



# Valuing Human Rights and Diversity

# What are Human Rights?

- Human rights are rights inherent to all human beings, whatever our nationality, place of residence, sex, national or ethnic origin, colour, religion, language, or any other status. These are basic rights that everyone *should* be entitled to.
- We are equally entitled to our human rights without discrimination. These rights are interrelated, interdependent and indivisible.
- It is important to keep in mind that the advancement of one right facilitates the advancement of others. Likewise the deprivation of one right affects adversely the others.

Adapted from: [www.ohchr.org/en/issues/pages/whatarehumanrights.aspx](http://www.ohchr.org/en/issues/pages/whatarehumanrights.aspx)

# Origins

In 1948, the United Nations adopted the Universal Declaration of Human Rights. It was the first time in history that a document with universal value was adopted by an international organization

Despite differences across the 58 members states which at times resulted in conflicting views, some key principles were agreed upon:

- 1. Respect for fundamental rights and freedoms**
- 2. Respect for principles of non-discrimination**
3. Respect for civil and political rights
4. Respect for social and economic rights

# Human Rights

“Where after all do universal human rights begin? In small places, close to home - so close and so small that they cannot be seen on any map of the world. Yet they *are* the world of the individual person: The neighbourhood he lives in; the school or college he attends; the factory, farm or office where he works. Such are the places where every man, woman, and child seeks equal justice, equal opportunity, equal dignity without discrimination. Unless these rights have meaning there, they have little meaning anywhere. Without concerted citizen action to uphold them close to home, we shall look in vain for progress in the larger world.”

Eleanor Roosevelt

Remarks at the United Nations, March 27, 1958

# Canadian Charter of Rights and Freedoms

- Adopted in 1982, the charter:
- is a bill of rights enshrined in the constitution of Canada;
- defines and regulates the relationship between Canadian Citizens and the state and;
- unifies Canadians around a set of principles that embody political and civil rights.

# Important Points in the Charter

- Every individual is equal before and under the law and has the right to the **equal protection and equal benefit of the law** without discrimination and, in particular, **without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.**
- Subsection (1) does not preclude any law, program or activity that has as its object the amelioration of conditions of disadvantaged individuals or groups including those that are disadvantaged because of race, national or ethnic origin, colour, religion, sex, age, mental or physical disability.

# Human Rights Legislation - Canada

Canadian Human Rights Act (for federally regulated organizations)



Canadian Human Rights Commission & Tribunal

Provincial Human Rights Legislation (codes/acts/charter – Quebec)  
Covers those organizations not included under federal legislation



Provincial Human Rights Commissions and Tribunals

# Canadian Human Rights Act (CHRA)

- The CHRA is the law in areas of discrimination and harassment on prohibited grounds in the federal sphere.
- The purpose of the CHRA is to give effect ... to the principle that all individuals should have an opportunity equal to other individuals and when required to have their needs accommodated, consistent with their duties and obligations as members of society, without being hindered in or prevented from doing so by discriminatory practices.



# CHRA Legislation

- Canadian human rights legislation recognizes that true equality means respect for people's different needs and requirements. **Equality does not mean that all people will be treated in the same way.**
- In employment, this means valuing and accommodating differences so that all employees can work to the best of their ability.

# The CHRA's definition of Discrimination

According to the *Canadian Human Rights Act*, “discrimination” means making a distinction between certain individuals or groups based on a prohibited ground of discrimination.

Discrimination is:

- a distinction which,
- whether intentional or not
- but based on grounds relating to personal characteristics of the individual or group,
- has an effect which imposes disadvantages not imposed upon others or
- which withholds or limits access to advantages available to other members of society.

# Discrimination & Employment

## Section 2

(10) It is a discriminatory practice for an employer, employee organization or employer organization

- (a) to establish or pursue a policy or practice, or
- (b) to enter into an agreement affecting recruitment, referral, hiring, promotion, training, apprenticeship, transfer or any other matter relating to employment or prospective employment, that deprives or tends to deprive an individual or class of individuals of any employment opportunities on a prohibited ground of discrimination.

# Prohibited Grounds

Under the Canadian Human Rights Act, section (2), it is against the law for any employer or provider of a service that falls within federal jurisdiction to discriminate on the basis of:

- race
- national or ethnic origin
- colour
- religion
- age
- sex
- sexual orientation
- marital status
- family status
- disability
- conviction for an offence for which a pardon has been granted

# CHRA Exceptions

## Exceptions

15. (1) It is not a discriminatory practice if;
  - (a) any refusal, exclusion, expulsion, suspension, limitation, specification or preference in relation to any employment is established by an employer to be based on a ***bona fide occupational requirement***.

# Discrimination – Important Considerations for Stewards

There are a number of provisions in the *CHRA* that set out what acts amount to discrimination in the workplace

The two which are of primary importance to PIPSC stewards are:

- (7) It is a discriminatory practice, directly or indirectly,**
  - (a) to refuse to employ or continue to employ any individual, or**
  - (b) in the course of employment, to differentiate adversely in relation to an employee, on a prohibited ground of discrimination.**

# Collective Agreements

All collective agreements negotiated by PIPSC include a provision on non discrimination:

Section 43 of the CS collective agreement: There shall be no discrimination, interference, restriction, coercion, harassment, intimidation, or any disciplinary action exercised or practiced with respect to an employee by reason of age, race creed, colour, national or ethnic origin, religious affiliation, sex, sexual orientation, family status, marital status, mental or physical disability, membership or activity in the union or conviction for which a pardon has been granted.



# **Human Rights and the Duty to Accommodate**





# The Duty to Accommodate

The duty to accommodate refers to the obligation of an employer or service provider to take measures to eliminate disadvantages to employees, prospective employees or clients that result from a rule, practice or physical barrier that has or may have an adverse impact on individuals or groups protected under the *Canadian Human Rights Act* or identified as a designated group under the *Employment Equity Act*. In employment, the duty to accommodate means the employer must implement whatever measures necessary to allow its employees to work to the best of their ability. Source: Canadian Human Rights Commission

The duty to accommodate requires that once barriers have been identified, there is a commitment on the part of the employer to search for alternative arrangements

# Employer Obligation to Reasonably Accommodate an Employee

- Employer has the duty to accommodate an employee if this accommodation does not affect the essential tasks of a position, in other words, the *Bona Fide Operational Requirements*.
- Employer has the obligation to accommodate an employee to the point of undue hardship.
- The only factors to take under consideration are: financial costs and health and safety.

# Bona Fide Operational Requirements

## Key Court Decisions

1999 – Supreme Court of Canada Cases:

### Case #1: Tawney Meiorin

- Issue: Was it reasonable given the job that a firefighter run 2.4 km in 11 minutes?
- What was this case really about? Gender discrimination in a workplace particularly in traditionally male-dominated fields.
- This case resulted in the “three-step Meiorin Test” to determine if the employer has established a standard that is now termed a bona fide occupational requirement (BFOR).

### Case #2 – Terry Grismer

- Issue: Driver’s license cancelled after medical condition resulted in the loss of peripheral vision in left eye. To accommodate this, Grismer developed a system of mirrors to compensate for this loss but was prevented from taking an individual assessment and demonstrate that he could drive safely
- What was this case really about? Service discrimination directed at a person with a disability.
- Outcome: Meiorin Test was applied and court found that Grismer was discriminated against because he was not allowed to take the driver’s test using his mirrors in order to demonstrate that he could in fact drive safely.

# Impact of the Cases

- As a result of these cases there is a workplace duty to accommodate that eliminates employment standards, rules, practices or other requirements that discriminate on prohibited grounds.
- Human rights legislation has a quasi-constitutional place in Canadian law, and all other statutes, policies and practices must not be inconsistent with it including collective agreements.

# Strategies for Fostering an Inclusive Workplace?

As a steward, there are number of things you can do to help foster an inclusive workplace

1. Know the organizational demographics: What is the demographic of your workplace (consider all the dimensions of diversity).
2. Be familiar with the policies that relate to employment equity, harassment, discrimination and so forth.
3. Be approachable – members who are experiencing discrimination often feel they have no where to turn. One strategy might be to invite people to a lunch-time session to chat about diversity in the workplace – this opens a door for further conversations.
4. Know the options for informal conflict management in your department, have the names of the ICMS practitioners in case a member needs it.
5. Be prepared to challenge discrimination in the workplace – stewards are models for other employees.
6. Are the activities inclusive? This is also an important consideration for PIPSC related activities.
7. Stay in touch with what is going on in the workplace (recruitment, hiring, complaints) bring it to the attention of PIPSC EROs.
8. Be aware of informal or unwritten practices that could favour one group over the other.
9. Be aware of inconsistencies in the way policies are applied, i.e. is there more flexibility for staff with children than staff with elder-care responsibilities?