

SASKATCHEWAN



HUMAN
RIGHTS
COMMISSION

*Guidelines and Application
of Policy on Equity Programs*

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*“Sometimes equality means treating people the same,
despite their differences,
and sometimes it means treating them as equals
by accommodating their differences.”*

- Judge Rosalie Abella,
Report of the Commission on Equality in Employment

1. Introduction

The purpose of this policy is to outline the Commission’s approach to equity programs and to set out the requirements for approval of equity programs under section 47 of *The Saskatchewan Human Rights Code*.¹

Discrimination is illegal if based on any of the following prohibited grounds or reasons: religion, creed, marital status, family status, gender, sexual orientation, disability, age, colour, ancestry, nationality, place of origin, race or perceived race, and receipt of public assistance.² The *Code* prohibits individual acts of discrimination, and also recognizes that inequality is built into systems and institutions. Discrimination against groups can be caused by pervasive stereotyping, widespread bias, or systemic barriers. It may flow from the accumulated effect of many years of doing things in particular ways that exclude or harm individuals and groups, usually unintentionally. For this reason, section 47 of the *Code* authorizes the Commission to approve **voluntary programs** designed to prevent, reduce or eliminate disadvantages experienced by groups of individuals because of a prohibited ground of discrimination.

The Commission may approve programs designed to improve opportunities in public services, accommodation, employment or education. One goal of equity in employment, for example, is a representative workforce that mirrors the working age population. In public services, equity could mean modifying a service to meet the needs of a variety of groups.

Nothing done for the purposes of an approved program is a violation of the *Code*.

¹ See Appendix for full text of section 47. Equity programs may be approved by the Commission under section 47, or negotiated in settlement of a human rights complaint, or ordered by a court or human rights tribunal.

² Section 2(m.01), *The Saskatchewan Human Rights Code*.

2. *Explanation of Terms*

In this policy, a program approved under section 47 is referred to as an **equity program**. An organization or institution with an approved program is referred to as a **sponsor** or **equity sponsor**. The group an equity program is designed to benefit is called an **equity group**.

Employers, educators and service providers can use many strategies to advance equality of opportunity, including positive, accommodating and special measures.

Positive measures remove barriers to equality for equity groups while benefiting others as well. They are open to all. Positive measures do not require legal approval, and sponsors are free to use them with no reference to the Human Rights Code. Examples:

- A respectful workplace policy may be most helpful to those who are vulnerable to sexual or racial harassment, but it will also improve the work environment for all employees.
- A policy allowing flexible work arrangements will assist parents and people with disabilities, and benefit other employees who wish to work non-standard hours.

Accommodating measures serve the same broad purpose as equity programs – the removal of barriers to equal benefit and participation. However, the duty to accommodate applies to all persons covered by human rights legislation whether or not they have an approved equity program. The Supreme Court of Canada has indicated that all employers, educational institutions, and service providers must take reasonable steps to accommodate needs related to a prohibited ground of discrimination, up to the point of undue hardship. Moreover, the duty to accommodate can arise in relation to any prohibited ground, regardless of the equity groups for which a program has been designed. General human rights law requires accommodating measures; therefore, they do not require Commission approval. Example:

- An employer with an equity program designed to improve opportunities for Aboriginal people must also accommodate employees who experience disadvantage related to religion or other prohibited grounds.

Special measures are actions, policies or decisions that take a prohibited ground of discrimination into account in order to reduce disadvantages experienced because of that ground. They differ from positive measures in that they apply to, and benefit, *only* members of one or more of the equity groups addressed by an equity program. Because they identify opportunities based on prohibited grounds of discrimination, special

measures require Commission approval. For instance, employers typically cannot consider ancestry, gender or disability in their hiring decisions – that would be a violation of the *Human Rights Code*. But an employer with an equity program can choose to consider a prohibited ground when hiring, for the purpose of developing a representative workforce and within the context of certain limits established by the Commission. Examples:

- An equity employer may have five qualified applicants for a job opening, including a person with a disability. Because equity plans are voluntary, the employer is not required to hire the equity group member. Nonetheless, the employer may *choose* to hire the candidate with a disability in order to promote equality goals and develop a workforce that reflects the make-up of the working age population. In this example, the Commission’s approval makes it legal for the employer to consider disability in the hiring decision.
- Scholarships for students from equity groups, special recruitment initiatives to increase the representation of Aboriginal people, and special access to training for women in non-traditional occupations are also examples of special measures.

While positive and accommodating measures can be used in any context, special measures are a unique feature of equity programs. Special measures are effective strategies of change because they focus directly upon the barriers experienced by equity groups and accelerate progress towards equality goals. Sponsors may choose when and how to use special measures, depending on their individual circumstances.

3. The Potential Range of Equity Programs

In keeping with the results of its 2002-2003 review process, the Commission’s approach to equity programs is based on its commitment to flexibility, accessibility and accountability. The Commission will use its approval authority to strengthen and support a broad spectrum of initiatives, and to facilitate expansion and innovation by current or potential sponsors.

Because the Commission wishes to encourage new and creative strategies, it will not require programs to fit a standard template. Instead, the Commission will ask sponsors to make a commitment to the objectives and principles outlined in section 4 of this policy, and to fulfill the requirements outlined in section 5. This commitment will be a condition of Commission approval, which will take effect when the Commission and the sponsor sign a standard-form Equity Partnership Agreement.

Without limiting the nature of requests brought to it for approval, the Commission intends equity programs to include the following possibilities. Programs may be designed for one equity group, or more than one.

- (1) Broad initiatives designed to address widespread patterns of disadvantage experienced by one or more equity groups. Typically, programs involve many components and evolve over time. Historically, such initiatives have been approved as equity plans under section 47 of the *Code*.
- (2) A single strategy or limited range of actions intended to benefit one or more equity groups. For example, an employer may simply wish to hire preferentially, without developing a comprehensive program that addresses training, retention and other issues.

Historically, some initiatives of this kind have been dealt with as exemptions. Section 48 of the *Code* gives the Commission the authority to grant an exemption from the Act where the Commission considers this to be “necessary and advisable.”³ Exemptions refer to specific sections of the *Code* and usually involve a single decision or type of action.

Example:

- The Commission may give a university an exemption from section 13 (the provision dealing with the right to education) so that the institution may designate a scholarship for students from a particular background.

Over the years, some organizations have requested exemptions for plans or policies affecting large numbers of people. Some of these initiatives are very similar to section 47 programs, in that they seek to address disadvantage in a comprehensive manner in the areas of education, employment, housing or public services. The Commission’s view is that large, ongoing initiatives affecting many people should be classified as programs – partly in the interests of public accountability, and partly because such initiatives tend to become multi-faceted over time. Wherever feasible, therefore, the Commission will grant approval for such initiatives under section 47 of the *Code*.

- (3) Contracts entered by government or businesses on a preferential basis in order to achieve the goals of section 47 of the *Code*. Examples:
 - A government department may wish to give preference in contract tendering to contractors whose workforces come closest to representative levels, in order to promote the employment of equity groups.

³ See Appendix for full text of section 48.

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- An employer may wish to enter agreements with businesses operated or largely staffed by members of equity groups.
- (4) Joint initiatives undertaken by trade unions and employers to promote employment opportunities for equity groups. Example:
- Parties to a collective agreement may wish to negotiate provisions that will advance the goals of equality and diversity.
- (5) Initiatives undertaken to improve housing accommodation or public services to members of equity groups.

4. Principles and Objectives

As a condition of granting approval or continued approval of section 47 programs, the Commission will ask all equity sponsors to make a commitment to the following principles and objectives.

- (1) To support the fundamental objectives set out in section 3 of *The Saskatchewan Human Rights Code*; that is,
 - (a) to promote recognition of the inherent dignity and the equal inalienable rights of all members of the human family; and
 - (b) to further public policy in Saskatchewan that every person is free and equal in dignity and rights and to discourage and eliminate discrimination.
- (2) To support the principle that cultural diversity is a fundamental human value.
- (3) To support the principle of equality of opportunity.
- (4) To foster the full potential of all individuals and promote their contribution to the creation of a prosperous, harmonious and inclusive society.
- (5) To improve opportunities for equity groups in the areas of employment, education, accommodation or public services.
- (6) To recognize the reality that individuals may experience disadvantage because of more than one prohibited ground of discrimination. Further, to consider whether additional special measures are advisable where individuals face multiple barriers because they belong to more than one of the four original equity groups: Aboriginal people, people with disabilities, visible minorities and women in underrepresented occupations.

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- (7) To support the establishment of links and partnerships between equity initiatives in employment, education and public services.

5. *Approval Requirements*

In addition to making a commitment to the principles and objectives outlined above, equity sponsors are asked to meet the following requirements. These requirements are based on section 47 of *The Saskatchewan Human Rights Code*, principles emerging from case law, or the Commission's own experience with equity programs.

- (1) The program must be designed to prevent, eliminate or reduce disadvantages related to a prohibited ground of discrimination.
- (2) The program must improve opportunities in services, facilities, accommodation, employment or education.
- (3) Except where the Commission recognizes in this policy (as amended from time to time) that a group experiences disadvantage in Saskatchewan, the sponsor will illustrate that it is appropriate to designate a group as an equity group for the purposes of section 47 of the *Code*. Examples:
 - The Commission recognizes that people with disabilities experience disadvantage in employment throughout Saskatchewan. Therefore, potential sponsors do not need to demonstrate that people with disabilities are an equity group for the purposes of employment initiatives.
 - The Commission has not documented whether groups experience widespread disadvantage because of age or marital status. For this reason, a sponsor seeking to improve opportunities for people of a certain age or marital status will be required to demonstrate the disadvantages generally experienced by the relevant groups.
- (4) The sponsor must illustrate the existence of disadvantage within its own organization – both at the initial approval stage and in periodic progress reports – for the equity groups addressed by its program. Example:
 - An employer wishing to take special measures to hire or retain members of visible minorities must show that visible minorities are underrepresented in the employer's workforce.

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- (5) The sponsor will undertake to implement its section 47 program in a fair and reasonable manner that takes into account the relevant interests of all persons affected by the sponsor's actions.
 - (6) The sponsor agrees that no person shall be laid off, terminated or demoted in order to implement a section 47 program.
 - (7) Where a sponsor employs unionized employees, the sponsor will obtain the trade union's support for the equity program and will ensure the trade union's ongoing involvement in the program's implementation. If the sponsor is unable to obtain trade union support, the Commission may approve the sponsor's program if the sponsor demonstrates that it has made concerted efforts to obtain trade union support and that Commission approval of the sponsor's program will advance the purposes of section 47 of the *Code*.
 - (8) The sponsor acknowledges that approval of an equity program does not authorize the breach of a collectively bargained agreement.
 - (9) The sponsor supports the sharing of information and resources among equity sponsors and other community partners.
 - (10) To ensure public accountability, the sponsor will provide the Commission with periodic monitoring reports in the format and on the dates set by the Commission.
 - (11) The sponsor undertakes to maintain transparency of programs and accountability for special measures approved under section 47 of the *Code*.

6. *Equity Groups*

Because the Commission's mandate is to protect the human rights of all Saskatchewan residents, it has been careful to require statistical or other evidence of significant, widespread disadvantage before designating equity groups. To date, the Commission has approved equity programs for four groups: Aboriginal people, people with disabilities, visible minorities, and women. These groups have been denied equality of opportunity and benefit in important areas of public life.

In the past, the Commission promoted the inclusion of all four groups in equity programs. However, the 2002-2003 review process indicated it is important for the Commission to support all equity initiatives that can create positive change. The Commission will therefore approve any equity program that addresses disadvantages experienced by at least one equity group.

At the same time, the Commission recognizes the reality that some individuals experience discrimination for more than one reason. One kind of disadvantage can intersect with and compound the negative effects of another. Example:

- An individual seeking to fulfill her unique potential may confront two different sets of barriers because she is both an Aboriginal person and a woman. In pursuing her career goals, she may confront a “glass ceiling” for both reasons.

The Commission will therefore ask all sponsors – even those choosing to focus on one equity group – to consider whether additional special measures are advisable where individuals face multiple barriers because they belong to more than one of the four original equity groups: Aboriginal people, people with disabilities, visible minorities and women in underrepresented occupations. Example:

- In a program to improve opportunities for women, the Commission will ask the sponsor to take steps to improve opportunities for Aboriginal women, visible minority women and women with disabilities.

The Commission has also decided to open equity programs to new equity groups. It will consider approvals linked to any of the prohibited grounds of discrimination, so long as an applicant fulfils the requirements of section 47: evidence of disadvantage; evidence that disadvantage is related to the prohibited ground of discrimination; and evidence that the proposed program is likely to reduce disadvantage.

The Commission does not wish to impose onerous or unnecessary requirements upon potential sponsors. If the Commission itself has already noted that a group experiences disadvantage in a particular context, a sponsor will not be required to illustrate this fact. Example:

- The Commission periodically publishes information on the make-up of a representative workforce and the extent to which the four original equity groups lag behind full representation. Therefore, it is not necessary for a potential sponsor to show that women, Aboriginal people, visible minorities or people with disabilities are appropriate equity groups for employment initiatives.

With a new group or in a novel context, however, the Commission will ask the sponsor to provide a rationale for the requested approval, to demonstrate that the group experiences general disadvantage, and to show that the request is consistent with the objectives and principles of equity programs.

7. *Parameters and Long-Term Goals*

The fundamental goals of equity programs can be expressed as principles of fairness and inclusion. Equity in employment means a representative workforce that mirrors the working age population in all occupations and at all levels, and supportive work environments that promote the participation of all groups. Equity in education means an inclusive educational system that provides equality of benefit to all students.

To ensure programs are as effective as possible, sponsors need concrete, measurable goals and ways of assessing progress towards them. Goals may be quantitative (such as higher employment and retention rates) or qualitative (such as job satisfaction and positive working relationships). Where disadvantage can be expressed in numerical terms, the parameters for special measures will typically reflect the extent of disadvantage.

To assist sponsors, the Commission has developed policy definitions of the four original equity groups. The Commission has also, to some degree, provided guidance on indicators of success. In the employment area, numerical indicators are readily available. The Commission looks at Statistics Canada data to develop a picture of Saskatchewan's working age population. Because one goal of employment equity is simply a workforce that mirrors the community as a whole, this picture also constitutes the program's long-term goals.

In the area of education, the Commission notes that Aboriginal people, visible minorities and people with disabilities experience systemic disadvantage in education and that students may also experience disadvantage because of gender. Quantitative indicators of success could include graduation rates and the representation of equity group members in teaching and non-teaching positions. Qualitative indicators might include the educational experience of equity groups, or success at overcoming racism and other obstacles.

Within the K to 12 system, the Commission's original focus was on Aboriginal students because of their extremely high drop-out rates. However, the Commission has not articulated numerical goals for educational initiatives. Aboriginal students have made significant progress since 1985, when education equity was launched, but they are still a long way from enjoying equal success and participation rates. Setting limits on special measures has not been a pressing priority. Nevertheless, the Commission wishes to develop parameters for equity initiatives in education, in consultation with educational partners and sponsors.

The Commission also endorses the policy framework of the Equity in Education Forum, to which the Commission belongs. This framework, set out in *Our Children, Our Communities and Our Future*, states:

“Saskatchewan’s diverse population is reflected across the education system among our students and their families, educators, administrators, and board members. Ensuring that each person has equitable opportunity and benefit, regardless of their ethnic origin, physical or mental disability, religious preference, culture, gender, family structure and lifestyle, social or economic background or other difference, is a critical priority.”⁴

Inherent in the concept of an equity program is the belief that it can and should be temporary. Once disadvantage is overcome, special measures will no longer be necessary or appropriate. With regard to new equity groups or novel situations, the Commission will ask potential sponsors to suggest appropriate parameters or limits for the use of special measures. From time to time, the Commission itself may develop parameters for new groups or contexts, as resources allow. Where the Commission itself provides parameters for special measures, sponsors will not be asked to propose them. In all cases, the Commission will welcome input from sponsors, community organizations, and other interested parties.

8. Progress Reports

The Commission asks sponsors to provide periodic statistical and narrative reports, in order to assess progress and ensure public accountability of equity programs.

In May 2003, the Provincial Auditor reported on another government program designed to ensure workforce representation of Aboriginal people at all occupational levels in proportion to their provincial population.⁵ The Provincial Auditor noted the importance of reporting on progress towards this goal, and of taking steps to ensure the information it reports is consistent and comparable. He recommended joint evaluation by government and employers of progress towards measurable objectives that include both activities and results. He also recommended the development of definitions for key terms, and a requirement of written action plans and progress reports from each participating employer.

⁴ Equity in Education Forum, *Our Children, Our Communities and Our Future* (1997), p. ii. Forum members include Saskatchewan Learning, Saskatchewan Teachers’ Federation, Gabriel Dumont Institute, Saskatchewan School Boards Association, Saskatchewan Human Rights Commission, the Colleges of Education of the Universities of Saskatchewan and Regina, and the League of Education Administrators, Directors and Superintendents.

⁵ *Report of the Provincial Auditor* (May 2003). See pages 101-113, on the Aboriginal Employment Development Program of Government Relations and Aboriginal Affairs.

The Commission should meet comparable standards in its approval and monitoring roles. At the same time – in keeping with its desire to make the overall equity program as flexible, accessible and “user-friendly” as possible – the Commission will endeavour to keep annual progress reports brief, simple, and meaningful to sponsors as well as the general public. Sponsor reports are public documents, and will be posted to the Commission’s web site (www.gov.sk.ca/shrc). The Commission will ask sponsors to use a standard reporting format, for ease of navigation as well as comparability.

While ensuring the transparency of equity programs, progress reports also provide a rich source of information for other sponsors and community organizations. The Commission’s equity sub-site (www.gov.sk.ca/shrc/equity) launched in October 2003, is intended to be a springboard for dialogue, resource sharing, and the development of best practices.

The Commission will seek ongoing input on the most valuable reporting formats, and will refine them on a continual basis in collaboration with sponsors, community groups, and other interested parties.

APPENDIX: Excerpts from *The Saskatchewan Human Rights Code*

Programs, orders or approval of by commission

47 (1) On the application of any person or on its own initiative, the commission may approve or order any program to be undertaken by any person if the program is designed to prevent disadvantages that are likely to be suffered by, or to eliminate or reduce disadvantages that are suffered by, any group of individuals when those disadvantages would be or are based on or related to the race, creed, religion, colour, sex, sexual orientation, family status, marital status, disability, age, nationality, ancestry or place of origin of members of that group, or the receipt of public assistance by members of that group by improving opportunities respecting services, facilities, accommodation, employment or education in relation to that group or the receipt of public assistance by members of that group.

(2) At any time before or after approval to a program is given by the commission, or a program is ordered by the commission or a human rights tribunal, the commission may:

- (a) make inquiries concerning the program;
- (b) vary the program;
- (c) impose conditions on the program; or
- (d) withdraw approval of the program as the commission thinks fit.

(3) Nothing done in accordance with a program approved pursuant to this section is a violation of the provisions of this Act.

Exemptions

48 (1) Where any person or class of persons is entitled to an exemption under any provision of this Act or any other Act administered by the commission or where the Chief Commissioner considers it necessary and advisable, the Chief Commissioner may, upon application from the person who is entitled to the exemption or who seeks the exemption, by order made in accordance with any terms, conditions or criteria prescribed in the regulations, exempt that person or class of persons from any or all of the provisions of this Act, other than Part I, or from any or all of the provisions of any other Act administered by the commission.

(2) Notwithstanding that an exemption order has been made under sub-section (1), the commission may, on its own initiative or upon application from any person or class of persons, terminate the exemption order, but the person or class of persons in whose favour the exemption order was made shall receive thirty days written notice that the exemption order may be terminated and shall be allowed to make representation to the commission.

(3) Notice under subsection (2) may be given personally, by ordinary mail addressed to the last known postal address of the persons in whose favour the exemption order was made, or by publishing that notice on three consecutive days in the daily newspaper published closest to the places of residence of those persons.