



***Northwest Territories  
Human Rights Commission***

## **Human Rights and Public Services**

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## Contents

Contents .....	2
Introduction.....	3
What Are Public Services? .....	4
What Is Discrimination? .....	5
Duty o Accommodate .....	7
Human Rights Issues: Service Providers .....	9
Human Rights Issues: Customers .....	10
For More Information .....	10

This guide provides general information about the *Human Rights Act* as it applies to providing services to the public in the Northwest Territories.

### **The Vision of the NWT Human Rights Commission**

We envision a North at peace with its diversity where everyone is safe, confident, and respected on their journey.

#### ***Our Mission***

The NWT Human Rights Commission will:

- promote human rights through education and advocacy;
- strive for understanding and acceptance of human rights by all through leadership and partnerships; and,
- provide a complaint process that is accessible, timely and fair.

## Introduction

Everyone has the right to equal access to public services and equitable treatment while receiving public services.

The *Human Rights Act* prohibits discrimination on the basis of:

- race, colour, ancestry, place of origin, ethnic origin, nationality
- sex, sexual orientation, gender identity
- family or marital status, family affiliation
- social condition
- religion, creed
- political belief or association
- pardoned criminal conviction
- disability (includes physical, mental, and behavioural disabilities)
- age

Section 11 of the *Act* prohibits discrimination based on any of the grounds above in the provision of “goods, services, accommodation or facilities that are customarily available to the public.” These are referred to in this guide as “public services”.

Section 14 of the *Act* prohibits harassment based on any of the grounds listed above “in the provision of goods, services, facilities or accommodation.”

These guidelines identify key areas of concern for business and organizations. However, it is not comprehensive, nor is it a legal document. For further information please refer to the *Human Rights Act* or contact the Commission. Contact and website information is listed at the end of this document.

### Case Study

Gladys Radek is a middle-aged Aboriginal woman with a disability. She has mobility problems because she had a leg amputated after a motorcycle accident. Ms. Radek lived across the street from International Village, a shopping mall in the Downtown Eastside of Vancouver.

Ms. Radik went to the mall with a friend for a cup of coffee at Starbucks. When she entered the mall, she was closely followed by a security officer. Ms. Radek asked the officer what her problem was and why she was being followed. Ms. Radek and her friend were told that they were trespassing and causing a disturbance and had to leave. Ms. Radek filed a human rights complaint.

The BC Human Rights Tribunal heard evidence that mall security routinely told Aboriginal people and people who were poor that they were trespassing and asked them to leave. The Tribunal stated that the mall discriminated against Ms. Radek because of her race and her disability. (*See Radek v. Henderson Development (Canada) Ltd. (No. 3) (2005), 52 C.H.R.R. D/430, 2005 BCHRT 302*)

## What Are Public Services?

The *Act* prohibits discrimination in the provision of public services based on the prohibited grounds listed on page 3. Public services include:

- **Goods** include all transactions involving the buying and selling of items such as cars, groceries, clothing, or building supplies.
- **Services** include such things as public transportation, education, entertainment and hospitality, government services, community services, medical and professional services, and insurance.
- **Accommodations** include all temporary accommodation such as hotels, motels, inns, bed and breakfasts, and campsites.
- **Facilities** include commercial buildings, arenas, swimming pools, and hospitals.

### Case Study

A high school teacher notices that a Mike is being bullied by other students because of his sexual orientation. The students are calling Mike “fag”, “homo”, and are pushing him around in the hallway.

The teacher stops the behaviour and tells the students that bullying is unacceptable. The teacher tells Mike that he should talk to the principal about the bullying, and sends the other students to the principal’s office.

The principal disciplines the students who bullied Mike. The principal also educates the students on the school’s policy on bullying. One of the students who bullied Mike apologizes to him.

### Examples of Public Services

**Entertainment and hospitality services** include restaurants, nightclubs, theaters, golf courses, vehicle rentals, hotels, motels, bed and breakfasts, and guided tours.

**Public Transportation** includes transit buses, school buses, and taxis.

**Education** includes public schools (K-12) and private schools, as well as community colleges, technical institutes, and adult continuing education programs.

**Government services** include all services provided by territorial and municipal governments, such as health and social services, licensing, and corrections facilities.

**Community organizations** include food banks, animal shelters, business associations, sports associations, festivals, and arts organizations.

**Retail stores** include department stores, grocery stores, convenience stores, clothing stores, dry cleaners, automobile dealerships, and repair shops.

**Medical and other professional services** such as the services provided by physicians, dentists, physiotherapists, chiropractors, massage therapists, accountants, and lawyers.

## What Is Discrimination?

It is discrimination when:

- someone is denied a service, either directly or indirectly, is treated negatively and differently in accessing a service, or is harassed while accessing the service; and,
- the treatment is based on a prohibited ground listed on page 3.

The *Act* does not protect against poor treatment or bad service, unless it flows from a protected ground of discrimination, such as race or physical disability.

**It is not discrimination** for a service provider to refuse service to customers who:

- are intoxicated, disorderly, or abusive to staff.
- refuse to pay or have failed to pay the costs that are charged to all customers.
- are accompanied by animals which are not certified assistive or guide animals.
- are under the legal age limit to access the service, such as the legal age limits to vote, to enter a licensed establishment, or to get a license to drive a vehicle.

### **Examples of Discrimination:**

- A restaurant or retail store denies service to individuals using certified guide or assistive animals.
- A public library or public swimming pool is not accessible for individuals with mobility disabilities, such as those who use wheelchairs, scooters, or walkers.
- A hotel refuses to rent a hotel room to an Aboriginal woman and her teenage son.
- A taxi driver requests payment in advance based on a customer's ancestry or sexual orientation.
- A school does not protect students from bullying that is based on race, sex, social condition, disability, or sexual orientation.
- A university does not allow a student with a learning disability to take extra time to complete an exam or assignment.
- A government does not provide interpretation for medical services, and legal processes.
- A waiter in a restaurant makes a racist remark to a customer.
- A woman breastfeeds her child on a bench in the mall. Mall security asks her to stop breastfeeding, or to leave.

### **Case Study**

Jean is blind and relies on a seeing-eye dog. Jean had to travel for work and made arrangements to stay at a hotel. When Jean checked in, the hotel clerk told her that she could not stay because other guests may have allergies to her dog. The clerk also raised concerns about health standards and inspections.

Jean asked to speak to the manager. She explained what happened. The manager told Jean that the clerk is a new employee and did not know about the hotel's policy to allow assistive animals. The manager apologized to Jean and offered her a complementary lunch in the hotel dining room. The manager also spoke to the clerk to ensure that this situation did not happen again.

## **Exceptions**

There are times when discrimination is justifiable. The following are the exceptions to the broad prohibition against discrimination.

### **Preference for family members:**

The *Act* allows for an owner of a family-owned business to give preference in goods, services, accommodation or facilities to members of his or her own family. For example, an owner of a bed and breakfast might refuse service to someone in favour of renting the room to his or her daughter. However a manager, who is not the owner, does not have this exemption. In addition, the exception does not apply to a publicly owned company; a company that is owned by shareholders and run by a board of directors. This exception is meant to allow a family run business to show preference to members of the family.

### **Bona fide and reasonable justification:**

*Bona fide and reasonable justification (BFRJ)* is a legal term used to describe situations where discrimination is justified. The following are examples of where discrimination is justified:

- A bar or restaurant refuses to serve alcohol to someone under the age of 18.
- Governments do not extend the right to vote to citizens under the age of 19.
- A bar or restaurant refuses to continue to serve liquor to someone who is intoxicated in order to comply with liquor laws.
- A training course for an occupational first aid attendant refuses to enroll someone who cannot meet the physical requirements to be an occupational first aid attendant, for example, lifting and transferring an unconscious patient onto a spine board.
- Motor vehicle services refuses to provide a driver's license to someone who does not meet the minimum visual requirements to drive safely.

#### **Case Study**

A community was planning renovations for a community centre. The community hosted an open house where it showed the plans for the centre.

A member of the public noticed that the community centre did not include ramps for wheelchair and scooter access. He told the local council that people with mobility issues would not be able to enjoy the centre because it would not be accessible.

The local council responded by consulting with NWT disability and seniors organizations. In response to the consultations, changes were made to the plans by increasing the width of entranceways and installing ramps.

## Special Programs

The *Act* allows for organizations to adopt special programs that are designed to better the conditions of groups and individuals that are disadvantaged in our society. For example, non-profit organizations and government agencies frequently run programs or offer services that are targeted to specific groups, such as:

- A homeless shelter for men refuses access to women.
- A shelter for women leaving domestic violence refuses services to and limits visits from men.
- A youth skills development program sets a maximum age limit of 25 years old.
- A government housing program provides subsidies for persons with disabilities. The subsidies help pay for home renovations that make homes more accessible, for example, the installation of entrance ramps or special railings in the bathroom.

Special programs are meant to address social issues that are often the result of systemic discrimination in society.

For information about whether discrimination in a specific situation is justifiable, please contact the Commission.

## Duty To Accommodate

Often public services will have standards, or rules, or facilities that may inadvertently discriminate against certain people, even if the business treats everyone equally, or does not intend to discriminate. In these cases, the services have the “duty to accommodate.” The duty to accommodate means making changes to any rules, standards, or facilities to ensure that they don’t have a negative effect on anyone based on any protected ground.

The following are examples of discrimination and of accommodation.

- A “no animals” rule in a hotel discriminates against clients who use assistive animals.
  - The hotel includes in its rule an exception to allow certified guide dogs or assistive animals. The hotel would still refuse service to individuals with pets.
- A movie theatre does not have seating space for people in wheelchairs. While the theater does not deny entrance to persons in wheelchairs, the lack of seating space results in denying service to people in wheelchairs.
  - The movie theater rearranges aisle seats to open space for wheelchair users.
- A school’s exam requires all students to finish the exam within three hours. This rule discriminates against students with learning or attention-deficit disabilities who require more time to write exams.
  - The school allows these students to take more time. The students who require the accommodation have to submit a doctor’s confirmation that they need the accommodation.

- A government service requires all clients to fill out a form before they can access the service. This requirement discriminates against clients whose first language is not English, or who do not have the literacy level required to fill out the form.
  - The government service provides the forms in different languages and provides help filling out the form for those who have lower literacy skills.

Individuals who require accommodation should inform the public service personnel of their need for accommodation. Doing so gives the business or organization the opportunity to make changes necessary to accommodate the individual, as well as other clients with the same or similar needs.

### ***Undue Hardship***

Service providers are expected to accommodate to the point of “undue hardship”. For example, if a business is on the second floor of a heritage building, it would be an undue hardship to install an elevator to accommodate persons with mobility impairments. The undue hardship comes from the cost of the elevator and the loss of the heritage status of the building. When accommodation becomes an “undue hardship” a business can argue that it has a *BFRJ* – in other words, the discrimination is justifiable in that situation.

The duty to accommodate to the point of undue hardship will be different for each service provider because of the different types of services, the size of the business, the amount of resources the business has and the cost of the accommodation.

When in doubt, please call the Commission about the duty to accommodate to the point of undue hardship. The Commission offers a free confidential public inquiry service.

#### **Case Study**

A local taxi service charged extra fees for clients who requested that a van pick them up. The taxi service only had one van and it was often requested for larger groups. The van was also the only form of accessible public transportation for clients who used a wheelchair in that community. One of these clients was Marie.

Marie asked the company to not charge her extra to use the van. She explained that her wheelchair cannot fit into any other taxi because it does not collapse to fit in the trunk. She said that, because she does not have a choice but to use the van, she should not be charged for it as a “special request.”

The taxi company realized that its rule – to charge everyone the same extra fee for the van – had an adverse impact on Marie. The company decided to change their rule so that Marie, and others who used wheelchairs, paid the regular taxi fare for the van. The company continued to charge the extra fee to other clients that requested the van.

## Human Rights Issues: Service Providers

Owners and managers can take steps to make their businesses discrimination-free and to deal fairly with human rights concerns raised by customers, clients, and guests.

### ***Preventive Strategies***

- Educate employees, including contractors, about how the NWT *Human Rights Act* prohibits discrimination and make them aware of their obligations.
- Promote corporate pride in providing accessible services to a diverse clientele.
- Contact the NWT Human Rights Commission to arrange for an educational workshop on rights and responsibilities related to human rights in public services.
- Designate a manager to be the contact for issues related to human rights, and advise all employees to direct human rights issues to that person.
- Audit your organization's human rights performance by reviewing the physical accessibility of your facilities and identifying policies that may restrict services.
- Put in place a policy on accommodating customers' and clients' special needs arising from physical or mental disabilities.
- Seek expert input about accessibility from community groups that represent persons with disabilities.
- Prepare staff for working with people from diverse backgrounds.
- Hire a diverse staff, particularly in positions that deal with the public.
- Provide staff with conflict resolution training.

### ***Customer Complaint Strategy***

Even when preventive strategies are in place, problems may arise. The following strategies provide ideas for dealing with customer complaints:

- Designate a manager or staff person to deal with problems promptly. The designated person should be available to meet with the customer, in a private setting whenever possible.
- Ask the customer to write a description of the issue and to make an appointment in person or by phone to speak with the designated person or the manager.
- Investigate the customer's complaint.
- Attempt to resolve the complaint with the customer.
- Contact the NWT Human Rights Commission to get a free confidential consultation regarding the issue.
- Inform the customer that he or she may contact the Commission for a free, confidential consultation.

## Human Rights Issues: Customers

Customers, clients, and guests can look for constructive ways to deal with issues of discrimination and accommodation. Here are some options:

- Take immediate action by seeking out a manager and explaining your human rights issue. If you need accommodation, let management know what your needs are.
- If taking immediate action is not appropriate or possible, write a detailed description of the human rights issue and make an appointment to speak or meet with a manager as soon as possible.
- Contact the NWT Human Rights Commission to get a free confidential consultation regarding your human rights issue.

## For More Information

1. For more information about human rights in public services, please visit the Commission's website at: [www.nwthumanrights.ca](http://www.nwthumanrights.ca). Additional contact information is on the back page of this document.
2. To obtain a copy of Commission publications, please contact the Commission. The Commission contact information is at the back of this Guide. All publications are also on the website at: [www.nwthumanrights.ca](http://www.nwthumanrights.ca).
3. For information about making your organization accessible to persons with disabilities, contact:
  - The NWT Council of Persons with Disabilities at: [www.nwtability.ca/](http://www.nwtability.ca/)
  - Office for Disability Issues – Government of Canada:  
[http://www.hrsdc.gc.ca/eng/disability\\_issues/index.shtml](http://www.hrsdc.gc.ca/eng/disability_issues/index.shtml)
  - The Disability Lens (Government of British Columbia):  
[www.mhr.gov.bc.ca/PUBLICAT/DB/DisabilityLens.htm](http://www.mhr.gov.bc.ca/PUBLICAT/DB/DisabilityLens.htm)
4. The Government of the Northwest Territories has adopted the 2005 National Building Code of Canada, and 2005 National Fire Code of Canada. For more information visit the website of the Government of the Northwest Territories' Department of Municipal and Community Affairs at: [www.maca.gov.nt.ca](http://www.maca.gov.nt.ca)





## **Northwest Territories Human Rights Commission**

### **Contact Us**

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