



You can respect human rights and control the sale of intoxicating substances

YOUR RIGHTS, YOUR OBLIGATIONS

Guidelines under *The Human Rights Code* for retailers controlling the sale of products containing an intoxicating substance.

Introduction

This guide is the Manitoba Human Rights Commission's interpretation of provisions of *The Human Rights Code* with respect to the control and sale of intoxicating substances. It is subject to the specific language of *The Code*, and to interpretations by adjudicators and the courts.

What is *The Human Rights Code*?

The Human Rights Code is Manitoba's provincial human rights law. It is administered by The Manitoba Human Rights Commission. It protects individuals and groups in Manitoba from discrimination.

The Human Rights Code prohibits discrimination in a number of activities, including services accessible to the public or to a section of the public, such as retail services. Protected characteristics under *The Human Rights Code* include ancestry or race, and physical and mental disability.

What is “discrimination” under *The Human Rights Code*?

It is discriminatory to treat someone differently, to their disadvantage and without reasonable cause, on the basis of a protected characteristic, such as ancestry or age, in a protected activity, such as services. Discrimination includes failing to reasonably accommodate special needs that are based on a protected characteristic, such as disability.

What are intoxicating substances?

Intoxicating substances, including inhalants and non-potable alcohol, are contained in a range of retail products. The sale of products containing intoxicating substances is controlled under provincial legislation. (See *The Liquor Control Act*, *Safer Communities and Neighbourhoods Act* and *Minors Intoxicating Substances Control Act*.)

Effects of abuse of intoxicating substances, such as solvents, can include memory problems, reduced impulse control, and damage to brain, liver and kidney function.

How can I refuse sale of a product containing an intoxicating substance and comply with *The Human Rights Code*?

Retailers controlling the sale of products containing intoxicating substances must comply with *The Human Rights Code*.

The Human Rights Code says that no person shall discriminate in the provision of services unless *bona fide* (“in good faith”) and reasonable cause exists for the discrimination.

Discrimination includes refusing the sale of products to customers based on their ancestry, disability or other protected ground, or based on the customer’s association with someone who has a protected characteristic, rather than on the basis of personal merit.

What is reasonable cause to refuse to sell a product containing an intoxicating substance to a customer?

Reasonable cause to refuse the sale of a product containing an intoxicating substance may include reasonable evidence that the customer is intoxicated, is someone identified by police authorities as a substance abuser, or is purchasing the product for use by themselves or another person as an intoxicating substance.

The Human Rights Code prohibits discrimination in services on the basis of disability. Some disabilities cause speech and mobility impairment. Merchants must exercise reasonable care when refusing the sale of products containing intoxicating substances to a customer they believe to be intoxicated to ensure that the customer’s symptoms are not due to a disability unrelated to intoxication.

What are examples of human rights complaints involving refusal to sell a product containing an intoxicating substance?

Example 1

The complainant, an Aboriginal woman, alleged that the retailer's decision not to sell her a product containing an intoxicating substance was based on her ancestry.

The retailer admitted that staff refused sale of the product to the complainant. Staff did not suspect the complainant was a substance abuser, but were concerned that the customer was purchasing the product for use by abusers in the vicinity.

The retailer said there were many substance abusers in the area where the store was located, and that the police had warned them that if intoxicants were sold to abusers, the media would be contacted and the retailer would be charged.

Before the conclusion of the investigation by the Manitoba Human Rights Commission, the retailer made an offer of settlement acceptable to the complainant and the case was closed as settled.

Example 2

Mr. Friday, an Aboriginal man, went to a Superstore in Regina to pick up some items for his niece. A stroke nine years earlier had left him with a slight limp and a minor speech impediment.

When he placed his items to be purchased on the checkout counter, a security guard removed a cleaning product containing an intoxicating substance, and told Mr. Friday that he was drunk and should leave the store.

Mr. Friday tried to tell the security guard that he did not drink, and asked to see a manager. The manager came and said he accepted the security guard's assessment of the situation.

Mr. Friday left the store and got into his car, which had a handicap sticker and was parked in a spot reserved for disabled parking. The security guard followed him and told him to get out of his car as he was too drunk to drive and that police had been called.

The police arrived and determined that Mr. Friday was sober, but required that he apologize to the retailer.

Mr. Friday filed a human rights complaint alleging that he had been discriminated against based on his Aboriginal ancestry. A Human Rights Tribunal found that the security guard had no evidence at the time of the refusal of service that Mr. Friday was intoxicated and that Mr. Friday has “suffered a great deal of humiliation at the hands of the security guard.”

The employer was held to have some of the responsibility for Mr. Friday’s treatment. Two problems were identified with respect to the retailer’s policy. The first was that it gave authority to security guards “to remove intoxicated people from the store without giving these guards proper training in how to assess intoxication.” The second problem was that the store manager had deferred to the judgement of the security guard, and did not independently assess the situation.

Westfair Foods Ltd. was ordered to pay \$5000.00 in compensation to Mr. Friday for injury to his dignity and self-respect.

Friday v. Westfair Foods Ltd. (2002), 45 C.H.R.R. D/218 (Sask.H.R.T.)

What are policy considerations in controlling the sale of products containing intoxicating substances?

A retailer developing a policy with respect to the sale of products containing intoxicating substances should ensure that it does not:

- exclude members of a particular group based on impressionistic assumptions; or
- treat one group more harshly than others without justification.

Retailers should also ensure that a policy is not unnecessarily broad.

Retailers are encouraged to seek assistance from those with expertise in the identification of persons who abuse intoxicating substances, so that their policy does not adversely affect customers with disabilities unrelated to the use of such substances. Training for staff in assessing intoxication and in applying the policy is also recommended.