

THE MANITOBA  
**HUMAN RIGHTS**  
COMMISSION



LA COMMISSION DES  
**DROITS DE LA PERSONNE**  
DU MANITOBA

***Service Animal Public  
Consultation Report  
February 2015***

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*“... we are one unit: a handler and a dog.  
When they disallow entry for the dog, it is  
discriminating against a person with a  
disability.”*

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## *Executive Summary*

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The Manitoba Human Rights Commission recognizes that the role of a service animal is evolving. Since *The Human Rights Code* was amended in June 2012 to replace the term “guide dog” with “service animal”, there appears to be growing confusion about the right of individuals who use service animals to be free from discrimination, including guaranteed access to public establishments, and the corresponding obligations of employers, service providers and landlords, to ensure that freedom.

The Manitoba Human Rights Board of Commissioners’ Issues Committee identified this as a growing concern and a working group was set up to organize public consultations (Appendix 1).

Participants from across the province in three public consultations spoke openly about their experiences, challenges and needs. The Commission committed to compiling those voices in this report. It is our hope that by distributing this report widely, the Commission will continue to engage stakeholders in the issues outlined in this report.

By reviewing the participants’ answers to a number of questions posed by the Commission during the consultation, a number of key issues emerged.

- Misunderstanding and confusion about what *is* a “service animal”
- Difficulties accessing public spaces
- Difficulty balancing the needs of service animal users and rights of employers, service providers and owners
- A need for clarity about what *is* a “service animal”
- Clarify obligations as they relate to service animals, and other animals that provide comfort, therapy or emotional support.
- Clarify the rights and responsibilities of service animal users
- Service animals should be consistently identified
- Governments need to get involved
- Stakeholders should partner and coordinate with each other about setting standards around the identification of service animals
- Any training programs should be consistent but to what standard?

This report concludes with suggested actions for the Commission and recommendations for collaborative actions that are aimed at eliminating barriers and enabling equality of opportunity for all. The Commission hopes that others will join its efforts in addressing this important issue for Manitobans.

## ***Definitions for the purpose of this report:***

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- a. “animal assistant”- A dog or other animal that is relied on by a person with a disability; includes a service animal but may also include other untrained animals.
- b. “*The Code*” - *The Human Rights Code (Manitoba)*, C.C.S.M. H-175, the provincial law prohibiting discrimination and setting out rights and responsibilities to protect human rights in the areas of employment, services available to the public, rental of premises etc.
- c. “Commission” - The Manitoba Human Rights Commission, an independent agency of the Government of Manitoba responsible for administering *The Human Rights Code (Manitoba)*
- d. “protected characteristic” - One of the grounds listed in section 9 of *The Human Rights Code (Manitoba)*, such as ancestry age or disability, that are protected from discrimination in certain areas (i.e. employment, services available to the public, rental of premises, etc.)
- e. “reasonable accommodation” – The process of revising or adjusting a rule, standard, policy, or physical space, that is based on a need related to a protected characteristic, without imposing an undue hardship or burden on the employer, service provider, landlord etc, to ensure equality of opportunity for all.
- f. “service animal”– A dog or other animal that is trained to assist a person with specific disability related need(s) (see also definition in *The Human Rights Code*).

## *Introduction*

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*In 1987 The Code defined a guide dog as “a dog that serves as a guide or leader for a visually impaired person and has been trained for that purpose.”*

*When The Code was amended in 2012 the term “guide dog” was replaced with “service animal,” defined as “an animal that has been trained to provide assistance to a person with a disability that relates to that person’s disability.”*

Today, use of the broader term “service animal” acknowledges that the role of these animals is evolving. Service animals, especially dogs, are increasingly being relied upon to meet the specialized needs of individuals with disabilities other than visual or hearing disabilities. The evolution continues.

The role of a guide dog must never be undervalued. Even today barriers still exist for individuals who are blind and/or deaf and use service animals. It appears, however, that it is individuals with invisible disabilities using service animals who currently experience significant barriers and whose rights are not well understood by employers, service providers and landlords.

There is not a great deal of public awareness of service animals that assist individuals with disabilities such as post traumatic stress disorder, autism or epilepsy. For the employer, service provider or landlord, the confusion often arises from more than a lack of awareness and relates to needing clarity about their obligations under *The Code*. They have questions: What is a service animal? What is the difference between a service animal and a therapy animal or comfort/companion animal? What kind of information are we entitled to ask for? This confusion appears to lead to the question: Is there a way to identify animals that fall within the protection of *The Code* and those which are not?

The Commission has received an increasing number of inquiries and complaints relating to access and the accommodation of service animal users. The Commission recognizes that there appears to be confusion around the rights of service animal users, the rights of individuals with disabilities who rely on untrained animals for comfort, therapy, and/or emotional support and the corresponding obligations of employers, service providers and landlords under *The Code*.

The Commission's Board of Commissioners identified the need to consult with the public about this issue and invited individuals with disabilities who rely on animal assistants, service providers, employers and rental property owners to engage in discussions about their needs, concerns and ideas about how to build understanding and awareness about the rights and obligations in *The Code* as they relate to the use of service animals.

## ***Background***

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*The Code* is the provincial human rights law that protects against discrimination in specific areas such as employment, services available to the public and housing. Discrimination under *The Code* is treating a person or group differently, to their disadvantage on the basis of a protected characteristic, such as ancestry, age or disability, without reasonable cause to do so. Failure to reasonably accommodate a special need based on a protected characteristic is also discriminatory.

The role of the Commission is to promote and educate about human rights in this province and to enforce the anti-discrimination provisions of *The Code* through its complaint process. Anyone, including a group or organization, can make a complaint if they believe that a practice or policy unreasonably discriminates against them. The Commission investigates those complaints to determine if there is enough evidence to warrant a public hearing of the complaint. The Commission also mediates complaints facilitating voluntary resolutions and remedies between the parties to a complaint. The Commission has both policies and guidelines reflecting its interpretation of *The Code*.

The definition of a service animal remains an evolving issue in Canada and the Commission has accordingly noted the direction taken by human rights agencies in Canada and in the United States, in applying the protections set out in *The Code*.

### ***The Human Rights Code and Disability***

A disability may include a condition that is visible (for example, a visual impairment or mobility restriction) but can also include a condition that is not apparent or is hidden from view (for example, a learning disability chronic fatigue syndrome or post traumatic stress disorder). In some cases, the symptoms related to an invisible disability may go through phases where they are detectable or apparent, but also through phases where the individual appears asymptomatic or in remission. Because invisible disabilities are not “seen,”

many individuals with these disabilities can also experience another barrier. This being reluctance by some of the public to acknowledge the existence of their disability.

***The Human Rights Code, service animals and Reasonable Accommodation***

*The Code* prohibits discrimination against a person with a mental or physical disability, “or related circumstances including reliance on a service animal, a wheelchair or any other remedial appliance or device”. This includes failing to reasonably accommodate the specialized needs of a person with a mental or physical disability, which can include their use of a service animal.

Restaurants, stores, schools, taxi companies, hospitals and other establishments that provide services to the public therefore have a duty to accommodate individuals with disabilities who rely on service animals, unless it would be an undue hardship for them to do so. This means they must consider whether their policies or practices may result in discriminating against service animal users.

According to *The Code*, public establishments must allow service animal users access to all areas otherwise accessible to the public, unless such access would create an undue hardship. For example, a service animal user should be permitted into a hospital room, clinic, or cafeteria, despite public health or other legislation that as a general rule excludes animals from these premises. There may be rare exceptions where it would be unreasonable or an undue hardship to allow access to a service animal user to a hospital operating room or other sterile environment. Similarly, there might be rare exceptions where it would be an undue hardship for a taxi driver with a severe allergy to dogs to transport a service animal user, but even in those circumstances, the taxi driver or company would be expected to have considered, in advance, policies and procedures that would enable the service animal user to obtain alternate transportation.

Similarly, landlords cannot refuse to rent to service animal users, unless they can demonstrate that it would be an undue hardship for them to do so. Since a service animal is defined in *The Code*, there is a clear distinction between a “pet” and a “service animal” and therefore “no pet” policies should not be broadly applied so as to include service animals. Hotel or motel operators should also carefully consider the situations in which they require an additional damage deposit or charge an additional cleaning fee to patrons.

An employer, service provider, or landlord claiming that it would be an undue hardship to accommodate the needs of a service animal user, as set out above, must be able to demonstrate the undue hardship through actual evidence, and cannot rely solely on anecdotal evidence.

The Commission employs a balancing of rights approach when considering whether reasonable accommodation has been provided and will always look at the steps taken to search for and consider accommodation, and will also evaluate the substance of the accommodation offered.

### ***The Consultation Process/Scope***

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After receiving a number of questions and concerns about service animals and when and where they should be given access, the Commission decided to hold a consultation with all relevant stakeholders in an attempt to address these issues.

To help with the consultation, the Commission developed a consultation paper which included a number of questions. The responses from stakeholders to these questions has helped the Commission to assess what additional steps and information could be taken to ensure that the public is aware of the rights and the responsibilities in *The Code* as they relate to service animals.

The Commission started the consultation process by consulting with the Government of Manitoba, Disabilities Issues Office to create a contact list of individuals who use animal assistants as well as service providers and other individuals interested in this topic. The Commission also made a special effort to contact a sampling of school boards, restaurant owners, property managers and government workers.

The consultation paper was developed (*Appendix 3 Consultation Paper*) and posted on the Commission's website and on its Facebook page, along with information on how to register to attend the public consultation. The information was also posted on the Government of Manitoba Residential Tenancies Branch website and an article was written for the Winnipeg Real Estate News. Due to the response, a second consultation was scheduled in Winnipeg and a third in Brandon, Manitoba.

The purpose of the consultations was to obtain feedback from the community on the issues identified in the consultation paper. Over 100 people participated in three consultation sessions. Participants included service animal users, as well as individuals with disabilities who rely on animals for comfort, therapy and emotional support. Participants also included owners and executives of restaurants, representatives of hospitals, schools, property management companies, and municipal and provincial governments. Participants were given



a series of questions based on the consultation paper and the agenda in advance, in order to ensure a constructive discussion as possible (*Appendix 4*).

Two consultations were held in Winnipeg on Wednesday, September 24, 2014. Another consultation was held in Brandon on Thursday, October 2, 2014.

Due to the overwhelming response of Manitobans interested in attending the consultations and the limited space available, the public was encouraged to submit their thoughts in response to the Commission's questions, in writing, to the Commission.

Email responses from those who could not attend have been added to the content of this report as have been any post-consultation comments from participants received by the Commission.

### ***Sharing Perspectives:***

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The following key issues were identified based on the input and comments provided by participants during the consultation process. Italicized sentences are direct quotes provided by participants. (Detailed responses can be found in *Appendix 5*).

#### **Question 1: What barriers do service animal users face?**

***“Even the most traditional service animal users face barriers.”***

##### **1. Misunderstanding and confusion about what a “service animal is.”**

Participants identified a general lack of awareness of service animals as their primary concern. All participants agreed that service animal users have both rights and responsibilities. Many service animal users suggested they are tired of trying to educate the public themselves.

##### **2. Difficulties accessing public spaces**

Many service animal users recounted examples of situations in which they had difficulty accessing public spaces such as restaurants and hotels and shared the rationale used by the service provider to justify barring their access. Some specific examples were: restaurants who say a dog is not allowed access because

food is being served; taxi companies with drivers who refuse to transport service animals because of “allergies”; hotel/motels who do not provide rooms to service animal users relying on health and safety or other legislation; and theatres and other entertainment venues who present challenges to service animal users when making bookings. Many thought the simple message to convey to the public was, “Service animals are allowed wherever the public is invited.”

*“The public doesn’t know the basic guidelines for service dogs, which makes going out in public an experience in anxiety.”*

*“I carry copies of the act and the law.”*

**Question 2: What are the concerns of employers, service providers and rental property owners?**

*“We don’t have a rule book so we can assess a situation and make everyone comfortable”*

**1. A need for clarity about what is a “service animal”**

Landlords, restaurant owners/operators and school board representatives expressed that if service animals were easily identifiable, their corresponding human rights obligations would be as well. Many participants requested a clearer definition so that they could distinguish between a service animal and an animal that provides comfort, therapy or emotional support. These participants felt caught in the middle and were not sure what questions they could ask of individuals who use animal assistants.

**2. Difficulty balancing the needs of service animal users and rights of employers, service providers and owners**

Participants identified the issue of competing rights. Many participants gave examples of situations in which other competing needs should be considered against the right of a service animal user to access. For example: the need to manage allergies and fear of dogs; the need for prepare the premises (workplace or otherwise) for a service animal user; the need for information about the extent of care and control the service animal user has over the animal; the need to be sure an animal meets the definition of a service animal when service animal identification and harnesses are available online; and the fear of opening the

floodgates based on the “me too” factor (“if he can have a dog here, why can’t I?”) Participants identified that assessing these needs can present challenges to enabling a clear right of access to service animal users.

*“It’s not just the concern about the individual who needs the service animal; it’s the concern of how the other students in the school are going to react.”*

*“With an actual certified service animal, everyone involved is much more cooperative. Some documentation to provide assistance to landlord would be very valuable to ensure pets are separate from service animal issues.”*

### **Questions 3: What can the Commission do?**

*“We no longer want to be the ones facing individuals with animal assistants and having confrontations with them about what a service animal is.”*

#### **1. Clarify obligations as they relate to service animals, and other animals that provide comfort, therapy or emotional support.**

Participants agreed that the Commission has a role to play in defining what type of animal constitutes a service animal and clarifying when other animal assistants should be accommodated, if at all.

#### **2. Clarify the rights and responsibilities of service animal users**

Participants overwhelmingly agreed that it is important to distinguish between a service animal, an animal that provides comfort, therapy or emotional support, and a pet. Participants specifically requested that the Commission’s publications be simplified to avoid misinterpretation of the obligations relating to these various types of animal assistants. They requested advice and even sample questions that could be asked or policies employed to avoid confrontations that often result in formal complaints to the Commission or directly to or within their organizations.

*“The Commission or Government must help us deal with those who are trying to circumvent the rules to get pets into places they should not be.”*

### **3. Educate the public**

Participants suggested that education or awareness materials should be targeted towards certain groups. In addition, education should be provided to some professional groups such as human resource specialists, doctors and others in the medical field, and teachers or school administrators, on the rights and obligations in *The Code* relation to the use of service animals.

*“You can get a doctor that writes a note to say just about anything. I think there needs to be some education of the medical profession.”*

#### **Question 4: What about standardizing training and identification of service animals?**

*“Isn’t there anything identifying, a piece of paper or document or something, that truly can identify these animals. I don’t get why that’s such a difficult thing.”*

*“There may be a divergence on how to address the problem, but everyone wants to protect rights.”*

#### **1. Service animals should be consistently identified**

Many participants strongly supported a standard means of identifying service animals, which could include a certification process that would result in service animal users carrying a card or other form of identification to demonstrate that they rely on a service animal. They suggested that this would help avoid confrontations in public and assure everyone that service animal users are welcome. Service animal users had mixed views about this issue but most were cautious. Their concerns ran from the cost associated with a certification and renewal process to having to constantly show identification at every store or venue they enter. It appeared that participants were at times confused regarding the difference between identification and certification.

#### **2. Governments need to get involved**

Participants noted that when it comes to service animals, some provincial legislation is outdated. This leads to confusion. Some participants suggested that more government regulation around the certification or identification of service animals would be helpful to avoid unnecessary confrontations. Many participants suggested that the government could develop a process to certify

service animals so that they would be consistently identified and that this process should include consideration of how the animal has been trained. Some participants clarified that whether or not an animal is professionally trained should not matter as long as the animal is well trained.

*“Service animals should be under control at all times. The animal should be harnessed, leashed, or tethered, unless these devices interfere with the work or task that they perform, or the individual’s disability prevents using these devices. In those instances, the individual relying on the animal must maintain control of the animal through voice, signal or other means.”*

### **3. Stakeholders should partner and coordinate with each other about setting standards around the identification of service animals**

Participants suggested that the government should consider developing a standardized identification process for service animals. Suggestions included partnering or utilizing: Assistance Dogs International, which certifies training facilities not animals; St. John’s Ambulance, noted for its therapy dog training and the “good neighbour test”; and/or MSAR’s Courageous Companions (*see Appendix 5*), an organization involved with the PTSD program in the Canadian Forces. The Government of Manitoba could also work with other provincial governments to develop and implement national standards which would make travelling from province to province with a service animal much less difficult.

### **4. Training programs should be consistent but to what standard?**

Most participants agreed that service animals must be trained to acceptable standards. The question was raised, “What are acceptable standards and who sets them?” The response was mixed. Some suggested that service animals should be professionally trained and follow professional standards. Some participants suggested that self trained or non-professionally trained animals do not meet the definition of service animal in *The Code*. Others suggested that an individual with a disability should be free to train their animal in the manner of their choice. Still others suggested that the focus should move away from who does the training to creating a standard to which all service animals are trained as it relates to the behaviour and public conduct of the animal.

## *Conclusions*

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It should come as no surprise that service animal users continue to face barriers, which include challenges gaining access to public spaces. Many employers, service providers and landlords appear to lack understanding about the use of service animals generally, and may be confused about their responsibilities under *The Code*.

These groups appear to want clear direction on their legal obligations as they relate to service animal users, including advice about the information they are entitled to ask for and specific examples about what might be reasonable and non-discriminatory conduct in certain situations. The need for clarity seemed to relate in large part to the increasing prevalence of individuals who rely on animals for comfort, therapy or emotional support, that might not meet the definition of “service animal” in *The Code*, who request accommodation in certain circumstances. These groups also appear to be seeking confirmation that service animal users have obligations relating to maintaining care and control of their animals in public.

Participants agreed that more public education is necessary and that the Commission has a responsibility to assist in this effort.

There is no doubt that education is an important element, but there are other factors that must also be addressed. For example, is the current definition of service animal sufficient? How is this definition interpreted? If service animals are trained, who trains them? Are training standards needed or not?

Service providers, for the most part, want to do the right thing but find a lack of clarity results in confusion and sometimes confrontation with service animal users. Service providers want to avoid confrontation, but to do this they need to know how to identify a service animal and what questions may be appropriate to ask.

Some service providers quoted provincial legislation as the basis for refusing service animals on their premises.

Competing rights are too often used as an excuse for not respecting service animal users’ rights – from allergy concerns to a fear of dogs.

Persons with invisible disabilities using service animals face even more barriers due to the lack of awareness of what service animals are now able to do.

Other identified barriers were hidden costs and the requirement to make special arrangements because of the presence of a service animal.

Most service animal users agree it is up to them to be responsible owners.

It was suggested that building awareness about service animals often falls on the shoulders of service animal users who have begun to suffer from “education fatigue.”

Finally, it was clear that there are differing opinions on whether it would benefit the public to have a process whereby the provincial government or other body took responsibility for certifying a service animal or service animal user, providing an identification card that could then be used by a service animal user to gain access in employment, services available to the public and housing for example. Reactions were mixed about whether there was a related role for government to play with respect to setting training standards for service animals, but what was clear was that participants agreed that some form of standardized identification of service animals could be of assistance to service animal users and the public.

The criteria for meeting the definition of “service animal” was not, however, discussed in detail and again, it was suggested that the Commission address this point.

Unlike some other provinces, Manitoba does not have any laws which provide for standardized identification of service animals. In both Alberta and British Columbia, a person can apply to the provincial government for a certificate/identification indicating the dog is a service animal, if the animal has been trained by an approved school. (*Appendix 5 and 6 Synopsis of the Laws affecting the Registration of Service Animals in British Columbia and Alberta*). Whether or not this type of legislation is successful is not known, but some service animal users and service providers, employers and rental property owners consider this a step forward.

## ***Recommendations***

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During the consultations, the Commission committed to reviewing the input from participants with a view to developing recommendations or action items to address what it identified as needs by the public.

The consultations provided an informative and useful context for understanding the scope and breadth of the barriers faced by service animal users, and the confusion and uncertainties experienced by employers, landlords and service providers.

Because the Commission is mandated by the provincial government to administer *The Code*, which includes educating Manitobans about human rights and prevention of discrimination in certain areas, it is incumbent that the Commission respond to many of the key issues raised during the consultations. The Commission has acted accordingly, developing detailed action items that it is in the process of implementing.

The recommendations that follow also involve the Commission's involvement but are dependent on collaboration between other stakeholders or groups.

### **Action Items:**

1. The Commission will provide this report specifically to the Government of Manitoba and request that the Government review existing legislation to ensure that it is consistent with the definition of “service animal” as it is defined in *The Code*.
2. The Commission will develop public awareness materials that provide information about service animals and the extent to which they are used by individuals with disabilities. The materials will specifically focus on the rights and responsibilities of service animal users under *The Code* and the corresponding obligations of employers, service providers such as restaurant and retail owners, and landlords and condominium boards.
3. The Commission will develop a series of Fact Sheets that are topic specific. These topics may include: What is a service animal? Who uses *service animals*? How do I distinguish between a service animal and an animal that provides comfort, therapy or emotional support? Rights to access and accommodation of service animals in public establishments such as restaurants, stores, theatres, and public transportation.



4. The Commission will continue to review and update, as necessary, its existing policy and Guideline as it relates to service animals.
5. The Commission will share this report and its other work on service animals with the Canadian Association of Statutory Human Rights Agencies (CASHRA) to initiate further discussion about this issue on a national level.
6. The Commission will ensure that information about service animals is integrated into all applicable Commission education and outreach activities.

### **Recommendations for Collaborative Action:**

The Commission, representatives of the Government of Manitoba and selected stakeholders develop a working group to further discuss the elimination of barriers for service dog users. The Commission would assist by drafting terms of reference for this working group. Initial topics for discussion may include determining if educational programs will be sufficient to address key issues identified during the consultation process and whether further steps should be taken to consider a certification or standardized identification or training process for service animals or service animal users.

1. The Commission and organizations such as the Retail Council of Canada, Manitoba Hotel Association, school boards, Professional Property Managers Association and the Manitoba Restaurant and Food Services Association work together to build understanding about the use of service animals and related legal obligations under *The Code*.
2. The Commission and the Government of Manitoba work together to develop an awareness campaign that may include producing advertisements/public service announcements for television and radio about the role of service animals and the protections under *The Code*.

### ***Acknowledgements***

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The Commission would like to thank those who contributed to this consultation process.

## *Appendices*

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### **1. *Issues Committee and Working Group:***

Issues Committee: Joan Hay, Yvonne Peters, Azim Jiwa, Tanya Buschau, George Sarides, Patricia Knipe, Jayson Laplante

Working Group: Azim Jiwa, Tanya Buschau, George Sarides, Patricia Knipe, Jayson Laplante, Isha Khan, Heather Unger, Joshua Shaw, and Pam Roberts

### **2. *Public Consultation Paper June 10, 2014***

#### **Introduction**

The Manitoba Human Rights Commission is asking for your views on a range of issues relating to the use of service animals. The purpose of this Consultation Paper is to obtain feedback from community stakeholders including users of service animals as well as employers, landlords and service providers that will allow the Commission to assess what additional steps may be taken to ensure that the public is aware of both the rights and the responsibilities involving individuals who use service animals.

#### **Why is The Manitoba Human Rights Commission reviewing the issue of service animals and accommodation?**

Manitoba, like many other provinces and territories, has human rights laws preventing discrimination against service animal users. The Commission frequently receives inquiries and complaints where there is an allegation that a person who uses a service animal for their visible or invisible disability has not been reasonably accommodated. However, often there are situations where a landlord, employer or service provider realizes they have an obligation to accommodate a service animal user but they are unsure as to whether or not a particular animal is in fact a service animal. We are aware that in other jurisdictions there have been instances of individuals suggesting that their pets are service animals and we want to take proactive and preventative steps to prevent confusion. Also, we believe that the public needs to learn more about service animals beyond the traditional guide dogs used by people with visual disabilities.

Unlike some other provinces, Manitoba does not have any laws which provides for certification or identification of animals deemed to be service animals. In both Alberta and British Columbia a person can apply to the government for certificate/identification indicating the dog is a service animal, if it has been trained by an approved school.

The Manitoba Human Rights Commission is considering what, if anything, we can do to increase awareness of rights and responsibilities regarding the use of service animals, so as to reduce barriers that interfere with the accommodation of those who require service animals and to clarify what is considered a service animal.

### **What is the Manitoba Human Rights Commission?**

The United Nations Universal Declaration of Human Rights declares that "All human beings are born free and equal in dignity and rights" and recognizes and respects the value of all people. In Manitoba, this ideal has been translated into law by *The Human Rights Code* ("*The Code*") which protects individuals and groups in Manitoba from discrimination. The Human Rights Commission is an agency created by the Provincial Government in accordance with *The Code* to accept, mediate and investigate complaints, as well as to present complaints before an independent adjudicator. It also promotes respect for human rights and educates the public about human rights.

### **What are the protections under *The Human Rights Code*?**

Discrimination under *The Code* is treating a person or group differently, to their disadvantage and without reasonable cause, on the basis of an *applicable characteristic*, such as ancestry, age or disability, including reliance on a service animal. It also includes failure to accommodate special needs related to these characteristics.

*The Code* applies to activities such as rental of premises, employment and services (such as schools, restaurants, public transportation, community centres and restaurants).

### **What are the current protections under *The Human Rights Code* with respect to discrimination regarding individuals who use service animals?**

Currently, *The Code* prohibits discrimination on the basis of disability, including reliance on a service animal, unless the discrimination is reasonably necessary.

It is very rare that it would be acceptable to discriminate against a person for using a service animal.

For example, even if a landlord has a “no pet” policy, such a policy should not apply to service animals. This also means that services available to the public should generally allow service animals even where animals are usually not allowed, such as restaurants and public transportation.

### **What is a service animal under *The Code*?**

“Service Animal,” is defined in *The Code* as “an animal that has been trained to provide assistance to a person with a disability that relates to that person’s disability.” The disability can be visible (example: visual impairment) or invisible (example: epilepsy).

In its policies the Commission sets out factors to consider in determining whether or not a particular animal meets the definition of a service animal. Factors include:

1. Does the animal work or perform a task for a person with a disability that relates to the person's disability?
2. Has the animal been individually trained to do work or perform a task for a person with a disability that relates to the person's disability?

Examples of work or tasks referenced above include:

- a. guiding a person who is blind or visually impaired;
- b. alerting a person who is deaf or hearing impaired;
- c. pulling a wheelchair;
- d. alerting or protecting a person who is having a seizure;
- e. reminding a person to take their medication;
- f. calming a person with Post Traumatic Stress Disorder during an anxiety attack.

Based on the above considerations, it is acknowledged that service dogs remain the most common form of service animal. Dogs or other animals that solely provide comfort or emotional support do not fall under subsection 9(2) (1) of *The Code*.

## **Is there other provincial legislation dealing with Service Animals?**

*The Service Animals Protection Act* (not administered by the Manitoba Human Rights Commission) makes it an offence to touch, feed or interfere with a service animal. In that Act, "service animal" means an animal;

- a. trained to be used by a person with a disability for reasons relating to his or her disability; or
- b. trained to be used by a peace officer in the execution of his or her duties; or
- c. trained to be used by a person who is authorized by a peace officer to assist peace officers in their duties.

### **Questions to consider**

1. What barriers do users of service animals face?
  - a. What type of locations/situations present the greatest challenges?
2. What questions or concerns arise for people providing services, housing or employment to those who use service animals?
3. What can the Commission do to ensure that everyone is aware of their rights and obligations?
4. Is not having provincial standards and identification for service animals problematic?
  - a. Would it be beneficial to have provincial standards and identification?
  - b. Would there be any concerns with having provincial standards and identification?
  - c. Who would be the appropriate authority to enforce/issue such identification? Government? Other?
  - d. What factors should be considered when determining appropriate standards?

The Commission is inviting you to participate in a roundtable community discussion to further discuss this issue:

When: Wednesday September 24, 2014 2pm-4pm

Where: To be determined

Please RSVP no later than August 29, 2014

Toll free: 1-888-884-8681;

[hrc@gov.mb.ca](mailto:hrc@gov.mb.ca); [www.gov.mb.ca/hrc](http://www.gov.mb.ca/hrc)

**Please help us keep this event scent free and advise if you require any accommodation such as large print or a sign language interpreter.**

### 3. *Service Animal Consultation Agenda*

1. Welcome & overview of *The Code* (5 min) – Azim Jiwa Executive Director, The Manitoba Human Rights Commission
2. Brief overview of discussion paper & introduction of facilitator (5 min) – Yvonne Peters, Chairperson, Manitoba Human Rights Board of Commissioners
3. Overview of facilitated discussions to follow (5 min)  
Sarah Lugtig, Facilitator (Winnipeg), Isha Khan, Facilitator (Brandon) and Legal Counsel, The Manitoba Human Rights Commission
4. Questions:
  - a. What barriers do users of service animals face? (20 min)
    - What type of locations/situations present the greatest challenges?
      - a) What questions or concerns arise for people providing services, housing or employment to user service animals? (20 min)
      - b) What can the Commission do to ensure that everyone is aware of their rights and obligations? (20 min)
      - c) Is not having provincial standards and identification for service animals problematic? (25 min)
    - Would it be beneficial to have provincial standards and identification?
    - Would there be any concerns with having provincial standards and identification?
    - Who would be the appropriate authority to enforce/issue such identification? Government? Other?
    - What factors should be considered when determining appropriate standards?
5. Sum up of conversation & next steps (5) – Isha Khan
6. Closing Remarks (5 min) – Azim Jiwa

#### ***4. Answers to Questions asked during consultation***

##### **Question 1: What barriers do service animal users face?**

*“Even the users of the most well-known service animals face barriers.”*

**Themes: Key issues developed**

**General lack of public awareness and understanding as to what is a “service animal?”**

- Those with invisible/mental disabilities face most lack of awareness by the public.
- Service animal users have rights as well as responsibilities
- Responsibility of people who use animals to know their rights and obligations, including keeping up training and knowing what these animals can and cannot do.
- Newcomers would benefit from education – many have never seen a service animal.
- Message: Service animals are allowed wherever the public is invited.
- Many service animal users, although willing to explain the use of their dog, admit to “education fatigue.”

**Service animal users continue to face barriers**

- Restaurant staff - the staff is transient, management needs to give constant reminders.
- Still hear that I can’t bring in an animal as food is being served.
- Cab companies - some citing allergies; others cultural and religious beliefs.
- Hotel/motels - many still believe that the Motel Services Act gives them the right to refuse service animals...often quoted.
- Entertainment industry - Service animal users have to make special arrangements for floor room for a dog to lie down
- Paying more for having a service animal in some circumstances.
- Service animal users say they communicate needs and then those needs are often ignored (explaining that a service animal is present and still get a small transport vehicle or a driver with “allergies.”

*“The public doesn’t know the basic guidelines for service dogs, which makes going out in public an experience in anxiety.”*

## **Question 2: What are the concerns of Providers of Services?**

**Themes: *Key issues developed***

### **The need for clarity**

- Need checklist of questions-clarity or a tool of sorts.
- Struggles with definitions: Need to understand the difference between service animals and comfort animals and what rules apply separately to different ones.
- Sector specific guides would be helpful. How to verify a service animal?
- Looking for someone to take a leading role.

### **Competing needs and rights**

- Schools and health care workers especially concerned with competing rights (allergies) and also fear of dogs, which is very real to some young people. Need to know what can be asked regarding training.
- There is a need to be involved before a student, employee or tenant shows up with animal - preparation/assessment time.
- Obligations to look after service animal if user cannot.
- Accountability - Who legally holds responsibility if something goes wrong?
- Service providers, employers and rental property owners are aware and concerned about the existence of online certification, identification and harnesses etc.
- Granting accommodation causes problem with other staff – process secretive and needs to be more open to aid understanding
- Comfort animals can cause problems - no way of knowing how the animal is trained, often don’t understand why and hard to explain. Need to weigh against fears and allergies of tenants.
- There is also the “me too” factor.
- The real underlying issue is the projected potential of a problem arising from an individual entering a public premise with an animal that is, in actuality, not a service animal.



- Some schools have a mandatory 3-4 month transition period which helps with the education part but can frustrate the users of animal assistants.  
*“It’s not just the concern about the individual who needs the service animal; it’s the concern of how the other students in the school are going to react.”*

*“With an actual certified service animal, everyone involved is much more cooperative, some documentation to provide assistance to landlord would be very valuable to ensure pets are separate from service animal issues.”*

### **Questions 3: What can Commission do?**

*“We no longer want to be the ones facing individuals with animal assistants and having confrontations with them about what is a service animal.”*

**Themes: Key issues developed**

**Define the distinction between service animals, therapy animals, and comfort animals.**

- If MHRC has jurisdiction, they are obligated to come up with a definition which could avoid unnecessary confrontations or having to file a complaint to the Commission; Definition should include what is and what is not a service animal.
- What to know regarding accommodating a person whose animal does not fall under the definition of a “service Dog.”

**Clarify/simplify the rights and responsibilities related to reliance on service animals.**

- Some service providers, employers and rental property owners (especially landlords and restaurant owners find that the Commission’s mediation process is skewed against them. It costs money, hurts their reputation and causes hardship simply by the time it takes to be in the process.) Ideally clear definitions and guidelines would prevent everyone from having to go to the Commission, especially if there is good will on both sides.
- Service animal users say they would like guidelines in particular circumstances, specifics like having enough space in a vehicle or taking the dog to toilet.

- Guidelines would help with immediate problems and may help avoid confrontations.
- The Commission should do something proactive.... all learn in different ways so something visual something in print and face to face. We can access diff people in the public in different ways.
- Currently the guidelines offered are vague and can be misinterpreted.
- Guidelines should include what to say to other employees, students who also think they can bring their pet animal because of the presence of a service animal.
- Get the media involved – most people don't have time to read every law.
- Consider solutions on how to deal with people who misuse human rights.

*“Over the years it is problematic and people demand a free license, what does it do, is it trained, has problems for people who have disabilities and people who don't and are taking advantage.”*

*“We must avoid an untrained animals or a disguised pet getting into an altercation with a service animal or being disruptive to other people.”*

*“It is Important to be able to identify service animal versus pet.”*

### **Target specific groups for education**

- Human Resource specialists need education as that is usually the first step when a company deals with a complaint.
- Education of our medical or paramedical professionals. Specific guidelines are needed with different categories (schools, restaurants, apartments, stores, transportation etc), including questions to ask and a suggested outline for a model policy (like your suggested harassment policy), which would include accommodating service animals.

*“I mean you can get a doctor that writes a note to say just about anything. I think there needs to be some education of the medical profession”*

- service animals provide an extremely valuable means of assisting in those who use them, but the doctors need to be able to understand what is the need that's being addressed by the service panel and that it is in fact something that is a need that justifies the service animal, so any guidelines you can provide on that would be helpful too.

**Questions 4: Provincial Standards or Identification (Benefits? Concerns? Who oversees? Factors to be considered?)**

*“Isn’t there anything identifying, a piece of paper or document or something that truly can identify these animals. I don’t get why that’s such a difficult thing.”*

**Themes: Key issues developed**

**Governments need to get involved**

- Perhaps the Department of Agriculture, which has the “Animal Care Act”, could be involved.
- Noted that public health legislation is out of date with respect to service animals. It only permits guide dogs for deaf and blind. They are in process of updating regulations and service animals will likely be addressed and would be willing to work with The Commission so legislation uses similar language.
- Few service providers want more regulation but from a business perspective it would prove clarity if they could ask someone with an animal if they had a service animal can they see a card or ID.
- MPI has a definition called medical necessity and it hinges on how much benefit is there to that treatment and whether it is ongoing or something chosen.
- Follow the lead of Alberta and enact specific legislation regarding identifying service animals (*Appendix 5 and 6 Synopsis of the Laws affecting the Registration of Services Animals in British Columbia and Alberta*).
- British Columbia and Alberta issue a card, so you come to them and prove your standard and then they’ll issue a provincial card for that.
- With this, the act/regulation needs to clearly state that those who choose to train their own service animal, or if they choose to have their service animal trained by a non- certifiable training school,

they have to take full responsibility for the behavior of their service animal, and this needs to be advertised, marketed, all service animal users need to be aware of this.

***“Service animals should be under control at all times. The animal should be harnessed, leashed, or tethered, unless these devices interfere with the work or task that they perform, or the individual’s disability prevents using these devices. In those instances, the individual relying on the animal must maintain control of the animal through voice, signal or other means.”***

### **Partnership and coordination among stakeholders**

- Assistance Dogs International has standards recognized in many countries. The standard is to perform three tasks not natural to the dog. It doesn’t matter what the illness or injury is, the dog has to perform three tasks. Many of the schools adhere to those today and go far beyond that.
- National standards are needed when travelling - suggest collaborating with Human Rights Commissions across the country.
- A therapy dog is certified through St. John’s program and has to pass the good neighbour test. It is asking whether the dog will be safe in the hospital but the test says this dog is going to be fine in a public space.
- Courageous Companions MSAR is the largest provider of service animals in Canada and also runs the PTSD program for the Canadian Forces. MSAR actually did a study of 100 retailers dealing with service dogs. The number one problem that everyone has is a right of access, and identifying a real service dog. MSAR has standardization that all of dogs have exclusive jackets that the public cannot purchase and are bought from “K9 Storm” (*Appendix 6 Company Profile of K9 Storm*). It also has an online registry which is national. With a card, you punch in that number on MSAR’s web site and you’ll find this is actually a certified service dog.

### **Standardization for training service animals**

- Assistance Dogs International certifies training facilities, not dogs. 14 training centres in Canada are accredited by Assistance Dogs International.

- Need rules for self - trained animal to support a person with a disability.
- There are dogs that force a person to *concentrate on something else for preventative reasons*. There are dogs trained in prevention regarding suicide or nightmares. You can't know what exactly is involved in that training. There has to be clear definition and where the *categories fall*. *There is a lot of variation* in the comfort dog piece.
- There is no formal training plan or certification for a self-trained animal to support a person with a disability even if it does what other service animal can do.
- *A person with a disability should be able to choose to train their service animal in the manner of their choice*. A service animal is a tool that an individual uses to help them with their disability, like any health treatment.
- Individuals have the right to choose to have the animal to be trained by them or by a certified service animal school anywhere in the world, even if the trainer or service school is not listed on a standardized provincial training center.
- Any standard would have to delineate the difference between a service dog, comfort dog, and maybe a dog used for therapy
- The most important thing is standardization.
- National Standards are needed for travelling.
- To deal with the various types of service animals the standards would be too vague.

### **Certification of service animals/Identification of service animals**

- Service providers say that identification is important so the animal can be where they are supposed to be.
- Identification would assist when some people just put their dog in a harness and try to take them into establishments. Harnesses and vests are available on line and it is difficult on the staff.
- Confusion regarding the difference between identification and standards.
- Cautions from service animal users about any type of identification and standardization.
- Any identification or standard documentation must be affordable.
- Any type of paperwork needs to have a renewal process.

*“With certification and identification they open up avenues that we don’t want to go down once the dog is retired.”*

- The international standard requires a medical document stating that I am a person with disability and require the dog.

*“My first letter stated my disability, but I found this intrusive. Ensure another barrier is not created.”*

- Concerns that if in Manitoba, individual's that use service animals were required to use similar ID cards such as the ones in B.C. and Alberta, that this may cause a certain degree of harassment. One could imagine a situation that an individual would be "carded" every where they went.
- The development of a government regulated standard/identification, government issued card-license, is a very costly process to simply put business owners mind at ease, not to mention that if the process is efficient and guarantees that no person with a disability who needs a service dog falls through the cracks (for lack of better words), for the reason that business owners require the card, the process is essentially useless. (email)
- Business owners could simply choose to allow all service animal users who claim that their animal in company is a service animal to enter and use their establishment, and still by law can ask individuals to leave the premises only if there is a problem.

## **5. K9 Storm Company Profile**

K9 Storm Inc. is a Canadian manufacturer and distributor of custom-fitted canine tactical body armor.

Veteran Police K9 Handler, Jim Slater, originally designed the vest to enable his police service dog, Olaf, to meet the demands of progressive tactical emergency response team operations and be protected. The patented design was the result of extensive research and field testing.

The idea of police K9 body armor that can be worn on all calls for service has been patented and marketed worldwide as K9 Storm Tactical Body Armor. What began as a need for one bulletproof vest has developed into an incorporated business in 1998 whose innovation is now protecting dogs in

agencies at home and abroad including the RCMP, the Canadian Coast Guard, The Rotterdam Hodenbrigade, and the Swiss Army.

K9 Storm Inc. is a registered member of the Department of Foreign Affairs and International Trade's Database: V.T.C., and Industry Canada's Network of international business services: <http://strategis.ic.gc.ca>

## **6. *Synopsis of the Laws affecting the Registration of Services Animals in British Columbia ("BC") and Alberta***

### **British Columbia:**

The *Guide Animal Act* gives people with disabilities who use "guide animals" the right to access places and services available to the public with the animal, if the guide animal abides by certain restrictions, including being held by a harness.

The *Guide Animal Act* makes provision for the issuance of a "certificate" that serves as proof that a person in fact has a disability requiring the use of a qualified service animal. A disabled person may apply to the Minister for it and she must issue the certificate if she is satisfied that the animal will be used as a guide animal. Disabled persons are not, however, required to obtain a card. A certificate must be surrendered if the guide animal no longer provides services to a disabled person, dies, becomes disabled or otherwise becomes disqualified to act as a guide animal.

The Guide Animal Regulation delineates the discretion the Minister can exercise in deciding whether an animal is in fact a qualified "guide dog" for the purpose of issuing a certificate under the *Guide Animal Act*. She may issue a certificate if a "guide dog" has been trained at either "The Seeing Eye, Inc." located in the United States of America ("US") state of New Jersey or at the "Guide Dogs for the Blind" located in the US state of California. Additionally, the Minister may also issue a certificate if she is satisfied that a guide dog was trained at any other facility which, in her opinion, provides an acceptable standard of training.

The Corporate Policy and Planning Office within the Ministry of Justice manages the day-to-day administrative issuance of certificates in the Minister's name. According to its website (<http://www.pssg.gov.bc.ca/guideanimal/>) people seeking a certificate must submit proof of an animal's graduation from an approved training facility. Upon receiving that proof, the Ministry will then issue the "Guide Animal Certificate."

**Alberta:**

Alberta treats blind people and all other disabled people differently for the purpose of the respective registration of “guide dogs” and “service animals” under *The Blind Persons’ Rights Act* and *The Service Dogs Act*.

Under *The Blind Persons’ Rights Act*, blind persons who use qualified “guide dogs” have the right to access places and services available to the public with the animal. The Minister may issue blind persons an “identification card” that serves as proof that a blind person relies upon the assistance of a qualified guide dog. Blind persons are not, however, required to obtain a card. The Guide Dogs Qualifications Regulation further explains that the government relies upon the qualifications set down by guide dog schools that are registered members of the “International Guide Dog Federation” for the purpose of recognizing what are qualified guide dogs.

In a similar vein to *The Blind Persons’ Rights Act*, *The Service Dogs Act* prescribes that disabled persons who are not blind persons who use qualified “service dogs” have the right to access places and services available to the public with the animal. The Minister may issue disabled persons an “identification card” that serves as proof that a disabled person relies upon the assistance of a qualified service dog. Disabled persons are not, however, required to obtain a card. The Service Dogs Qualifications Regulation further explains that the government relies upon the qualifications set down by training programs delivered by schools or institutions that are accredited by, or have

candidacy status with, “Assistance Dogs International Inc.” for the purpose of recognizing what are qualified guide dogs.

The Department of Human Services manages the application process on behalf of the Minister. Blind and disabled people may submit an application form following a prescribed process, following which an identification card would then be issued. The Department lists the application requirements on its websites (<http://humanservices.alberta.ca/disability-services/blind-persons-rights-act.html> and <http://humanservices.alberta.ca/disability-services/service-dog-team-identification-card.html>).

Approved by the Manitoba Human Rights Board of Commissioners

Date: February 4, 2015

Yvonne Peters, Chairperson

