

Navigating Indigenous-Specific Hiring: Insights From The Ontario Human Rights Commission's New Policy Statement And Guide



In today's evolving workplace, many employers are committed to fostering equity, diversity and inclusion, including with a particular focus on supporting Indigenous communities. This can involve initiatives aimed at hiring Indigenous peoples. However, the legal question arises: can employers lawfully prefer Indigenous applicants for certain positions?

In May 2025, the Ontario Human Rights Commission (OHRC) released a [Policy Statement](#) and the [Context Guide](#) on Indigenous-specific hiring. These documents provide helpful guidance for employers seeking to navigate the complexities of hiring for Indigenous-specific positions while adhering to the [Ontario Human Rights Code](#) (the "Code").

The OHRC's policy and guide address the ongoing challenges faced by Indigenous peoples, including systemic discrimination and under-representation in employment sectors, while providing guidance on implementing fair and culturally appropriate hiring practices for Indigenous-specific positions.

Understanding the Legal Framework

The *Code* prohibits discrimination in employment based on various protected personal characteristics, known as prohibited grounds of discrimination. While "Indigeneity" is not expressly a prohibited ground of discrimination in Ontario, Indigenous persons are protected by the *Code* generally through the ground of ancestry, and the intersections of ancestry, race, place of origin, ethnic origin, and/or creed.

In addition, as the OHRC highlights in the policy, the *Code* protects Indigenous-specific preferential hiring practices in certain circumstances, through the use of special programs (Section 14) or special employment provisions (Section 24).

Special Programs

Special programs under Section 14 of the *Code* are designed to promote substantive equality by supporting disadvantaged groups. Special programs require a clear and

specific rationale, as well as adequate eligibility criteria. A clear and specific rationale is crucial to help individuals and organizations – who may see special programs as discriminatory – understand their purpose, how the program is meant to be used, and how success will be evaluated. As such it is important for employers to develop the eligibility criteria from the rationale, as well as to clearly communicate them to candidates.

Jurisprudence across Canada has generally supported special programs that are well documented and grounded in data, aiming to address historical and ongoing disadvantages. For instance, in *Sauve v. Ininew Friendship Centre*¹, a hiring preference for Indigenous peoples was deemed a special program under the Ontario Code, as it was designed to provide equal opportunities and promote Indigenous culture. Similarly, in *Miller v. Union of BC Performers*², the British Columbia Court of Appeal affirmed the decision to support preferential admission of Indigenous people to a writing workshop for Indigenous people, among other designated groups, promoting inclusivity and acknowledging the importance of such initiatives. The Court emphasized that special programs supporting Indigenous people do not violate the province's human rights legislation as they are essential in remedying the effects of colonialism and historical trauma, while promoting substantive equality.

Special Employment

Section 24 of the Code, for its part, sets out special employment provisions, enabling organizations serving Indigenous interests to prioritize hiring Indigenous candidates when it is a reasonable and *bona fide* requirement of the job.

Special employment provisions have been less frequently adjudicated in Ontario. However, British Columbia cases offer useful insights and guidance. In *Shiozaki v. Aboriginal Mother Centre Society*³, the British Columbia Human Rights Tribunal dismissed a complaint alleging discrimination of non-Indigenous people against an organization dedicated to supporting Indigenous mothers and children. The Tribunal emphasized the legitimacy of requiring that the board of directors and senior leadership be comprised entirely of Indigenous peoples, aligning with the organization's mandate to serve Indigenous communities.

Key Insights for Employers from the Policy and Guide

- The policy takes the position that employers should confirm claims of Indigenous identity and/or lived experience in hiring for Indigenous-specific positions, in addition to self-identification. This is a response to recent incidents of alleged identity fraud by non-Indigenous people. The policy nonetheless cautions that there is a tension between “confirming” and “determining”, and that the complex nature of Indigenous identity requires a tailored approach that avoids “one-size-fits-all” solutions.
- Indeed, the policy expressly highlights the risk of relying on underinclusive definitions of who is Indigenous and overly rigid evidentiary requirements to substantiate a claim, thereby further perpetuating marginalization.
- Employers are encouraged to work closely with local Indigenous communities to establish appropriate confirmation processes, ensuring they are culturally sensitive, and tailored and proportional to the specific rational and needs of each position.

Conclusion

While navigating the legal landscape of preferential hiring can be complex, employers have pathways to lawfully implement initiatives that support Indigenous employment.

By aligning hiring practices with the principles of the Ontario *Human Rights Code* and collaborating with Indigenous communities, employers can contribute to the broader goals of reconciliation and substantive equality, while also aligning their employment strategies with their values of equity, diversity and inclusion.

Footnotes

1 2010 HRTO 720.

2 2022 BCCA 358 affirming 2020 BCHRT 133.

3 2020 BCHRT 10.

The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.

Authors: [Judith Parisien](#), [Camille S. Sigouin](#)

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