



CANADIAN HUMAN
RIGHTS COMMISSION

Your Guide to Understanding the *Canadian Human Rights Act*

Rights - Responsibility - Respect



Canada



NATIVE WOMEN'S
ASSOCIATION OF CANADA
L'ASSOCIATION DES FEMMES
AUTOCHTONES DU CANADA

The Commission acknowledges the important contribution of the Native Women's Association of Canada in the production of this guide.

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Note: All complaint-related inquiries will be transferred to the Commission's national office

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DISCLAIMER: This is an informational document and should not be considered as legal advice. This is not an official version of the *Canadian Human Rights Act*. The law is described here in clear language to make it more accessible to the general public.



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Discrimination: what can you do about it?

Has discrimination affected you? What can you do about it? This guide explains what discrimination is, how the law prohibits it, and what to do if someone discriminates against you. The guide deals with the federal *Canadian Human Rights Act* (the **Act**)—not with provincial or territorial laws.

At the end of this guide is a glossary that explains certain words. Those words are in **bold** in the guide.

What is discrimination?

Discrimination is an action or a decision that results in the unfair or negative treatment of person or group because of their race, age, religion, sex, etc. Some types of discrimination are illegal under federal and provincial human rights laws. If you are the victim of discrimination under the **Act**, you can file a **complaint** with the Canadian Human Rights Commission (the **Commission**).

Is your case federal or provincial?

Canada's Constitution splits legal responsibility, or jurisdiction, between the federal and the provincial or territorial governments. The federal government regulates some employers and service providers, such as banks and airlines. They are described in the glossary under the entry for "**federally regulated**."

Provinces and territories regulate other businesses and service providers and have their own human rights laws. If your case involves provincial or territorial law, the guide lists the provincial and territorial agencies to contact—see page 15.

Indians and lands reserved for Indians are **federally regulated**. But not every organization run by First Nations people or located on a reserve is **federally regulated**. For example, a band office is **federally regulated**, but a gas station or a corner store on a reserve is regulated by the provincial or territorial government. A **complaint** against the gas station or corner store would be handled by the provincial or territorial human rights commission under its own human rights laws.

To find out if your case is federal or provincial, talk to a **human rights officer** at the **Commission**. They will direct you to the right place.





What does the Act say about discrimination?

Grounds of discrimination

Section 3 of the **Act** makes it illegal for **federally regulated** employers and service providers to discriminate against people, or treat them unfairly, based on the following **grounds**:

- ☼ race
- ☼ national or ethnic origin
- ☼ colour
- ☼ religion
- ☼ age
- ☼ sex
- ☼ sexual orientation
- ☼ marital status
- ☼ family status
- ☼ disability
- ☼ a conviction for which you have been granted a pardon.

To see the **Act**, go to <http://laws.justice.gc.ca/eng/H-6/index.html>.

Examples of discrimination under the Act

- ☼ You apply for Band membership, but the band refuses because you are a woman (sex).
- ☼ You apply for a loan, but the bank refuses because you are Aboriginal (race, national or ethnic origin, colour).
- ☼ A Band Council refuses to hire you because you are from another First Nation (national or ethnic origin).
- ☼ You are fired from your job because you become pregnant (sex).
- ☼ You are fired because your boss doesn't like someone in your family (family status).
- ☼ You are fired because you failed a random drug test at work (disability).

But if you just don't get along with your boss, that does not mean there is discrimination. If you think there may be discrimination, talk to a **human rights officer** from the **Commission** to learn more.



Discriminatory practices

The **Act** forbids the following **discriminatory practices** —if they are based on one of the **grounds of discrimination**:

- ☀ Denying someone goods, services, facilities, or accommodation (Section 5).
- ☀ Refusing to employ or continue to employ someone or treating them unfairly in the workplace (Section 7).
- ☀ Following policies or practices that deprive people of employment opportunities (Section 10).
- ☀ Paying men and women differently when they are doing work of the same value (Section 11).
- ☀ Communicating hate messages on the telephone or through the Internet (Section 13).
- ☀ Harassing someone (Section 14).
- ☀ Retaliating against a person who has filed a **complaint** with the Commission or someone who has filed a **complaint** for them (Section 14.1).

Harassment: a common discriminatory practice

Harassment occurs when someone:

- ☀ offends or humiliates you physically or verbally.
- ☀ threatens or intimidates you.
- ☀ makes unwelcome remarks or jokes about your race, religion, sex, age, disability, etc.
- ☀ makes unnecessary physical contact with you, such as touching, patting, pinching or punching—this can also be assault.

Employers are responsible for any harassment in the workplace and they must take appropriate action against any employee who harasses someone else. Workplaces should have an anti-harassment policy, which employees can ask to see.





What can you do if you are harassed?

Report it to your employer—don't ignore it. If you fear for your safety, or the safety of others, contact the police. Tell the person harassing you that their actions are unacceptable.

If you are harassed at work, tell the contact person listed in your employer's anti-harassment policy. If they don't help you, find out if there is a company grievance procedure to help you or contact your union representative. Document your case—keep a written record of the incidents, including times, places and witnesses.

If a service provider harasses you, complain to the management of the service provider.

Duty to accommodate in employment and service delivery

Sometimes, employers must take necessary steps to make it possible for people to work. This is called the **duty to accommodate**. For example, employers have to give pregnant women maternity leave. They also have to let people observe their religious holidays. Employers have a **duty to accommodate** only when an employee needs a change or modification, based on one of the **grounds of discrimination**.

Businesses or organizations that are **federally regulated** are required by law to accommodate when they provide services to the public, for example, by making wheelchair access available to people with disabilities.

If you have special circumstances that may require your employer to accommodate your needs under Subsection 15(2) of the **Act**, you should:

- ☀ Tell your employer how your special circumstances may affect your work.
- ☀ Give enough information about your special circumstances to your employer to justify the change.
- ☀ Discuss with your employer ways to make it easier for you to do your job.



Andrea's story

Andrea is a member of the Spruce Tree First Nation and has worked for the Band council as a bookkeeper and administrator for seven years. The Band council told Andrea that they would fire her because of her poor attendance, moodiness, and angry behaviour when she drinks. Andrea believed the Band council was discriminating against her on the ground of disability. She suffers from depression every September, which is the anniversary month of her daughter's death five years ago, and she drinks when she gets depressed.

Andrea's doctor agreed that the depression and drinking were disabling conditions. He referred Andrea to a therapist for ongoing counselling and help in finding an alcohol treatment program. The doctor also prescribed anti-depressants.

The counsellor told Andrea that her only option was a 28-day treatment program away from the reserve. Andrea worried that the Band council would not agree to her missing work for such a long time, so she made a plan with the following:

- ☀ a request for a leave of absence due to medical disability.
- ☀ a letter from the doctor explaining that Andrea suffers from a medical condition that leaves her temporarily unable to work but that medication and the treatment plan should improve her condition dramatically.
- ☀ a note from the therapist confirming that Andrea is undergoing ongoing counselling to deal with her workplace problems and angry behaviour.
- ☀ a work plan from Andrea showing how she could draw together the periodic financial reports when she returns, as long as another employee tracks the invoices, expenses and other relevant information.

The Band council accepted Andrea's plan and are looking forward to her return to the job, back to her normal self.





Your employer does not have to accommodate your special circumstances if it would create **undue hardship** for the employer. For example, a person who cannot get a driver's license because their vision is impaired cannot be a bus driver.

What is undue hardship?

Under Subsection 15(2) of the **Act**, an employer or service provider can claim **undue hardship** when the duty to accommodate would cost too much or create risks to health or safety. For example, if you have a drug addiction and work in a dangerous job, your employer may be able to show that accommodating your disability by keeping you in your job would put you, your co-workers, or the public at risk.

When does the Act allow special treatment?

Sometimes, treating everyone the same does not automatically result in equality. When this happens, the Act allows special treatment to ensure that people are treated fairly. For example, requiring all applicants for a job to pass a written test may not be fair to an individual with a visual disability. Or having a blanket policy on days of work may not be fair to an employee who practices a certain religion. In such cases, the duty to accommodate may require that adjustments be made to ensure full participation of the person. In other words, it may be necessary to treat someone differently in order to be fair.

There are other times when the Act may allow special treatment. An employer may have a good reason to choose to hire Aboriginal applicants, for example, because they need to know the culture to do the job. Or a First Nations employer may hire a qualified Aboriginal person rather than someone else because it is important for them to have Aboriginal employees.

Aboriginal people should expect to be treated equally with other people. But equality does not always mean treating everyone the same.



Mike's story

The Smith family belongs to the Pine Tree First Nation. Mike, the 14-year-old son, has a progressively disabling condition that affects his mobility. He can move around only on crutches, and his condition is expected to get worse as he gets older. Getting around school is becoming increasingly hard as his condition worsens. Mike's father carries him into and out of school every day. As there is no washroom on the main floor, Mike must drag himself up a flight of stairs and then down again when he needs the washroom. When he gets there, he must yell for the janitor to help him open the door. The doorknob is the grip-and-turn type, which Mike cannot operate.

Mike must also visit the Pine Tree First Nation's health unit and its recreation centre. The health unit is all on one level but has steps at the entrance. The recreation centre, where Mike goes for important exercise and physiotherapy, has three steps at its entrance and the same doorknob problems in the gym, change rooms, and washroom.

Mike's parents, Gerry and Marian, worry about what would happen if they were no longer around to care for him and his condition worsens, especially while he's at school. The specialists say that Mike will soon need a wheelchair, but the school isn't accessible even for a small wheelchair. Mike's only option may be to move to supportive housing in the city, but that would mean losing contact with his family, language and community. Mike's family doesn't want to consider this option.

Gerry and Marian have spoken to the Chief and the Band Council about the need to make the school and the other reserve facilities wheelchair-accessible, but money is a problem. The family is well known and everyone wants to help Mike because he is very good-natured, but there's not enough money to pay for the ramps, elevators, washroom renovations, and other costs to make reserve facilities accessible.

Finally, the family decides to file a **complaint** with the **Commission**, against the federal government and the Band. The Band says that they would go bankrupt if they had to do everything in the current budget, as there is not even enough money for essential housing, let alone new projects. They feel mediation would not help because the money simply isn't there. The Smiths are very upset and feel betrayed, so they go ahead with the **complaint**.

This story continues in a later section.





Where can you get help?

Community-based and other internal dispute resolution processes

Often, a situation can be solved quickly and easily within an organization or community. You can try to solve a dispute by:

- ☀ using a customary process, such as asking elders for guidance or using a healing circle; or
- ☀ filing a grievance, if you have a union at your workplace.

If you file a **complaint** with the **Commission**, it will always look first to see how you have tried to solve the problem within your organization or community. If it is possible to deal with a **complaint** there, the Commission will, in most cases, tell you to do that before it will proceed with your **complaint**.

But if this does not work, you have only 12 months from when the discrimination happened to file a **complaint** with the **Commission**. In some cases, such as illness, the **Commission** may extend the deadline.

The Commission and the Tribunal

The **Act** created both the Canadian Human Rights Commission (**Commission**) and the Canadian Human Rights Tribunal (**Tribunal**). Both organizations operate independently of each other and of the government. The

Commission:

- ☀ deals with complaints of discrimination by **federally regulated** employers or service providers and sends them to the **Tribunal** for a hearing if more inquiry is needed.
- ☀ ensures that employers promote workplace equality for the four groups named in the *Employment Equity Act*: women, Aboriginal people, people with disabilities, and members of visible minorities.
- ☀ promotes an understanding of human rights and informs **federally regulated** organizations about respecting human rights in their organizations.



Mike's story continued

A **human rights officer** from the **Commission** approached the Smiths and the Band to see if they could resolve their differences using the community-based dispute resolution process. The Pine Tree First Nations Dispute Resolution Circle has different tiers or levels, depending on the kind of dispute and what the parties hope to achieve. The Smiths and the Band decided to try the community model and to use a traditional process with an Elder as an independent third party. The federal government appointed an official to participate in the mediation. Within a week, they met with a committee and the Elder acted as a guide in the process. The committee consisted of a member living off the reserve, two members living on the reserve, a youth representative, and the Elder. The process was the same one the community always used to reach consensus.

The Elder gave the Smiths a chance to tell their story and then the Band got an opportunity to respond. The Band was surprised that the Smiths were not asking for everything to happen overnight. They agreed to treat the school as a priority and then look at other facilities that could be adapted. The community gave its input and there was a discussion about the costs and the benefits to the community.

The plan was for the Band and the Smiths to inspect the school and make a list of what needed to be done immediately and what retrofitting could be done as part of regular maintenance in future years. Then they did the same thing with the health unit and the recreation centre.

The Smiths felt that the Band's response to their son's needs was fair and decided to withdraw their **complaint**. They had to file a short letter notifying the **Commission** that they had come to an agreement with the Band and wished to withdraw their **complaint**. The **Commission** agreed and closed the file.





The **Tribunal**:

- ☀ holds hearings and decides on cases that the **Commission** sends to it.
- ☀ makes orders to solve discrimination. In these roles, the **Tribunal** is like a court.

For more on the **Tribunal**, see “What Happens Next? A Guide to the Tribunal Process” at www.chrt-tcdp.gc.ca. Click on “Tribunal Rules and Procedures” and then on “What Happens Next? A Guide to the Tribunal Process.”

Making a complaint to the Commission

If you believe you have been a victim of discrimination, you can contact the **Commission** in writing or by telephone. Staff will give you basic information about the **Commission’s** services and tell you if it can deal with your **complaint**.

Only people who are in Canada legally—or someone acting for them—can file a **complaint**. You must file a **complaint** within 12 months of the event or situation that you are complaining about. Your **complaint** must describe the action or decision that you think is a **discriminatory practice**, the **grounds of discrimination**, and how the **discriminatory practice** affected you.

Not all unfair situations are valid human rights complaints. A **complaint** requires **grounds of discrimination**, a **discriminatory practice**, and a negative effect on you.

Complaint = grounds of discrimination + discriminatory practice + negative effect on you

You can file a **complaint** on behalf of others as long as you have their consent. A **human rights officer** will encourage you to try to solve the problem by using an internal dispute resolution in your workplace or community.

Filing a complaint

A **human rights officer** will send you a kit with instructions on how to prepare the **complaint** form. If you need help completing the form, you



can ask the **human rights officer**, a family member or friend to help you. You don't need a lawyer to file a **complaint**. If there is anything you do not understand, you can ask the **human rights officer** for help.

If the **Commission** accepts your **complaint**, the person or organization that you are complaining about (**respondent**) will receive a copy, so they will know about it. The **Commission** is impartial—it doesn't take your side or the **respondent's**.

In some cases, there may be a reason why the **Commission** cannot proceed further with your complaint. The **human rights officer** may write an initial report asking the Commission to make a decision **to deal** or **not to deal with** your complaint. The Commission will need to make this decision where:

- ☀ there are other grievance or review procedures reasonably available.
- ☀ there are other more suitable procedures.
- ☀ the **complaint** is not based on a ground, or is not **federally regulated**.
- ☀ the 12-month period has expired.

You can send in your comments before the **Commission** makes this decision, and Commission members will read them along with the report, and any comments sent in by the **respondent**.

Retaliation

When you file a **complaint**, the **Act** says that no one can **retaliate** or take action against you because of the **complaint**. If someone does that, you can file a new **complaint**. Contact the **human rights officer** immediately to find out what you can do. If the person's action is criminal, call the police as well. Document your case—keep a written record of the action, including times, places and witnesses, and explain why you think the incident is **retaliation**.

How does the Commission deal with complaints?

The **Commission** tries to resolve complaints at the earliest stage possible, as that is a good outcome for you, the respondent, and the **Commission**. If a **complaint** cannot be resolved, then it is usually assigned to a **human rights officer** to do an investigation. However, a **complaint** can be settled at any





stage in the process. Most of the time, the **Commission** will deal with your **complaint** by:

1. Assigning a mediator to help the parties solve the dispute. A mediator is a neutral professional trained to help people solve problems. If the mediation works, you and the **respondent** will sign an agreement about what each of you agrees to do. This is called “reaching a settlement”. The **Commission** will review the settlement to ensure that it is fair and appropriate to both sides. The **Commission** can also monitor the settlement to ensure both sides do what they promise.

Settlement examples

Example 1:

Grounds: Race, national or ethnic origin

Area: Employment

Sector: Federal public service

Allegation: The complainant participated in a training program. He said that one of the instructors made derogatory comments about his Aboriginal heritage, tried several times to remove him from the program and forced him to leave on the last day, although he had successfully completed all parts of the program.

Settlement: Official recognition of his successful completion of the program.

Example 2:

Grounds: Race, national or ethnic origin, disability

Area: Provision of services

Sector: Transportation

Allegation: The complainant, an Aboriginal woman, has rheumatoid arthritis. She said that, while she was travelling with her children, an attendant harassed her and her family and treated them differently from other passengers during their journey.

Settlement: Financial compensation and a letter of apology.



2. Assigning a **human rights officer** to investigate. The human rights officer will speak with you and the **respondent**, interview witnesses and review any supporting documents. Then the **human rights officer** makes a report to the **Commission**, with the information, and recommends either that your complaint be dismissed or that it be referred to the Tribunal. You can send in a letter so that the **Commission** members know what you think about the report when they are making this decision.
3. Sending the **complaint** to the **Tribunal**. When that happens, the Commission no longer controls the **complaint**. The **Tribunal** will hold a hearing. It will ask you and the respondent to hand in documents and call witnesses to support your arguments.

After the hearing, the **Tribunal** will decide whether there has been discrimination. The **Tribunal** can:

- ☀ dismiss the **complaint**, or
- ☀ find that there has been discrimination and order payment or other action (called corrective measures) to resolve the discrimination.

Corrective measures can include making the **respondent**:

- ☀ change its rules and policies or create an anti-harassment policy.
- ☀ pay you lost wages or give you your job back.
- ☀ learn more about human rights.
- ☀ pay you for pain and suffering and any losses caused by the **discriminatory practice**.

If the **Commission** feels that the **complaint** deals with a matter of **public interest**, it can also appear before the **Tribunal** to represent the **public interest**.

The complaints process is not public. All written information is kept on file for the **human rights officer** to prepare a report for the **Commission**. But if the **complaint** goes to the **Tribunal** or Federal Court, the documents become public.





What if you disagree with the Commission or the Tribunal?

You can ask the Federal Court to review the decision. If the Federal Court agrees with you, it will send the case back to the **Commission** or the **Tribunal** to look at it again. The Federal Court cannot change the decision.

The Act and Aboriginal People

In 2008, the federal government repealed, or cancelled, Section 67 of the **Act**. Section 67 prevented anyone from filing a **complaint** about anything related to the *Indian Act*. Now that Section 67 is gone, Aboriginal people can file a human rights **complaint** against the federal government if the *Indian Act* or policies made under the *Indian Act* cause discrimination.

Starting June 18, 2011, Aboriginal people will also be able to file a human rights **complaint** against First Nations governments and **federally regulated** Aboriginal organizations if their acts or decisions under the *Indian Act* are a **discriminatory practice**. For example, denying a certificate of possession or a certificate of education under the *Indian Act* would be a **discriminatory practice** if a **complainant** can show that it's because of a prohibited **ground of discrimination**, like family status.

Human rights decisions involving First Nations need to recognize Aboriginal and Treaty rights. For **complaints** about a First Nation government or service organization, the **Commission** and the **Tribunal** can consider the customary law of the First Nation. They need to balance collective and individual rights from a First Nation perspective, while respecting gender equality.

Where can you get more information?

For more information about the **Commission** and its services, visit the website at www.chrc-ccdpc.gc.ca or call toll free 1-888-214-1090.



PROVINCIAL AND TERRITORIAL HUMAN RIGHTS AGENCIES	
Organization	Website
Alberta Human Rights Commission	www.albertahumanrights.ab.ca
British Columbia Human Rights Tribunal	www.bchrt.bc.ca
Manitoba Human Rights Commission	www.gov.mb.ca/hrc
New Brunswick Human Rights Commission	www.gnb.ca/hrc-cdp
Newfoundland & Labrador Human Rights Commission	www.justice.gov.nl.ca/hrc
Northwest Territories Human Rights Commission	www.nwthumanrights.ca
Nova Scotia Human Rights Commission	www.gov.ns.ca/humanrights
Nunavut Human Rights Tribunal	www.nhrt.ca
(Ontario) Human Rights Tribunal of Ontario	www.hrto.ca
(Ontario) Human Rights Legal Support Centre	www.hrlsc.on.ca
Prince Edward Island Human Rights Commission	www.gov.pe.ca/humanrights
(Québec) Commission des droits de la personne et des droits de la jeunesse	www2.cdpcj.qc.ca/en
Saskatchewan Human Rights Commission	www.shrc.gov.sk.ca
Yukon Human Rights Commission	www.yhrc.yk.ca





Other human rights laws

The *Canadian Charter of Rights and Freedoms* (Charter) is part of the Canadian Constitution. It guarantees broad equality rights and other fundamental human rights and freedoms. It applies to governments, but not to organizations, businesses, or people. Learn more on the Charter at www.pch.gc.ca/pgm/pdp-hrp/canada/guide/index-eng.cfm .

The United Nations has made many human rights statements, including the *2007 United Nations Declaration on the Rights of Indigenous Peoples* (Declaration). The Declaration confirms that all indigenous people are entitled to individual equality rights and to collective equality rights as members of First Nation or other Aboriginal peoples. The Declaration recognizes the right of indigenous peoples to self-determination. Learn more on the Declaration at www.un.org/esa/socdev/unpfii/en/declaration.html.



GLOSSARY

Act	The <i>Canadian Human Rights Act</i>
Commission	The Canadian Human Rights Commission, an organization under the Act
complainant	A person who makes a complaint under the Act
complaint	A complaint under the Act
discriminatory practice	<p>The following are examples of discriminatory practices when they are based on one of the grounds of discrimination:</p> <ul style="list-style-type: none">☀ denying someone goods, services, facilities or accommodation☀ refusing to employ or continue to employ someone or treating them unfairly in the workplace☀ paying men and women differently when they are doing work of the same value☀ following policies or practices that deprive people of employment opportunities☀ communicating hate messages on the telephone or through the Internet☀ harassing someone☀ retaliating against a person who has filed a complaint with the Commission or someone who has filed a complaint for them
duty to accommodate	The duty of an employer to make changes in the workplace to accommodate a person with special needs or for a service provider to adapt the way service is provided





federally regulated	<p>The Act applies to federally regulated employers and service providers. These include:</p> <ul style="list-style-type: none">☀ federal departments, agencies and Crown corporations☀ chartered banks☀ airlines☀ television and radio stations☀ interprovincial communications and telephone companies☀ interprovincial transportation companies, like buses and railways that travel between provinces☀ First Nations governments and some other First Nations organizations☀ other federally regulated industries, like some mining companies
grounds of discrimination	<ul style="list-style-type: none">☀ race☀ national or ethnic origin☀ colour☀ religion☀ age☀ sex☀ sexual orientation☀ marital status☀ family status☀ disability☀ a conviction for which you have been granted a pardon



human rights officer	A Commission professional who has expertise in human rights
public interest	A matter is in the public interest when there are concerns about public policy or public values
respondent	The person or organization against whom a complaint is made
retaliate or retaliation	A negative act or behaviour by or on behalf of the respondent as a result of a complaint filed with the Commission
Tribunal	The Canadian Human Rights Tribunal, an organization under the Act
undue hardship	Circumstances involving cost, health or safety that would make it impossible or very difficult for an employer to meet the duty to accommodate



