

SECTION: General

Effective date: February 6, 2002

SUBJECT: SERVICES - BONA FIDE AND REASONABLE CAUSE

Purpose:

This policy is intended to assist in the understanding and application of *The Human Rights Code* ("The Code"). Where there is any conflict between this policy and *The Code*, *The Code* prevails.

Context:

In determining whether bona fide and reasonable cause exists in relation to the provision of services ordinarily available to or accessible by the public or a section of the public, the Commission adopts the approach set out by the Supreme Court of Canada in *British Columbia (Superintendent of Motor Vehicles) v. British Columbia (Council of Human Rights)* (1999) 36 C.H.R.R. D/129 ("*Grismer*"). According to this approach, once a standard, policy or rule in the provision of services ordinarily available to or accessible by the public or a section of the public has been shown to be discriminatory on the basis of any of the enumerated grounds under *The Code*, a service provider must show on a balance of probabilities that:

1. the standard, policy or rule that was adopted by the service provider was **rationally connected** to the provision of the service. In other words, what is the challenged standard, policy or rule designed to achieve, how does that relate to the service being provided and is there a rational connection between the two?;
2. the service provider adopted the particular policy, standard or rule in an **honest and good faith belief** that it was necessary to the fulfillment of the legitimate service-related purpose. Information as to the circumstances surrounding the adoption of the policy, standard or rule and considerations underlying the development of the policy, standard or rule will be considered by the Commission;
3. the policy, standard or rule is **reasonably necessary** to accomplish the legitimate service-related purpose. To show that the standard is reasonably necessary, it must be demonstrated that it is impossible to accommodate individual service users sharing the characteristics of the complainant without imposing undue hardship upon the service provider. In addressing the reasonableness of the standard or policy, the Commission will consider whether:

- a. the standard or policy excludes members of a particular group on impressionistic assumptions;
- b. the standard or policy treats one particular group more harshly than others without apparent justification;
- c. alternative approaches to the standard or policy were investigated and considered;
- d. the policy or standard has been designed to minimise the burden on service users required to comply with the policy or standard.

In addressing undue hardship, the Commission will consider whether:

- a. it is necessary that all service users meet the single standard or comply with the single policy for the service provider to accomplish its legitimate purpose;
- b. the legitimate purpose can be accomplished through less discriminatory ways of providing the service;
- c. the service provider has searched for potential accommodations and considered them (in this regard, the search for accommodation includes the service provider seeking assistance from those obliged to assist in the search for possible accommodation and those with expertise in the particular needs of individuals who could be adversely affected by the policy or standard).

Each case will be assessed on the basis of its individual merit and circumstances.

APPROVED BY:

"Janet Baldwin"
Chairperson

April 16, 2002
Date