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First Session, Forty-second Parliament,

64-65-66 Elizabeth II, 2015-2016-2017

**STATUTES OF CANADA 2017**

**CHAPTER 3**

An Act to prohibit and prevent genetic discrimination

**ASSENTED TO**

MAY 4, 2017

BILL S-201

**SUMMARY**

This enactment prohibits any person from requiring an individual to undergo a genetic test or disclose the results of a genetic test as a condition of providing goods or services to, entering into or continuing a contract or agreement with, or offering specific conditions in a contract or agreement with, the individual. Exceptions are provided for health care practitioners and researchers. The enactment provides individuals with other protections related to genetic testing and test results.

The enactment amends the *Canada Labour Code* to protect employees from being required to undergo or to disclose the results of a genetic test, and provides employees with other protections related to genetic testing and test results. It also amends the *Canadian Human Rights Act* to prohibit discrimination on the ground of genetic characteristics.

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**64-65-66 ELIZABETH II**

**CHAPTER 3**

An Act to prohibit and prevent genetic discrimination

[*Assented to 4th May, 2017*]

Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

Short Title

**Short title**

**1**This Act may be cited as the *Genetic Non-Discrimination Act*.

Interpretation

**Definitions**

**2**The following definitions apply in this Act.

***disclose*** includes to authorize disclosure. (*communiquer*)

***genetic test*** means a test that analyzes DNA, RNA or chromosomes for purposes such as the prediction of disease or vertical transmission risks, or monitoring, diagnosis or prognosis. (*test génétique*)

***health care practitioner*** means a person lawfully entitled under the law of a province to provide health services in the place in which the services are provided by that person. (*professionnel de la santé*)

Prohibitions

**Genetic test**

**3 (1)**It is prohibited for any person to require an individual to undergo a genetic test as a condition of

**(a)**providing goods or services to that individual;

**(b)**entering into or continuing a contract or agreement with that individual; or

**(c)**offering or continuing specific terms or conditions in a contract or agreement with that individual.

**Refusal to undergo genetic test**

**(2)**It is prohibited for any person to refuse to engage in an activity described in any of paragraphs (1)‍(a) to (c) in respect of an individual on the grounds that the individual has refused to undergo a genetic test.

**Disclosure of results**

**4 (1)**It is prohibited for any person to require an individual to disclose the results of a genetic test as a condition of engaging in an activity described in any of paragraphs 3(1)‍(a) to (c).

**Refusal to disclose results**

**(2)**It is prohibited for any person to refuse to engage in an activity described in any of paragraphs 3(1)‍(a) to (c) in respect of an individual on the grounds that the individual has refused to disclose the results of a genetic test.

**Written consent**

**5**It is prohibited for any person who is engaged in an activity described in any of paragraphs 3(1)‍(a) to (c) in respect of an individual to collect, use or disclose the results of a genetic test of the individual without the individual’s written consent.

**Exceptions: health care practitioners and researchers**

**6**Sections 3 to 5 do not apply to

**(a)**a physician, a pharmacist or any other health care practitioner in respect of an individual to whom they are providing health services; or

**(b)**a person who is conducting medical, pharmaceutical or scientific research in respect of an individual who is a participant in the research.

Offences and Punishment

**Contravention of sections 3 to 5**

**7**Every person who contravenes any of sections 3 to 5 is guilty of an offence and is liable

**(a)**on conviction on indictment, to a fine not exceeding $1,000,000 or to imprisonment for a term not exceeding five years, or to both; or

**(b)**on summary conviction, to a fine not exceeding $300,000 or to imprisonment for a term not exceeding twelve months, or to both.

R.‍S.‍, c. L-2

Canada Labour Code

**8 The *Canada Labour Code* is amended by adding the following after section 247.‍97:**

**DIVISION XV.‍3**

Genetic Testing

**Definitions**

**247.‍98 (1)**The following definitions apply in this Division.

***disclose*** includes to authorize disclosure. (*communiquer*)

***genetic test***, in relation to an employee, means a test that analyzes the employee’s DNA, RNA or chromosomes for purposes such as the prediction of disease or vertical transmission risks, or monitoring, diagnosis or prognosis. (*test génétique*)

**Genetic test**

**(2)**Every employee is entitled not to undergo or be required to undergo a genetic test.

**Disclosure of results**

**(3)**Every employee is entitled not to disclose or be required to disclose the results of a genetic test.

**Disciplinary action**

**(4)**No employer shall dismiss, suspend, lay off or demote an employee, impose a financial or other penalty on an employee, or refuse to pay an employee remuneration in respect of any period that the employee would, but for the exercise of the employee’s rights under this Division, have worked, or take any disciplinary action against or threaten to take any such action against an employee

**(a)**because the employee refused a request by the employer to undergo a genetic test;

**(b)**because the employee refused to disclose the results of a genetic test; or

**(c)**on the basis of the results of a genetic test undergone by the employee.

**Disclosure by third party**

**(5)**No person shall disclose to an employer that an employee has undergone a genetic test, or disclose to an employer the results of a genetic test, without the written consent of the employee.

**Collection or use**

**(6)**No employer shall collect or use the results of a genetic test without the written consent of the employee who has undergone the test.

**Complaint to inspector**

**247.‍99 (1)**An employee who alleges that an employer has taken action against the employee in contravention of subsection 247.‍98(4) may make a complaint in writing to an inspector.

**Time for making complaint**

**(2)**Subject to subsection (3), the complaint shall be made to the inspector not later than 90 days after the date on which the complainant knew, or in the inspector’s opinion ought to have known, of the action or circumstances giving rise to the complaint.

**Extension of time**

**(3)**The Minister may extend the period of time referred to in subsection (2) if the Minister is satisfied that a complaint was made in that period to a government official who had no authority to deal with the complaint but that the employee making the complaint believed the official had that authority.

**Inspector to assist parties**

**(4)**On receipt of a complaint made under subsection (1), an inspector shall endeavour to assist the parties to the complaint to settle the complaint or cause another inspector to do so.

**Where complaint not settled within reasonable time**

**(5)**Where a complaint is not settled under subsection (4) within such period as the inspector endeavouring to assist the parties pursuant to that subsection considers to be reasonable in the circumstances, the inspector shall, on the written request of the employee who made the complaint that the complaint be referred to an adjudicator under subsection (6),

**(a)**report to the Minister that the endeavour to assist the parties to settle the complaint has not succeeded; and

**(b)**deliver to the Minister the complaint made under subsection (1) and any other statements or documents the inspector has that relate to the complaint.

**Reference to adjudicator**

**(6)**The Minister may, on receipt of a report pursuant to subsection (5), appoint any person that the Minister considers appropriate as an adjudicator to hear and adjudicate on the complaint in respect of which the report was made, and refer the complaint to the adjudicator.

**Decision of adjudicator**

**(7)**An adjudicator to whom a complaint has been referred under subsection (6) shall

**(a)**consider whether the employer has contravened subsection 247.‍98(4) and render a decision on it; and

**(b)**send a copy of the decision with the reasons for the decision to each party to the complaint and to the Minister.

**Orders**

**(8)**If an adjudicator decides pursuant to subsection (7) that an employer has contravened subsection 247.‍98(4), the adjudicator may, by order, require the employer to cease contravening that subsection and may, if applicable, by order, require the employer to

**(a)**permit the employee to return to the duties of their employment;

**(b)**reinstate the former employee;

**(c)**pay to the employee or former employee compensation not exceeding the sum that, in the adjudicator’s opinion, is equivalent to the remuneration that would, but for the contravention, have been paid by the employer to the employee or former employee;

**(d)**rescind any disciplinary action taken in respect of the contravention and pay compensation to the employee, not exceeding the sum that, in the adjudicator’s opinion, is equivalent to any financial or other penalty imposed on the employee by the employer; and

**(e)**do any other like thing that it is equitable to require the employer to do in order to remedy or counteract any consequences of the contravention.

**Application of provisions**

**(9)**Subsection 242(2) applies to a complaint that has been referred to an adjudicator under subsection (6), sections 243 and 244 apply to an order of an adjudicator under subsection (8), and subsection 246(1) applies to an employee who makes a complaint under subsection (1), with any necessary modifications.

R.‍S.‍, c. H-6

Canadian Human Rights Act

**9 Section 2 of the *Canadian Human Rights Act* is replaced by the following:**

**Purpose**

**2**The purpose of this Act is to extend the laws in Canada to give effect, within the purview of matters coming within the legislative authority of Parliament, to the principle that all individuals should have an opportunity equal with other individuals to make for themselves the lives that they are able and wish to have and to have their needs accommodated, consistent with their duties and obligations as members of society, without being hindered in or prevented from doing so by discriminatory practices based on race, national or ethnic origin, colour, religion, age, sex, sexual orientation, marital status, family status, genetic characteristics, disability or conviction for an offence for which a pardon has been granted or in respect of which a record suspension has been ordered.

**10 (1) Subsection 3(1) of the Act is replaced by the following:**

**Prohibited grounds of discrimination**

**3 (1)**For all purposes of this Act, the prohibited grounds of discrimination are race, national or ethnic origin, colour, religion, age, sex, sexual orientation, marital status, family status, genetic characteristics, disability and conviction for an offence for which a pardon has been granted or in respect of which a record suspension has been ordered.

**(2) Section 3 of the Act is amended by adding the following after subsection (2):**

**Idem**

**(3)**Where the ground of discrimination is refusal of a request to undergo a genetic test or to disclose, or authorize the disclosure of, the results of a genetic test, the discrimination shall be deemed to be on the ground of genetic characteristics.

Coordinating Amendments

**Bill C-16**

**11 (1) Subsections (2) and (3) apply if Bill C-16, introduced in the 1st session of the 42nd Parliament and entitled *An Act to amend the Canadian Human Rights Act and the Criminal Code* (in this section referred to as the “other Act”), receives royal assent.**

**(2) On the first day on which both section 1 of the other Act and section 9 of this Act are in force, section 2 of the *Canadian Human Rights Act* is replaced by the following:**

**Purpose**

**2**The purpose of this Act is to extend the laws in Canada to give effect, within the purview of matters coming within the legislative authority of Parliament, to the principle that all individuals should have an opportunity equal with other individuals to make for themselves the lives that they are able and wish to have and to have their needs accommodated, consistent with their duties and obligations as members of society, without being hindered in or prevented from doing so by discriminatory practices based on race, national or ethnic origin, colour, religion, age, sex, sexual orientation, gender identity or expression, marital status, family status, genetic characteristics, disability or conviction for an offence for which a pardon has been granted or in respect of which a record suspension has been ordered.

**(3) On the first day on which both section 2 of the other Act and subsection 10(1) of this Act are in force, subsection 3(1) of the *Canadian Human Rights Act* is replaced by the following:**

**Prohibited grounds of discrimination**

**3 (1)**For all purposes of this Act, the prohibited grounds of discrimination are race, national or ethnic origin, colour, religion, age, sex, sexual orientation, gender identity or expression, marital status, family status, genetic characteristics, disability and conviction for an offence for which a pardon has been granted or in respect of which a record suspension has been ordered.

Published under authority of the Senate of Canada