

Resources

Legislation

Policies

Policy On Special Programs

Table of Contents

[Definition](#)

[Purpose](#)

[The law](#)

[Special programs and other measures](#)

[Grounds on which a special program can be established](#)

[Under what circumstances may a special program be initiated?](#)

[Principles or criteria applying to special programs](#)

[Suggested procedures for implementation of special programs](#)

Definition

A special program is any plan, arrangement, rule, policy or legislative provision designed to prevent, eliminate or reduce disadvantage that is experienced, or likely to be experienced, by disadvantaged groups.

Various legislation and jurisprudence refer to this concept differently. The Canadian Human Rights Act (CHRA) refers to "special programs"; the Employment Equity Act (EEA) to "special measures" and "positive policies and practices"; and the Charter to programs whose object is the "amelioration of disadvantage." For ease of reference we refer to these all generically as "special programs."

The reason for the disadvantage must be related to a prohibited ground of discrimination as defined in the CHRA or be related to membership in any of the designated groups defined in the EEA. It is not a discriminatory practice to adopt or carry out a special program.

[Back to Top](#)

Purpose

The Commission is issuing this revised policy in light of section 16(2) of the Canadian Human Rights Act in order to assist employers and service providers to develop and put in place appropriate special programs when these are used to ensure equality is achieved. Section 16(2) authorizes the Canadian Human Rights Commission to "make general recommendations" regarding special programs and provide advice and assistance as appropriate to those considering such programs.

The purpose of the policy is to set out the Commission's understanding of what constitutes a special program for purposes of the Canadian Human Rights Act and the Employment Equity Act.

[Back to Top](#)

The law

Special programs are a feature of human rights protection both in international law and in the Constitution and human rights legislation in Canada.

For example:

- The Convention on the Elimination of All Forms of Discrimination against Women authorizes temporary "special measures aimed at accelerating de facto equality between men and women" (Article 4).
- Section 15 of the Canadian Charter of Rights and Freedoms permits "any law, program or activity that has as its object the amelioration of conditions of disadvantaged individuals or groups ..."
- The Employment Equity Act requires employers to institute "positive policies and practices" (section 5) and include these in its employment equity plan (section 10).
- Section 16(1) of the Canadian Human Rights Act states that "It is not a discriminatory practice for a person to adopt or carry out a special program ..."

designed to prevent disadvantages that are likely to be suffered by, or to eliminate or reduce disadvantages that are suffered by, any group of individuals when those disadvantages would be based on or related to the prohibited grounds of discrimination ..."

[Back to Top](#)

Special programs and other measures

There are a variety of measures an employer or service provider can adopt to advance the equality of disadvantaged groups.

For example, there are various positive management and hiring practices, which, although they may benefit members of a disadvantaged group, also have a beneficial effect on other employees. While such measures may be initiated to benefit a particular group or groups in overcoming barriers, they are open to all.

An example would be a policy allowing for flexible work hours. Such policies are of direct benefit to parents raising children and to people with disabilities. At the same time these policies also benefit other employees who wish to work non-standard hours.

Other examples of measures of this type would be the adoption of barrier-free design criteria for the construction of all offices and facilities. While barrier-free design obviously has immense benefits for people with disabilities seeking to enter the workforce, it has also been shown to make workplaces more user-friendly for all employees and clients.

Employers and service providers may also institute measures to ameliorate disadvantages suffered by individuals. While measures aimed at individuals may bear some similarity to special programs, especially in their objective to ensure substantive equality is achieved, these measures are more properly considered forms of accommodation. As is made clear by the 1998 amendments (Bill S-5) to the Canadian Human Rights Act, accommodation — up to the point of undue hardship — is a legal requirement.

Special programs differ from these other types of measures in that they are designed to ameliorate or prevent disadvantage by allowing for unique programs, policies or practices that apply to, and benefit, only those in one or more of the specified disadvantaged groups.

An example of such a program would be implementing directed recruitment initiatives to ensure that Aboriginal people will be recruited at a rate higher than their general representation in the pool of prospective employees, or that women be given special access to training positions in non-traditional occupations.

[Back to Top](#)

Grounds on which a special program can be established

It is important to recognize that although this policy statement applies to special programs under both the CHRA and the EEA, there are differences between how the two statutes approach special programs.

The most critical difference is that section 16 of the CHRA is permissive: a special program may be implemented for the purposes of ameliorating disadvantages based on or related to any of the eleven prohibited grounds of discrimination. No organization subject to the CHRA is required to implement such a program of its own accord.

On the other hand, under the EEA, employers must implement special programs that can ensure reasonable progress towards full representation of one or more of the four designated groups when there is evidence of under-representation in the workforce.

[Back to Top](#)

Under what circumstances may a special program be initiated?

Special programs may be initiated by any organization, of its own accord, coming under the jurisdiction of the Canadian Human Rights Commission.

In addition, special programs may result:

Under the CHRA, from the following circumstances:

- as a condition of settlement of a complaint
- as ordered by a tribunal or court

Under the EEA, from the following circumstances:

- pursuant to an employment equity plan developed in fulfilment of obligations under the EEA
- pursuant to an undertaking or a "direction" issued under the EEA

[Back to Top](#)

Principles or criteria applying to special programs

The courts have determined specific criteria and principles to which special programs are to adhere in order to ensure that they are consistent with underlying human rights principles.

The basic rules set out by the courts are as follows:

A special program must advance equality

Inherent in the notion of a special program is the idea that in the pursuit of equality it may be necessary to treat individuals or groups differently in order to establish "substantive equality." Special programs must be designed and administered to ensure that this objective is always paramount.

It has been clearly established by the courts that validly constituted special programs are not a limit or exception to equality. Rather, they are a means of advancing the achievement of equality.

A special program must address genuine disadvantage

The organization responsible for the program must establish that the target group experiences disadvantage and that the proposed special program will advance the achievement of equality for that group.

For example, a special program may be warranted within organizations where the equitable representation of disabled people is lacking and where people with disabilities do not have access to the same employment and advancement opportunities as non-disadvantaged workers.

A special program must be tailored to meet the actual needs of the disadvantaged group

A determining factor in establishing that the program will advance equality is whether the program meets the actual needs of the disadvantaged group for which it is intended. There must be a demonstrable connection between the program and its intended goals.

For example, if a program is aimed at improving employment prospects for visible minority professionals, there must be clear evidence that the program in fact achieves this goal.

The impact of the special program on third parties must be considered

Special programs may have some impact on non-designated group members, and steps should be taken to ensure that such impacts interfere as little as possible with the opportunity of third parties, consistent with the overall need for and objectives of the special program.

Special programs must be proportional to the degree of under-representation or disadvantage

Greater and more entrenched disadvantage may necessitate more comprehensive and far-reaching special programs. For example, within workforces where there is history of exclusion (e.g., women in the railways) it may be possible to justify special programs that are more restrictive.

Factors to be considered include the degree of disadvantage, the size of the organization, the scope of the measure, the type of industry, and alternatives available to third parties.

Special programs are temporary

By definition, special programs are designed and initiated in order to remedy or prevent disadvantages being suffered by groups for a reason related to

one of the proscribed grounds of discrimination. A special program can therefore only be justified for as long as the disadvantage persists. Sponsors of special programs should reassess the need for the program periodically, and wind programs down as soon as they are no longer necessary.

[Back to Top](#)

Suggested procedures for implementation of special programs

The following elements are presented as an aid to organizations implementing a special program. The Commission will not require strict adherence to these elements, but rather will consider the elements in conjunction with the program's compliance with the general principles to determine whether the program is likely to prevent disadvantage. Naturally, these procedures do not override requirements set out in a tribunal or court order if that is the basis for the special program.

Employers and service providers should carefully document the process they follow in planning and implementing special programs.

Analysis

Since special programs must be designed to respond to a need, it is imperative that employers and service providers quantify the nature of the problem. The EEA sets out a process for doing this, and Human Resources Development Canada supports this with relevant data packages.

For those organizations instituting programs outside the context of the EEA, however, some thought should be given to what is reasonably necessary to justify the program. Obviously, the type and extent of the analysis required will depend upon the situation at hand.

Clearly, more sophisticated analysis may not be necessary in the case of an employer, for example, whose workforce virtually excludes target group members. In other cases, readily available data sources, including, for example, socio-economic indicators produced by Statistics Canada, may be sufficient to document the nature and degree of the disadvantage. Such data might be used to support a program geared specifically to support women who are single parents, for example.

In some cases, depending upon the sophistication and scope of the potential program, tailor-made research data may be required. In all cases, however, it is probably a wise investment to consult with disadvantaged groups directly, and, where applicable, with the individuals who might be directly assisted by a program, as these individuals can give valuable insight into both the nature of the disadvantage they experience, and the best ways in which this disadvantage might be ameliorated.

Review of policies, practices and procedures

A review of policies, practices and procedures should be undertaken to determine how they affect disadvantaged groups. Where it is clear that a system or practice has had a significant exclusionary impact over time, the proponents of a program will have a more persuasive case for a special program. Unnecessary height and weight restrictions are classic examples of policies that exclude women and certain groups from employment.

The special program must be designed to ameliorate real disadvantages. It is usually advisable to consult with associations or individuals knowledgeable about the special needs of a particular group (e.g., people with disabilities). In addition, where applicable, consultation with those likely to be directly affected by the program should be considered.

In determining whether a measure is a "special program," consideration must be given to its rationality, effectiveness and fairness. In designing a special program, the measurement of its goals and its exclusionary effects should be considered.

- *Measurable goals*

A special program should be capable of objective definition, that is, it should be based on measurable goals. The objectives of the program should be defined by a plan that indicates the activities to be undertaken to achieve the objective, and the time frame in which results are expected.

- *The design of the program should consider exclusionary effects on non-designated group members*

Special programs are intended to help target groups overcome systemic barriers to equality of opportunity. Due to their remedial nature, the courts have treated special programs with considerable deference regarding their impact on non-disadvantaged segments of the public.

Nevertheless, these programs should be designed in a manner that considers undue exclusionary effects on people who are not members of the target groups.

Regular monitoring and evaluation

Regular monitoring and evaluation to assess efficacy and progress and determine whether adjustments are necessary is critical.

The monitoring and evaluation process will determine the continued need for the program. Special programs should be considered to be temporary in nature. They are only required until such time as the issues they address are substantially resolved. As with other factors, the period of the program may be related to the severity of the disadvantage. As the disadvantage decreases, the need to continue the program will diminish. Given the availability of other remedial programs, it may be possible to terminate special programs after the original disadvantage has been substantially but not completely eliminated.

For Further Information

Please [contact](#) one of the Commission's regional offices in Montréal, Winnipeg or Edmonton or contact the national office in Ottawa.