

SECTION: Legislation

Effective date: August 15, 2003

SUBJECT: SERVICES – CLOSED BOND CREDIT UNIONS

Purpose

This policy is intended to assist in the interpretation and application of s. 13 of *The Code* to complaints challenging a closed bond association at a credit union or caisse populaire. Where there is any conflict between this policy and *The Code*, *The Code* prevails.

Context

1. The denial of financial services on the basis of a prohibited group factor is prima facie discriminatory, and hence the Commission will accept complaints filed against credit unions operating under closed bonds of association where the closed bond is based upon one of the group factors set out in Section 9 of *The Code* (e.g. ethnic origin, sex, source of income, etc.).
2. However, the Commission will then assess the factual context to determine whether the particular “bond” in question is “reasonably necessary” in all the circumstances. The onus will be upon the person applying the bond of association to establish that it meets the requirements set out in the *Meiorin*¹ analysis. (See also Policy # L-13 “Services - Bona Fide and Reasonable Cause”)
3. The Commission acknowledges the rationale for the “bond of association” provided by C.S. Axworthy, in his article “Credit Unions in Canada: The Dilemma of Success” (1981), 31 U. of T.L.J. 72-116 (i.e. that the bond of association sets the outer parameters of an identifiable group who unite to meet the financial needs of that particular community; delineates the boundaries between various credit unions to minimize duplication of services within communities; etc.). The Commission notes that closed bond credit unions have in the past been an important tool to assist disadvantaged groups to access financial services. The Commission also acknowledges the commitment to multiculturalism set out in Section 27 of the Charter. These and any other relevant factors will be taken into account in assessing a complaint.
4. In assessing the validity of a particular bond of association, however, the Commission will look not only at the “common bond”, itself, but at factors such as the consistency of its application, changes in circumstances since the bond of association’s original adoption, etc. For instance, a particular bond of association may appear justifiable, looked at in isolation, but may be applied in a discriminatory fashion, (e.g. a credit union might have a bond of association limiting its membership to a particular ethnic group.

¹ *British Columbia (Public Service Employee Relations Commission) v. BCGSEU*, [1999] 3 S.C.R. 3

The bond would be suspect, however, if there were indications that some persons not of that ethnic origin were allowed membership, and others were excluded).

5. The Commission is also mindful of the possibility that in some situations a bond of association, although justifiable and reasonable on its face, may have a substantially discriminatory impact or effect on a community. It may not be considered discriminatory to have a caisse populaire limited to francophones functioning in an area with sizeable non-francophone minorities, because other groups can set-up their own credit unions with relative ease under provincial legislation, or there may be meaningful access to other financial institutions, including banks. However, if the particular community was so structured that a very small linguistic or ethnic group would be denied all access to banking services, the principle of “reasonable accommodation” may come into play.

APPROVED BY:

Original Signed By

“Janet Baldwin”
Chairperson

19 August 2003
Date