

# THE CANADIAN CHARTER OF RIGHTS AND FREEDOMS ITS EFFECT ON THE CANADIAN AUTOMOBILE INSURANCE INDUSTRY

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*Equity is the correction of the law where it is  
defective by means of its universality.*

—Aristotle

## *Abstract*

*With the existence of the new Canadian Charter of Rights and Freedoms, it is expected that many of the present risk classification parameters used by the Canadian automobile insurance industry will be challenged. Whether these challenges occur in court or in political forums, industry spokespersons should be prepared to present cogent and relevant comments on the pertinent issues. This paper is specifically designed to assist such persons.*

## 1. INTRODUCTION

On April 17, 1982, Canada officially repatriated its constitution. Until that day, amendments to the constitution still technically required approval by the British parliament. It is now possible for Canada to amend its constitution unilaterally and internally.

Part of the repatriation process involved inclusion in the constitution of a new Charter of Rights and Freedoms (hereafter referred to as the Charter). The Charter has the potential to greatly affect the automobile insurance industry in Canada, particularly many of its presently accepted risk classification parameters (e.g., age, sex, and marital status).

Prior to the existence of the Charter, matters relevant to human rights usually found their way to provincial human rights commissions. The federal government, under John Diefenbaker, had passed a Bill of Rights in 1960, but it was given limited effect by the courts since it lacked the authority of a constitutional document.

Beginning in the early 1970's, the provincial governments amended their human rights codes to prohibit discrimination based on age, sex, and marital status. Prohibition against discrimination on the basis of race, religion, and various other factors had been in existence for some time.

Individual insurance contracts are generally subject to the sections of the provincial human rights codes prohibiting denial of services customarily available to the public or contracts offered to the public on the basis of the prohibited grounds for discrimination. Strictly speaking, individual insurance contracts have not come under the authority of federal legislation.

Some provinces specifically exempted insurance contracts from the discrimination provisions of their human rights codes within limits. For example, the Ontario Human Rights Code provides for limited exemptions "on reasonable and bona fide grounds because of age, sex, marital status, family status, or handicap." What is reasonable and bona fide obviously becomes the issue.

Unlike the provincial human rights codes, the Charter is not a statute; it is a part of Canada's constitution, and therefore, the supreme law of Canada. It is binding at both federal and provincial levels and overrides any statutes or laws to the extent that they are inconsistent with it.

At first, it might appear that as a result, the importance of the provincial human rights codes will fade significantly. In fact, just the opposite may be true. For reasons that will be explained in the next section, the Charter is not expected to apply to private contracts. For those transactions, rulings will still be made based on the provincial human rights codes. Because of the Charter, however, the power and extent of these provincial human rights codes may be broadened significantly.

For example, most provincial human rights codes specifically state that their rights apply only up to age 65. Because of the Charter, this restriction may be ruled invalid, extending the provincial codes' powers to all ages. It may also be possible to use the Charter to end the limited exemptions given to insurance contracts as previously mentioned.

In total, it is anticipated that for insurers, the provincial human rights codes will become more important and more contentious with the existence of the Charter. Present provincial human rights codes, as applicable to automobile insurance, have been summarized in Appendix A.

## 2. THE CHARTER

Three sections of the Charter are of prime importance to the general insurance industry.

### *Section 1—Rights and Freedoms in Canada*

The Canadian Charter of Rights and Freedoms guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.

### *Section 15 (1)—The Equality Section*

Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, color, religion, sex, age, or mental or physical disability. (Author's note: this is clearly not an exhaustive list.)

### *Section 32 (1)—Application of Charter*

The Charter applies

- (a) to the Parliament and government of Canada in respect of all matters within the authority of Parliament including all matters relating to the Yukon Territory and Northwest Territories; and
- (b) to the legislature and government of each province in respect of all matters within the authority of the legislature of each province.

Other sections (not original wording) that may prove to be significant are: Section 15 (2), which specifically allows for affirmative action programs; Section 28, which says that notwithstanding anything in this Charter, the rights and freedoms referred to in it are guaranteed equally to male and female persons; and Section 33 (1), which allows Parliament (federal) and provincial legislatures to override the Charter or opt out.

Some important points need expansion here. First, the Charter applies only to the Parliament and government(s) of Canada and matters on which they have legislative authority. Thus, the Charter should not apply to private contracts or transactions. Legal opinion and some early cases agree with this interpretation. Hence, private contracts (transactions) will still look to the provincial human rights codes for guidance on matters of discrimination.

For automobile insurance, however, the matter of jurisdiction by the Charter may be a debatable point. If the insurance is regulated by the government(s), or if approval of contract forms, rates, etc., is required in any way, then it will be argued that the Charter will apply to such contracts/transactions. Professor Peter W. Hogg, Q.C., in an opinion written for the Insurance Bureau of Canada ([7], page 7) stated:

“It is clear that an insurance company writing automobile insurance in a province in which there is no government participation in rate fixing is free of the Charter. But it is not clear what degree of governmental participation would be regarded as *bringing the Charter to bear*.”

That will be a matter for the courts to ultimately adjudicate.

Putting Section 15 (1) and Section 1 together, we see that any case will involve two levels of proof. First, one must show that one has been discriminated against. Second, one must show, or refute the defense, that the discrimination was beyond the reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society. Obviously, this leaves room for broad interpretation and will only be defined more clearly through judicial precedents.

It seems clear, however, that laws setting minimum ages for drinking, driving, and voting will have little chance of serious challenge. On the other hand, mandatory retirement and the use of age, sex, and marital status in setting automobile insurance rates are already being challenged as matters contrary to the Charter. It is expected that such cases will be allowed a final hearing in the Supreme Court. (The position with respect to risk classification for automobile insurance procedures will be discussed in detail later in the paper.)

Section 33 (1) would allow the provinces to declare an exemption for insurance contracts regardless of the Charter, but this would have to be done under the full glare of public scrutiny and should not be anticipated.

Finally, Section 28 seems to give special status to sexual equality. Section 28 was a late addition to the Charter and does not fit comfortably with the remainder of the document. It was inserted because of political pressure from the feminist lobby groups. Early opinion has it that the courts may not give this section as much weight as the feminists might hope. In particular, if one were to give a literal interpretation to Section 28, one would have to admit that Section 15 (2), which allows for affirmative action programs, would be inoperable and, in fact, meaningless. Thus, it is anticipated that, while Section 28 may give extra emphasis to sexual equality, its final interpretation will be as an integral part of the whole Charter.

In general, early cases indicate that the courts will give the Charter a broad interpretation attuned to changing circumstances as opposed to overly technical or literal interpretations. (In the words of Associate Chief Justice MacKinnon, "the letter killeth but the spirit giveth life.")

### 3. THE NEED FOR ADVOCATES

The Charter came into force on April 17, 1982, but the operation of Section 15 was postponed for three years to provide time for the various governments to make whatever changes were necessary to bring their laws into compliance.

While three years have come and gone, little of a substantive nature has occurred. Instead, the politicians seem to have decided to let many of the contentious issues be decided by the courts. There may be some wisdom in this ordering of events, as the courts could overturn legislation deemed to be inconsistent with the Charter anyway.

In this regard, both the politicians and the courts will be inviting the participation of industry experts. The remainder of this paper is devoted to identifying issues of which such experts should be aware in the hope of enhancing the industry's position; that is, that the disputed parameters should be allowed in automobile insurance risk classification.

### 4. A TWO-STAGE ISSUE

As referred to earlier, most issues will have to be approached in two steps. First, it has to be determined whether the guaranteed fundamental right or freedom has been infringed, breached, or denied. If the answer

to that question is yes, then it must be determined whether the denial or limit is a reasonable one demonstrably justifiable in a free and democratic society.

At first glance, one might assume that on matters relevant to risk classification, the industry's involvement will begin at stage two. I would argue that this assumption is seriously in error.

To say that the industry will not become involved until stage two is to imply that we have admitted that we discriminate. That in itself might prove to be a serious tactical error. While we realize that the word discriminate has a positive definition ("the power of observing differences accurately, or of making exact distinctions"), society has decided that the word discrimination means "to discriminate against." Hence, by going directly to stage two, the industry immediately places itself on the defensive.

Instead, it seems prudent to start by saying that our present risk classification methods are totally in agreement with the intent of the Charter. In doing so, one should differentiate between treating people equally and treating them the same. The Charter should not be construed to mean that people should be treated the same or that being treated the same leads to equality.

Two examples might help. Having a weight/height criterion for entering into a career treats everyone the same, but discriminates against females. Having a written test criterion for entering into a university treats everyone the same, but discriminates against the blind.

Feminists in Canada are presently lobbying for pay equity legislation which would require equal pay for work of equal value. No one has suggested that everyone be paid the same, only that there be pay equity. Similarly, the insurance industry is in favor of premium equity, which requires equal premiums for risks of equal cost. Surely anyone in favor of pay equity must agree with the philosophy of premium equity.

"Human rights should mean that everyone can enter a restaurant and get service. It should not mean that everyone has to order the same meal, nor pay the same price." ([8], page 10).

One must argue, then, that the present risk classification methods are in agreement with the Charter. These methods lead to economic equity which equates price and cost, and that equity is true equality. Treating people the same leads to superficial equality, but not true equality. Treating people equitably leads to true equality. With this argument, the industry places itself in total agreement with the Charter and starts on a truly positive basis.

Regardless of the acceptability of this argument, one must move along to address the stage two question. That is, whether or not our risk classification methods are deemed to be discriminatory, can they be “demonstrably justified in a free and democratic society?”

## 5. SECTION 1 ISSUES

### *Group Versus Individual Rights*

One of the toughest aspects of arguing a case under the Charter is the fact that the Charter is very much a document about individual rights. On the other hand, the essence of insurance is the concept of the pooling of risk and the law of large numbers.

In entering a discussion on this issue, it is wise to point out that the pooling concept of insurance preceded the private insurance corporations. Centuries ago, people striving for economic security formed fraternal and cooperatives, so that a defined contribution from each member of the group could be used to reimburse the small number who met with economic loss through fire, death, disability, etc.

In fact, the present risk classification methods have moved this primitive pooling concept from one of pure single factor grouping (if you are in the group you share equally in the risk) to one where, to the extent possible before the outcome is known, individuals are truly treated as individuals.

And perhaps that is the crux of the matter. Underwriters and actuaries must price insurance coverages (to enable the transfer of economic risk) before the outcome is known. Hence, each individual is assessed according to some predictive characteristics. These include not only the disputed characteristics like age, sex, and marital status but also characteristics like driving record, use of car, geographic location, etc., which

are not being disputed under the Charter. Underwriters get as much information on each individual as is economically feasible (risk classification will use finer and finer categories until the marginal cost of further refinement does not yield a corresponding increase of business to the seller) and then treat each individual truly as an individual. Underwriters also look for risk classification characteristics that are easy to ascertain and verify and are not subject to manipulation by the applicant. In this latter sense, age, sex, and marital status are preferred to variables such as miles driven.

At this time, one could also point out that the ultimate goal of those in favor of superficial equality is equality of outcome. It can be argued that the present risk classification methods, centering as they do on economic equity, also have as their goal equality of outcome, and, in that sense, we are in total agreement.

#### *Age, Sex, and Marital Status*

Many of the early discussions on the effect of the Charter on risk classification have centered on the issue of sex as a classification variable. This is partly because of the extra emphasis given to sexual equality in Section 28, but more likely because this is such an important political topic at this time. The discussion that follows will also center on sex, but the arguments presented apply equally as well to age and marital status.

The arguments with respect to the use of sex as a risk classification parameter usually center on whether one's sex *causes* the resultant risk profile or not. One may wish to argue that it is of little concern to the underwriter whether the risk profile is caused by the risk classification parameter or not; that, in fact, the underwriter is satisfied with correlations without cause and effect being necessary. For example, one can see a correlation between being in a hospital and mortality, but one would not conclude that being in a hospital *causes* one to die. However, the underwriter would claim that there is justification here to change one's risk class if one is presently in a hospital.

However, it would appear that the industry advocate may have to try to show that one's sex is, in fact, causal with respect to one's ultimate risk profile. It will be argued that the automobile insurance industry could use other classification parameters such as miles driven per year,

driving record convictions, or number of claims as a substitute for sex. In fact, however, the industry already does vary its rates based on these parameters and can show that sex differentials are still appropriate even after all other differences have been accounted for, as illustrated in Table 1.

TABLE 1

COMPARISON OF MALE, FEMALE ACCIDENT FREQUENCIES WITHIN  
MILEAGE BANDS

Annual Mileage Band	Number of Accidents/Driver (3 Year Accident Record)		Number of Accidents/100,000 Miles (3 Year Accident Record)	
	Male	Female	Male	Female
0-2,499	.163	.079	8.15	3.95
2,500-4,999	.268	.103	7.15	2.75
5,000-7,499	.223	.152	3.57	2.43
7,500-9,999	.229	.179	2.62	2.05
10,000-14,999	.271	.242	2.17	1.94
15,000-19,999	.319	.249	1.82	1.42
20,000-24,999	.345	.299	1.53	1.33
25,000-29,999	.353	.277	1.28	1.01
30,000-39,999	.350	.271	1.00	0.77
40,000-49,999	.430	.273	0.96	0.61
50,000+	.563	.318	0.94	0.53

Source: U.S. Department of Transportation, Federal Highway Administration (with California Department of Public Works), 1973

The Canadian automobile insurance industry has been aware of the controversy surrounding the risk classification system that uses disputed parameters such as age, sex, and marital status for at least a decade. Although the industry has extensively investigated alternative risk classification models, no satisfactory alternatives have yet been found ([8], page 15).

This opinion is supported by many independent studies and reports. For example, in the Report of the Alberta Automobile Insurance Board respecting factors of age, sex, and marital status in automobile insurance rating:

"We concluded that the research conducted by Ontario groups demonstrates that there are no variables capable of introduction to the system as true surrogates for the factors of age, sex, and marital status."

Further statistics can be cited. The 1983 Ontario Motor Vehicle Accident Facts Booklet shows a collision rate per 100 licensed drivers of 7.2 for male drivers of all ages and 3.3 for female drivers of all ages. Statistics from the TIRF [18] show that, in 1982, male drivers accounted for 60% of all traffic injuries in Canada and 75% of all traffic deaths. In 1982, 4 of every 5 drivers fatally injured in Canada were male and 2 of every 3 injured drivers were male. An Ontario Provincial Police survey of drivers charged with blood alcohol violations in the 1985 Christmas season showed that 94 per cent were male, and 30 per cent were single males under age 30 (the largest identified subgroup).

Similar statistics are shown for age in Table 2. Not only do young drivers have more collisions but, for the youngest drivers, the cost per accident is higher.

As to marital status, consider males aged 21 to 25. Those who are single have an expected accident frequency of 10.6 per every 100 cars insured while those who are married have a frequency of 8.8 accidents per 100 cars insured (source: Insurance Bureau of Canada).

Whether the parameter is age, sex, or marital status, the key to the argument is the same. That is, price should be a direct function of cost. An inevitable result is that equal risks are treated equally but unequal risks are treated unequally. The overriding criterion is economic equity which we argued earlier is a better attempt at true equality than the superficial equality that results from treating everyone the same.

In closing, one should mention that if the risk profile differences by sex, age, or marital status were to disappear over time (for whatever reason), the present risk classification methods would cause insurance rate differences to disappear also. That being the case, no specific legislation is required.

TABLE 2  
 ALBERTA  
 AGE AND SEX OF DRIVERS  
 INVOLVED IN SERIOUS COLLISIONS  
 1985

<u>Age of Driver (Years)</u>	<u>Number of Collisions per 1,000 Licensed Drivers</u>	
	<u>Male</u>	<u>Female</u>
Under 16	17.7	9.0
16-17	27.2	16.0
18-19	32.1	14.5
20-24	21.9	9.4
25-34	14.1	7.1
35-44	11.6	6.9
45-54	11.2	5.7
55-64	10.8	5.4
65+	10.6	5.6

Source: Alberta Traffic Collision Statistics,  
 1985

## 6. PUBLIC POLICY

While the question may not arise in a court proceeding, in many political forums the question of the ultimate effects of treating people the same (i.e., superficial equality) versus treating people equitably (i.e., true equality) may arise. This question is often asked by those concerned about social justice who feel that females have been "penalized" by our risk classification methods in the past and can now expect "the wrong to be righted."

Obviously, in a sex-neutral world, one would expect females to pay more for life insurance and automobile insurance but less for life annuities. While life insurance data are not available for Canada, it has been

estimated that for the United States, females would pay \$360 million more per annum for life insurance and \$700 million more per annum for automobile insurance. The Insurance Bureau of Canada has found that if automobile insurance pricing stratification in Canada based on sex were abolished, females would pay 48 percent more for their insurance, while young males would pay 12 percent less. In a free market society, however, it is difficult to predict the exact outcome.

Under the present philosophy, risk classification methods arrive at an equitable value for benefits provided to any individual. No significant subsidies consciously exist. As already pointed out, if the risk differences between males and females were to disappear over time, the price differential would disappear also. However, if we are forced to treat individuals with superficial equality instead of true equality (e.g., provide the same rates to males and females regardless of the inherent risk), then subsidies will exist in that some individuals will pay less than their expected costs and some will pay more.

Such a system can exist within closed groups where free market consumer options are not available. For example, it is possible for unisex pensions to be available in the Canada/Quebec Pension Plan. It is also possible for an employer to pay equal benefits to females and males in a closed-group defined benefit pension plan, as is presently the case for 93.7% of private plan members in Canada.

However, such a system cannot exist for long in a free market place without serious consequences. Basic economic theory tells us that those who see the market price as being less than their expected cost will buy more units. Those who believe the price to be too high will buy fewer units, choose larger deductibles, or otherwise attempt to self-insure (e.g., drive without insurance). In particular, females will move to purchase lower limits of liability protection, higher deductibles, or even refrain from driving. Some young males, finding their insurance now affordable, will drive more. The public policy effect of these shifts actually could be an increased number of accidents, since high risk drivers would be encouraged to drive while the class of drivers representing a lower risk profile would be discouraged from driving. Consequently, average losses will rise, and in the next round of price determination, so too will prices.

The end result of this spiral is that, in the long run, the market price will reach an equilibrium equal to the fair price for the poorest risk in the group, while all other potential users of the insurance mechanism (to transfer risk) will remove themselves from the market for economic reasons. For example, if unisex automobile insurance rates are required by law, those rates could ultimately reach a new equilibrium at the previously existing single male rates or the industry may just allocate all male risks to the residual market (the Facility Association). In short, there will be few winners and many, many losers.

## 7. CONCLUSION

This paper has presented the philosophical arguments that could be used in presenting the actuarial argument in favor of the continued use of certain disputed parameters such as age, sex, and marital status, in the pricing of automobile insurance in Canada. What has not been presented are the economic and mathematical arguments that might center on the issue of the optimality of the present risk classification system. As stated in the American Academy of Actuaries document, "Risk Classification Statement of Principles" [2]:

"There often is not a clear-cut optimal set of characteristics. Over time, in a perfectly competitive market, the optimal set of characteristics tends to emerge through the competitive mechanism. However, in practice, perfectly competitive markets are seldom achieved, and the risk characteristics commonly used reflect both observed fact and informed judgment."

Readers who have an interest in the mathematical optimality of competing risk classification systems, with imperfect information, are invited to read references [1], [5], [10], [12], and [19].

There is no doubt that the existence of the new Canadian Charter of Rights and Freedoms will lead to challenges to our present risk classification methods. Whether those challenges are in a court of law or in a political forum, the automobile insurance industry must be prepared with cogent and relevant arguments. We should also be seen to be proactive rather than reactive. It is the hope of the author that this paper will assist the Canadian industry in that regard.

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## APPENDIX A

PROVINCIAL HUMAN RIGHTS LEGISLATION RELEVANT TO AUTOMOBILE  
INSURANCE

## ALBERTA—THE INDIVIDUAL'S RIGHTS PROTECTION ACT

*Section 3*

"No person, directly or indirectly, alone or with another, by himself or by the interposition of another, shall

- (a) deny to any person or class of persons any accommodation, services or facilities customarily available to the public, or
- (b) discriminate against any person or class of persons with respect to any accommodation, services or facilities customarily available to the public,

because of the race, religious beliefs, color, sex, physical disability, ancestry or place of origin of that person or class of persons or of any other person or class of persons."

It should be noted that while there is no reference in Section 3 to discrimination by reason of age, the preamble to the Act does refer to age. It provides as follows:

"Whereas it is recognized in Alberta as a fundamental principle and as a matter of public policy that all persons are equal in dignity and rights without regard to race, religious beliefs, color, sex, physical disability, age, ancestry or place of origin . . ."

In 1985, the following provision was introduced allowing reasonable and justifiable contravention:

*Section 11.1*

"A contravention of this Act shall be deemed not to have occurred if the person who is alleged to have contravened the Act shows that the alleged contravention was reasonable and justifiable in the circumstances."

## BRITISH COLUMBIA—HUMAN RIGHTS CODE

Section 3 was amended in 1984 to read as follows:

*Section 3*

"No person shall

- (a) deny to a person or class of persons any accommodation, service or facility customarily available to the public, or
- (b) discriminate against a person or class of persons with respect to any accommodation, service or facility customarily available to the public

because of race, color, ancestry, place of origin, religion, marital status, physical or mental disability or sex of that person or class of persons unless the discrimination relates, in the case of sex, to the maintenance of public decency or, in the case of sex or physical or mental disability, to the determination of premiums or benefits under contracts of life or health insurance."

It will be noted that age is not a factor to be taken into account nor are sex and physical or mental disability insofar as life or health insurance is concerned.

## MANITOBA—HUMAN RIGHTS ACT

*Section 3(1)*

"No person shall

- (a) deny to any person or class of persons any accommodation, service, or facility customarily available to the public; or
- (b) discriminate against any person or class of persons with respect to any accommodation, service, or facility customarily available to the public,

unless reasonable cause exists for the denial or discrimination."

*Section 3(2)*

"For the purposes of subsection (1)

- (a) the race, nationality, religion, color, sex, age, marital status, physical handicap, or ethnic or national origin of a person does not constitute reasonable cause; and
- (b) the sex of any person does not constitute reasonable cause unless it relates to the maintenance of public decency."

*Section 7(1)*

"No person shall, in making available to any person, a contract that is offered to the public generally,

- (a) discriminate against any person; or
- (b) include terms or conditions in any such contract that discriminate against a person on the basis of race, nationality, religion, color, sex, age, marital status, physical handicap, ethnic or national origin of that person."

*Section 7(2)*

"No provision of Section 6 (which relates to discrimination prohibited in employment, advertising, etc.) or subsection (1) shall prohibit a distinction on the basis of age, sex, family status, physical handicap or marital status

- (a) of any employee benefit plan or in any contract which provides an employee benefit plan, if the Commission is satisfied on the basis of the guidelines set out in the regulations that the distinction is not discriminatory or that the employee benefit can be provided only if the distinction is permitted; or
- (b) in any contract which provides life insurance, accident and sickness insurance or a life annuity to a specified person where the contract is not part of an employee benefit plan, if the Commission is satisfied on the basis of guidelines set out in the regulations that the distinction is not discriminatory or that the insurance or annuity can be provided only if the distinction is permitted."

*Section 7(3)*

"Nothing in this Act prohibits a distinction on the basis of sex, age or marital status in any contract of automobile insurance offered or made available to the public under The Manitoba Public Insurance Corporation Act or The Insurance Act."

It will be noted that the Manitoba legislation does not prohibit the use of age, sex, or marital status in automobile insurance contracts.

Bill 47, The Human Rights Code, introduced on June 3, 1987, will bring substantial amendments to the present legislation. It will extend the elements of discrimination and retain "bona fide and reasonable" discrimination in several areas including life insurance and accident and sickness insurance.

## PRINCE EDWARD ISLAND—HUMAN RIGHTS ACT

*Section 2(1)*

“No person shall discriminate

- (a) against any individual or class of individuals with respect to enjoyment of accommodation, services and facilities to which members of the public have access; or
- (b) with respect to the manner in which accommodations, services and facilities, to which members of the public have access, are provided to any individual or class of individuals.”

*Section 2(2)*

“Subsection (1) does not prevent the denial or refusal of accommodation, services or facilities to a person on the basis of age if the accommodation, services or facilities are not available to that person by virtue of any enactment in force in the province.”

*Section 11*

“The provisions of this Act relating to discrimination in relation to age or physical or mental handicap do not affect the operation of any bona fide retirement or pension plan or any bona fide group or employee insurance plan.”

*Section 14(1)(d)*

Provides that Sections 2 to 13 do not apply to a refusal, limitation, specification, or preference based on a bona fide qualification.

## NOVA SCOTIA—HUMAN RIGHTS ACT

*Section 4*

“No person shall

- (a) deny to any individual or class of individuals enjoyment of accommodation, services and facilities, to which members of the public have access; or
- (b) discriminate with respect to the manner in which accommodations, services and facilities, to which members of the public have access, are provided to any individual or class of individuals,

because of the race, religion, creed, color or ethnic or national origin of the individual or class of individuals.”

*Section 11(A)(1)*

“No person shall deny to, or discriminate against, an individual or class of individuals, because of the sex of the individual or class of individuals, in providing or refusing to provide any of the following:

- (a) accommodation, services and facilities customarily provided to members of the public;
- (b) occupancy, or any term or condition of occupancy, of any commercial unit or self-contained dwelling unit;
- (c) transfer any property or interest in property;
- (d) employment, conditions of employment or continuing employment, or the use of application forms or advertising for employment, unless there is a bona fide occupational qualification based on sex.”

*Section 11(A)(2)*

“No person or agency included in Subsection 2 of Section 8 or Sections 9, 10 or 11 shall discriminate against an individual or class of individuals because of the sex of the individual or class of individuals or on account of marital status.”

## NEW BRUNSWICK—HUMAN RIGHTS ACT

*Section 5(1)*

“No person, directly or indirectly, alone or with another, by himself or by the interposition of another, shall

- (a) deny to any person or class of persons the accommodation, services, or facilities available in any place to which the public is customarily admitted, or
- (b) discriminate against any person or class of persons with respect to the accommodations, services, or facilities available in any place to which the public is customarily admitted

because of race, color, religion, national origin, ancestry, place of origin, age, physical disability, mental disability, marital status or sex.”

*Section 5(2)*

“Notwithstanding subsection (1), a limitation, specification, exclusion, denial or preference because of sex, physical disability or marital status shall be permitted if such limitation, specification, exclusion, denial or preference is based upon a bona fide qualification as determined by the Commission.”

Note the bona fide qualification related to sex or marital status in Section 5(2).

#### NEWFOUNDLAND—HUMAN RIGHTS CODE

##### *Section 7(1)*

“No person shall deny to any person or class of persons admission to or enjoyment of accommodation, services or facilities available in any place to which the public is customarily admitted by reason only of the race, religion, religious creed, sex, marital status, physical disability, mental disability, political opinion, color or ethnic, national or social origin of such person or class of persons.”

##### *Section 7(2)*

“Notwithstanding Subsection (1), a limitation, specification, exclusion, denial or preference because of physical disability, mental disability shall be permitted if such limitation, specification, exclusion, denial or preference is based upon a bona fide qualification as determined by the Commission.”

#### SASKATCHEWAN—HUMAN RIGHTS CODE

##### *Section 12(1)*

“No person, directly or indirectly, alone or with another, by himself or by the interposition of another, shall:

- (a) deny to any person or class of persons the accommodation, services, or facilities to which the public is customarily admitted or which are offered to the public; or
- (b) discriminate against any person or class of persons with respect to the accommodation, services or facilities to which the public is customarily admitted or which are offered to the public;

because of the race, creed, religion, color, sex, marital status, physical disability, age, nationality, ancestry or place of origin of that person or class of persons or of any other person or class of persons.”

##### *Section 12(2)*

“Subsection (1) does not apply to prevent the barring of any person because of his sex from any accommodation, services or facilities upon the ground of public decency.”

*Section 12(3)*

“Subsection (1) does not apply to prevent the denial or refusal of any accommodation, services or facilities to a person on the basis of age, if the accommodation, services or facilities are not available to that person by virtue of any law or regulation in force in the province.”

*Section 15(1)*

“No person shall, in making available to any person a contract that is offered to the public:

- (a) discriminate against any person or class of persons; or
- (b) include terms or conditions in any such contract that discriminate against a person or class of persons;

because of the race, creed, religion, color, sex, marital status, nationality, ancestry or place of origin of that persons or class of persons.”

## ONTARIO—THE HUMAN RIGHTS CODE

*Section 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, color, ethnic origin, citizenship, creed, sex, age, marital status, family status or handicap.”

*Section 3*

“Every person having legal capacity has a right to contract on equal terms without discrimination because of race, ancestry, place of origin, color, ethnic origin, citizenship, creed, sex, age, marital status, family status or handicap.”

*Section 21*

“The right under Sections 1 and 3 to equal treatment with respect to services and to contract on equal terms, without discrimination because of age, sex, marital status, family status or handicap, is not infringed where a contract of automobile, life, accident or sickness or disability insurance or a contract of group insurance between an insurer and an association or person other than an employer, or a life annuity, differentiates or makes a distinction, exclusion or preference on reasonable and bona fide grounds because of age, sex, marital status, family status or handicap.”

It should be noted that Section 21 has been interpreted by the Ontario court in favor of insurers with respect to automobile insurance. This decision is presently under appeal.

#### QUEBEC—CHARTER OF HUMAN RIGHTS AND FREEDOMS

##### *Section 10*

“Every person has a right to full and equal recognition and exercise of his human rights and freedoms, without distinction, exclusion or preference based on race, color, sex, pregnancy, sexual orientation, civil status, age except as provided by law, religion, political convictions, language, ethnic or national origin, social condition, a handicap or the use of any means to palliate a handicap.”

“Discrimination exists where such a distinction, exclusion or preference has the effect of nullifying or impairing such right.”

##### *Section 20*

“A distinction, exclusion or preference based on the aptitudes or qualifications required for an employment, or justified by the charitable, philanthropic, religious, political or educational nature of a non-profit institution or of an institution devoted exclusively to the well being of an ethnic group, is deemed non-discriminatory.”

##### *(Not Proclaimed)*

“[Similarly, under an insurance or pension contract, a social benefits plan or retirement, pension or insurance plan, or under a public pension or public insurance plan, a distinction, exclusion or preference based on risk determining factors or actuarial data fixed by regulation is deemed non-discriminatory].”

##### *Section 90 (Prior Legislation And Still In Force)*

“Sections 11, 13, 16, 17 and 19 of this Charter do not apply to pension plans, retirement plans, life insurance plans or any other plan or scheme of social benefits unless the discrimination is founded on race, color, religion, political convictions, language, ethnic or national origin or social condition.”

In 1982, the Charter was amended substantially and Section 90 was to be repealed and replaced by Section 20, second paragraph. This provision has not been proclaimed and Section 90 is still in force with respect to discrimination in insurance contracts.

