

**Human Rights Lens**

**for**

**Policy Hot Spots**

<p><b>Employment</b></p> <p><i>Includes interviewing, hiring, promoting, and terminating employment, as well as sick leave, maternity leave, compassionate leave, human resource policy, etc.</i></p>	
<p><b>Human rights hot spot</b></p>	<p>Looking at it through a human rights lens</p>
<p><b>Making sexual jokes or bantering in the workplace</b></p>	<p>This may be sexual harassment. Consider developing an anti-harassment policy for staff and offering training</p> <p>See the <b>Commission’s</b> website for a guide on adopting such a policy. See <i>Anti-Harassment Policies for the Workplace: An Employer’s Guide</i>, at <a href="http://www.chrc-ccdp.gc.ca">www.chrc-ccdp.gc.ca</a>.</p> <p>A sexual harassment policy is mandatory for all employers, including First Nations organizations, under the <i>Canada Labour Code</i>.</p>
<p><b>Offensive comments or gestures about someone’s colour, where they come from or even what they eat; making jokes about someone being gay.</b></p>	<p>This may be harassment on grounds such as sexual orientation, ethnic origin, or race. Consider developing an anti-harassment policy for staff and see the <b>Commission’s</b> <i>Guide: Anti-Harassment Policies for the Workplace: An Employer’s Guide</i>, at <a href="http://www.chrc-ccdp.gc.ca">www.chrc-ccdp.gc.ca</a>.</p> <p>The <b>Commission’s</b> website also has information sheets such as “Harassment and the <i>Canadian Human Rights Act</i>” and “<i>Harassment: what it is and what to do about it</i>”</p>
<p><b>Buildings that people who use wheelchairs can’t get into, or other accessibility problems</b></p>	<p>May trigger the <b>duty to accommodate</b> up to the point of <b>undue hardship on the ground of disability</b>. This means your organization must do all it can to make public spaces accessible for people with disabilities—to the point where the financial, safety, health or other risks become too much for the organization to bear. You may not be able to do this all at once; think about a longer-term plan for improving accessibility. When you build new buildings, make sure you consider accessibility.</p> <p>The <b>Commission’s</b> website has many resources on the <b>duty to accommodate</b> and <b>undue hardship</b>, including “Fact Sheet on the Duty to Accommodate” and “Duty to Accommodate Frequently Asked Questions &amp; Answers”. It also has a guide on developing a workplace accommodation policy, called “<i>A Place for All: A Guide to Creating an Inclusive Workplace</i>”. See <a href="http://www.chrc-ccdp.ca">www.chrc-ccdp.ca</a></p>

***Employment (continued)***

<p><b>Inappropriate questions during an interview: asking if the person is married, intends to have children, their sexual orientation, their history of physical or mental illness, and whether they have a criminal record</b></p>	<p>All these questions raise human rights issues, unless there is a specific job-related reason for asking. A person could complain that they were denied a job because of reasons not related to job requirements, if they said they plan to have children in the next few years (discrimination on the basis of family status), or that they had previously had cancer (discrimination on the basis of disability).</p> <p>For more information, see the <b>Commission’s</b> “Guide to Screening in Employment”, on its website at <a href="http://www.chrc-ccdp.ca">www.chrc-ccdp.ca</a>.</p>
<p><b>Firing someone who comes to work drunk a few times.</b></p>	<p>May be an addiction or disability issue covered by the <b>duty to accommodate</b>. It may include working with the employee to see they get treatment for their addiction, being flexible with their work schedule, and dealing with potential relapses after they have overcome the addiction.</p>
<p><b>Refusing maternity or parental leave.</b></p> <p><b>Refusal to hire, or dismissal of a female employee because she becomes pregnant, or dismissal of any employee because they request parental leave</b></p>	<p>May be discrimination based on sex and family status if you fire someone, give away their job or don’t let them take a reasonable period of time away from work when their baby is born.</p> <p>Women should not suffer negative consequences in the workplace simply because they are pregnant. Pregnancy-related discrimination is a form of sex discrimination, because only women can become pregnant. Job functions and workplace rules may affect a pregnant employee differently than other employees, and adjustments to working conditions may be needed to reduce or eliminate discriminatory effects.</p> <p>New parents are entitled to take parental leave. The ground of “family status” covers parental needs such as caregiving. Consider developing a pregnancy and maternity/parental leave section in your policies for staff.</p> <p>In addition to other <b>Commission</b> resources on the <b>duty to accommodate</b>, check out the <b>Commission’s</b> “Pregnancy Policy” on the website. For more information, see ...</p>

***Employment (continued)***

<b>You hire only First Nations people</b>	<b>Hiring only Aboriginal employees</b> may be justified if you have an <b>Aboriginal Employment Preference Policy</b> , but it won't allow you to hire only members of a particular First Nation. This may be discrimination based on race or ethnic origin. In some cases, it could be justified. For example, a school in a First Nation Cree community may hire a Cree person because they want children at the school to receive instruction in the Cree language. But if classes are taught in English, there may be less justification for denying the job to a qualified Ojibway teacher who lives in the community. Hiring from only a particular First Nation may be justified if it is based on a good reason, for example, if the person needs to know the language or culture to do the job.
<b>Close family relatives of Band Council members are hired or promoted</b>	May be discrimination based on family status, if there is no other reason for the hire. In a small First Nations community where many people are related and the person who got the job was the best qualified candidate, there may be no discrimination.
<b>Random drug testing</b>	In some workplaces, where the risk of on-the-job drug use by one employee raises significant safety issues for other employees, this may be justified. But if safety risk is low, this could conflict with disability and addiction issues and the <b>duty to accommodate</b> .
<b>Firing an employee who takes too much time off</b>	<p>This is a human resources issue, but it can also be a human rights issue if the absenteeism is related to a physical or mental disability. If so, there may be a <b>duty to accommodate</b>. The employee has to tell you they need accommodation (or maybe it's obvious because of the situation) , but as a manager, you should tell the employee that they must raise human rights issues with you, if they need accommodation.</p> <p>In addition to other <b>Commission</b> resources on the <b>duty to accommodate</b>, check the <b>Commission's "Policy and Procedures on the Accommodation of Mental Illness"</b> on the website.</p>
<b>Firing an employee who has been on stress leave for 6 months</b>	<p>Letting someone take stress leave is part of the <b>duty to accommodate</b>. The employer's duty is to accommodate up to the point of <b>undue hardship</b>. Letting someone take leave extending beyond 6 months may not be undue hardship—where the financial, safety, health or other risks become too much for your organization to bear. It depends on the case.</p> <p>In addition to the other <b>Commission</b> resources on the <b>duty to accommodate</b> noted above, see the <b>Commission's "Guide for Managing the Return to Work"</b> on the website.</p>

<b>Provision of Services</b> <i>Includes health services, social assistance, child protection, education, natural resource management, etc. (depending on the First Nation).</i>	
<b>Human rights hot spot</b>	Looking at it through a human rights lens
<b>Eligibility criteria for a program or service that treat members and non-member residents differently</b>	<p>May be discrimination based on race or ethnic origin.</p> <p>Could be justified based on available resources in some cases, but First Nations governments may be discriminating if social assistance is denied to non-member spouses of members who live on reserve.</p>
<b>Treating status and non-status Indians differently when it comes to being eligible for programs or services.</b>	<p>May be discrimination based on race, sex or family status.</p> <p>The different treatment may be about INAC imposing program delivery criteria. If that's the case, see the note below.</p>
<b>Eligibility criteria for a program or service that distinguish between on-reserve and off-reserve</b>	<p>Aboriginal residency is not a prohibited <b>ground of discrimination</b>, but it could be tied to other grounds like sex and family status (for example, a Bill C-31 Indian).</p> <p>In some cases, some distinctions are justifiable, but it depends on the nature of the service and the nature of the distinction.</p>
<b>Treating married people and common law spouses, or same-sex spouses differently, when it comes to being eligible for programs or services.</b>	<p>May be discrimination based on marital status and sexual orientation.</p> <p>Generally, there is no justifiable reason for having such distinctions.</p>
<b>Criteria that deny certain services or program access because of illness or condition</b>	<p>May be discrimination based on disability.</p> <p>Raises the <b>duty to accommodate</b> to the point of <b>undue hardship</b>.</p>

## Housing and Land Management

Includes band-owned housing, allocation of Band Council Resolution for Certificate of Possession, housing policy, residency by-laws, etc.

<b>Human rights hot spot</b>	Looking at it through a human rights lens
<b>Refusal of a Certificate of Possession to non-member children of a deceased Band member</b>	May be discrimination based on race or ethnic origin and family status. In this case, you would be following the rules in the <i>Indian Act</i> . Discrimination complaints should go to the federal government and INAC.
<b>Denial of Band housing to Bill C-31 members</b>	May be discrimination based on a combination of sex and marital status.
<b>Denial of residence to non-Aboriginal people married to Band members, or the Band members themselves because they are married to non-Aboriginal people</b>	May be discrimination based on marital status and race. You may have a justification that these decisions are necessary in order to preserve culture and language, but this defence has not been accepted in some cases. Legal tradition or custom may help to justify it, but it is not clear if this defence would succeed.

Band-owned Infrastructure <i>Band office buildings, band housing and other buildings owned by the band (health centre, police station, fire station, schools, etc.)</i>	
Human rights hot spot	Looking at it through a human rights lens
Buildings not wheelchair accessible (lack of ramps, elevator, widened doors, accessible bathroom, etc.), or not accessible for other reasons	May be discrimination based on disability, and raises <b>duty to accommodate</b> to the point of <b>undue hardship</b> .  There are several resources on the <b>duty to accommodate</b> , already mentioned above, on the <b>Commission’s</b> website.

Membership codes, residency by-laws, by-law on rights of members’ spouses and children on reserve, by-law on trespass on reserve	
Human rights hot spot	Looking at it through a human rights lens
Denial of membership / residency to Bill C-31 members or their children	May be discrimination based on a combination of <b>grounds</b> —sex and marital or family status.
Denial of membership / residency to members with non-member spouses	May be discrimination based on a combination of race and national or ethnic origin and marital status.
Denial of membership to people with past criminal records	May be discrimination based on a criminal conviction for which a pardon has been granted.

<b>Elections and Voting</b> <i>Either under Indian Act or Custom Election / Leadership Selection Code</i>	
<b>Human rights hot spot</b>	Looking at it through a human rights lens
<b>Using ballots for voting that can't be read by a blind person</b>	May be discrimination based on disability and raises the <b>duty to accommodate</b> to the point of <b>undue hardship</b> .
<b>Ban on voting by off-reserve members</b>	Aboriginal residency is not a <b>ground of discrimination</b> , but it could be tied to other grounds, like sex and family status, if the main reason for person being off-reserve is because they are a Bill C-31 Indian.
<b>Ban on voting by people registered under s. 6(2) of <i>Indian Act</i></b>	May be discrimination based on gender or marital or family status.
<b>Eligibility criteria for leadership requiring person to be over a certain age in order to run for Council positions</b>	<p>May be discrimination based on age, but may be justified as part of a First Nation's legal tradition or customary law.</p> <p>The degree of the consideration given will likely depend on the nature of the alleged discrimination, how relevant the legal traditions and customary laws are to the facts of the complaint and the extent to which they will be impacted by the complaint.</p> <p>Identifying the customary law, and finding evidence to support it, may be challenging during the investigation.</p>
<b>Eligibility criteria for leadership requiring person to be drug and alcohol free</b>	<p>May be discrimination based on disability / addiction, but may be justified.</p> <p>Raises the possibility that this might be a First Nation legal tradition or customary law in which case the statement above applies.</p> <p>It is important that human rights protection encroach as little as possible on matters involving Aboriginal or Treaty rights, and that human rights decisions take into account a community's legal traditions and customs.</p>



<b>Other by-laws</b>	
<i>Law and order by-laws, intoxication by-law</i>	
<b>Human rights hot spot</b>	Looking at it through a human right lens
<b>A by-law that refuses programs or services to residents who use alcohol or drugs</b>	<p>May be discrimination based on disability. Alcohol and drug dependencies are disabilities under the <b>Act</b>. There may be a <b>duty to accommodate</b> people with alcohol and drug dependencies up to the point of <b>undue hardship</b>.</p> <p>This should not stop you from having an intoxication by-law, but you may need to accommodate people with addictions.</p>

<b><i>If INAC has set eligibility criteria for programs or services that your First Nation government administers and concerns are raised about the potential discriminatory effect, what should you do?</i></b>
<p><b>You cannot change criteria set by INAC, but you can take steps to have INAC deal with potential discrimination:</b></p> <ol style="list-style-type: none"> <li>1) Make notes of your concerns and keep them in your file, particularly if you receive informal complaints from members and residents of the community.</li> <li>2) Raise your concerns and any complaints you receive with the INAC sector that oversees administration of the program or service, preferably in writing.</li> </ol>