

The Saskatchewan Human Rights Code, 2018 **and its impact on the Education Sector** **– A Primer for Board Members**



SASKATCHEWAN
HUMAN RIGHTS
COMMISSION

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Disclaimer

This presentation provides information about the Saskatchewan Human Rights Code and the work of the Saskatchewan Human Rights Commission.

The content does not constitute or replace legal advice.

Roadmap

- Legislation overview
- Prohibited Grounds of Discrimination
- Human Rights law and its impact on Boards of Education
- Human Rights Complaints – process
- Remedies

Boards of Education must comply with:

- ***The Education Act, 1995 and Regulations***
- ***The Saskatchewan Human Rights Code, 2018***
- ***Canadian Charter of Rights and Freedoms***
- ***The Local Authority Freedom of Information and Protection of Privacy Act***
 - ***Boards of Education are Local Authorities***
- ***The Saskatchewan Employment Act***
 - ***Boards of Education are Employers***

The Saskatchewan Human Rights Code, 2018

Objectives of the Code:

- Promote the inherent dignity and equal rights of all members of the human family
- Further public policy that every person is free and equal in dignity and rights
- Discourage and eliminate discrimination

The Saskatchewan Human Rights Code, 2018

being

Chapter S-24.2 of the *Statutes of Saskatchewan, 2018*
(effective October 1, 2018)

The "Prohibited Grounds"

- Religion
- Creed
- Marital Status
- Family Status (1993)
- Sex
- Sexual Orientation (1993)
- Disability (Mental disability added: 1989)
- Age
- Colour
- Ancestry
- Nationality
- Place of Origin
- Race or Perceived Race
- Receipt of Public Assistance (1993)
- Gender Identity (2014)

Areas of Protection

- Employment
- Education
- Public Services
- Rental Housing
- Sale of Property
- Contracts
- Publications
- Occupations
- Trade unions
- Professional associations

Duty to Accommodate

Treating everyone the same all the time can sometimes lead to discrimination.

In order to treat people fairly, we sometimes need to treat them differently.

This is the concept of accommodation.

Accommodation: "reasonable adjustments to rules, policies, practices, or physical environments to eliminate or reduce negative impacts on people based on protected grounds, thus providing equal access and participation."

Boards of Education and

The Saskatchewan Human Rights Code, 2018

Board must be mindful not to discriminate against:

- ***Students***
- ***Employees (Boards of Education are employers)***
- ***Parents***
- ***Members of the Public***

The Saskatchewan Human Rights Code, 2018

Right to Education

13 (1) Every person and every class of persons has the right to education in any school, college, university or other institution or place of learning, vocational training or apprenticeship without discrimination on the basis of a prohibited ground other than age.

(2) Nothing in subsection (1) prevents a school, college, or university or other institution or place of learning from following a restrictive policy with respect to enrollment on the basis of sex, creed, religion or disability if:

- (a) it enrolls persons of a particular sex, creed or religion exclusively;
- (b) it is operated by a religious order or society;
- (c) it enrolls persons with a disability

The Saskatchewan Human Rights Code, 2018

Discrimination in Employment Prohibited

16 (1) No employer shall refuse to employ, refuse to continue to employ or otherwise discriminate against a person or class of persons with respect to employment, or a term or condition of employment, on the basis of a prohibited ground.

Charter of Rights and Freedoms

s.15(1) Every individual is equal before and under the law and has the right to the equal protection and equal protection of the law without discrimination and, in particular without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

The Education Act, 1995 - s. 142

Every student has the right “to receive instruction appropriate to that person’s age and level of educational achievement”

Note: that this is the right of the student.

Student's Right to Education

The Education Act, 1995 section 85(1)(g):

It is the duty of the board to determine what school students attend.

Student's Right to Education – Case Law

Moore v. British Columbia (Education) [2012] SCJ No. 61 (Supreme Court of Canada):

" . . . if the evidence demonstrates that the government failed to deliver the mandate and objectives of public education such that a given student is denied meaningful access to the service based on a protected ground, this will justify a finding of *prima facie* discrimination."

Accommodation Process

School division must:

- Be alert to potential needs even where an accommodation request is not made
- Accept requests for accommodation in good faith
- Note that this applies to accommodation of students, parents, staff, and members of the public.

Duty to Accommodate

Example: Accommodation of disability for a student

School division must consider all reasonable possibilities including:

- purchase of equipment
- changes to classroom environment
- provision of personnel
- changes to schedules
- specialized staff training
- modifications to programs
- modifications to class assignments or exams

These sorts of accommodations are sometimes commonly referred to as "adaptations".

Duty to Accommodate

Accommodation of disability can mean a requirement on the party asking for the accommodation to provide updated medical information, upon request. Also, the individual has an obligation to cooperate and try reasonable proposed accommodations.

Case by Case Basis – Individual Facts

SSBA Legal will always provide advice to school divisions regarding individual circumstances and fact scenarios.

Every situation is different, just as every individual is different.

One fact can change everything.

Policy Reviews will be done, upon request, to ensure legal compliance with legislation.

The Education Sector: Most Commonly Encountered Prohibited Grounds of Discrimination

**Colour,
Ancestry,
Nationality**

Religion

**Sexual
Orientation**

Disability

Age

**Gender
Identity**

**Family
Status**

**Race or
Perceived
Race**

Undue Hardship

School divisions must accommodate to the point of undue hardship.

Undue hardship exists when the steps required to accommodate are so extreme, onerous, or difficult that it is unreasonable to expect the school division to implement the accommodations.

Undue hardship will always be considered on a case by case basis, but the onus will be on the school division to prove undue hardship. Cost alone is not undue hardship.

Human Rights Complaints

If an individual believes that they have been discriminated against on the basis of ANY of the prohibited grounds of discrimination, they might proceed to file a complaint with the Saskatchewan Human Rights Commission.

What could happen next?

If a complaint is found to be in contravention of the Code, possible statutory remedies to a complaint could be:

- I. \$20k for dignity and payment of damages.**
- I. In the case of employment, payment for lost wages is possible.**
- II. As per section 39 of the Code, possible policy changes ordered.**
- III. Furthermore, Section 39(1) allows for Courts to order renovations to ensure a building or facilitate is accessible.**
- IV. Depending on the case, damage to reputation is possible.**

Action, Learning and Change

- **Any organization or system can have inequity and systemic discrimination within its environment, or culture**
- **At the same time, any organization or system can be working simultaneously to improve and change the status quo**

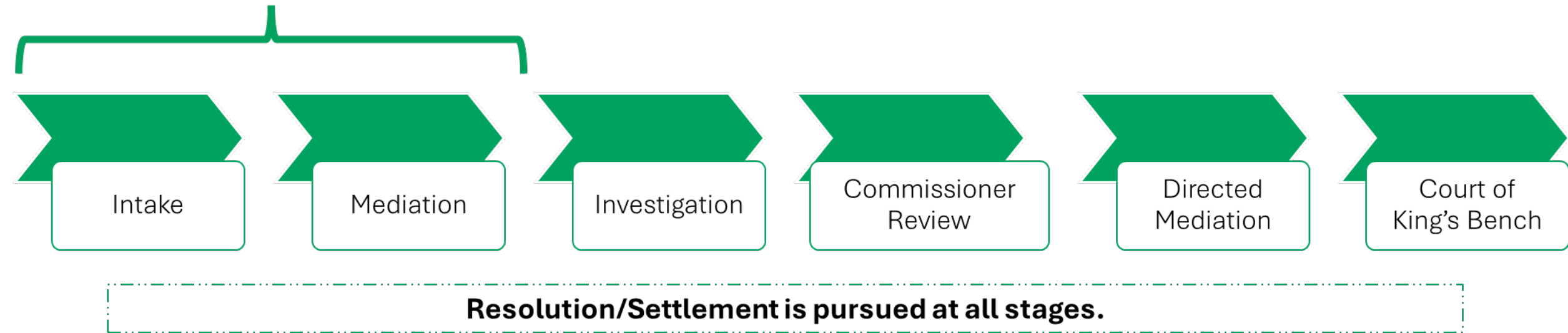
The goals of the SHRC are *not* punitive, but preventative and educational. We are available to consult and collaborate.

Making a Human Rights Complaint

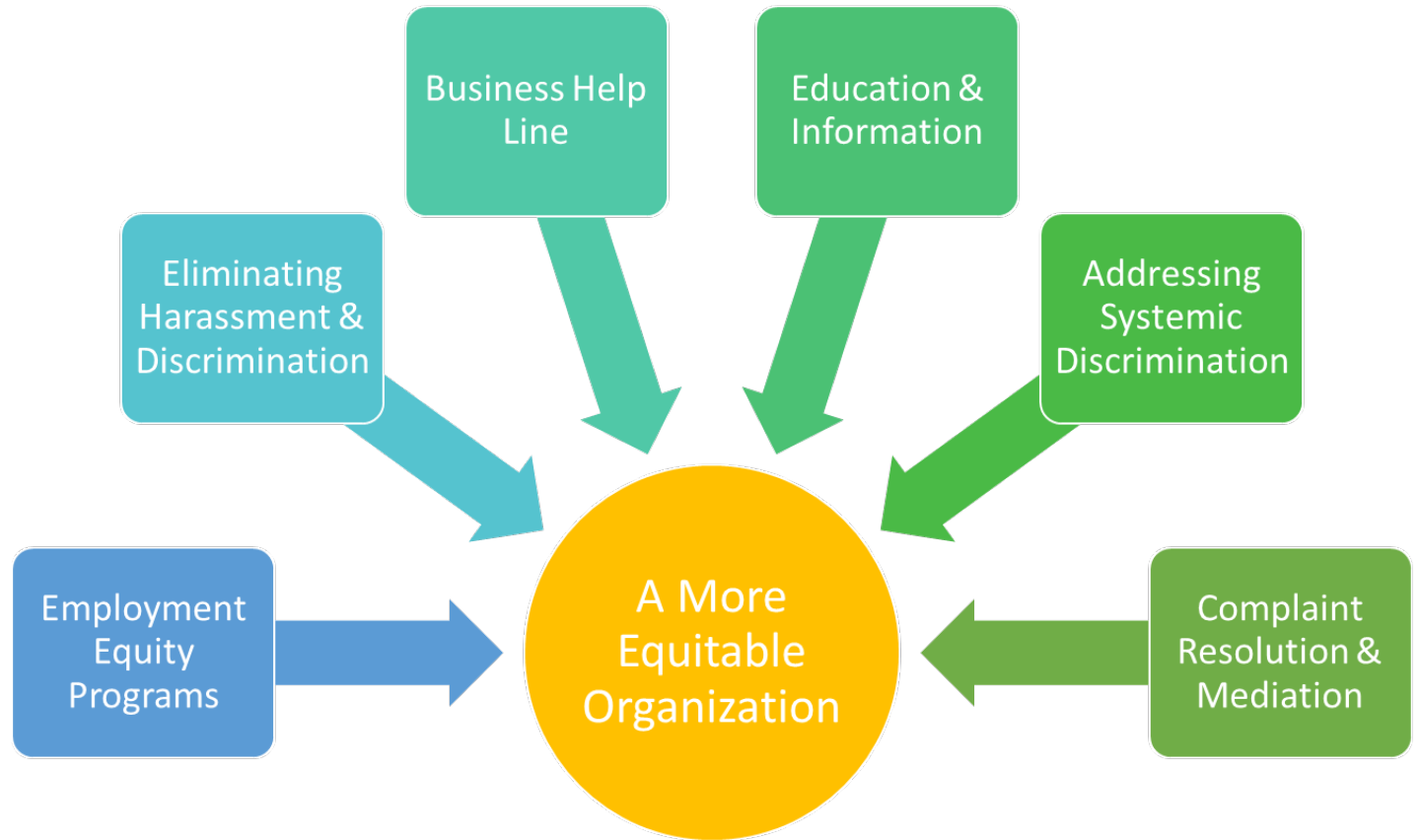


Making a Human Rights Complaint

~80% of cases resolved here



**What we do,
how we can
help.**



FULL REPORT

- ☐ www.saskatchewanhumanrights.ca
- ☐ Education and Resources tab
- ☐ Publications
- ☐ Report available in PDF and HTML formats



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**EQUITABLE
EDUCATION**
FOR STUDENTS WITH READING DISABILITIES

SSBA Legal Services – we are here to help

- Requests are sent to legalservices@saskschoolboards.ca Each request will be picked up by a member of our Legal Services team with expertise in that area and capacity to take the matter on.
- The Legal Services team member has carriage of that file until all issues are resolved.
- Please provide enough detail in your request so that we have a general nature of what the request is about.

Questions?



Thank you



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