



# Human Rights Accountability in National Security Practices

A Special Report to Parliament





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CANADIAN HUMAN RIGHTS  
COMMISSION

COMMISSION CANADIENNE  
DES DROITS DE LA PERSONNE

*Acting Chief Commissioner*

*Président par intérim*

November 28, 2011

The Honourable Noël A. Kinsella  
Speaker of the Senate  
The Senate  
Ottawa, Ontario K1A 0A4

Dear Mr. Speaker:

Pursuant to section 61(2) of the *Canadian Human Rights Act*, I have the honour of transmitting to you for tabling in the Senate, our Special Report to Parliament: *Human Rights Accountability in National Security Practices*.

Yours sincerely,

David Langtry

Encl.

c.c.: Mr. Gary W. O'Brien  
Clerk of the Senate and Clerk of the Parliaments





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The Honourable Andrew Scheer, M.P.  
Speaker of the House of Commons  
House of Commons  
Ottawa, Ontario K1A 0A6

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Sincerely,

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Clerk of the House of Commons





## Highlights

Ten years after the 9/11 attacks, the question of how best to ensure collective safety while respecting the rights of individuals remains on the minds of many Canadians, especially those who travel frequently by air.

Many of us associate this issue with our own experiences at airports. News reports regularly tell stories of air travelers who say they experienced discrimination during a security screening on account of their race, ethnicity, religion, or disability.

Over the past decade, the Canadian Human Rights Commission has conducted extensive research on national security and human rights in the Canadian context. It has consulted with organizations responsible for national security in Canada. And it has studied and analyzed court cases, inquiries into individual experiences, and the work of Parliamentary Committees.

The Commission has learned that many organizations have policies designed to prevent discrimination, but few can demonstrate whether or not their policies are actually effective in practice. For example, national security organizations have stated that they do not use racial or ethnic profiling. However, without clear methods to monitor practices and demonstrate that profiling is not taking place, an organization leaves itself open to criticism and the loss of public trust.

This Special Report to Parliament argues that good policy is not enough. Accountability is also necessary to ensure that national security organizations respect human rights in practice. Consequently, the Report recommends that Parliament amend existing legislation or create new legislation that requires national security organizations to track their human rights related performance and account publicly for that performance.

### Table of Contents

● Introduction	1
● Environment	3
● Bridging the Gap Between Commitment and Practice	6
● Establishing Structures for Human Rights Accountability	8
● Recommendation	10
● Conclusion	12
● Annex	15







## Introduction

The Government of Canada's national security organizations operate in a challenging environment. They must protect Canada from complex domestic and foreign threats that evolve constantly. At the same time, they must respect human rights as they are defined in the *Canadian Human Rights Act* and the *Canadian Charter of Rights and Freedoms*.

The effectiveness of these organizations depends in part on their capacity to earn and maintain the trust of the general public. Respect for human rights is not just a legal obligation; it is critical to earning that trust.

National security and human rights objectives must not be pursued with an either/or approach. The challenge is to find an appropriate balance. This fact has been acknowledged by the government, Parliament, the courts and national security organizations themselves. Yet, national security organizations have faced questions about the extent to which they respect human rights in the course of their work in Canada, and internationally.

Concerns have been raised about issues such as the profiling of individuals on grounds that are prohibited under the *Canadian Human Rights Act* (the Act). Such concerns were reported as recently as March 2011, by the Special Senate Committee on Anti-Terrorism.<sup>1</sup> Specific cases have linked Canadian officials and security organizations to human rights abuses involving Canadians at the hands of governments in other countries.<sup>2</sup>

Since 2001, the Canadian Human Rights Commission (the Commission) has produced research papers on national security and human rights. This research has brought together contemporary evidence and analysis to help inform Parliamentary and public debate.

The Commission has looked at issues such as Canada's national security environment and human rights; racial or ethnic profiling; and how Canadian security organizations report on human rights issues in their work.

Several research papers have informed this special report:

- *National Security and Human Rights Concerns in Canada: A Survey of Eight Critical Issues in the Post—9/11 Environment*<sup>3</sup>
- *Human Rights Issues in National Security: An Inventory of Agency Considerations*<sup>4</sup>
- *The Effectiveness of Profiling from a National Security Perspective*<sup>5</sup>
- *Identity Certification and the Protection of Human Rights*<sup>6</sup>
- *National Security and Human Rights*<sup>7</sup>

In addition, the Commission's research has been complemented by material from judicial proceedings and inquiries into specific security cases, as well as the work of review bodies such as the Security Intelligence Review Committee.

Analysis of a decade of research clearly shows that there are no means to assess the human rights performance of Canada's national security organizations. Not only is there no accountability framework in place, national security organizations are not required to collect and report data on human rights performance in practice.

This Report recommends that Canada's national security organizations be required to demonstrate, with the support of evidence, that they are committed equally to the protection of national security and the respect for human rights, not just in word, but in practice.



## Environment

National security and the personal security of citizens are fundamental government responsibilities. Over the course of just one generation, the environment influencing these responsibilities has shifted dramatically. International terrorist groups and their domestic supporters have replaced foreign states as the most direct security threat to Canada and its international partners.

This shift has been matched by changes in the Government of Canada's approach to national security. It has led to the establishment of new organizations and changes to the departments and agencies that already held national security responsibilities. The Government of Canada departments, agencies and institutions with the greatest responsibilities for security are:

- Canada Border Services Agency;
- Canada Revenue Agency;
- Canadian Air Transport Security Authority;
- Canadian Security Intelligence Service;
- Citizenship and Immigration Canada;
- Communications Security Establishment;
- Foreign Affairs and International Trade Canada;
- National Defence and Canadian Forces;
- Public Safety Canada;
- Royal Canadian Mounted Police (RCMP); and,
- Transport Canada.

National security organizations must continue to manage strategies and actions within established legislated frameworks in this shifting environment. While the nature of threats may have changed, the ground rules of democracy have not. Those ground rules include oversight from bodies that are mandated to provide external assessments of policies, practices and impacts.<sup>8</sup> Examples of these bodies include the Security Intelligence Review Committee and the Commission for Public Complaints against the RCMP.

The ground rules also include a strong human rights framework. The *Canadian Charter of Rights and Freedoms* (1982) provides the foundation for a broad range of human rights in Canada. Section 7 protects the fundamental rights of life, liberty and security of person.<sup>9</sup> Equality rights are protected under section 15 of the Charter. Section 15 strengthens the application of the *Canadian Human Rights Act* (1977), which was created to prevent and remedy discrimination in matters under federal jurisdiction. Both the Charter and the Act have general application to all federal laws, except where an explicit exception has been made.<sup>10</sup>

In essence, through the Charter and the Act, the Government of Canada is committed to ensuring that its laws, policies and practices respect human rights. Beyond its impact on federal organizations, the Act applies to the actions and decisions of Government of Canada officials at home and abroad.<sup>11</sup> Its reach extends to federally regulated services such as the passenger screening that private firms provide on behalf of the Canadian Air Transport Security Authority.

In a number of instances Canadian courts have been called on to consider what balance the Government of Canada and its officials must strike between protecting national security and respecting human rights. In general, under the Charter, Canadian courts have allowed some reasonable and justified constraints on human rights in the context of government efforts to protect national security. They have generally accepted the importance of managing risk, protecting confidential sources and preventing disclosure of information or evidence that may jeopardize the security of Canadians.<sup>12</sup> However, the Supreme Court of Canada and lower courts have developed and refined a body of jurisprudence that requires the Government to demonstrate that where a right is constrained, the constraint is rational and justified.<sup>13</sup> In general, the courts' decisions have established that human rights protection is critical. These decisions suggest that it is necessary to integrate respect for human rights into national security systems, policies and practice.

When the Supreme Court of Canada was asked, specifically, to consider the relationship between national security, human rights and the rule of law, its response was clear:

*[T]he challenge for a democratic state's answer to terrorism calls for a balancing of what is required for an effective response to terrorism in a way that appropriately recognizes the fundamental values of the rule of law. In a democracy, not every response is available to meet the challenge of terrorism. At first blush, this may appear to be a disadvantage, but in reality, it is not. A response to terrorism within the rule of law preserves and enhances the cherished liberties that are essential to democracy.<sup>14</sup>*

The Court has reinforced this perspective in subsequent decisions, such as Charkaoui:

*The protection may not be as complete as in a case where national security constraints do not operate. But to satisfy s. 7 [of the Charter on “life, liberty and security of the person”], meaningful and substantial protection there must be.*<sup>15</sup>

This perspective on respecting human rights has been echoed by national security oversight bodies. For its part, the Security Intelligence Review Committee noted that the operational policies of the Canadian Security Intelligence Service, “some of which are sensitive and potentially intrusive, must comply with ... *the Canadian Human Rights Act*.”<sup>16</sup> This commitment to respect human rights has also been reinforced by Parliamentarians in the course of the many House of Commons and Senate reviews of security and human rights issues.

As the Special Senate Committee on the *Anti-terrorism Act* noted, “[e]ven in extraordinary times and in response to extraordinary threats, the normal principles of non-discrimination must continue to be followed.”<sup>17</sup> Further support for the value of ensuring full attention to human rights considerations in national security comes from the lessons learned in Canada and from international experience.

A study by the Commission, entitled *The Effectiveness of Profiling from a National Security Perspective*, assessed Canadian and international evidence on the use of profiling in security operations. It found no evidence to support the use of racial and ethnic profiling in helping to identify terrorists.<sup>18</sup> The 2011 interim report of the Special Senate Committee on Anti-terrorism also considered this issue. It found that members of ethnic or religious communities believe that they were singled out or profiled, which created “distrust and resentment.”<sup>19</sup>



## Bridging the Gap Between Commitment and Practice

It is important to underline that Canada's national security organizations have indicated that they are committed to ensuring that their policies and programs respect Canadian human rights law. For example, a report from the Canadian Security Intelligence Service noted that it was pursuing strategies designed to sensitize its employees on human rights issues as early as the 2004-2005 fiscal year.<sup>20</sup>

Many of these initiatives have taken place following instances of human rights violations. Evidence, testimony and other findings in cases before Canadian courts, in judicial inquiries into the treatment of Abdullah Almalki, Ahmad Abou-Elmaati and Muayyed Nureddin [Iacobucci Inquiry]<sup>21</sup>, and in the ongoing work of the Security Intelligence Review Committee have revealed issues with front line activities. Among these issues was the belief that:

- security imperatives overrode human rights considerations; or
- human rights were not relevant to security operations, particularly those taking place in other countries.<sup>22</sup>

As the Honorable Frank Iacobucci stated in reference to the personal responsibility of individuals in security organizations to ensure protection of human rights, “[N]o Canadian officials should consider themselves exempt from this responsibility.”<sup>23</sup>

The Commission does not assume that cases where national security activities did not respect human rights were representative of the overall views and activities of the organization in question at that time. Nor does it assume that those gaps are representative of the current environment. However, the public attention generated by these cases is important because of its impact on public trust. In the view of at least one well-known expert on public accountability, Canadians' trust in institutions and their leaders is in decline. Canadians are increasingly sceptical about verbal assurances from organizational leaders and expect consistent and credible proof.<sup>24</sup>

This need for proof represents a challenge for national security organizations. By their very nature, they operate in an environment where transparency may not be appropriate. Without an effective approach to assessing and demonstrating that they are meeting human rights standards, these organizations will remain open to criticism.

One way to deal with this challenge is to develop and promote initiatives that integrate human rights responsiveness and respect into operational culture. Doing so provides the foundation for preventing discrimination.

The Commission has worked with national security organizations to make these changes to their operational culture. It has published *The Human Rights Impact Assessment for Security Measures*, which is appended to this report. The guide provides national security organizations with direction on what to do throughout a security measure's lifecycle to ensure that security standards, policies, and practices are both effective and respectful of human rights.

Another means of assessing and demonstrating results is through the efforts of national security oversight bodies. For example, the Security Intelligence Review Committee is an independent, external review body that reports to Parliament on the operations of the Canadian Security Intelligence Service. The Commission for Public Complaints against the RCMP seeks to ensure that complaints about the conduct of RCMP members are examined fairly and impartially. When these bodies deal with human rights issues, as they sometimes do, it is on an ad hoc basis. This approach does not provide a comprehensive look at potential human rights trends or issues.



## Establishing Structures for Human Rights Accountability

National security organizations have stated that they do not use racial or ethnic profiling in their work.<sup>25</sup> However, without data collection and public reporting to demonstrate that they are meeting their human rights obligations, such assertions are easily challenged.

For example, the United Nations (UN) independent expert on minority issues recently reported, following a mission to Canada, that members of many ethnic communities believe that they are singled out disproportionately by the staff of government security organizations. They believe that this amounts to racial or ethnic profiling,<sup>26</sup> which is not permitted under the *Canadian Human Rights Act*.

Effective accountability structures would ensure that national security organizations can demonstrate that they actually do take human rights into account in practice. The external perspectives of national security oversight bodies and the presence of operational guides, while important, will not have the same effect as codifying human rights into an organization's very way of working.

The Commission believes that Canada's national security organizations would benefit from developing and implementing human rights accountability structures. This would require national security organizations to report on the impact of security measures on human rights to the appropriate authority. To do so, these organizations would need to collect data.

Collecting and analyzing data that is disaggregated based on race, disability, ethnic origin or other grounds can be done in a manner consistent with the *Canadian Human Rights Act* and the *Privacy Act*. Through data collection, national security organizations would be able to:

- show that decisions are based on objectively justifiable criteria and not discriminatory factors;
- prevent or address systemic barriers, for example, the barriers that certain types of technology may pose for people with disabilities;
- improve service delivery; and
- demonstrate a measure's effectiveness and soundness if it is challenged.



Several issues, including how to measure human rights performance and achieving the right transparency, would need to be considered and addressed in defining, developing and implementing an effective accountability structure.

The Commission has experience working with organizations to develop these processes. Its guide on how to perform a human rights impact assessment, appended to this report, is one example of this type of work.

The Commission also has experience working with organizations to create institutional frameworks for human rights issues.<sup>27</sup> These frameworks have helped organizations improve their human rights performance, while also demonstrating progress to outside audiences.

A legislated accountability structure would:

- enable national security organizations to assess respect for human rights legislation, principles and policies in their operations;
- identify the most relevant and appropriate means of measuring human rights performance and to deal with specific complaints or situations;
- provide a basis for senior leaders of those organizations to identify strengths and areas for improvement in organizational practice;
- enable ongoing dialogue and cooperation between each organization, the Commission, Parliamentarians and stakeholders on human rights issues; and
- demonstrate results to the Canadian public.



## Recommendation

The Canadian Human Rights Commission recommends that Parliament introduce legislation that requires national security organizations to have accountability structures to track their human rights-related performance and account publicly for that performance.

Most legislation that provides the legal authority for Canada's federal organizations with national security responsibilities is silent on human rights issues. The Commission recommends that Parliament establish specific, legislated obligations to ensure that national security organizations operate within a human rights framework that is measurable, consistent and transparent.

There are two ways to proceed with this recommendation:

### **Amendments to individual pieces of legislation**

The Government could propose amendments to individual pieces of legislation such as the *Canadian Security Intelligence Service Act* or the *Royal Canadian Mounted Police Act*. This could be done in tandem with Parliament's review of the enabling legislation for each individual national security organization. In each case, amended legislation would include a new section that would:

- Underline the importance of respect for human rights in the policies, programs and operation of that organization;
- Require the organization to have a human rights accountability structure in place that would enable it to gather data, measure institutional performance and take action to improve that performance as appropriate; and
- Require the organization to report publicly and regularly on its human rights performance.

### **A legislative solution**

A new law could establish the same requirement across the Government. The proposed Act would include a schedule of the departments, agencies and institutions that would be required to have human rights accountability structures and reporting.

It is important to note that this legislative approach would clarify, codify and make transparent an adherence to human rights laws for all national security organizations. It would establish a consistent way for these organizations to document their performance and share that information with Canadians, thereby reinforcing their trust.

The Commission recognizes that Parliamentary committees have recommended a more effective oversight role for Parliament in the work of national security organizations. In 2011, the Special Senate Committee on Anti-terrorism recommended:

*(16) That, consistent with the practices in the United Kingdom, Australia, France, the Netherlands, and the United States, the federal government constitute, through legislation, a committee composed of members from both chambers of Parliament, to execute Parliamentary oversight over the expenditures, administration and policy of federal departments and agencies in relation to national security, in order to ensure that they are effectively serving national security interests, are respecting the Canadian Charter of Rights and Freedoms, and are fiscally responsible and properly organized and managed.<sup>28</sup>*

The Commission is of the view that its recommendation could be implemented through the structure recommended by the Special Senate Committee or by any other structure, including independent reporting by the organizations in question.

The key is the accountability process for adherence to human rights obligations. It should be supported by the data collection and reporting necessary to make that accountability transparent to Canadians and to the people within those organizations.

The Commission is prepared to work with these organizations as partners in an effort to design effective accountability structures, much as it has worked with them in the past. Based on experience, the Commission believes that it is possible to identify appropriate measures to track performance and develop reporting vehicles that will meet the needs of Canadians as well as the organizations themselves.



## Conclusion

Canadians expect to be protected, but they do not expect that protection to come with a wholesale loss of rights and freedoms. They expect human rights to be respected in the course of those actions. That expectation is not simply a public preference; it is anchored in the *Canadian Human Rights Act* and the *Canadian Charter of Rights and Freedoms*.

Leaders of national security organizations have committed to improvements. While there is evidence of action and no reason to doubt the good faith behind those commitments, the introduction of a clear accountability structure in relation to human rights performance would enable those organizations to build and sustain the public trust that they require to carry out challenging responsibilities. This is especially critical to building and maintaining trust among members of ethnic, racial and religious communities. Creating an accountability structure would benefit both Canadians and the organizations that protect them.

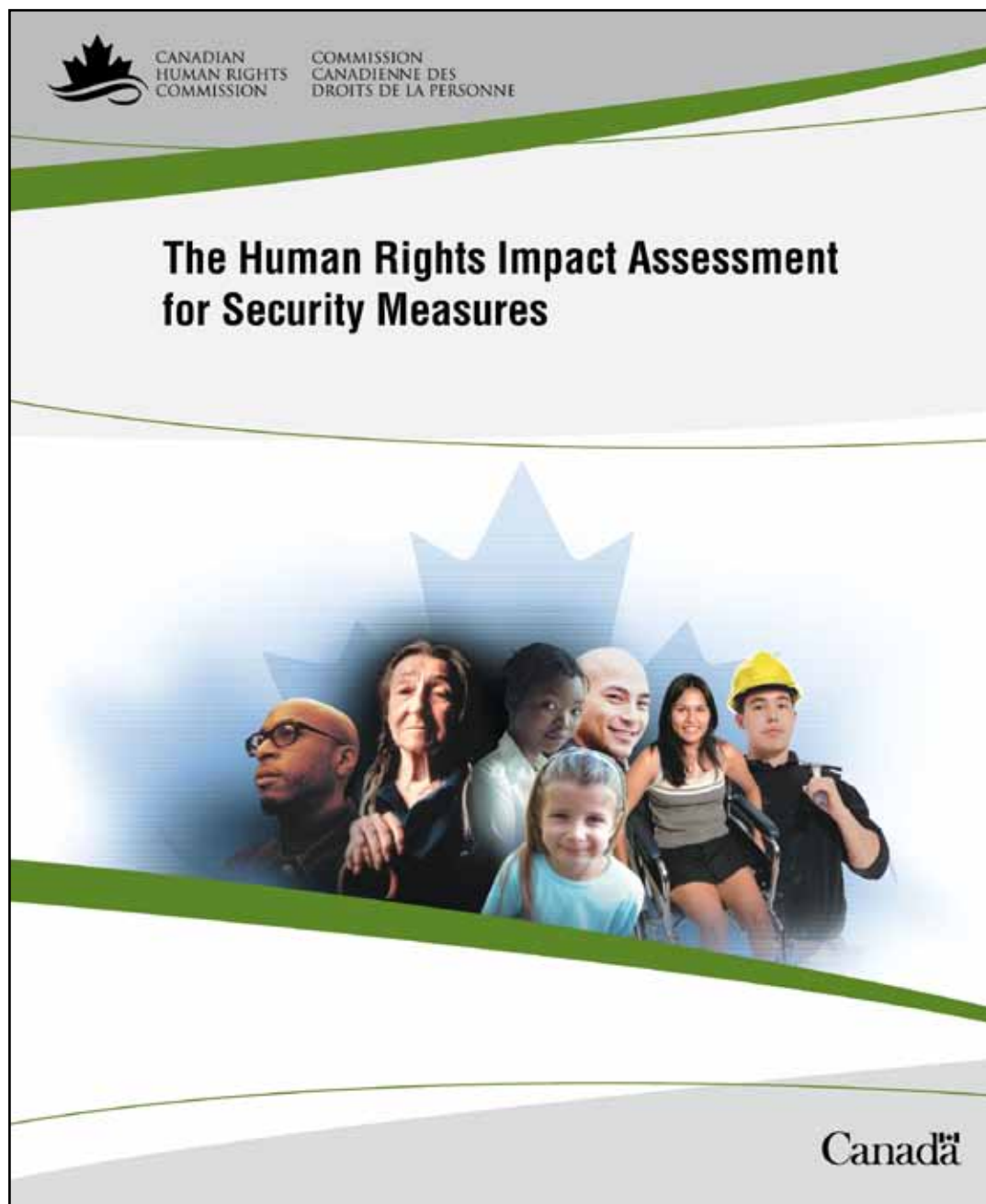
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9. *Canadian Charter of Rights and Freedoms*, Part I of the Constitution Act, 1982, being Schedule B to the Canada Act 1982 (UK), 1982, c 11.
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22. These include cases of “extraordinary rendition,” arbitrary detention, torture and cruel treatment: see Iacobucci Inquiry, Final Report, (Ottawa Public Works and Government Services Canada, 2008), (the actions of Canadian officials were deficient and contributed to the torture of Canadian citizens) at 363-367, paras 60-75, online: < [http://epe.lac-bac.gc.ca/100/206/301/pco-bcp/commissions/internal\\_inquiry/2010-03-09/www.iacobucciinquiry.ca/pdfs/documents/final-report-copy-en.pdf](http://epe.lac-bac.gc.ca/100/206/301/pco-bcp/commissions/internal_inquiry/2010-03-09/www.iacobucciinquiry.ca/pdfs/documents/final-report-copy-en.pdf)>; Arar Commission of Inquiry, *supra* note 2; *Canada (Prime Minister) v Khadr*, 2010 SCC 3, [2010] 1 SCR 44; *Almrei (Re)*, 2009 FC 1263, at para 486 ff.
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## Annex





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This guide is not intended as legal advice. Consultation with legal advisors is recommended when developing and implementing any security measure.





## Introduction

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There is no greater responsibility for a government than the protection and safety of its citizens. In an increasingly complex world, Canada's security community must constantly evolve and innovate to ensure the safety and security of everyone in Canada.

The federal departments and agencies working to meet these challenges operate in an environment that is subject to the *Canadian Human Rights Act*. This means that the security measures that protect the lives of people in Canada must respect the principles of equality and non-discrimination.

This guide provides practical information for Canadian organizations with responsibilities for national security. It outlines the steps to take during a security measure's lifecycle to ensure that security standards, policies, and practices are both effective and respectful of human rights.



### Security Measure

“Security measure” refers to any standard, policy or practice that is used to safeguard security. This includes, but is not limited to:

- Biometric and psychometric tests
- Technologies that screen travellers for security risks
- Front line and secondary inspections
- Identity certification
- Security guidelines and operating procedures
- No-fly lists, watch lists and specified persons lists

Canada’s success as a diverse society will be measured by the government’s ability to safeguard its citizens while protecting human rights.

*“National Security and the Protection of Human Rights”  
2008 Annual Report, Canadian Human Rights Commission*



## The Human Rights Impact Assessment

The Human Rights Impact Assessment will help you create and maintain security measures that respect human rights.

The four-step process outlines how to be as inclusive as possible by identifying and eliminating potential discriminatory practices throughout the lifecycle of a security measure.

This proactive approach can save time and money, improve a security measure's effectiveness and efficiency, and bolster public support for new and existing security initiatives.

### **There are 11 grounds of discrimination under the *Canadian Human Rights Act*.**

- race
- national or ethnic origin
- colour
- religion
- age
- sex
- sexual orientation
- marital status
- family status
- disability
- pardoned conviction



## Step 1: Identify the appropriate security measure

Prevention begins at the development stage. When choosing a security measure, ensure that you are meeting your legal obligations to prevent discrimination.

Begin by establishing that the security goal is legitimate.

### Ask yourself:

- Is the goal itself legitimate?
- Why is the goal legitimate?

### Example\*

**Goal:** Preventing unauthorized entry into the country.

#### Is the goal legitimate?

Yes, the State is obligated to ensure the security of its citizens and implement measures to prevent unauthorized entry into the country.

#### Why is the goal legitimate?

International and domestic terrorist events underscore the need to implement measures to protect national security.

\*The example used throughout this guide is for illustrative purposes only.



Once you have established that the goal is legitimate, you must be able to show that the measure is needed to achieve the goal. The decision to use a measure should be supported by evidence of its effectiveness and efficiency.

**Ask yourself:**

- How is the measure linked to the goal?
- What evidence supports the choice of the security measure given the purpose or goal?

**Example**

**Measure:** Fingerprint scanner

**How is the measure linked to the goal?**

The ability to identify people crossing national borders is essential to preventing unauthorized entry into the country. A sophisticated identity certification process supports this goal. Fingerprinting is one measure that can be used to certify a person's identity.

**What evidence supports the choice of the security measure given the purpose or goal?**

Numerous studies have shown that fingerprints are relatively permanent and unique. They are a high-grade biometric characteristic.



### Undue Hardship

In some cases it may be decided that a security measure is necessary, even though it is potentially discriminatory. In such cases, an organization must be able to demonstrate that no alternative arrangements are possible, because of issues related to health, safety or cost. When an organization can demonstrate this, a security measure that is potentially discriminatory may still be justified. It is important to fully document these types of situations, as well as the evidence that led to the decision.

Finally, consider what impact the security measure might have on the people it is designed to serve. If a group may be negatively affected by the measure, consult with representatives of that group to determine the most appropriate course of action.

#### Ask yourself:

- Is the measure as inclusive as possible?
- Could the measure create barriers for any group based on the 11 grounds of discrimination?
- Have we consulted with organizations that represent the groups who could be negatively affected by the measure?
- Is there a way to eliminate the barrier using alternative arrangements?
- If alternative arrangements are not possible, have we fully documented health, safety and/or cost issues to demonstrate undue hardship?

Each situation is different. Consult with the Canadian Human Rights Commission or other experts to ensure that you have considered everything possible to make your measure respectful of human rights.



### Example

**Is the measure as inclusive as possible?**

The evidence suggests that the fingerprint scanner is a relatively inclusive form of biometric data that could be used for identity certification.

**Could the measure create barriers for any group based on the 11 grounds of discrimination?**

This measure could automatically exclude people who, because of disability or age, do not have fingerprints.

**Is there a way to eliminate the barrier using alternative arrangements?**

For those who cannot use the fingerprint scanner, an alternative arrangement, such as an iris scanner, could be used to certify identity.



## Step 2: Test for potential discrimination

Discrimination occurs when an individual or group of people are singled out, and treated differently *and* adversely because of their race, national or ethnic origin, colour, religion, age, sex, sexual orientation, marital status, family status, disability, or because of a pardoned conviction.

Prior to implementation, test the measure and any planned alternative arrangements to confirm that they are as inclusive as possible. Testing can also determine if the measure or planned alternative arrangement(s) treats anyone differently and adversely for reasons not previously identified. Ensure that relevant human rights-based data are collected during testing.

### Ask yourself:

- Given a specific measure, what *human rights-based data* should be collected during testing?
- What evidence do we have to support that this is the right data to collect?
- Based on the test results, does the measure create barriers for any person or group based on the 11 grounds of discrimination?





### Example

#### **Based on the test results, does the measure create barriers for any group based on the 11 grounds of discrimination?**

During testing, data were collected on the grounds of age and disability. Testing confirmed that the vast majority of people can have their identity certified using the fingerprint scanner or the iris scanner.

It was also found that a very small number of individuals could not, for unforeseen reasons, use the fingerprint scanner or the iris scanner to have their identity certified.

### Collecting human rights-based data

Collecting *human rights-based data* involves gathering information on peoples' age, sex, colour, disability etc. when it is relevant to the security measure being used. Prior research or intelligence gathering will help you determine which of the 11 grounds to collect data on. This data should be collected without any links to specific individuals.

Collect human rights-based data on the use of the security measure, any alternative arrangements and all discretionary decisions made by employees. This information allows your organization to determine if anyone is being negatively affected by the measure and take steps to correct the issue.

When collecting data, you should also consider your obligations under the *Privacy Act* and other relevant legislation.



## Step 3: Improve the security measure

If the security measure, or planned alternative arrangement(s), have a negative effect on anyone based on one or more of the 11 grounds of discrimination, explore other alternative arrangements and ways to improve the measure to eliminate or mitigate the negative effect.

If there are no other alternative arrangements or ways to improve the measure to include those negatively affected, accommodate them on an individual basis.

### Example

#### Improve the measure

Continuous improvement to fingerprint and iris scanning technologies will make it possible to include more and more people in the scanning process.

#### Preparing for the unexpected

Following testing, the organization established guidelines to deal with unexpected situations. These guidelines help employees conduct individual assessments to accommodate an individual in the event that they cannot use the fingerprint or iris scanners.



**Ask yourself:**

- Can the measure be improved so that it is more inclusive?
- Have we developed guidelines for conducting individual assessments so that individuals negatively affected by the measure can be properly accommodated?

## **Training employees in human rights**

Making employees aware of the potential human rights implications of a particular measure, better prepares them to prevent discrimination.

When training employees on a security measure:

- Stress the importance of treating people with dignity.
- Address general human rights principles to ensure that everyone has the same basic understanding (do not assume that employees already know what is expected of them).
- Explain both the security measure and the available alternative arrangement(s).
- Provide guidelines to help employees identify situations where individual assessments are necessary.
- Provide guidelines to help employees conduct individual assessments to accommodate individuals negatively affected by the measure.



## **Step 4: Monitor for unexpected discrimination**

During the development stage, it may not be possible to identify or predict all the potential situations that could lead to discrimination. Despite careful planning and testing, human rights issues may still arise once a security measure has been rolled out. Discretionary decisions made by employees are an important component of the measure and should be monitored.

Monitoring a security measure for situations where people are treated differently and adversely involves continually measuring its effect on people's human rights. It is necessary to collect data on the security measure, any alternative arrangements and any discretionary decisions made by employees.

When collecting data on discretionary decisions, document:

- the reason for the decision; and
- the relevant human rights-based data on the individual.



**Ask yourself:**

- Have we planned for ongoing monitoring following implementation?
- Have we considered how changes in personnel might impact the human rights of people accessing the service?
- Have we identified what human rights-based data will be collected following implementation?
- Have we trained personnel to conduct individual assessments when appropriate?



## Human rights principles

### A potentially discriminatory practice may be acceptable

If a security measure treats a group adversely on the basis of one of the 11 grounds, the measure may still be justified. The service provider must demonstrate that the standard, policy or practice being implemented to achieve a legitimate goal is: directly linked to that goal; reasonably necessary to achieve that goal; and that no reasonable alternative arrangement is possible short of undue hardship.

### The duty to accommodate

The *duty to accommodate* is a service provider's obligation to take steps to eliminate the different and adverse treatment of individuals protected under the *Canadian Human Rights Act*.

### Undue hardship

Under the *Canadian Human Rights Act*, a service provider can claim undue hardship when adjustments to the measure or alternative arrangement(s) would cost too much, or create risks to health or safety. There is no precise legal definition of undue hardship or a standard formula for determining undue hardship. Each situation should be viewed as unique and assessed individually.

It is not enough to claim undue hardship based on an assumption or an opinion, or by simply saying there is some cost. To prove undue hardship, evidence must be provided as to the nature and extent of the hardship.



### **Alternative arrangements**

Alternative arrangements are special provisions made to a standard, policy or practice. They are intended to eliminate barriers that single out and treat a group of people differently and adversely because of one of the 11 grounds of discrimination.

### **Individual assessment**

Individual assessment is a personalized assessment of an individual's needs to determine appropriate accommodation.



## Glossary

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**Discrimination** is an action or a decision that results in the different and adverse treatment of an individual, or group of people, because of one of the 11 grounds of discrimination.

**Grounds of discrimination** are reasons a person may experience discrimination. There are 11 reasons or 'grounds' that are protected under the *Canadian Human Rights Act*. This means that federally regulated employers and service providers cannot discriminate against individuals for these reasons. The 11 grounds protected under the Act are: race, national or ethnic origin, colour, religion, age, sex, sexual orientation, marital status, family status, disability, or pardoned conviction.

**Systemic discrimination** occurs when policies or practices create or perpetuate disadvantage for individuals or groups based on one of the 11 grounds of discrimination.





## Human Rights Impact Assessment Checklist

### Step 1: Identify the appropriate security measure

- The goal is legitimate.
- The goal has been justified.
- The measure has been linked to the goal.
- Given the goal, the evidence supports the chosen security measure.
- The measure is as inclusive as possible.
- Potential barriers (based on the 11 grounds of discrimination) have been considered.
- Alternative arrangements have been included in the plan.
- If alternative arrangements are not possible, health, safety and/or cost issues have been fully documented to demonstrate undue hardship.



**Step 2: Test for potential discrimination**

- It has been decided what human rights-based data will be collected for this security measure during testing.
- There is evidence to support that this is the right data to collect.
- Test results show the measure creates barriers for certain groups based on the 11 grounds of discrimination. (If **not**, move to Step 4)

**Step 3: Improve the security measure**

- The measure has been improved so that it is more inclusive.
- Other alternative arrangements have been explored.
- Guidelines for individual assessments have been developed.



**Step 4: Monitor for unexpected discrimination**

- We have a plan for ongoing monitoring following implementation.
- We have considered how changes in personnel might impact the human rights of people accessing the service.
- We have identified what human rights-based data will be collected following implementation.
- We have trained personnel to conduct individual assessments when appropriate.