



Ontario
Human Rights Commission
Commission ontarienne des
droits de la personne

Guidelines for collecting data on enumerated grounds under the Code

ISBN 0-7794-6321-8

Approved by the Commission: September 24, 2003

Revised by the OHRC November 2009

Also available on Internet: www.ohrc.on.ca

Available in accessible formats on request

Disponible en français

Contents

Purpose of OHRC Policies.....	3
Collecting data in a <i>Code</i> -consistent way	4
Collect data for a Code-consistent purpose	4
Inform the public.....	4
Consult affected communities	4
Use the least intrusive means	4
Anonymity	5
Distinguish between collection, use and disclosure.....	6
Information and privacy	6
For more information.....	7
Endnotes.....	7

Purpose of OHRC Policies

Section 30 of the Ontario *Human Rights Code* (*Code*) authorizes the Ontario Human Rights Commission (OHRC) to prepare, approve and publish human rights policies to provide guidance on interpreting provisions of the *Code*.^{*} The OHRC's policies and guidelines set standards for how individuals, employers, service providers and policy-makers should act to ensure compliance with the *Code*. They are important because they represent the OHRC's interpretation of the *Code* at the time of publication.^{**} Also, they advance a progressive understanding of the rights set out in the *Code*.

Section 45.5 of the *Code* states that the Human Rights Tribunal of Ontario (the Tribunal) may consider policies approved by the OHRC in a human rights proceeding before the Tribunal. Where a party or an intervenor in a proceeding requests it, the Tribunal *shall* consider an OHRC policy. Where an OHRC policy is relevant to the subject-matter of a human rights application, parties and intervenors are encouraged to bring the policy to the Tribunal's attention for consideration.

Section 45.6 of the *Code* states that if a final decision or order of the Tribunal is not consistent with an OHRC policy, in a case where the OHRC was either a party or an intervenor, the OHRC may apply to the Tribunal to have the Tribunal state a case to the Divisional Court to address this inconsistency.

OHRC policies are subject to decisions of the Superior Courts interpreting the *Code*. OHRC policies have been given great deference by the courts and Tribunal,^{***} applied to the facts of the case before the court or Tribunal, and quoted in the decisions of these bodies.^{****}

^{*} The OHRC's power under section 30 of the *Code* to develop policies is part of its broader responsibility under section 29 to promote, protect and advance respect for human rights in Ontario, to protect the public interest, and to eliminate discriminatory practices.

^{**} Note that case law developments, legislative amendments, and/or changes in the OHRC's own policy positions that took place after a document's publication date will not be reflected in that document. For more information, please contact the Ontario Human Rights Commission.

^{***} In *Quesnel v. London Educational Health Centre* (1995), 28 C.H.R.R. D/474 at para. 53 (Ont. Bd. Inq.), the tribunal applied the United States Supreme Court's decision in *Griggs v. Duke Power Co.*, 401 U.S. 424 (4th Cir. 1971) to conclude that OHRC policy statements should be given "great deference" if they are consistent with *Code* values and are formed in a way that is consistent with the legislative history of the *Code* itself. This latter requirement was interpreted to mean that they were formed through a process of public consultation.

^{****} Recently, the Ontario Superior Court of Justice quoted at length excerpts from the OHRC's published policy work in the area of mandatory retirement and stated that the OHRC's efforts led to a "sea change" in the attitude towards mandatory retirement in Ontario. The OHRC's policy work on mandatory retirement heightened public awareness of this issue and was at least partially responsible for the Ontario government's decision to pass legislation amending the *Code* to prohibit age discrimination in employment after age 65, subject to limited exceptions. This amendment, which became effective December 2006, made mandatory retirement policies illegal for most employers in Ontario: *Assn. of Justices of the Peace of Ontario v. Ontario (Attorney General)* (2008), 92 O.R. (3d) 16 at para. 45. See also *Eagleson Co-Operative Homes, Inc. v. Théberge*, [2006] O.J. No. 4584 (Sup.Ct. (Div.Ct.)) in which the Court applied the OHRC's

Collecting data in a Code-consistent way¹

Collecting information about characteristics based on *Code* and non-*Code* grounds may lead to fears that the information might be used to treat a person or group in a discriminatory way, give unmerited preference to a particular group that does face historical discrimination, or lead to individuals being identified or “outed.” To address such fears, the following guidelines are strongly recommended to make sure that data involving *Code* and non-*Code* grounds is collected and used in a legitimate and appropriate way:

Collect data for a Code-consistent purpose

A data collection program should clearly set out a purpose that is consistent with the *Code*. A data collection program can be contextualized within an organization’s obligation to take into account a person’s already disadvantaged position within Canadian society.

Example: Social science research shows that many new immigrants in Canada are underemployed because of barriers preventing the recognition of foreign credentials. An immigration settlement agency collects data to track the employment prospects and barriers faced by new immigrants to support and maintain a strong service-delivery system that meets the changing needs of newcomers to Ontario and Canada.

Inform the public

Regardless of the data collection method used, the people data is being collected on and the broader public in general should be advised of why such information is being gathered and its potential uses. They should also be told how the data will be collected, the steps taken or that will be taken to protect privacy and confidentiality, the benefits of collecting data, and the progress reached in achieving stated goals and objectives.

Consult affected communities

Service providers, employers, landlords and other responsible bodies should consult with affected communities about the need for data collection and appropriate methodology.

Use the least intrusive means

The form that data collection takes should be the least intrusive alternative that most respects dignity and privacy of individuals.

Policy and Guidelines on Disability and the Duty to Accommodate, available at: www.ohrc.on.ca/en/resources/Policies/PolicyDisAccom2

Self-identification surveys are one standard method for identifying types of individuals, within or served by an organization. When using this method, make it clear to people that their participation is voluntary and that confidentiality will be maintained.

Another method might be to have a trained employee or an external expert record data through observation. A capable and effective observer can provide an objective viewpoint about the characteristics and behaviour of research subjects that others may be unaware of. A key weakness, however, is that an observer, trained or otherwise, may not be able to accurately differentiate within or between certain groups of people, particularly when an identity is not readily visible (such as religion, mental illness or sexual orientation). This may affect the accuracy of observed results.

Analyzing data from multiple perspectives and relying on data gathered from different sources, using accepted data collection techniques, can strengthen the conclusions drawn from research.

Anonymity

Assuring anonymity (e.g. by not requiring any identifying information such as a name) may be necessary to address privacy and confidentiality concerns, particularly where the collective results are so small that reporting them could potentially reveal an individual's identity. For example, in a small organization, it would be reasonable to suppress the statistic that only one employee has a mental illness. In other cases, assuring participants' anonymity might mean that a formal data collection initiative is limited in its ability to achieve objectives, or is unable to proceed with altogether. In all cases, however, measures should be taken to protect privacy and confidentiality.

Example: Under the Federal Contractors Program (the FCP), provincially regulated employers with more than 100 employees that are eligible for federal government contracts valued at \$200,000 or more are contractually required to comply with the federal *Employment Equity Act* (the *Act*). FCP employers, and other employers covered by the *Act*, must collect information using a workforce survey questionnaire and provide some means of identifying employees to help find the number and degree of underrepresentation of women, visible minorities, Aboriginal Peoples and persons with disabilities in specific occupational groups.² Numerical codes may be used to identify each employee. While the survey is not anonymous, employers must keep designated group status information confidential, and are advised to keep collected data separate from human resources file

Example: In spring 2008, the Toronto District School Board (TDSB) conducted its first *Parent Census* for parents of students through Junior Kindergarten to Grade 6. Student demographic data and social environment data was collected to help the Board develop policies and strategies to close the achievement gap between groups of students, as well as to establish a baseline of data to measure improvements in the educational outcomes for all students. The 2008 Parent Census was confidential but not anonymous. Unique identification was used to allow the data to be linked

to other centrally available data sources – such as the TDSB Student Information System, Education Quality and Accountability Office (EQAO) and student report cards – for crosschecking and tracking. To ensure confidentiality for students and parents, the forms were pre-coded with a specially assigned survey number (not the student's own identification number), and parents were asked to place their completed forms in the sealed envelope provided before returning them to their child's school.

Distinguish between collection, use and disclosure

The method should distinguish between the appropriate collection, use and disclosure of information. There should be a rational and objective connection between the nature of the information being collected and its intended use.

Data should be collected in a way that removes any identifying information such as name, driver's licence number or student number from the data.

Data should be separate from and unconnected to any other records that contain personal identifying information, unless it is being used to determine a person's eligibility for a special program.

Data collection procedures, storage, access and disclosure must be carefully controlled. Always respect confidentiality and dignity.

Information and privacy

In addition to the *Code*, data collection must comply with freedom of information and privacy protection legislation.

For more information

Please visit www.ontario.ca/humanrights for more information on the human rights system in Ontario.

The Human Rights System can also be accessed by telephone at:

Local: 416-326-9511

Toll Free: 1-800-387-9080

TTY (Local): 416-326 0603

TTY (Toll Free) 1-800-308-5561

To file a human rights claim, please contact the Human Rights Tribunal of Ontario at:

Toll Free: 1-866-598-0322

TTY: 416-326-2027 or Toll Free: 1-866-607-1240

Website: www.hrto.ca

To talk about your rights or if you need legal help with a human rights claim, contact the Human Rights Legal Support Centre at:

Toll Free: 1-866-625-5179

TTY: 416-314-6651 or Toll Free: 1-866-612-8627

Website: www.hrlsc.on.ca

Endnotes

¹ For the purposes of relevance and convenience, the OHRC's *Guidelines for Collecting Data on Enumerated Grounds* have been revised and included as Section 5 of the document.

² *Regulations* at s. 4.