

EMPLOYMENT AGREEMENT

This Employment Agreement (the "Agreement") is made effective the 23 day of August 2017

BETWEEN:

HER MAJESTY THE QUEEN IN RIGHT OF ALBERTA
AS REPRESENTED BY THE MINISTER OF
JUSTICE AND SOLICITOR GENERAL
(the "Employer")

- and -

WILLIAM D. McFETRIDGE
(the "Employee")

WHEREAS:

The Employer may select and appoint a person to be the Acting Chief of the Commission and Tribunals (the "Position") of the Alberta Human Rights Commission (the "Agency").

The Employee is a "designated executive" pursuant to the *Reform of Agencies, Boards and Commissions Compensation Act* ("RABCCA").

The Employer and the Employee agree to this fixed term Employment Agreement.

The Employer and the Employee agree as follows:

1. POSITION & TERM:

- 1.1. The Employer will employ the Employee in the Position.
- 1.2. The Employee will report to the Minister of Justice and Solicitor General (the "Minister") or the Minister's duly authorized designate.
- 1.3. Further to section 15 of the *Alberta Human Rights Act*, the Employee has been appointed by the Lieutenant Governor in Council as a member of the Alberta Human Rights Commission and has been designated by the Minister as the Acting Chief of the Commission and Tribunals pursuant to Ministerial Order 48/2017 (the "Ministerial Order"), which is attached as Schedule A to this Agreement.
- 1.4. Employment is subject to the condition precedent of appointment to the Position by the Employer. Employment will start on the effective date of the Ministerial Order and will continue until the end of the day on January 31, 2018 (the "Term") unless terminated earlier in accordance with this Agreement. This Agreement is for a fixed term and it will not be combined with any prior employment agreements between the Employer and the Employee to create a contract of indefinite duration.

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2. CONDUCT

- 2.1. The Employee will perform the 0.8 full-time equivalent (FTE) duties of the Position and all additional duties as directed by the Employer. The Employee will perform and discharge his duties in a manner which is in the best interests of the Agency and in accordance with its objectives as determined by the Minister.
- 2.2. The Employee agrees to devote his full-time attention and energies to the performance of his duties and to perform such duties faithfully, diligently and to the best of his abilities. The Employee will not be involved in any business or undertaking other than his employment under this Agreement except with the prior written approval of the Employer, which may be revoked in the sole discretion of the Employer.
- 2.3. The Employee agrees to comply with the *Code of Conduct For Members of the Commission (forming the Tribunal)* and any Supplemental Code of Conduct, and all other Acts, rules, regulations, directives and policies that the Employer may be subject to respecting the performance of the Position and/or the conduct of employees generally, including, but not limited to rules governing financial disclosure, conflict of interest and post-employment restrictions.
- 2.4. The Employee acknowledges that during the Term of this Agreement, his Position may be designated to be subject to provisions of the *Conflict of Interest Act* and, as a result, upon designation the Employee will comply with all obligations and requirements outlined in the *Conflict of Interest Act* and/or any regulations listed under that Act including obligations and requirements.

3. COMPENSATION:

- 3.1. The Employee will be paid a biweekly base salary of \$7,421.27 (the "Base Salary") less required deductions and withholdings, payable in accordance with the Employer's regular payroll services.
- 3.2. The Employee acknowledges and agrees that his Base Salary is subject to review and adjustment during the Term, in accordance with guidelines issued by the Employer, and in a manner that is consistent with RABCCA, the *Reform of Agencies, Board and Commissions Compensation Regulation* (the "Regulation") and any related amendments, directives and guidelines.
- 3.3. The Employee acknowledges and agrees that after the termination or expiry of this Agreement, his remuneration for continuing to act in the Position on an as needed basis and/or for acting as a member of the Alberta Human Rights Commission will be subject to the terms of the *Committee Remuneration Order*.

4. NO OTHER RIGHTS OR BENEFITS:

- 4.1. The Employee will not be entitled to any of the rights or benefits afforded to employees of the Public Service of Alberta, except as provided in this Agreement.

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5. BENEFITS:

- 5.1. The Employee is eligible for the following benefits, and the rules and requirements of the *Public Service Employment Regulation* will govern eligibility and entitlement:
- 5.1.1. Paid annual vacation leave of 30 days and vacation supplement of five (5) days
 - 5.1.2. Paid holidays and special leave
 - 5.1.3. Casual and general illness
 - 5.1.4. Approved leaves of absence
 - 5.1.5. Christmas Closure

6. BUSINESS EXPENSES:

- 6.1. The Employee may be reimbursed for reasonable business expenses incurred in the performance of his duties. Reimbursement of business expenses will be in accordance with the following:
- 6.1.1. Travel and subsistence equivalent to those provided in the *Public Service Relocation and Employment Expenses Regulation*; and
 - 6.1.2. Business expenses as provided in the *Travel, Meal and Hospitality Expenses Directive* (with the exception of section 3(2) of the directive), and subject to the *Public Disclosure of Travel and Expenses Directive*.

7. TERMINATION BY EMPLOYER:

- 7.1. The Employer may terminate this Agreement at any time by giving the Employee four (4) weeks' written notice.
- 7.2. In lieu of notice the Employer may, in its sole discretion, pay the Employee an amount equal to the Base Salary for the notice period or a combination of notice and payment in lieu of notice.
- 7.3. Upon receipt of notice or payment in lieu of notice of termination, the Employee agrees to sign a restrictive agreement and release that includes at least the following terms:
- 7.3.1. If, during the notice period, the Employee is employed or retained directly or indirectly through another entity on a fee for service basis by a Department (as defined in the *Public Service Act*), a Provincial Agency (as defined in the *Financial Administration Act*) a board, agency or corporation listed in section 2(5) of *Financial Administration Act*; or an entity where such employment or contractual arrangement is in violation of Part 2 of the *Public Service Act*, the Employee agrees to pay the Employer, the gross amount of Base Salary that was paid pursuant to Clause 3 plus any allowance paid for any benefits pursuant to Clause 5.1 of this Agreement, in addition to any penalty imposed by Part 2 of the *Public Service Act*.

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- 7.3.2. The Employee agrees that the conditions in this Clause are reasonable and agrees to accept the notice, or payment in lieu of notice, or any combination thereof in full satisfaction of any claims or actions, including complaints under the *Employment Standards Code* and the *Alberta Human Rights Act* that the Employee may have arising out the employment under or termination of this Agreement and the Employee expressly agrees not to make any claims, complaints or commence an action for any amounts beyond the amounts set out in this Agreement.
- 7.4. The common law duty to mitigate the loss of employment will apply and the Employee agrees to make good faith efforts to mitigate any loss of employment. Should the Employee be successful in mitigating the loss of employment, it may reduce the Employer's liability for terminating employment under this Clause 7.
- 8. TERMINATION BY EMPLOYEE:**
- 8.1. The Employee may terminate this Agreement by providing at least two (2) weeks' written notice to the Employer. If the Employee gives notice in accordance with this Clause, the Employer reserves the right to waive all or part of the notice period, in which case the Employee will be paid the Base Salary during the waived period.
- 8.2. This Agreement will automatically end on the death of the Employee and no notice or pay in lieu of notice will apply.
- 9. NEW AGREEMENT:**
- 9.1. In the event the Employee is reappointed, the Employee acknowledges that he may be subject to a new contract.
- 10. NOTIFICATION OF CRIMINAL CHARGE:**
- 10.1. The Employee agrees to give immediate written notice to the Employer if the Employee is charged with any offence under the *Criminal Code of Canada* and/or the *Controlled Drugs and Substances Act (Canada)* or charged with an offence under provincial or municipal legislation.
- 11. EMPLOYER POLICIES AND PROCEDURES:**
- 11.1. The Employee will be subject to the policies and procedures of the Employer and Agency, currently in place or as may be established from time to time, except to the extent of any conflict with the provisions of this Agreement. In the event of a conflict between this Agreement and the policies and procedures of the Employer and Agency, the Agreement governs.
- 12. MATERIALS:**
- 12.1. All files, forms, correspondence, memoranda, documents, manuals, software, electronic records and other materials pertaining to or used in connection with the business of the Agency, other than publicly available materials, (the "Materials") which come into the Employee's possession or control during his employment will, at all times, be and remain the property of the Employer.

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12.2. The Employee will not make for her own use or for the use of anyone else, copies or reproductions of the Materials. The Employee, or his estate representative, will return all Materials upon the termination of this Agreement, however caused.

13. CONFIDENTIAL INFORMATION AND TRADE SECRETS:

13.1. Any confidential information or trade knowledge acquired or created by the Employee in the performance of this Agreement, or any prior employment agreement with the Employer (the "Confidential Information"), will not be used or disclosed to anyone unless release is specifically approved by the Employer. Any benefits resulting from the development of the Confidential Information will accrue to the Employer and will be held in trust by the Employee for the Employer. For the purposes of this Agreement, Confidential Information includes any information, whether in writing or not, which is not generally known to the public, and which could, if used, communicated or divulged, cause damage or embarrassment, loss of reputation, or other harm to the Employer.

13.2. This duty not to release Confidential Information is in addition to the common law duty of confidentiality.

13.3. The Employee acknowledges and agrees that his obligations of confidentiality owed to the Employer will survive the termination of this Agreement.

14. OWNERSHIP OF INTELLECTUAL PROPERTY:

14.1. All rights, title and interest in and to all intellectual property that may be conceived, created or developed during the course of employment of the Employee with the Employer (the "Intellectual Property") will belong solely to the Employer.

14.2. The Employee hereby waives his moral rights in any and all copyright works authorized or coauthored by the Employee in the performance of his duties and obligations under this Agreement, and will execute a written waiver of moral right in any copyright works authored or coauthored by the Employee immediately upon request of the Employer.

14.3. The Employee will execute such assignment and other documents as are required by the Employer to transfer all right, title and interest in and to all Intellectual Property to the Employer. In the event that the Employee fails to execute such assignment and other documents within ten (10) business days after a written request from the Employer, the Employee hereby appoints the Employer as the Employee's attorney to execute such assignment and other documents on behalf of the Employee.

14.4. The Employee will cooperate and render all assistance as may be reasonably requested by the Employer with respect to any applications, filings, or actions in relation to the Intellectual Property, including any applications for letters patent or for copyright or trade-mark registration, and any legal action or potential legal action which relates to the Intellectual Property. The Employer will reimburse the Employee for all reasonable expenses for such cooperation and assistance.

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15. INJUNCTIVE RELIEF:

- 15.1. The Employee acknowledges the value of the confidential information as defined in Clause 13.1 to the Employer and the Agency and that any material breach or threatened breach of any of the provisions contained in Clause 13 by the Employee may cause material and irreparable harm to the Employer and/or the Agency which may not be reasonably or adequately compensated for by damages in an action at law.
- 15.2. The Employee therefore agrees that in the event of a breach or threatened breach of any of the provisions of Clause 13, the Employer shall be entitled to an injunction to prevent breaches of the Agreement, in addition to any other remedy it may be entitled to at law and in equity.

16. NOTICE OF PUBLICATION:

- 16.1. The Employee agrees that this Agreement and any records and information created or collected pursuant to the Employee's employment (including but not limited to the Employee's name, classification, salary, benefits or employment responsibilities) may be disclosed by the Employer or the Agency. Decisions about disclosure are in the Employer's sole discretion and are subject to law of policy of the Government of Alberta including, but not limited to, the *Public Sector Compensation Transparency Act*.

17. ENTIRE AGREEMENT:

- 17.1. This Agreement, including any payroll records, policies, programs or other interpretive materials referred to herein, sets forth the entire Agreement between the parties with respect to its subject matter and replaces any previous discussions, agreements and understandings of every kind and nature between them with respect to the employment of the Employee by the Employer and neither party will be bound by any term or condition other than as expressly set forth or provided for in this Agreement.
- 17.2. The parties acknowledge and agree that there are other enactments, administrative directives and Orders in Council, which also impose duties and obligations on the parties and which may be amended from time to time without notice to the Employee. In the event of a conflict between this Agreement and any enactments, administrative directives and Orders in Council, the enactments, administrative directives and Orders in Council govern.
- 17.3. Acts, regulations, directives, codes, policies, authorities and guidelines referred to into this Agreement, may be amended, repealed or replaced from time to time without notice to the Employee.

18. SURVIVAL OF TERMS:

- 18.1. Despite any other provision of this Agreement, those clauses which by their nature continue after the conclusion or termination of this Agreement will continue after such conclusion or termination, including:
- 18.1.1. Clause 3.3 Compensation After Expiry or Termination of Agreement
 - 18.1.2. Clause 7 Termination by Employer
 - 18.1.3. Clause 12 Materials

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- 18.1.4. Clause 13 Confidential Information and Trade Secrets
- 18.1.5. Clause 14 Ownership of Intellectual Property
- 18.1.6. Clause 15 Injunctive Relief
- 18.1.7. Clause 16 Notice of Publication

19. AMENDMENT:

- 19.1. The parties may by mutual agreement make written amendments to the terms of this Agreement.

20. SEVERABILITY:

- 20.1. If a term of this Agreement is held to be invalid, illegal or unenforceable, that term is deemed to be severed and the remaining terms of this Agreement continue to operate.

21. WAIVER:

- 21.1. The failure of either party to this Agreement to enforce any of its terms, provisions or covenants will not be construed as a waiver of the same or of the right of such party to enforce the same. Waiver by either party hereto of any breach by the other party of any terms of provisions of this Agreement will not operate as a waiver of any other breach or default.

22. NOTICES, APPROVALS and REQUESTS:

- 22.1. Notices, approval and requests referred to in the Agreement will be in writing and, if under Clauses 7, 8, 9, 10, and 13 will be personally delivered or sent by recorded mail to the Employer or Employee at the address provided below:

To the Employer: Office of the Minister of Justice and Solicitor General
10800 – 97 Avenue
Edmonton, AB T5K 2B6

To the Employee:

and are deemed to have been given as follows:

- 22.1.1. If personally delivered, upon delivery; or
 - 22.1.2. If by recorded mail, on the third day after mailing.
- 22.2. All other notices, approvals and requests under this Agreement that are not referred to by Clause 22.1 may be given in accordance with Clause 22.1 or by email and are deemed to have been given after 72 hours from sending.
 - 22.3. The contact information for notices, approvals and requests may be changed by a notice to the other party.

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23. INDEPENDENT LEGAL ADVICE:

- 23.1. The Employee hereby acknowledges and confirms that he was advised by the Employer to obtain independent legal or other professional advice and that by executing this Agreement, the Employee hereby confirms that he had the opportunity to seek independent legal or professional advice prior to executing this Agreement and has either obtained such legal or professional advice; or waived the right to obtain such independent legal or professional advice.

24. JURISDICTION:

- 24.1. This Agreement will be interpreted in accordance with the laws in force in the Province of Alberta. The parties agree to submit and attorn to the jurisdiction of the courts of the Province of Alberta.

25. HEADINGS:

- 25.1. The section headings in this Agreement have been included for convenience only and they do not define, limit or enlarge the scope or meaning of this Agreement or any part of it.

26. SINGULAR/PLURAL:

- 26.1. In this Agreement words in the singular include the plural and words in the plural include the singular.

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27. COUNTERPARTS:

27.1. This Agreement may be executed in any number of counterparts or by facsimile, each of which will be deemed an original and all of which together will constitute one and the same agreement.

This Agreement is effective as of the date and year first above written.

EMPLOYEE:

Printed Name _____
Signature _____
Date August 22, 2017

WITNESS:

Printed Name _____
Signature _____
Date AUGUST 22, 2017

EMPLOYER:

Deputy Minister and Solicitor General
Signature _____
Date August 24, 2017

Printed Name _____
Signature _____
Date August 24, 2017

Compliance with the provisions of the Reform of Agencies, Boards and Commissions Compensation Regulation confirmed by:

Public Agency Secretariat:

Deputy Minister and Public _____
Signature _____
Date Sept 5, 2017

Printed Name _____
Signature _____
Date Sept 5/17

