace-which-laws>

⁶² See for example section 25(1)2 of the Crown Employees Collective Bargaining Act: <http://www.ontario.ca/laws/statute/93c38#BK32>

⁶³ <http://www.ohrc.on.ca/en/equal-access-education-students-disabilities-during-strikes-fact-sheet>

⁶⁴ *Kacan v. Ontario Public Service Employees Union*, 2012 HRTO 1388 (CanLII), <<http://canlii.ca/t/fs2rr>

⁶⁵ See part IV of the Crown Employees Collective Bargaining Act: <http://www.ontario.ca/laws/statute/93c38#BK32>