CANADIAN
HUMAN RIGHTS
COMMISSION

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The Human Rights Impact Assessment for Security Measures

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Introduction

There is no greater responsibility for a government than the protection and safety of its citizens. In an increasingly complex world, Canada's security community must constantly evolve and innovate to ensure the safety and security of everyone in Canada.

The federal departments and agencies working to meet these challenges operate in an environment that is subject to the *Canadian Human Rights Act*. This means that the security measures that protect the lives of people in Canada must respect the principles of equality and non-discrimination.

This guide provides practical information for Canadian organizations with responsibilities for national security. It outlines the steps to take during a security measure's lifecycle to ensure that security standards, policies, and practices are both effective and respectful of human rights.

Security Measure

"Security measure" refers to any standard, policy or practice that is used to safeguard security. This includes, but is not limited to:

• Biometric and psychometric tests

• Technologies that screen travellers for security risks

• Front line and secondary inspections

• Identity certification

• Security guidelines and operating procedures

• No-fly lists, watch lists and specified persons lists

Canada's success as a diverse society will be measured by the government's ability to safeguard its citizens while protecting human rights.

"National Security and the Protection of Human Rights"
2008 Annual Report, Canadian Human Rights Commission

The Human Rights Impact Assessment

The Human Rights Impact Assessment will help you create and maintain security measures that respect human rights.

The four-step process outlines how to be as inclusive as possible by identifying and eliminating potential discriminatory practices throughout the lifecycle of a security measure.

This proactive approach can save time and money, improve a security measure's effectiveness and efficiency, and bolster public support for new and existing security initiatives.

There are 11 grounds of discrimination under the _Canadian Human Rights Act_:

- race
- national or ethnic origin
- colour
- religion
- age
- sex
- sexual orientation
- marital status
- family status
- disability
- pardoned conviction

Step 1:
Identify the appropriate security measure

Prevention begins at the development stage. When choosing a security measure, ensure that you are meeting your legal obligations to prevent discrimination.

Begin by establishing that the security goal is legitimate.

Ask yourself:

- Is the goal itself legitimate?

- Why is the goal legitimate?

Example*

Goal: Preventing unauthorized entry into the country.

Is the goal legitimate?
Yes, the State is obligated to ensure the security of its citizens and implement measures to prevent unauthorized entry into the country.

Why is the goal legitimate?
International and domestic terrorist events underscore the need to implement measures to protect national security.

*The example used throughout this guide is for illustrative purposes only.

Once you have established that the goal is legitimate, you must be able to show that the measure is needed to achieve the goal. The decision to use a measure should be supported by evidence of its effectiveness and efficiency.

Ask yourself:

- How is the measure linked to the goal?

- What evidence supports the choice of the security measure given the purpose or goal?

Example

Measure: Fingerprint scanner

How is the measure linked to the goal?
The ability to identify people crossing national borders is essential to preventing unauthorized entry into the country. A sophisticated identity certification process supports this goal. Fingerprinting is one measure that can be used to certify a person's identity.

What evidence supports the choice of the security measure given the purpose or goal?
Numerous studies have shown that fingerprints are relatively permanent and unique. They are a high-grade biometric characteristic.

Undue Hardship

In some cases it may be decided that a security measure is necessary, even though it is potentially discriminatory. In such cases, an organization must be able to demonstrate that no alternative arrangements are possible, because of issues related to health, safety or cost. When an organization can demonstrate this, a security measure that is potentially discriminatory may still be justified. It is important to fully document these types of situations, as well as the evidence that led to the decision.

Finally, consider what impact the security measure might have on the people it is designed to serve. If a group may be negatively affected by the measure, consult with representatives of that group to determine the most appropriate course of action.

Ask yourself:

- Is the measure as inclusive as possible?

- Could the measure create barriers for any group based on the 11 grounds of discrimination?

- Have we consulted with organizations that represent the groups who could be negatively affected by the measure?

- Is there a way to eliminate the barrier using alternative arrangements?

- If alternative arrangements are not possible, have we fully documented health, safety and/or cost issues to demonstrate undue hardship?

Each situation is different. Consult with the Canadian Human Rights Commission or other experts to ensure that you have considered everything possible to make your measure respectful of human rights.

Example

Is the measure as inclusive as possible?
The evidence suggests that the fingerprint scanner is a relatively inclusive form of biometric data that could be used for identity certification.

Could the measure create barriers for any group based on the 11 grounds of discrimination?
This measure could automatically exclude people who, because of disability or age, do not have fingerprints.

Is there a way to eliminate the barrier using alternative arrangements?
For those who cannot use the fingerprint scanner, an alternative arrangement, such as an iris scanner, could be used to certify identity.

Step 2:
Test for potential discrimination

Discrimination occurs when an individual or group of people are singled out, and treated differently *and* adversely because of their race, national or ethnic origin, colour, religion, age, sex, sexual orientation, marital status, family status, disability, or because of a pardoned conviction.

Prior to implementation, test the measure and any planned alternative arrangements to confirm that they are as inclusive as possible. Testing can also determine if the measure or planned alternative arrangement(s) treats anyone differently and adversely for reasons not previously identified. Ensure that relevant human rights-based data are collected during testing.

Ask yourself:

• Given a specific measure, what *human rights-based data* should be collected during testing?

• What evidence do we have to support that this is the right data to collect?

• Based on the test results, does the measure create barriers for any person or group based on the 11 grounds of discrimination?

Example

Based on the test results, does the measure create barriers for any group based on the 11 grounds of discrimination?
During testing, data were collected on the grounds of age and disability. Testing confirmed that the vast majority of people can have their identity certified using the fingerprint scanner or the iris scanner.

It was also found that a very small number of individuals could not, for unforeseen reasons, use the fingerprint scanner or the iris scanner to have their identity certified.

Collecting human rights-based data

Collecting *human rights-based data* involves gathering information on peoples' age, sex, colour, disability etc. when it is relevant to the security measure being used. Prior research or intelligence gathering will help you determine which of the 11 grounds to collect data on. This data should be collected without any links to specific individuals.

Collect human rights-based data on the use of the security measure, any alternative arrangements and all discretionary decisions made by employees. This information allows your organization to determine if anyone is being negatively affected by the measure and take steps to correct the issue.

When collecting data, you should also consider your obligations under the *Privacy Act* and other relevant legislation.

Step 3:
Improve the security measure

If the security measure, or planned alternative arrangement(s), have a negative effect on anyone based on one or more of the 11 grounds of discrimination, explore other alternative arrangements and ways to improve the measure to eliminate or mitigate the negative effect.

If there are no other alternative arrangements or ways to improve the measure to include those negatively affected, accommodate them on an individual basis.

Example

Improve the measure
Continuous improvement to fingerprint and iris scanning technologies will make it possible to include more and more people in the scanning process.

Preparing for the unexpected
Following testing, the organization established guidelines to deal with unexpected situations. These guidelines help employees conduct individual assessments to accommodate an individual in the event that they cannot use the fingerprint or iris scanners.

Ask yourself:

- Can the measure be improved so that it is more inclusive?

- Have we developed guidelines for conducting individual assessments so that individuals negatively affected by the measure can be properly accommodated?

Training employees in human rights

Making employees aware of the potential human rights implications of a particular measure, better prepares them to prevent discrimination.

When training employees on a security measure:

- Stress the importance of treating people with dignity.

- Address general human rights principles to ensure that everyone has the same basic understanding (do not assume that employees already know what is expected of them).

- Explain both the security measure and the available alternative arrangement(s).

- Provide guidelines to help employees identify situations where individual assessments are necessary.

- Provide guidelines to help employees conduct individual assessments to accommodate individuals negatively affected by the measure.

Step 4:
Monitor for unexpected discrimination

During the development stage, it may not be possible to identify or predict all the potential situations that could lead to discrimination. Despite careful planning and testing, human rights issues may still arise once a security measure has been rolled out. Discretionary decisions made by employees are an important component of the measure and should be monitored.

Monitoring a security measure for situations where people are treated differently and adversely involves continually measuring its effect on people's human rights. It is necessary to collect data on the security measure, any alternative arrangements and any discretionary decisions made by employees.

When collecting data on discretionary decisions, document:

- the reason for the decision; and

- the relevant human rights-based data on the individual.

Ask yourself:

- Have we planned for ongoing monitoring following implementation?

- Have we considered how changes in personnel might impact the human rights of people accessing the service?

- Have we identified what human rights-based data will be collected following implementation?

- Have we trained personnel to conduct individual assessments when appropriate?

Human rights principles

A potentially discriminatory practice may be acceptable

If a security measure treats a group adversely on the basis of one of the 11 grounds, the measure may still be justified. The service provider must demonstrate that the standard, policy or practice being implemented to achieve a legitimate goal is: directly linked to that goal; reasonably necessary to achieve that goal; and that no reasonable alternative arrangement is possible short of undue hardship.
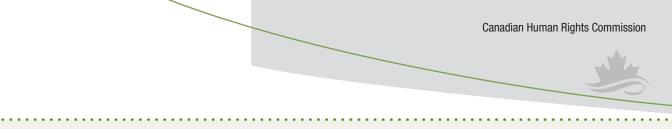
The duty to accommodate

The *duty to accommodate* is a service provider's obligation to take steps to eliminate the different and adverse treatment of individuals protected under the *Canadian Human Rights Act.*

Undue hardship

Under the *Canadian Human Rights Act*, a service provider can claim undue hardship when adjustments to the measure or alternative arrangement(s) would cost too much, or create risks to health or safety. There is no precise legal definition of undue hardship or a standard formula for determining undue hardship. Each situation should be viewed as unique and assessed individually.

It is not enough to claim undue hardship based on an assumption or an opinion, or by simply saying there is some cost. To prove undue hardship, evidence must be provided as to the nature and extent of the hardship.

Alternative arrangements

Alternative arrangements are special provisions made to a standard, policy or practice. They are intended to eliminate barriers that single out and treat a group of people differently and adversely because of one of the 11 grounds of discrimination.

Individual assessment

Individual assessment is a personalized assessment of an individual's needs to determine appropriate accommodation.

Glossary

Discrimination is an action or a decision that results in the different and adverse treatment of an individual, or group of people, because of one of the 11 grounds of discrimination.

Grounds of discrimination are reasons a person may experience discrimination. There are 11 reasons or 'grounds' that are protected under the *Canadian Human Rights Act*. This means that federally regulated employers and service providers cannot discriminate against individuals for these reasons. The 11 grounds protected under the Act are: race, national or ethnic origin, colour, religion, age, sex, sexual orientation, marital status, family status, disability, or pardoned conviction.

Systemic discrimination occurs when policies or practices create or perpetuate disadvantage for individuals or groups based on one of the 11 grounds of discrimination.

Human Rights Impact Assessment Checklist

Step 1: Identify the appropriate security measure

☐ The goal is legitimate.

☐ The goal has been justified.

☐ The measure has been linked to the goal.

☐ Given the goal, the evidence supports the chosen security measure.

☐ The measure is as inclusive as possible.

☐ Potential barriers (based on the 11 grounds of discrimination) have been considered.

☐ Alternative arrangements have been included in the plan.

☐ If alternative arrangements are not possible, health, safety and/or cost issues have been fully documented to demonstrate undue hardship.

Step 2: Test for potential discrimination

☐ It has been decided what human rights-based data will be collected for this security measure during testing.

☐ There is evidence to support that this is the right data to collect.

☐ Test results show the measure creates barriers for certain groups based on the 11 grounds of discrimination. (If **not**, move to Step 4)

Step 3: Improve the security measure

☐ The measure has been improved so that it is more inclusive.

☐ Other alternative arrangements have been explored.

☐ Guidelines for individual assessments have been developed.

Step 4: Monitor for unexpected discrimination

☐ We have a plan for ongoing monitoring following implementation.

☐ We have considered how changes in personnel might impact the human rights of people accessing the service.

☐ We have identified what human rights-based data will be collected following implementation.

☐ We have trained personnel to conduct individual assessments when appropriate.