

New Brunswick Human Rights Commission

Guideline on Accommodating Physical and Mental Disability at Work

Adopted April 22, 2004*

For employers, unions, persons with disabilities and their health care providers:

Provisions under the New Brunswick *Human Rights Code* take precedence and are paramount over the provisions of every other law of the Legislature unless expressly provided otherwise.¹

The New Brunswick *Human Rights Code* (hereinafter the “Code”)² states that all persons are equal in dignity and human rights. According to sections 11 and 12 of the Code, the role of the Commission is to enforce the Code and the principles underlying it. In order to fulfill this objective the Commission produces guidelines that reflect its interpretation of the Code. We would like to acknowledge human rights commissions from various jurisdictions across Canada for the opportunity to study and draw from their policies and documents on accommodation of physical and mental disability at work.

Please Note

This policy statement embodies the Commission’s interpretation of the provisions of the Code relating to certain forms of discrimination as set out in section 3. It is subject to decisions by Boards of Inquiry and the courts. The policy should be read in conjunction with those decisions and with the specific language of the Code. Any questions regarding this policy should be directed to the staff at the New Brunswick Human Rights Commission.

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* Updated on October 8, 2008 by replacing footnote 37 and the first bullet of section 4.7 with new texts, replacing “prognosis” with “diagnosis” on pages 23 and 25, and updating the table of contents and the Commission’s contact information; updated on January 31, 2005 by adding “social condition, political belief or activity” to the excerpts of the Human Rights Act and by updating the Commission’s contact information; updated on January 25, 2007 to add a date for the MD’s signature on page 26.

¹ *Newfoundland Association of Public Employees v. Newfoundland (Green Bay Health Care Centre)*, [1996] 2 S.C.R. 3, at para. 20.

² *Human Rights Code*, RSNB 1985, c. H-11.

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1.0 WHO SHOULD READ THESE GUIDELINES

These regulations are important to you if you are:

- an employer, human resource director or manager trying to meet your obligations under the Human Rights Code to disabled employees seeking work or returning to work;
- a person in New Brunswick with a disability seeking employment or accommodation from your employer;
- a person in New Brunswick claiming to be discriminated against by an employer because of a perceived disability;
- a union leader, representative or shop steward advising members about their rights and obligations in accommodating employees with disabilities in your workplace;
- a health care provider advising patients with respect to their rehabilitation and work-readiness.

2.0 INTRODUCTION

According to human rights commissions across Canada, there has been a marked increase in physical and mental disability discrimination complaints since the start of the new millennium. In New Brunswick, physical and mental disability have for the past three years been respectively the most common and second most common ground of complaint in cases recorded. Together they now represent over half the cases filed with the Commission.

This is perhaps not surprising since they are relatively new grounds. Physical discrimination was added in 1976 and mental disability in 1985. Nonetheless it is largely since the late 1990s and the development of a significant disability discrimination case law under the Charter that a deeper social transformation relating to the inclusion of persons with disabilities in the workforce has taken root.

This change is due in part to new standards established by the Courts with respect to proof of discrimination, such as its insistence on proof of an affront to human dignity and its limitation of justifications to cases where accommodation of a disability is impossible short of undue hardship. The change owes as much, however, to the recognition by courts of the fundamental importance of employment to an individual's life as an essential component of identity, personal dignity, self-worth and emotional well-being. In this way, persons who once appeared as problems or burdens have become holders of rights such as the right to work.

This willingness to acknowledge the rights of persons with disabilities is certainly not a uniquely Canadian phenomenon; this evolution in human rights is also unfolding at the international level. The direct relationship between disability on the one hand and poverty and social exclusion on the other continues to exist throughout the world. In a 2002 report of the Office of the High Commissioner for Human Rights at the United Nations, the authors describe the change taking place as follows:

A dramatic shift in perspective has taken place over the past two decades from an approach motivated by charity towards the disabled to one based on rights. In essence, the human rights perspective on disability means viewing people with disabilities as subjects and not as objects. It entails moving away from viewing people with disabilities as problems towards viewing them as holders of rights. Importantly, it means locating problems outside the disabled person and addressing the manner in which various economic and social processes accommodate the difference of disability - or not, as the case may be. The debate about the rights of the disabled is therefore connected to a larger debate about the place of difference in society.³

This transformation is buttressed by Canada's international human rights commitments and in particular respect for the right to work guaranteed under Article 6 of the International Covenant on Economic, Social and Cultural Rights,⁴ since these human rights instruments are not merely guidelines but impose on Canada the duty to change. This evolution is the product of the past twenty years' experience with inclusionary policies in Canadian schools and college classrooms. Lastly, it is reflection of a desire by employers to leverage the labour pool to maximum advantage in an age of diminishing demographics and more broadly to improve productivity by capitalizing on the productive capacity of each member of society according to his or her means.

Complaints in this area have been numerous because these principles call for profound transformations, ones which open the doors of the work world to segments of the population that have been previously excluded. Employers and service providers

³ *Human Rights and Disability: The current use and future potential of United Nations human rights instruments in the context of disability*, G. Quinn and T. Degener, HR/PUB/02/01, United Nations, New York and Geneva, 2002.

⁴ Adopted by General Assembly Resolution 2200 A (XXI) of 16 December 1966, ratified by Canada and entering into force in 1976, Article 6 provides as follows:

1. The States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.
2. The steps to be taken by a State Party to the present Covenant to achieve the full realization of this right shall include technical and vocational guidance and training programmes, policies and techniques to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedoms of the individual.

are now required to dismantle rules and standards that have until now served, perhaps unwittingly, to maintain this exclusion in a world which the Supreme Court has described as "relentlessly oriented to the able-bodied"⁵ and one where disabled persons "have been subjected to paternalistic attitudes of pity and charity, and their entrance into the social mainstream has been conditional upon their emulation of able-bodied norms."⁶

The impact of these decisions is significant and yet the standards evolved by the courts are imprecise. These guidelines are published by the Commission to offer clearer direction to those involved in a process of reasonable accommodation of physical or mental disability in the workplace, particularly as it relates to the duties imposed upon employers, unions, health care providers and persons with disabilities, under the Code. The standards used by the Commission itself in the conduct of investigations into complaints raising issues of accommodation generally are set out in its *Guideline for BFOQs and BFQs and the Duty to Accommodate*.

The intention of the Human Rights Commission in developing this project is not to harm employers by imposing unjustifiable burdens on them. While it is true that all citizens of New Brunswick have a right to equality, it is also imperative that we not jeopardize employer prosperity by imposing undue hardships that would compromise their very ability to do business. Canadian society as a whole, and this includes employers and unions, has a duty to take concrete measures to eliminate certain ingrained assumptions about the place of persons with disabilities and to adapt the work environment to reasonably favour the inclusion of all members of society according to their abilities. Adopting such an approach will benefit society as a whole, including not only persons with disabilities and workers who may one day become disabled but also employers whose exemplary conduct could not help but contribute to their good reputation and prosperity. It is up to all of us to work together towards these twin goals of equality and prosperity.

Canadian demographic data indicate that in the near future a majority of our citizens will be aged 55 and over—a first in Canadian history.⁷ This means that the active segment of the population will be reduced considerably. Consequently, the integration of all workers (including those with physical or mental disabilities) will be more imperative than ever. It is important, then, to understand the ins and outs of the issue at hand and to take note of the rights and obligations of each party.

3.0 WHAT IS A DISABILITY?

What exactly is a disability? Disability encompasses most physical and mental conditions that affect ability or are perceived by others as affecting ability. This includes conditions that are visible, such as a person in a wheelchair, and those that cannot be seen, diabetes or epilepsy for example. Disability includes intellectual impairments and learning disorders. Individuals dependent on drugs or alcohol are also protected as being disabled. Disability protection covers even those who labour under a mere

⁵ *Granovsky v. Canada (Minister of Employment and Immigration)* (2000), 186 D.L.R. (4th) 1.

⁶ *Eldridge v. British Columbia* (1997), 151 D.L.R. (4th) 577 (SCC).

⁷ Lisa Doupe, *Round Table Project on Return to Function/Return to Work: Moving to Health and Productivity*, presentation for the HRC-WHSC-CBA-NBMS Conference, April 5, 2003.

perception of disability, an example being a homosexual male who is refused a job because the employer assumes he has AIDS.

Clearly, the concept of disability pervades every area of life, and many different terms are used to mean the same thing. For example, the Ontario *Human Rights Code* uses the term “handicap,” whereas New Brunswick talks about “disability.” The Ontario definition is much the same as New Brunswick’s. Regardless of the word used, we are dealing with the same concept.

3.1 DEFINITIONS UNDER THE HUMAN RIGHTS CODE

The New Brunswick *Human Rights Code* sets out very broad definitions of both mental and physical disability. It is helpful for employers seeking to meet their obligations under the Code to develop policies and practices that use this same terminology. Recently the literature on accommodation makes increasing reference to a definition of disability given by the World Health Organization.⁸ While this and other such definitions may be helpful, employers in New Brunswick are required to uphold equality rights based on grounds enumerated in the *Human Rights Code*, including mental and physical disability, which the Code defines as follows:

i) Mental Disability

“Mental disability” designates

- a) a condition of mental impairment or a developmental disability,
- b) a learning disability, or a dysfunction in one or more of the processes involved in understanding or using symbols or spoken language, or
- c) a mental disorder.

ii) Physical Disability

“Physical disability” designates

any degree of disability, infirmity, malformation or disfigurement of a physical nature caused by bodily injury, illness or birth defect and, without limiting the generality of the foregoing, includes any disability resulting from any degree of paralysis or from diabetes mellitus, epilepsy, amputation, lack of physical co-ordination, blindness or visual impediment, deafness or hearing impediment, muteness or speech impediment, or physical reliance on a guide dog or on a wheelchair, cane, crutch or other remedial device or appliance.

3.2 INTERPRETATIONS BY BOARDS AND TRIBUNALS

The definitions given in the Code are very broad and courts have confirmed that equality rights call for an expansive interpretation of disability. Discrimination based on disability may stem as much from perceptions, myths or stereotypes as from ac-

⁸ World Health Assembly Resolution for ICF, at www3.who.int/icf/.

tual functional limitations. One should guard against locking the concept into a narrow, inflexible definition. Rather than focus entirely on an individual's biomedical condition, the Supreme Court of Canada has clearly stated that the emphasis should be on human dignity, respect for the individual, and the right to equality. The courts are required to weigh the circumstances in which a distinction is made, for a disability may result from a physical limitation, an affection, a social construct, a social perception or a combination of all these factors. State of health may constitute a handicap, and a distinction based on the real or perceived possibility that an individual may develop a handicap is prohibited. The emphasis must be on impediments to full participation in society as opposed to the individual's condition or state.⁹

Given this broad definition of terms and the broad principles of respect for human dignity and elimination of discrimination involved, boards and tribunals have applied code provisions with a large and liberal interpretation. Some early cases, however, sought to limit the scope of non-discrimination provisions relating to disability, so as not to encourage complaints based on trivial and self-induced impairments. The early decisions suggested that a physical or mental condition is a disability if it prevents an employee from performing significant functions that most people can perform; if it is ongoing rather than temporary; and if it cannot be controlled by the employee.

Thus, a brief bout with the flu may not constitute a physical disability under the Code, and employees who self-induce allergic reactions to justify an absenteeism problem won't benefit from the Code's protection.¹⁰ However, while this rule of thumb was initially thought helpful in limiting the application of the Code to clear cases of disability discrimination, courts have since rejected the adoption of such factors as a necessary element in a definition of disability.¹¹ More recent cases suggest that the Code can apply to a number of situations where the disability may be transient or non-evident. Therefore, the enduring or permanent nature of the condition, while often present, is not an essential element of disability.¹²

Generally speaking, the list of conditions that courts consider to be disabilities, within the meaning of human rights law, is much broader than employers, unions or even employees suffering from these conditions or their physicians may at first expect. It includes, in addition to the types of disability enumerated in the definition under the Code, conditions which might not traditionally have been considered to be disabilities per se, such as stuttering,¹³ dependence on drugs or alcohol,¹⁴ obesity,¹⁵ colour

⁹ *Québec (Commission des droits de la personne et des droits de la jeunesse) c. Montréal (Ville)*, (2000) 1 R.C.S. 665 (referred to as *Mercier*).

¹⁰ *Ouimette v. Lily Cups Ltd.* (1990), 12 C.H.R.R. D/19 (Ont. Bd. Inq.).

¹¹ *Entrop v. Imperial Oil Ltd.* [1995], 23 C.H.R.R. D/196 (Ont. Bd. Inq.) affirmed 30 C.H.R.R. D/433 (Ont. Div. Ct.); appeal allowed in part 37 C.H.R.R. D/481 (O.C.A.).

¹² As in the case of a firefighter requesting accommodation due to seasonal allergies *Morgoch v. Ottawa (City)* (1989) 11 C.H.R.R. D/80 (Ont. Bd. Inq.); a health care worker requiring an indeterminate period of rest to recover from a hysterectomy *Wilson v. Douglas Care Manor* (1992), 21 C.H.R.R. D/74; or an office worker dealing with an temporary anxiodepressive syndrome *Commission des droits de la personne et des droits de la jeunesse c. Société de portefeuille du Groupe Desjardins (Assurances générales des Caisses Desjardins Inc.)*, (1997) R.J.Q. 2049 (T.D.P.).

¹³ *Commission des droits de la personne et des droits de la jeunesse c. Commission scolaire des Draveurs*, J.E. 99-1061; REJB 1999-12851 (T.D.P.).

¹⁴ *Entrop v. Imperial Oil Ltd.*, *supra*; *Commission des droits de la personne et des droits de la jeunesse c. Commission scolaire des Draveurs*, J.E. 99-1061; REJB 1999-12851 (T.D.P.).

¹⁵ *Hamlyn v. Cominco Ltd.* (1989) 11 C.H.R.R. D/333 (B.C.C.H.R.).

blindness,¹⁶ smoking,¹⁷ hysterectomy,¹⁸ heart attack/heart condition,¹⁹ knee pain,²⁰ panic attacks,²¹ transsexualism,²² or being exceptionally short.²³

3.3 NON-EVIDENT AND PERCEIVED DISABILITY

The Commission recognizes that discrimination may result from policies or practices that fail to recognize the needs of disabled persons because their disability is non-evident. However it can also result from policies or practices aimed at persons whose functional limitations are not as great as the discriminator believes or indeed against persons who have no disability but are in fact perceived as being disabled and also less worthy or capable of work. In the latter context the Commission may investigate a complaint of perceived disability.

The nature or degree of certain disabilities can render them "non-evident" to others. Chronic fatigue syndrome and back pain, for example, are not apparent conditions. Other disabilities might remain hidden because they are episodic. Epilepsy is one example. Similarly, environmental sensitivities can flare up from one day to the next, resulting in significant impairment to a person's health and capacity to function, while at other times, this disability may be entirely non-evident. Other examples might include:

- persons whose disabilities do not actually result in any functional limitations but who experience discrimination because others believe their disability makes them less able;
- persons who have recovered from conditions but are treated unfairly because of their past condition; and
- persons whose disabilities are episodic or temporary in nature.

Regardless of whether a disability is evident or not, a great deal of discrimination faced by persons with disabilities is based upon social constructs of "normality." These constructs or perceptions are at times used to justify barriers to integration or prevent use of alternatives that could ensure full participation. Because these disabilities are not "seen," many of them are not well understood in society. This can lead to stereotypes, stigma and prejudice.

The Commission will accept and investigate complaints alleging discrimination on the basis of disability under section 3 even in cases where the discriminatory treatment alleged is based on a false assumption or perception of disability by an employer or co-worker.

¹⁶ *Bicknell v. Air Canada* (1984) 5 C.H.R.R. D/1992 (Can. Trib.).

¹⁷ *Caminco Ltd. v. United Steelworkers of America, Local 9705 and Local 480* (2000) 33 C.H.R.R. D/34 (B.C.C.A.).

¹⁸ *Wilson v. Douglas Care Manor*, *supra*.

¹⁹ *Levac v. Canada (Armed Forces)* (1992), 15 C.H.R.R. D/175 (Can. Trib.).

²⁰ *Boyce and Westminster (City) (Re)* (1994) 24 C.H.R.R. D/441 (B.C.C.H.R.).

²¹ *Cameron and Fletcher Challenge Canada Ltd. (Re)* 1995 24 C.H.R.R. D/506 (B.C.C.H.R.).

²² *Sheridan and Sanctuary Investments Ltd. (Re)* (1998) 33 C.H.R.R. D/464 (B.C.H.R.T.).

²³ *Ede v. Canada* (1990) 11 C.H.R.R. D/439 (Can. Trib.).

4.0. EQUALITY RIGHTS AND THE DUTY TO ACCOMMODATE

Under the Code, employers have a duty to provide employment opportunities, whether through hire, promotion, entitlement to employment benefits or otherwise, without discrimination to all their employees or prospective employees, including expressly persons with physical or mental disabilities. The Code sets out separate provisions dealing with discrimination by employers, by employment agencies, in job advertisements and in union membership, and subjects all prohibitions to a general limitation for bona fide occupational qualifications. The provisions relevant to employers under the *Human Rights Code* are as follows:

3(1) No employer, employers' organization or other person acting on behalf of an employer shall
 (a) refuse to employ or continue to employ any person, or
 (b) discriminate against any person in respect of employment or any term or condition of employment,

because of race, colour, religion, national origin, ancestry, place of origin, age, physical disability, mental disability, marital status, sexual orientation, sex, social condition, political belief or activity.

...

3(4) No person shall
 (a) use or circulate any form of application for employment,
 (b) publish or cause to be published any advertisement in connection with employment, or
 (c) make any oral or written inquiry in connection with employment,

that expresses either directly or indirectly any limitation, specification or preference, or requires an applicant to furnish any information as to race, colour, religion, national origin, ancestry, place of origin, age, physical disability, mental disability, marital status, sexual orientation, sex, social condition, political belief or activity.

3(5) Notwithstanding subsections (1), (2), (3) and (4), a limitation, specification or preference on the basis of race, colour, religion, national origin, ancestry, place of origin, age, physical disability, mental disability, marital status, sexual orientation, sex, social condition, political belief or activity shall be permitted if such limitation, specification or preference is based upon a *bona fide* occupational qualification as determined by the Commission.²⁴

These provisions guarantee persons with disabilities in the province a right to equal opportunity in all aspects of employment. Employers are enjoined to eliminate discriminatory standards and practices but are permitted to maintain a discriminatory limitation, specification or preference if they can establish a bona fide occupational qualification (BFOQ). The Human Rights Commission used to have a practice of approving exemptions based on BFOQs, as a shield to potential claims. It has abandoned its practice in this respect since the year 2000, and revoked all previous exemptions granted. This means that the Commission makes an a posteriori determination as to whether such a qualification is appropriate: it now requires employers to justify discriminatory standards based on a BFOQ if and when complaints arise. This approach was determined to be more manageable, leave less room for error and be more consistent with the trend in the case law which interprets the equality provisions of the Code as ones which place a duty on employers, unions, publishers and service providers to accommodate the particular needs of equality seeking groups, for instance, persons with disabilities. It should be noted that this change is one of form more than of substance.

²⁴ *Human Rights Code*, RSNB 1973 c. H-4, subsections (2) and (3) set out similar duties imposed on employment agencies and unions respectively.

The enforcement of equality guarantees under human rights codes across Canada apply to private and public sector employers. Complaints arising in federally regulated sectors of the economy, such as banking, aeronautics, telecommunications or interprovincial transportation or shipping are directed to the Canadian Human Rights Commission. Most employment settings, however, are provincially regulated and complaints in this province can be addressed to the New Brunswick Human Rights Commission. Complaints against public sector employers may also give rise to a court challenge under section 15 of the *Canadian Charter of Rights and Freedoms*. The *Charter* is the supreme law of the land. All laws and regulations, federal and provincial, must comply with its provisions. Section 15 sets out the equality rights guaranteed to all persons in Canada. These are guarantees which apply to governments and their agents. However, the principles of equality law developed under section 15 have significantly influenced the interpretation of equality guarantees set out in the *Human Rights Code*. This is particularly true with respect to the Supreme Court's *Charter* jurisprudence relating to disability over the last decade.

4.1 WHAT THE COURTS HAVE SAID

In *Andrews v Law Society of British Columbia*, a dissenting opinion gave a definition of discrimination which has been adopted and quoted repeatedly ever since. Mr. Justice McIntyre stressed that equality does not require that all persons be treated the same way. The concept of formal equality was rejected in favour of a concept of substantive equality. For many of us, acting as employees, employers or union members, this proposition is not immediately apparent and we have to remind ourselves that in order to treat all employees equally we are often required to offer some employees special accommodations and consideration.

One of the most significant decisions on equality rights in the last ten years involved a female forest firefighter from B.C. who was deemed unfit for a job she had already held for three years. This resulted from the adoption of an aerobic standard as a job requirement that most Canadian women could never meet even with training. In upholding the finding of discrimination in her case, the Supreme Court laid out a three-part test which all employers must meet in order to satisfy a court or board of inquiry that their discriminatory standard is justified:

An employer may justify the impugned standard by establishing on the balance of probabilities:

- 1- that the employer adopted the standard for a purpose rationally connected to the performance of the job;
- 2- that the employer adopted the particular standard in an honest and good faith belief that it was necessary to the fulfilment of that legitimate work-related purpose; and
- 3- that the standard is reasonably necessary to the accomplishment of that legitimate work-related purpose. To show that the standard is reasonably necessary, it must be demonstrated that it is impossible to accommodate individ-

ual employees sharing the characteristics of the claimant without imposing undue hardship upon the employer.²⁵

This test is a very stringent one. It is rare that the Supreme Court will hold employers to such high standards, requiring proof that it is "impossible to accommodate" without imposing undue hardship. The standard is clearly oriented at achieving the remedial purpose of equality rights through proactive means. The Court has underscored the importance of this purpose in other decisions as well.

In two other decisions, *Law* and *Granovsky*, the Supreme Court has emphasized the importance of human dignity as an element of equality rights analysis. Nancy Law was a young widow who claimed that the Canada Pension Plan regulations on survivorship benefits discriminated against her in denying her certain entitlements based on her age. The Court disagreed and found that there was no discrimination because there was no affront to her human dignity that arose from the fact that older widows were entitled to benefits to which she was not.

In general terms the purpose of s. 15(1) is to prevent the violation of essential human dignity and freedom through the imposition of disadvantage, stereotyping, or political or social prejudice, and to promote a society in which all persons enjoy equal recognition at law as human beings or as members of Canadian Society, equally capable and equally deserving of concern, respect and consideration.²⁶

The Court has indicated that proof of discrimination will require: 1) proof of a formal distinction between the complainant and others based on personal characteristics or a failure to consider particular needs based on those personal characteristics resulting in substantively differential treatment; 2) proof that the differential treatment was based on one or more of the enumerated or analogous grounds of discrimination; and 3) proof of discrimination in a substantive sense, i.e., that the differential treatment brings into play the purpose of section 15 in remedying such ills as prejudice, stereotyping and historical disadvantage. This third component of the proof of discrimination focuses on whether the differential treatment demeans a person's dignity.

In *Granovsky*,²⁷ the complainant's back injury had kept him off work for a number of years. He returned to work sporadically following his injury but did not work or contribute sufficiently to qualify for disability benefits under the Canada Pension Plan. Had he been more severely disabled, he could have dropped out of the qualifying period provisions and received such benefits. The Court held that there was no affront to his human dignity in refusing him benefits destined for others more severely disabled than he. Not only did the Court confirm in *Granovsky* that dignity was a central element in physical disability discrimination complaints, it also shifted the focus of inquiry away from actual differences, impairments or functional limitations of disabled persons as compared to the "mainstream" and to the government or employer's handling of those differences. The Court no longer merely asks whether the complainant is disabled and what he or she can do in the current work environment. It focuses instead on whether the employer has stigmatized the disabled person, attributed func-

²⁵ *British Columbia (Public Service Employee Relations Commission) v. British Columbia Government and Service Employees' Union (B.C.G.S.E.U.)*, [1999] 3 R.C.S. 3 (referred to as the *Meiorin* case).

²⁶ *Law v. Canada (Minister of Employment and Immigration)* (1999), 170 D.L.R. (4th) 1, at 39.

²⁷ *Granovsky v. Canada*, *supra*.

tional limitations which do not exist, or failed to recognize the additional burdens faced by the disabled person.

Finally, the court's decisions with respect to disability discrimination in the employment sector are often buttressed by its recognition of the fundamental importance of work in our lives, as "an essential component of identity, personal dignity, self-worth and emotional well-being."²⁸ Given the central importance of employment in our lives, the courts will carefully scrutinize the manner in which employment relationships are entered into, developed and terminated.

4.2 WHAT IS REASONABLE ACCOMMODATION?

The elimination of intolerance throughout Canada is an emerging national value and it is in everyone's best interest to contribute to the global effort to bring about a more egalitarian society. It is important to consider that excluding certain people from fundamental spheres of public life entails a higher cost for society than their inclusion would. Furthermore, Canadian society is a leader in the development of international human rights and international humanitarian law. That being the case, its policies must reflect these obligations, which are part of Canadian law.

In the context of disability-based discrimination, reasonable accommodation requires Canadians to challenge certain in-grained assumptions about the place of disabled persons in society. Human rights legislation and equality rights under the *Charter of Rights and Freedoms* require us to move from a society based on able-bodied norms. A truly egalitarian society recognizes and is designed in view of the fact that the workforce is made up of able-bodied and disabled persons with distinct needs and abilities, but with an equal right to work. The goal is to put the abilities of physically and mentally disabled people to work for the good of society, while at the same time contributing to their emancipation by enforcing their fundamental rights.

This egalitarian model is a universal one and is in fact reflected in the 1975 United Nations' Declaration of the Rights of Disabled Persons,²⁹ which provides in Articles 3 and 8 that:

3. Disabled persons have the inherent right to respect for their human dignity. Disabled persons, whatever the origin, nature and seriousness of their handicaps and disabilities, have the same fundamental rights as their fellow citizens of the same age, which implies first and foremost the right to enjoy a decent life, as normal and full as possible. [...]
8. Disabled persons are entitled to have their special needs taken into consideration at all stages of economic and social planning.

The Supreme Court cases confirm that, in Canada, equality rights for the disabled require employers, unions, employees and health care providers to work collabora-

²⁸ *Lavoie v. Canada* (2002), 210 D.L.R. (4th) 193, at 224.

²⁹ United Nations, Declaration of the Rights of Disabled Persons, proclaimed by General Assembly resolution 3447 (XXX) of 9 December 1975.

tively towards the goal of an inclusionary workforce. Several guiding principles emerge from the case law:

- Employers must design their workplaces and employment and performance standards in inclusionary terms aimed at the full participation of all members of the labour force;
- In removing barriers to persons with disabilities, and in accommodating persons with disabilities, where barriers cannot be removed without undue hardship, employers must design solutions premised on equality and equal respect for the human dignity of all members of the workforce;
- Similarly, claims for accommodation will not be advanced spuriously and the gravamen of a valid complaint of disability discrimination must arise from an affront to human dignity; and
- Workplace standards respectful of the equality rights of persons with disabilities must allow for individual assessment.

In practical terms, the test for reasonable accommodation in disability complaints is no different from the process used in every case of discrimination. Human rights officers investigating such complaints will consider the factors set out in the Commission's *Guideline on BFOQs and BFQs and the Duty to Accommodate*, which are based largely on the Supreme Court decision in *Meiorin* and which state, in part, as follows:

- Is the employer applying a standard or policy?
- Does the standard or policy discriminate (directly or indirectly) on a ground prohibited in section 3?
- Is the standard or policy rationally connected to the performance of the job? One must identify the positional duties to which the standard or the policy must apply.
- Did the employer adopt the particular standard with an honest and good faith belief that it was necessary to the accomplishment of its employment-related purpose? One must look into the circumstances surrounding the adoption of the policy or standard.
- Is the standard reasonably necessary for the employer to accomplish its employment-related purpose? One must include evidence of its actual effect on the employees and of alternatives considered by the employers (such as individual assessment). Is this the least discriminatory means of accomplishing the purpose? Is it designed to minimize the burden on those required to comply? What hardship would result from alternative standards or accommodations?
- Has the employer integrated its duty to accommodate into its workplace standard?

In short, employers are being asked to eliminate arbitrary barriers to the inclusion of persons with disabilities in the workplace. At the same time, the person asking for a reasonable accommodation, in view of his or her needs, also has certain obligations toward the employer, which we will come back to further on. These include informing the employer of his or her situation and the need for an accommodation (preferably in writing); supporting the request with documentary proof, such as a medical docu-

ment; being specific about his or her exact needs; and indicating the length of time this accommodation will be required.

4.3 WHAT IS UNDUE HARDSHIP?

The courts and boards of inquiry have intentionally set standards that are flexible and adaptable to the circumstances of each case. The Supreme Court has emphasized also that reasonable accommodation and undue hardship are not independent criteria but alternate ways of expressing the same concept.³⁰ What constitutes undue hardship will vary significantly from one case to the next depending on a range of factors, such as the size of the employer, the economic situation, market conditions, the climate of labour relations, the nature of the work or the reliability of recommended technological or adaptive devices.

In its decision in *Meiorin*, the Supreme Court cited with approval its earlier decision in *Renaud* to emphasize again that "[t]he use of the term 'undue' infers that some hardship is acceptable; it is only 'undue' hardship that satisfies this test". The Court went on to make the following comments on how to determine the point of undue hardship:

Among the relevant factors are the financial cost of the possible method of accommodation, the relative interchangeability of the workforce and facilities, and the prospect of substantial interference with the rights of other employees. ... The various factors are not entrenched, except to the extent that they are expressly included or excluded by statute. In all cases, ..., such considerations "should be applied with common sense and flexibility in the context of the factual situation presented in each case".³¹

The factors considered by Human Rights Commission officers in determining whether a defense of undue hardship exists are set out in our *Guideline on BFOQs and BFQs and the Duty to Accommodate*, and include the following:

- a) the capacity of the employer or service provider to absorb the cost of revenue lost from the measures taken to the extent that these are not offset by increased productivity, tax exemptions, grants, subsidies or other gains;
- b) the extent to which the inconvenience would prevent the employer or service provider from carrying out the essence of its business;
- c) the scope of the demands made by the measure on other workers or customers of the business;
- d) the costs to the respondent as assessed in the context of the size of the organization and its financial situation;
- e) the ability of the employer or service provider to absorb the cost of modifying premises or equipment, and the ability to amortize such costs before implementing planned changes to ensure accessibility;

³⁰ *Renaud*, supra.

³¹ *Meiorin* supra, at para. 63.

f) the employer's or supplier's ability to absorb the cost of retrofitting in light of firm plans to move to accessible premises;

g) that a proposed accommodation cannot significantly interfere with the rights of others, or discriminate against them. The interchangeability of the employer's workforce, and the safety of the complainant and others involved can have an impact on the ability to accommodate; and

h) that costs such as overtime, special leave, or costs in responding to a threatened grievance are not necessarily considered as undue hardship, nor is minor disruption of a collective agreement. However, a substantial departure from the normal operation of a collective agreement may amount to undue interference with a respondent's business.

A few legal decisions detailing actual cases may help to illustrate undue hardship. In one example it was decided that an employer is not required to maintain the position of a person who is neither productive nor useful to the company.³² In another case, a very long absence of indefinite duration is considered to go beyond the point of undue hardship.³³

Also, small employers with few financial resources are not required to accommodate in a manner that causes them too much uncertainty and instability,³⁴ but this limit is very relative. While there is no duty to accommodate an employee who is totally unable to perform his or her functions, there may be a duty to accommodate an individual whose disability is temporary, by providing a period of recovery.³⁵ In all cases, the determination of undue hardship is based entirely on the circumstances.

4.4 DUTIES OF EMPLOYERS

While the concepts of reasonable accommodation and undue hardship are just now being defined and refined as board and court decisions come forward, some of the basic obligations imposed on employers can be met by adhering to the following guidelines:

- accept the employee's request for accommodation in good faith, unless there are legitimate reasons for acting otherwise;
- obtain expert opinion or advice where needed: making decisions on impressionistic evidence of costs or capacity, functionality or ability will raise doubts about your own motives and good faith efforts at accommodation;
- take an active role in ensuring that alternative approaches and possible accommodation solutions are investigated, and canvass various forms of possible accommodation and alternative solutions, as part of the duty to accommodate (developing and using checklists of alternative solutions will be helpful in this process);

³² *Re Hamilton Civic Hospital and CUPE, Local 794* (1994), 44 L.A.C. (4th) 31 (Kennedy).

³³ *Re Emrick Plastics and C.A.W.* (1992), 25 L.A.C. (4th) 19, at pp. 25-26.

³⁴ *Re Community of Unemployed Help Centre and CUPE, Local 2348 (Nerbas)* (1997).

³⁵ *Woolworth Canada Inc. v. Human Rights Commission (Nfld.) and White* (1995), 135 Nfld. and P.E.I.R. 45.

- keep a record of the accommodation request and action taken;
- maintain confidentiality;
- limit requests for information to those reasonably related to the nature of the limitation or restriction so as to be able to respond to the accommodation request;
- grant accommodation requests in a timely manner, to the point of undue hardship, even when the request for accommodation does not use any specific formal language; and
- bear the cost of any required medical information or documentation. For example, doctors' notes and letters setting out accommodation needs should be paid for by the employer.

As we will see in the following section, the duty to make reasonable accommodations for an employee with a disability is not solely the employer's. Employees, and more specifically the unions that often represent them, must also co-operate in this effort by accepting some hardships in order to promote the integration of persons with disabilities. The duty to make reasonable accommodations is a joint obligation between the employer and the union.

4.5 DUTIES OF UNIONS

For the past few decades, organized labour has been at the heart of the struggle for economic and social rights, and only strong representative unions can contribute to that social dialogue. When it comes to the fight against discrimination, and more specifically discrimination against disabled workers, the union's role is undeniable. It should also be pointed out that such discrimination has direct repercussions on a worker's social and economic rights, rights the unions maintain they defend. A union's responsibility when it comes to the reasonable accommodation of a worker extends to the point of undue hardship, just as it does for the employer. The integration of persons with disabilities into the workplace is not just a company responsibility: an inclusion-friendly workplace must be created through co-operation between employer and employees.

Until 1992, it was unclear what the union's role was in accommodation cases and what reliance could be placed on collective agreement provisions that ran counter to management's attempts at accommodation. It seems that a union can cause or contribute to discrimination by formulating work rules that have a discriminatory effect. (These are often found in collective agreements.) If this is the case, the union may be held just as responsible as the employer. Nevertheless, the union's responsibility comes into play when its participation is required to accommodate an employee with a disability.

The Supreme Court of Canada addressed this point in *Central Okanagan School District No. 23 v. Renaud*³⁶ and clearly underscored the active role which unions can and may be required to play in a return to work process. Unions and professional associations have a duty to accommodate their members and other employees returning to work following injury or illness. They are required to:

³⁶ [1992] 2 S.C.R. 970

- take an active role in the accommodation process;
- share joint responsibility with the employer to facilitate accommodation;
- support accommodation measures irrespective of collective agreements, up to the point of undue hardship;
- compensate employees for losses arising out of an incident of discrimination where union liability is established;
- consider in good faith accommodation requests from employees within and outside the bargaining unit that may infringe on collective agreement rights if other accommodation alternatives are not available or are less reasonable.

Lastly, it is in the unions' best interest to play an active role in the effort to integrate persons with disabilities. Not only is this a key component of their mission, but too much resistance on their part could lead to the implementation of integration mechanisms separate from the unions in order to satisfy a fundamental social obligation.

4.6 DUTIES OF HEALTH CARE PROVIDERS

While unions and employers are increasingly aware of their roles in the Duty to Accommodate and return to work process for persons with disabilities, good faith efforts by employers, unions and disabled persons can often break down if health care providers are not full participants in the return to work process. The Canadian Medical Association and associations representing other health care professionals recognize this fact and have recently developed their own policies to guide their members in achieving equal access to employment for persons with disabilities. Interestingly, and not surprisingly, the discussion among health care professionals, while premised largely on evolving legal standards with respect to equality rights, is informed and driven as much by principles related to patient care.

Some principles for health care professionals to observe in assisting with employment accommodation practices are as follows:

- Facilitate the patient's return to work by encouraging communication with the employer early in treatment or rehabilitation;
- Be familiar with the patient's support systems in the community and responsibilities at home and at work;
- Have a frank discussion with the patient early on about expected healing and recovery times and the benefit of an early or graduated return to work;
- Be knowledgeable of the employer's and the union's duties in accommodating a return to work and of the various agencies and professionals available to assist in this process, WHSCC, in-house employer occupational health service, Human Rights Commission;
- When the employer requests medical information, and if the patient consents, be as specific as possible. If the medical information forms require more detailed investigations, refer the patient to the appropriate health specialists for a comprehensive and objective assessment of functional capacity;

- If suggestions are sought for modified job details, be as specific as possible and state, whenever possible, if the job restrictions are permanent or temporary and give the expected recovery time;
- Be aware of the risks to the patient but also of any risks that an early return to work may pose to others and advise both the patient and the employer appropriately; and
- Always ensure when sharing any recommendations or patient records with outside parties that the patient's consent is clear and specific.

4.7 DUTIES OF EMPLOYEES WITH DISABILITIES

Employees and job applicants seeking accommodation of any particular needs as a disabled person have obligations in the process as well. Without good faith and good communications on all sides, the accommodation process will often break down.

A person with a disability is required to:

- advise the accommodation provider of the disability and provide concise medical information with regard to the disability, which includes: the employee's functional limitations with regard to the duties required by the job; a prognosis for recovery; and the employee's capabilities for alternative work;³⁷
- make her or his needs known to the best of his or her ability, preferably in writing, in order that the person responsible for accommodation may make the requested accommodation;
- answer questions or provide information regarding relevant restrictions or limitations, including information from health care professionals, where appropriate, and as needed;
- participate in discussions regarding possible accommodation solutions;
- co-operate with any experts whose assistance is required to manage the accommodation process or when information is required that is unavailable to the person with a disability;
- accept reasonable accommodation when it is offered;
- meet agreed-upon performance and job standards once accommodation is provided;
- work with the accommodation provider on an ongoing basis to manage the accommodation process; and
- discuss his or her disability only with persons who need to know. This may include the supervisor, a union representative, case managers and occupational health staff, or human rights staff.

³⁷ *Mazuelos v. Clark* (2000), 36 C.H.R.R. D/385

5.0 FREQUENTLY ASKED QUESTIONS

Q1: My employee is returning to work from a back injury but is not fully recovered. I've accommodated him by holding his position available until he is fully recovered. Have I met my duty?

A1: No. Many employers believe that they can insist that an employee be ready to take on all their former job responsibilities prior to any return to work. Holding the job available for the employee's return until this time is clearly not reasonable accommodation. Good management will encourage attempts at an early return to work with the necessary accommodations, gradual return to work schedule and modified job duties to ensure that the employee's illness or injury has as little impact as possible on productivity. This is good for the employee, good for the employer and is in fact what the law requires.

Q2: I have an employee who has been on medical leave for over three months. His doctor initially recommended two weeks' leave and this recommendation has been renewed six times since then for one- to three-week periods. I have no idea what's wrong with him but cannot continue to operate on this basis. Can I require him to disclose his condition and confirm a return date?

A2: Employees with disabilities have a duty to request accommodation as required from their employer. They will normally be required to present medical proof of their accommodation needs and employers can insist on the level of medical proof necessary to allow them to plan a successful return to work. Employees are not required to divulge intimate personal information that they do not want their employer or anyone other than their medical advisers to have. The best practice here is for employers to have their own medical forms ready for use in return to work situations. Depending on the case, the employer may bear some costs in having the forms completed by the employee's physician. Make sure that the consent to release of medical information is clear and explicit. Generally, when the ground rules with respect to accommodation are known in advance, employees will be much more comfortable in sharing as much of their medical history as is necessary to facilitate the return to work. Policies and practices that safeguard the confidentiality of employee medical information are important as well. If you need help in developing forms or policies in this area, contact the Human Rights Commission.

With respect to insisting on a given return date, employers should recognize that predicting recovery from illness or trauma is not an exact science. Employers that start with a position of "get better by... (next week or next month) or else" are usually only inviting trouble. Sometimes employers have excellent policies in the area of return to work, but front line managers cause problems by placing conditions or demands on disabled employees that run afoul of the employer's policy and duties. Training your supervisors and managers on how to implement the policies and meet your duty to accommodate equality-seeking groups under the Code is an ongoing task. The Human Rights Commission can also assist you in these efforts.

Q3: I have an employee who has been on worker's compensation for two years. She tried a return to work in her same position last year, had a flare-up of her injury and has been off ever since. Now that her benefits with WHSCC have run out, we have had to terminate her. She says that she now wants to return to light duties and that we must accommodate her. Do we have to?

A3: Yes, you must determine whether reasonable accommodation of her condition can be made. The fact that insurance coverage through the worker's compensation scheme has lapsed should not have any effect on the employment relationship. Employers are required to hold a position available for an injured employee for up to two years in most cases arising from a workplace accident or illness. This legislative requirement under the Worker's Compensation legislation does not waive or release the employer from any duties under the *Human Rights Code*, or constitute grounds for severing the employment relationship.

Q4: An employee is asking me to create a position for him by grouping together several totally unrelated tasks in an effort to accommodate him and fill his days. He says I have a duty to accommodate him even if the result is neither useful nor productive for my company. It seems to me that creating the position would hurt my business. I want to live up to my obligations under the Code, but just how far does the duty to reasonably accommodate go?

A4: Creating a position for a person with a disability by grouping together several tasks can constitute a reasonable accommodation. However, the employer certainly has the right to insist that the tasks so grouped and assigned be productive and useful. Certain decisions bear this out.³⁸

Q5: My employee's doctors say she cannot perform the job for which she was trained and hired. What reasonable accommodation is required of us?

A5: Reasonable accommodation principles require you as an employer to analyze the job design that she was in. Are there some tasks that she can still perform? Can she perform more of these tasks and transfer other job tasks to other employees? If so, it may be difficult to demonstrate undue hardship in the circumstances. Employers are required to consider bundling and unbundling job tasks between employees in order to accommodate an injured worker. Arbitrators have held that employers need not create a new position, but this should not be interpreted as an excuse for failing to consider modification of existing job tasks between employees. Employers should also consider whether the disabled worker could undertake new and different tasks with appropriate training. The costs of such retraining would not normally be considered an undue hardship.

³⁸ *Holmes v. Attorney General of Canada*, 97 C.L.L.C. 230-022 (F.C.T.D.), and *Re Canada Post Corporation and CUPW (Godbout)* (1993), 32 L.A.C. (4th) 289.

Q6: Is there a high cost to integrating people with disabilities into the workplace?

A6: No. In most cases, the cost of accommodation is reasonably modest. According to the Job Accommodation Network, employers can accommodate most adaptation needs for \$500 or less. These costs are even more reasonable when you consider them amortized over the entire duration of the employee's work in your organization. The cost of adapting a workstation to the needs of a person with a disability can sometimes be high, but should always be measured against the costs of potential recovery against the employer for a failure to offer reasonable accommodation.

Q7: One of my employees has a drinking problem. Recently, he caused an accident that could have seriously endangered the lives and safety of all our employees and the general public as well. We discovered afterwards that he was drunk at the time of the accident. All the positions we have to offer are high risk and I do not think I can let this employee continue to work any longer. He says I have a duty to accommodate him. Do I have the right to take disciplinary measures that are appropriate to the circumstances?

A7: The duty on the employer to reasonably accommodate is limited by his or her obligation to ensure the safety of all employees and of the general public. A decision confirms this limitation: a bus driver was fired after causing a traffic accident while on duty. It turned out that he had diminished faculties at the time because of a drinking problem. The adjudicator ruled that public safety on the road and the obligation to drive passengers safely were primary considerations and that the duty to accommodate must not be used to prevent an employer from taking disciplinary measures appropriate to the circumstances, up to and including dismissal.³⁹

Q8: What are the potential consequences if employers fail to accommodate people with disabilities in the workplace?

A8: An employee who has been denied accommodation can file a complaint under the New Brunswick *Human Rights Act* or the *Canadian Human Rights Act*. Failure to provide accommodation short of undue hardship may be found to be discrimination on the basis of disability. Human rights boards of inquiry have a broad range of remedies available under the *Human Rights Code*. They can award damages for lost wages and emotional suffering, and they may require employers to reinstate the employee with the necessary accommodations and develop policies and practices aimed at eliminating discrimination against persons with disabilities from their workplaces. Accommodation is not a courtesy, it is the law.

³⁹ *Re Toronto Transit Commission and Amalgamated Transit Union* (1998), 72 L.A.C.(4th) 109 (Shime).

Q9: What happens if an employer has provided accommodation for an employee but the situation is still not working out?

A9: Employers must remember that employee accommodation is not always a one-time provision; individuals' needs can change over the course of their employment, as can the job itself. If an employee approaches an employer to inform them that he or she cannot perform well enough without further accommodation, this request may be entirely legitimate. However, if an employee arrives continually late for work, this is a management issue, not an accommodation requirement of flexible work hours. It is important to ensure that all employees understand what performance level is expected of them and what workplace ethics are part of the employer's corporate culture. Accommodation is a means of enhancing an individual's abilities and of ensuring that workplace performance standards are met, not compromised.

Q10: If an employee is transferred to another bargaining unit, is that employee entitled to retain his or her seniority?

A10: An employee should not suffer a loss of benefits because accommodation requires a transfer between bargaining units, particularly where seniority may be used in calculating wages, benefits and other compensation issues that have no impact on other workers. However, where the transfer of seniority would result in undue interference with the rights of other workers or undue disruption of the collective agreement, the employer and union may have a defense of undue hardship and alternative accommodations may be considered. Arbitrators and boards may prefer to insist on accommodations within the bargaining unit and use accommodations involving a transfer of bargaining units or assignments outside the collective agreement process altogether as measures of last resort.

Q11: If an employer has a last chance agreement in place and the employee who requires accommodation breaches that last chance agreement, what are the consequences if the employer decides to terminate the employment relationship?

A11: A last chance agreement is an agreement that the employer will give the employee a last chance to mend his or her ways, failing which the employee will be fired. These agreements are often negotiated as a result of the union intervening to get a discharge reversed. These agreements may have high moral authority, but they are just one element in the accommodation equation. Having failed or breached a last chance agreement will not be considered the end of the inquiry if reasonable accommodation remains possible. There have been several cases where a termination as a result of a breach of a last chance agreement was found to be discriminatory and the employee was therefore reinstated in his or her employment.

Q12: What are some examples of reasonable accommodation of disabilities?

A12: The following are examples of reasonable accommodation based on the nature of the physical or mental disability: providing assistive devices; modifying exist-

ing practices or procedures; providing access to facilities and services; allowing for flexible work and leave schedules; making information available in alternative formats; and temporarily reassigning an employee to alternate employment. However, these are general examples; the facts of each situation and the specific needs of the individual who requires accommodation must be considered.

6.0. SAMPLE LETTER FROM EMPLOYER TO ATTENDING PHYSICIAN OF AN EMPLOYEE WITH A MENTAL OR PHYSICAL DISABILITY

(Date)

Dear Dr. *(Name of physician)*:

Re: *(Name of employee)*

We understand that *(Name of employee)* is a patient of yours. *(Name of employee)* is currently on leave from work and has indicated to us that it is for medical reasons.

Mr./Ms. *(Name of employee)* works as a *(Position title)* for our company. His/her duties include X, Y and Z. *(Please provide a fairly detailed description of the employee's position, including the physical, mental and social efforts required of the employee. This will make the physician's job easier and will enhance the validity of the process. It would also be pertinent to include a list of the employee's responsibilities.)*

In an effort to accommodate *(Name of employee)* according to his/her medical needs, we are writing to ask you for the following information:

- a) *(Name of employee)*'s anticipated date of return to work;
- b) A long-term prognosis of the medical condition in relation to *(Name of employee)*'s current position within our company;
- c) Any physical or functional limitations affecting *(Name of employee)*'s ability to carry out his/her duties;
- d) Any medical information that could help us put in place the conditions necessary to ensure that *(Name of employee)* can return to working in our employ.

To make this task easier for you, we are enclosing a medical report form that you can fill out and return to us. Please rest assured that the information you give us will be kept confidential and will be used for the employee's benefit, for the sole purpose of facilitating his/her return to work. Also, please note that *(Name of employee)* has given his/her consent to the disclosure of the requested medical information, as indicated on the enclosed form.

(Name of employee) is a valued employee of our company and that is why we hope to have him/her back to work as soon as possible. We are fully prepared to accommodate *(Name of employee)* according to his/her medical condition by modifying his/her duties and by decreasing his/her work hours so that he/she may be reinstated in his/her position as soon as possible. *(Name of employee)*'s recovery is very important to us, as it is to you.

If you have any questions about this letter or the enclosed form, please do not hesitate to contact us.

Yours truly,

(Supervisor's signature)

7.0. SAMPLE FORM TO BE FILLED OUT BY PHYSICIAN***CONFIDENTIAL******EMPLOYEE MEDICAL REPORT***

Name of employee: _____	Date: _____
Name of physician: _____	
Address: _____	

Physician's telephone number: _____	
Physician's fax number: _____	

***** Employee's authorization to disclose information:**

I, _____, authorize my attending physician, Dr. _____, to disclose the information requested by my employer _____ in this form.

Employee signature: _____ Date: _____

***** Questionnaire to be filled out by attending physician:**

Date employee absence commenced: _____

Date(s) on which employee was examined: _____

Was the employee referred to a particular specialist for this problem? _____

If so, to whom, and when was he/she referred? _____

Is the employee's disability temporary or permanent? _____

If it is temporary, how much time should be required for recovery?

Please check any boxes that apply:

The employee can return to work immediately, with full duties, because he/she is not suffering from any physical or functional limitations relating to his/her job.

The employee suffers limitations that affect his/her ability to perform all the duties of the position he/she occupies. (Complete the "Accommodations Required" section below.)

The employee should return to work in his/her position, as modified by the employer, on _____. (Complete the "Accommodations Required" section below.)

The accommodation plan for this employee should continue for a period of _____.

The current medical prognosis shows that the employee will be able to return to work without accommodation on _____.

Please provide a general description of the employee's condition and the nature of his/her physical or mental disability: _____

ACCOMMODATIONS REQUIRED

***** Please note that that these tables are only examples and will have to be adapted for each company or position.***

a) Physical restrictions (if applicable)

	Frequency (max. no. of hours)	Weight (max. kg) if req.
Lifting (ground to hips)		
Lifting (hips to shoulders)		
Carrying objects		
Bending		
Standing		
Turning around, pivoting		
Walking		
Working at a computer		
Climbing stairs		
Other: _____		

b) Functional restrictions

	Number of hours at a time	Number of hours per day
Concentrating		
Having interpersonal contact		
Doing more than one thing at a time		
Solving problems		
Handling interpersonal conflict		
Managing stress and deadlines		
Other: _____		

Does the employee's medication have any effects we should know about?

Additional comments about our employee's recovery:

Physician's signature:

Dr. _____

Date: _____

8.0 ADDITIONAL REFERENCES

For further information about the Code or this policy, please contact the Commission at 1-888-471-2233 toll-free within New Brunswick, or at 506-453-2301. TTD users can reach the Commission at 506-453-2911.

You can also visit the Commission's website at www.gnb.ca/hrc-cdp or e-mail hrc.cdp@gnb.ca.

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6 Arran Street

Dieppe Office

330 Champlain Street, Suite 320

Web sites of interest:

For information about disability and human rights at the world level:

<http://www.unhchr.ch/disability/index.htm>

For information on the World Health Organization's International Classification of Functioning, Disability and Health:

<http://www3.who.int/icf/icftemplate.cfm>

For disability duration guidelines for physicians:

<http://www.grandroundsnow.com/whscc/whsccindex.htm>

For information on the New Brunswick Premier's Council on the Status of Disabled Persons:

<http://www.gnb.ca/0048/english/index.htm>

For more detailed information on the duty to accommodate:

<http://www.workink.com/workink/national/Lynk/lynk.htm>

The Canadian Council on Rehabilitation and Work:

<http://www.workink.com/>