



GENERAL

Frequently Asked Questions



What is the Nova Scotia Human Rights Commission and what do they do?

The Nova Scotia Human Rights Commission (NSHRC) is an independent government agency that is tasked with administering the Nova Scotia Human Rights Act. The NSHRC provides a human rights dispute resolution process to resolve allegations of discrimination as well as working to eliminate barriers and prevent discrimination through education, training, policy development and public engagement.

Under the Nova Scotia Human Rights Act, it is against the law to discriminate against someone or treat them unfairly due to the possession of a protected characteristic and in combination of a protected area.

What are the protected characteristics under the NS Human Rights Act?

- Aboriginal Origin
- Age
- Association
- Ethnic/National Origin
- Family Status
- Gender Expression
- Gender Identity
- Harassment
- Irrational Fear of Contracting an Illness
- Marital Status
- Mental Disability
- Physical Disability
- Political Affiliation
- Race/Colour
- Religion/Creed
- Retaliation
- Sex (pregnancy)
- Sexual Orientation
- Sexual Harassment
- Source of Income

What are the protected areas under the NS Human Rights Act?

- Employment
- Housing or Accommodations (renting or leasing)
- Membership in Professional Associations
- Publication, Broadcasting or Advertisement (newspapers, magazines)
- Purchase or Sale of Property
- Services and Facilities (retail, restaurants, or provincially funded programs)
- Volunteer Public Service

What establishes grounds for a complaint?

If someone believes that they may have experienced discrimination on the basis of a protected characteristics and in combination of a protected area, they may have grounds to file a complaint.

What should I do if I think my human rights have been violated?

If you believe that your human rights have been violated you are encouraged to contact the Nova Scotia Human Rights Commission. Speaking with a human rights officer is the first step in filing a complaint. A human rights officer will ask questions to determine if your complaint falls within the jurisdiction of the NS Human Rights Act.

Is there a time limit for filing a complaint?

There is a one year time limit from the last incident of discrimination to file a complaint. Under specific and extreme circumstances an extension of an additional year may be considered.

Is there a fee to file a complaint?

There is no fee to file a complaint. If you file a complaint and wish to hire legal counsel to assist you, you would be financially responsible for the costs of legal counsel. The Nova Scotia Human Rights Commission's legal counsel does not represent either side (the complainant nor the respondent).

Does the NS Human Rights Act apply to all businesses and services operating in NS?

The NS Human Rights Act applies to all businesses and services that are provincially regulated. Some services and businesses are regulated through the federal government, and they fall under the jurisdiction of the Canadian Human Rights Act. Inquiries and complaints involving federally regulated businesses and services should be made to the Canadian Human Rights Commission.

What is discrimination?

Discrimination is an intentional or unintentional act that imposes burdens, obligations or disadvantages on an individual or group of people based on protected characteristics or perceived protected characteristics and that limits access to opportunities, benefits, and advantages that are available to other members of society (**NS Human Rights Act, s.4**).

What is harassment?

Harassment can involve any unwanted physical or verbal behavior or treatment that is demeaning, disrespectful, offensive or humiliating.

What is retaliation?

It is illegal to retaliate against someone because they have filed a human rights complaint, or if they are a witness to a complaint. Retaliation is when someone tries to "get back at someone" for something that happened. Retaliation could involve threatening, intimidating, or discriminatory behavior. It could also involve differential treatment, or intentionally excluding or isolating someone.



EDUCATION



Race Relations, Equity and Inclusion in Nova Scotia

The Race Relations, Equity and Inclusion (RREI) division of the Nova Scotia Human Rights Commission (NSHRC) distributes information, provides training, and promotes the knowledge of human rights to raise awareness and build a culture of human rights in Nova Scotia.

Background & History

Established in 1967, the NSHRC is responsible for offering education, and providing a process to consider experiences of discrimination and advise the government. The RREI division of the NSHRC was established in 1991 as a result of the recommendations of the Donald Marshall Jr Inquiry that instructed that the NSHRC should engage in raising public awareness related to race relations, and in particular to concerns of discrimination involving First Nations people and African Nova Scotians.

The Importance of Education

Educating Nova Scotians about their human rights and their responsibilities is important because it encourages dialogue about the personal nature of human rights. As human beings we often internalize our experiences, and through human rights education we are offered the opportunity to discuss the values of human rights, and issues related to inclusion, equity, and discrimination. Through human rights education we can explore how to integrate the principles and values of human rights into the way we live. The RREI division of the NSHRC engages with communities, schools, and organizations to provide information and training related to human rights, and to proactively help raise the public's awareness and understanding of the Nova Scotia Human Rights Act.

Human Rights in Nova Scotia

The cornerstone of Human Rights in Nova Scotia and Canada is inclusion. Everyone deserves and must have a place of belonging within our society. The RREI division of the NSHRC works to help promote an inclusive and equitable society in Nova Scotia, where everyone is included, and where barriers and discrimination are eliminated.

History & Diversity Matter in Nova Scotia

- Nova Scotia was founded on land that had been inhabited by and home to Mi'kmaq and First Nations peoples for more than 10,000 years. There are 13 Aboriginal communities and numerous historic Aboriginal communities throughout the province.
- Nova Scotia has been home to people of African descent for over 300 years, more than 48 historic Black communities that were established in the mid to late 1700's.
- Nova Scotia has numerous historic Acadian communities dating back to the mid 1600's.
- Scottish and Irish Gaels settled throughout mainland Nova Scotia and Cape Breton Island in the late 1700's.
- Since the mid-1980's, Nova Scotia has the highest rate of disability of any province in Canada, with one in every five people having a mental or physical disability.
- In 1991, sexual orientation was added as a protected ground under the NS Human Rights Act.
- The Transgendered Persons Protection Act was passed in 2012, and gender identity/gender expression was added as a protected ground under the NS Human Rights Act.

Services offered by RREI

- The RREI division of the NSHRC offers various services including:
- Community partnerships
- Human Rights workshops
- Human Rights information sessions
- Information display booths
- Workplace consultations
- Policy development and review
- Human Rights initiatives



PROTECTED CHARACTERISTICS AND AREAS



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Protected Areas of Discrimination under the Nova Scotia Human Rights Act

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- Membership in Professional Associations
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Grounds for a Complaint

Under the Nova Scotia Human Rights Act, it is against the law to discriminate against someone or treat them unfairly due to the possession of a protected characteristic and in combination of a protected area. If someone believes that they may have experienced discrimination on the basis of a protected characteristic and in combination with a protected area, they may have grounds for a complaint.



TRADITIONAL BOARD OF INQUIRY



The Board of Inquiry is an independent administrative tribunal conducted separate and apart from the Nova Scotia Human Rights Commission. The Board of Inquiry Chair is the adjudicator, and is appointed after the complaint has been referred to a Board of Inquiry by the Board of Commissioners. The Traditional Board of Inquiry closely resembles a civil trial; however, the rules of evidence are relaxed. The parties include those referred to the Board of Inquiry by the Board of Commissioners as well as the Commission. The Commission is an independent party representing the public interest and does not represent either the complainant or the respondent.

Communication prior to a hearing: teleconference to set dates

Hearing dates will be scheduled and confirmed on a teleconference call organized after a Board Chair has been appointed. The teleconference call, like the hearing, will be moderated by the Board Chair and include all parties: the complainant, the respondent and the Commission. The call will cover all aspects of scheduling the hearing and the setting of filing deadlines for the various materials and briefs necessary for the hearing.

Communication with the Board Chair

Any communication with the Board Chair must include all parties. A party can request a teleconference or include all parties on email communications, should it be necessary to speak to the Board Chair.

Negotiation / Mediation

Parties to a Board of Inquiry have the option to engage in negotiation or mediation throughout the Board of Inquiry process. Engaging a private mediator will be at the parties own cost. The Commission will not pay for a private mediator. Negotiated or mediated discussions are typically considered off the record. Commission counsel can assist the parties negotiate/mediate to reach a settlement. S/he participates in discussions and must be consulted on the public interest aspect prior to a final settlement. Commission counsel will offer, if asked, feedback to any of the parties on their understanding of the issues, the law and how to find common interests with each other. Commission counsel does not provide legal advice to any party.

Settlement agreements

A settlement between the parties must be approved by both the Board of Commissioners and the Board Chair. If there are matters that cannot be resolved through negotiation or mediation, the Board Chair adjudicates the outstanding issues through a Traditional Board of Inquiry hearing. If a final settlement is reached during negotiation or mediation, the settlement agreement will not be considered confidential. Settlement agreements created after a complaint has been referred to a Board of Inquiry are considered to be a matter of public interest. Therefore, the final settlement agreement will be posted soon on the Nova Scotia Human Rights Commission website.

Documents prior to a hearing

Prior to the Board of Inquiry hearing, the parties will have the option to file “legal briefs” (written arguments) for the Board Chair to consider. Written argument provides the Board Chair with the parties position on what happened; this may include the facts and any relevant law that demonstrates their position. The parties also have the option to provide the Chair with relevant documents (evidence) by creating exhibit books for the Chair to reference during the hearing. The parties may choose to do this jointly. If the parties agree on some of the facts of the case, they may provide the Board Chair with an “agreed statement of facts” (outlining the facts in agreement). This allows the Chair to make a determination on the facts that remain at issue between the parties.

Hearing

At the hearing, the parties will have an opportunity to orally present facts and arguments to the Board Chair for the Chair’s consideration. The parties will be able to testify or call witnesses to testify. Everyone who testifies is subject to cross-examination. The Board Chair will consider the oral argument to establish the facts and make their determination. Typically, legal counsel asks the questions of witnesses. If a party is unrepresented, they can ask questions themselves or Commission counsel can lead the case by asking questions of the witness(es). The Commission, however, does not represent the complainant or the respondent. In some instances, the interests of the Commission and the unrepresented party may be different.

Boards of Inquiry are public hearings. The general public, including media, will be notified of the date, time and location of all hearings. A party, however, may request a publication ban to prevent a serious risk to the administration of justice. The Board Chair will have discretion as to whether to order a publication ban; however, it is rare for a publication ban to be ordered.

Decision

After the facts and arguments are presented and the hearing concludes, the Chair determines what law should be applied and whether discrimination occurred. The Board Chair has six months to make this determination and hand down a written decision. The Board Chair will order a remedy if there is a finding of discrimination or may set down a new hearing to determine remedy. Once a written decision has been rendered by the Board Chair, it will be posted on the Nova Scotia Human Rights Commission website and the Canadian Legal Information Institute website. This process does result in an order of the Board Chair. Upon posting, the general public, including media, will be notified of the decision via a press release issued by the Commission.



DISABILITY

Frequently Asked Question



What is a disability?

The term disability covers a wide range and degree of conditions which may be visible, invisible, episodic and persistent conditions throughout the life course. The term disability includes both physical and mental disabilities, and addictions are included within mental disabilities. Protection from discrimination because of disability includes actual and perceived conditions **(NS Human Rights Act, s.3 (L))**.

Although disability is defined in the Nova Scotia Human Rights Act, the definition may differ from that used to assess Worker's Compensation and long-term disability claims.

What is 'accommodation'?

Accommodation involves the removal of barriers (physical or otherwise) to access of services, employment and other areas protected by Human Rights Act. Experience has shown that complaints can be eliminated from the outset if policies are put in place outlining the accommodation process. Institutions, employers and service providers, for example, are obligated to provide "reasonable accommodation to the point of undue hardship".

Reasonable accommodation can involve physical modification of a work site, changing a training course, altering policies, modifying work hours or changing job tasks so that a qualified person with a disability can have an equal opportunity to perform. Providing accommodation could also mean granting a leave of absence to recover from an injury, surgery, or illness or allowing them to return to work gradually, or providing equipment that will let a person continue to work.

What is undue hardship?

Undue hardship is how much an employer has to accommodate depends on many factors such as the financial cost of the accommodation compared to the size of the company and its ability to absorb the cost, safety issues, interchangeability of the work tasks, and disruption of service to the public.

Does the duty to accommodate only apply to people with disabilities?

No. The duty to accommodate applies to all the protected characteristics under the Act (s.5 (h) to (v)). Examples of protected characteristics that can require accommodation include gender, gender identity/expression, religion, family status or race. Approximately 70% of the complaints involve employment and a failure to properly accommodate the disability.

Do I only qualify for accommodation if I have a permanent disability?

No. Disabilities can be permanent, irregular or temporary. Many individuals only require accommodation for a limited period of time until their condition improves. For example, employees receiving treatment for cancer may require time off for treatment but may recover fully.

What can I do if I cannot fully perform my job because of my disability?

Tell your employer, union, landlord, service provider, student services advisor, or professor what you need. Your accommodation needs should be related to the service you are receiving, your job duties, your course/program of study or your housing. Provide supporting information about your disability and the related need it creates. Include relevant medical or other expert opinions when necessary.

You must assist and participate in exploring possible accommodations solutions. The accommodation does not have to be perfect or the best accommodation, it only has to be reasonable. Accommodation is usually a process which requires ongoing communication between the employer and the employee. Employers and employees must show some creativity and flexibility to implement accommodations — as well as to make adjustments as necessary.

Is workplace stress a disability?

Sometimes “stress” is considered a disability. When doctors, to avoid stigma, refer to disabilities such as generalized anxiety disorder or depression as “stress”, they are considered mental disabilities. There is no duty to accommodate until the disability has been properly medically confirmed.

What are the accommodation rights and responsibilities of employers?

- Create an atmosphere in which employees are comfortable asking for accommodation.
- Provide employees with information about the organization’s accommodation policy, and create procedures that allow for the request to be made confidentially.
- Assume that the employee’s request is made in good faith.
- Work with the employee and medical professionals, if necessary, to explore possible accommodations.
- Maintain records of the request for accommodation and steps taken to deal with the request.

What are the accommodation rights and responsibilities of employees?

- Advise employer of a disability or other protected characteristic that requires accommodation
- Notify employer (if possible in writing) of specific needs
- Answer and provide relevant medical information when requested

How can I explain the accommodation to other staff?

Accommodation is not special treatment but can be perceived as such, especially in the workplace. Privacy of the person being accommodated should be the priority. Consult with the employee about how the change in duties will be explained to other staff. Policy surrounding the employer’s accommodation process which is available to all staff will assist in limiting the perception that an employee with a disability is receiving ‘special treatment’.

Who can I contact if I have any questions?

- Nova Scotia Human Rights Commission - **902-424-4111** or **1-877-269-7699**
- APSEA - Atlantic Provinces Special Education Authority - **(902) 424-8500**, serves children and youth who have hearing or visual impairments
- CNIB - Canadian National Institute for the Blind - **(902) 453-1480** or **1-800-563-2642**
- Nova Scotia Disabled Persons Commission - **902-424-8280** or **1-800-565-8280**
- Student Accessibility Services (should be available at all universities in NS; please consult your specific institution)



ACCOMMODATION

Frequently Asked Question



What is the duty to accommodate?

Employers must not discriminate against employees based on any of the protected characteristics, such as mental or physical disability, gender, gender identity/expression, religion, family status or race. Employers have a duty to accommodate certain needs of employees, and must do what is reasonable to allow an employee to fulfill their job. The duty to accommodate is the adjustment(s) of a rule, practice, condition or requirement to help an individual gain equal access to opportunities and benefits.

As an employer, how can I provide accommodation?

Providing accommodation could involve changing policies, practices and workplace cultures as well as physically modifying a worksite to ensure that a qualified person will have equal opportunities and will not experience any disadvantages because of a protect characteristic. This may mean granting a leave of absence to recover from an injury, surgery, or illness or allowing them to return to work gradually, changing job duties, or providing equipment that will let a person continue to work. Providing an accommodation could also involve adjusting or re-arranging shifts, and allowing for shorter or modified work hours to accommodate a disability, or caretaking and family responsibilities. Employers must try to accommodate the needs of their employees up to the point of undue hardship.

What is undue hardship?

Undue hardship is the point where employers are not expected to make accommodations as doing so would pose a health or safety risk to other employees, cause substantial economic cost that would be unsustainable, or cause a significant disruption to the operation of the business or organization. Undue hardship will be different for each business or organization, and it depends on several things, including the size of the organization and the role of the employee within the organization. For example, the larger the organization, the greater the ability to accommodate would be. A smaller organization with only a few employees would reach the point of undue hardship sooner than a larger organization, as they would not have the same level of capacity.

What are the responsibilities of employers and employees?

It is always best for employers and employees to talk openly and regularly about any needed accommodation. In many cases, a medical or health specialist can provide advice on the type of accommodation needed for a mental or physical disability. It is the employer's responsibility to ask for supporting documentation if there is an accommodation issue to be addressed. Employers have a right to know what disability, medical condition, or circumstance requires accommodation and the specific accommodations that are required for the employee. It is the employee's responsibility to provide appropriate documentation to demonstrate how the disability, medical condition or circumstance affects their ability to conduct their job. If an employee does not or refuses to provide documentation, the employer may not be obligated to accommodate the employee.



First Nation Human Rights Complaints

Provincial vs. Federal Jurisdiction



Lodging a human rights complaint

The Nova Scotia Human Rights Commission (“NSHRC”) will take authority (jurisdiction) of a human rights complaint made by a First Nations member unless the issue is undoubtedly federal (which is defined in s. 91 of the Constitution), in which case, the Canadian Human Rights Commission (“CHRC”) will handle the complaint. If it is unclear who should take the complaint due to insufficient information at the intake stage, the provinces assume authority. Therefore, the NSHRC accepts the complaint and studies it further to determine whether they in fact have the authority to take the complaint.

The CHRC has discretion under their Act to accept a complaint outside the one-year limitation period if the complaint is first accepted by a province; therefore, the assessment of jurisdiction should not adversely affect the ability of a First Nations member to file a complaint within the allotted time limitation.

Determining which commission has authority to take a complaint

The NSHRC will consider the following factors when assessing whether it has authority to accept a complaint:

1. If it is a government agency or government employee that is filing or responding to a complaint, the commission considers whether the agency or employee is within a federal or provincial department. If the agency or employee works for the Band or if it is a Band-run organization, this will often fall within federal jurisdiction and should be lodged with the CHRC.
2. If it is a non-governmental business or employee responding to the complaint, the commission considers the following:
 - What is the nature of the operation of the business? More specifically, what are the normal activities of that organization?
 - Next, the commission considers whether the federal or provincial government has jurisdiction over the normal activities of the business. If it is clearly a federally regulated business or activity (see list on page 2), the complaint will fall under federal jurisdiction. The test is complete and the CHRC will have jurisdiction. If the test is inconclusive as to whether the work is federally regulated, the next step is considered.
 - If the test above proves inconclusive, the presumption is the complaint against the business will fall under provincial jurisdiction. However, if some aspect of regulating that business impacts a federal power protected by section 91 of the Constitution (see list on page 2), the complaint will fall under federal jurisdiction. In other words, if there is any conflict between federal and provincial power over the particular business, the complaint will be considered to fall within federal jurisdiction.

For example, child and welfare services generally fall under provincial authority; however, if that organization’s primary function is to act like a First Nations government and/or to advance and assert title and rights overland, and only one of its functions is to provide child welfare services, jurisdiction will be federal because provincial regulation would impair the federal authority over “Indians and lands reserved for Indians.” If the organization’s only activity was to provide child welfare services, it would likely fall under provincial authority.

An assessment of jurisdiction may be questioned again by any party if the complaint is referred to a Board of Inquiry. The Board Chair (adjudicator) may have to consider jurisdiction before hearing evidence on the allegation of discrimination.

Federal and provincial jurisdictional areas

The following is a list of examples of services and employment areas, based on the Constitution (ss. 91 and 92) and case law that interprets it, which generally shows which activity is federal or provincial:

Federal:

- First Nations governance
- First Nations status and registration
- On-reserve housing
- First Nations social assistance (on-reserve)
- s. 91 grounds (banking, postal service, military, interprovincial transportation or communications)
- If enterprise is run by the Band itself

Provincial:

- Social services
- Retail/Gas/Hospitality
- Off-reserve housing
- Child care or child welfare services
- Labour and Employment (generally), unless the business or organization conducts federal work, or is an organization run by the Band.
- Most activities off-reserve

Grey Areas:

Education - On reserve jurisdiction is generally federal, but can also be provincial, especially if it is off-reserve and/or post-secondary education.

Health - On reserve jurisdiction is generally federal, but could be provincial depending on the purpose and function of the actual organization.

Policing - Often federal jurisdiction, especially if there are some elements of self-policing or the organization is in any way run by the First Nations Band itself.

Contact the NSHRC

Should you have any questions about lodging a complaint, please call our intake line, drop in or send us an e-mail:

Toll free: **1-877-269-7699**

Local call: **902-424-4111**

TTY: **902-424-3139**

E-mail: hrcinquiries@novascotia.ca



Two - Spirit People



Throughout history, people around the world have expressed different genders, and/or been attracted to people of the same sex. Many languages have terms to describe these people. For example, the Maori use the term *takuāpui* to describe partners of the same sex. English now uses the terms lesbian, gay, bisexual, and trans.

Indigenous nations have their own ways of naming and understanding gender and sexuality. Early Settler anthropologists used the French term *berdache* to describe Indigenous people who didn't live as men or women, who seemed to shift gender, or who expressed multiple genders. However, berdache came with its own meaning (slave, or prisoner) that didn't accurately reflect the gender or sexuality systems of Indigenous nations.

In the 1990s many Indigenous people who identified as lesbian, gay, bisexual, and trans (LGBT) began to describe themselves using the word "*two spirit*" instead.

This accomplished several things:

- It prioritized their Indigenous identity and their relationship with their Indigenous community and nation.
- It helped them reclaim roles in Indigenous communities that had been performed by people like themselves before colonization.
- It let them connect with Indigenous people across North America to develop solidarity on issues such as homophobia.

Today two-spirit people are also discovering and using terms from their Indigenous languages to describe their gender or sexuality. Some Anishinabek people, for example, use the term *agokwe* for men and *agokwe-nini* for women. Some Indigenous nations have terms to describe fluid or third genders. The Navaho (Dine), for example, use the term *nádleehí*, meaning "one who transforms."

Two-spirit has replaced the term berdache, and is often added when people are discussing LGBT people and their communities. While berdache described only gender two-spirit is used to describe both gender and sexuality. Many two-spirit people use multiple terms to describe their identity. In addition to identifying as two-spirit, for example, they may identify as gay, lesbian, bisexual, or trans, and may also use a term from their Indigenous language, such as *winkte* (Lakota), *boté* (Apsaaloke), or *hova* (Hopitu).

Two-spirit people face the same systemic racism, intergenerational trauma, and violence as other Indigenous people, but also experience harassment related to their sexuality and/or gender. A study of Aboriginal bisexuals in Ontario found that 70% had been harassed or attacked as an adult, and 58% had been forced or coerced into sex before age 16. A study of Aboriginal trans people found that 43% had experienced physical or sexual violence motivated by transphobia.

Two-spirit people experience high rates of poverty. The study of Aboriginal bisexuals mentioned above found that 26% were living on less than \$10,000 per year. Similarly, the study of trans Aboriginal people found that 47% were living in poverty, one third was homeless or unstably housed, and 29% did not have enough food to eat in the past year.

Maintaining mental wellness is also a concern. Aboriginal bisexuals reported high rates of severe depression (39%) and suicidal thoughts (71%), and 65% reported having an unmet mental health need in past year.

Despite the challenges they face, two-spirit people are organizing politically, providing services to their communities, and educating people about traditional Indigenous understandings of gender and sexuality.

Examples include:

- **2-Spirited People of the 1st Nations** provides resources for two-spirit people and conducts research in their communities.
www.2spirits.com
- **Native Youth Sexual Health Network** is run by and for two-spirit people across Turtle Island.
<http://www.nativeyouthsexualhealth.com/twospiritdirectory.html>

This two-spirit info sheet was prepared by Margaret Robinson, PhD, Assistant Professor of Indigenous Studies, Department of Sociology & Social Anthropology, Dalhousie University, Halifax, NS, Canada.

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