

INFORMATION SHEET

Introduction

The purpose of the *Alberta Human Rights Act (AHR Act)* is to uphold human rights and protect Albertans from discrimination. The right to follow one's religious beliefs is a protected ground under the *AHR Act*.

Religious beliefs are protected in the following areas:

- statements, publications, notices, signs, symbols, emblems or other representations that are published, issued or displayed before the public;
- goods, services, accommodation or facilities customarily available to the public;
- tenancy;
- employment practices;
- employment applications or advertisements; and
- membership in trade unions, employers' organizations or occupational associations.

By prohibiting discrimination on the basis of religious beliefs in the protected areas above, the *AHR Act* allows all Albertans to follow their various religious beliefs without fear of their human rights being denied.

The Alberta Human Rights Commission has developed this publication to provide Albertans with information on religious beliefs as a protected ground under the *AHR Act*.

The publication explains:

- what is meant by religious beliefs;
- discrimination based on religious beliefs;

- the responsibility to accommodate religious beliefs;
- respect for diversity of religious beliefs; and
- Supreme Court of Canada decisions on religious beliefs and accommodation of religious beliefs in workplaces and public institutions.

What is meant by religious beliefs?

The *AHR Act* states that individuals shall not be discriminated against because of their religious beliefs, which include native spirituality. Religious beliefs refer to a system of belief, worship and conduct. Religion has been defined by the Supreme Court of Canada (*Syndicat Northcrest v. Amselem*) as being "about freely and deeply held personal convictions or beliefs connected to an individual's spiritual faith and integrally linked to his or her self-definition and spiritual fulfillment, the practices of which allow individuals to foster a connection with the divine or with the subject or object of that spiritual faith." In this same decision by the Supreme Court of Canada, it was determined that religious beliefs are subjective in nature. In defining religious beliefs in such an open-ended manner, the Supreme Court acknowledged the wide variety of religious beliefs personally held by Canadians.

Discrimination based on religious beliefs

Discrimination on the ground of religious beliefs often occurs because of rules that may appear to be neutral and non-religious in nature, but still have a negative impact on some individuals because of their religious beliefs. An example of a neutral rule is an employer mandating the wearing of helmets or hard hats in the workplace. This neutral rule may negatively affect employees who must wear head coverings such as turbans or hijabs due to their religious beliefs. Another example of a neutral rule is a requirement that all employees work on a particular day of the week that may be a “Sabbath day” for some employees. In one of the first Supreme Court of Canada human rights decisions, *O’Malley v. Simpson Sears*, the Court found that a neutral rule that required employees to work on Saturdays discriminated against an employee because of her religious beliefs. This employee was negatively affected by the rule as she could not, based on her religious beliefs as a Seventh-Day Adventist, work on a Saturday, which was her Sabbath day. In another Supreme Court of Canada decision (*Multani v. Commission scolaire Marguerite-Bourgeoys*), a neutral rule that prohibited students from carrying weapons negatively affected a student’s religious belief to always wear a kirpan, which is a ceremonial dagger that is a religious symbol of the Sikh faith.

An employer or service provider may impose rules without intending to discriminate against employees. For example, in the *O’Malley v. Simpson Sears* Supreme Court case, it was not the employer’s intention to discriminate on the basis of religious beliefs by requiring employees to work on Saturdays. However, since the rule had a negative impact upon Ms. O’Malley’s religious beliefs, the Court determined that the rule was discriminatory and required accommodation for that employee.

Accommodation of religious beliefs

Once a rule or policy has been determined to negatively affect an employee or a person accessing services due to that individual’s particular religious beliefs, accommodation is usually required. Examples of accommodation include short prayer breaks, enabling schedule changes to observe religious days, and permitting employees and those receiving services to wear a religious symbol. However, an employer or service provider is not required to accommodate a religious belief if the employer or service provider can show that the neutral rule is a *bona fide* occupational requirement (“BFOR”) or is “reasonable and justifiable.” Part of establishing that a requirement is a BFOR or is reasonable and justifiable is for the employer or service provider to demonstrate that they have attempted to accommodate up to the point of undue hardship.

As shown in *Central Okanagan School District No. 23 v. Renaud*, the Supreme Court of Canada sets undue hardship as a very high standard and much greater than a minor inconvenience. Factors to consider when assessing undue hardship may include financial costs of the accommodation, impact on staff morale, interference with the rights of others, impact on operational needs of the employer or service provider, and risks to safety as supported by evidence. Ultimately, the responsibility is upon the employer or service provider to prove that the accommodation of religious beliefs will result in undue hardship. For example, in the case of *Van Der Smit v. Alberta (Human Rights and Citizenship Commission)*, the Alberta Court of Queen’s Bench found that “Alberta Milk,” a milk pick-up and processing service, would face undue hardship if it was required to modify its schedule of pickups from milk

farmers who, because of their religious beliefs, did not wish pickups to take place on Sundays. In an effort to accommodate such farmers, Alberta Milk conducted a study that looked at alternative arrangements that would avoid Sunday pickups. The study showed that all alternative schedules would have significant impacts on milk haulers, processors, Alberta Milk staff, and other milk producers. The Court held that in addition to the monetary costs of accommodation, there were also unacceptable health and quality concerns, all of which contributed to a finding that the accommodation would cause undue hardship.

Respect for diversity of religious beliefs

In order to uphold respect for the diversity of religious beliefs that exist in Alberta, public institutions such as hospitals and non-denominational schools must remain neutral by not showing preference for any one particular religion. An institution may be showing preference for a particular religion or discriminating against individuals of other religions when the institution imposes particular religious practices on employees or citizens accessing the services of that institution.

The neutrality of public institutions may also be affected by their physical appearance. For example, certain symbols in public institutions may be interpreted as showing a preference for one religion over another. It is important to consider various factors when determining whether a religious symbol shows preference for a religion. Factors to consider include:

- the history of an institution;
- who the institution serves;
- how prominent the symbol is;

- whether the symbol is permanent or temporary (for example, a symbol displayed in celebration of a particular religious holiday); and
- whether the symbol has an impact that indicates preference for one religion and excludes other religious or non-religious individuals and groups.

While public institutions must not impose religious practices on employees or citizens, these institutions must respect and accommodate the religious beliefs of individuals working within or obtaining services from these institutions. Even if an institution is non-denominational and public, the institution must accommodate, to the point of undue hardship, the various religious beliefs or practices of its employees or citizens who work in and access those institutions. By keeping public institutions religiously neutral yet accommodating individual religious beliefs to the point of undue hardship, the goal of giving equal treatment and respect to all citizens of various religious beliefs is achieved.


In *Mouvement Iaique Quebecois v. Saguenay (City)*, the Supreme Court of Canada directed that conduct in public institutions must not show a preference for any one particular religion. The Supreme Court in *Saguenay* held that a municipal council cannot perform a prayer from a particular religious tradition before each public council meeting because that would be discriminatory toward members of the public who adhere to other religions and toward those who do not hold any religious beliefs (as was the case in *Saguenay*). By commencing with a Christian prayer, the municipal council was held to be showing preference for one religion over others, and thereby not remaining neutral.

Conclusion

By prohibiting discrimination on the basis of religious beliefs, the *AHR Act* allows all Albertans to follow their various religious beliefs without fear of having to make a choice between their employment and their religious beliefs, and without fear of being denied service because of their religious beliefs. By setting the legal standard of accommodation to the point of undue hardship, the courts have balanced the right to religious beliefs with the legitimate operational needs of employers and service providers. Finally, the human rights goals of equality and respect for diversity are upheld when government institutions are kept neutral and when non-denominational institutions accommodate the various religious beliefs held by those who attend these institutions.

For more information

Refer to these Alberta Human Rights Commission resources, which are available on the Commission website at albertahumanrights.ab.ca:

1. *Protected areas and grounds under the Alberta Human Rights Act* information sheet
2. *Employment: Duty to accommodate* information sheet
3. *Duty to accommodate* interpretive bulletin
4. *When is discrimination not a contravention of the law?* interpretive bulletin 

Contact us

The Alberta Human Rights Commission is an independent commission of the Government of Alberta. Our mandate is to foster equality and reduce discrimination. We provide public information and education programs, and help Albertans resolve human rights complaints.

**Hours of operation: 8:15 a.m. to 4:30 p.m.
Monday to Friday (holidays excluded)**

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TTY service for persons who are deaf or hard of hearing

780-427-1597 Edmonton
403-297-5639 Calgary
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Email: humanrights@gov.ab.ca

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Please note: The Commission must receive your completed complaint form or letter within one year after the alleged contravention of the *Alberta Human Rights Act*. The one-year period starts the day after the date on which the alleged contravention of the *Act* occurred. For help calculating the one-year period, contact the Commission.

The Commission will make this publication available in accessible formats upon request for people with disabilities who do not read conventional print.