



## Fact Sheet: Creed Discrimination

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In December 2015 the Ontario Human Rights Commission released an updated policy on preventing discrimination based on Creed. With the changing landscape in Canada, the Commission began receiving complaints from people regarding barriers faced based on their Creed. There is a strong correlation between groups of people who experience discrimination based on Creed with faithism (a phobia developed because of your beliefs) racism and xenophobia. According to the Commission, the result of these phobias can lead to the following:

- Unfair treatment
- People being afraid to disclose their creed
- Forced to choose between creed and employment or services

It is also important to note that someone who has no affiliation to a creed can also cite creed as a discriminatory ground. In instances like this, the person is treated differently because of having no belief system or is forced to participate in creed related events.

### **What is Creed?**

Creed is not defined in the Code but it includes religion. It can be defined however as a sincerely held belief which means honesty of belief and it should be generally assumed on good faith unless legitimate reason to believe otherwise. Where further inquiry is warranted, it should be as limited as necessary. This belief system influences a person's identity, way of life and a sense of fulfilment.

Remember, with associated belief:

- Perfection is not required
- It is not about the strength of the belief
- It must consider the context where the belief has been compromised

The belief system can be grounded to the five areas of focus.

1. It is a sincerely freely and deeply held belief (this does not need confirmed documentation).
2. It is integrally linked to a person's identity (A religious belief or commitment that is deeply rooted ... as an element of the individual's identity, rather than simply a choice or judgement she or he has made. –*Supreme Court of Canada*-).
3. It is a comprehensive, overarching belief system (this can sometimes be subjective).
4. It is usually connected to a community that professes a shared belief system.
5. It addresses ultimate questions of human existence, including ideas about life, purpose, death, and the existence or nonexistence of a Creator or higher order of existence.

Although the five focus areas are a guide, not every belief, opinion, expression or practice is protected as a creed under the Code. Human Rights do not extend to creed practices and observations that:

- Are hateful
- Incite discrimination, hatred or violence against other individuals or groups
- Contravene criminal law

*NB: There is no weighing or measuring of the five focus criteria areas to decide if a belief is a creed or not, rather it is based on interpretation and experience.*

Some examples:

1. Pastafarianism is not a creed as it fails to measure up to the first criteria that it is a sincerely held belief (to date).
2. Communism fulfils all the five focus criteria areas for creed but it is still open to interpretation if it can be classified as a creed.
3. Veganism fits some criteria of the five focus areas but again is still open to interpretation.

### **Discrimination Based on Creed**

To establish prima facie discrimination (discrimination on its face) a claimant must show the following:

- The discrimination is linked to and protected by the Code ground
- They experienced negative treatment or adverse impact with in the 5 social areas identified by the Human Rights Code
- The protected characteristic was a factor in the negative treatment or adverse impact

- Anyone may experience creed discrimination, whether or not they have a creed  
\*(Treating someone differently because of the absence of creed is also the basis of discrimination.)

When persons are being treated differently because they differ in beliefs in the same creed, the code does not cover:

- Discrimination within a purely religious service ( where men and women may be treated differently because of gender)
- The Human Rights Tribunal of Ontario does not challenge the religious belief system, teachings or core form of worship

### Examples of creed-based discrimination

#### Direct, Indirect and Subtle

- Derogatory language, negative comments toward individuals or communities affiliated by creed
- Insults, comments, jokes that ridicule, humiliate or demean people because of their creed identity or how they express it, including those circulated in writing by e-mail or social media - Threats, unwelcome touching, violence and physical assault.

#### Poisoned environment

- Force of pressure to accept or comply with creed beliefs or take part in creed practices against someone's choosing
- Made to take part in religious activities as a term of employment
- Pressure requiring one to recite prayers in schools and at public meetings (state duty of neutrality does not mean that individuals associated with government cannot exercise their religious rights in their personal capacity)

#### Systemic discrimination

- Any action taken for safety, security or public protection that relies on stereotypes about a person's religion or creed rather than on a reasonable suspicion.
- Often based on stereotypes and preconceived ideas about Code-protected characteristics
- Profiling based on creed can be a form of racial profiling

*\*NB: Intersectional discrimination must be acknowledged to fully address the impact of discrimination. Persons who are discriminated against based on creed are usually racialized - The Ontario Human Rights Commission (OHRC)*

## **Differences within Creed Groups**

Creed disputes occur when members of the same creed have differences regarding how a creed should be understood and practiced. As a result, an individual approach is necessary recognizing the unique identity of each person.

### **Exceptions**

Allowing behavior that would otherwise be discriminatory

- People's right to come together and form associations for creed-related purposes.
- Programs designed to address the historic disadvantage experienced by people identified by a Code ground

### **Exceptions guide:**

The program needs to show

- That it is designed to relieve the hardship or economic disadvantage
- That it is designed to help the disadvantaged group achieve or try to achieve equal opportunity or likely to help eliminate discrimination.

\* See *Guide Book on special programs on the OHRC site at*

<http://www.ohrc.on.ca/en/search/site/special%20programs> - **Special Interest**

### **Organizations**

Religious organizations and other organizations (charities, schools and social clubs) can limit membership and involvement to people to a particular creed but it must fulfil all three criteria;

1. It is a religious, philanthropic, educational, fraternal or social institution or organization
2. It is an organization that primarily engaged in serving the interests of persons identified by their creed
3. Membership or participation in the organization restricted to people identified by that creed

### **Special Employment**

Religious and some other organizations that mostly serve a creed group can give hiring preference to people from that group or impose a creed-based hiring requirement when the employer shows:

1. That it is a religious, philanthropic, educational, fraternal or social institution or organization

2. That it is an organization that primarily engaged in serving the interests of persons identified by their creed and employs only and gives preference in employment to persons similarly identified
3. That a creed-based qualification is a reasonable and bona fide because of the nature of the employment.

### **Duty to Accommodate**

The goal of accommodation is to allow people with different creed beliefs (including no creed belief) to equally benefit from and take part in the workplace or service.

To trigger the duty to accommodate, 3 things must be shown:

1. Adverse effect **on a**
2. Sincerely held belief **that is**
3. Connected to a creed

Adverse effects:

- Objective evidence may be required to show a requirement adversely affects a person based on their sincerely held creed belief (Teaching a course that is contradicting your beliefs does not constitute a violation of one's creed)
- Not every adverse impact on a person's creed may be discriminatory under the Code (e.g. creed related social volunteer activities and or accessing religious programming via satellites, internet etc.).

Connected to Creed:

- It is an objective analysis to confirm the existence of a creed
- A person's creed belief or practice does not need to be required by the creed, or be consistent with beliefs or practices of others of the same creed. (The question is not if it is a practice of the faith but a sincere belief, which is an individual matter)

*\*NB: Once it is a sincere belief it does not need to conform to a held creed.*

### **Accommodation Principles.**

- It respects dignity, including privacy and confidentiality
- it responds to a person's individualized needs
- It allows for integration and full participation

## **Inclusive Design**

This is about designing society and structures with the needs of people of diverse creed in mind. (Employees should not have to ask for this accommodation; ceremonial rooms/spaces)

## **Creed-based Holidays, Leaves & Ritual Observances**

- Many creeds have time-sensitive creed-related observances that must be accommodated e.g. Religious holidays, Sabbath, creed-based pilgrimages, rites of passage, mourning and bereavement rituals, hunting/harvesting practices, prayers etc.

When providing time off:

- Must offer option(s) to take time off without loss of wages
- Can offer a menu of options (forcing employees to use vacation time is likely discriminatory)
- May include paid time off equivalent to the number of Christian statutory holidays
- No automatic entitlement to paid days off
- One should proactively anticipate religious holidays (but must leave room to recognize individualized needs and circumstances)

## **Dress Code and Appearance Rules**

- Some creeds have dress and appearance requirements (e.g. a turban, kirpan, hijab, facial scarification, bindi, unshorn hair, etc.)
- May conflict with uniforms, appearance standards or protective gear requirements
- Organizational style preferences, cultural customs not a legitimate reason to deny accommodation
- If accommodation is likely to cause significant health and safety concerns, may be considered 'undue hardship' (e.g. Mask for recaust operator)

## **Display of creed-based symbols**

- This is dealt with on a case-by-case approach
- Some factors to consider
  - Who displays the symbol and why (individual accommodation vs. organizational preference)
  - Location and visibility (public area vs. personal workspace)
- Whether causing a significant negative impact (causing creed-based pressure, exclusion, discrimination against others) *\*Hair, hijabs, turban, etc. are not symbols*

## **Photos and Biometrics**

Some creeds do not permit followers to be photographed (can preclude: biometric hand scanning, photo identification cards, photos for company ID & website, etc.)

*\*Exemption from an activity may be a form of accommodation, but organizations must also consider the competing rights of others.*

## **Indigenous Spirituality**

- Suppression of Indigenous spirituality ( There is a history of erasure among Indigenous culture by Canadian society)
- The Ontario Human Rights Commission, (OHRC) does not define 'Indigenous Spirituality' in recognition of Indigenous peoples' right to define and determine this for themselves Some definitions may include:
  - Way of life/way of knowing
  - Centered on relationship with creator, the land and all our relations

## **Examples of Indigenous Spirituality Accommodations**

Time/space for spiritual practices:

- Smudging
- Grieving practices
- Food, hunting and harvesting practices and rites
- Partaking in Indigenous spiritual activities on National Aboriginal Day, Louis Riel Day, Inuit Day
- Clothing, appearance standards (e.g.Hairstyle)
- Sacred objects