

Identifying and addressing anti-Indigenous discrimination in retail settings

Guide



Ontario Human
Rights Commission
Commission ontarienne des
droits de la personne



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Anti-Indigenous discrimination in retail settings: Guide to identifying and addressing anti-Indigenous discrimination in retail settings

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Content warning: This guide deals with topics that may cause trauma to some readers. It includes references to mistreatment of First Nations, Inuit, Métis, and urban Indigenous people, including racial discrimination. Please engage in self-care as you read this material. There are many resources available if you need additional support, some of which are listed on the Ontario Human Rights Commission (OHRC) website, here:

<https://www.ohrc.on.ca/en/list-supports>.

1. Introduction

Many Indigenous people* experience discrimination when they shop, sometimes due to racial profiling. Examples include when business owners or employees engage in targeted surveillance, make derogatory comments toward Indigenous customers related to their ancestry, race, or culture(s), or unjustly refuse to serve Indigenous customers. Discrimination may also occur when a First Nations person seeks to use their Status card to request a tax exemption or as identification, or when other Indigenous documentation is used for identification (e.g., Non-Insured Health Benefits (NIHB) client identification number).

With this reality in mind, the Ontario Human Rights Commission (OHRC)¹ and the Indigenous Human Rights Program (a partnership between Pro Bono Students Canada (PBSC)² and the Ontario Federation of Indigenous Friendship Centres (OFIFC))³ co-developed this guide to provide human rights information about anti-Indigenous discrimination in retail settings.

This guide provides information about the protections afforded by the Ontario *Human Rights Code* (the *Code*)⁴ and about the various ways in which Indigenous people experience discrimination and harassment in retail settings. It is intended for Indigenous people themselves, to help them exercise their right to non-discrimination, but also for duty-holders in retail settings (e.g., business owners, employees, third-party vendors, etc.), to help them understand their responsibilities and the actions they can take to prevent discrimination against Indigenous customers.

As a practical supplement to this guide, two fact sheets summarizing the information contained herein were also created, one tailored for rights-holders (*Fact sheet: Recognizing anti-Indigenous discrimination and harassment in retail settings*) and the other for duty-holders (*Fact sheet: Preventing anti-Indigenous discrimination and harassment in retail settings*).

* The term Indigenous is used to collectively describe First Nations, Inuit, Métis, and urban Indigenous communities. This is consistent with the approach used in inquiries and reports such as the National Inquiry into Missing and Murdered Indigenous Women, Girls, and 2SLGBTQIA People and with the United Nations Declaration on the Rights of Indigenous Peoples. Indigenous people make up 2.9% of the Ontario population (or 406,585 individuals),⁵ most of whom live off-reserve, in or near urban centers.⁶

PBSC, the OFIFC, and the OHRC support the Truth and Reconciliation Commission's Call to Action 92 (iii), which recommends that Canadian businesses provide "education for staff and managers on the history of Aboriginal Peoples, including the history and legacy of residential schools, the United Nations Declaration on the Rights of Indigenous Peoples, Treaty and Aboriginal rights, Indigenous law and Aboriginal–Crown relations."⁷

This guide is not legal advice. It contains a general discussion of topics, terminology and law relating to discrimination and harassment experienced by Indigenous people in retail settings. If you need legal advice, please contact a lawyer or find more information in Appendix I, titled "What can you do if you think you've experienced discrimination?"

2. Definitions

The concepts below are key to building a strong understanding of *Code*-related discrimination and will be helpful in identifying it in retail settings. Unless otherwise noted, the definitions have been adapted from the OHRC's *Glossary of human rights terms*.⁸

Discrimination is mistreating someone by either imposing a burden on them or denying them a privilege, benefit, or opportunity enjoyed by others, because of their race, citizenship, family status, disability, sex, or other personal attribute. Discrimination can take many different forms, including direct, indirect, subtle, and adverse effect discrimination.⁹ A discriminatory intent or motive is not required to establish that discrimination has occurred – demonstrating that the conduct has a discriminatory effect is sufficient.

Stereotyping is attributing the same characteristics to all members of a group regardless of their individual differences. It is often based on misconceptions, incomplete information, and/or false generalizations.

Racism is a broader experience and practice than racial discrimination. Racism is a belief that one racialized group is superior to others. Racism can be openly displayed in racial jokes, slurs, or hate crimes. It can also be more deeply rooted in attitudes, values, and stereotypical beliefs. In some cases, people do not even realize they have these beliefs. Instead, they are assumptions that have evolved over time and have become part of systems and institutions associated with the dominant group's power and privilege.

Racial discrimination is prohibited by the *Code*. It includes any action, intentional or not, that has the effect of singling out persons based on their race and imposing burdens on them that are not imposed on others. It also includes actions that withhold or limit access to benefits available to other members of society, in social areas covered by the *Code*. Race only needs to be one factor in a situation for racial discrimination to have occurred.

Racial profiling includes any action that relies on stereotypes about race, colour, ethnic origin, ancestry, religion, or place of origin, or a combination of these, rather than on a reasonable suspicion, to single out a person for greater scrutiny or different treatment. Racial profiling may not violate the *Code* on its own, however it can lead to racial discrimination, which can be a *Code* violation.

Consumer racial profiling is differential treatment in retail settings based on a perception of the consumer's race or ethnic origin.¹⁰ This can happen:

1. when a racialized person is provided bad service in a retail setting, or not served at all, because of their perceived race or ethnicity, or
2. when a racialized person is profiled as a suspected shoplifter and receives discriminatory treatment.

Intersectional discrimination is discrimination that occurs in relation to two or more *Code* grounds. Intersectional discrimination results from the combination of various forms of oppression which, together, produce something unique and distinct from any one form of discrimination standing alone.¹¹ Categories of discrimination may overlap, and individuals may suffer historical exclusion because of both race and gender, age and disability, or some other combination.¹²

Harassment means engaging in a course of vexatious comment or conduct that is known or ought reasonably to be known to be unwelcome.¹³ A pattern of behaviour or more than one incident is usually required to constitute harassment.¹⁴ It can involve words or actions that are known or should be known to be offensive, embarrassing, humiliating, demeaning or unwelcome.¹⁵

A **poisoned environment** is created by comments or actions that ridicule or insult a person or group protected under the *Code* and cause them to feel that the environment is hostile or

unwelcoming. It violates their right to equal treatment with respect to services, goods and facilities, housing, and employment. The actions or comments do not have to be directed specifically at individuals. For example, insulting jokes, slurs, or cartoons about LGBT2SQ+ people or racial groups or pin-up photos that demean women all contribute to a poisoned environment for members of those groups.¹⁶

3. Ontario's Human Rights Code

The *Code* is a provincial law that gives everyone the right to be free from discrimination in five parts of society, referred to as **social areas**, based on one or more personal attributes, called **protected grounds**.

The *Code* protects individuals from discrimination when accessing both public and private services, including the right not to be discriminated against or harassed while shopping.

Indigenous people in Ontario are included in these protections.¹⁷

The five (5) social areas are:

- Employment
- Housing
- Goods, services and facilities (such as education, health care, police, government, shops, or restaurants)
- Membership in unions, trade or professional associations
- Contracts

The *Code* prohibits discrimination and harassment based on **17 protected grounds**:

- Age
- Ancestry
- Citizenship
- Colour
- Creed
- Disability
- Ethnic origin

- Family status
- Marital status
- Gender identity
- Gender expression
- Place of origin
- Race
- Receipt of public assistance (in housing only)
- Record of offence (in employment only)
- Sex
- Sexual orientation.¹⁸

To establish discrimination under the *Code*, a person must show that:

- they have a personal attribute protected by the Code (e.g., race, ancestry, place of origin),
- they experienced adverse treatment/impact within a social area (e.g., they were denied a service, housing or employment), and
- the protected personal attribute was a factor in the adverse treatment or impact (for example, that they didn't receive a service, housing or employment because of their race).

When Indigenous people experience discrimination while shopping, the relevant protected grounds are likely race and related grounds, including ancestry, ethnic origin, place of origin, colour, and creed (which includes Indigenous spirituality).

For greater clarity, race may refer to a combination of physical and cultural attributes, while ancestry is concerned with the geographic location or origins of a person's ancestors. These grounds, along with colour, ethnic origin, place of origin, and creed are all interrelated.

A person's experience may be complicated further when facing intersectional discrimination (as defined in section 2). For example, if an Indigenous youth was presumed to be more likely to shoplift and this led to targeted surveillance, age as well as race and related grounds could be involved. Additionally, Indigenous women's experiences must be understood through the lens of intersectional racism and sexism, which they face as both Indigenous people and as women. If an Indigenous woman experiences heightened surveillance, race as well as sex, gender expression, or gender identity could be at play.

4. Discrimination in retail settings

Indigenous people often experience racism and consumer racial profiling in different commercial settings like department stores, supermarkets, pharmacies, convenience stores, malls, and shopping centres. These experiences may amount to racial discrimination (which also includes harassment) and may violate the *Code*.

These negative experiences can vary, ranging from an Indigenous customer being subjected to unkind remarks and tones or being ignored, to more extreme examples of discrimination including targeted surveillance by staff or security personnel.¹⁹ While these experiences are common, they may have increased during the COVID-19 pandemic.²⁰

Lived experience: Refusal of service during the COVID-19 pandemic²¹

During the COVID-19 pandemic, social media posts were used to spread racist commentary and misinformation about Indigenous people from Wabaseemoong Independent Nations. This led businesses and organizations in Kenora, a Northern Ontario town, to refuse service to Indigenous people. The nearby Indigenous community was facing a COVID-19 outbreak at the time. Many members of Wabaseemoong Independent Nations live and work in Kenora and/or rely on the community for medical and social services. The impact of this differential treatment not only undermined the dignity of local Indigenous people but also created barriers to accessing goods and services.

The following sections list examples of racial discrimination experienced by Indigenous customers to help Indigenous readers identify when their *Code* rights may have been violated and help duty-holders recognize when they might have an obligation to act.

4.1. Racial profiling

Racial profiling in retail settings may lead to racial discrimination, which is a *Code* violation and has damaging impacts on Indigenous and racialized people. It perpetuates feelings of inferiority, being undesirable or invisible. Racialized customers explain that racial profiling while shopping signals that they are not as desirable or welcome as white customers.²²

Discriminatory conduct may involve preventing or discouraging customers from accessing retail spaces.²³

Consumer racial profiling of Indigenous people is primarily linked to two related stereotypes:

- the perception or affiliation of Indigeneity with poverty, and
- the association of Indigenous people with criminality, especially when viewing Indigenous people as potential shoplifters.²⁴

This can result in service providers denying or providing slower service to an Indigenous shopper due to a belief that they cannot afford to buy goods, for example. It can also result in the hyper-surveillance of Indigenous shoppers because service providers think that Indigenous people are more likely to engage in criminal behavior.

Stores may be held accountable under the *Code* for racial profiling when they surveil or search Indigenous customers in ways they would not do to others, based in part on their perceived Indigeneity.²⁵ Hunches (whether based on intuition gained from experience or otherwise) or perceived nervousness are not enough to establish reasonable suspicion of a customer.

Behaviour should be viewed objectively and not through stereotypes. Any reliance on a customer's perceived Indigeneity in the retail security process could constitute racial profiling and give rise to a human rights complaint.

Lived experience: Racial profiling²⁶

An Indigenous man was shopping at a store in Thunder Bay where he was accused of stealing the shirt he was wearing from the store.

While waiting in line to purchase an item, he received a call from his mother. She required assistance, which led him to promptly place the item back on the racks and make his way out. However, he was stopped by an employee who implied the shirt the man wore was stolen. The Indigenous customer explains that as he tried to leave:

“Some guy’s walking toward me from inside the store and he said, ‘the shirt, buddy.’ And I looked at my shirt. I’m like, ‘yeah.’ He said, ‘that’s ours.’ And I said, ‘no it’s not.’ And he said, ‘are you sure?’ I said, ‘100 per cent.’ And we stared at each other and he said, ‘OK,’ and went back into the store.”

The shirt that he wore was not being sold at the store in question, nor on its online website.

After the Indigenous customer shared his experience online, the parent company of the store denied any wrongdoing, citing a misunderstanding instead. The company invited the customer to participate in an online meeting with the store’s manager, who intended to present an apology, but the meeting was later cancelled by the company when the Indigenous customer insisted on bringing an advocate to support him during the call.

4.2. Surveillance

Targeted surveillance of Indigenous people is one form of discrimination that takes place in retail settings. Staff or security personnel may inappropriately target Indigenous customers by:

- Watching or following Indigenous customers without reasonable grounds (e.g., by unreasonably identifying an Indigenous customer as a “suspicious person”).²⁷
- Arresting, questioning, or searching Indigenous customers without sufficient legal authority.²⁸

- Monitoring Indigenous customers when using dressing rooms or self-checkout machines or checking their receipts upon exiting a store due to unfounded suspicions of shoplifting.
- Physically removing Indigenous customers from a store or a mall, asking them to leave, or refusing service to them due to unfounded suspicions of shoplifting or due to stereotypes or negative attitudes toward Indigenous people.²⁹
- Over-scrutinizing tags on potential purchases when customers are checking out to ensure Indigenous customers have not changed them to obtain a lower price.³⁰

Retailers may also take discriminatory surveillance-related actions beyond physical scrutiny, such as:

- Accusing Indigenous customers of stealing or not scanning all their items at self-checkout.³¹
- Asking staff to be on the lookout for Indigenous shoppers because they are presumed to steal.
- Questioning Indigenous customers about the price of their purchases or possible returns (e.g., asking “can you afford this?”).
- Denying a return based on false accusations (e.g., falsely accusing them of damaging an item or altering the sales tag in some way) or ridiculing an Indigenous customer when they are attempting to make a return.³²
- Asking Indigenous customers to leave their bags or potential purchases at the counter while they browse due to unfounded suspicions of shoplifting.³³

4.3. Other forms of discrimination in retail settings

Indigenous people often experience additional forms of discrimination in retail settings. For example, staff and/or business owners may:

- Speak to Indigenous customers or ask questions in a rude, hostile, patronizing, or suspicious way.
- Make racist comments or direct racial slurs toward Indigenous customers.
- Ignore, deny, or provide slow service specifically to Indigenous customers.
- Accuse Indigenous customers of being intoxicated.³⁴
- Become physically violent towards Indigenous customers.³⁵

4.4. Discriminatory inventory

Part of the aim of the *Code* is “the creation of a climate of understanding and mutual respect for the dignity and worth of each person so that each person feels a part of the community.”³⁶ Thus, service providers, such as retail businesses, have a duty to provide an environment free from discrimination, to be aware of the existence of poisoned environments, and to take steps to respond and eliminate them.

Images and words, such as signs, can create poisoned service environments. For example, some businesses sell merchandise that contains derogatory terms related to Indigenous people,³⁷ offensive imagery including names and logos of sports teams,³⁸ or Indigenous-themed Halloween costumes (which are often based on inaccurate and harmful stereotypes about Indigenous people and are hyper-sexualized).

Furthermore, discriminatory displays of names, words, and images are also prohibited under the *Code* if they indicate an intention to infringe or incite the infringement of the rights of others.³⁹

The practice of stocking Indigenous-themed merchandise may undermine the dignity of Indigenous people and violate the *Code*. Businesses have an obligation to ensure that a poisoned environment does not exist for Indigenous customers (as well as others protected under the *Code*) through sales of inappropriate merchandise.

4.5. Discrimination related to Indian Status cards

Indian Status (Status) is the legal standing of a person who is registered under the *Indian Act*.⁴⁰

A Status card is a government issued identification card that identifies a person under the *Indian Act*. Inuit and Métis persons are not eligible for Status or Status cards, nor are many First Nations people who fall outside of the identity structures set out in the *Indian Act* by the Government of Canada.

Status cards provide specific benefits, rights, programs, and services to First Nations people registered as Status Indians under the *Indian Act*,⁴¹ including but not limited to a tax exemption for the eight per cent (8%) provincial portion of the Harmonized Sales Tax (HST) on qualifying goods. Tax exemptions typically come from Treaty and related agreements between the Crown and First Nations, where the Crown offered certain services, benefits, or rights in exchange for land. First Nations individuals may also use their Status cards as a form of photo identification.

It is important to note that an individual's Status does not expire. A Status card is sufficient to access the benefits, rights, programs, and services to which a Status individual is entitled (this includes the HST exemption on qualifying goods), regardless of any expiration date on the card.

The eight per cent (8%) portion of HST is exempted on qualifying goods and services purchased off-reserve. The exemption can be claimed at the time of purchase (called "point-of-sale"), or through a mail-in rebate⁴² requested to the Ontario Ministry of Finance after the sale or after making eligible purchases online where tax exemptions are typically unavailable at the point-of-sale. Status individuals must purchase the eligible goods or services for personal use or consumption and not for other people unless as a gift.

While vendors can provide an eight per cent (8%) tax exemption at the point-of-sale to Status individuals on qualifying purchases, as long as certain procedures outlined in O. Reg 317/10 to the *Retail Sales Act*⁴³ are followed (such as record keeping requirements),⁴⁴ **vendors do not have a legal obligation to provide the tax exemption at the point-of-sale per section 8(1) of O. Reg 317/10.**⁴⁵

Not providing First Nations customers with the option to receive the partial HST exemption at the point-of-sale is likely not discrimination under the *Code* on its own.

Racism, discrimination, stereotyping, and harassment related to the use of Status cards are widespread and rooted in a lack of public knowledge.⁴⁶ Many people, including business owners and employees in the retail industry, are unaware of:

- the history of Indian Status cards,
- the procedures to be followed when providing a tax exemption at the point-of-sale,
- what information must be collected when providing a tax exemption, and
- that Status cards are a valid form of identification.

As a result, First Nations people can experience *Code*-related discrimination while shopping when they try to use a Status card to get a tax exemption at the point-of-sale and/or when they use their Status card as a form of identification. In some cases, non-Indigenous people also perpetuate racist behaviours and remarks against First Nations people⁴⁷ when Status cards are presented or mentioned.

4.5.1. Tax exemptions

As previously mentioned, if a retailer refuses to provide the tax exemption at the point-of-sale, that is likely not discrimination under the *Code* because there is no legal obligation for vendors to do so. However, *Code*-related discrimination may still occur when a Status individual tries to get a tax exemption at the point-of-sale, regardless of whether the exemption is provided.

A First Nations person may be discriminated against after presenting a Status card if business owners and/or employees:

- Make race-related comments (e.g., commenting on whether a customer looks Indigenous or asking a Status card holder about their blood quantum).
- Express negative comments about Indian Status (e.g., saying that Status holders receive an unfair advantage or that Indigenous people receive free stuff).
- Behave as though providing a tax exemption is a hassle even though the business' policies allow for the tax exemption to be provided at the point-of-sale.
- Act rudely toward a First Nations customer after a tax exemption was requested or after a customer's Indian Status was mentioned (e.g., toss Status card back at customer).

Expressing negative attitudes toward Indian Status or the customer through body language (e.g., eye rolling, scoffing or exasperation).⁴⁸

Status individuals frequently experience such conduct and commentary when they ask if a tax exemption is offered at the point-of-sale, regardless of whether the tax exemption is available. The *Code* connection in these cases is often that the conduct or commentary is linked to *Code*-protected grounds (e.g., race and related grounds), rather than the failure to offer a tax exemption.

Lived experience: Discrimination after presenting a Status card

An Indigenous woman was shopping at a grocery store in London, Ontario. When she asked for a tax exemption, the cashier rolled her eyes, grunted, and told her that they would have to call the manager. After ten minutes of waiting, the manager came over and began joking with the cashier about how stupid the process was and referring to the Status card as “a cool tax-exemption card”. After another ten minutes, the transaction was finally completed and the cashier said, “sorry, we see **so many** of these cards that we don’t know how to use them.”

The Indigenous woman who experienced this discrimination wrote:

“I walked away, upset, shaking, almost wanting to cry...it may be cool to be ‘tax-exempt,’ but it’s not cool when I feel uncomfortable and belittled by certain cashiers or businesses who give me a fuss over something that is a right... it reminds me that some businesses don’t like “us” because of the transaction process. It reminds me that I will sometimes be annoying by a few extra buttons, a few extra minutes. It reminds me that I will never be treated equally, even if I am just a customer.”⁴⁹

An Indigenous woman from Kahnawake who lives in Dorval, Quebec, shared:

“Whether it’s just an eye roll, or a (shrug) or sometimes they look at the picture on the card, they look at me and they say, ‘Are you native? Are you full (blooded)?’ Or ‘You’re not 100 per cent ([A]boriginal), right?’ Sometimes I’d just rather avoid that, so I keep the card in my wallet and I just pay full price... it’s not even about the savings – it’s the principle, it’s a right.”⁵⁰

The following behaviors may also violate the *Code*:

- A business offers the tax exemption but a cashier or other employee refuses to provide the exemption to a specific Status individual.
- A business owner expresses that they do not offer the exemption because of negative views about Indigenous people and/or Aboriginal rights.

These actions or comments could be discrimination directed at the Indigenous customer, rather than the availability of the tax exemption.

Lived experience: Refusal to provide a tax exemption

An Indigenous family left a Sudbury store feeling traumatized and humiliated after staff berated them for requesting a tax exemption. When the mother first presented her Status card, the cashier seemed to indicate there would be no issue with providing the tax exemption. However, when the transaction was completed, the full tax amount had been charged. The mother flagged this to the cashier who responded argumentatively. A second employee got involved and denied that anything was wrong in an increasingly aggressive tone. The two staff members continued to raise their voices and ultimately yelled at the family to leave.

Other customers present in the store tried to defend the family, which escalated the situation and resulted in one of the cashiers reaching into the register to throw a five-dollar bill at the family and calling security.

When recalling the event, the mother shared her experience that “as people of colour we're allowed to just be ejected from anywhere if anyone calls security on us.”⁵¹

An Indigenous woman was kicked out of a store following her request for a tax exemption. When she presented her Status card, the cashier told her that the store did not accept them. After the Indigenous woman tried to explain what the tax exemption was, the cashier called the store owner by shouting in front of other customers, “There's a lady here that thinks that she should be tax-exempt.” When the owner got involved, the Indigenous woman described that:

“He immediately snatched [the item she was purchasing] out of my hand and told me to get out of the store, that I wasn't welcome there. And I said, ‘Well, you can't kick me out of your store. I haven't done anything wrong. All I'm trying to do is exercise my rights.’ And that's when he came out from behind the counter and opened the door and told me to get out.

So I told him that I was going to pursue this because I didn't like the way that I was treated there, and that I had never been kicked out of a store in my life. And he just told me to get out.”⁵²

The store owner later apologized and changed the store's policy to provide the tax exemption at the point-of-sale, which led the Indigenous woman to drop her intention of filing a human rights complaint.⁵³

4.5.2. Other customers

When other customers respond negatively to the mention of Indian Status or when they harass Indigenous customers, this may also constitute discrimination or harassment under the *Code*.

This may happen when a Status individual presents their Status card at the cash register to receive their tax exemption. Other customers may make disrespectful comments or indicate negative attitudes through body language (e.g., eye rolling, loud sighing, shaking their head in disapproval) towards the Status customer. Non-Indigenous customers may be frustrated that they must wait longer in line while the cashier collects the required information from the Status customer to provide the tax exemption and/or they may believe that Indigenous people receive unfair advantages. These types of actions and comments can create a poisoned environment.

As first mentioned in section 4.4., businesses must ensure that a poisoned environment does not exist for Indigenous customers (as well as others protected under the *Code*). As a result, retailers may need to address discrimination and harassment toward Indigenous customers by non-Indigenous customers.⁵⁴

4.5.3. Identification

Many First Nations individuals use Status cards as their main form of photo identification. For example, Status cards may be used as identification when applying for a marriage license, when registering a vehicle, or when required to provide proof of name or age (e.g., retrieve a hotel reservation, purchase age-restricted goods).

There are two types of Status cards,⁵⁵ and both are valid forms of photo identification:

- Secure Certificates of Indian Status cards are newer cards that were introduced in 2009, and
- Certificate of Indian Status, which are laminated Status cards issued prior to 2009 that many First Nations people still possess and use.

Many businesses and employees don't know that Status cards are valid forms of photo identification and refuse to accept them. This may be discrimination under the *Code* if the refusal (or even the acceptance) of the Status card as identification is accompanied by race-based comments or conduct, or if negative attitudes toward Status are expressed through body language.

Up-to-date information about the various versions of Status cards and their history is available on Indigenous Services Canada's website.⁵⁶ Individuals wishing to use Status cards to access government-regulated licenses should verify identification requirements using government websites. To access some government-regulated licenses, additional identification documents might be required.⁵⁷ Both kinds of Status cards are sufficient identification to prove eligibility for the HST exemption or rebate.

It is important to also note that other valid forms of identification may at times be used by Indigenous people to access services. For instance, a First Nations or Inuit individual may use their NHIB client identification number to pick up pharmacy prescriptions. The same obligations outlined above to provide services in a non-discriminatory manner would apply in such cases.⁵⁸

5. Guidance to create safe retail spaces for Indigenous people and prevent discrimination

Retail businesses should maintain safe spaces for Indigenous shoppers and staff. A safe space is a place where a person can feel confident that they will not experience discrimination, harassment, or other criticism. Creating a safe space will help retailers build trust with Indigenous shoppers.⁵⁹

5.1. Administrative considerations

Fostering an inclusive environment involves building trust among staff and customers. Under the *Code*, service providers, which includes retail businesses, must respond to, investigate, and resolve allegations of discrimination.

Businesses can help develop an inclusive environment by:

- Developing transparent complaint reporting procedures for both staff and customers to help meet their Code obligations.
- Creating a forum for employees to discuss issues (about policies/procedures) and to report incidents.

Reviewing internal policies and procedures to ensure there are not any unintended adverse impacts on Indigenous customers as this can also be discrimination under the *Code*.⁶⁰

5.2. Recruitment and general training of staff

Businesses can transform the experiences of Indigenous customers by focusing on the quality of service offered by their staff and by:

- Ensuring employees are fully aware of their roles and responsibilities to uphold the *Code* and adhere to its principles within the workplace.
- Training their employees on diversity, substantive equality, anti-discrimination, and de-escalation techniques, as well as on Indigenous cultural safety.
- Ensuring procedures exist to address situations where non-Indigenous customers harass Indigenous customers, and that staff are trained on these procedures.
- Recruiting and retaining Indigenous staff while ensuring a safe working environment free from discrimination.
- Promoting reconciliation as well as diversity and inclusion programming (e.g., through corporate events to honour National Indigenous People's Day, Indigenous History Month, and National Day for Truth and Reconciliation, or by providing reading materials in the workplace).
- Requiring staff to review OHRC policies and resources⁶¹ as well as other anti-racism training modules and reports about anti-Indigenous racism and Indigenous cultural competency/sensitivity, particularly those developed by local Indigenous organizations.
- Providing training in response to Call to Action 92 from the Truth and Reconciliation Commission.
- Instructing staff not to engage in targeted surveillance against Indigenous customers (e.g., telling staff not to follow Indigenous customers, review their receipts, or confirm the tags on their purchases were not altered, without reasonable suspicion).⁶²
- Incorporating non-discrimination indicators into performance reviews.

5.3. Indian Status cards

Businesses can follow wise practices to educate themselves and their staff about Status cards by:

- Providing a tax exemption at the point-of-sale.
- Placing visible signage that clearly states that Status cards are accepted as identification and that Status customers are welcome to inquire about tax exemptions.
- Training staff on Indian Status and the availability of tax exemptions at the point-of-sale in their workplace. This includes ensuring that employees are aware that Status does not expire.
- Training staff to be respectful and sensitive to Indigenous customers when Status is discussed.
- Training staff on the correct and respectful language to use when providing tax exemptions at the point-of-sale.
- Training staff to de-escalate situations if other customers are disrespectful to Indigenous people when Status is raised.
- Training staff on the procedures to follow if the tax exemption is provided at the point-of-sale. This includes not requesting more information than is required by the Ontario Ministry of Finance.⁶³
- Training staff to refer First Nations customers to the Ontario Ministry of Finance website (which explains the mail-in-rebate option) if the tax exemption is not provided at the point-of-sale.⁶⁴ Many First Nations people are not aware that an alternative option is available when a vendor does not offer an exemption at the point-of-sale.
- Developing a policy and training staff on accepting Status cards as a valid form of personal identification.

5.4. Third-party vendors

Third-party vendors may also discriminate against Indigenous people. When hiring third parties, such as personal shoppers or security guards, businesses should:

- Include clear language regarding anti-Indigenous racism competencies in contracts.
- Opt to work with vendors that recruit Indigenous candidates and that meet high thresholds regarding Indigenous cultural competency training, including on unconscious bias.
- Require third-party vendors to treat Indigenous customers with respect and to refrain from subjecting them to scrutiny, inappropriate commentary, unpleasant or slow service, or denial of service because of personally held negative views or stereotypes about Indigenous people.
- Develop and implement clear policies and procedures that provide effective remedies if discrimination by a third-party vendor occurs.

5.5. Inventory

Service providers such as retail businesses should not stock Indigenous-themed merchandise that may undermine the dignity of Indigenous people and poison the environment in a way that discourages or prevents them from equitable access to the service.

Businesses can prevent and respond to situations that involve discriminatory inventory by:

- Avoiding selling merchandise that contains derogatory terms related to Indigeneity, offensive imagery including names and logos of sports teams, and Indigenous-themed Halloween costumes.
- Ensuring that policies related to inventory and/or the types of merchandise sold recognize service providers' responsibilities under the *Code* to maintain environments that are free from discrimination.
- Researching the historical and cultural factors that underlie derogatory or offensive displays to better understand their harmful impacts on Indigenous people.⁶⁵

5.6. Cultural appropriation

Moving beyond legal obligations, when thinking about reconciliation and about the creation of safe spaces for Indigenous people as well as a climate of mutual respect, retail businesses are encouraged to be aware of cultural appropriation.⁶⁶

Businesses often sell products that many Indigenous people believe have been culturally appropriated. This includes sacred medicines (e.g., sage, sweetgrass) manufactured by non-Indigenous entities and sold in non-Indigenous businesses, or imitation Indigenous artwork (e.g., mixed-media art, clothing with Indigenous art-inspired imagery, beadwork) that is neither made nor sold by Indigenous artists. Although the Human Rights Tribunal of Ontario (HRTTO) has not yet fully ruled on the issue of the cultural appropriation of Indigenous cultural practices and images,⁶⁷ this issue is important to consider as cultural appropriation disrespects Indigenous people's agency over their cultural expression and perpetuates stereotypes,⁶⁸ which can create derogatory, exclusionary, and discriminatory environments.⁶⁹

Indigenous goods (products made by Indigenous people or businesses) can be sold by non-Indigenous stores. However, non-Indigenous businesses should create and maintain respectful environments that feel safe and inclusive to Indigenous people. To do so, businesses should consider whether the items they stock and sell can make Indigenous people feel unwelcome and disrespected, and avoid selling products that have been culturally appropriated.

Appendix I: What can you do if you think you've experienced discrimination?

1. Prioritize your safety

If you find yourself in a situation in which you believe you are experiencing discrimination, take precautions to protect your own safety. This may include removing yourself from the situation and contacting a local Indigenous organization for support (e.g., Friendship Centre). Once you are safe, you may wish to record the details of the incident in the format that best suits your needs (e.g., writing, audio).

2. Contact the Human Rights Legal Support Centre (HRLSC)

The HRLSC is working to help people assert and protect their rights by providing advice through telephone inquiries, assisting individuals to file human rights applications, and by representing applicants at mediations and hearings at the HRTO.

If you think you have experienced discrimination, you can start by using this HRLSC online tool to help determine whether you have experienced discrimination under the *Code*:

<https://hrlsc.on.ca/have-you-experienced-discrimination/>.

Additionally, you can contact the HRLSC or find more information about their services at:

- Toll Free: 1-866-625-5179
- TTY Toll Free: 1-866-612-8627
- Website: www.hrlsc.on.ca

The HRLSC provides culturally appropriate services for persons who self-identify as Indigenous through an Indigenous Services team that can offer services in Cree, Oji-Cree, Mohawk, and Ojibway. They can be reached by pressing 4 when calling their intake line at the above-noted

number. You can also find more information about the HRLSC's Indigenous Services team, including a brochure, here: <https://hrlsc.on.ca/indigenous-services/>.

3. Assert your rights under the Code

If you think you have experienced discrimination, you can file an application directly with the HRTO here: <https://tribunalsontario.ca/hrto/forms-filing/>

Additionally, you can contact the HRTO or find more information about their services at:

- Toll Free: 1-866-598-0322
- TTY Toll Free: 1-866-607-1240
- Website: www.hrto.ca
- Indigenous services: <https://tribunalsontario.ca/en/indigenous-services/>

4. Find more information

To learn more about your rights under the *Code*, you can:

- Read OHRC policies, guidelines, brochures, and other resources related to Indigenous peoples and human rights here: <https://www.ohrc.on.ca/en/key-priorities/indigenous-reconciliation>
- Read the HRLSC's how-to guides here: <https://hrlsc.on.ca/how-to-guides/>
- Find answers to frequently asked questions about the *Code* here: <https://hrlsc.on.ca/faq/>
- Watch this video by the HRLSC and OFIFC, entitled "Defending your human rights in Ontario – what you need to know.": <https://www.youtube.com/watch?v=S4JD7b7Uce0>
- Find information about the Indigenous Human Rights Program offered jointly by PBSC and OFIFC here: <https://www.probonostudents.ca/indigenous-peoples>

Endnotes

1 The Ontario Human Rights Commission (OHRC) was established as an arm's length agency of government in 1961 to prevent discrimination and to promote and advance human rights in Ontario. The OHRC is one pillar of Ontario's human rights system, alongside the Human Rights Tribunal of Ontario (HRTO) and the Human Rights Legal Support Centre (HRLSC). Learn more on the OHRC's website: <https://www3.ohrc.on.ca/en/about-us/who-we-are>

2 Pro Bono Students Canada (PBSC) is a national law student program whose mission is to provide free legal support to people and communities facing barriers to justice. Learn more on PBSC's website: <https://www.probonostudents.ca/who-we-are>

3 The Ontario Federation of Indigenous Friendship Centres (OFIFC) represents the collective interests of 31 Friendship Centres in cities and towns across Ontario. Friendship Centres are places for community members and Indigenous people living in urban spaces to gather, connect with one another and receive culturally based services. Learn more on the OFIFC's website: <https://ofifc.org/about/>

4 Ontario *Human Rights Code*, R.S.O.1990, c. H.19 [Code]; available online: <https://www.ontario.ca/laws/statute/90h19#BK33>.

5 Statistics Canada, "Indigenous population continues to grow and is much younger than the non-Indigenous population, although the pace of growth has slowed," (2022), *The Daily*; available online: <https://www150.statcan.gc.ca/n1/daily-quotidien/220921/dq220921a-eng.htm>

6 Statistics Canada, "Ontario [Province] (table). Indigenous Population Profile," *2021 Census of Population, Statistics Canada Catalogue no. 98-510-X2021001*, released June 21, 2023; available online: <https://www12.statcan.gc.ca/census-recensement/2021/dp-pd/ipp->

ppa/details/page.cfm?Lang=E&DGUID=2021A000235&SearchText=Ontario&HP=0&HH=0&GENER=1&AGE=1&RESIDENCE=3

7 Truth and Reconciliation Commission [TRC], *Honouring the Truth, Reconciling for the Future Summary of the Final Report of the Truth and Reconciliation Commission of Canada*, (2015) at 336; available online: https://ehprnh2mwo3.exactdn.com/wp-content/uploads/2021/01/Executive_Summary_English_Web.pdf.

8 Ontario Human Rights Commission [OHRC], *Teaching human rights in Ontario - A guide for Ontario schools*, (2013) at Appendix 1; available online: <https://www.ohrc.on.ca/en/teaching-human-rights-ontario-guide-ontario-schools/appendix-1-glossary-human-rights-terms>
<https://www.ohrc.on.ca/en/teaching-human-rights-ontario-guide-ontario-schools/appendix-1-glossary-human-rights-terms>

9 OHRC, *Human Rights at Work – Third Edition*, (2008) at section III.2; available online: <https://www3.ohrc.on.ca/en/iii-principles-and-concepts/2-what-discrimination>

10 Nova Scotia Human Rights Commission [NSHRC], *Working Better to Serve All Nova Scotians*, (2013) at 10; available online: <https://humanrights.novascotia.ca/sites/default/files/crp-report.pdf>

11 OHRC, *An Intersectional Approach to Discrimination: Addressing Multiple Grounds in Human Rights Claims*, (2001) at 3, which quotes: M. Eaton, “Patently Confused, Complex Inequality and *Canada v. Mossop*” (1994) 1 Rev. Cons. Stud. 203 at 229; available online: https://www3.ohrc.on.ca/sites/default/files/attachments/An_intersectional_approach_to_discrimination%3A_Addressing_multiple_grounds_in_human_rights_claims.pdf

12 Madam Justice L’Heureux-Dubé writing for the minority in *Canada (A.G.) v Mossop* [1993] 1 SCR at 645.

13 *Code*, *supra* note 4, section 10 (1).

14 OHRC, *Guide to your rights and responsibilities under the Human Rights Code*, (2013), at 10; available online: <https://www3.ohrc.on.ca/en/guide-your-rights-and-responsibilities-under-human-rights-code-0>

15 OHRC, *supra* note 8, “Harassment”

16 *Ibid.*, at Students’ Handouts – Fact Sheet #4

17 Indigenous people are also protected from discrimination in areas of federal jurisdiction through the *Canadian Human Rights Act* (R.S.C., 1985, c. H-6; available online: <https://laws-lois.justice.gc.ca/eng/acts/h-6/>). Examples of organizations covered by the federal law are chartered banks, airlines, federal government departments and agencies as well as First Nations governments and band councils. Determining what issues may be dealt with at the Human Rights Tribunal Ontario or the Canadian Human Rights Tribunal can be complex, particularly regarding potential discrimination that occurs on-reserve.

18 For more information see: OHRC, *Guide to your rights and responsibilities under the Human Rights Code*, (2013); available online: <https://www.ohrc.on.ca/en/guide-your-rights-and-responsibilities-under-human-rights-code-0>

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<https://www.cbc.ca/news/canada/thunder-bay/kenora-racist-social-media-posts-1.5925748>

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https://www.researchgate.net/publication/318747970_Shopping_while_Black_Black_consumers'_management_of_racial_stigma_and_racial_profiling_in_retail_settings

23 *Ibid.*

24 *Ibid.* at 6

25 *Johnson v. Halifax Regional Police Service*, 2003 CanLII 89397 (NS HRC) at para 57, cited in *Pieters v. Toronto Police Services Board*, 2014 HRT0 1729 (CanLII) at para 93; available online:

<https://www.canlii.org/en/on/onhrt/doc/2014/2014hrto1729/2014hrto1729.html>.

26 Jon Thompson, “Ojibway man takes to Tiktok over treatment at Urban Planet in Thunder Bay,” *APTN News*, July 14, 2022; available online: <https://www.aptnnews.ca/national-news/ojibway-man-takes-to-tiktok-over-treatment-at-urban-planet-in-thunder-bay/>

27 *Radek v. Henderson Development (Canada) and Securiguard Services (No. 3)* [Radek], 2005 BCHRT 302; available online:

<https://www.canlii.org/en/bc/bchrt/doc/2005/2005bchrt302/2005bchrt302.html?autocompleteStr=2005%20bchrt%20302&autocompletePos=1>

28 Security guards are not law enforcement, they are private individuals who may only arrest individuals under citizen’s arrest powers. Their powers originate from s.494 of the *Criminal Code* (*Criminal Code*, R.S.C., 1985, c. C-46; available online: <https://laws-lois.justice.gc.ca/eng/acts/c-46/>) and legislation like the *Trespass to Property Act* (*Trespass to Property Act*, R.S.O. 1990, c. T.21; available online:

<https://www.ontario.ca/laws/statute/90t21>). For more information, see: Government of

Canada, Department of Justice, *What You Need to Know About Making a Citizen's Arrest*, webpage, retrieved on December 17, 2024 from: <https://www.justice.gc.ca/eng/rp-pr/other-autre/wyntk.html>; and Justice for Children and Youth, *Hot Topics – Security Guards*, webpage, retrieved on December 17, 2024 from: <https://jfcy.org/en/rights/hot-topic-security-guards/>.

29 *Radek*, *supra* note 27

30 OHRC, *supra* note 19

31 Samantha Beattie, “Indigenous man a longtime Giant Tiger customer – until he says he was falsely accused of stealing,” *CBC News*, February 21, 2022; available online: <https://www.cbc.ca/news/canada/toronto/indigenous-customer-giant-tiger-falsely-accused-1.6356810>

32 *Smallboy v. Grafton Apparel*, 2021 BCHRT 15; available online: <https://www.canlii.org/en/bc/bchrt/doc/2021/2021bchrt15/2021bchrt15.html>

33 OHRC, *supra* note 19

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36 *Code*, *supra* note 4, at Preamble

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39 *Code*, *supra* note 4, at section 13 (1)

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43 *Retail Sales Tax Act* R.S.O. 1990, c. R. 31, *O. Reg. 317/10*; available online: <https://www.ontario.ca/laws/regulation/100317>

44 *Ibid.* at section 9

45 *Ibid.* at section 8

46 Union of BC Indian Chiefs, *They Sigh or Give You the Look: Discrimination and Status Card Usage*, (2022) at 21 and 73-75; available online <https://drive.google.com/file/d/1jPTLpicFLj-ld6gFW-HiYmWmyVXZRYXq/view>

47 *Ibid.* at 75

48 *Ibid.* at 50

49 Naomi Sayers, “Tax Exemption,” *Kwetoday*, January 9, 2011; available online: <https://kwetoday.com/2011/01/09/tax-exemption/>

50 Christopher Curtis, “Mohawks are getting tired of explaining to cashiers why they don't have to pay QST,” *Montreal Gazette*, September 9, 2015; available online: <https://montrealgazette.com/news/mohawks-are-getting-tired-of-explaining-to-cashiers-why-they-dont-have-to-pay-qst>.

51 Kate Rutherford, “Whitefish River First Nation family wants apology after security called to remove them from Sudbury store,” *CBC News*, January 5, 2024; available online: <https://www.cbc.ca/news/canada/sudbury/whitefish-river-first-nation-family-wants-apology-after-security-called-to-remove-them-from-sudbury-store-1.7074843>

52 “Morris Home Hardware facing human rights complaint,” *CBC News*, September 12, 2014; available online: <https://www.cbc.ca/news/canada/ottawa/morris-home-hardware-facing-human-rights-complaint-1.2765005>

53 “Morris Home Hardware owner sorry for not honouring tax exemption,” *CBC News*, September 29, 2014; available online: <https://www.cbc.ca/news/canada/ottawa/morris-home-hardware-owner-sorry-for-not-honouring-tax-exemption-1.2781745>

54 *Josephs v. Toronto (City)*, 2016 HRT0 885; available online: <https://www.canlii.org/en/on/onhrt/doc/2016/2016hrto885/2016hrto885.html>

55 When a Status card is lost, stolen, or destroyed, Indigenous Services Canada may issue a Temporary Confirmation of Registration Document (TCRD), which is valid for 1 year. The TCRD also confirms registration under the *Indian Act* and eligibility for certain rights, benefits, and services but individuals seeking to use the TCRD may be required to present one additional piece of valid acceptable identification with the individual's picture to make sure the name matches on the temporary document. For more information, see Government of Ontario, *supra* note 42.

56 Government of Canada, Indigenous Services Canada, *Is your status card valid?*, webpage. Retrieved on November 21, 2024, from: <https://www.sac-isc.gc.ca/eng/1100100032424/1572461852643>

57 Government of Ontario, ServiceOntario, *Acceptable identity document*, webpage. Retrieved on November 21, 2024, from: <https://www.ontario.ca/page/acceptable-identity-documents>

58 *Harry v. Trail Apothecary Ltd.*, 2004 BCHRT 238; available online: <https://canlii.ca/t/h09pt>. The BC Human Rights Tribunal found that discrimination occurred when a pharmacist refused to directly bill NIHB for wrist braces because the pharmacy had a policy of not billing for medical equipment for less than \$300. The pharmacy could not show that accommodating the applicant would result in undue hardship, partially because they already had a practice of billing NIHB directly for medication.

59 While the *Code* protects people from discrimination, it does not require the creation of “safe spaces” more broadly. Nevertheless, the wise practices listed in this section can both create an inclusive, safe space for Indigenous people that is better in tune with principles of reconciliation and, in some instances, prevent discrimination under the *Code*.

60 OHRC, *supra* note 8, at Students’ Handouts – Fact Sheet #5

61 OHRC e-Learning modules, such as “Call it out: racism, racial discrimination and human rights” and “Human Rights 101 – Third Edition”, are available here:

<https://www.ohrc.on.ca/en/our-work/online-learning>. Additionally, OHRC publications on the subject of race and related grounds are available here: <https://www.ohrc.on.ca/en/your-rights/code-grounds/race-and-related-grounds>, while publications related to Indigenous Reconciliation are available here: <https://www.ohrc.on.ca/en/key-priorities/indigenous-reconciliation>.

62 Radek, *supra* note 27

63 Government of Ontario, *supra* note 42

64 *Ibid*.

65 OHRC, *Human Rights-Based Approach to Policy and Program Development*, (2024) at Appendix; available online: <https://www3.ohrc.on.ca/en/human-rights-based-approach-policy-and-program-development-0>

66 “Cultural Appropriation of Indigenous Peoples in Canada,” *The Canadian Encyclopedia*, April 18, 2018 (Last edited on July 20, 2020); available online:

<https://www.thecanadianencyclopedia.ca/en/article/cultural-appropriation-of-indigenous-peoples-in-canada>

67 *Lindsay v. Toronto District School Board*, 2020 HRT0 496, at para 23; available online: <https://www.canlii.org/en/on/onhrt/doc/2020/2020hrto496/2020hrto496.html>. In this recent case about cultural appropriation, the HRT0 recognized the ways in which a tribunal may take judicial notice of the ways in which Indigenous people have been marginalized and disadvantaged in Canadian society. This is necessary to show that the use of Indigenous symbols and images constitutes substantive discrimination.

68 “Why Cultural Appropriation is Disrespectful,” *Indigenous Corporate Training Inc.*, October 4, 2020; available online: <https://www.ictinc.ca/blog/why-cultural-appropriation-is-disrespectful>

69 OHRC, *supra* note 61