

SECTION: Interpretation

Effective date: March 13, 2014

SUBJECT: SYSTEMIC DISCRIMINATION – s.9(3)

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* will be followed.

Context:

Systemic discrimination has been defined as “practices or attitudes that have, whether by design or impact, the effect of limiting an individual’s or a group’s right to the opportunities generally available because of attributed rather than actual characteristics.” [*Canadian National Railway Co. v. Canada (Canadian Human Rights Commission)*], [1987] 1 S.C.R. 1114 at p. 1138].

Systemic discrimination is similarly defined in section 9(3) of *The Code*, which refers to a mix of rules or practices that may not seem discriminatory when looked at individually, together resulting in discrimination.

The law is clear that *intention* to discriminate is not required to prove that discrimination occurred. Therefore systemic discrimination often refers to an indirect or unintended negative effect or impact of certain standards, policies, or behaviour.

For this reason, discriminatory fitness or vision (or other) standards for a job or service must be shown to be reasonably necessary to accomplish the standard’s broader purpose or goal, which is often safety. An individual assessment should be available to evaluate whether a person meets the standard, unless it would be undue hardship to provide this. [*British Columbia (Public Service Employee Relations Comm.) v. B.C.G.E.U.* (1999), 35 C.H.R.R. D/257 (“*Meiorin*”) and *British Columbia (Superintendent of Motor Vehicles) v. British Columbia (Council of Human Rights)* (1999), 36 C.H.R.R. D/129 (“*Grismer*”)].

Complaints of systemic discrimination are often filed on behalf of a group(s) of people; however an individual may also file a complaint of systemic discrimination. Systemic discrimination is usually the broader impact of a rule or policy which discriminates against an individual based on a characteristic in *The Code*.

Systemic and individual discrimination are assessed the same way: has the individual or

group suffered arbitrary or unjustified negative effects or barriers based on a characteristic in section 9(2) of *The Code*, such as disability, age, or sex. [*Moore v. British Columbia (Education)*, [2012] 3 S.C.R. 360].

The Commission will consider the systemic nature of complaints, where appropriate, in the public interest.

Systemic discrimination may include requiring job candidates to have Canadian work experience, not providing a wheelchair accessible washroom in a public place, setting unreasonably strict vision or hearing standards for employment, not allowing head covers worn for religious reasons, imposing a more difficult licensing process on professionals from certain countries, height and/or size requirements for a job that exclude most women and members of certain ancestral groups, English-only rules in a workplace, and female-dominated occupations requiring comparable skill and education being paid less than their male-dominated counterparts. These are hypothetical examples. Actual complaints will be assessed based on their unique facts.

APPROVED BY:

“Yvonne Peters”
Chairperson

March 13, 2014
Date