



ACCOMMODATING THE

# SIKH ARTICLES OF FAITH


A GUIDE



# INTRODUCTION

*to the guide*

Sikhs in Canada have the legal right to freely wear their Articles of Faith in both public and private settings. The wearing of the Sikh Articles of Faith must by law be accommodated to the point of undue hardship – a very stringent standard. This guide provides information on the significance of the Sikh Articles of Faith and also guidance on how they can be worn in various settings.



Initiated Sikhs are known as Amritdhari or Khalsa Sikhs. Sikhs who are initiated into the Khalsa commit to following the Rehit Maryada or Sikh Code of Conduct. This includes a daily discipline of meditation and prayer and also wearing the five Sikh Articles of Faith or Kakaars at all times.

# AMRITDHARI SIKHS

The Kakaars are a reminder to Sikhs of their commitment to the tenets of their faith including justice, charity, morality, humility, and equality.

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# LEGAL PROTECTION & *Freedom of Religion*



The Canadian Charter of Rights and Freedoms sets out the rights and freedoms of Canadians, citizens and non-citizens. The Charter is a part of the Canadian Constitution, which is the supreme law of Canada. One of the fundamental freedoms contained in Section 2 of the Charter is freedom of conscience and religion. It is important to note the rights and freedoms in the Charter are not absolute. They can be limited to protect other rights or important national values.

The Charter extends the rights and freedoms contained within it to any person in Canada, whether they are a Canadian citizen, a permanent resident or a newcomer.



WORLD SIKH ORGANIZATION OF CANADA

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If you are an international student in Canada and you pursue a complaint about discrimination or harassment, this will NOT impact your immigration status. You are simply exercising the protections and freedoms extended to you by the Charter.

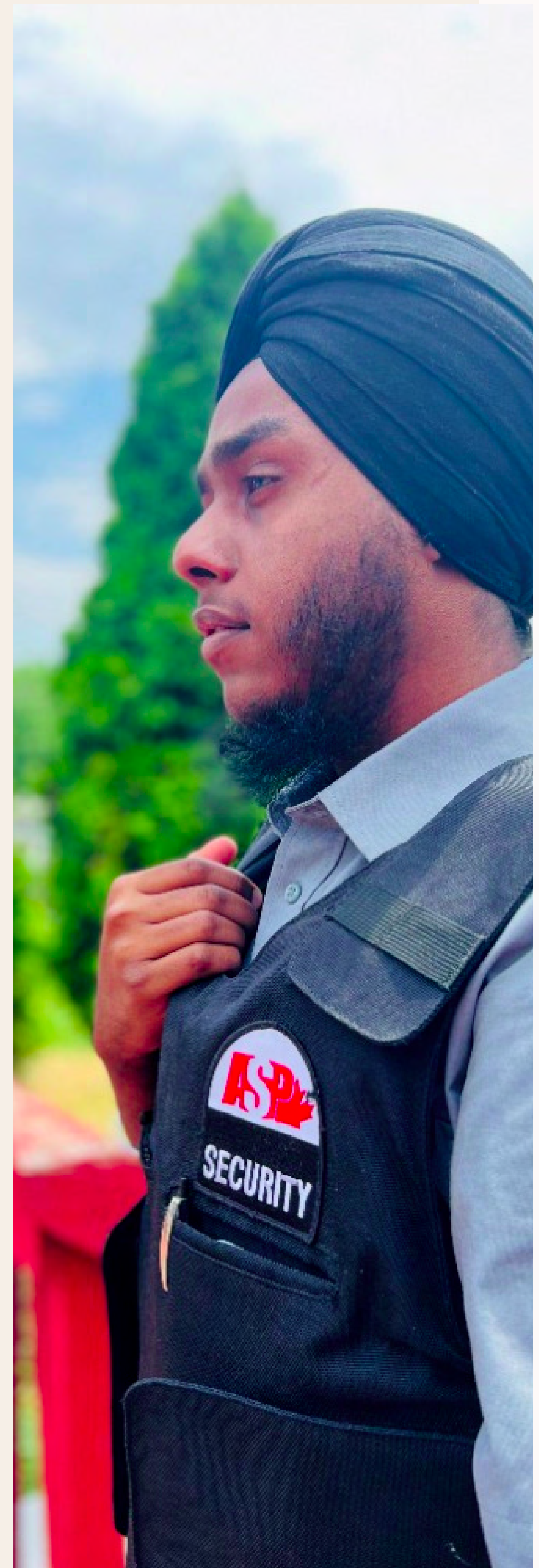
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Apart from the Charter, the federal government, and all Canadian provinces and territories, have Human Rights Codes, laws, Commissions and/or Tribunals to address matters related to human rights infringements.

Each province has a provincial Commission and there is also the Canadian Human Rights Commission (CHRC) that addresses federally regulated workplaces and sites.

With these safeguards in place, any discrimination or harassment based on faith or religion can be appropriately addressed. Discrimination is unfair differential or negative treatment of certain individuals or groups based on grounds such as race, gender, colour, ancestry, place of origin, religion, marital status, age, disability, citizenship, etc. Discrimination can include denial of service, refusal to hire, differential wages, and a refusal to accommodate such as refusing to accommodate religious clothing or articles of faith in a uniform.

Harassment is a type of discrimination and includes comments or behaviour that is insulting on the base of race, gender, religion, place of origin, etc. Examples of harassment include racial jokes and insults and displaying insulting posters or cartoons.



# THE FIVE KAKKARS

SIKH ARTICLES OF FAITH



## Kesh

Kesh is unshorn hair symbolizing the acceptance of God's will. Hair is considered a gift from God, and so hair becomes a symbol of loving God and respecting everything God has given. The hair must be covered at all times with a Keski or Dastaar (Turban or head-covering) representing spiritual wisdom.

## Kangha

The Kangha is a wooden comb representing self-discipline, hygiene and ridding oneself of impurities and what is morally undesirable. It is worn in the hair and used to keep it neat and tidy.

## Karha

The Karha is an iron or steel bracelet worn on the wrist. The circle signifies the oneness and eternity of God and to use one's hands for the benefit of humanity.

## Kachhera

The Kachhera is a cotton undergarment representing high moral character and restraint.

## Kirpan

The Kirpan is a small sword, which must be worn sheathed, restrained in a cloth belt (called a Gaatra), and next to the body. The word Kirpan is a combination of the words grace and honour. The Kirpan signifies the duty of a Sikh to stand up against injustice. Most Kirpans range in size from 15 to 22 cm (6 to 9 inches) in length but sizes do vary depending of the preferences of the wearer. Some have elegant, ornate hilts and sheaths.

# *understanding the* KIRPAN



Most Kirpans range in size from 15 to 22 cm (6 to 9 inches) in length but sizes do vary depending of the preferences of the wearer. Some have elegant, ornate hilts and sheaths.

What prevents Sikhs using an article of faith for violence is that very faith, coupled with the same social customs that we all observe. Of all the blades used in daily life, Kirpans are the least hazardous because they are sacred: they come with a philosophy that is an integral part of how Sikhs practise their faith. It's not just a talisman or a piece of jewelry. Removing the Kirpan is a serious matter for Sikhs. It is done rarely and only under extreme circumstances – Sikhs even wear the Kirpan while sleeping and bathing.

Canadian Sikhs have gone before various human rights commissions to struggle for their rights to wear their Kakaars, specifically the Kirpan and Dastar (Turban). Canadian courts have found that there is a duty to accommodate differences to the point of “undue hardship”. This is a very high standard and means that unless accommodating differences (religious, physical, etc.) is essentially impossible, every step must be taken to make the required changes.



The duty to accommodate requires different treatment as a means to achieve equality of opportunity. In other words, it rejects the idea that, just because everyone works for the same employer, they must be treated the same, with no exceptions.

It is important to emphasize it is inappropriate for employers to ask for a priest or Gurdwara letters to support accommodation requests. The Supreme Court of Canada decision in *Syndicat Northcrest v. Amselem, 2004* SCC held a claimant need not show an objective religious obligation, requirement or precept to invoke freedom of religion (i.e. expert evidence was not required to invoke freedom of religion). The test in this case is as following:

- He or she has sincerely held practice or belief, having a nexus with religion, irrespective of whether a particular practice or belief is required by official religious dogma or is in conformity with position of religious officials; and
- the impugned legislative provision interferes with his or her ability to act in accordance with his or her religious beliefs in a manner that is more than trivial or insubstantial.

# ACCOMMODATING KESH

*"The right of Sikhs to wear religious headgear, the Dastaar, is protected under human rights legislation, subject to the tests for bona fide occupational requirements and the undue hardship standard."*

## WORKPLACE

Employers are to accommodate and individually assess health and safety risks against the undue hardship standard where an employee is requesting an exemption from a hard-hat requirement to wear a Turban. An accommodation may also be an alternative work placement or an exemption where the risk is de minimus and borne exclusively by the Sikh requesting an accommodation.

The recent WorkSafeBC amendment to Section 8.11 of the Occupational Health & Safety Regulation (OHSR) now requires employers to conduct a risk assessment and attempt to remove and eliminate any risks before requiring hardhats on worksites. Employers must assess each area of a job site to determine if a person has to wear safety headgear, rather than implementing a blanket hardhat policy that would require a hard hat even in low-risk areas.

Employers must avoid attempts to restrict the wearing of religious headgear based on uniform requirements or concerns about image or customer preference.



## FOOD PROCESSING, STORAGE DISTRIBUTION & HANDLING AREAS

All people entering food processing, storage, distribution and handling areas have an appropriate degree of personal cleanliness and take the appropriate precautions to prevent the contamination of food and food contact surfaces.

Employees in processing areas should wear effective hair restraints, such as hair nets. There can be no requirement for Sikh workers to remove their turbans or be clean shaven. Hair and beard nets will be sufficient to eliminate any risk of contamination.

## POLICE & CANADIAN FORCES' UNIFORM REGULATIONS

The accommodation of the turban for police uniforms is a legal requirement in Canada based on human rights laws.

Any rank of an initiated practicing member of the Sikh religion can, in place of other headgear, wear a turban of the color dark navy blue with a municipal cap badge centered on its front. Kesh can remain uncut provided that it is kept neat with the hair tied in a bun and concealed under the issued turban.



Similarly, Sikh men and women in the Canadian Forces are allowed to wear turbans and the Sikh articles of faith while serving.

## PERSONAL PROTECTIVE EQUIPMENT (PPE)

In the aftermath of the COVID pandemic, many Sikh workers who maintain their Kesh have been asked to remove their facial hair in order to be fitted with N95 respirators and to comply with workplace regulations. This is because N95 respirators cannot form a seal where the wearer has facial hair.

The use of the N95 mask is only necessary where there is an aerosol generating medical procedure (AGMP). Regular medical masks are sufficient in every other situation.



Sikh RCMP officers who were removed from frontline policing duties to office duties in March 2020 due to the RCMP requiring all officers be fitted with N95 masks, returned to the front-lines in October 2020 after public outcry. BC Provincial Health Officer Dr. Bonnie Henry said she saw little reason officers would need to wear the N95.

An alternative to the N95 respirator that is effective for individuals with facial hair is the Powered Air-Purifying Respirators ("PAPR"). The PAPR provides equivalent or greater protection to the N95 and provides coverage of the wearer's face regardless of facial hair or any other facial irregularity. PAPRs are however much more expensive than N95 respirators and are in limited supply.

## MOTORCYCLES

Practicing Sikhs who habitually wear turbans, are exempted from motorcycle helmet requirements if they wear turbans of a size of five square metres or more in British Columbia, Alberta, Manitoba and Ontario.



## PASSPORT PHOTOS

Canadian passport photos allow head coverings if they are worn for religious beliefs, as long as it does not cast shadows on the face and the full face is clearly visible.



## WORKER COMPENSATION

**If you are injured at work and cannot tie your turban, you can get compensation for this.**

In WCAT-2003-01615 (RE), 2003 (BC WCAT), the Court found in favour of appellant, who lost his right arm due to a work injury, in being provided financial assistance for turban tying.

The appellant was not able to tie his turban and did not want to burden any of his family members for the rest of his life in helping him tie his turban. Thus, court also provided him with financial assistance for turban tying in addition to his daily financial assistance that was provided.



## SPORTS

**There should be no problem with wearing the turban in most sports.**

In Karate, during international competition, competitors may wear plain black head-coverings that have been approved by the World Karate Federation. Local and national competitions are much more flexible.

In Soccer, a player may use equipment or clothing other than the basic equipment provided that its sole purpose is to protect him physically and it poses no danger to him or any other player. According to FIFA, religious headgear is not considered dangerous and are permitted. Turbans should match uniform colours in some jurisdictions.

According to the International Basketball Federation (FIBA), Sikh players may wear religious headgear.

# HOSPITAL REGULATIONS DURING MEDICAL PROCEDURES

## Removing Hair

Since hair is considered a gift from God, it should not be removed from any part of a Sikh's patient's body without consultation and explicit permission from the patient. In the case of incapacity, the lawful care giver or power of attorney must give consult.

In the case that a Sikh patient is in impaired capacity and their life is at high risk, medical treatment can be carried out without delay when there is no time to obtain consent. The cutting of any hair on the body should be avoided at all cost, unless life threatening medical treatment will be impaired without the removal of hair.



## Substituting for the Turban

The patient or family member must be consulted; a surgical bouffant cap may be acceptable but a hat may not be.

After removing their turban, Sikh patients may want to keep their head covered with an alternative covering such as a small turban or a scarf. The headdress should be respected, and if removed, it should be given to the family or placed with the patient's personal belongings.

# AIRPORTS

The Canadian Air Transport Security Authority (CATSA) requires all head coverings to be screened. If there is an alarm in the area of the head covering, the screening officer will take steps to resolve the alarm. The passenger will be asked to remove the object (pin, emblem, etc.) that caused the alarm.



If the alarm persists, standard procedures will be used to resolve the alarm, which may include the use of a hand-held metal detector, a visual inspection or a physical search. If the alarm still cannot be resolved, a further search of the turban may be necessary. The passenger will be offered a private search which may require the turban to be removed.

*The **turban** should not be handled or touched at first instance and an opportunity will be provided to the passenger to remove any object which may be causing the alarm.*





## TRUCK YARDS

Truck yards must adopt accommodation procedures while allow truck drivers who refuse to wear a protective hard-hat due to their faith to be served without compromising their beliefs.

The *Bhinder* case and subsequent cases provide historical context to the law as it stands today. Employers must now pass the requirements of the *Meiorin and Grismer* tests to justify a policy that has no accommodation.

In response to the needs of the Sikh truck drivers who wear Dastaars, the Federal Marine Terminals (FMT) introduced a special accommodation procedure at their Hamilton site. As per the special procedure, truck drivers who request the accommodation will be informed that once they leave the scale, they cannot exit the cab of their truck at any moment while on the terminal. The driver will only be allowed to exit the cab once they arrive back at the scale to sign out. The driver will drive to the location indicated and, once available, FMT's labour will load/unload the bulk material.

This special procedure addresses the need to accommodate without compromising safety. This is a policy that can be easily replicated by other truck yards and terminals which require hard-hats.

*Legalizing Right to Kesh & Dastaar*

## Bhinder v. CN, 1985 SCC

In *Bhinder*, the Supreme Court of Canada ruled that a policy making hard hats mandatory could be upheld. *Bhinder* had asked for an exception from the policy due to his Dastaar but the Court ruled that where there was a bona fide occupational requirement, and there was no intention to discriminate, the restriction could stand. The Supreme Court later revised its approach to bona fide occupational requirements in *Meiorin and Grismer* and an employer or service provider may justify a disputed standard by establishing on the balance of probabilities that the standard:

- Was adopted for a purpose rationally connected to the performance of the job or the provision of the service;
- was adopted in an honest and good faith belief that it was necessary to the fulfillment of that legitimate work-related or service-related purpose; and
- is reasonably necessary to accomplish the legitimate purpose & no accommodation possible without undue hardship.

This is the law that has been applied to subsequent human rights cases involving reasonable accommodation. It is important to keep this in mind that the *Bhinder* case provides important historical context to the legal test and law that stands today. There are still blanket hard hat policies in place across the nation which are highly problematic.

*Legalizing Right to Kesh & Dastar*

## Dhillon v. British Columbia, 1999 B.C.H.R.T.D.

(Ministry of Transportation and Highways, Motor Vehicle Branch)

This British Columbia Human Rights Tribunal decision allowed Sikh motorcyclists to wear the turban while riding, and exempting them from helmet requirements.

## Grant et al. v. Attorney General (Canada), 1995.

Canadian courts have found that restricts on the Dastar due to uniform requirements are unacceptable. Cases prior to Grant had found restrictors on the Dastar due to uniform requirements on the job were discrimination and unacceptable. This issue seems completely resolved after the Federal Court of Appeal decision in Grant where the Court upheld a RCMP decision allowing Sikh officers to wear Dastars.

# *The* Kangha



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*The Kangha can be worn in all  
settings without issue.*

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## WORKPLACES

**There is no issue with wearing the Karha on the worksite.**

Where there is a safety issue with wearing jewelry, Sikh workers are permitted to wear the Karha on the job, so long as the Karha is worn tightly on the upper arm, restrained with an elbow support and covered by a rolled down sleeve.

## SPORTS

Rules vary on the wearing of the Karha. In many cases, if the Karha is rolled up on the forearm and covered with an athletic band, the Karha will not be a safety issue.



## HOSPITAL REGULATIONS DURING MEDICAL PROCEDURES

In some instances, it may not be possible to remove the Karha during a medical procedure because the hand no longer slips through. In this situation, we recommend health care professional work with their team and the patient to determine what accommodations can be made.

Examples include:

- Surgery: the bracelet can be taped off
- CT Scan: The hand with the bracelet can be moved to the side

The Karha cannot be worn during an MRI because metal objects are not permitted in the MRI area/room due to the powerful magnet used in the process.



# THE KACHHERA

Generally speaking, the Kachhera can be worn in most settings without issue.

## HOSPITAL REGULATIONS DURING MEDICAL PROCEDURES

If a patient is wearing a Kachhera, it will in many cases be worn at all times, including during bathing as a part of religious observance.

Women during childbirth may want to tie the Kachhera to one of their legs. Patients may also request that the Kachhera be tied to one of their legs during surgery

# THE KIRPAN



## WORKPLACES

The wearing of the Kirpan is permitted in all settings in Canada with the exception of prisons and the Quebec National Assembly. The right of Sikhs to wear the Kirpan is protected under human rights legislation and will not be found to constitute a health and safety risk amounting to undue hardship.

An employer can not prohibit a Sikh employee from wearing a Kirpan in the workplace. In instances where an individual is sent by employment agencies to third party locations, the workplace must accommodate the Sikh employee wearing the Kirpan.

Multinational companies operating in Canada must accommodate Sikh employees wearing the Kirpan and visiting employees as well.

## ACCOMMODATION IN FACILITIES

Kuehne & Nagel, a multinational freighting company, developed a Kirpan accommodation policy for Sikh workers at its Canadian facilities. Even though no metal items were permitted to be worn by employees on the premises in attempts to limit unauthorized removal of items from the premises, the policy states Sikh workers will be permitted to wear the Kirpan if they are wearing all the other Sikh Articles of Faith, if the Kirpan is worn underneath the clothing and it does not exceed 7.5 inches in length.



## HOSPITAL REGULATIONS DURING MEDICAL PROCEDURES

If a patient is wearing a Kirpan, staff should be considerate of the patient's sentiments towards it.

If the Kirpan must be removed for medical reasons please explain this to the patient/family and allow them to remove it gently. If they are unable to remove the Kirpan themselves, please ensure your hands are clean and gently remove it and place it on a clean space.

If the patient has been identified as a risk to themselves or others, please consult with the family as alternatives may be possible.

## STANDARDIZED TESTING

The Kirpan is allowed to be worn in public places, schools and test centres thus it is allowed while taking any standardized test such as the LSAT, MCAT, SAT, etc.

## AMUSEMENT PARKS AND ENTERTAINMENT SPACES

Kirpans are allowed in amusement parks and entertainment spaces. In some instances, there are specific policies in place. Check with the specific Amusement park or entertainment space prior to visiting.

For example, Evraz Place has a kirpan policy for guests. According to the policy, Sikh visitors may wear kirpans of up to 7.5 inches in length if they are worn in the sheath and restrained in a Gaatra (fabric belt), underneath the clothing.



## Courts and Legislatures.

The Kirpan is allowed to be worn at Parliament Hill and other provincial legislatures with the exception of the Quebec National Assembly. The Kirpan is also accommodated in courthouses throughout Canada, including the Supreme Court of Canada.

An accommodation policy has been developed for the Kirpan in Canadian courthouses. Sikhs are permitted to wear the Kirpan in public areas of Toronto courthouses, subject to an individualized risk assessment and the following conditions:

- A person who wishes to enter a Toronto courthouse wearing a Kirpan must self-identify as Khalsa Sikh and inform the court officer that they are carrying a Kirpan upon arrival;
- All articles of the Sikh faith must be worn and available for proof, if required;
- The total length of the Kirpan, including the sheath, may not exceed 7.5 inches with a blade of not more than 4 inches; and
- The Kirpan must be worn under clothing and not be easily accessible and remain so throughout the courthouse attendance.

## EMBASSIES AND CONSULATES

Sikhs will be permitted to wear the Kirpan in Canadian embassies and consulates as long as the kirpan is secured within a sheath, attached to a Gaatra (fabric belt) worn across the torso and under clothing prior to entering the mission premises. The individual must all be in possession of the four other Sikh Articles of Faith.

Where there is a non-Canadian embassy in Canada, it is governed by that embassies domestic law which may or may not allow the kirpan. For example, American consulates in Canada do not allow the Kirpan.

# *Accommodating the Kirpan* IN TRANSPORTATION

## BC FERRIES

A Kirpan accommodation policy with BC Ferries was implemented after several Sikh passengers were told they could not wear their Kirpans while travelling.

The Kirpan accommodation policy states practicing members of the Sikh religion are permitted to carry a Kirpan provided that the following conditions are met at all times while onboard our ferries:

- the Kirpan must be kept sheathed
- the Kirpan must be worn underneath clothing; and
- the Kirpan must not be visible to other passengers.

## VIA RAIL AND BUSES

Via Rail and bus passengers are allowed to wear the Kirpan on trains so long as the Kirpan is worn underneath the clothing, always worn in its sheath and not visible to other passengers.

## AIRPLANES

The Canadian Air Transport Security Authority (CATSA) allows kirpans with blades of up to 6cm to be worn on flights domestically in Canada and to all international/domestic destinations, except the USA. If you have a transit stop over for your flight, you will have to ensure that the stop-over country also allows small kirpans. The UK and New Zealand allow small kirpans whereas India does not. Larger kirpans can be checked in with luggage.

The kirpan can be worn through security and the CATSA screening officer will ask to see the kirpan and may ask that it be removed from the sheath to be measured. If you are requested to hand over or remove your kirpan, please request to speak with a supervisor.

*Legalizing Right to Kirpan*


## Multani v. Commission scolaire Marguerite–Bourgeoys, 2006 SCC

In a unanimous 9 - 0 decision, the Supreme Court of Canada confirmed the right of Sikh students in public schools to wear the Kirpan and more generally the right of Sikhs to wear the Kirpan in Canada. The SCC held that there was no evidence that the Kirpan posed a safety risk beyond regular everyday items found in a classroom. The court found that any attempt to call the Kirpan a weapon was “contradicted by the evidence regarding the symbolic nature of the Kirpan, it is also disrespectful to believers in the Sikh religion and does not take into account Canadian values based on multiculturalism”.

# Discrimination & Harassment

If you feel you have been discriminated against or harassed, the first step is to explain to the person engaging in the discriminatory conduct why you find the behaviour or comments offensive and ask him/her to stop.

If there is an issue concerning your Kakaars or other articles of faith, explain to the person concerned that you are wearing these items due to your religion and their significance to you.



If the discrimination or harassment occurs at work, see whether there are company or union policies forbidding this type of behaviour and whether there are any internal complaint procedures. You may want to speak with your manager, union representative or some other authority to address the situation.

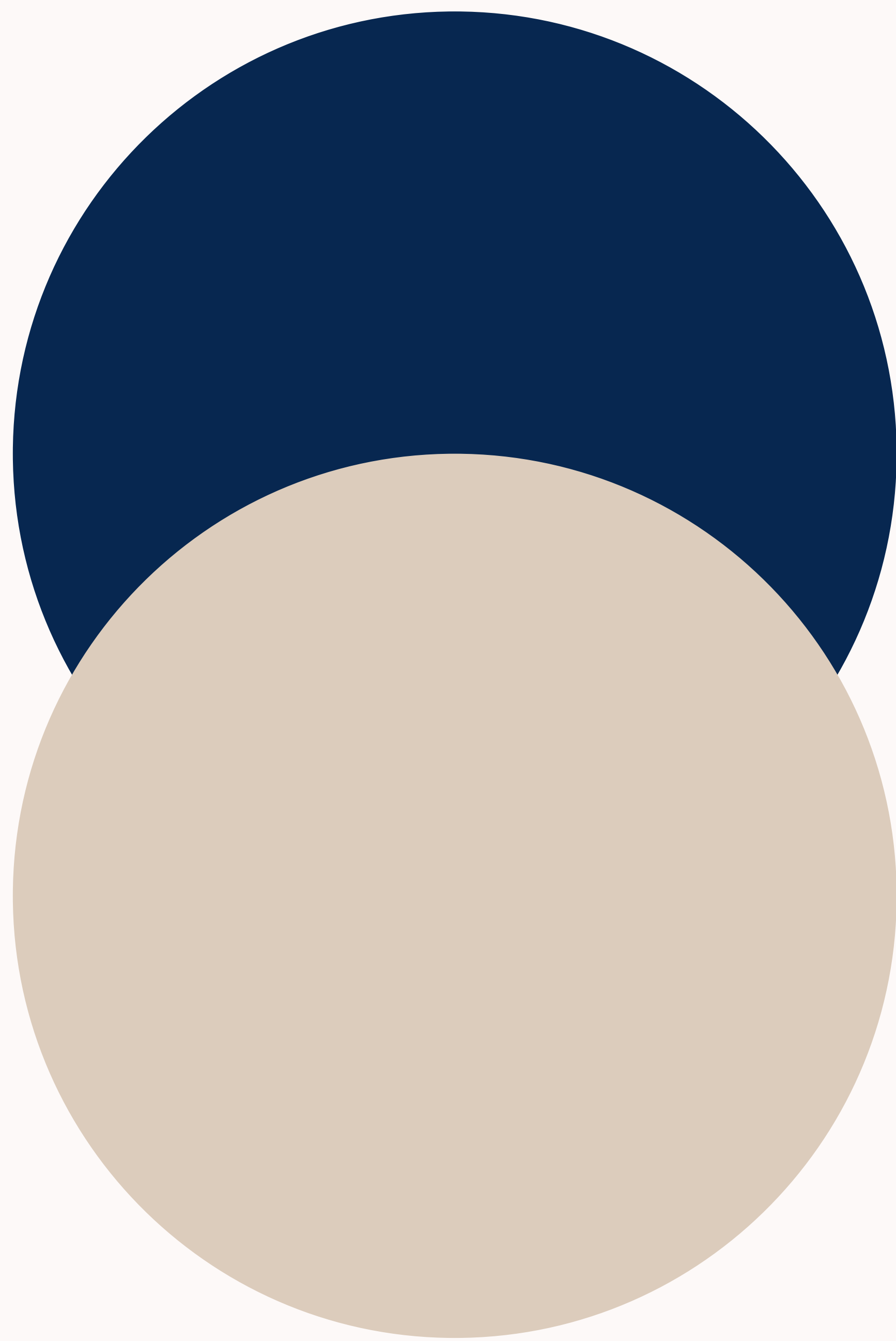
It is important to put your experience in writing.

Be sure to record:

- What happened
- When it happened
- Where it happened
- Who was involved and what was said
- Others who may have seen the incident
- What you did and said

You can also contact the WSO for advice in regards to your situation. WSO has encountered many cases of discrimination and harassment and may be able to guide you as to which steps you need to take and what options are available to you.

It is easiest and most efficient to resolve such issues on a lower level. When a matter reaches the Human Rights Commissions, parties are much less likely to be flexible and willing to compromise and change. The chances of your complaint reaching the Tribunal level may be quite low and the success rate is also not very high.



What happens if I  
have to escalate my  
complaint about  
discrimination or  
harassment?

The Canadian Human Rights Commission can be contacted for issues involving:

- Federal government departments, agencies and Crown corporations
- Canadian Forces
- Canada Post
- Chartered Banks
- Airlines, inter-provincial transportation and shipping
- Tele-communications companies, including internet service providers
- Television and radio stations
- First Nations employers
- Some other bodies including credit corporations, grain companies, museums, nuclear power operations and uranium mines.

For all other areas, the Provincial Commission will likely have jurisdiction.

The time limits on complaints vary with each Commission. The CHRC allows complaints to be filed within one year of the events but provincial Commission such as the Ontario Human Rights Commission have only six-month periods.

# THE PROCESS

## FILING A COMPLAINT

- When you contact your provincial Human Rights Commission, you will need to explain your situation in detail.
- You will then be asked to send your complaint in writing. Your complaint will then be served on the party you are complaining about.
- The Commission will work with you and the party you have filed the complaint against to bring about a resolution.
- Mediation may take place where the parties meet face to face and a neutral mediatory appointed by the Commission will attempt to find possible solutions. Mediation is completely voluntary and confidential and the mediator cannot decide the matter or force any action.
- If no resolution can be reached, two different outcomes can result, depending on the Commission.

# THE PROCESS

## FILING A COMPLAINT

- In most provinces, the Commission will begin an investigation to find evidence of discrimination or harassment.
- If sufficient evidence is found, the Commission will refer the complaint to a Board of Inquiry or Tribunal. In a legal setting, both parties will present their arguments, witnesses and evidence and a decision will be reached by the Board.
- In British Columbia however, after attempts at mediation have failed, the complaint will go directly to Tribunal but you will either represent yourself or need to hire counsel.
- If you decide to represent yourself, you will need to do your own investigation, organize your argument, identify and prepare your witnesses, present your documents and also prepare opening and closing statements. WSO can be of assistance in advising you at this stage

Sikhs in Canada can practice their faith and wear their articles of faith freely without discrimination and harassment. If you face any challenges or have questions about the right to accommodation and the Sikh articles of faith, please contact the WSO.

The WSO can provide legal guidance and assistance free of charge.

## CONTACT

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