

SECTION: Procedure
2022

Effective date: October 8, 2014
Revised date: January 1,

SUBJECT: JURISDICTION – LEGISLATION

Purpose:

The Manitoba Human Rights Commission (“Commission”) can only act within the authority given to it by *The Human Rights Code* (“*The Code*”). This policy sets out circumstances in which the Commission does not have jurisdiction to consider a complaint about other legislation. Where there is any conflict between this policy and *The Code*, *The Code* will be followed.

Context:

The Code is paramount legislation, which means that it takes precedence over other laws (section 58). The Commission does not however have the power to strike down or declare ineffective a law that does not appear to comply with *The Code*.

The Manitoba Court of Appeal has held that allegedly discriminatory legislation must be challenged through the courts under section 15 of the *Canadian Charter of Rights and Freedoms*. In *Gale Estate v. Hominick* [1997] M.J. No. 154 (C.A.) (“*Gale*”), the Court expressly stated:

[...] Human Rights legislation does not create and does not pretend to create a mechanism to determine the validity of or to strike down allegedly discriminatory provincial legislation. In other words it is not a provincial Charter of Rights and Freedoms with the potential to limit the ability of the legislature to enact laws of general application. [...] [at paragraph 15]

In *Tranchemontagne v. Ontario (Director Disability Support)*, [2006] 1 S.C.R. 513, the Supreme Court of Canada considered *Gale* and clarified that a human rights statute is a quasi-constitutional document:

It has been described as quasi-constitutional, and as more important than all others (save for the constitutional laws), but it falls short of being a constitutional document entitling the Tribunal or the Courts to disallow legislation or require changes to it. [at paragraph 36].

Therefore although the Commission will not consider the validity of allegedly discriminatory legislation, it will continue to consider whether the actions of any “person” in applying the provisions of any law are discriminatory. For example, if an individual alleges a law is discriminatory, the Commission may consider if the complaint relates to the wording of the law itself or whether it relates to the interpretation or application of the law. In the latter case, the Commission’s investigation may consider whether the respondent’s actions in its interpretation or application of the law are discriminatory. Where a respondent has discretion in applying or interpreting the law, they must do so in accordance with human rights principles.

Where complaints solely take issue with the validity of allegedly discriminatory legislation, the Commission may dismiss the complaint without investigation under subsection 26(2)(c) of *The Code*, or following investigation under subsection 29(1)(c) of *The Code*.

APPROVED BY:

“John Burchill”
Chairperson

January 1, 2022
Date