



Understanding the Duty to Accommodate

EMBRACE
EQUITY



Know your rights &
responsibilities under
the Yukon *Human
Rights Act*



YUKON
HUMAN
RIGHTS
COMMISSION

COMMISSION
DES DROITS
DE LA PERSONNE
DU YUKON

Introduction

International and domestic human rights principles are clear that every person living with a disability has the **right** to work, live, and receive services free from discrimination. Where there exists a right, there is a corresponding responsibility or duty. Landlords, employers, and service providers have a legal **duty** to accommodate individuals living with special needs.

Equality and Equity

The duty to accommodate is the duty to treat individuals equitably.



Each individual is given the same number of boxes but not all can reach the apple. They are being treated **equally** by being given the same resources (one box).



Each individual has the number of boxes they need to reach the apple. They are being treated **equitably** by being given what they need to access the same opportunity (an apple).

KNOW YOUR RIGHTS

The Yukon *Human Rights Act* (the “*Act*”) protects against discrimination. **Discrimination means to be treated unfavourably in whole or in part because of a protected ground.**

Protected Grounds

A “protected ground” is a personal characteristic someone has that is legally protected from discrimination under section 7 of the *Act*.

The duty to accommodate applies to all 14 protected grounds listed in the *Act*, but arises most commonly in relation to physical or mental disability.

Some of the other protected grounds listed in the *Act* include ancestry, sexual orientation, religion or creed, marital or family status, etc.*



**This zine will focus primarily on the duty to accommodate in relation to physical and mental disabilities. For information about the duty to accommodate in relation to any of the other protected grounds, please contact the Yukon Human Rights Commission.*


Physical or Mental Disability



Physical or mental disability refers to conditions, disorders, illnesses, injuries, dysfunctions, or symptoms that impede, interfere with, or limit a person's ability to function.

What is considered a disability under human rights law?

Disability covers a range and degree of conditions, both physical and mental. Here are some characteristics of disability according to courts and tribunals under human rights law:

- The focus should be on assessing the obstacles to full participation in society rather than on the biomedical condition or state of an individual.
- It has some degree of permanence (i.e., the common flu or cold may not be considered a disability). 
- It includes both past and present conditions.
- It must be interpreted to include its subjective component, as discrimination may be based as much on perceptions, myths, and stereotypes, as on the existence of actual functional limitations.



Did you know?

- Addictions to drugs or alcohol, but not casual use, constitute a disability under human rights law.
- “Stress”, such as workplace stress, may not constitute a disability under human rights law in certain circumstances.

Human rights law is constantly evolving. Certain conditions, characteristics, or experiences that are not considered disabilities today may be accepted as such later due to changes in the law reflecting medical, social, or other advancements.

Protected Areas

It is discriminatory to treat people unfavourably or adversely on the basis of a protected ground in the following social areas:



services, goods, or facilities provided to the public



housing, including occupancy, possession, lease, or sale



any aspect of employment



membership in or representation by a trade union or association, or occupational or professional association



public contracts

ACCOMMODATION

Accommodations are **exemptions, supports, or alternatives** that allow someone with a disability-related need to participate fully in any of the protected social areas listed in section 9 of the *Act* (i.e., employment, housing, services).

Accommodations are necessary to ensure that people living with disabilities have equal opportunities, access, and benefits.

The Duty to Accommodate

If you are a landlord, service provider, employer, or union (a “provider”), you have a **legal obligation** to accommodate tenants, services users, and employees with needs related to a protected ground. This legal obligation is called the duty to accommodate.

Examples of accommodations

- modifying workstations
- granting leave for medical appointments
- offering flexible scheduling
- adjusting lighting or sounds
- allowing assistive animals
- providing a sign language interpreter
- allowing extra time to complete a task
- providing information in alternative formats
- providing accessible washrooms



What does the law say about accommodation?



Typically, the individual who needs an accommodation is responsible for **requesting** an accommodation.

The individual requesting an accommodation is required to provide **sufficient information** to allow the provider to assess how the individual may be accommodated.



Finding a **reasonable** accommodation is often a process of trial and error, with **cooperation** and **proper communication** being paramount.

Providers may request **clarifying medical documentation** about the disability (limitations, restrictions, prognosis, etc.) but providers are not entitled to a diagnosis or to know the cause of the condition.



While the individual may suggest accommodation solutions, the provider is in the **best position** to determine how the individual can be accommodated without incurring undue interference to their operational requirements.

The provider is obligated to follow the **restrictions and limitations** identified by the individual's health professional.



The individual needing an accommodation is not entitled to their ideal, perfect, or preferred accommodation; they are entitled to a **reasonable** accommodation.

The individual requesting an accommodation has a duty to facilitate the **implementation** of a proposal that is reasonable and would, if implemented, fulfill the duty to accommodate.



Accommodations are **fact-dependent**, meaning the provider must consider individual needs. What works for one person may not work for others. Even individuals with the same disability may require different accommodations.

In the employment context, employers may have to consider the possibility of appropriate alternative employment or redefined responsibilities, but employers do not need to:

- create a new position for the individual;
- fundamentally change working conditions;
- change the essential duties and requirements of a position so the individual can perform them; or
- assign essential duties of the individual to other employees.



Undue Hardship

Providers have a duty to accommodate to the point of undue hardship. The term “undue” means that **some hardship is acceptable** in accommodating individuals. It becomes “undue” when reasonable options are exhausted and only unreasonable or impracticable options for accommodation remain.



The *Act* and case law outline what factors may be considered in determining whether there was undue hardship:

- safety
- disruption to the public
- effect on contractual obligations
- disruption of a collective agreement
- business efficiency
- size and economic conditions of the provider
- financial costs
- problems of morale of other employees
- interchangeability of work force and facilities



To claim undue hardship, a provider must demonstrate through **objective, direct, and quantifiable evidence** that it considered or undertook measures to the point of undue hardship to accommodate the individual’s disability.



Remember: While accommodations may involve some inconvenience, inconvenience by itself is not a factor for assessing undue hardship. A mere statement, without supporting evidence, that the cost or risk is “too high” is not sufficient to claim undue hardship.

The Duty to Inquire

In most cases, an individual has an obligation to communicate that they have a disability-related need for accommodation. The duty to inquire is an **exception** to this obligation.

When a provider has knowledge or reasonable suspicion that there may be a relationship between a disability and someone's job performance, or their abilities to fulfil their duties as a tenant or service user, the provider has a duty to inquire (ask) about the possible relationship and if they require accommodation. In human rights law, this responsibility is called the duty to inquire.

It may be discriminatory for the provider to take **any adverse action** regarding the individual's employment, housing, or services (i.e., termination, eviction, refusal) **before inquiring about possible disability-related accommodation needs**, if a provider was aware or reasonably ought to have been aware that an individual's disability may be impacting their behaviour.



For Providers: Best Practices

Learn about and be prepared to fulfill your legal obligation to provide reasonable accommodations related to any of the grounds protected under the *Act*.



Have an accommodations policy accessible to staff, service users, and tenants. Train managers on the policy, the duty to accommodate, and the duty to inquire.



Accept requests for accommodation in good faith, unless there are legitimate reasons for acting otherwise.



Treat disclosures related to someone's disability as private and confidential.



Limit requests for information to those related to the nature of the limitations and restrictions, and to those that will enable you to respond to the accommodation request.



Act promptly, even if it means creating a temporary solution before a long-term one can be put in place.



Communicate regularly and effectively with the person, providing updates on the status of the accommodation and planned next steps.



Keep a record of the accommodation request and action taken.

EXAMPLES

Ruby Rose Inn operates as a hotel, bar, and restaurant and regularly hosts public social events. Mr. Low has post-traumatic stress disorder (“PTSD”). He has a prescription for medical cannabis to treat his PTSD. He complies with all regulatory requirements in respect of his use of medical cannabis. Mr. Low attended a community event at the Ruby Rose Inn. At one point, he began to roll a cannabis cigarette at his table. His server objected to him having cannabis on the premises. Their interaction led to Ruby Rose Inn refusing to serve Mr. Low, phoning the police, and ejecting him from the premises. Ruby Rose has refused to allow Mr. Low back. This may be grounds for a human rights complaint.

Example based off *Hayes v Blue Marlin Inn*, 2022 BCHRT 61.



Brian worked at an organization for 7 years. Brian hasn't been himself lately. In the last year, customers made unusual complaints about Brian, especially having to do with aggressive behaviours. Eventually, Brian informed his supervisor in confidence that he was struggling and requested direction. Shortly after, the employer decided to terminate Brian's employment for performance issues. This may be grounds for a human rights complaint. The employer may have had a duty to inquire with Brian prior to terminating him.

Example based off *Calkins v Broadview Homes (Alberta) Ltd.*, 2023 AHRC 45.

CASE LAW and SOURCES



- *Quebec (Commission des droits de la personne et des droits de la jeunesse) v Montréal (City); Quebec (Commission des droits de la personne et des droits de la jeunesse) v Boisbriand (City)*, 2000 SCC 27, para 79.
- *Ma. v Dr. Ianin G.M. Cleator and another*, 2014 BCHRT 180.
- *Walker v Bradford West Gwillimbury (Town)*, 2019 HRT0 614, paras 24 and 29.
- *Entrop v Imperial Oil Limited*, 2000 CanLII 16800 (ON CA).
- *Ontario (Disability Support Program) v Tranchemontagne*, 2010 ONCA 593.
- *Matheson v School District No. 53 (Okanagan Similkameen) and Collis*, 2009 BCHRT 112, para 14.
- *Young v Vancouver Coastal Health Authority*, 2018 BCHRT 27, para 117.
- *Simpson v Commissionaires (Great Lakes)*, 2009 HRT0 1362, para 35.
- *Central Okanagan School District No. 23 v Renaud*, [1992] 2 SCR 970 (SCC).
- *Harvey v Gibraltar Mines Ltd. (No. 2)*, 2020 BCHRT 193.
- *Grzesiak v. DOT Benefits*, 2008 HRT0 206, para 98.
- *Council of Canadians with Disabilities v VIA Rail Canada Inc.*, 2007 SCC 15, para 130.
- *Central Alberta Dairy Pool v Alberta (Human Rights Commission)*, [1990] 2 SCR 48 (SCC), para 74.

- *Human Rights Act*, R.S.Y. 2002, c. 116
- The Ontario Human Rights Commission's *Policy on ableism and discrimination based on disability*. (June 27, 2016): <https://www3.ohrc.on.ca/en/policy-ableism-and-discrimination-based-disability/1-introduction>
- Newfoundland and Labrador Human Rights Commission's *Guidelines on the Responsibility of Service Providers* (May, 2017): <https://thinkhumanrights.ca/resources/legal-guidelines/guidelines-on-the-responsibility-of-service-providers/>
- The Yukon Human Rights Commission's *What is the duty to accommodate?* webpage: <https://yukonhumanrights.ca/what-is-the-duty-to-accommodate/>

To read any of the above-cited cases for free, you can go to canlii.ca and search the case name.



IMPORTANT NOTE

These are guidelines that reflect the Yukon Human Rights Commission's interpretation of the provisions of the Yukon *Human Rights Act* and various legal decisions from across Canada relating to physical and mental disability, and the duty to accommodate in the context of human rights. They are subject to decisions by human rights panels, tribunals, and commissions (as relevant). Legal obligations can evolve as new decisions emerge. These guidelines do not constitute legal advice, and any questions about these guidelines should be directed to Commission staff.

HAVE QUESTIONS?

Get in touch with the Yukon Human Rights Commission

If you have any questions or believe that your physical or mental disability may be a factor in a situation in which you were treated negatively, contact the Yukon Human Rights Commission.

If you have any questions about your responsibilities under the Yukon *Human Rights Act*, such as your duty to accommodate or duty to inquire, contact the Yukon Human Rights Commission.

We're here to help. Contact the Commission to book a free, confidential inquiry with a Commission staff member.



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Human Rights are a team sport.

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