MANITOBA HUMAN RIGHTS COMMISSION POLICY # L-17
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SECTION: Legislation Effective date: August 16, 2002

SUBJECT: CANADIAN EXPERIENCE OR CITIZENSHIP REQUIREMENTS

This policy is intended to assist in the understanding and application of *The Human Rights Code*. Where there is any conflict between this policy and the *Code*, the *Code* prevails.

Any requirement for "Canadian experience" is considered to be *prima facie* discriminatory, as indirect differential treatment based on nationality, or national or ethnic origin. As such, a respondent will be required to justify the rule or practice in accordance with the Supreme Court of Canada's directions in the *Meiorin* and *Grismer* decisions, as reflected in policies # and # respectively.

A *citizenship* requirement will also generally be considered *prima facie* discriminatory on the basis of nationality, or national or ethnic origin, or perhaps on other personal characteristics. Thus, the *Meiorin* analysis will be applicable. However, it will be necessary to be especially mindful of context. In this regard, the approach taken by the plurality of the Supreme Court of Canada in *Lavoie v Canada (2002)*, as set out in the decision of Bastarache J, is particularly helpful, both in determining if a citizenship preference is discriminatory, and (if so), whether it is reasonable in the circumstances.

One must particularly watch out for distinctions between, e.g., *laws* "defining the rights and duties of Canadian citizens…" and laws, rules and standards which are "…using citizenship as a proxy for merit…" A citizenship requirement that prohibits a complainant from entering a chosen profession is likely suspect: e.g. *Andrews v. Law Society of British Columbia*, where such a rule prevented an applicant from practising as a lawyer. On the other hand, citizenship limitations on access to positions in the federal public service (*Lavoie v. Canada)* or qualifications for jury duty (*The Queen v. Dudley Laws*) have been found to be reasonable.

APPROVED BY:

Original Signed By

"Janet Baldwin" 4 March 2004
Chairperson Date