

Resource: Undue Hardship

Employers, service providers, unions and housing providers have a legal duty to accommodate people's beliefs and practices to the point of undue hardship.

Fulfilling the duty to accommodate requires that the most appropriate accommodation be determined and provided, short of undue hardship. The most appropriate accommodation is the one that most:

- Respects dignity (including autonomy, comfort, and confidentiality)
- Responds to a person's individualized needs
- Allows for integration and full participation.

Some degree of hardship in an accommodation may be expected – it is only if the hardship is “undue” that the accommodation will not need to be provided. In many cases, it will not be difficult to accommodate a person. Accommodation may simply involve making policies, rules and requirements more flexible. While doing this may involve some administrative inconvenience, inconvenience by itself is not a factor for assessing undue hardship.

The *Code* prescribes only three considerations when assessing whether an accommodation would cause undue hardship:

- cost
- outside sources of funding, if any
- health and safety requirements, if any.
-

No other considerations can be properly taken into account under Ontario law. Therefore, factors such as employee morale or preferences are not valid considerations in assessing whether an accommodation would cause undue hardship.

The nature of the evidence required to prove undue hardship must be objective, real, direct and, in the case of cost, quantifiable. The organization responsible for accommodation must provide facts, figures and scientific data or opinion to support a claim that the proposed accommodation in fact causes undue hardship. A mere statement, without supporting evidence, that the cost or risk is “too high” based on speculation or stereotypes will not be sufficient.

Before making a determination of undue hardship, please consult with the Office of Human Rights & Harassment by contacting humanrights@humber.ca