



Kawartha Pine Ridge District School Board

Human Rights Terminology and Definitions

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Human Rights Terminology and Definitions

Accommodation:

Accommodation means making reasonable changes or providing supports so that students, employees, parents/caregivers, volunteers, and members of the public can access and participate in KPR's education, employment, programs, services, and activities without barriers related to a protected ground under the Ontario Human Rights Code. Accommodations are based on individual needs and may include changes to learning materials, schedules, facilities, communication methods, or workplace duties.

Age:

Age is a protected ground under the Ontario Human Rights Code. For most purposes, the Code protects people who are 18 years of age or older from discrimination based on age.

Allegation:

A claim or assertion that someone has done something illegal or wrong but has not yet proven at a hearing or trial. Allegations, until they are proven in a review process/investigation remain merely assertions.

Associative Discrimination:

People may be subject to discrimination because of their association with a person with a protected characteristic under the Code. It applies even if the person could not otherwise claim protection based on one of the grounds or does not share the same Code grounds as the person they are associated with.

Balance of Probabilities:

The civil standard of proof satisfying a decision maker that the facts at issue probably occurred as alleged. Also referred to as a preponderance of the evidence or as a 51 percent likelihood of occurrence.

Bona Fide Occupational Requirement (BFOR):

A bona fide occupational requirement (BFOR) is a job requirement that is genuinely necessary for an employee to perform their duties safely and effectively. A requirement that has a discriminatory effect may be permitted if KPR can show that it is essential to the job and that accommodating the employee would cause undue hardship. For example, a KPR employee whose job involves driving must have adequate vision and the appropriate driver's license. A BFOR is also called a bona fide occupational qualification (BFOQ).

Burden of Proof:

The legal duty for establishing the truth of facts in a trial or hearing. The burden of producing evidence persuasive enough to establish the truth of facts needed to satisfy all the required legal elements of legal dispute.

Canadian Charter of Rights and Freedoms:

A bill of rights in the Constitution of Canada and the first part of the Constitution Act, 1982. The Charter guarantees certain political rights to Canadian citizens and civil rights of everyone in Canada from the policies and actions of the government.

Citizenship:

A prohibited ground of discrimination undefined in the Code. It is illegal for employers to make distinctions between Canadian citizens, citizens from other countries, persons with dual citizenship, landed immigrants or permanent residents, refugees and non-permanent residents.

Colour:

A prohibited ground of discrimination not defined in the Code. A person's skin colour can be seen as a physical feature that is commonly racialized. Colour is a ground that may also be encompassed by the concept of race.

Confidentiality:

Refers to the duty of an individual to refrain from sharing confidential information with others, except with the express consent of the other party.

Conflict of interest:

A situation where a person or organization is involved in multiple interests and serving one interest could involve working against another. A personal interest of an individual or organization might adversely affect a duty owed to make decisions for the benefit of a third party.

Constructive Discrimination:

Constructive discrimination occurs when a rule or practice applies to everyone but unintentionally disadvantages people because of a protected ground under the Ontario Human Rights Code. It is also called adverse-effect or indirect discrimination. For example, scheduling a mandatory KPR school event on a significant religious holy day could disadvantage students, families, or employees who are unable to attend because of their creed.

Contracts:

A social area under the Code. Everyone with the legal capacity to contract has the right to contract without discrimination.

Credibility:

Credibility means how believable and reliable a person's information is. In the COHREA complaints process, credibility may be assessed by considering whether the information is clear, consistent, supported by other evidence, and based on the person's direct knowledge of what occurred.

Creed:

A prohibited ground of discrimination not defined in the Code. It is interpreted to mean a "religious creed" or "religion." It includes faith, beliefs, observances or worship. The key test for the existence of a creed-based right is if the beliefs and practices are sincerely held and/or observed. Creed does not include secular, moral or ethical beliefs or political convictions.

Disability:

Disability is broadly defined under the Ontario Human Rights Code to include physical, developmental, mental health, and learning disabilities of any kind or level. The Code also protects people who had a disability in the past and people who are believed to have a disability, even if they do not.

Discrimination:

Discrimination is not defined in the *Code* but usually includes the following elements:

- not individually assessing the unique merits, capacities and circumstances of a person
- instead, making stereotypical assumptions based on a person's presumed traits
- having the impact of excluding persons, denying benefits or imposing burdens.

Under the Code discrimination occurs when someone is treating you unfairly because of one or more of the seventeen (17) Code grounds. Discrimination can occur if a policy, practice or program fails to accommodate the special needs of an individual that are related to one of the grounds of discrimination listed above, including disability, age, religion or family status.

Duty to Accommodate:

The duty to accommodate is a broad equality concept that applies to all prohibited grounds of discrimination under the Code. For example, in the workplace, accommodation at KPR may include changing aspects of a disabled employee's workspace, the schedule or number of hours, the specific tasks required to complete, or other terms or conditions. Reasonable, but not perfect, accommodation, must be provided to the point of undue hardship.

Equality:

Equality means that every person has the right to equal protection and benefit of the law. Sometimes fairness means treating everyone the same, while in other situations it means providing different supports or removing barriers so that everyone has an equal opportunity to participate and succeed.

Ethnic Origin:

A prohibited ground of discrimination not defined in the Code. Ethnic origin relates to large groups of people classed according to common racial, national, tribal, religious, linguistic or cultural origin or background. Ethnic groups may be distinguished based on cultural traits such as language or shared customs and heritage around family, food, dance and music.

Evidence:

Evidence is information used in KPR's complaint investigation process to help determine what happened. It may include statements from the people involved or witnesses, emails, messages, photographs, videos, records, documents, or other relevant information.

Family Status:

A prohibited ground of discrimination defined in the Code as being in a parent and child relationship. Family status protects non-biological parent-and-child relationships, such as families formed through adoption, stepparent relationships, foster families, non-biological gay and lesbian parents and all persons who are in a parent-and-child-type relationship.

Formal Equality:

Formal equality means treating everyone in exactly the same way by applying the same rules and expectations to all. For example, a school may give every student the same amount of time to complete a test, even though a student with a disability may need extra time as an accommodation.

Gender Expression:

A prohibited ground of discrimination not defined in the Code. Closely linked to the ground of gender identity. Personal characteristics associated with gender identity include self-image, expression, behaviour and conduct.

Gender Identity:

A prohibited ground of discrimination not defined in the Code. Gender identity is linked to a person's intrinsic sense of self, particularly the sense of being male or female. Gender identity may not conform to a person's birth-assigned sex. A person's gender identity is different from and does not determine their sexual orientation.

Grievance:

A formal complaint, usually raised by an employee against an employer occurs in the context of a unionized workplace and under the terms of a collective bargaining agreement.

Harassment:

A form of discrimination defined in the Code as engaging in a course of vexatious comments or conduct that is known or reasonably known to be unwelcome because of a prohibited ground of discrimination.

Human Rights Tribunal of Ontario (HRT):

An independent adjudicative body established under Part IV of the Code with a mandate to resolve applications brought under the Code. The HRT members who are appointed by the Ontario government based on their experience and expertise in human rights law. HRT members conduct both mediations and hearings

Intersecting Grounds:

Discrimination is often linked to the compounding effects of multiple grounds of discrimination. For example, a young Black man can be seen as a “Black person,” or as a “young person,” or as a “man” and is protected under the grounds of race, age and gender. He may be exposed to discrimination on these intersecting grounds as a “young Black man” based on various assumptions and/or stereotypes.

Language:

Language is not a protected ground under the Ontario Human Rights Code. However, discrimination based on a person’s language or accent may be connected to protected grounds such as race, ancestry, ethnic origin, or place of origin.

Legislation:

Legislation is a law passed by an elected government body, such as the Ontario Legislature. It may also be called a statute or an Act. The Ontario Human Rights Code is an example of legislation.

Liability:

Liability means being legally responsible for something a person or organization did, or failed to do. If that responsibility is not met, there may be legal consequences.

Limitation Period:

The time period that a party can wait before starting a case. The time period under the Code is either one (1) year after the last incident of discrimination occurred.

Litigation:

The process of taking legal action between two opposing parties working in the interest of enforcing or defending a legal right. Filing an application at the HRT is a form of litigation.

Litigation Guardian:

A person who has been approved to make decisions on behalf of another person without legal capacity, such as a minor or mentally incapacitated person, in a legal dispute.

Marital Status:

A prohibited ground of discrimination in the as the status of being married, single, widowed, divorced or separated and includes the status of living with a person in a conjugal relationship outside of marriage or common-law relationship. Equal protections under the Code apply to common-law, same-sex and opposite-sex relationships.

Material Fact:

A fact that is relevant to a legal dispute. Distinguishable from a trivial or insignificant fact that has no bearing on the outcome of the dispute. Not all facts are equally important to the decision making of a court or tribunal.

Mediation:

Mediation is a voluntary process in which a neutral person helps those involved discuss their concerns, understand each other's perspectives, and explore possible solutions. The mediator does not make a decision or require anyone to agree; any resolution must be accepted by everyone involved.

National Origin:

A prohibited ground of discrimination under the CHRA. Relating to a person's country or state of origin. National origin is like the ground of place of origin under the Code.

Nexus:

A connection or link. In human rights law, nexus refers to the evidentiary link required to establish a prima facie case of discrimination. An applicant must show a connection between their prohibited ground of discrimination and the adverse differential treatment they have experienced.

Onus of Proof:

Relates to the burden on a party to establish the facts and law required to prove a legal case. Often used interchangeably with burden of proof.

Perceived Grounds:

The Code protects people who are treated differently because others believe they belong to a protected group, even when that belief is incorrect. For example, a staff member KPR may be assumed to have a disability even though they do not.

Respondent:

A person connected with KPR such as an employee, representative, student, or parent/caregiver who is asked to respond to a complaint about their conduct, decisions, or area of responsibility.

Place of Origin:

A prohibited ground of discrimination not defined in the Code. People should not be discriminated against or harassed because they are from outside Canada. The Code may even cover people from a particular place within Canada. A person's place of origin is often related to other grounds in the Code, such as ethnic origin or race.

Poisoned Work Environment:

A poisoned work environment is created when a workplace is hostile or unwelcoming because of insulting or degrading comments or offensive actions aimed at an employee or others. Usually there is a series of events or incidences although such an environment may, in exceptional circumstances, occur based on a single event or incident.

Pregnancy:

The right to equal treatment without discrimination includes where a woman is, was or may become pregnant, or because she has had a baby. Pregnancy is a characteristic that is linked to a woman's sex, and discrimination because of pregnancy is discrimination based on sex.

Procedural Fairness:

Procedural fairness means that people affected by a decision are treated fairly. They should be told about the issue, given a reasonable chance to share their information and respond, and have the matter considered by someone who is neutral and open-minded.

Prohibited Grounds:

The Code prohibits discrimination and harassment on any of the following grounds: race, colour, ancestry, place of origin (i.e., where you were born), ethnic background, citizenship, creed (religion), sex, disability, sexual orientation, age, marital status, family status, receipt of public assistance (in housing only) or record of offences (in employment only). Also referred to as the Code's protected characteristics.

Provincial Jurisdiction:

Under Canada's Constitution Act, 1867, provincial governments have many important powers and jurisdictions, such as the provision of fundamental social services (for example, health, education and welfare), control over civil and property rights, and power over local government. The Code is a statute of provincial jurisdiction in Ontario and the HRTO has only that jurisdiction set out in the Code and another statute, the Statutory Powers Procedure Act (SPPA).

Race:

A prohibited ground of discrimination in the Code that is not defined. Notions of race continue to exist in society and create differences among groups thereby marginalizing some people in society. Race remains a potent force in society. Individuals may have prejudices related to people or characteristics that are racialized.

Receipt of Public Assistance:

A prohibited ground of discrimination in the Code but only with respect to the social area of housing. In Ontario, receipt of public assistance includes the Ontario Student Assistance Program, Ontario Disability Support Program and Ontario Works.

Record of Offences:

A prohibited ground of discrimination under the Code but only in the social area of employment. Record of offences is narrowly defined in subsection 10(1) of the Code to mean a conviction for an offence in respect of which a pardon has been granted under the Criminal Records Act (Canada) and has not been revoked, or an offence in respect of any provincial enactment. This provision applies to convictions only, and not to situations where charges only have been laid.

Reprisal:

Reprisals or threats of reprisal are acts or threats that are intended to punish an individual who has reported discrimination or harassment or who has refused to infringe the rights of another person.

Services, Goods and Facilities:

A social area in the Code. Everyone has the right to equal treatment based on a protected characteristic in the receipt and delivery of publicly available services, goods and facilities. See section 1 of the Code. Services does not include a levy, fee, tax, or periodic payment imposed by law.

Sex:

A prohibited ground of discrimination under the Code, not specifically defined. It is generally considered to be related to a person's biological sex, male or female but also includes a broader notion of gender, or social characteristics attributed to each sex.

Sexual Harassment:

A form of Code-based harassment. Behavior characterized by the making of unwelcome and inappropriate sexual remarks, conduct or physical advances, often in a workplace setting.

Sexual Orientation:

A prohibited ground of discrimination in the Code, not specifically defined. Sexual orientation is a personal characteristic that forms part of an individual's core identity and encompasses the range of human sexuality. Sexual orientation may include attraction to the same gender (homosexuality), a gender different than your own (heterosexuality), both men and women (bisexuality), all genders (pansexual), or neither (asexuality).

Sexual Solicitation:

The Code protects the right to be free from unwelcome advances or requests for sexual favours made by a boss, supervisor or other person in a position of authority. If the supervisor punishes the person because he or she rejected the advance, this is called reprisal, also not allowed under the Code.

Social Areas:

Social areas that are covered by the Code are services, goods and facilities, accommodation (housing), employment, contracts and vocational associations.

Special Programs:

The Code allows organizations and employers to create temporary special measures on a voluntary basis. The purpose of a special program is to help create opportunities for people who experience discrimination, economic hardship and disadvantage.

Substantive Equality:

A fundamental aspect of human rights law that is concerned with equitable outcomes and equal opportunities for disadvantaged and marginalized people and groups in society and aimed at preventing systemic discrimination.

Systemic Discrimination:

Patterns of behaviour, policies or practices that are part of the structures of an organization, and which create or perpetuate disadvantage for marginalized persons. Whether by design or impact, systemic discrimination the effect of limiting an individual's or a group's right to the opportunities generally available because of attributed rather than actual characteristics. For example, systemic racial discrimination. Also referred to as institutional discrimination.

Undue Hardship:

The legal limit of the duty to accommodate. Where the severe negative effects outweigh the benefit of providing accommodation it may be said that the undue hardship has been reached and the accommodation may not be provided. The three factors considered for undue hardship under the Code are financial costs, outside funding, and health and safety risks.