

Frequently Asked Questions with regard to Services

1) What is a service available to the public?

Services available to the public can include:

- 1) Public services, such as provincial/municipal government departments, schools, libraries, city hall, and hospitals etc.
- 2) Private sector service providers, such as restaurants, shopping malls, universities/colleges and non-profit organizations.

2) What is *bona fide* qualification?

Conduct may be found to be non-discriminatory if the service provider or housing provider can show that the limitation, specification or preference is based upon a *bona fide* (“in good faith”) qualification (BFQ).

In order to be a BFQ the standard adopted by the organization must pass the “Meiorin Test”. This three-part test requires that the employer, service provider or housing provider establish that the standard:

1. Was adopted for a purpose or goal that is rationally connected to the function being performed;
2. Was adopted in good faith, in the belief that it is necessary for the fulfillment of the purpose or goal; and
3. Is reasonably necessary to accomplish its purpose or goal, in the sense that the employer, service provider or housing provider cannot accommodate persons with the characteristics of the person without incurring undue hardship.

The third part of the test requires that the employer, service provider or housing provider individually assess the needs of the person with a service animal to determine whether it is possible to accommodate the person without incurring undue hardship.

3) Can a patient in a hospital or a client in a nursing home request that the employee providing them with personal care be the same sex as the patient or client?

Yes. An individual can request personal care based on their sex. The service provider has a duty to provide reasonable accommodation to the patient or client. The duty to accommodate the client outweighs the rights employees.

4) Can high school students be asked to take off their backpacks in the store?

No. A service provider could not ask *only* high school students to remove their backpacks, but a service provider could set a general rule applicable to all customers or clients.



5) Can high school students be prevented from entering a store if there are more than a certain number of students in the store at the same time?

No. A service provider could set a limit on number of clients allowed in a store as long as it is applied equally to everyone.

6) Do schools still have a duty to accommodate a student if the parent of the student is banned from the school for ill behaviour?

Yes. They still have a duty to accommodate the student up to the point of undue hardship.

7) Do schools have to keep a violent student (a student who has hit another student or who throws items at other students and the teacher) in the classroom when it negatively impacts the learning of the other students?

The school has a duty to accommodate the student up to the point of undue hardship. Should the accommodation not reduce or eliminate the violent/disruptive behaviour then the school may reach a point of undue hardship.

8) Do schools have a duty to allow students to use a gendered washroom that matches their gender identity or expression and not their natal sex?

Yes. A trans person may seek accommodation with respect to a washroom or change facility if they are not comfortable using one of the available men's or women's washrooms. Possible accommodations could include providing access to a single-stall washroom that may not normally be available. However, a trans person cannot be required to use a separate washroom or change facility from everyone else if they wish to use the one that corresponds to their gender identity.

[See our guideline.](#)

9) What documentation does a student need to provide to support a need for accommodation?

Students have an obligation to inform their post-secondary institution of the need for accommodation. As students are entitled to privacy, there is no requirement to disclose the specific disability to the education provider. The provider may require students to provide a letter from a medical professional outlining the student's functional impairment or capabilities and the type of accommodation required, but it is unnecessary for the letter to include a diagnosis of the disability.

10) Can restaurants refuse to allow a nursing parent to breastfeed?

Service providers cannot prohibit breastfeeding or limit someone's ability to breastfeed.

11) Do service providers have a duty to provide baby changing stations in washrooms?

a. Do they have to provide them in male washrooms and not just female washrooms?

Service providers should provide changing stations in both male and female washrooms or have reasonable alternative.



12) Do public places such as restaurants, libraries, malls, hotels, etc. have an obligation to permit a patron to bring a service animal into the building?

Yes they do, although there could be health and safety exceptions, for example, in the restaurant's kitchen.

Generally, they cannot refuse entry, but they may argue that it is a preference based on a *bona fide* requirement or qualification. Issues could arise such as health and safety concerns.

In addition, hotels would have to establish a *bona fide* qualification to refuse entry.

a. Can they require that the service animal be on a leash?

A service animal must be under the care and control of their handler at all times (e.g. harnessed, leashed or tethered) unless doing so interferes with the work or task that it performs. If a person's disability prevents maintaining physical control of the animal, the person must still maintain control of the animal through voice, signal or other means.

13) Are restaurants permitted to have children only and senior only menus that other patrons are not permitted to order from?

Restaurants are able to have children and senior menus however all patrons should be able to access it if the restaurant is unable to establish a *bona fide* qualification for having the special menu.

14) Can establishments such as movie theatres, play houses, rinks, etc. charge a different amount for children, seniors and students?

A person could conceivably file a complaint based on this situation, but an establishment could argue that it is a preference based on a *bona fide* qualification.

15) Can restaurants be adult only restaurants?

Generally no, but it may depend on various factors including liquor licensing and type of establishment.

16) Can spas decline entry to a mother with an infant?

Generally no, but they may argue that it is a preference based on a *bona fide* requirement or qualification. They would have to establish a *bona fide* qualification for denying access to minors.

17) Are service animals limited to just dogs?

No it is not. They could be cats, horses, monkeys, birds, etc. Please refer to Service Animal Guidelines for additional information.

18) Can schools only partially accommodate student's needs?

Possibly. The school can make an argument that the accommodations are reasonable. Students have access to reasonable and not perfect accommodation.

19) Can you restrict children from public events?

Generally no, but it may depend on various factors including liquor licensing and type of event.



20) Can employment programs restrict participants based on age?

Generally no, but this is subject to the age of majority exception under Section 6.3 of the NB *Human Rights Act*, or if there is a *bona fide* requirement or qualification.

It is also possible if it is a required or authorized by an *Act* of the Legislature or if the Commission, pursuant to section 14 of the *Act*, has determined it is a special program or has approved a special program.

21) Can employment programs restrict participants based on level of income?

Under the Act, level of income is not specifically a ground that is covered. The ground of social condition only covers the source of income, occupation or level of education. However, the grounds of marital status and family status are protected and such a program could have an adverse affect on these individuals based on their level of income.

22) Can an insurance provider discriminate on the basis of age or pre-existing condition?

Prior to may 5, 2017, there was no age exemption for age discrimination in services. However, on May 5, 2017, the Act was amended to include a bfq for age discrimination with respect to services. Consequently, an insurance provider can raise the age exemption for excluding certain individuals based on their age or pre-existing condition(s).

23) If I am a service provider who rents space in a building, who has the onus to ensure the building is accessible?

Both the service provider and the landlord. The obligations are to the point of undue hardship. The service provider should consider the location of its business to ensure it is accessible to the clients. The landlord should consider making those changes that are necessary and possible to the building to make it accessible.

24) If my business is in a historical building, what are my obligations to make it accessible?

Your obligations are to the point of undue hardship. You may experience difficulty modifying the building to make it accessible due to your obligations with regard to contracts, covenants, or bylaws, etc. However, the *Act* supersedes other obligations and New Brunswick legislation. Therefore, your obligations under the *Act* must be met.

25) Can trans women be denied access to women's only spaces or services? Ex. Shelters, spas, gyms, etc.

No, they are women.

26) Can I be found to be discriminatory if I wasn't intending to do so, or if it was a joke?

Yes, as long as the behaviour is discriminatory based on of the protected grounds as intent does not matter.



27) Can a service provider deny services based on a person's ancestry or national origin?

It will depend on the service provider and/or the service being provided. A service provider must never deny a service based on ancestry or national origin unless they can establish a bfq or a special program.

Examples: a food bank is not able to deny service to a First Nation person by maintaining that their band is providing that service unless the food bank only serves a specific disadvantaged group and they are able to establish a special program; a food bank that provides services to everyone is unable to refuse service based on ancestry or national origin.

28) I have an employee who has an allergy or phobia of dogs, what are my obligations to accommodate a customer with a service dog?

You have a duty to accommodate the employee as well as the customer. You can request medical documentation from the employee regarding their disability and work with the employee to see what accommodation is required. You may need to work out a schedule with the employee and the customer where they are not in the facility at the same time.

29) If I am providing a service, do I have to do so in a scent free environment?

It is encouraged, but it may not be a requirement unless an employee or customer requires it. If an employee or customer requires it, then you would have a duty to accommodate.

For example, a car rental company should provide a scent free car when requested, up to the point of undue hardship.

30) If I notice one of my students is struggling, do I have to offer accommodation?

Not necessarily. Depending upon the institution (pre-school, school, postsecondary, etc.), you may have a duty to inquire if they require accommodation. In the postsecondary institution, the student has an obligation to advise the institution that they are encountering difficulty based on a disability or require accommodation. If a disability is causing the struggle, accommodation may be required.

Disclosure – The answers to these questions are not to be considered as legal advice or a substitute for legal advice and if there is any conflict between the answers to these questions and the Act and/or case law interpreting the Act, the Act and case law prevail. Direct any questions regarding this guideline to the Commission's staff.

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