

Guideline on Accommodating People with Service Animals

May 2017



NEW BRUNSWICK
HUMAN RIGHTS COMMISSION
COMMISSION DES DROITS
DE LA PERSONNE DU NOUVEAU-BRUNSWICK

Table of contents

1.0 Physical and Mental Disability Discrimination in relation to Service Animals..... 4

 1.1 Meaning of “Service Animal” 4

 1.2 Interaction with Service Animals 5

 1.3 Companion, Emotional Support or Therapeutic Animals 5

 1.4 Identification..... 5

2.0 Duty to Accommodate 5

 2.1 What is Undue Hardship? 6

3.0 Limits to Accommodation 6

4.0 Employment 7

 4.1 Undue Hardship 8

 4.2 Clarification about the Service Animal 8

 4.3 Balancing Accommodation Needs 8

5.0 Services and Facilities Available to the Public..... 9

 5.1 Clarification about the Service Animal 9

 5.2 Obligation of the Person with the Service Animal 11

 5.3 Balancing Accommodation Needs 11

 5.4 Information for Education Providers..... 12

6.0 Housing 13

 6.1 “No Pets” Policies 13

 6.2 A Housing Provider’s Duty to Inquire 14

 6.3 Obligation of the Person with the Service Animal 14

 6.4 Clarification about the Service Animal 15

 6.5 Balancing Accommodation Needs 15

7.0 For More Information 16

Please Note:

The New Brunswick Human Rights Commission (“Commission”) develops guidelines as part of its mandate to prevent discrimination. These guidelines are intended to help individuals understand their legal rights and responsibilities under the New Brunswick *Human Rights Act* (“*Act*”).

This guideline gives the Commission’s interpretation of the provisions of the *Act* relating to discrimination on the basis of the use of a service animal for a physical or mental disability.¹ It is subject to decisions by boards of inquiry, tribunals and courts. Read this guideline in conjunction with those decisions and with the specific language of the *Act*. If there is any conflict between this guideline and the *Act*, the *Act* prevails. This guideline is not a substitute for legal advice. Direct any questions regarding this guideline to the Commission’s staff.

1.0 Physical and Mental Disability Discrimination in relation to Service Animals

The *Act* prohibits discrimination (whether it is intentional or not) based on physical and mental disability in areas such as employment, housing, public services (e.g. schools, hospitals, restaurants, malls, and insurance), and membership in labour unions and professional associations. It is also discriminatory to publish or display (or cause to be published or displayed) something that is discriminatory or indicates an intention to discriminate (e.g. a notice or sign).²

This guideline focuses solely on discrimination on the basis of reliance on a service animal for a physical and/or mental disability in the areas of employment, public services and facilities, and housing. For information on the rights and obligations under the *Act* in other situations or in relation to physical and mental disabilities generally, please see the Commission's guidelines on those subjects or contact the Commission directly.

1.1 Meaning of "Service Animal"

A service animal is an animal that has been trained to perform specific tasks in order to provide assistance to a person with a disability for that disability. Dogs are the most common service animals, but other animals (e.g. cats, monkeys, birds and miniature horses) are sometimes used as well. It is not necessary for an animal to be professionally trained or certified as a service animal for the *Act* to apply.³ An animal that is trained, including self-trained, to provide personalized assistance for someone with a disability may be a service animal for the purposes of the *Act*.

While service animals are often associated with people who have visual impairments, they are used to assist with a number of physical and mental disabilities.⁴ Such disabilities include (but are not limited to):

- agoraphobia;⁵
- anxiety;⁶
- attention deficit hyperactivity disorder (ADHD);⁷
- autism;⁸
- bipolar disorder;⁹
- claustrophobia;¹⁰
- depression;¹¹
- epilepsy;¹²
- being deaf or hard of hearing;¹³
- mobility issues;¹⁴
- obsessive compulsive disorder;¹⁵
- post-traumatic stress disorder (PTSD).¹⁶

Guideline on Accommodating People with Service Animals

Many of the disabilities that service animals are used for are “invisible” disabilities, in that the person’s disability and role of the service animal are not readily apparent. A person with a service animal has the same right to employment, public services and facilities, and housing as a person without a service animal and/or disability.¹⁷

A service animal must be under the care and control of their handler at all times (e.g. harnessed, leashed or tethered) unless doing so interferes with the work or task that it performs. If a person’s disability prevents maintaining physical control of the animal, the person must still maintain control of the animal through voice, signal or other means.

1.2 Interaction with Service Animals

Service animals are not pets,¹⁸ and no one should interact with a service animal unless the animal’s handler gives his or her permission. A distracted service animal is unable to provide assistance for the person relying on the animal for a physical or mental disability. In some instances, a distracted service animal could lead to a serious or even fatal injury for the person it is supposed to assist.

1.3 Companion, Emotional Support or Therapeutic Animals

The use of an animal that is not a service animal but instead a companion, emotional support or therapeutic animal may still be protected under the *Act* if the animal is part of a person’s treatment for a disability.¹⁹ A person seeking an accommodation for the use of such an animal must be able to show that he or she has a need to rely on the animal for a disability (e.g. through documentation from a physician, psychologist, etc.). The benefits of pet ownership that are enjoyed by everyone (including those without disabilities) are insufficient to show reliance.²⁰

1.4 Identification

Service animals should be readily identified, such as by a special harness or vest. This makes it easier for the employer, service provider or housing provider to know that the animal is a service animal and make the appropriate accommodations. However, a special harness or vest is not required for the animal to be considered a service animal. Some people may choose less conspicuous methods to indicate that they rely on an animal as a service animal (e.g. note from a physician, training certificate), while keeping the fact that the animal is a service animal from those who do not have a need to know. This is ultimately a choice that a person with a service animal needs to make, while also being mindful that clearly identifying the animal as a service animal may make the accommodation process a smoother one.

2.0 Duty to Accommodate

The *Act* requires employers, service providers and housing providers to avoid policies that have a discriminatory effect on people who use a service animal for a physical or mental disability. Employers, service providers and housing providers have a duty to

accommodate a person with a service animal to the furthest point possible short of undue hardship. The duty to accommodate extends to a third party handler of the service animal, if the third party handler is accompanying a person with the disability who relies on the service animal.

Accommodation is an individualized process that takes into account the specific needs and circumstances of the person requiring accommodation.²¹ Accommodation is also a multi-party inquiry²² that includes the person with the service animal and the employer/service provider/housing provider (as the case may be). In some situations it may also include health care professionals, unions, and others as required.

2.1 What is Undue Hardship?

- Undue hardship occurs if accommodating the person relying on the service animal would be extremely difficult.
- The determination of undue hardship depends entirely on the circumstances of each specific case.
- Examples of undue hardship in this context could include:
 - Extremely high financial costs;
 - A serious disruption to a business;
 - Health and safety considerations;
 - A substantial interference with the rights of others, including employees, customers or tenants;²³
 - Inability to renovate the facilities to accommodate the person with the service animal;
 - Inability to interchange, alter or substitute duties within the workforce;²⁴
 - The extent to which the inconvenience would prevent the business from carrying out the purpose of that business.

The duty to accommodate will arise when a person relying on a service animal has made a request for accommodation. However, in some instances the duty to accommodate will arise without an accommodation request being made. The duty to accommodate may be triggered when it is obvious that the person is relying on a service animal, or once it is known or reasonably ought to have been known that the person is relying on a service animal.

3.0 Limits to Accommodation

Conduct may be found to be non-discriminatory if the employer, service provider or housing provider can show that the limitation, specification or preference is based upon a *bona fide* (“in good faith”) qualification (BFQ).²⁵

In order to be a BFQ the standard adopted by the organization must pass the “Meiorin Test”.²⁶ This three-part test requires that the employer, service provider or housing provider establish that the standard:

Guideline on Accommodating People with Service Animals

1. Was adopted for a purpose or goal that is rationally connected to the function being performed;
2. Was adopted in good faith, in the belief that it is necessary for the fulfillment of the purpose or goal; and
3. Is reasonably necessary to accomplish its purpose or goal, in the sense that the employer, service provider or housing provider cannot accommodate persons with the characteristics of the person without incurring undue hardship.²⁷

The third part of the test requires that the employer, service provider or housing provider individually assess the needs of the person with a service animal to determine whether it is possible to accommodate the person without incurring undue hardship.

4.0 Employment

It is a violation of the *Act* for an employer to discriminate against an employee or a potential employee because a person relies on a service animal for a mental and/or physical disability. Employees have a right to bring service animals into the workplace, and employers are obligated to accommodate employees with service animals to the point of undue hardship.

The *Act* prohibits discrimination in all aspects of full-time, part-time, permanent, casual or probationary employment. It also applies to unpaid or volunteer employment, employment recruiters and agencies, trade unions and occupational associations.²⁸

Under New Brunswick human rights law, employers cannot:

- Refuse to renew an employment contract because an employee relies on a service animal;
- Permit co-workers to harass an employee based on the employee's reliance on a service animal;
- Demote, withhold a promotion, or fail to consider an employee for a promotion because of his/her reliance on a service animal;
- Terminate or lay off (even with notice) an employee because he/she relies on a service animal;
- Subject an employee to adverse treatment by taking advantage of his/her mental disability;²⁹
- Deny an employee the right to transfer seniority to another department with a separate seniority list when the employee has been moved to the other department as part of an accommodation;³⁰
- Subject an employee to excessive questioning about an undisclosed disability (actual or perceived) when there are no performance issues associated with the disability and no reasonable basis for believing the disability could impact the employee's job;³¹
- Force an employee relying on a service animal to resign by making working conditions unacceptable.

4.1 Undue Hardship

As noted above, what constitutes undue hardship will depend on the specific circumstances. An employee is only entitled to a reasonable accommodation, not a perfect one. In some cases it may be reasonable to limit a service animal's access to some parts of the workplace for health reasons or a need to maintain a sterile environment (e.g. a food preparation area, laboratory or surgical setting), but it is the employer's obligation to demonstrate that such restrictions are reasonable under the circumstances. Where such concerns are merely speculative, or the employer has not undertaken an examination of the workplace requirements and the particular needs of the person with the service animal, it is unlikely a BFQ will be found.

Example: A job applicant for a security guard position relied on a service dog as he was hard of hearing and had mobility issues. During a prescreening orientation, the employer's manager of human resources noticed the applicant's cane and service dog and pulled the applicant aside. The manager asked the applicant whether he could stand and walk for long periods of time outdoors, and whether the dog would also be able to be outside.

The employer was found to have discriminated against the job applicant by singling out the applicant and asking him questions that classified or indicated qualifications based on his disabilities. The employer also did not consider what the essential requirements were or possible accommodations. It was noted that the employer should have provided accurate job descriptions to all candidates in advance, and identified the essential requirements for particular jobs.³²

4.2 Clarification about the Service Animal

An employer may seek clarification on whether the animal is a service animal and the role the animal serves, if it is not obvious. Requests for additional information should be limited to what is reasonably related to the person's need for a service animal, such that the employer is able to respond to the need for accommodation. An employer does not need to know the employee's exact diagnosis or cause of the disability.³³ Documentation clarifying that the animal is a service animal may include a doctor's note indicating that the person requires the animal for medical reasons,³⁴ or a certificate indicating that the animal is a certified service animal.³⁵ Some harnesses and vests for service animals may also contain such a certificate.

4.3 Balancing Accommodation Needs

A situation may arise where an employer also has an obligation to accommodate an employee who is unable to be around a service animal due to an allergy or phobia. The employer must make every effort to balance the needs of both employees. How this is done will vary based on the needs being balanced, but may include implementing measures to keep the service animal at a distance from the other employee.

Please see the New Brunswick Human Rights Commission Guideline entitled *Guideline on Accommodating Physical and Mental Disabilities at Work* for more information.

5.0 Services and Facilities Available to the Public

It is a violation of the *Act* for a service provider to discriminate against a customer, patron, student or other recipient of a service because that person relies on a service animal for a mental and/or physical disability. A person who relies on a service animal has the same right to access public services and facilities with the animal as any other person. A service provider also has an obligation to make sure that its staff is properly trained and aware of their obligations under the *Act*.³⁶

Under New Brunswick human rights law, a service provider cannot:

- Refuse service to a person because he/she relies on a service animal;³⁷
- Prevent a person relying on a service animal from accessing spaces customarily available to other members of the public;³⁸
- Permit service animals in the establishment for only some disabilities but not others (e.g. only permit service animals for people who are blind or have low vision);³⁹
- Permit the harassment of a person based on his or her reliance on a service animal;
- Put restrictions or limitations on the service being provided because a person relies on a service animal;
- Charge additional fees because a person relies on a service animal;
- Clarify that a person requires a service animal when the person's disability is obvious;⁴⁰
- Require that the service animal remain outside or off the premises while providing the service.⁴¹

A service provider has an obligation to accommodate a person with a service animal, unless doing so would result in undue hardship for the service provider. As noted above, what constitutes undue hardship will depend on the specific circumstances. A person receiving the service is only entitled to a reasonable accommodation, not a perfect one. In some cases it may be reasonable to limit a service animal's access to some parts of the establishment or facility for health reasons or a need to maintain a sterile environment (e.g. a food preparation area, laboratory or surgical setting), but it is the service provider's obligation to demonstrate that such restrictions are reasonable under the circumstances.

5.1 Clarification about the Service Animal

There are situations when a service provider may clarify that an animal is a service animal if animals are not otherwise permitted where the service is being carried out. Such situations may include:

Guideline on Accommodating People with Service Animals

- Where a person may have an “invisible” disability (e.g. epilepsy, PTSD), and the need for a service animal is not immediately obvious;⁴²
- Where the animal is not wearing a vest or otherwise marked as a service animal;
- Where the animal is not behaving like a service animal.⁴³

Documentation clarifying that the animal is a service animal may include a doctor’s note indicating that the person requires the animal for medical reasons,⁴⁴ or a certificate indicating that the animal is a certified service animal.⁴⁵ Some harnesses and vests for service animals may also contain such a certificate.

However, if it is obvious that the person has a disability and the animal is a service animal, seeking to clarify the person’s need for a service animal or the function the animal performs could constitute discrimination under the *Act*.

Example: A customer who was legally blind approached the entrance of a grocery store with her guide dog and a companion. The customer’s guide dog was harnessed and wore a sign that read “Please don’t pet or feed me, I’m working.” The customer was wearing dark glasses and held onto the dog’s harness at all times. A security guard approached the customer and would not allow the customer to enter unless she provided the dog’s identification. The customer did not have identification for the dog, and the customer’s companion then asked to see the manager. After the manager arrived, the manager informed the guard that the customer was blind and allowed the customer, her dog, and her companion to enter the store. The customer and her companion ultimately decided not to enter the store.

The store was found to have discriminated against the customer. It was held that it was unnecessary for the customer to prove that the dog was a service animal in order for the customer to be protected under human rights legislation, as it was “eminently obvious” that the customer was blind and the dog was a service animal. Even a brief denial of entry was a refusal of service and therefore discriminatory on the basis of a disability.⁴⁶

A person who is seeking accommodation for a service animal has an obligation to respond to reasonable inquiries about the function the animal performs. Discussions between the service provider and the person with a service animal about accommodation should be respectful.⁴⁷ A person with a service animal is not required to disclose a diagnosis of his or her medical condition.⁴⁸ Medical documentation only needs to indicate that the person has a disability and benefits from the use of a service animal.

Example: A restaurant patron with a service dog was told by restaurant staff that she could not go to the buffet table with her dog, and that her companion could bring her food from the buffet instead. The patron provided documentation on her need for a service animal and told staff that the dog was for her epilepsy, but was still not permitted to go to the buffet table with the dog. The restaurant was found to have discriminated against the patron as it did not establish that there were public health concerns, and the restaurant acknowledged that it would have allowed a blind or low vision patron to go to the buffet table with a guide dog.⁴⁹

Care must be taken with inquiries about a possible service animal, as the manner of the inquiry could be discriminatory.⁵⁰ Service providers should make such inquiries in a respectful manner, and in a way that does not draw the attention of other customers or patrons in the vicinity. The service provider should also minimize any delays in the provision of services as a result of such inquiries.

5.2 Obligation of the Person with the Service Animal

A person relying on a service animal has an obligation to maintain control of the animal. A service provider may ask a person with a service animal to leave if the animal poses a risk to other customers⁵¹ or the animal is misbehaving.⁵²

5.3 Balancing Accommodation Needs

Service providers also have an obligation to accommodate their employees who may have a physical or mental disability that prevents them from being around dogs or other service animals, such as an allergy or phobia. As a result, it is possible that a service provider will find itself in a situation where it needs to balance an employee's right to a safe and healthy work environment with a customer's right to be provided service in a non-discriminatory manner.⁵³ Nevertheless, the service provider must ensure that there is a way to provide the service to the person relying on the service animal, unless doing so would constitute undue hardship for the service provider.

Example: A taxi was called on behalf of a person with a guide dog. The caller did not indicate that the person being picked up had a guide dog. Upon arrival, the taxi driver indicated that he was allergic to dogs and could not have the guide dog in the taxi. The driver then arranged for another taxi to pick up the person with the guide dog, and the other taxi arrived within a minute or two. The taxi company had a policy of requiring drivers to provide a medical certificate signed by a doctor if they could not transport animals for medical reasons, and would not dispatch those drivers if it was aware that the person being picked up had an animal.

It was found that the actions of the taxi company did not constitute discrimination as it demonstrated a *bona fide* qualification for the brief denial of service. The policy was held to strike an appropriate balance between the rights of employees and customers. Also relevant was the fact that the person with the guide dog was accommodated in another taxi almost immediately.⁵⁴

Guideline on Accommodating People with Service Animals

Example: A person with a guide dog approached a taxi stand where three taxis from the same company were waiting. As she opened the door to the first taxi, the driver grabbed her, told her that he was allergic to dogs, and directed her to the second taxi. The driver of the second taxi rudely told the person that no dogs were getting into his taxi and then directed her to the third taxi. As she approached the third taxi, it drove away.

The taxi company was found to have discriminated against the person with the guide dog, as merely directing her to another taxi without ensuring that she would be provided service by the next driver was not a reasonable accommodation.⁵⁵

A service provider also has to be mindful of the needs of others that it provides services to, particularly if the service provider is one that frequently serves people with allergies or phobias (e.g. a doctor's office).⁵⁶

To help avoid such situations and make the accommodation process a smooth one, in some cases a person relying on a service animal may wish to advise a service provider of the need for accommodation in advance, such as when requesting a taxi or reserving a hotel room.

If a service provider is unable to accommodate a person with a service animal due to the service provider's own disability, it is helpful for the service provider to indicate that is the reason for the denial of service. That way the person with the service animal will know that the refusal was not for discriminatory reasons. It may also be helpful for a service provider to include statements such as "No animals please, owner allergy" on the service provider's website or promotional materials if accommodations for service animals cannot be made without incurring undue hardship.⁵⁷

5.4 Information for Education Providers

As is the case with other service providers, education providers have an obligation under the *Act* to accommodate students with service animals to the point of undue hardship. A student relying on a service animal has a right to bring the animal into the classroom and other areas of an educational facility unless the education provider can demonstrate that there is a BFQ for limiting such access.

An education provider may also need to balance the needs of a student relying on a service animal with the needs of students who may not be able to be around the animal due to an allergy or phobia. While it may be necessary to implement measures to distance some students from a service animal, education providers should avoid segregating or isolating either the student with the service animal or students with allergies or phobias.

The Commission is currently working on reviewing and revising a guideline that it had developed specifically addressing the accommodation of students with disabilities and the unique issues associated with such accommodations.

6.0 Housing

It is a violation of the *Act* for a housing provider (e.g. a landlord, building superintendent or manager, building management corporation, or condominium corporation) to discriminate against a tenant or purchaser because that person relies on a service animal for a mental and/or physical disability. A person who relies on a service animal has the same right to access housing with the animal as any other person. A housing provider also has an obligation to make sure that its staff are properly trained and aware of their obligations under the *Act*.

Under New Brunswick human rights law, a housing provider cannot:

- Refuse to rent or sell to a person who relies on a service animal;
- Apply a no pets policy to service animals;
- Deny a prospective tenant or purchaser an opportunity to view a unit because the person relies on a service animal;⁵⁸
- Permit only service animals that have been registered or certified;⁵⁹
- Permit the harassment of a person based on his or her reliance on a service animal;
- Prevent a person relying on a service animal from accessing common areas customarily available to other tenants or residents.

A housing provider has an obligation to accommodate a person with a service animal, unless doing so would result in undue hardship for the housing provider. As noted above, what constitutes undue hardship will depend on the specific circumstances. A tenant or purchaser is only entitled to a reasonable accommodation, not a perfect one. For example, depending on the circumstances, if there are perfectly suitable areas available for a service animal to defecate, a housing provider may not need to make other areas available for that purpose.⁶⁰

6.1 “No Pets” Policies

It is not possible to contract out of human rights legislation. Even if a tenant or purchaser agrees to not keep animals or pets in the unit, such a requirement is unenforceable in relation to service animals.⁶¹ A housing provider would need to show that it would constitute undue hardship for someone to keep a service animal in the unit.

Example: A family had a basement suite in their home that they would rent out, and the entrance to the suite was through the family’s fenced backyard. The backyard was used by the family’s dog, which was very territorial. A prospective tenant with low vision and a service dog asked to see the suite, but was refused by the family due to the territorial nature of the family’s dog. The family was concerned that there would be a fight between the dogs, which could result in injuries to the dogs and anyone who intervened. The family was found to have a *bona fide* qualification for refusing to show the suite and the complaint was dismissed.⁶²

A speculative concern that other tenants without a need for a service animal will then want to keep pets or will start calling their pets “service animals” has not been found to be a valid reason for refusing to rent or sell to a person with a service animal.⁶³

6.2 A Housing Provider’s Duty to Inquire

If pets are allowed, but a person’s animal is believed to be disruptive, a housing provider has an obligation to make meaningful inquiries to determine whether the animal is a service animal and an accommodation is required.

Example: A hard of hearing tenant had a small dog that barks to alert him when someone was at the door or the telephone rang. The dog is not trained or certified as a service animal. The property management company received complaints from other tenants about the dog’s barking and initiated the eviction process.

The company was found to have discriminated against the tenant. The company either knew the tenant had disability-related needs or reasonably ought to have known about those needs. Once notified that there were disability-related needs, the company had a duty to make meaningful inquiries about those needs to determine whether it had a duty to accommodate the tenant. The failure to make those inquiries constituted a form of disability discrimination.⁶⁴

6.3 Obligation of the Person with the Service Animal

A person relying on a service animal has an obligation to maintain control of the animal at all times. If the service animal is routinely misbehaving or disruptive for other tenants or residents, that may support a finding that an eviction on the basis of the animal’s behavior was for non-discriminatory reasons.

Example: A hard of hearing tenant had a large dog that she used to alert her to a knock on the door or the ringing of the telephone. The apartment building where she resided had a no dog policy, but the building’s management made an exception to the policy as the dog was a service animal. The tenant’s apartment was near the entrance to the building, and the dog would lunge at visitors when the dog was on the tenant’s patio. The tenant did not regularly clean up the dog’s feces, resulting in a foul smell in the building’s hallway. The tenant also had difficulty controlling the dog, as it regularly escaped her apartment and jumped on other people and had once snapped at another tenant. The building’s management sent the tenant several letters and visited the tenant personally regarding these issues after receiving complaints from the building’s other tenants, and the tenant was eventually evicted as a result of the dog’s behaviour.

It was held that the building’s management did not discriminate against the tenant by evicting her. Management applied an individualized approach in response to the tenant’s needs by making an exception to the no dog policy. The dog’s unruly behavior was unrelated to the tenant’s disability.⁶⁵

6.4 Clarification about the Service Animal

As with service providers, housing providers may clarify that an animal is a service animal if animals are not otherwise permitted in the building or unit. Such situations may include:

- Where a person may have an “invisible” disability (e.g. epilepsy, PTSD), and the need for a service animal is not immediately obvious;⁶⁶
- Where the animal is not wearing a vest or otherwise marked as a service animal;
- Where the animal is not behaving like a service animal.⁶⁷

Documentation clarifying that the animal is a service animal may include a doctor’s note indicating that the person requires the animal for medical reasons,⁶⁸ or a certificate indicating that the animal is a certified service animal.⁶⁹ Some harnesses and vests for service animals may also contain such a certificate.

A tenant or purchaser who is seeking accommodation for a service animal has an obligation to respond to reasonable inquiries about the role the animal serves. Discussions between the housing provider and the person with a service animal about accommodation should be respectful.⁷⁰ A person with a service animal is not required to disclose a diagnosis of his or her medical condition.⁷¹ Medical documentation only needs to indicate that the person has a disability and benefits from the use of a service animal.

6.5 Balancing Accommodation Needs

Housing providers have an obligation to accommodate their other tenants or residents who may not be able to be around a service animal due to an allergy or phobia. Housing providers must find a way to balance the needs of all tenants or residents requiring accommodation. How this is accomplished will depend on the circumstances, but it may involve finding ways to keep a person with an allergy or phobia at a distance from the service animal.

7.0 For More Information

For further information about the *Act* or this guideline, please contact the Commission at 1-888-471-2233 toll-free within New Brunswick, or at 506-453-2301. TTD users can reach the Commission at 506-453-2911.

You can also visit the Commission's website at <http://www.gnb.ca/hrc-cdp> or email us at hrc.cdp@gnb.ca

New Brunswick Human Rights Commission
P.O. Box 6000
Fredericton, NB E3B 5H1
Fax 453-2653

Follow us!

Facebook: www.facebook.com/HRCNB.CDPNB

Twitter: [@HRCNB_CDPNB](https://twitter.com/HRCNB_CDPNB)

¹ The Commission would like to acknowledge and thank the Manitoba Human Rights Commission for allowing us to incorporate portions of their guidelines and factsheets on service animals into this guideline. The Commission would also like to recognize other human rights commissions from various jurisdictions across Canada for the opportunity to study and draw from their policies and documents on service animals.

² *Human Rights Act*, R.S.N.B. 2011, c. 171, sections 4, 5, 6, 7 and 8 [*Human Rights Act*].

³ *Devine v. David Burr Ltd.*, 2010 BCHRT 37 [*Devine*]; *Robdrup v. J. Werner Property Management*, 2009 HRTO 1372 [*Robdrup*].

⁴ *Sweet v. 1790907 Ontario Inc. o/a Kanda Sushi*, 2015 HRTO 433 [*Sweet*].

⁵ *Allarie v. Rouble*, 2010 HRTO 61 [*Allarie*].

⁶ *C.C. v. J.L. o/a [...] Restaurant*, 2014 HRTO 1625 [*C.C.*]; *Kamis v. 1903397 Ontario Inc.*, 2015 HRTO 741 [*Kamis*].

⁷ *Kamis*, *ibid.*

⁸ *Sweet*, *supra* note 4.

⁹ *C.C.*, *supra* note 6.

¹⁰ *Allarie*, *supra* note 5.

¹¹ *Ibid.*

¹² *Schussler v. 1709043 Ontario Ltd. (c.o.b. Chan's Chinese Buffet)*, 2009 HRTO 2194 [*Schussler*].

Guideline on Accommodating People with Service Animals

-
- ¹³ *Robdrup*, *supra* note 3; *Brockett v. Oxbow RV Resort*, 2014 BCHRT 169; *C.C.*, *supra* note 6.
- ¹⁴ *Cluff v. Logan (c.o.b. Village Food Market)*, 2014 BCHRT 99 [*Cluff*].
- ¹⁵ *Allarie*, *supra* note 5.
- ¹⁶ *C.C.*, *supra* note 6; *Kamis*, *supra* note 6.
- ¹⁷ *Sweet*, *supra* note 4.
- ¹⁸ *Mazurski v. St. Ann's Motel*, [2013] N.S.H.R.B.I.D. No. 14 [*Mazurski*].
- ¹⁹ *Niagara North Condominium Corp. No. 46 v. Chassie*, 1999 CanLII 15035.
- ²⁰ *Strumecki v. Capital Regional Housing Corp.*, 2005 BCHRT 386. A tenant with disabilities was not allowed to keep his dogs in his apartment. It was held that the prohibition on dogs was not discriminatory under the circumstances as the tenant was unable to draw a connection between the presence of the dogs and his disabilities. There was evidence that people with disabilities benefitted from companion animals, but it was also noted that people without disabilities would experience the same benefits.
- ²¹ *Jones v. Strata Plan 1571*, 2008 BCHRT 200 [*Jones*]; *Devine*, *supra* note 3.
- ²² *Central Okanagan School District No. 23 v. Renaud*, [1992] 2 S.C.R. 970, (1992), 16 C.H.R.R. D/425 (S.C.C.).
- ²³ *Carter v. Chrysler Canada Inc.*, 2014 HRTO 845, 79 C.H.R.R. D/388.
- ²⁴ *Central Alberta Dairy Pool v. Alberta (Human Rights Commission)*, [1990] 2 S.C.R. 489, (1990), 12 C.H.R.R. D/417 (S.C.C.).
- ²⁵ *Human Rights Act*, *supra* note 2, s. 2.2.
- ²⁶ *British Columbia (Public Service Employee Relations Commission) v. B.C.G.S.E.U.*, [1999] 3 S.C.R. 3 (SCC).
- ²⁷ *British Columbia (Superintendent of Motor Vehicles) v. British Columbia (Council of Human Rights)*, [1999] 3 S.C.R. 868.
- ²⁸ *Human Rights Act*, *supra* note 2, s. 4.
- ²⁹ *Vasil v. 528716 BC Ltd. (No. 4)*, 2009 BCHRT 117, CHRR Doc. 09-0473. The Tribunal concluded that the employer adversely treated an employee based on his mental disabilities. The employer took advantage of the employee's mental disabilities by failing to keep adequate work records on the employee and failing to adequately compensate the employee for his work.
- ³⁰ *Bubb-Clarke v. Toronto Transit Commission*, 42 CHRR 326, 2002 CanLII 46503 (ON HRT); *Amalgamated Transit Union, Local 741 v. London Transit Commission*, 2011 CanLII 76422.
- ³¹ *Davis v. Sandringham Care Centre*, 2015 BCHRT 148, 82 C.H.R.R. D/49; *Norrena v. Primary Response Inc.*, 2013 HRTO 1175, request for reconsideration dismissed: 2014 HRTO 39 [*Norrena*].
- ³² *Norrena*, *ibid.*
- ³³ *Jackson v. M Butler Insurance Brokers Ltd.*, 2007 HRTO 5, 59 C.H.R.R. D/17 An employee required 6 weeks off to recover from surgery for ovarian cancer. When she was ready to return to work, her position

Guideline on Accommodating People with Service Animals

had been replaced. The employers argued that they did not know she had cancer. The Tribunal found that the employee had provided the employer with 2 doctors' notes indicating that the employee required 6 weeks off to recover from surgery, the employer did not need to be informed of the precise diagnosis. See also: *Kazmir v. 1056217 Ontario Inc.*, 2009 HRTO 1974, CHRR Doc. 09-2586.

³⁴ *Allarie*, *supra* note 5.

³⁵ *Sprague v. RioCan Empress Walk Inc.*, 2015 HRTO 942 [*Sprague*].

³⁶ *Sweet*, *supra* note 4; *Sprague*, *ibid*.

³⁷ *Bourdeau v. Kingston Bazar*, 2012 HRTO 393; *Smolak v. 1636764 Ontario Ltd. (c.o.b. Mr. Sub)*, 2009 HRTO 1032;

³⁸ *Schussler*, *supra* note 12.

³⁹ *C.C.*, *supra* note 6. It was discriminatory for a restaurant owner put up a sign that said only service animals for blind people were permitted in the restaurant.
See also: *Schussler*, *supra* note 12.

⁴⁰ *Feldman v. Westfair Foods Ltd. (c.o.b. Real Canadian Superstore)*, [1997] B.C.H.R.T.D. No. 10, affirmed: *Westfair Foods v. Feldman*, [1998] B.C.J. No. 3380 [*Feldman*].

⁴¹ *Hill v. Bani-Ahmad*, 2014 HRTO 937. A blind customer with a service dog was told by a staff member that he could not enter a restaurant with his dog due to health regulations. The customer provided identification for himself and his dog, but the staff member still refused entry with the dog due to the restaurant owner's instructions. The restaurant was found to have discriminated against the customer.

⁴² *Berry v. Nagano Japanese Restaurant*, 2014 BCHRT 207 [*Berry*]. A customer with PTSD and a registered service dog was asked to show his guide dog certificate when he entered a restaurant. It was held that it was not improper or discriminatory for the restaurant to satisfy itself that the customer required accommodation in light of the fact that the customer had an "invisible" disability.

⁴³ *Allarie*, *supra* note 5. It was not unreasonable for store staff to ask for identification and medical documentation where an unmarked service animal was on a retractable leash and sniffing bulk products in the store.

⁴⁴ *Ibid*.

⁴⁵ *Sprague*, *supra* note 35.

⁴⁶ *Feldman*, *supra* note 40.

See also: *Parisian v. Hermes Restaurant Ltd.*, (1987), 9 C.H.R.R. D/4756 (Man. Q.B.); *Lawson v. 994486 N.W.T. Ltd.*, 2008 NWTHRAP 8.

⁴⁷ *Mazurski*, *supra* note 18.

⁴⁸ *C.C.*, *supra* note 6.

⁴⁹ *Schussler*, *supra* note 12.

⁵⁰ *Berry*, *supra* note 42.

⁵¹ *Cluff*, *supra* note 14. A customer with a service dog did not have a harness or leash on the dog while shopping in the store. Store staff observed that another customer nearly tripped over the dog. It was not

Guideline on Accommodating People with Service Animals

discriminatory for store staff to ask the customer with the service dog to take the dog outside due to the safety concerns.

⁵² *Gavrilovic vs. Ottawa Police Services Board*, 2012 HRTO 1810. It was not discriminatory for a store owner to intervene when he believed he saw a guide dog licking products. There was no connection between the owner's actions and the functions the dog was performing for a blind customer.

⁵³ *McCreath v. Victoria Taxi (1987) Ltd.*, 2015 BCHRT 153, 82 C.H.R.R. D/45.

⁵⁴ *Ibid.*

See also: *Dewdney v. Bluebird Cabs Ltd.*, (2003), 45 C.H.R.R. D/503, 2003 BCHRT 7; *Bergeron v. Alberta Co-op Taxi Line Ltd.*, 2005 AHRC 2.

⁵⁵ *Malone v. Dave Gulliver's Cabs Ltd.*, (2016), CHRR Doc. 16-3009 (N.L. Bd.Inq.).

⁵⁶ *Leavitt v. Church*, 2012 BCHRT 37. It was not discriminatory for a doctor to ask a patient to not bring her service dog into the examination room and leave the dog with a friend in the waiting room. The use of the dog was unrelated to the examination and the doctor had a need to conduct the examination as he saw fit. There was also a concern for the sensitivities of other patients in relation to allergies and odours.

⁵⁷ *Mazurski*, *supra* note 18.

⁵⁸ *Fitzhenry v. Schemenauer*, 2008 AHRC 8 [*Fitzhenry*]. The owner/operator of a rental property asked a prospective tenant if he had any pets, and the prospective tenant stated that he had a guide dog. The owner/operator did not permit the prospective tenant to view the unit and stated that no dogs were moving into the house. The owner/operator also said that if he allowed the prospective tenant to have a dog, other tenants in the house would want one.

⁵⁹ *Jones*, *supra* note 21. A blind person with a service dog inquired about a townhouse. The other townhouse owners had a policy that dogs over 15 kg would need to be registered as guide dogs in order to be permitted. The registration requirement was found to be discriminatory. Further, a concern by townhouse owners that permitting dogs without documentation that they were service animals would result in others calling their pets service animals was rejected as "speculative and unsupported by any evidence."

⁶⁰ *Zally v. Rosegate Strata Corp. NW 2402*, 2015 BCHRT 161. A resident of a townhouse wanted the other owners to upgrade an outdoor common area so that it could be used by her service dog for defecation. There was already a fenced area that the resident used for training her service dog and there was nothing that would have prevented that area from being used for defecation as well. As such, there was no reasonable prospect that the resident would be able to establish that the refusal to upgrade the common area was discriminatory.

⁶¹ *Waterloo North Condominium Corp. No. 198 v. Donner*, [1997] O.J. No. 6332. The owner of a unit in a condominium agreed to abide by the condominium corporation's rules at the time of purchase. The rules prohibited the keeping pets on the property and the bringing of pets onto the property by others. The owner later advised the condominium corporation that her mother would be moving in with her and that her deaf mother required the assistance of a service animal, but the condominium corporation refused to amend the no pets rules. It was found that the condominium corporation could not enforce the no pets rules in relation to the mother's service animal as doing so would be contrary to human rights legislation.

⁶² *Mann v. Rufer*, 2009 BCHRT 322.

⁶³ *Jones*, *supra* note 21. A blind person with a service dog inquired about a townhouse. The owners had a policy that dogs over 15 kg would need to be registered as guide dogs in order to be permitted. The registration requirement was found to be discriminatory. Further, a concern by townhouse owners that

Guideline on Accommodating People with Service Animals

permitting dogs without documentation that they were service animals would result in others calling their pets service animals was rejected as “speculative and unsupported by any evidence.”
See also: *Fitzhenry*, *supra* note 58.

⁶⁴ *Robdrup*, *supra* note 3.

⁶⁵ *Devine*, *supra* note 3.
See also: *Robdrup*, *supra* note 3.

⁶⁶ *Berry*, *supra* note 42. A customer with PTSD and a registered service dog was asked to show his guide dog certificate when he entered a restaurant. It was held that it was not improper or discriminatory for the restaurant to satisfy itself that the customer required accommodation in light of the fact that the customer had an “invisible” disability.

⁶⁷ *Allarie*, *supra* note 5. It was not unreasonable for store staff to ask for identification and medical documentation where an unmarked service animal was on a retractable leash and sniffing bulk products in the store.

⁶⁸ *Ibid.*

⁶⁹ *Sprague*, *supra* note 35.

⁷⁰ *Mazurski*, *supra* note 18.

⁷¹ *C.C.*, *supra* note 6.