

Guideline on Social Condition

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Guideline on Social Condition

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Please Note:

The New Brunswick Human Rights Commission (Commission) develops guidelines as part of its mandate to protect and promote human rights in the province. These guidelines are intended to help people understand their rights and responsibilities under the New Brunswick *Human Rights Act (Act)*.

This guideline offers the Commission's interpretation of discrimination based on social condition. For information on your rights and obligations in other situations of discrimination, please review the Commission's guidelines on those subjects or contact the Commission directly. This guideline is based on relevant decisions by boards of inquiry, tribunals, and courts, and should be read in conjunction with those decisions and with the relevant provisions of the *Act*. In case of any conflict between this guideline and the *Act*, the *Act* prevails.¹

This guideline is not a substitute for legal advice. Furthermore, this guideline does not apply to activities that fall under federal jurisdiction, such as radio and television broadcasting; inter-provincial and international services like railways and air transport; and banks, etc.

For clarification on any section of this document, please contact the Commission.

1.0 Discrimination based on Social Condition

The *Act* prohibits discrimination based on social condition in employment, housing and sale of property, public services, and membership in labour unions and professional associations. It is also discriminatory to publish or display or cause to be published or displayed anything (e.g. a notice, sign or other representation) that is discriminatory or indicates an intention to discriminate against a person or group on the basis of their social condition.²

1.1 Meaning of Social Condition

The *Act* defines social condition as follows:

“Social condition”, in respect of an individual, means the condition of inclusion of the individual in a socially identifiable group that suffers from social or economic disadvantage on the basis of his or her source of income, occupation or level of education.³

A person’s social condition is determined by the rank or position they hold in society,

Consequently, the *Act* protects discrimination against individuals who may be disadvantaged by their social condition; it acknowledges that socially disadvantaged people or groups are more vulnerable to discrimination. These individuals or groups have equal rights to employment, housing, and public services and facilities, because no person should be stigmatized for their employment status, or due to his or her source of income or education.

1.1.1 Objective and Subjective Factors in Social Condition

Social condition is defined by objective facts and subjective perceptions.⁴ In objective terms, a person’s social condition is often determined by his or her occupation, income or education. Sometimes, however, a person or group’s social condition gets defined by the subjective perceptions that exist in society about that person or group. For example, a person’s education, income, and employment status can generally be quantified: he or she makes x amount of money, or has x level of education – these are objective facts that establish that person’s social standing.⁵

However, social condition becomes a subjective category when people form perceptions or stereotypes based on a person’s objective realities. For example, a landlord refused to rent his apartment to a recipient of social assistance, because he assumed that people on social assistance are unreliable as tenants. The landlord had formed a subjective perception about his tenant, which was based on a common stereotype about social assistance recipients.⁶ In most instances, courts adopt both objective and subjective tests to assess if a person was discriminated against on the basis of his or her social condition.

1.1.2 Social Condition as a Composite Category

Social condition is a composite category, because it has three constituent parts: a person's income, occupation or job, and education. However, to show discrimination under social condition, a person does not have to prove that he or she experienced discrimination in all three categories. If a person is discriminated against on the basis of any one of these categories, it would generally be construed as discrimination based on social condition, as conceived in the *Act*.

1.1.3 Intention to Discriminate and Social Condition

A person cannot justify treating someone in a discriminatory manner on the grounds that he or she had no intention to discriminate – intention is not material in situations of discrimination.⁷ It is enough to constitute discrimination if a person is denied access to employment, housing or services available to other people, or if that access is hindered or diminished in any way because of that person's real or perceived social condition.⁸

1.1.4 Intersectionality and Social Condition

Social condition often intersects with other grounds of discrimination like disability, gender or race, because people with socioeconomic disadvantage also tend to have other vulnerabilities that make them easy targets of discrimination. Social condition often pushes people into a spiral of poverty, which is a multidimensional experience of socioeconomic disadvantage, interlocked with a person's race, gender, disability or age. Therefore, social condition is sometimes defined in multi-factored⁹ terms, in accordance with the broad and purposive approach with which courts regard human rights legislation and violations under it: human rights law is interpreted liberally, so as to advance the larger purpose and intent of human rights legislation.¹⁰ This, however, does not mean that social condition is an all-inclusive category that would encompass all situations of socioeconomic disadvantage.¹¹

1.2 Persons with Social Condition Characteristics

Examples of individuals or groups who may identify with social condition as it is defined in the *Act* include, but may not be limited to, the following:

- Seasonal workers;¹²
- Homeless people or those living in inadequate housing;¹³
- Freelance workers;¹⁴
- Single parents, especially single mothers;¹⁵
- Retirees or pension recipients;
- Casual employees, unemployed or underemployed workers;
- People transitioning between jobs, or those on medical, sick or maternity leave;¹⁶
- Students;¹⁷
- People in very constrained economic circumstances, such as panhandlers;¹⁸

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- People with limited education and few job opportunities, or those with certain kinds of occupations, such as domestic workers.¹⁹

1.3 Types of Income That May Create Social Condition

Examples of types of income that may identify an individual as someone with social condition as defined in the *Act* include, but are not limited to, the following:

- Social assistance;²⁰
- Welfare support;
- Disability benefits, disability pension or disability insurance;²¹
- Pension remuneration;
- Workers' compensation;²²
- Employment insurance;
- Rent subsidy from a public or cooperative housing.²³

2.0 Duty to Accommodate

The *Act* prohibits employers, service providers, and housing providers from enacting policies that may discriminate against people on the basis of their social condition. Employers, housing, and service providers have a duty to accommodate persons disadvantaged by their social condition equally and at par with all other persons. The duty to accommodate is an individualized process; the person with the duty to accommodate must take into account the specific needs and circumstances of the person requiring accommodation.²⁴

Accommodation is a collaborative process, and it comprises substantive and procedural aspects.

Accommodation is also a multi-party inquiry that involves both the person with social condition status and the employer, housing or service provider (as the case may be).²⁵ Therefore, accommodation is a collaborative process: the person with a duty to accommodate should actively seek the information he or she needs, and must consider and explore all possibilities for accommodating the person in need of accommodation. At the same time, the person requiring accommodation must also cooperate in the attempt to find a solution that would suitably meet his or her accommodation needs.²⁶

The duty to accommodate has substantive and procedural aspects. The “substantive” component includes concessions and steps that were taken to accommodate an employee.²⁷ The “procedural” dimension of the duty to accommodate requires an employer, housing or service provider to inquire and assess a particular situation to determine the needs of the person expecting accommodation. Failure to make the necessary inquiries and assessments is a form of discrimination in itself, because it denies the affected person his or her right to accommodation and to protection against discrimination.²⁸

2.1 Example of Reasonable Accommodation – I

A landlord has the duty to accommodate the reasonable requests of a tenant, when those requests would not result in undue hardship to the landlord. A tenant, who was a bilateral amputee and also suffered from kidney failure and diabetes, received disability income from the Government of Ontario. He used a wheelchair and lived in a fifth floor apartment; he requested his landlord to shift him to an apartment that had become available on the ground floor. The tenant also found it difficult to access the doorways of the building, and requested that they be made fully wheelchair compliant. These requests were within reasonable limits, and would not have caused undue hardship to the landlord. Therefore, it was the landlord’s duty to accommodate these reasonable accommodation needs of his tenant; by not fulfilling these requests, the landlord discriminated against the tenant on grounds of his disability and receipt of social assistance.²⁹

2.2 Example of Reasonable Accommodation – II

The complainant suffered from multiple sclerosis and was a recipient of social assistance. She used the city's Disabled Transit System (DTS), which charged a higher fare than the regular transit. The complainant also used the city's swimming pool, which did not offer adequate accessibility for persons with disability. It was held that providing DTS services at the cost of regular transit would not constitute undue hardship for the city. Similarly, while the city had made some improvements to the swimming pool facility, it needed to provide further accommodation to make the swimming pool facilities fully accessible to disabled persons. By not accommodating the reasonable requests of the complainant, the city had discriminated against her on the basis of her disability and social condition.³⁰

2.3 Example of Reasonable Accommodation – III

The complainant worked at a milk processing plant and was a member of the World Wide Church of God. He requested permission to take unpaid leave on a Monday, because a holy day observed by his church happened to fall on that particular Monday. Mondays were especially busy at the milk plant, so the employer refused the leave request. When the complainant did not report to work on the Monday in question, his employment was terminated. The Supreme Court held that under the circumstances the employee's request was reasonable and would not have imposed undue hardship on the employer. Undue hardship could be pleaded if the employee was going to continue to request a holiday on Mondays, but there was no evidence that this was going to be the case. In dismissing the employee, therefore, the employer had discriminated against him, and had failed in its duty to accommodate.³¹

While the person with a duty to accommodate must make all efforts to accommodate legitimate accommodation requests, he or she is not required to accommodate past the point of undue hardship. Therefore, the duty to accommodate extends to the furthest point possible, but there are situations where accommodation might have to be restricted.

3.0 Limits to Accommodation

3.1 Undue Hardship

If it is extremely difficult for an employer, housing or service provider to accommodate a person, the employer, housing or service provider would have to show that it would suffer extreme or undue hardship in fulfilling the accommodation request. What constitutes undue hardship would depend on the specific circumstances of each case; undue hardship in one situation may not be seen as undue hardship in a different set of circumstances.

The three-part Meiorin Test was established by the Supreme Court of Canada in the Meiorin case.

3.1.1 Examples of Undue Hardship

A situation of undue hardship may arise:

- If accommodating a person would result in extremely high financial costs to an individual or business;³²
- If the accommodation would result in a serious disruption of a business or a collective agreement;³³
- If accommodating a person would cause substantial interference in the rights of others, including employees, customers or tenants;³⁴
- If accommodation would involve potential health and safety risks;³⁵
- If an accommodation would inconvenience a business to such an extent that it could impact the very purpose of that business.

3.2 *Bona Fide Requirement (BFR) or Bona Fide Qualification (BFQ)*

The conduct of an employer, housing or service provider may be seen as non-discriminatory if the employer, housing or service provider can show that any limitation, specification or preference it imposed on an individual or group was based on a *bona fide* (in good faith) requirement (BFR) or qualification (BFQ)³⁶ – a necessary requirement for employment, or in the provision of housing and service facilities that would outweigh the accommodation request. Courts apply a strict test in each situation to determine if a particular limitation or denial of accommodation was based on a *bona fide* requirement.

3.3 The Meiorin Test

To be considered a BFR or a BFQ, the limitation or standard adopted by an employer, housing or service provider must pass the Meiorin Test.³⁷ This three-part test was established by the Supreme Court of Canada in the Meiorin case: employers, housing or service providers have to show that an action taken or a standard or rule adopted by them was an essential requirement of the job, or of the housing or service provision. They have to show that a standard, requirement or rule:

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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, and the employer, housing or service provider cannot accommodate the requirements of a person or group without incurring undue hardship.³⁸

To qualify the first part of the test, an employer, housing or service provider has to show that a rule or standard is rationally connected to the job, housing or service; for example, a college requires a high school diploma to admit students, or a transit service requires its bus drivers to possess a Class 2 or Class 4 driving license, as the case may be – these rules or limitations are rationally connected to the service and employment that the two situations entail. The second part of the test puts an onus on employers, housing or service providers to show that a rule or limitation was established in good faith, and not to discriminate against a person or group. The third part of the test requires employers, housing or service providers to assess the individual needs of the person making the accommodation request; it requires them to evaluate objectively if accommodating the request would cause undue hardship or serious loss to their business or service.

3.4 Statutory Limitation: Social Condition

The *Act* also places an explicit limitation on the protection that individuals or groups are entitled to because of their social condition. Section 9 of the *Act* permits a limitation, specification, exclusion, denial or preference on the basis of social condition if it is required or authorized by an Act of the Legislature.³⁹ The statutory limitation is a standard provision in legislation, envisaged to prevent potential hindrance in the work of government and the legislature as they pursue and implement their policy agendas.⁴⁰ It may be noted, however, that in most cases, exceptions embedded in human rights legislation are strictly construed.⁴¹

The intention of the statutory limitation, therefore, is to protect government services and programs from claims of discrimination based on social condition.⁴² For example, the New Brunswick Social Assistance Program sets eligibility criteria based on household income to assess eligibility and rates of social assistance for individuals, families or households. To protect the program and ensure its integrity and smooth operation, the rules, regulations or limitations specified in it would not be subject to claims of discrimination on the basis of social condition.

In situations alleging social condition discrimination in employment, employers would have to show a BFQ or BFR as their defense or justification for any limitation or exception they may have put in place (for more clarification, see section 6.3).

4.0 Social Condition Discrimination in Housing

It is a violation of the *Act* if a housing provider (a landlord, building superintendent or manager, building management corporation, or condominium corporation) discriminates against a tenant or purchaser because of the tenant or purchaser's actual or perceived social condition. Housing providers also have an obligation to ensure that their staff is properly trained and aware of its obligations under the *Act*.

The *Act* prohibits housing providers from discriminating against tenants or purchasers because of their social condition.

4.1 Duties of Housing Providers

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

- Refuse to rent or sell to a person because of that person's actual or perceived social condition as defined in the *Act*;⁴³
- Include additional conditions in the rental agreement of a tenant because of the tenant's real or perceived social condition;⁴⁴
- Deny facilities to a tenant that would normally be available to others because of the tenant's perceived or actual social condition;⁴⁵
- Impose extra rental charges on a tenant with a view to evict him or her from the premises because of the tenant's perceived or actual social condition status;⁴⁶
- Evict a tenant or terminate or attempt to terminate their tenancy because of their perceived or real social condition;⁴⁷
- Deny a prospective tenant or purchaser an opportunity to view a unit because of the tenant or purchaser's real or perceived social condition;⁴⁸
- Harass or permit the harassment of a tenant, prospective tenant or home buyer based on his or her actual or perceived social condition;⁴⁹
- Disallow a tenant to share an apartment with a co-occupant or roommate because of the co-occupant's actual or perceived social condition;⁵⁰
- Evict a tenant without adequate notice, because of the tenant's actual or perceived social condition.⁵¹

4.2 Test of Discrimination

In order to show discrimination in tenancy, a person must be able to prove, on a balance of probabilities:

- That they are a member of one or more of the protected groups against whom discrimination is prohibited by the *Act*;
- That they were discriminated against in relation to a term or condition of the tenancy; and

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- That it is reasonable to infer that discrimination happened because they belonged to a group protected by law.⁵²

This *prima facie* test of discrimination is commonly referred as the Moore Test.⁵³

4.3 Examples of Discrimination in Tenancy

- The Yukon Housing Corporation enforced a no-pet policy for low-income tenants, but permitted government employees living in the same building to keep pets. The low-income tenants had different sources of income, including social assistance, government benefits, and part-time or seasonal employment earnings, and they received housing subsidies. The Corporation's policy was based on the assumption that low-income tenants have less capacity to fulfill their tenancy responsibilities than tenants with secure government employment. The Board found that the policy discriminated against the low-income tenants on the basis of their source of income, or social condition.⁵⁴
- A tenant who received social assistance was denied or provided very limited access to laundry facilities, which denial was deemed as discrimination based on social condition.⁵⁵ Denial of other facilities like parking or storage space to tenants because of their social condition would also be discriminatory under the same principle.
- A landlord refused to rent his apartments to persons who spent more than a specified percentage of their incomes (usually 30 percent) on rent. The practice discriminated against social assistance recipients and other disadvantaged groups like single women, young people, and refugees, whose income status would exclude them from renting these apartments.⁵⁶
- A landlord inserted a clause in the rental agreement that required direct deposit of rent from a tenant who was a social assistance recipient. When the tenant could not arrange direct deposit confirmation from his case worker, the landlord refused to rent the apartment. The landlord was held to have discriminated against the tenant based on the tenant's source of income or social condition.⁵⁷
- A landlord discriminated against a tenant who received disability benefits and rental subsidy when he raised his rent, while rents of other tenants living in the same building were not raised. This was held to be discriminatory treatment based on social condition, and a tactic to put pressure on the tenant to vacate the apartment.⁵⁸
- The complainant was employed as a Zamboni operator at a local rink, and sometimes supplemented his income with social assistance to support his family. He signed a rental agreement and paid a damage deposit, but the landlord refused to rent him the apartment when he learned of his social assistance income. The court held that the complainant was a member of a protected group and the landlord had discriminated against him on the basis of his source of income. The landlord had presumed that a social assistance recipient would not be a reliable tenant.⁵⁹

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Two men, both with HIV-AIDS and other disabilities, lived as roommates in a rented apartment. One of them identified as gay and the other as two-spirited, and both received disability benefits and housing subsidies. The landlord had agreed to repair their unit when they moved in, but refused to follow up with his promise. When the tenants insisted that repairs be done to the deck because it was unsafe, the landlord taunted them for living off welfare and not being hardworking taxpayers like himself; he also mocked them for their sexual orientation. The two men were eventually forced to leave the tenancy because of the landlord's conduct. The landlord was found to have discriminated against the tenants on the grounds of their sexual orientation, disability, and source of income.⁶⁰

4.4 Employees of Housing Providers

Employees of a property or housing company represent the interests of their employers, so the employer or company is answerable for the conduct of the employees. The manager of an apartment complex discouraged a person from submitting an application to rent an apartment; according to the manager, the application would not be approved because the applicant was receiving disability benefits. It was held that even if the owners of the apartment complex had not authorized the conduct of their employee, they were still liable for the discriminatory treatment suffered by a prospective tenant.⁶¹

5.0 Social Condition Discrimination in Public Services

It is a violation of the *Act* if a service provider discriminates in providing a service to a person because of that person's perceived or actual social condition. A person with social condition status has the same rights to access public services and facilities as any other person.

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

- Refuse a service to a person because of that person's perceived or actual social condition;
- Prevent a person with perceived or actual social condition from accessing spaces customarily available to other members of the public;
- Harass or permit the harassment of a person in the provision of a service based on that person's perceived or actual social condition;⁶²
- Put restrictions or limitations on the service being provided to a person because that person belongs to or is perceived to belong to a class or group having social condition characteristics.

A person with social condition status has the same rights to access public services and facilities as any other person.

5.1 Types of Public Service

Public services that should be available to all people without discrimination include, but are not limited to, the following:

- Hospitality services and premises such as restaurants, hotels, and other public locations, and/or entertainment venues like stores, shopping malls, theatres, etc.;⁶³
- Education services, in both private and public sectors, like schools, colleges, and universities;
- Healthcare facilities, both public and private, like hospitals, clinics, and treatment centers;
- Insurance services, like automobile, home, and life insurance;
- Nursing home and residential care facilities;
- Transport and public transit facilities like taxis, buses, and trains;⁶⁴
- Employment insurance and workers' compensation pay;⁶⁵
- Telephone, ISP, TV or cable services;
- Financial services offered by provincial financial institutions or banks.⁶⁶

5.2 Example of Denial of Service

A seasonal worker from Newfoundland who worked as an ice-road truck driver in Yellowknife broke his hip in a work-related injury. In calculating his worker's compensation pay, the Workers' Compensation Board (WCB) did not include his employment insurance earnings. The court ruled that the WCB discriminated against the applicant on the basis of his social condition: he was a seasonal worker, with inadequate education and low income, which identified him as someone disadvantaged by his social condition. The court used the "Moore test" to conclude that the WCB had denied the applicant a service that was generally available to the public.⁶⁷ The denial of service was discriminatory, because it was based on the applicant's social condition.⁶⁸

5.3 Duty to Accommodate and Undue Hardship

A service provider has an obligation to accommodate a person with perceived or actual social condition, 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 of each situation. At the same time, a person receiving a service is only entitled to a reasonable accommodation, not a perfect one. It is the service provider's obligation to demonstrate that any restrictions or limitations placed on a service are reasonable and necessary, and have been adopted in good faith.

5.4 Denial of Service: More Examples

A recipient of social assistance who also suffered from a progressive form of multiple sclerosis used the city's Disabled Person's Transit System (DTS); she was unable to use the regular transit or taxi services due to mobility restrictions caused by her disability. The DTS service charged higher fares than the regular transit system, and did not provide monthly passes for DTS users. The court concluded that the complainant's social condition and disability were equal factors in her dependence on the DTS service for her commuting needs. By keeping different rates and facilities (like the unavailability of monthly passes) the transit system had discriminated in providing a service to the complainant because of her disability and social condition.⁶⁹

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A recipient of social assistance lived in the Town of Wolseley and owned a number of pets; three of her dogs strayed from her house and were impounded by the town's animal control service. The applicant made a number of inquiries about the dogs, but learnt after a few days that they had been euthanized by the town. The tribunal found that the town had subjected the applicant to discriminatory treatment, because, under the circumstances, the usual practice would have been to notify the dog owner and give them an opportunity to retrieve the dogs. According to the town's Dog Bylaw, owners of impounded dogs were required to pay a fine and kennel fees before reclaiming their dogs. Based on the evidence, the court held that the town officials presumed that the owner would not be able to pay the fines and kennel fees because she was on social assistance. Thus, the town discriminated in providing a service⁷⁰ that would customarily have been provided to someone in the owner's circumstances. The owner was subjected to discriminatory treatment in the provision of that service because of her social assistance income, or her social condition.⁷¹

6.0 Social Condition Discrimination in Employment

It is a violation of the *Act* for an employer to discriminate against an employee or a potential employee because of his or her actual or perceived social condition. Employees have a right to be treated fairly and equally, irrespective of their social condition as defined in the *Act*; employers, therefore, have an obligation to accommodate employees with perceived or actual social condition equally with other employees.

The *Act* prohibits discrimination in all aspects of full-time, part-time, permanent, casual or probationary employment. Protection against discrimination in employment also extends to unpaid or volunteer employment, employment recruiters and agencies, trade unions and occupational associations.⁷²

Employees have a right to be treated fairly and equally, irrespective of their social condition as defined in the *Act*.

Under New Brunswick human rights law, employers cannot:

- Refuse to renew an employment contract because of an employee's perceived or actual social condition;
- Permit co-workers to harass or make fun of an employee because of the employee's perceived or actual social condition;
- Demote, withhold a promotion or fail to consider an employee for a promotion because of his or her perceived or actual social condition;
- Terminate or lay off (even with notice) an employee, basing the decision on the employee's perceived or actual social condition;
- Subject an employee to adverse treatment because of his or her actual or perceived social condition;
- Force an employee to resign by making working conditions unacceptable for that employee because of his or her perceived or actual social condition.

6.1 Duty to Accommodate and Undue Hardship

An employer's duty to accommodate is triggered whenever an employment rule has an adverse discriminatory effect on an employee. However, an employee is only entitled to a reasonable accommodation, not a perfect one, and an employer should not have to face undue hardship in the form of excessive costs, health and safety risks, or other similar difficulties. As noted in the earlier sections of this guideline, what constitutes undue hardship will depend on the specific circumstances and contexts of each situation.

6.2 Example of Social Condition Discrimination in Employment

A recipient of social assistance benefits enrolled in the government's Work and Employment Incentive Program. He was referred to the Department of Income Security which finds temporary placements for candidates by matching their qualifications and interests with prospective employers. These placements are meant to provide opportunities of skills training and future employability to temporary workers. The applicant was hired by the Department of Tourism on a 16-week contract, working as office assistant in its photo library. He was paid a wage that was below the provincial minimum wage; furthermore, his services were terminated after five weeks. The tribunal held that the applicant had been in an employment contract, and the Department of Tourism had violated the *Labour Standards Act* by paying him less than minimum wage. The applicant had been treated differently than other employees because he was a social assistance recipient; the Department, therefore, had discriminated against him because of his social condition.⁷³

6.3 Discrimination in Employment: A Hypothetical Scenario

A school advertises a job vacancy for the position of a custodian. One of the job requirements is a high school certificate or a GED diploma, because the duties include the handling of certain types of chemicals and reading and understanding of safety instructions. An applicant has previous experience of custodial work and can read safety materials with competence, but he does not possess either a high school certificate or a GED diploma. The school does not hire the applicant, basing its decision on the ground that the applicant does not fulfill the stated educational requirement. If the applicant files a complaint with the Commission alleging social condition discrimination, the Commission would accept the complaint and investigate its specific circumstances. The school would have to establish that the education condition is a *bona fide* requirement or qualification for the job, and that accommodating the applicant would put them in a position of undue hardship. Additionally, the school would have to show that it fulfilled its obligation to assess the applicant's reading comprehension, if reading comprehension was the basis of the education requirement stipulated in the job vacancy.

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

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¹ The Commission acknowledges and thanks human rights commissions from jurisdictions across Canada for the opportunity to study and draw on their policies and documents on social condition.

² *Human Rights Act*, RSNB 2011, c. 171, sections 4, 5, 6, 7, and 8 [*Human Rights Act*].

³ *Ibid.*, s. 2.

⁴ *Québec (Commission des droits de la personne) c Gauthier* (1993), 19 CHRR D/312, CanLII 8751 (QC TDP).

⁵ “Board of Commissioner’s Policy”, online: The Manitoba Human Rights Commission <http://www.manitobahumanrights.ca>.

⁶ *Day v Kumar and another (No. 3)*, 2012 BCHRT 49 (CanLII) [*Day v Kumar*].

⁷ *Ontario (Human Rights Comm.) and O’Malley v Simpsons-Sears Ltd* (1985), 2 SCR 536 (CanLII): It is not necessary to prove that discrimination was intentional – a rule or practice, neutral on its face and honestly made, can have discriminatory effects.

⁸ *Williams v Melucci*, 2013 HRTO 547 at para 27 (CanLII) [*Melucci*]: “As has been stated many times in the case law, intent to discriminate is not required in order to find a violation of the *Code*; rather, it is the impact of a respondent’s actions on the applicant that is the central issue”.

⁹ Wayne MacKay and Natasha Kim, “Adding Social Condition to the *Canadian Human Rights Act*” (2009), Canadian Human Rights Commission.

¹⁰ *(Commission des droits de la personne et des droits de la jeunesse) c Boisbriand (City)*, 2000 SCC 27 (CanLII); *Gould v Yukon Order of Pioneers*, 1996 1 SCR 571 (CanLII 231) [*Gould*].

¹¹ *Commission des droits de la personne du Québec v Ville de Beauport*, [1981] CP 292, 3 CHRR D/648: For example, the court decided that a person with a criminal record does not belong to a group protected by the social condition clause; criminal record relates to a person’s unlawful conduct, while social condition is defined by his or her income, occupation, and education. *Johnson v Commission des affaires sociales*, [1984] CA 61: A person who had become unemployed as a result of a labour dispute was not seen to qualify for protection under the social condition category.

¹² *Mercer v Northwest Territories (Workers’ Compensation Board)*, 2007 NWTHRAP 4 at para 21 (CanLII) [*Mercer*]: Seasonal workers are recognized as workers who have limited education levels and limited job opportunities, and “tend to work from job to job without the comfort and assurance of ongoing employment”.

¹³ *Garbett v Fisher* (1996), 25 CHRR D/379 (Ont. Bd. Inq.); “Board of Commissioner’s Policy”, online: The Manitoba Human Rights Commission <http://www.manitobahumanrights.ca>: To be considered homeless, a person would have to show a pattern of homelessness over a length of time. For example, a person temporarily residing with friends because he or she is shifting apartments would not fall under the homeless category.

¹⁴ *Québec (Comm. des droits de la personne et des droits de la jeunesse c Sinatra)* (1999), CHRR Doc. 99-218 (Trib. Qué.), CanLII 52 [*Sinatra*].

¹⁵ *Willis v David Anthony Phillips Properties* (1987), 8 CHRR D/3847 (Ont. Bd. Inq.); *Whittom v Québec (Comm. des droits de la personne)* (1997), 29 C.H.R.R. D/1 (C.A. Qué.): Single mothers are considered a particularly vulnerable group.

¹⁶ *Janes v Wright (No. 2)* (2012), 75 CHRR D/168 (HRTO 1621): An applicant for a rental property had a full-time job, but was expecting to receive workers’ compensation income when she would go on leave to get surgery for a work-related injury. Her husband worked part-time and received health care benefits for his diabetes. A house owner discriminated against them on the basis of their income when he terminated their tenancy on the assumption that both of them would be on social assistance on an ongoing basis. *Trudeau v Chung* (1991), 16 CHRR D/25 (BCCHR): A federal government employee was on sick leave and received disability pension; he was a victim of discrimination when his application to rent an apartment was turned down on grounds of his disability and social condition. For maternity leave, see *Alberta Hospital Assn. v Parcels* (1992), 17 CHRR D/167 (Alta. Q.B.).

¹⁷ *Lévesque c Québec (Procureur général)*, [1988] R.J.Q. 223 (C.A.): Students fall under a fringe group whose status may or may not constitute social condition. They are in a temporary situation of socioeconomic disadvantage, which could change with time, unlike more permanent conditions of disadvantage faced by other groups whose poverty is historically determined, or runs through generations.

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¹⁸ *Commission des droits de la personne et des droits de la jeunesse v Delisle No. 3* (2013), CHRR Doc. 13-3137 (QC TDP 33): A disabled woman who received social assistance sometimes panhandled in front of a local business to augment her income. A customer wrote a letter to the manager of the business, spewing vitriol against the woman's poverty and social assistance status. It was held that he had discriminated against the woman on grounds of her social condition and disability.

¹⁹ William Black, "BC Human Rights Review" (1994), Government of British Columbia: For example, people who may have "difficulty reading or writing, or people whose dress or patterns of speech identify them as coming from inferior ranks".

²⁰ *Day v Kumar*, *supra* note 6.

²¹ *Tanner v Blake* (2003), 47 CHRR D/134 (BCHRT 36): A housing provider discriminated against an applicant when he refused his rental application because the applicant was receiving a disability pension. *Birchall v Guardian Properties Ltd.* (2000), 38 CHRR D/83 (BCHRT 36): The rent application of a single mother was denied because she was receiving disability benefits – the owner of the property discriminated against the applicant by presuming that she would not be able to pay her rent because of her source of income.

²² *Mercer*, *supra* note 12.

²³ *Campbell v Yukon Housing Corp.* (2005), 56 CHRR D/151 (YT Bd. Adj.) [*Campbell*].

²⁴ *Jones v The Owners Strata Plan 1571 and others*, 2008 BCHRT 200 (CanLII).

²⁵ *Central Alberta Dairy Pool v Alberta (Human Rights Commission)*, [1990] 2 SCR 489, 12 CHRR D/417 [*Dairy Pool*].

²⁶ *Dixon v 930187 Ontario Ltd. (No. 1)*, 2010 HRTO 256 at para 38 (CanLII) [*Dixon*].

²⁷ *Gourley v Hamilton Health Sciences*, 2010 HRTO 2168 at para 8 (CanLII).

²⁸ *Lane v ADGA Group Consultants Inc.*, 2007 HRTO 34 (CanLII).

²⁹ *Dixon*, *supra* 26.

³⁰ *Portman v Yellowknife (City)*, 2016 CanLII 62610 (NT HRAP) [*Portman*].

³¹ *Dairy Pool*, *supra* note 25.

³² *British Columbia (Superintendent of Motor Vehicles v British Columbia (Council of Human Rights))* (1999), 181 DLR (4th) 385 (SCC): The Supreme Court held that excessive costs can constitute undue hardship in some cases, but merely "impressionistic" evidence of rising costs would not be a sufficient claim of undue hardship. In *Portman* (*supra* note 30), representatives of the Yellowknife city transit argued that accommodating the complainant's request regarding the DTS service would increase the transit system's operating costs; the court held that an operating deficit in a business alone does not constitute undue hardship – the business would have to show a more significant financial impact to make a case for undue hardship (at para 20).

³³ *Dairy Pool*, *supra* note 25.

³⁴ *Carter v Chrysler Canada Inc.*, 2014 HRTO 845, 79 CHRR D/388.

³⁵ *Dixon*, *supra* note 26 at paras 41 and 42: The factors relevant to establishing undue hardship are "cost, outside sources of funding, if any, and health and safety requirements".

³⁶ *Human Rights Act*, *supra* note 2, s. 2.2.

³⁷ *British Columbia (Public Service Employee Relations Commission) v BCGSEU*, [1999] 3 SCR 3 (CanLII).

³⁸ *Ibid.* at para 54.

³⁹ *Human Rights Act*, *supra* note 2, s. 9.

⁴⁰ The limitation clause follows the principle set in Section 1 of *The Canadian Charter of Rights and Freedoms*, which limits rights guaranteed under the *Charter* to "reasonable limits prescribed by law".

⁴¹ Ruth Sullivan, *Driedger on the Construction of Statutes* (4th ed.) at 376 (Toronto: Butterworths, 2002).

⁴² Bill 12, *An Act to Amend the Human Rights Act*, New Brunswick, 2004-2005, s. 9: Readings of the Bill that proposed the limitation clause affirm that the limitation provision is intended to "preserve and protect complex government programs [from] attack or diminution".

⁴³ *Sinatra*, *supra* note 14: A landlord was held to have discriminated on social condition grounds when he refused to rent his apartment to a person who was a freelance worker; the landlord presumed that a freelance worker would have an unsteady income, and discriminated against the person based on his perceived social condition.

⁴⁴ *McEwen v Warden Building Management Ltd.*, (1993) 26 CHRR D/129: A housing applicant, who received Mother's Allowance from the province, a form of public assistance, was discriminated against

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when the landlord required her caseworker to ensure direct payment of rent as a condition of her tenancy. *Québec (Comm. des droits de la personne et des droits de la jeunesse) c Normandin* (2011), CHRR Doc. 11-3034, 2011 QCTDP 6: An unemployed man who was receiving social assistance was discriminated on grounds of his social condition when his landlord asked that he include a co-signer in the rental agreement. Instead of making a presumption about the tenant's source of income, the landlord had the duty to make further inquiries about the tenant's financial situation. By placing an additional burden on the tenant, the landlord set a different criterion for the tenancy just because the tenant was a recipient of social assistance.

⁴⁵ *Coreas v Tuyen (No. 3)* (2012), CHRR Doc. 12-0218, 2012 BCHRT 218 [Coreas].

⁴⁶ *409205 Alberta Ltd. v Alberta (Human Rights and Citizenship Comm.)* (2002), 44 CHRR D/260, 2002 ABQB 681 [409205 Alberta].

⁴⁷ *Desjarlais v Kanganilage* (2012), CHRR Doc. 12-0243, 2012 BCHRT 243.

⁴⁸ *Jacques Reeves v Foundation Abbe Charles-Emile Gadbois* (2001), CanLII 9093 (QC TDP): The owner of an apartment discriminated against the complainant when he refused his request to view the apartment because the complainant was on social assistance.

⁴⁹ *Crawford v 2176534 Ontario Ltd (No. 3)*, 2010 HRTO 1412, CHRR Doc. 10-2062: A landlord was found to have caused injury to the dignity and self-respect of his tenant when he shouted insults at him denouncing his sexual orientation and his social assistance income.

⁵⁰ *Larson v Graham* (1999), 35 CHRR D/382 (BCHRT).

⁵¹ *Sparks v Dartmouth/Halifax County Reg. Housing Authority* (1993), 101 D.L.R. (4th) 224, 119 NSR (2d) 91 (NSCA): A lessee of a subsidized housing unit was evicted at a month's notice, which was discriminatory because it set up a distinction between ordinary lessees and lessees of subsidized housing; this was held to be discrimination based on the low-income status of the lessee.

⁵² *Monsson v Nacel Properties*, 2006 BCHRT 543 at para 25 (CanLII).

⁵³ *Moore v British Columbia (Education)*, [2012] 3 SCR 360, 2012 SCC 61 (CanLII).

⁵⁴ *Campbell*, *supra* note 23.

⁵⁵ *Coreas*, *supra* note 43.

⁵⁶ *Shelter Corp. v Ontario (Human Rights Comm.)* (2001), CanLII 28414, 39 CHRR D/111 (ON SCDC).

⁵⁷ *Melucci*, *supra* note 8.

⁵⁸ *409205 Alberta*, *supra* note 44.

⁵⁹ *Day v Kumar*, *supra* note 6.

⁶⁰ *Bro v Moody (No. 2)* (2010), 69 CHRR D/145 (BCHRT 8).

⁶¹ *Neale v Princeton Place Apts. Ltd.* (2001), 39 CHRR D/161 (BCHRT 6).

⁶² *Andrella David v Sobeys Group Inc.* (2015), 82 CHRR D/18 (NS Bd. Inq.).

⁶³ "Social Condition", online: Comm. des droits de la personne et des droits de la jeunesse <http://www.cdpdj.qc.ca/en>: A homeless person who occasionally eats at a local restaurant is asked to pay for his meal before it is served, whereas other customers pay after they have eaten. The restaurant is discriminating against the person by treating him differently because of his perceived social condition.

⁶⁴ *Portman*, *supra* note 30.

⁶⁵ *Mercer*, *supra* note 12.

⁶⁶ *D'Aoust c Vallières* (1993), 19 CHRR D/322 (Trib.Qué.): The court held that a provincially regulated financial institution had discriminated against the applicant who was a welfare recipient by refusing to approve her mortgage loan. Evidence showed that the applicant had sufficient means and capacity to qualify for the loan. The financial institution, however, presumed that the applicant would default on her payments, and discriminated against her based on their perception of her social condition.

⁶⁷ *Moore*, *supra* note 51.

⁶⁸ *Mercer*, *supra* note 12.

⁶⁹ *Portman*, *supra* note 30.

⁷⁰ The court used the definition of service provided in *Gould* (*supra* note 10) to conclude that the animal control service provided by the town created a public relationship between the town (as service provider) and the residents of the town (as service users), and was thus a public service in accordance with the definition of service in the human rights code.

⁷¹ *Nash v Town of Wolseley* (2008), CHRR Doc. 08-1000, CanLII 89770 (SK HRT).

⁷² *Human Rights Act*, *supra* note 2, s. 4.

⁷³ *Lambert c Québec (Ministère du tourisme) (No. 3)* (1996), 29 CHRR D/246, CanLII 21 (QC TDP).