



CANADIAN HUMAN RIGHTS COMMISSION



## A GUIDE TO SCREENING AND SELECTION IN EMPLOYMENT

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## THE CANADIAN HUMAN RIGHTS COMMISSION

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# A GUIDE TO SCREENING AND SELECTION IN EMPLOYMENT

This guide is intended primarily to help employers when they interview and hire staff — whether they are choosing a new employee or promoting one from within the organization.

Even before the interview, employers can take steps to ensure that they have reached the widest pool of qualified applicants.

- Remember that the application form is the employer's calling card. Any question on the application form that is unrelated to the job may appear discriminatory and dissuade a good prospective employee from applying.
- Advertising in newspapers or magazines whose primary readers are women, Aboriginal people, members of visible minority groups, people with disabilities, or gay men and lesbians, for example, also communicates a clear message that qualified individuals from traditionally disadvantaged groups are welcome in your organization and will be treated with respect.

## THE INTERVIEW

An employment interview is conducted to learn more about the suitability of people under consideration for a particular job. However, sometimes the information sought during interviews is not relevant to the job being filled and may let discriminatory elements affect the selection process.

For example:

- an applicant's place of birth seldom has anything to do with ability;
- height and weight requirements are not always accurate measures of physical strength and may act to screen out women or some racial or ethnic groups that tend to be smaller in stature.

A skilled interviewer can properly assess a candidate without drawing out a lot of unnecessary information. This guide identifies some of the common pitfalls in interviewing and suggests useful alternatives. Although no employer can anticipate every possible interview situation, he or she should be sensitive to the kinds of situations that can lead to a human rights complaint.

## INTERVIEW NOTES

Usually, interviewers will have copies of résumés or applications available at the interview for easy reference or to use as the basis of interview questions. When many applicants are being interviewed, interviewers often make notes on the résumés to help differentiate candidates.

Even though these notes may be solely for the use of the interviewer, they must not identify or differentiate candidates according to the prohibited grounds (for example, “black woman, 45-ish” or “South Asian man”).

## THE CANADIAN HUMAN RIGHTS ACT

The *Canadian Human Rights Act* entitles all individuals to equal employment opportunities without regard to race or colour, national or ethnic origin, religion, age, family or marital status, sex (including pregnancy or childbirth), pardoned conviction, disability (either physical or mental or as the result of dependence on alcohol or drugs), or sexual orientation.

Section 8 of the Act states that:

*It is a discriminatory practice*

- to use or circulate any form of application for employment, or*
- in connection with employment or prospective employment, to publish any advertisement, or make any written or oral inquiry*

*that expresses or implies any limitation, specification or preference based on a prohibited ground of discrimination.*

The Act covers employment under federal jurisdiction. Included are federal government departments and agencies, Crown corporations, airlines, banks, railways, interprovincial pipelines, radio, television and telephone companies, and transport companies that do business in more than one province.



## ***BONA FIDE OCCUPATIONAL REQUIREMENTS***

When a person's disability, gender or other protected attribute prevents him or her from performing a job's essential duties, then it is not discriminatory to refuse to employ that person.

For example, a job may require a certain level of colour vision in order to be performed safely and efficiently, thereby precluding from consideration a person who does not meet this standard. A particular skill or qualification can be specified if the preference is based on a *bona fide* occupational requirement.

However, before judging whether a person can perform the essential requirements of a position, steps must be taken to ensure that all barriers to participation for people protected under human rights law are eliminated from selection, training and promotion standards and practices. Employers must make sure that they build accommodation into their policies and practices as far as possible, and up to the point of undue hardship. This will include consideration of alternative approaches to do a job so that restrictive requirements can be eliminated.

The Canadian Human Rights Commission has detailed materials available to explain the application of *bona fide* occupational requirements if you think that jobs in your organization are affected.

## **SPECIAL PROGRAMS AND EMPLOYMENT EQUITY**

The *Canadian Human Rights Act* allows for special programs designed to improve opportunities for groups that have been traditionally disadvantaged because of race, ethnic origin, age, sex, disability or other prohibited grounds of discrimination. As well, the Canadian Human Rights Commission audits employers and takes necessary action to ensure they comply with the *Employment Equity Act*, which is designed to improve job opportunities for four specific groups — women, Aboriginal people, members of visible minorities, and people with disabilities. Many employers have found special programs helpful in achieving equality in the workplace.

Commission policy permits employers to collect the data they require to plan and support special programs, even though the information collected may touch upon one of the prohibited grounds. However, in the event of a complaint, the employer must be able to show that the data collected have not been used to discriminate, either in the hiring process or later when deciding promotion opportunities.

The following offers some helpful interview guidelines for selecting job candidates.

SUBJECT	AVOID ASKING	PREFERRED	COMMENTS
<b>Name</b>	<p>about name change: whether it was changed by court order, marriage, or other reason</p> <p>for maiden name</p>		Ask after selection if needed to check on previously held jobs or educational credentials
<b>Address</b>	for addresses outside Canada	Ask place and duration of current or recent address	
<b>Age</b>	for birth certificates, baptismal records, or about age in general	Ask applicants if they are eligible to work under Canadian laws regarding age restrictions	If precise age is required for benefit plans or other legitimate purposes, it can be determined after selection
<b>Sex</b>	<p>males or females to fill in different applications</p> <p>about pregnancy, child bearing plans, or child care arrangements</p>	Ask applicant if the attendance requirements can be met	During the interview or after selection, the applicant, for purposes of courtesy, may be asked which of Dr., Mr., Mrs., Miss, or Ms. is preferred



SUBJECT	AVOID ASKING	PREFERRED	COMMENTS
<b>Marital Status</b>	<p>whether the applicant is single, married, divorced, engaged, separated, widowed, or living common-law</p> <p>whether the applicant's spouse may be transferred</p> <p>about the spouse's employment</p>	<p>If transfer or travel is part of the job, the applicant can be asked whether he or she can meet these requirements</p> <p>Ask whether there are any circumstances that might prevent completion of a minimum service commitment</p>	<p>Information on dependents can be determined after selection if necessary</p>
<b>Family Status</b>	<p>about number of children or dependents</p> <p>about child care arrangements</p>	<p>Ask if the applicant would be able to work the required hours and, where applicable, overtime</p>	<p>Contacts for emergencies and/or details on dependents can be determined after selection</p>
<b>National or Ethnic Origin</b>	<p>about birthplace, nationality of ancestors, spouse, or other relatives</p> <p>whether born in Canada</p> <p>for proof of citizenship</p>	<p>Since those who are entitled to work in Canada must be citizens, permanent residents, or holders of valid work permits, applicants can be asked whether they are legally entitled to work in Canada</p>	<p>Documentation of eligibility to work (papers, visas, etc.) can be requested after selection</p>
<b>Military Service</b>	<p>about military service in other countries</p>	<p>Inquire about Canadian military service where employment preference is given to veterans by law</p>	

SUBJECT	AVOID ASKING	PREFERRED	COMMENTS
<b>Language</b>	<ul style="list-style-type: none"> <li>about mother tongue</li> <li>where language skills were obtained</li> </ul>	Ask if applicant understands, reads, writes, or speaks languages required for the job	Testing or scoring applicants for language proficiency is not permitted unless job-related
<b>Race or Colour</b>	any question related to race or colour, including colour of eyes, skin or hair		
<b>Photographs</b>	for photo to be attached to applications or sent to interviewer before interview		Photos for security passes or company files can be taken after selection
<b>Religion</b>	<ul style="list-style-type: none"> <li>whether the applicant will work a specific religious holiday</li> <li>about religious affiliation, church membership, frequency of church attendance</li> <li>for references from clergy or religious leader</li> </ul>	Explain the required work shift, asking whether such a schedule poses problems for the applicant	Reasonable accommodation of an employee's religious beliefs is the employer's duty
<b>Height and Weight</b>			No inquiry unless there is evidence they are genuine occupational requirements





SUBJECT	AVOID ASKING	PREFERRED	COMMENTS
<b>Disability</b>	<p>for a list of all disabilities, limitations or health problems</p> <p>whether the applicant drinks or uses drugs</p> <p>whether the applicant has ever received psychiatric care or been hospitalized for emotional problems</p> <p>whether the applicant has received worker's compensation</p>		<p>The employer should:</p> <ul style="list-style-type: none"><li>• disclose any information on medically related requirements or standards early in the application process</li><li>• then ask whether the applicant has any condition that could affect his or her ability to do the job, preferably during a pre-employment medical examination</li></ul> <p>A disability is only relevant to job ability if it:</p> <ul style="list-style-type: none"><li>• threatens the safety or property of others</li><li>• prevents the applicant from safe and adequate job performance even when reasonable efforts are made to accommodate the disability</li></ul>
<b>Medical Information</b>	<p>whether the applicant is currently under a physician's care</p> <p>name of family doctor</p> <p>whether the applicant is receiving counselling or therapy</p>		<p>Medical exams should be conducted after selection and only if an employee's condition is related to job duties</p> <p>Offers of employment can be made conditional on successful completion of a medical exam</p>

