

# THE COST OF CARING

## Report on the Consultation on Discrimination on the Basis of Family Status

**ONTARIO  
HUMAN RIGHTS  
COMMISSION**

ISBN: 978-1-4249-4281-7

Approved by the Commission: November 29, 2006

Available in various formats: IBM compatible computer disk, audiotape, large print

Also available on internet: [www.ohrc.on.ca](http://www.ohrc.on.ca)

*Disponible en français*

## Table of Contents

I.	EXECUTIVE SUMMARY .....	4
II.	INTRODUCTION .....	6
III.	FAMILY STATUS AND OTHER CODE GROUNDS .....	8
1.	Family Status and Gender.....	8
2.	Family Status and Disability .....	10
3.	Family Status and Age .....	11
4.	Family Status, Sexual Orientation, and Gender Identity.....	12
5.	Family and Marital Status.....	14
6.	Family Status, Race and Race-Related Grounds.....	15
7.	Other Issues	16
	KEY CONCLUSIONS	16
IV.	DEFINING FAMILY STATUS .....	17
1.	The Current Code Definition.....	17
2.	Limitations of the Current Definition .....	17
3.	Principles and Considerations.....	20
	Caregiving and Interdependency .....	21
	Commitment .....	22
	Practical Considerations and Limitations .....	23
4.	Approaches to a Definition .....	23
	KEY CONCLUSIONS	24
V.	EMPLOYMENT .....	26
1.	Introduction	26
2.	Accommodation of Caregiving Needs .....	30
	The Context of the Duty to Accommodate for Family Status .....	30
	Family Status and the Duty to Accommodate under the <i>Code</i> .....	33
3.	Common Workplace Barriers .....	35
	Failure to Recognize Spectrum of Caregiving Needs .....	35
	Absenteeism Policies and Leaves of Absence .....	35
	Hours of Work.....	38
	Travel Requirements .....	40
	Access to Alternative Work Arrangements.....	40
	Access to Benefits .....	41
	Negative Perceptions and Stereotypes.....	42
	KEY CONCLUSIONS	44
VI.	HOUSING.....	45
1.	Introduction	45
	The Role of Poverty .....	45
	Supply of Adequate, Affordable Housing .....	46
	Discriminatory Attitudes and Stereotypes .....	48
2.	Refusal to Rent to Families with Young Children .....	49
3.	Rental Criteria	51
	Income Information .....	51
	Credit History .....	52

Requirement for Co-Signors .....	53
Rental History .....	53
Employment History .....	53
4. Policies Related to Occupancy of Accommodation .....	54
Occupancy Policies .....	54
Definition of ‘Tenant’ .....	55
No Transfer Policies .....	56
Health and Safety Concerns .....	56
Access to Recreational Facilities and Common Areas .....	57
Other Issues .....	57
5. Children’s Noise	58
KEY CONCLUSIONS	60
<b>VII. SERVICES .....</b>	<b>61</b>
1. Context	61
2. Negative Attitudes and Stereotypes .....	61
3. Inclusive Design and Accommodation of Needs .....	62
4. Narrow Definitions of Family .....	63
5. Child-Free Spaces and Age Restrictions.....	64
6. Education	65
KEY CONCLUSIONS	67
<b>VI. ROLES AND RESPONSIBILITIES.....</b>	<b>68</b>
1. Government	68
2. Employers, Housing Providers and Service Providers .....	69
3. The Commission	69
<b>VIII. ORGANIZATIONS PROVIDING INPUT.....</b>	<b>71</b>
<b>ENDNOTES.....</b>	<b>73</b>

## I. EXECUTIVE SUMMARY

*The Cost of Caring* is the final Report on the Ontario Human Rights Commission's ("the Commission") research and public consultation on issues related to the ground of family status.

Family status is one of the least understood grounds of the Ontario *Human Rights Code* ("the Code"). It was clear from the Commission's consultations that employers, landlords and service providers, as well as potential complainants and advocates, are largely unaware of the protections of the Code with respect to family status, or of issues and barriers related to this ground of discrimination.

Although there are many aspects to the ground of family status, caregiving – and the cost of that caring – lie at its heart. For many, our obligation and desire to care for our family members lies close to the core of our identities. The Commission heard that the frequent lack of recognition, value and support placed on caregiving often leaves caregivers at a significant disadvantage in attempting to access and maintain employment, housing and services. Because caregiving is so closely associated with gender roles, this disadvantage tends to be particularly acute for women. The disadvantages caregivers face are compounded when those caregivers are parenting alone; when they or those they care for have disabilities; when they are gay, lesbian, bisexual or transgendered; or when they are racialized or Aboriginal.

Demographic changes, including the rise in lone parent families, the increased labour force participation of women, and the aging of the populace, together with eroding social supports and increased workplace demands, are placing growing pressures on caregivers.

Protections under the Code for caregivers are relatively narrow, extending only to parent-child and spousal types of relationships. Often Ontarians, especially persons with disabilities and older Ontarians, must rely on a wide range of caregiving supports, including siblings, extended family members and other relationships. The lack of recognition and supports for these relationships both in the Code and in the broader social context, can place a burden both on caregivers and on those who rely on their care.

Workplaces have been slow to adapt to the changing realities of the family, and this, together with the intensification of work and the shift to contingent, part-time and temporary work, has created significant stress in the relationship between families and the workplace. Unnecessary inflexibility and outdated assumptions create employment barriers for caregivers. Employers can take positive steps to remove barriers to caregivers, including improving access to alternative work arrangements, ensuring that part-time employees are treated fairly, re-examining

policies related to hours of work and leaves of absence, and developing accommodation policies and procedures.

Families with young children have long faced significant disadvantages in the rental housing market, due to widespread discrimination among landlords, a tight supply of affordable housing, and the disproportionate poverty among lone parent, racialized, Aboriginal and other vulnerable families. The Commission recognizes that substantial work must be done to increase awareness among both landlords and tenants of their rights and responsibilities under the *Code*, and to tackle systemic barriers in the rental housing market.

The Commission heard about barriers that families face in accessing a range of services, including social assistance, transportation, healthcare and education. Service providers must recognize the diversity of Ontario's families, and design their services to recognize needs related to family status. Age restrictions and "child-free" spaces must be employed with caution, as such policies may violate the *Code*.

Employers, landlords and service providers cannot, on their own, solve all of these complex issues. Government has a responsibility to ensure that there are adequate social supports for caregivers, such as supports for eldercare, childcare, and persons with disabilities; minimum legislated standards that ensure that caregivers can participate in the workforce; adequate affordable housing; and barrier-free government services. Without such supports, caregivers will continue to face serious systemic barriers.

The Commission also has a significant role to play in addressing issues related to family status. The Commission will develop policies and guidelines on family status to clarify what employers, landlords and service providers must do to ensure compliance with the *Code*. The Commission will also take steps to communicate the results of this consultation, and to ensure greater awareness of these issues among all key stakeholders. The Commission hopes that this Report will raise awareness about the importance and impact of this *Code* ground, encourage further discussion of the issues raised, and provide a resource for the community in advancing the rights under the *Code* related to family status.

## II. INTRODUCTION

The roles that we play as family members are central to our lives. We value our ability to provide care and support – emotional, social, physical, and financial – to our family members when they need it, and rely on our families to provide the same for us when necessary.

The way in which we provide and receive care as part of our family relationships has a profound effect on most of our life decisions and opportunities – where we live, the work that we do, and the economic and social prospects that we have. How this occurs will likely differ based on our sex, our marital status, our sexual orientation, our socio-economic status, whether we or a family member have a disability, and whether we are members of a racialized group, to name a just few factors.

The ground of family status was added to the Ontario *Human Rights Code* (“the Code”) in 1982 in recognition of the ways in which our identity as family members, and the associated caregiving responsibilities, can act to disadvantage and exclude individuals from opportunities and benefits in a way that is serious, systemic, and offensive to dignity. The situation of a single mother who is repeatedly turned away by landlords when they learn of her status; of a parent of a child with a disability who loses his job because the employer refuses to accommodate his need for a flexible work schedule; of the woman who spends her old age in poverty because a lifetime of providing care for parents, children and family members has left her without a pension or adequate income - these situations raise serious human rights concerns.

It is apparent that there is a profound lack of awareness, not only of the rights and responsibilities under the *Code* regarding family status, but of the significant impact of family status on opportunities and experiences. This is true for employers, housing providers, community advocates, service providers and the general public.

For these reasons, in 2005 the Ontario Human Rights Commission (“the Commission”) initiated a public consultation on human rights and family status. The consultation was launched in May 2005 with the Discussion Paper, *Human Rights & the Family in Ontario*. The Discussion Paper outlined key issues and invited submissions from interested parties. At the same time, the Commission distributed a questionnaire and posted it on its website, inviting individual Ontarians to share their stories of how their family status had impacted on their access to housing, employment and services. This information was sent to over 300 stakeholders.

The Commission heard from approximately 120 organizations and individuals. These included employers, unions, housing providers, government, academics, community organizations, legal clinics, service providers, professional organizations, and advocacy groups. Based on the information received from questionnaires and submissions, during the fall of 2005, the Commission held four roundtables on specific issues of concern: on issues affecting older Ontarians,<sup>1</sup> on the definition of family status, on employment, and on housing.

The Commission would like to take this opportunity to thank everyone who contributed to this process. We wish to acknowledge the substantial time and effort that individuals and organizations invested in preparing written submissions and participating in the roundtables. The breadth and quality of the information received have made it possible for the Commission to develop this Report, and provide a strong foundation for further work in this area.

It is the Commission's hope that this Consultation Report will lead to greater awareness among institutions and individuals about their rights and responsibilities under the *Code* with respect to family status. Based on this Report, the Commission intends to undertake further work in this area to raise awareness, deepen understanding, and address systemic issues.

### III. FAMILY STATUS AND OTHER CODE GROUNDS

Each individual's experience of his or her family status is profoundly influenced by other aspects of their identity, such as gender, sexual orientation, age, race, marital status, or disability: this was a major theme of the submissions the Commission received. For example, the experience of an aging parent of a child with a disability will differ from that of an Aboriginal single mother in search of housing. A heterosexual married mother seeking career advancement will experience different barriers than a lesbian couple dealing with their children's schooling. Beyond the shared experience of barriers based on caregiving, the intersection of various *Code* grounds can result in forms of discrimination that are unique and complex. It is essential that the full context of family status issues be considered in order to reach a true understanding. Highlighted below are some of the issues arising from the intersection of family status with gender, disability, sexual orientation, race and race-related grounds, and age.

#### 1. Family Status and Gender

*We live in a world today where gender roles and stereotypes exist. These roles and stereotypes act to limit both men and women.*

CAW Canada

Women continue to provide the bulk of caregiving in our society, whether it is for children, aging parents or relatives, or family members with disabilities. Women both devote more time to caregiving activities, and are more likely to have the primary responsibility for the care of family members. Over 70% of informal caregiving is provided by women.<sup>2</sup>

Consultees emphasized that caregiving is so intimately connected to gender roles that it is impossible to adequately consider family status without thoughtful examination of gender issues. Family status issues have frequently been characterized as "women's issues"; at the same time, many have pointed out that no real progress can be made until these issues are no longer perceived as solely "women's issues". The effects of women's caregiving responsibilities are key to the continued disadvantage that women face in employment, housing, and society at large.

Organizational submissions and roundtable participants noted a range of factors that pressure women to assume greater caregiving responsibility, such as lower earned incomes, norms about gender and family responsibility, and lack of accommodation by employers. ARCH, A Legal Resource Centre for Persons with Disabilities, noted that families of children with disabilities tend to follow the 'traditional' model of a stay-at-home mother, indicating that, "women come under tremendous pressure to leave the public arena and go back into the home".<sup>3</sup>

Many consultees commented on the pressures experienced by women in the paid workforce with regard to their caregiving responsibilities. CAW told the Commission about the concerns that it hears from its female members “about the double and triple day, about the ‘sandwich’, situation of caring for children and parents”. A number of consultees pointed to the role of caregiving obligations and a lack of appropriate accommodation and supports in pushing women into part-time employment or out of the paid workforce altogether.

These realities have been reflected in international covenants and documents. The *Convention on the Elimination of All Forms of Discrimination Against Women*<sup>4</sup> requires states parties, as essential steps to promoting the equality of women, to recognize the importance of maternity as a social function and to encourage the provision of the necessary supports to combine family obligations with work responsibilities and participation in public life. The 1995 *Beijing Declaration and Platform for Action* recognized that the lack of a family friendly workplace was a significant obstacle to women achieving their full potential.<sup>5</sup>

Jurisdictions outside of Canada have recognized that the failure to accommodate caregiving responsibilities has an adverse impact on women, and is a form of sex discrimination. In Australia, the *Sex Discrimination Act* explicitly prohibits employers from discriminating against employees on the basis of family responsibilities. Failure to accommodate the family responsibilities of workers has been considered a form of indirect sex discrimination.<sup>6</sup> New South Wales prohibits discrimination in employment against persons with caregiving responsibilities; employers have been required to accommodate caregiving responsibilities to the point of unjustifiable hardship.<sup>7</sup> In the United States, issues of accommodation of needs related to family responsibilities have been litigated as gender discrimination.<sup>8</sup>

Of course, gender roles and stereotypes have negative effects on men as well. There is an expectation that men do not, and should not, take on significant caregiving roles. When they do, they may meet resistance, and find themselves subject to negative treatment. As one submission stated,

In the workplace, it is perhaps expected, though not always tolerated, that women may have caregiving responsibilities. This can be a benefit, but it can also serve to discredit women workers. On the other hand, the prevalence of this attitude suggests that when men’s caregiving affects their work there is frequently surprise and opposition.

It is arguable that, irrespective of the ground of family status, the failure to recognize and accommodate caregiving responsibilities, because it is related to long-standing gender roles and assumptions, has an adverse impact on women and in some cases men, and may in appropriate circumstances be considered discrimination on the basis of sex.

Special attention must be paid to the situation of women who are subjected to domestic violence. Women who are facing violence in the home can end up being disciplined, or even losing their jobs because of rigid absenteeism policies. An organization that works to end violence against women and children notes that:

The fact that landlords can and do discriminate against single mothers with children can place the women on whose behalf we work at serious risk. It is not uncommon for women in such a situation to return to the abusive relationship, literally because they have nowhere else to go. Once a woman has returned to her abuser, the fact that she was unable to find housing becomes a weapon he can use to intimidate her from leaving a subsequent time.

Metropolitan Action Committee on Violence Against Women (METRAC)

The disadvantages experienced by women who are caregivers are further compounded when these women are caring for family members with disabilities, or if they are also racialized, transgendered, lesbian or bisexual, parenting on their own, or have disabilities themselves.

## **2. Family Status and Disability**

Persons who have caregiving responsibilities for family members with disabilities face challenges and barriers beyond those faced by others with caregiving responsibilities. These caregiving responsibilities are carried out in a context of inadequate social supports for persons with disabilities and their caregivers. A recent study indicated that over two million Canadians require assistance with everyday activities. The bulk of this assistance is provided by family members, either living with a person or in a separate residence.<sup>9</sup>

For some families, the key issue is not caregiving responsibilities, *per se*, but the difficulties that arise because of continued barriers to inclusion in the community, for example, when children are not included in the educational system, or when individuals are unable to access transportation.<sup>10</sup> As a study by the Canadian Association for Community Living notes:

The consistent lack of disability supports for persons with disabilities and the lack of community capacity to respond to and include people with disabilities, impacts upon a family's ability to transition through the natural stages of a caring relationship....Inflexible supports and exclusionary community systems and practices result in families taking up more responsibility for providing supports to their family member with a disability ... Unsupported parents, spouses, siblings and adult children who provide assistance, are required to act as more than just a caring family member.

Their role is expanded to provide often unsustainable levels of support beyond those of a typical family.<sup>11</sup>

The impacts on family members of persons with disabilities are broad. One study indicated that workers who had children with disabilities were more likely to turn down overtime hours, reduce their work hours, and refuse promotions.<sup>12</sup> Children with disabilities are more likely to live in poverty, their parents are twice as likely to have social assistance as their primary source of income, and these families face difficulties in finding accessible housing in communities with needed support.<sup>13</sup>

My child suffered mental health issues since age 7, as a single parent I stopped working to look after her. We now live in poverty... As a single parent there are not enough funds to obtain costly therapy for my child... [This] has affected housing, and I am unable to provide properly for my child because of lack of funds, for example, medications, proper nutrition, clothing, outings for my child.

Individual

Attention must also be paid to the situation of persons with disabilities who are themselves caregivers. These individuals may find themselves disadvantaged in multiple ways. Parents with disabilities may face stereotypes regarding their ability to ensure the safety, or manage the basic care of their children, and may find themselves under unwarranted scrutiny from child protection authorities. As well, they may face difficulty in finding accessible services for themselves in their caregiving capacities. For example, ARCH has received reports that specialized transportation providers will only rarely allow a parent with a disability to travel with a child. This means that parents with disabilities may have no means of transportation for taking children to appointments, outings or daycare.

### **3. Family Status and Age**

Many submissions pointed out the particular difficulties faced by aging parents of adult children with disabilities. As they age, parents may find themselves less able to provide the extensive care that their children need, but may be unable to access the necessary community supports to ensure their children's ongoing social, emotional and physical well-being. Parents may find themselves living with terrible anxiety about the fate of their children once they are no longer able to provide care.<sup>14</sup>

Other submissions pointed out the growing prevalence of grandparents providing care for grandchildren. There are approximately 20,000 Ontario children currently being cared for by their grandparents. Close to half are single grandmothers. Many have serious health and mobility limitations. Approximately one-third of these families are living in poverty. The unique needs of this group of caregivers are often overlooked.<sup>15</sup> One grandmother looking after her special needs

grandchild told the Commission that she had to leave a good job and take part-time employment in order to care for her grandchild, as well as selling her home in order to pay for costs. As a result, she is unable to save for retirement.

As the Commission reported in *A Time for Action: Advancing Human Rights for Older Ontarians*,<sup>16</sup> the lack of social supports for family members providing eldercare remains a significant and pressing issue. The Commission heard again through this consultation of the growing and urgent need related to eldercare, which is largely provided in the community by family members. The lack of support for eldercare by government, employers and service providers has a significant impact on the quality of life of older Ontarians, as well as on those who are providing eldercare.<sup>17</sup>

At the other end of the age spectrum, young parents also often face significant challenges. There are numerous negative stereotypes about young parents that may make it difficult for them to find housing or access services. For example, both employers and housing providers are likely to think of young people as insufficiently mature, so that they have difficulties accessing employment or housing.

Most of the discrimination that I have found is because I am a young single mother. I was 19 when my daughter was born and I have faced a lot of problems getting a job or housing. People think that because you're a young single mother there must necessarily be something wrong with you. They won't trust you. Because you're single they know you need double the effort to raise a child and because you're young they think you are just irresponsible and want to party.

Individual

Young parents are much more likely to be poor: in 2001, 48.1% of all families where the main income earner was under the age of 25 were low-income.<sup>18</sup> The low-income of these families puts them at a severe disadvantage in the housing market.<sup>19</sup> At the Roundtables, the Commission heard that these barriers are particularly pronounced for young parents from Aboriginal and racialized communities.

#### ***4. Family Status, Sexual Orientation, and Gender Identity***

The Coalition for Lesbian and Gay Rights in Ontario (CLGRO) stated that “Negative stereotypes about the suitability of gays, lesbians, or bisexuals as parents or role models are still very much prevalent in Ontario”, and the Commission has heard that similar stereotypes affect transgendered persons.<sup>20</sup> As a result, lesbian, gay, bisexual, and transgendered (LGBT) parents face distinct difficulties relating to family status.

The courts have recognized the historical disadvantage experienced by lesbian mothers and their children, and that these families continue to face legal barriers and social marginalization.<sup>21</sup>

Consultees described challenges in the process of becoming a parent, such as the federal restrictions on use of sperm. Another was the requirement for lesbian parents to have one parent adopt the child in order to be recognized as a parent:

When we applied to the registrar general for a birth certificate, we were told that they would not recognize a non-birth parent on the birth certificate and that we would have to go through legal means in order to secure a 'step-parent adoption'. My partner isn't, and will never be a 'step-parent' to our son. Conversely, heterosexual couples using donor sperm in order to produce offspring are NOT required to go through a costly and timely 'step-parent adoption'. The father, despite not being a biologically related parent, is allowed by the registrar general to be stated on the original birth certificate and is never considered the child's 'step-parent'.

The discriminatory effect of such policies was recognized in a very recent decision of the Ontario Superior Court of Justice, *M.D.R. v. Ontario (Deputy Registrar General)*.<sup>22</sup> The case involved lesbian parents whose children were conceived through anonymous donor insemination, and who sought to include the particulars of both parents on each child's Statement of Live Birth. The Court ruled that the provisions of the *Vital Statistics Act* preventing such inclusion violated section 15 of the *Charter of Rights and Freedoms* with respect to sex and sexual orientation, and gave the legislature 12 months to remedy the constitutional defects.<sup>23</sup>

One Roundtable participant referred to these types of issues as "denial of family status".

For LGB parents, these pervasive negative attitudes about their adequacy as parents may lead to difficulty in accessing services in a welcoming and inclusive environment. Even where supports and services are available, LGB families may hesitate to avail themselves of them, because they are afraid of the consequences of disclosing their sexual orientation.

The Commission heard that the prevalence of transphobia creates a barrier to the public acknowledgement of trans families:

The fact that my partner is the same sex as me and also transsexual is making me seriously consider whether or not I should bring her to the company picnic – family connections are important in my current working environment – which I find problematic since I know that this picnic is designed to integrate people into the company further and create connections among employees.

The Commission also heard that structures and programs designed for, and based on heterosexual concepts of the family and parenting may be unsuitable for the needs of LGB families. There are few services that specifically address the needs of these communities, particular outside of urban areas.

Members of LGBT families may be harassed because of their association with a non-traditional family. For example, Family Services Canada told the Commission that children of LGB parents may face bullying, teasing and taunting because of the sexual orientation of their parents.

### **5. Family and Marital Status**

Lone mothers (including widowed, single and divorced mothers) are one of the fastest growing segments of the population. In 2001, almost one-quarter of families with children were lone-parent families, most of these headed by women.<sup>24</sup> These tend to be the most economically vulnerable of all families, experiencing high rates of poverty, and tending to experience poverty over the long term.<sup>25</sup>

There exists a powerful set of negative stereotypes about lone mothers. A number of submissions identified the persistent image of female-headed lone-parent families as undeserving and as “failed families”. There is an assumption that these families are dysfunctional, and that these women are lazy, don’t really want to work, and prefer life on social assistance.<sup>26</sup>

The stigma of being a single parent still exists and is almost synonymous with ‘dysfunctional family’. Some of this is perpetuated by the media and unfortunately by social service professionals and researchers.

Family Services Canada

The Ontario English Catholic Teachers Association (OECTA) pointed out that the lack of financial or personal supports for single parents means that the issues that affect caregivers in general will have a greater personal and financial impact on these families:

The issues which our members face are exacerbated for single parents. These teachers often must make decisions affecting the job and the family, sometimes without a lot of support from either the employer or the family. Single parent women teachers often face serious financial impact if they need to access leaves or take a time reduction to part-time work due to the fact that they often have little or no outside support.

As is evident throughout this Report, these families often face massive practical barriers in accessing employment and adequate housing.

Another aspect of the way in which family and marital status intersect is the situation of blended or dual custody families. Due to the complexity of their relationships, they have unique needs, which are often not taken into account in the design of services or programs. For example, rules and eligibility requirements for subsidized childcare may not accommodate the realities of a dual custody family, where children move back and forth over jurisdictional boundaries as part of custody arrangements. As well, when two parents are living separately, but sharing custody of their children, they may find paying for adequate housing and childcare in two places a significant financial burden.

## **6. Family Status, Race and Race-Related Grounds**

The *Code* prohibits discrimination on the ground of race, as well as several grounds that are closely linked to race: colour, ethnic origin, ancestry, place of origin, and creed. These grounds intersect with family status in complex ways.

As a number of consultees pointed out, negative stereotypes associated with race continue to have an impact:

Stereotypes continue to be common concerning ethnic groups and the myth of ‘different’ child-rearing practices implying that certain ethnic groups do not protect their children properly, expect others to look after them in public places, etc.

Family Services Canada

These stereotypes have a range of serious consequences. Parents from racialized communities may find themselves subject to extra negative scrutiny from their children’s schools or from child protection agencies, on the assumption that their families are likely to be “dysfunctional”. Racist attitudes also create barriers for racialized families seeking housing.

Recent immigrants and refugees experience unique issues in accessing housing, employment and services. For example, because they are unable to provide Canadian rental references, landlords will often ask these families to provide large security deposits and/or guarantors. The Ontario Coalition of Agencies Serving Immigrants (OCASI) reports that settlement agencies experience enormous difficulty in finding adequate rental housing for recently arrived refugees from countries where the average family size is larger: these families are forced to live in overcrowded or substandard housing.

Because of disproportionate levels of poverty among racialized communities, stereotypes, discrimination and systemic barriers based on family status have a disproportionate impact on these communities. For example, as one Roundtable participant pointed out, because racialized persons are often last hired and first

fired, they are less able to take the risk of asking their employers for accommodation for their family-related needs.

## **7. Other Issues**

The Commission also heard about difficulties faced by families formed through adoption. The Adoption Council of Canada raised concerns regarding the barriers that adopted persons and their birth parents face in obtaining access to personal information, barriers that are not experienced by other families.<sup>27</sup> The Adoption Council also identified as issues the treatment of internationally adopted children with respect to citizenship, and the treatment of adoptive families under the pregnancy and parental leave provisions of the *Employment Insurance Act*.<sup>28</sup>

The Foster Parents Society of Ontario indicated that children raised in foster families face many challenges and obstacles in dealing with the education and justice systems. As well, these families face barriers in accessing housing and in the provision of services by insurance companies. The Ontario Federation of Indian Friendship Centres (OFIFC) notes that youth involved with the Children's Aid Society as Crown Wards often face discrimination because of their circumstances.

During the Roundtables, a number of consultees told the Commission that most of the issues related to family status are exacerbated for persons from Northern Ontario, because of the lower level of services and employment in the North. For example, one participant noted that in fly-in communities, if a family member becomes seriously ill, they must be flown out to the nearest hospital, and caregivers may therefore require many days away from work – and may lose their jobs as a result. As well, in the North, more jobs are short-term, so employers are less likely to offer supports for familial obligations.

### **KEY CONCLUSIONS**

**Government, employers, housing providers and service providers should take into account the intersecting impacts on persons identified by family status of gender, disability, age, sexual orientation, marital status, race, and race-related grounds whenever programs, policies and services are developed and implemented.**

## **IV. DEFINING FAMILY STATUS**

### **1. *The Current Code Definition***

The *Code* includes two grounds that provide protections for persons in relationships: marital status and family status. “Marital status” is defined in section 10 of the *Code* as “the status of being married, single, widowed, divorced or separated and includes the status of living with a person in a conjugal relationship outside marriage”, including both same-sex and opposite sex relationships. “Family status” is defined as “the status of being in a parent and child relationship.”

The grounds of marital and family status intersect to cover a range of family forms, including lone parent and blended families, as well as families where the parents are in a ‘common law’ relationship.

In accordance with the principle that a broad and purposive approach must be taken to the interpretation of human rights,<sup>29</sup> tribunals and courts have taken an expansive approach to the interpretation of the ground of family status. The ground has been interpreted to include adoptive families, foster families, and non-biological gay and lesbian parents.<sup>30</sup>

An Ontario Board of Inquiry has enunciated the broad principle that the definition relates to being in a parent and child “type” of relationship, and thus includes situations in which someone is acting in the position of a parent to a child.<sup>31</sup> This may be a legal guardian, or an adult otherwise functioning as a parent, and may therefore include parent-child relationships formed by marriage and common-law relationships.

It is the Commission’s position that the ground of family status includes care relationships between adult children and their parents.<sup>32</sup> Therefore, individuals providing eldercare for ailing parents are entitled to accommodation on the basis of family status. Similarly, those providing care to spouses with disabilities are entitled to accommodation on the basis of marital status.

### **2. *Limitations of the Current Definition***

During this consultation, the Commission heard numerous concerns about how “family status” is defined and interpreted under the *Code*, and the appropriateness of this definition in light of the current diversity of family life and caregiving relationships in Ontario.

Many expressed concerns that important parenting relationships are not or would not be protected or recognized in many circumstances:

When I was young my brother lived for several years with an older couple who had no children. This was due in part to our family's economic status as well as the closeness of the relationship to "Granny and Gramps." If a CAS agency had been aware at the time of my brother's living arrangement, I'm sure he would have been taken into custody.

Anishnabe man

A number of consultees referred to the limitations of "traditional" and "nuclear" concepts of the family. The "traditional" concept of family, consisting of a father in the paid workforce married to a woman who is a full-time caregiver for their children, is only one of a range of family forms. There have always been families who did not fit this model but it has become increasingly out of date over the past few decades, due to a range of demographic shifts.<sup>33</sup> A recent study by the Vanier Institute on the Family indicates that the nuclear family model, consisting of a married heterosexual couple with at least one child, now fits fewer than half of Canadian families.<sup>34</sup> Many consultees called attention to the discrepancy between idealized concepts of the family and contemporary realities:

In many ways, legislation, workplace policies and societal attitudes are rooted in an old notion of the family....Alongside what has been called the "nuclear family", are growing numbers of households headed by single parents, blended families, same sex unions, multi-generational households and adult siblings sharing a home.

CAW Canada

The Commission heard that failure to protect and accommodate a broader range of family relationships beyond those currently recognized in the *Code* perpetuates the disadvantage experienced by women, persons with disabilities and their families, older persons, Aboriginal, newcomer and racialized families, and LGBT persons. The Commission heard that this exclusion could be considered to have an adverse impact on groups protected by these grounds, and that steps must be taken to ensure adequate protection for the caregiving needs of the families of Ontarians identified by the above *Code* grounds.

For example, because of homophobia and transphobia, many LGBT individuals are rejected by their families of origin, and rely on "chosen families" for care and support: however, these important relationships are not generally recognized or protected by the *Code*:

Many lesbians, gays, and bisexuals have been rejected by most, if not all, of our families or origin and prefer the notion of "chosen families" ...We can see no reason why these connections should not be equally honoured and protected.

Similar issues were raised with regard to older Ontarians. The Older Women's Network indicated that, where older persons are not married and have no children, they become very dependent on broader networks. The Halton Region's Elderly Services Advisory Committee (ESAC) stated that:

Because of family breakdowns, mobility of family members, the increase in three generational families, changing relationships, etc., there must be more recognition of expanded dependency relationships.

Consultees described the importance of in-laws, siblings, grandchildren, cousins, nieces or nephews, and friendship networks as caregivers and supports. A consultee indicated that she had named friends to deal with her Power of Attorney and will, describing her own definition of family as "who is important to you, who do you trust?"

The Commission heard that the caregiving networks for persons with disabilities include a range of family relationships other than the parent-child relationships covered by the *Code*, and described a number of ways in which the equation of family support with spousal or parent-child relationships excludes other family supports that are important for persons with disabilities:

Often there is no living parent, child or spouse for an ODSP recipient who can receive accommodation or even understanding from their employer, which has a discriminatory effect both on the family member and on the person receiving care. ... ODSP recipients and people with disabilities, in general, often rely on the care provided by their extended families – siblings, cousins, aunts uncles, nieces and nephews – and friends to ensure that they can attend medical appointments, access ODSP information, meet financial commitments, shop and otherwise take part in their communities.

Ministry of Community and Social Services (MCSS)

ARCH and other consultees described a number of care and support arrangements used by persons with disabilities, such as guardians, supported decision-making networks, alternate family arrangements similar to foster care, and "homeshare" arrangements made between adults, and indicated that persons with disabilities suffer from a lack of legal recognition of these arrangements.

Many consultees referred to Canada and Ontario's increasing ethnic diversity in discussion of the definition of family status. Ontario accounts for more than half of all Canadian immigration:<sup>35</sup> as of 2001, 27% of Ontario residents and 41% of residents in the Greater Toronto Area were born outside Canada.<sup>36</sup> The Commission heard that many cultures define family in ways much broader than

the current protections of the *Code*. As a result, persons identified by race and related grounds, such as ethnic origin, place of origin, ancestry and creed, may find the *Code* definition excludes their experience of family:

I've always been aware of (and many times thankful for) the differences between my cultural heritage and that of mainstream Canada. I think that many agencies with a responsibility to children need to expand their definition of family to include extended family and close friends – especially in cultures that are not WASP.

Anishnabe man

OFIFC also noted that poverty among Aboriginal communities, both on and off reserve, also contributes to a tendency toward multi-generational households. As a result, the Commission heard from many consultees that it is necessary to expand protections for family status to more adequately address this reality. For example, OECTA indicated that a broader definition "... would do much to capture the nuances of family relationships in Ontario's multicultural society".

### ***3. Principles and Considerations***

The Commission heard strongly that the *Code* definition of family status must be broadened to include a wider range of relationships. Consultees in submissions and in the Roundtables identified a number of principles and considerations that should guide any definition of family status.

## Caregiving and Interdependency

Legislation protecting familial relationships may be based in part on the recognition of the value of close personal relationships, and the desire to support relationships in which care is provided.<sup>37</sup> Care is labour that is essential to the smooth functioning of society, and family has long been understood in terms of caregiving relationships. It is on this basis that some anti-discrimination legislation in other jurisdictions specifically identifies protections on the basis of “responsibilities as a carer.”<sup>38</sup>

If laws and protections meant to support caregiving relationships use as convenient proxy only the most visible structural relationships, such as marital and parent-child relationships, many people and caregiving relationships will be excluded.<sup>39</sup> However, the Vanier Institute for the Family states that, if we recognize and refocus on the importance of care, “...we shift our energy from arguing about what a family **is** on the basis of structural characteristics, to emphasizing what family members **do** and can do for each other in the name of care.”<sup>40</sup>

The Commission heard that most accommodation of family status relates to caregiving, that any definition of family status should relate to care, and that care relationships require further protection:

...family status must be broadened to include dependency relationships such as caring for disabled adults, providing eldercare, and caring for unrelated persons who are part of our extended families or who have close personal relationships with us.

OECTA

[T]he definition should be expanded to include relationships where there is dependency of one person on another, regardless of whether they are in a conjugal relationship recognized by the state or are related by blood or adoption. Such dependency may be because of disability, age, infirmity, or economic circumstances.

CLGRO

[The current protection] should be expanded to include other dependents that are in a person’s care. Issues concerning dependant care are experienced in the same way [as parent/child relationships]. The consequences of not accommodating individuals with such responsibilities... can be significant.

ALOC

It is important to note that most relationships between care providers and older persons or persons with disabilities are not one-way but reciprocal, and that

parties in many relationships both provide and receive care and support.<sup>41</sup> Social science research also indicates that we are motivated as much by our own need to give care as we are by the needs of others.<sup>42</sup> A number of consultees therefore suggested terms such as “relationship and care responsibility”, “duty of care”, and “interdependency”.

## **Commitment**

Another of the principles enunciated by consultees for identifying relationships that require protection is that of commitment, which implies a level of closeness and permanence in the relationship.<sup>43</sup>

The definition should be expanded to include care and commitment relationships... as well as close mutual relationships beyond the scope of ‘blood ties’.

Centre for Families, Work and Wellbeing (CFWW)

Family means many things to different people but always the term suggests caring and permanence.

MCSS

Roundtable participants and organizational submissions discussed the importance of permanence or length of relationship in establishing the genuineness of a relationship, protecting vulnerable persons from opportunistic individuals presenting themselves as “caregivers,” and protecting organizations and employers from abuse of family status accommodations. One consultee referred to guidelines from a government service organization, which contains the phrase “There is a settled intention to treat someone as a member of the family.”<sup>44</sup>

Many Roundtable participants found this to be a useful concept; however, some noted that family and caregiving relationships cannot be assumed to be static and unchanging. Roundtable participants noted that the need for care and accommodation of a caregiver can arise suddenly and unexpectedly, or can change quickly in emergency situations. CFWW suggested that the definition must include “care and commitment relationships that may be unpredictable and must be considered on a case by case basis.”

Some consultees felt that settled living relationships or permanence were important indicators of commitment. Roundtable participants suggested that definitions could include a clause or phrase that allows for accommodation of other cases, suggesting wording from collective agreements that include “unrelated specific members of the household.” Halton Region’s Elderly Services Advisory Committee indicated that the definition should incorporate “...established living relationships where there were shared responsibilities for accommodation, finances and caregiving.” Others cautioned against a definition

limited to shared living arrangements, as persons giving and receiving care may not live together, but have an important closeness that may sometimes require accommodation, and suggested a phrase to include an “ongoing, long-term significant relationship with an unrelated person.”

## **Practical Considerations and Limitations**

Some organizations expressed concerns regarding the additional burden that might be placed on employers by expanded protections for caregiving relationships. The Human Resources Professionals Association of Ontario (HRPAO) indicated that current legislative requirements can already be onerous for employers, particularly smaller employers, and expressed concern about additional requirements resulting from an expanded *Code* definition of family status. This was echoed by the Canadian Manufacturers and Exporters:

There must be a practical limitation on the scope of “family status.” To construe the concept of “family status” overly broadly would impose an obligation to accommodate on employers that would, in many cases, approach undue hardship.

Some employment-related organizations indicated that any definition must be clear and certain. A Roundtable participant indicated, “employer providers do not want to have to decide what is a relationship, and what is not.” Some Roundtable participants pointed to potential practical solutions to any uncertainties, such as the protocols and forms used by schools to identify who has the right to pick up children, and the fact that many caregiving relationships will be formally documented through powers of attorney and living wills.

### **4. Approaches to a Definition**

Consultees pointed to a variety of options for developing a more inclusive definition of ‘family status’.

1. **Leave the term undefined:** In some jurisdictions, family status protections are not explicitly defined. For example, the *Canadian Human Rights Act*<sup>45</sup> provides for freedom from discrimination based on family status, but does not define the term. This has the benefit of flexibility, and may therefore allow for broad interpretation. However, it lacks clarity, and is therefore open to misinterpretation or narrow interpretation.<sup>46</sup>
2. **Inclusive list of familial relationships:** Some legislation provides specific lists of relationships covered, and several consultees referred to the usefulness of definitions found in federal and provincial legislation relating to employment, such as the *Employment Standards Act*.<sup>47</sup> A number of consultees suggested that a list of specific relationships is the

clearest and most practical way to set out the definition, and that it makes the legislation easier to interpret and implement. However, others indicated that a set list is exclusive and inflexible: it would not sufficiently address the broad range of relationships that may require accommodation, or unexpected changes in caregiving relationships.

3. **Principle-based definition:** Instead of specifying particular familial relationships, Alberta’s human rights legislation defines family status as “the status of being related to another person by blood, marriage, or adoption.”<sup>48</sup> A number of stakeholders suggested that the *Code* should adopt a similar definition because of its flexibility and broader inclusion of family relationships. Family Service Canada noted in particular that the Alberta definition includes important adult-adult relationships not currently covered by the *Code*. However, others noted that many relationships may still be excluded by this definition. The Halton Region’s Elderly Services Advisory Committee noted that its members like the Alberta definition, but felt that it should incorporate relationships based on circumstances that caused responsibilities to shift to a non-family member. At the same time, some consultees were concerned that more open definitions lose clarity and certainty, and that it is difficult to establish the genuineness of an accommodation request relating to relationships beyond immediate family.
  
4. **Use of a ‘basket clause’:** Some definitions combine a list of specific relationships covered with a more general statement. For example, the “Emergency Leave” provisions in Ontario’s *Employment Standards Act* list a number of relationships that are specifically protected, and also include “a relative of the employee who is dependent on the employee for care or assistance.” A number of roundtable participants preferred this type of definition because it provides some clarity but also allows for flexibility to account for broader and less predictable caregiving demands. Other consultees expressed concern about open definitions, due to lack of clarity as to who is covered, and difficulty of establishing the genuineness of an accommodation request relating to family status.

## **KEY CONCLUSIONS**

**The *Code*’s current definition of family status is under inclusive and may have an adverse impact on a number of groups protected by the *Code*.**

**The *Code* should be amended to include a broader range of relationships that is more reflective of current family and caregiving**

**relationships in Ontario. As well, legislation and programs providing entitlements and protections for caregiving should reflect the needs of the broad range of caregiving responsibilities and family relationships currently existing in Ontario. It is a best practice for employers, service providers, and landlords to ensure that their policies, programs, and practices accommodate and include the broad range of family structures and caregiving relationships that currently exist in Ontario.**

## V. EMPLOYMENT

*What are the lessons we can learn? How can we move towards a different world: one where there is public support for child rearing and care giving; one where both men and women are given equal roles and responsibilities; one where care giving requirements don't fall on people who are already struggling?*

CAW Canada

### 1. Introduction

Issues facing workers with caregiving responsibilities have received significant attention from media, government, trade unions and academics in recent years, largely in the form of discussions about 'work-life balance' and the downloading of caregiving responsibilities from the community to individual families.

One of the reasons for this increased attention is the significant flux in the relationship of families to the workplace. As has been widely recognized, the nature of the family and of roles within the family has undergone rapid change. There are more and more lone parent and blended families. Demographic shifts have created a growing need for eldercare, which is largely provided by family members. There are more workers who are recent immigrants and are providing care across borders. Women have entered the paid labour force *en masse*, with a resultant shift in roles, expectations and pressures: approximately 70% of mothers of pre-school children work outside the home.<sup>49</sup> As well, there has been increased recognition of family formations that fall outside traditional definitions, such as common-law or same-sex families.

At the same time, the nature of work itself has been undergoing change. Canadians are, on average, working longer hours. There has been a shift to contingent, part-time and temporary work.<sup>50</sup>

Over the past ten years many workers, and women workers in particular, are living with changes that make it even more difficult to manage both their employment and their caring responsibilities. Paid jobs have tended to intensify, that is they have become more demanding and less secure; paid caring work is under constant pressure to remain exploitative, low paid and precarious; and the needs for unpaid caring work are increasing.

Ontario Federation of Labour (OFL)

Those in minimum wage or contingent work are least likely to have the financial wherewithal or the workplace flexibility to provide care for their families. Even in more secure work, workplace restructuring and increased expectations mean that

employees are regularly expected to work overtime, and work evenings and weekends. The Commission heard that those who aren't seen to go 'above and beyond' by working long hours are unlikely to be considered for advancement.

In order to excel at work, the focus needs to be first and foremost on the job, to the exclusion of responsibilities to self and family. Lip service is given to 'work-life balance', but the individuals who can sacrifice for the job, are the most likely to succeed with promotions.

Individual

The broader context for these changes is declining or inadequate social supports for caregivers. This has serious repercussions for caregivers. As the Centre for Families, Work and Well-Being (CFWW) points out,

Attention to the level of service available in the community is critical, as this is a large part of the context that frames the experiences of workers and families in Ontario. In some cases, appropriate workplace accommodations are difficult to implement where services/resources simply do not exist (e.g., overnight childcare; midday transition from kindergarten to daycare; affordable home care for ill or disabled family members; accommodation for elders).

In particular, many submissions raised the lack of affordable, quality childcare as a major barrier to parents accessing and maintaining employment. As the OFL pointed out,

Working parents know that good education and care is an essential support to their parenting responsibilities while they are at work. When parents are satisfied with their children's education and care, they experience less work-life conflict and are likely to miss fewer days at work. When it is not available, parents are stressed, and are looking desperately for solutions.

This has a particularly detrimental impact on the most vulnerable workers, including parents of children with disabilities, individuals from racialized communities, and lone parents:

A factor raised frequently by lone parents involved in my research is the lack of childcare to support the increasing number of jobs which involve part-time shifts and operate out of traditional work hours. While such 'non-standard' work is well acknowledged as a likely permanent feature of our global labour market, supportive public policy has not kept pace and non-standard workers are insufficiently remunerated that the private market will emerge to fill these childcare needs. Even for those parents fortunate in having subsidized day care, these centres usually operate from 8am to 6pm.

Professor Lea Caragata

As well, some pointed out that hospital re-structuring, together with the lack of home care and access to affordable nursing homes has meant that families are increasingly responsible for intensive caregiving for elders and persons with disabilities, without adequate supports. The Halton Elderly Services Advisory Committee noted that, while there are government subsidies for childcare, there are none for adult day programs that would allow the caregiver of an adult child or aging parent to continue working. There are only very limited employment protections for workers who need to take significant leaves of absences to attend to caregiving needs for elders.

Needing to take time from work to take my mother to doctor's appointments can be stressful. We need to have caregiver leave available either through our union contract or as a right the same as parental leave for new parents, if our society is expecting us to care for the elderly. As my mother ages, she is now 91, if she needs me more this will become very difficult.

Individual

CAW noted that caregivers for aging elders are frequently left to assemble a patchwork of supports to try and ensure needs are met, and states that,

Informal, unpaid care must not be the norm for people. Female family members cannot be expected to fill in the gaps. We must properly fund and manage our health care system to ensure that the care of our older citizens does not fall onto their families.

Similar points were raised with respect to the lack of community supports for persons with disabilities, such as in-home or respite care.

Some legislative initiatives have been undertaken to address these issues:

- Since 2000, Ontario's *Employment Standards Act* ("ESA") has required employers of over 50 employees to provide up to 10 days unpaid leave for employees to attend to urgent family matters, including a death, severe illness, injury or medical emergency.<sup>51</sup>
- The ESA also now entitles employees to up to eight weeks of unpaid leave to provide care or support for family members who are at significant risk of death within the next six months.<sup>52</sup>
- The federal *Employment Insurance Act* now provides up to six weeks of benefits for persons who are not working because they are caring for siblings, grandparents, grandchildren, aunts, uncles, nieces, nephews, in-laws, wards, guardians, foster parents, spouses, children, parents or any gravely ill person who considers the claimant to be like a family member.<sup>53</sup>

However, as is detailed elsewhere, many consultees expressed concern about the limited scope and inflexible requirements of these pieces of legislation. Concerns were also identified with respect to other legislation that has a negative

impact on the ability of families to attend to their caregiving responsibilities – the most common examples cited being mandatory overtime, and extensions to permissible hours of work.

In the main, workplace structures and expectations have not adjusted to the changed situation of families. Caregiving responsibilities tend to be viewed as individual “personal problems” rather than as a systemic issue. As one Roundtable participant pointed out, women are changing the structure of their families (for example, by delaying childbirth, “timing” pregnancies around work obligations, and having fewer children) to accommodate work, but work is not changing to accommodate families: work dictates what happens in the home, but the home is not permitted to intrude into work.

Women [academics] report feeling forced to choose between childbearing and aggressively pursuing tenure. Despite maternity and parental leaves, which are ubiquitous on university campuses, women still worry about the consequences of taking maternity leaves and raising small children while pursuing tenure ....The traditional academic career was not created with the female life cycle in mind. As they pursue academic careers, women have been forced to adapt to the traditional career path in terms of tenure and promotion ... As a consequence, many women faculty feel like outsiders in their profession.

Ontario Confederation of University Faculty Associations (OCUFA)

As a result, workers with caregiving responsibilities find themselves in untenable situations – under stress, and unable to give the best of themselves either to their families or to their employment. The long-term social and economic impact of this situation has been recognized in numerous studies.<sup>54</sup>

This situation has systemic implications for the equality of women in the workplace.<sup>55</sup> Because they are more likely to have significant caregiving responsibilities, women find it more difficult to find and keep employment and to advance in their employment. They are more likely to reduce their work hours, or take leaves of absence from work in order to fulfil their caregiving responsibilities. As a result, women have reduced access to pensions and benefits, and experience long-term economic costs.

I was out of the workforce for over 20 years. Once my husband walked out on my family, I had to go back to school to update my skills at 50 years old and am still looking for a fulltime job. After leaving the workforce for 20 years, I have lost the possibility of advancement and promotion, meaning a higher income level, that other women have had at my age. Therefore, financially, it is hard, if not impossible, to pay all of my bills.

Individual

The Commission views these as significant systemic human rights issues. So long as these issues remain unaddressed, persons with familial responsibilities will experience barriers in the workplace. Further, since women continue to perform the bulk of caregiving work in this society, women's equality in the workplace cannot be addressed in any meaningful way without serious efforts to tackle these issues.

## ***2. Accommodation of Caregiving Needs***

### **The Context of the Duty to Accommodate for Family Status**

Consultees stressed the central importance of workplace accommodation of caregiving needs to the removal of barriers based on family status. The lack of flexibility and accommodation in many workplaces creates significant difficulty for workers in finding, keeping, and succeeding in their jobs.

Participants in the Employment Roundtable emphasized that this is a particular challenge for vulnerable workers in low-wage, contingent jobs, a type of work in which racialized, newcomer and female employees are disproportionately likely to find themselves. These workers cannot afford to lose their jobs. However, their employers may view them as easily replaceable, so that any absenteeism or request for flexibility can result in job loss. At the same time, they have little access to supports. For example, workers in the retail sector may have extreme difficulty in finding adequate childcare in the evening hours.

Lone mothers face particular difficulties. With reduced financial and social supports, their situation may be precarious. A change in work shift, or a family member's serious illness may push them out of the workforce.

[T]here are times when work demands are strenuous and if these combine with a child's illness either work or the family will suffer. In some cases parents make difficult choices to leave a child alone – and may face devastating personal and legal consequences as a result. In other cases, they take care of their children and lose their jobs. We interviewed a [lone] mother of an asthmatic 8-year-old son whom his daycare refused because they were scared by the severity of his illness. The mother had no choice but to ultimately quit a quite good job – her first in 14 years.

Professor Lea Caragata

Some pointed out that stereotypes about gender roles may mean that men may face a particularly harsh and negative reaction when seeking accommodation for caregiving needs. Consultees told the Commission that when men ask for accommodation for family needs, they are often asked, "Why can't your wife do it?" One male lawyer had this story to tell about his experiences:

When my first son was born, I managed to take 2 or 3 months off (only because I had negotiated this ability at the time of securing employment with the firm). Upon my return I investigated the possibility of a reduced workweek to permit me to stay home a little more and spend more time with my son. Once I had determined this was not a financially viable alternative at that point in my career, I had a discussion with one of the partners who advised me that he was relieved by my decision because, as he put it 'we tolerate that kind of thing from the women because we have to, but we really don't expect it from the men'.

This lawyer noted that, later on when he had to take time off to care for his sick child, this was cited on his performance review as evidence that he was not a team player, and he was told that he had to take his career commitments more seriously if he was going to succeed.

Caregiving needs will vary widely from situation to situation, and will vary over the life course of an individual:

It must be understood that either/both workplace and business requirements and family status are likely to change over time, resulting in new/changed expectations for both the employer and the employee. Workplace policies and educational programmes could increase awareness of this fluidity and the importance of considering the employment relationship within a 'work/life course' perspective.

CFWW

Needs are also frequently unpredictable.

Caregiving responsibilities often arise unexpectedly and are not possible to plan for. Children get sick and can't go to school, or must be picked up early due to illness, accident or other reasons. Elderly parents or other people our members care for become ill and sometimes require emergency medical attention. Caregivers hired to look after children or other dependents also get sick and are therefore unable to look after dependents as planned. In such circumstances, our members may be, and have been, in the position of having to unexpectedly care for a dependent person.

Association of Law Officers of the Crown (ALOC)

It should be kept in mind that needs will differ depending on the type of care being provided. For example, eldercare needs are often unpredictable, and frequently arise on an emergency basis. The OFL points out, "Workers with elderly or disabled family members are not always caring for them at home, but they often provide regular phone contact, help with shopping and housework, enable family members to get to appointments and handle emergencies". On the other hand, needs related to childcare, or for family members with disabilities may require long-term adjustments.

Contrary to the expectations of some employers, accommodation is frequently neither burdensome nor costly: most often it is a matter of flexibility. Very small accommodations can sometimes make an enormous differences to struggling employees – for example, access to a telephone to make and receive occasional emergency personal calls or to check in with a child after school.

The Commission heard that a flexible and accommodating workplace is ultimately to the advantage of employers:

[G]iven the fact that all employers should consider their employees their most valuable resource, as we do, the issue of discrimination on the basis of family status takes its full meaning when one realizes its negative repercussions on the work force. Those include high absenteeism, health problems due to stress and ultimately, losing highly talented and efficient workers who simply decide to devote themselves entirely to their family-related responsibilities and quit working.

The Co-operators

However, some employers and employer groups emphasized the practical difficulties attendant on accommodating for caregiving needs:

[L]egislative requirements can place a burden on employers and, can be quite onerous, especially to small operations. Sometimes they can make the difference as to whether an operation is viable. The accommodation requirements already placed on employers needs to be taken into consideration when new requirements are being examined.

HRPAO

HRPAO indicated that widely predicted skill shortages will bring work/life balance issues to the forefront, and that flexibility and work/life balance may become a best practice for employers striving to attract and retain talented and skilled employees. Others pointed out that these best practices are likely to benefit mainly the most skilled and in-demand employees, and that leaving these issues to employers' discretion leaves the most vulnerable and needy unprotected. They therefore argued for a strong set of legislated minimum standards:

In a province where most adults are in paid work, the ability to care for dependents should not be a privilege available only to some. It is in everyone's interest to 'raise the floor'.

OFL

Some expressed concern about the impact of accommodating those with caregiving responsibilities on other employees. HRPAO stated that, "From a practical, implementation perspective, it is important to note that when there is an accommodation for work/life balance for one group, the work/life balance of

another group is being negatively impacted.” Here it is worth noting that similar concerns have been raised in the past regarding the accommodation of workers with disabilities. As the Commission set out in the *Policy and Guidelines on Disability and the Duty to Accommodate*, the aim of accommodation is to ensure that individuals protected by a *Code* ground have equal opportunity to attain the same level of performance or to enjoy the same level of benefits and privileges experienced by others, or to ensure equal opportunity.

## **Family Status and the Duty to Accommodate under the Code**

Section 11 of the *Code* provides that where a requirement, qualification or factor results in the exclusion, restriction or preference of a group of persons identified by a *Code* ground (including family status), this requirement violates the *Code* unless it can be demonstrated that it is reasonable and *bona fide* in the circumstances, in that the needs of the group cannot be accommodated without undue hardship. Where workplace policies, procedures, or practices have the effect of disadvantaging persons identified by family status, employers therefore have a duty to explore accommodation up to the point of undue hardship.

As there have been very few human rights decisions dealing with workplace discrimination on the basis of family status<sup>56</sup>, there was considerable questioning and discussion, both in the submissions and at the Employment Roundtable, about the meaning of the duty to accommodate in the context of family status.

At the Roundtable, it was generally agreed that there is a relatively low level of awareness, among employers, employees and unions, of rights and responsibilities under the *Code* related to family status. Employers may nonetheless provide accommodations, such as flexible hours, reduced workweeks, or work from home arrangements, but do so as a ‘best practice’, or as part of an effort to address gender equality issues.

Given the relatively low level of awareness around this *Code* ground, it is not surprising that there were divergences of opinion regarding the content of the duty to accommodate for family status.

The ground of family status raises unique issues, and an understanding of the duty to accommodate for family status must be sensitive to the context. However, the *Code* does not set out a hierarchy of rights. The duty to accommodate for family status should not be taken any less seriously than it is for other *Code* grounds; nor should employers be held to a different or lower standard when accommodating for needs associated with family status.

The fundamentals of the Commission’s approach to the duty to accommodate have been set out in the Commission’s policy documents on other *Code* grounds,

most thoroughly in the *Policy and Guidelines on Disability and the Duty to Accommodate*. The Commission has taken the position that:

- Employers have a responsibility to accommodate the *Code*-related needs of employees to the point of undue hardship, as part of their duty to ensure equal and inclusive workplaces.
- The *Code*-related needs of employees must be accommodated in the manner that most respects their dignity, to the point of undue hardship.
- Employers have a duty to design their workplaces for inclusion, by preventing and removing barriers related to *Code* grounds. The most appropriate accommodation is the one that is most inclusive.
- There is no set formula for accommodation – each person has unique needs and it is important to consult with the person involved.
- The accommodation process is a shared responsibility. Everyone involved should co-operatively engage in the process, share information, and avail themselves of potential accommodation solutions.
- The standard for undue hardship is a high one, as is necessary to ensure equality.

There was some discussion of when the duty to accommodate for needs related to family status is triggered. The Canadian Manufacturers & Exporters (CME) emphasized that the employer's duty to accommodate should only arise "where compelling circumstances prohibit the employee from making the necessary arrangements to provide such care ... an employee ought to be expected to exhaust all possible avenues available to him or her that allow the employee to meet the family responsibilities without impacting the employer's business." However, as some pointed out at the Roundtable, it may be difficult to determine where such 'compelling circumstances' exist. As one consultee expressed it, when an exhausted mother of young children requests a reduction in her work hours, it may appear to the employer as a mere preference; in retrospect, when she has resigned, it will appear as a 'compelling need'.

Consultees emphasized the importance of mutual cooperation and respect in family status accommodations.

Both employees and employers should be made aware of their mutual and respective rights and obligations. .. *[E]ach should be considered to have a duty* to find and accept reasonable workplace accommodations for family status needs. For example, in the case of childcare arrangements, both the employer and employee have an obligation to consider how workplace needs and children's needs intersect in ways that reduce an undue burden for either the employer or employee.

CFWW

A number of submissions emphasized the importance of considering the unique aspects of individual needs and the circumstances of particular workplaces in assessing any accommodation request. The CFWW stated, "It is important to

recognize that ‘one size fits all solutions’ are not possible, and that there are workplaces where *bona fide* business requirements enable greater and lesser potential for flexibility in accommodating family status needs”. However, the duty to accommodate applies to all employees: as the CFWW went on to point out “Still, this discussion must apply to **all** workers – not only those in large companies or specific sectors”.

As with other *Code* grounds, consideration of the nature of the duty to accommodate for needs associated with family status must take into account the full context, including the larger systemic issues at play, the intersecting aspects of an employee’s identity, and the presence or absence of appropriate outside resources. As many submissions pointed out, so long as family status issues are viewed as individual problems to be solved by individual families alone, no significant progress can be expected.

### **3. Common Workplace Barriers**

Consultees identified numerous employment policies and practices that may create barriers for persons with caregiving responsibilities. These are outlined below.

#### **Failure to Recognize Spectrum of Caregiving Needs**

Connected with the earlier discussion of the restrictive definition of family status in the *Code*, many consultees pointed out that even where employers do recognize caregiving needs, this recognition is often limited to a narrow range of relationships – mainly parenting relationships, and sometimes extending to eldercare needs. Other relationships of care and commitment are not recognized or supported. For example, gay and lesbian employees may find that their caregiving needs are invisible to their employers, because of the stereotypical assumptions that are made about them. A gay man said this:

My partner and I were the sole care providers for my mother before she passed away. It was very difficult to find work while needing to care for my mother... When I needed to care for my mother, I missed promotions because I could not re-locate. During the 15 years I was with my partner I missed opportunities because I was not seen as having a family. I had my partner and my mother to think about, but that family was invisible to most in the community.

#### **Absenteeism Policies and Leaves of Absence**

One of most common accommodation needs for persons with family care responsibilities is time – most particularly, short-term absences from work, to enable them to deal with family illnesses, appointments or emergencies.

Many employers have formal attendance management programs, which subject persons with higher than normal levels of absenteeism to greater levels of scrutiny and potential discipline. A number of studies have shown higher rates of absenteeism for individuals with high levels of work-life conflict.<sup>57</sup> Attendance management programs that do not take into account the needs of persons related to their family status may have a disproportionate impact on persons with caregiving responsibilities.

[A]bsenteeism is extremely costly for employers. Accordingly, it is necessary for employers to be able to manage both culpable and innocent absenteeism for the purpose of attendance management programs. The administration of attendance management programs, however, is always subject to the employer's duty to accommodate short of undue hardship. In this way, a balance is reached between the employers' need to run an efficient business and the employee's human rights.

CME

Some employers have fixed thresholds for absenteeism, and workers who exceed these thresholds are liable to automatic dismissal. Such programs are problematic for persons identified by family status, as well as for persons with disabilities. The Commission has received a number of complaints from individuals with significant caregiving responsibilities who alleged that they were harshly disciplined or dismissed due to inflexible absenteeism thresholds. For example, one individual told the Commission that when she had to take two days off from a new job to care for her child, she was told that she was not a good fit, and was let go.

Many submissions raised concerns about the common practice of providing sick days to employees – but only for their own sickness.<sup>58</sup> The sickness of a family member does not qualify. This places employees whose family members become ill or suddenly need care in a quandary, as no workplace policy entitles them to any time away from work, but their family responsibilities require them to provide care.

Often I have to take vacation for family responsibilities or call in sick. I have a son with autism. I have had to take medical leaves in order to provide care for my son, since work did not consider caregiving for my son a valid reason to take time off work.

Individual

One organization representing professional workers reported that the primary accommodation for unexpected family care giving responsibilities is allowing members to take vacation time on short notice. This strategy, however, disproportionately impacts upon the vacation benefits of members with family care responsibilities. This organization points out that "Vacation days were never intended to be used as an accommodation tool for members to carry out family

responsibilities. Dealing with family care issues ... are often very stressful episodes in a person's life. It is fair to say that during these most stressful periods, members are most in need of their vacation entitlements.”<sup>59</sup>

The Commission heard that persons in low-income, contingent work can least afford to take unpaid time away from work to attend to their family responsibilities.

A single Aboriginal mother whose earnings are already at the poverty line should not be penalized for having to fulfill her role as a mother if she needs to care for a sick child or an elderly parent. This should be a paid absence. If a caregiver is well taken care of and supported by the employer, they will be that much more effective when they return to the workplace. It is the responsibility of the employer within reasonable guidelines to support the inherent role a caregiver has to both their child and parents.

OFIFC

Many consultees raised concerns about the inadequacy of current statutory protections for employees who must take time from work to attend to family care needs, specifically family medical leave and the 10 days of emergency leave provided under the ESA (these legislative provisions are described above). Family medical leave entitlements are set out in the ESA, and the federal *Employment Insurance Act* provides insurance benefits for qualifying persons who take such leaves. With respect to family medical leave, consultees noted the restrictiveness of the rules:<sup>60</sup>

- Those caring for persons with critical medical conditions do not qualify unless a doctor has identified a significant risk of death within 6 months.
- The leave is of short duration (8 weeks).
- Few employers are providing any 'top-up' benefits, so many employees cannot afford to avail themselves of the benefit.

With respect to the 10 days of emergency leave,<sup>61</sup> consultees noted that:

- Employers are allowed to count days absent due to workers' compensation injuries, personal sick days, and bereavement – leaving many employees with little protection in case of actual family emergencies.
- Some employers who previously had more progressive practices removed access to all other leaves, including sick leave, and replaced them with this leave. In these cases, this legislation had an unintended negative effect.
- This leave applies only to workplaces with more than 50 employees: given the high percentage of employees working in the small business and retail sectors, this leaves many with no protection whatsoever.<sup>62</sup>
- The leave must be taken in full work days, not in hours, which can be unreasonable: workers requiring a few hours to take a family member to a medical appointment must count this as a full day of leave.

## Hours of Work

A number of submissions emphasized the importance of considering the changing demands of work. These days, it is not uncommon for employers to expect their employees to make themselves available to work whatever hours are necessary to complete their tasks and to deal with crisis situations. In times of fiscal restraint, employees may be expected to “do more with less”, taking on greater work demands with fewer resources. Work demands creep further into the personal lives of employees. In non-unionized workplaces, employers may or may not give time in lieu or other compensation for overtime worked, even where employment standards protections apply.

Employment standards legislation, a number of submissions pointed out, puts few restraints on the number of hours that employees may be required to work in a week. The standard maximum hours of work are 8 in a day and 48 in a week; however, these maximums may be exceeded by agreement between the employer and the employee or the employee’s representative, or by application of the employer to the Director. There is no hard weekly maximum, beyond requirements for daily and weekly rest periods between shifts.<sup>63</sup>

The government must be urged to revisit these [hours of work and overtime] provisions and establish a cap on excess overtime hours by law or by permit, and move, as Quebec has, to voluntary overtime and overtime pay after 40 hours in a week.

CAW

Shift work is increasingly common. Some workers use shift work as part of a caregiving plan; for example, where both spouses work for the same employer, they may select different shifts to ensure that one of them is always available to their children. On the other hand, shift work can cause difficulties for caregivers as workers on rotating shifts may have great difficulty finding adequate childcare.

As a registered nurse, the work available to me required shift work: 12 hour shifts. I was unable to find daycare that could accommodate these long, alternating shifts which required me to leave home by 5:45 a.m. and not return home before 9:30 p.m.

Individual

Problems may also arise where workers have little control over changes to shifts: a shift change can pose extreme difficulties in adjusting long-standing family care arrangements. A recent British Columbia Court of Appeal decision found that an employer’s unilateral change to a shift could form a *prima facie* case of discrimination on the basis of family status.<sup>64</sup> As one employer representative noted, employers often see shift schedules as inviolable. As well, in unionized settings, accommodation with respect to shift work may clash with seniority rights.

Unnecessary employer inflexibility with respect to hours of work was another of the barriers identified. There may be little flexibility for employees to adjust their working hours around caregiving responsibilities. For example, ALOC raised the issue of “core hours coverage” in which at least one lawyer is required to be in the office by 8:00 a.m., often on a rotating basis. ALOC points out that this is incompatible with the standard hours of operation for most daycares, and that the availability of cell phone and other technology should permit greater flexibility on this matter on the part of the employer. One individual consultee told the Commission that:

Requests for accommodation on morning start time have continuously been rejected/resisted even though there is flexibility in assigning work hours. Current policy review is recognizing accommodation in hours for religion, work-related professional training, medical, or client accommodation. Requests for one hour’s morning accommodation continue to be disqualified as ineligible, even after raising the issue of human rights and family status protection.

Because of the lack of caregiving services outside of regular hours, many find it difficult to find or retain work. A single mother told us:

Due to the fact that many jobs for entry level employees ... often require that you work on evenings and/or weekends, because my daughter is only in care during weekdays, this has limited me from applying to certain jobs. Retail, many restaurants, jobs within the film industry (my area of work) and other types of jobs have hours that are very hard for me to maintain because they require me to hire additional care for my daughter.

A ‘culture of hours’ may mean that persons with caregiving responsibilities are viewed as insufficiently committed to their work. The expectation that all employees can stay late as necessary is not only unrealistic, but is the source of difficulty for many employees:

Every mommy and daddy out there with a child in daycare can relate to the stress induced when your workday runs late and you must pick up your child by 6:00 p.m... Having to excuse yourself from meetings, or tell an angry client that you have to go, is definitely career limiting.

Individual

Expectations around after-hours socializing and networking were raised as barriers by some. For example, one individual indicated that, as a single mother of three children, she is not able to attend after work drinking functions, dinners, golfing events and the like, and that she feels this is part of the reason she has been repeatedly passed over for advancement.

## Travel Requirements

Some submissions raised requirements around travel as an issue for employees with caregiving responsibilities. Several individual consultees told the Commission that their career prospects were limited by their inability to commit to regular travel. One submission noted the disproportionately low number of female employees in job classifications requiring regular travel.<sup>65</sup>

The submissions acknowledged that in some jobs, regular travel is an essential duty. Even where travel is an essential duty of the job, however, employers may be able to take steps to recognize and support the family-related needs of employees who are travelling. This might involve recognition of dependent-care expenses that arise as a result of travel, or permitting employees to use company vehicles to drop children off at school or daycare at the start of a day of work-related travel.

## Access to Alternative Work Arrangements

Employees with caregiving responsibilities may benefit from alternative work arrangements, such as alternative hours, reduced workweeks, work from home arrangements, or job sharing arrangements. There appears to be a general lack of quality part-time work, or other alternative work arrangements. Relatively few employers appear to have formal policies or programs designed to address the accommodation needs of employees with caregiving responsibilities. These are more likely to exist in unionized workplaces. Where there are no formal policies, employees seeking for flexible work arrangements must rely on *ad hoc* and discretionary arrangements.<sup>66</sup>

This is problematic. Alternative work arrangements are less likely to be available to those in contingent, low-paying or otherwise marginal work – areas of employment in which newcomers, women and members of racialized communities are disproportionately likely to be found.<sup>67</sup> Even within one workplace, flexibility and accommodation may be available to some employees and not others, based on the personal preferences and opinions of the manager or supervisor.

While many legal managers provide flexibility to accommodate for their caregiving responsibilities, some refuse to make any accommodations or are very reluctant to accommodate. In a few cases, managers have been openly hostile toward family caregiving responsibilities. In one case, a legal manager required a member to bring a sick child to the office. It was only after the child vomited in the office that the manager allowed the member to care for the child at home. But even then, the manager required the member to be available for a lengthy telephone conference call.

ALOC

Further, the fact that these policies and programs are discretionary leave employees vulnerable to having these arrangements withdrawn at any time, whether or not the employee's needs have changed.

Many workers, particularly women, seek part-time work as a way to manage the competing demands of their work and their family. As OECTA pointed out, this may be in part a response to the lack of other flexible options. Employees may find themselves choosing between part-time work and leaving the workforce altogether. However, part-time workers are likely to receive lower rates of pay, as well as limited or no access to benefits, and diminished job security. As well, a number of submissions noted the difficulties part-time workers face when their need for accommodation is over and they wish to return to the 'mainstream'.

In other jurisdictions, discrepancies between the treatment of part-time and full-time workers have been the subject of human rights complaints. For example, in a case decided by the European Court of Justice, the differential treatment of the mainly female part-time cleaning staff with respect to calculation of length of service and possibility of appointment to permanent staff was found to be sex discrimination.<sup>68</sup>

Further, the Commission heard that those workers fortunate enough to find part-time work or other alternative work arrangements may then find that they are viewed by their employer as less committed to their work than their co-workers, that their successes are less likely to be recognized, and that they are less likely to be considered for opportunities for advancement or training. The CFWW told the Commission that accommodations can result in employees being considered by employers to be 'off the career track'. DAWN noted that this is particularly true for parents of children with disabilities. OCUFA stated that:

One of the challenges facing university faculty in achieving work/life balance is the attitude within academia about utilizing such benefits. Some faculty evidently feel that to utilize such benefits to the full would be detrimental to their career.

The Halton Elder Services Advisory Committee emphasized that it is part of the mandate and responsibilities of employers to create an environment where caregivers are not afraid to use strategies to accommodate their caregiving responsibilities.

### **Access to Benefits**

Among the consequences employees face for accessing caregiving accommodations such as part-time work or leaves of absence, is reduced access to pensions and benefits. Relatively few part-time workers have access to benefits. This has long-term consequences for the economic security of caregivers and, as some submissions pointed out, raises systemic issues.

Aboriginal people who are working part time and have the responsibility of caregiving for either their children or elderly parents do not have access to benefits. Due consideration should be taken into account that this does have adverse impact on family status. Families continue to live in poverty. For example, children are not receiving the necessary care i.e. dentistry or optometry because the caregiver can simply not afford them.

OFIFC

Consultees advocated for reforms to pension and benefit plans to ensure the fair treatment of persons with caregiving responsibilities. For example, part-time, seasonal and temporary workers should have access to employee benefits.<sup>69</sup> Many argued that there should be better protection for employees who leave the workplace to provide caregiving:

Caregivers who leave the workplace to care for family members with disabilities should not be penalized for that period during which they have low or zero earnings. Benefit policies must protect a caregiver's eligibility for contributory schemes where, for example, the contributor made contributions before the period devoted to caregiving. In short, policies must provide real economic recognition and financial security to caregivers.

ARCH

The Commission also heard that pension and benefits plans could better reflect the diverse make-up of present-day families. For example, many workplace health care plans have narrow definitions of 'family member': these should be expanded to include health care benefits to dependent elderly parents.

Private insurance companies that are contracted by employers to provide employee benefits routinely allow the inclusion of only a spouse or a child in an employer provided benefit plan ... Extended family members such as a sibling or others are rarely allowed to be included, even where the employee is willing to pay. For many immigrant families, especially refugees, relatives such as an adult sibling or cousin are often the only family she or he has in Canada. Not including these family members in an employee benefit plan is unfair and discriminatory.

OCASI

Further, the Ontario *Pension Benefits Act* does not provide a minimum joint survivor benefit for persons who are single or widowed: single parents, and single parents of children with disabilities may experience tremendous uncertainty about their ability to provide for their loved ones in the event of death.

## **Negative Perceptions and Stereotypes**

The Commission heard that persons with caregiving responsibilities are the subject of a number of negative perceptions and stereotypes: most especially that they are less capable, and less committed than their colleagues. This limits employment opportunities and career advancement for persons with significant caregiving responsibilities.

People think that just because you have a family you can't be responsible at work, and you will always put your family before your job. .. No matter where I go, people immediately assume that because you're a single parent, you will perform poorly.

Individual

[T]he perception of a teacher's dedication to the job may be different when he or she has significant family responsibilities and obligations. The informal promotion track may be denied to those perceived to be on the 'parent track'. Superordinates may perceive certain employees as not involved enough in the life of the school, such as in extra curricular activities or after-hours functions. This perception can have a negative impact on relationships with colleagues within the school.

OECTA

Persons with caregiving responsibilities may find themselves subtly excluded from the workplace culture. Colleagues may resent accommodations made for those with caregiving needs, or feel that a person who does not socialize after hours is not really 'part of the team'. Women seeking employment continue to feel that they must hide the fact that they have children or other persons reliant on them for care.

My colleagues are ALWAYS bringing up the fact that I have a large family to care for. I feel so impacted by this that I have not disclosed to my workplace the recent separation between me and my husband and do not plan to, as I believe I will be given less opportunities if they now know I'm a single parent caring for 3 children.

Individual

There has been extensive American litigation regarding workplace discrimination against caregivers, based on gender-related negative attitudes and stereotypes. In one case, a male employee who was seeking to take parental leave was told that his wife would have to be "in a coma or dead" for a man to qualify as a primary caregiver.<sup>70</sup> In another case, an employer refused to consider a mother of two for promotion because of an assumption that she would not be interested in the job, since it involved extensive travel.<sup>71</sup>

As was noted earlier, negative attitudes and stereotypes may make it difficult for employees to request the accommodation they need. Employees may not request accommodation because they know that it will be refused, or worse still,

resented. The Commission heard that racism exacerbates this issue, as members of racialized communities are “last hired and first fired” and therefore cannot afford to take time off from work to attend to their family responsibilities, for fear of losing their jobs. As a result, parents who are trying to keep their employment may find themselves obliged to neglect some of their family responsibilities. As well, parents who are gay or lesbian may be reluctant to request accommodation because it can open them up to harassment based on their sexual orientation.

## ***KEY CONCLUSIONS***

**Lack of adequate social supports for families with caregiving responsibilities, together with rigid and non-inclusive workplace structures, creates systemic barriers in the workplace for persons identified by family status. These barriers are reinforced by inadequate legislative provisions with respect to hours of work, overtime, and leaves of absence.**

## VI. HOUSING

### 1. Introduction

Canada, as a signatory to a number of international human rights instruments, has recognized that adequate housing is a fundamental human right. With the ratification of the *International Covenant on Economic, Social and Cultural Rights*, Canada committed to take appropriate steps towards the realization of the right to adequate housing.<sup>72</sup> While the *Code* does not protect the broad range of social and economic rights set out in international instruments, it affirms the right to equal treatment in the occupancy of accommodation without discrimination on the basis of family status, or other grounds, and the values reflected in international human rights laws are an aid to interpreting human rights legislation.

It is clear that for many families with young children, these international and domestic housing rights are an unrealized promise. Families continue to struggle in the rental housing market, and may find themselves in housing that is neither affordable nor adequate. This is particularly true for lone-parent families; families in receipt of social assistance; families from racialized, Aboriginal and newcomer communities; and those who have young children.

Subsidized housing in Toronto is terribly difficult to get. Waiting lists are long, locations are sparse and often not located in downtown Toronto. The apartment that we live in now is safe and in a good location, but very difficult for me to afford.

Lone mother

While consultees from all perspectives – landlord groups, tenant advocacy groups, non-profit housing providers, and academics – agreed that vulnerable families continue to struggle in the rental housing market, there were differing opinions on the reasons why, and on the most effective remedies.

### The Role of Poverty

Consultees agree that poverty is a significant part of the problem. Families with young children, lone-parent families, parents with disabilities or parents of children with disabilities, Aboriginal families, families from racialized communities and newcomer families are more likely to be low income. As well, when two parents are living separately, but sharing custody of their children, affordable adequate housing in two locations may pose significant difficulties. The connection between membership in a group identified under the *Code* and the likelihood of being low income was recognized by the Board of Inquiry in *Kearney*

*v. Bramalea*,<sup>73</sup> when it ruled that rent-to-income criteria have a discriminatory effect. Measures that disadvantage those who are low-income are likely to disproportionately disadvantage members of *Code*-identified groups.

As of December 2005, over 50% of the beneficiaries of the Ontario Works social assistance program (OW) were members of lone parent families.<sup>74</sup> For these, and other families in receipt of social assistance, the very low shelter allowances put beneficiaries in the untenable circumstance of having to choose between shelter and the other necessities of life.<sup>75</sup> The Advocacy Centre for Tenants Ontario (ACTO) pointed out that almost all (96%) of OW beneficiaries are tenants, but only 17% of these live in subsidized housing – the rest are attempting to find adequate, affordable housing in the private rental market. In many areas of the province, there is simply no adequate rental housing available to families in the private rental market within the limits of the shelter allowance. Many submissions emphasized the crucial importance of raising the social assistance shelter allowance to levels that cover actual rental rates.

The Ministry of Community and Social Services (MCSS) informed the Commission about recent steps that it has taken to ensure that persons in receipt of social assistance are able to pay the rent. For example, in March 2004, a Provincial Rent Bank was created to help tenants with short-term arrears to enable them to stay in their homes. MCSS has also developed an Emergency Energy Fund to help low-income households deal with energy-related crises. This fund provides one-time emergency assistance to deal with payment of energy utility arrears, security deposits and reconnection fees. As well, where recipients of OW or Ontario Disability Support Program benefits (ODSP) have not been meeting their financial obligations, the administrator may direct a portion of social assistance for payment of arrears required to prevent eviction.

### **Supply of Adequate, Affordable Housing**

Most consultees, though not all, saw the dearth of adequate affordable housing as one of the root causes of the problem that families have in accessing housing. The Ontario Non-Profit Housing Association (ONPHA) stated that:

[T]he reality is that if there is no shortage of housing, landlords are much less likely to discriminate. And in the world of social housing, one of the categories the discussion paper focuses on as disadvantaged (victims of violence, who are in practice predominantly women with children), in fact receive specific and extensive priority. ONPHA's view is that the primary (though not the only) issue is the shortage of affordable housing...**The primary focus has to be on ensuring adequate affordable supply.** (emphasis in the original)

The Ministry of Municipal Affairs and Housing (MMAH) told the Commission that the province's Housing Agenda aims at increasing rental supply through

initiatives that will strengthen tenancies and keep tenants in their homes, as well as new programs to create more affordable housing and support those with special housing needs. For example, a new Canada-Ontario Affordable Housing Program will create more than 15,000 units of affordable housing, including new supportive housing and housing for victims of domestic violence. The program will also provide housing allowance assistance to 5,000 low-income Ontario families.

There were many suggestions as to how the lack of adequate, affordable housing could be addressed. Many of the housing-related submissions received by the Commission raised the issue of rent control. ACTO said:

With the introduction of vacancy decontrol in 1998, there has been little incentive for landlords to mediate with tenants who have lived in their units for a long time, and every incentive to get them evicted in order to increase the rent; resulting in fewer 'affordable' units. Average rents in Ontario have continued to increase, despite an increase in the vacancy rates. Vacancy decontrol has put affordable housing out of the reach of many low-income families in Ontario. ACTO has urged the provincial government to reintroduce rent regulation on all units, whether vacant or occupied, in order to preserve affordable housing units.

On the other hand, the Federation of Rental Housing Providers of Ontario (FRPO) argued that rent controls create a barrier to access, because they lead to housing shortages. The result of these shortages, FRPO states, is "many tenants vying for too few apartments. In this situation it is often the most poor and vulnerable households who lose out. The overall results for society can be devastating". According to FRPO, vacancy decontrol has led to an increase in vacancy rates, particularly at the lower end of the spectrum, which has provided more choice for poor and vulnerable families in Ontario.

MMAH told the Commission that the government is committed to developing a new system of regulating rents that would provide better protection for tenants.

There was also debate, both in the submissions received by the Commission and at the Housing Roundtable, on the effect of zoning by-laws that exclude or severely limit second suites. Concerns have been raised about the ability to effectively ensure health and safety requirements in second suites; however, others point out that such suites are a major source of affordable housing. As well, the Commission heard concerns about by-laws that limit or prohibit social service establishments, hostels or affordable housing projects. Stakeholders told the Commission that such by-laws have the effect of excluding people from housing on the basis of personal circumstances, including the *Code* grounds of disability, family status, and receipt of social assistance.

Submissions also raised concerns about the conversion of rental housing stock to other uses, such as condominiums, as this is having the effect of rapidly decreasing the supply of affordable housing. MMAH told the Commission that it is committed to ensuring that municipalities have the right to protect existing rental housing stock from unreasonable demolition or conversion to condominiums.

## **Discriminatory Attitudes and Stereotypes**

Based on the above, it is clear that discrimination against families in the rental housing market must be understood in the context of these broad social and economic concerns about inadequate income, and inadequate supply of affordable housing.

Added to these systemic problems is the continuing and common practice by rental housing providers of direct discrimination against families with young children. Many consultees emphasized the major impact on families of the widespread lack of knowledge of *Code* rights and responsibilities, among both landlords and tenants. The Landlord's Self Help Centre told the Commission that the secondary rental market is estimated to represent 40% of private rental housing providers in Ontario, and 15-20% of rental housing stock in Toronto. These housing providers are typically not professionals, and often possess very little or no property management skills or experience. They therefore have little exposure to information about their obligations under the *Code*. The Centre for Equality Rights in Accommodation (CERA) pointed out that many landlords are completely unaware that they cannot refuse individuals or families because they are in receipt of social assistance, and will acknowledge outright to CERA staff that they 'don't rent to people on welfare'.

The lack of awareness goes beyond lack of knowledge of the *Code*. There are also deep-rooted stereotypes and myths at play about persons in receipt of social assistance, lone parent families, and newcomers, among others. Perhaps the strongest message the Commission received through the Housing Roundtable was the importance of a strong public awareness and education campaign for landlords, to undertake "myth-busting" as well as education about the *Code*.

Landlords are prone to view our clients as unsuitable tenants despite the safeguards in the *Code* due to their disability, their family status or their income source. Potential landlords and the general public must be educated that our clients come from all walks of life and are not a homogeneous group. They are no more likely than their fellow citizens to default on housing payments ... [I]ncreasing rental housing stocks or even social assistance rates will not cure the problem of landlord discrimination.

MCSS

Similarly, the Commission heard that tenants themselves are often unaware of their rights. The most vulnerable tenants are also the individuals least likely to be aware of their rights, or to be in a position to enforce their rights, especially given the complexity and timelines associated with filing a complaint under the *Code*.

When contemplating the impact of family status on housing, it is important to keep in mind the additional effect of intersecting *Code* grounds. For example, ARCH reminded the Commission that persons with disabilities and their families experience particular difficulties in accessing housing because they must find housing that is both accessible to persons with disabilities, and 'family friendly'; this operates as a 'double whammy'. The Commission also heard of the housing difficulties experienced by parents who are raising children with disabilities that manifest behaviourally: often landlords and other tenants will have little patience with the difficulties experienced by such parents. OFIFC told the Commission that

Some landlords may not want to rent to Aboriginal people because of racist attitudes. Additionally, it is a fact that Aboriginal people have the highest rates of single moms as heads of households (27% of all families) and a number of these moms are teenagers. Finding accommodations for this group is very difficult, and even single Aboriginal dads find it difficult to find proper accommodations for them and their children for similar reasons.

Any consideration of the experiences of families in the rental housing market must therefore take into account the effect of multiple aspects of identity, not only in terms of stereotypes and direct discrimination, but also in terms of the impact of systemic factors.

Participants in the Housing Roundtable had many creative ideas for ensuring that tenants are better informed about their rights, such as requiring all landlords to post copies of the *Code* in building lobbies, or including information about human rights on rental application and lease forms, or providing accreditation for landlords who show that they have had training or education on human rights.

## ***2. Refusal to Rent to Families with Young Children***

As indicated above, despite the long-standing protections under the *Code*, the practice among landlords of denying rental housing to families with young children remains widespread.

It is difficult as a single parent, landlords prefer a two-income family. While looking for housing, I have been turned away many times because landlords are concerned that rent will not be paid, even with a good track record.

Lone mother in receipt of social assistance

I've been looking for housing for two years now. Each application has been denied. I've also had numerous conversations with potential landlords where they stated that their apartment was not 'suitable for children'.

Lone mother

One of the ways in which this outright refusal to rent to families with young children operates is the continued existence of "adult only" or "adult lifestyle" buildings. Other euphemisms indicating that families need not apply include "geared to young professionals" or "would suit students".

The *Code* does permit age restrictions in housing under some circumstances. For example, section 15 of the *Code* permits preferential treatment of persons aged 65 and over, and therefore permits housing that is limited to persons over the age of 64. Section 14 of the *Code* permits special programs to alleviate hardship and disadvantage, such as specially designed barrier-free housing projects aimed at older persons with disabilities. Section 18 creates a defence for religious, philanthropic, educational, fraternal or social institutions or organizations that primarily serve the interests of older persons and that provide housing as part of their services. However, there is no defence that permits "adult lifestyle" housing that results in the exclusion of children or persons under a certain age.<sup>76</sup> Given these *Code* exceptions, FRPO points out that there may be confusion among landlords as to what the law permits.

The fact that there is an age threshold at which a seniors-only building is allowed may lead to some confusion in the marketplace. The definition of a senior may vary for many people. Many people retire before age 60. Some people think of seniors as aged 55 plus, and others as aged 60 plus.

In light of this confusion, FRPO, like many other stakeholders, urged the Commission to undertake an education and awareness campaign among landlords.

MCSS told the Commission that persons with disabilities are particularly vulnerable to the effects of adults-only policies:

Many of our clients require housing stock which reflects their individual disability. The bulk of such housing is set aside for the aged or is found in buildings reserved for adults only under the exemptions found in the *Code*. However, there is a need to recognize that many of our clients fall under the umbrella of disability and family status – they are disabled with families. Exemptions for adults-only disability-focused housing effectively discriminate against the disabled parents of young children.

ONPHA told the Commission that many housing providers have taken steps to open buildings that were formerly “seniors only” to accommodate younger singles, in recognition of the fact that there is limited demand for the housing from older age groups. However, these changes have brought with them some issues in terms of integrating populations with diverse expectations and needs.

### **3. Rental Criteria**

During the consultation, the Commission heard about a number of common rental policies and practices among landlords that create systemic barriers for families attempting to access housing.

#### **Income Information**

The use by landlords of minimum income criteria or rent-to-income ratios has been found to violate the *Code*. The Board of Inquiry in *Kearney v. Bramalea*<sup>77</sup> held that these practices have a disparate impact on groups protected under the *Code*, including those identified by family status, and that these policies were not *bona fide* as they have no value in predicting whether a tenant will default on rent.

The *Code* was subsequently amended to state that landlords may, when selecting tenants, use income information, credit checks, credit references, rental history guarantees or other business practices, in accordance with the Act and regulations. Regulation 290/98 permits landlords to:

- Request credit references and/or rental history from a prospective tenant, as well as authorization to conduct credit checks.
- Use credit references, rental history and credit checks, alone or in combination to assess and to select or refuse tenants.
- Request income information *if* the above information was also requested (credit references and checks, rental history).
- Consider the income information and make a decision accordingly *only if* the other information is also considered, or if, having also requested the other information about credit and rental history, only the income information is provided. There is an exception for the use of income to assess eligibility for rent-geared-to-income housing.
- Require tenants to obtain guarantees for the rent or to pay a security deposit in accordance with the *Tenant Protection Act*.

The Regulation reaffirms that nothing in it authorizes a landlord to refuse housing on the basis of *Code* grounds.

It is the Commission’s position that landlords must give meaningful and valid consideration to the prescribed criteria, in a *bona fide* effort to validly assess

potential tenants. They may not apply them in an arbitrary manner for a prohibited discriminatory reason that would attempt to defeat the purposes of the *Code*.

The Commission heard that there are continuing issues with the use of income information by landlords, and that landlords are misinterpreting or misapplying the provisions of the *Code* and Reg. 290/98 and continuing to apply rent to income ratios.

The use of minimum income requirements and rent-to-income ratios continues to be a major barrier for low-income families with children attempting to secure appropriate housing. Despite a number of Board of Inquiry/Human Rights Tribunal decisions which clarify that the use of these requirements to screen out prospective tenants is not permitted under the *Code*, landlords regularly use these ‘affordability’ rules to deny low income families access to housing... many landlords (and others) equate the use of ‘income information’ in tenant selection with a sanctioning of the use of rent-to-income ratios.

CERA

The Ministry of Community and Social Services also identified these practices as barriers for ODSP recipients, stating, “ODSP recipients would benefit from an elimination of income criteria and questions about source of income for most rental housing applications. Landlords should instead rely on references and payment history alone.”

## **Credit History**

As noted above, Regulation 290/98 permits landlords to request credit references and to conduct credit checks (with permission from the prospective tenant), and to consider this information in selecting or refusing a tenant. As noted above, it is the Commission’s position that when landlords consider such information, they must do so in a *bona fide* effort to validly assess potential tenants.

The Commission heard that poor credit history can be the result of family breakdown, and that many women have poor credit histories for this reason. However, some landlords have a blanket policy of not renting to those with poor credit history, which can have a disproportionate impact based on family status.

As well, many young people, new Canadians, and women returning to the workforce after lengthy periods of caregiving may have little or no credit history. In *Ahmed v. Shelter Canadian Properties Limited*,<sup>78</sup> a human rights Board of Inquiry found that the practice of requiring credit history may have a disparate impact on newcomers, and further emphasized that the lack of a credit history is not the same thing as a negative credit history. The landlord was ordered to

cease and desist from the practice of rejecting tenancy applications from newcomers with no credit history.

## **Requirement for Co-Signors**

The Commission heard that it is the practice of many landlords to automatically require low-income applicants (particularly those in receipt of social assistance) to provide a co-signor or guarantor. Often the landlords will place restrictive rent-to-income ratios on the co-signors. This is a major barrier for these families, as few have access to a co-signor or guarantor, particularly not one that can meet the requested rent-to-income ratios.

While the use of co-signors or guarantors may be appropriate where a tenant has poor references or a history of default, requiring co-signors or guarantors merely because an applicant is in receipt of social assistance may be a violation of the *Code*. Although section 2(1) of Regulation 290/98 permits landlords to require a prospective tenant to provide a guarantor, section 4 of that Regulation emphasizes the prohibition on discrimination on the basis of the *Code* grounds, including receipt of social assistance.

## **Rental History**

Some groups protected by the *Code* may have little or no rental history: for example, women re-establishing themselves after a marital breakdown, or newcomers to Canada. The Commission heard that a landlords' treatment of prospective tenants without a rental history may have an adverse impact on groups identified under the *Code*.

[R]ecent immigrants and refugees experience systemic discrimination when they are unable to provide references (usually require references in Canada) in order to secure rental housing. Consequently, some landlords have asked these applicants to provide a large security deposit, in some cases as much as 12 months of rent.

OCASI

The *Code* and Regulation 290/98 permit landlords to request information about a prospective tenant's rental history. However, the decision in *Ahmed*<sup>79</sup> makes it clear that the lack of a rental history should not be treated in the same way as a negative rental history.

## **Employment History**

The Commission heard that some landlords require that applicants have 'stable' long-term employment, and that this may create barriers based upon *Code* grounds, including age, gender, family and marital status, and disability.

These requirements have clear adverse impacts on young people who are new to the workforce. They also can be very problematic for women with children leaving relationships after long periods as stay-at-home caregivers. Following the end of a relationship, these women will have to re-enter the workforce to support their children and themselves, and will often have irregular and seemingly unstable work histories as they try to find a place of employment that will best provide for their families.

CERA

In *Sinclair v. Morris A. Hunter Investments*<sup>80</sup>, a Board of Inquiry found that rental policies requiring applicants to be employed on a permanent basis or to satisfy a criterion of minimum tenure with an employer discriminated against rental applicants on the basis of age, as the expert evidence indicated that there is a very strong relationship between age and job tenure, and between age and the likelihood of having permanent employment.

#### **4. Policies Related to Occupancy of Accommodation**

##### **Occupancy Policies**

Consultees expressed concerns regarding occupancy policies. For example, a lone mother told us that she had often been told that she needed a larger residence because she had three people; however, a couple with a child could rent a two bedroom with no problem. CERA told us that:

[T]here is significant resistance from housing providers to rent to families where a parent has to share a bedroom with a child or children, where children have to share rooms (particularly if they are of the opposite sex), where a family member has to sleep in the living room, etc. ..[T]hese policies effectively deny families access to the units they can afford.

The OFIFC told the Commission that some families may need to take responsibility for an extended family member or friend's child or children, and the landlord may then complain that these children are not identified on the lease and the number of permissible occupants has been exceeded.

The Commission heard that the lack of available and affordable accommodations for larger families may result in overcrowding, simply because families have no other choices.

A number of consultees stated that while demonstrated health and safety concerns can be used to justify occupancy standards, this provides no basis for

forbidding children of different sexes from sharing bedrooms, or parents from sharing with their children. CERA argued that municipal occupancy standards, or overcrowding by-laws provide sufficient and acceptable occupancy standards. FRPO disagreed.

Almost all businesses in Ontario have policies which charge users based on the amount they consume... There is no reason that the rental housing industry should be treated differently than any other industry. Many of our costs vary with household size. For example, utility costs such as electricity, hot water and water and sewer services are paid for most often by the landlord in Ontario, as these costs are bulk metered. The owner has to recoup these costs through rents that are charged to occupants. These costs rise with the number of occupants... By having policies that ensure overcrowding does not take place in any given unit, the industry has a way of ensuring there is a closer relationship between rents charged and the costs being incurred.

ONPHA told the Commission that at some point, crowding becomes unacceptable, and even contrary to property standards. “A building with very crowded units becomes impossible to manage with negative consequences for all tenants”. ONPHA went on to say that:

ONPHA’s position is not that landlords should be permitted to be rigid and refuse to allow access to smaller units if this, in fact, would otherwise make waiting time less or improve affordability. However, there is a bigger picture to consider. Legislation can often be overly narrow in its perspective in dealing with issues where the consequences of a single decision to allow crowding may not be major, but the consequences of many decisions would be very damaging to the health of the overall community, and therefore of all those living in that community.

In *Desroches v. Quebec (Commission des droits de la personne)*,<sup>81</sup> the Quebec Court of Appeal found that policies regarding the number of occupants per number of rooms or bedrooms may have an adverse impact on families with children. Where a policy has an adverse impact on a group protected under the *Code*, the housing provider must show that the policy is a *bona fide* requirement, in that it is related to a valid objective, was adopted in good faith, and could not be designed in a way that would accommodate without incurring undue hardship.

### **Definition of ‘Tenant’**

Under the *Tenant Protection Act* (TPA),<sup>82</sup> a tenant is defined to include “a person who pays rent in return for the right to occupy a rental unit and includes the tenant’s heirs, assigns and personal representatives”. This does not include spouses and family members who ordinarily reside in the rental unit. Therefore, when the ‘tenant’ dies or vacates the unit, spouses or family members may have

no rights. This may leave families at a serious disadvantage. ACTO brought to the Commission's attention one case where a landlord brought eviction proceedings against a woman and her three children after the husband, who signed the rent cheques, left. Prior to the husband's departure, he signed a Notice of Termination at the request of the landlord. The woman had been living there for 17 years. This case was eventually settled, with the landlord agreeing to allow the family to stay at the same low rent.

## **No Transfer Policies**

Some landlords have policies prohibiting tenants from transferring between rental units in the same building. Such policies may have a negative impact on families with children, because their rental housing needs change as their families grow, but they must leave their building in order to accommodate their need for additional space.

FRPO argued that no-transfer policies are not in fact discriminatory, unless applied only to families, and that these policies are based on sound business practices:

Companies that have such a policy do so for good business reasons. For example, transfers come with transaction costs. They increase administration costs. But, more important, turnover costs on each suite can be substantial, particularly in current market conditions in Ontario... A transfer within a building results in the creation of two turnovers where there would have otherwise been one, significantly increasing costs for the owner.

In *Ward v. Godina*,<sup>83</sup> a Board of Inquiry found that no transfer policies have an adverse impact on families with children, and violate the *Code*.

## **Health and Safety Concerns**

The Commission heard that some landlords have a practice of refusing to rent apartments on the upper floors of buildings to families with young children, on the basis of health and safety concerns. MMAH told the Commission that there should be no reason why landlords can use the issue of children's safety as a reason for barring families from renting in high-rise apartments, as the TPA requires landlords to keep their buildings and rental units in a good state of repair, and to ensure that all health, safety and maintenance standards are met. Other stakeholders pointed out that landlords should be taking positive steps to accommodate the needs of families with young children.

[T]he lack of ground floor apartments should not be cause to refuse to rent to a family with young children. ...It is the landlord's responsibility to accommodate differences between people in their living situations, and

this includes the needs of families, concerning safety and reasonable enjoyment.

Federation of Metro Tenants Associations (FMTA)

## **Access to Recreational Facilities and Common Areas**

Over the years, the Commission has regularly heard about situations in which landlords or condominium corporations place restrictions on access to recreational facilities or common areas by children or youth.

MCSS told the Commission that rules restricting access to facilities on the basis of family status have a disproportionate impact on families that include persons with disabilities:

Our clients and their families are most in need of housing that includes access to swimming pools, fitness equipment and laundry facilities. Recreation and services benefit their endeavours to participate in society and is encouraged. Many of these recreational facilities bar use by children – and hence by their parents – and where our disabled clients rely on caregivers to assist them, laundry facilities sometimes restrict access to residents only, eliminating non-resident caregivers.

MCSS

FMTA noted that landlords will sometimes make rules about loitering or noise, in reaction to negative attitudes about youth, particularly racialized youth.

Families with older children – that is, teenagers, may find negative attitudes or stereotypes directed toward their children, especially children of colour, who are often seen as criminal, trouble-makers, etc. Landlords often make rules about loitering, or noise, to keep youth out of the common areas of buildings.

FMTA pointed out that “While, on the one hand, noise and certain behaviour of youth may interfere with reasonable enjoyment of tenants in the building, on the other hand, young people are also tenants in the building, and have the right to the use of common areas for common purposes.”

In *Leonis v. Metropolitan Toronto Condominium Corporation*,<sup>84</sup> a Board of Inquiry held that a policy restricting access to recreational facilities for children under the age of 16 discriminated on the basis of family status.

## **Other Issues**

ACTO raised the issue of the lack of external appeal procedures under the *Social Housing Reform Act*<sup>85</sup> from decisions of social housing providers to deny or revoke housing subsidies. Revocation of subsidies may lead to evictions, as rent falls into arrears. ACTO stated that:

Social housing tenants, many of whom are sole support mothers, disabled people and immigrants, risk homelessness because the only appeal is an 'internal review'. These internal reviews are conducted by the same housing provider that made the decision under review. Social housing providers rarely overturn decisions on internal review. When the review is unfair, the only process potentially available is judicial review.

As well, concerns were raised about the administration of the requirement, under the *Social Housing Reform Act*, for occupants to report a change in income or household size. Managers have the discretion to extend this timeline; however, not all do, so that families that fail to quickly report the addition of a child to the household may lose their subsidy.

## **5. Children's Noise**

One of the most frequently raised issues with respect to housing was children's noise. Persons living in rental housing are living in close quarters. Children, by their nature, can be noisy. Babies cry, toddlers have loud voices, and children run and jump and play. Some conflict is perhaps inevitable. However, the end result of such conflict is too frequently the harassment or eviction of families because of the kind of noise normally associated with children. During the Housing Roundtable, the Commission heard that, even where families are not threatened with eviction, harassment because of the normal noise associated with children can create a poisoned environment for these tenants. For example, families may feel obliged to be out of their apartments evenings and weekends, so as not to create friction with other tenants.

FRPO pointed out that there may be situations where the level of noise created by a family is exceptional:

It is not to overstate the case that noise can ruin the lives of neighbours. It is not reasonable to simply assume that in all situations 'all parties can work cooperatively to resolve the issue'. There will be circumstances where it is best for a household that is creating an exceptional level of noise or disturbances to find an environment better suited to them.

Many consultees emphasized that it is important to keep in mind that children's noise is not the same as other noise, and cannot be held to the same standard as, for example, a stereo being played too loud. There is a natural amount of noise associated with small children, and this is noise not subject to control, to

the same degree. There must be reasonable parenting; however, there must also be a recognition that children “have a right to run”.

[I]n complying with the *Code*, housing providers must be mindful that a certain amount of noise is to be expected from families with young children. With this, they should not necessarily hold families with young children to the same standard they would hold other households, such as a couple without children – in many cases, families with children will make more noise. As long as the parents are making reasonable attempts to minimize disturbances, the housing provider should not target or threaten to evict the family over noise.

CERA

There was also discussion at the Housing Roundtable about the connection between the treatment of families in the rental housing market and the general intolerance in society for families and children, with the perception that the general intolerance for children feeds into the noise-related complaints from tenants.

The Rental Housing Tribunal often deals with issues related to noise. MMAH told the Commission that the ORHT can refuse an application for eviction where the reason given is that children occupy the rental unit, provided that the occupation of children does not constitute overcrowding. However, the Commission heard that adjudicators on the OHRT have limited knowledge or experience with applying the *Code*, so that decisions by that Tribunal are not necessarily in harmony with the *Code*.

Many suggested that, where children’s noise becomes an issue, landlords should take active steps to resolve the issue, whether through mediating between tenants, moving the complaining tenant to another available unit, or providing soundproofing, where it is possible to do so without undue hardship. Landlords, CERA emphasized, should take action where other tenants are harassing families over reasonable children’s noise, just as they would if tenants were being harassed in relation to other *Code* grounds. On the other hand, the Commission heard from landlord organizations that landlords may find themselves in a difficult situation in these circumstances, and don’t necessarily have the mediation skills to solve it. For example, a tenant complaining about noise may threaten to seek a rent abatement as a result. FMTA said:

We encourage families with children to try to find solutions to the situation with their landlords and neighbours to find certain noise reduction solutions such as soundproofing, carpeting, or relocation in the building. While the FMTA recognizes that noise can interfere with the reasonable enjoyment of tenants in a multi-residential situation ... It is our position that evictions should absolutely not be a method of controlling noise.

On the issue of soundproofing, ONPHA said:

In principle, this is a potential, probably partial solution. However, in many cases, it is physically impossible to retrofit housing to achieve effective soundproofing. Even where it is physically possible, the cost of soundproofing would be beyond the means of most social housing providers if applied on a widespread scale... There is a tension here between legal approaches which might tend to address the concerns of one individual, on the one hand, and concerns of housing providers to use their limited funds in the way that's best for tenants in general.

Under the *Code*, landlords have a duty to ensure that the housing they provide is designed to be inclusive of persons identified by *Code* grounds (including family status), and to take steps to remove any barriers that may exist, unless to do so would cause undue hardship. Costs will amount to undue hardship if they are quantifiable, shown to be related to the accommodation, and so substantial that they would alter the essential nature of the enterprise or so significant that they would substantially affect its viability.

## ***KEY CONCLUSIONS***

**Families with children continue to face serious, systemic disadvantage in accessing adequate affordable housing. This is particularly true for the most vulnerable families, such as lone parent, racialized, newcomer, and Aboriginal families, and those including persons with disabilities. Factors include an inadequate supply of affordable housing, discriminatory attitudes among landlords, and low income, especially for those in receipt of social assistance.**

## VII. SERVICES

### 1. Context

A number of submissions received by the Commission identified barriers for families in the receipt of services. The Commission heard concerns about a broad range of services, including large public services like transportation, education and health, as well as small private services.

In addition to concerns about the delivery of existing services, the Commission heard much about the *lack* of appropriate services for families, particularly with respect to supporting the needs of caregivers. As noted elsewhere in this Report, stakeholders identified pressing unfulfilled needs around childcare, eldercare, and supports for persons with disabilities. Persons with intersecting needs have particular difficulty finding services. For example, ARCH pointed out that there are few appropriate ongoing supports or services available to persons with disabilities who have caregiving responsibilities. Similarly, CLGRO pointed out that:

Structures and programs designed for and based on heterosexual concepts of family and parenting are often unsuitable for or ill-equipped to deal with gay, lesbian and bisexual family situations. Few services are available in Ontario that specifically address the needs of and provide programs specifically for gay, lesbian and bisexual parents or their children. This is particularly true in the north, in smaller and rural communities, and in the outlying or suburban areas of urban Ontario.

The lack of appropriate services can have significant impact on access to employment and housing by persons identified by family status.

### 2. Negative Attitudes and Stereotypes

Throughout this consultation, many stakeholders raised concerns regarding the negative attitudes and stereotypes attached to some family forms. This is particularly true where family status intersects with race, marital status, age, sexual orientation or gender. For example, female-headed lone-parent families are heavily stigmatized, particularly where they are racialized, or in receipt of social assistance. These negative stereotypes can result in harassment, or in exclusion from services.

One issue that has come up time and again related to family status and single parents is with social service agencies such as Ontario Works. Although the workers have a mandate to follow, oftentimes we find that their personal attitudes interfere in their capacity to make no discriminatory comments and decisions. The OFIFC did a report on the findings of

Ontario Works recipients. Single Aboriginal women reported that workers had told them they wanted to have more babies so they can get more money from the system, others reported being told they should get their tubes tied.

OFIFC

Similarly, the Commission heard from a number of stakeholders that it is not uncommon for parents who have disabilities or are from racialized or Aboriginal communities who contact the Children's Aid Society for help with caregiving responsibilities, to then find themselves under investigation because of stereotypes and presumptions about their abilities as parents. The Commission also heard that mortgage providers may be very reluctant to provide services to lone parents, again because of stereotypes and assumptions based on their family and marital status. CLGRO told the Commission that where a parent ends a heterosexual relationship and enters a same-sex relationship, that parent may face difficulties, not only within the family, but also in having the new partner recognized by authorities, such as schools.

One former foster child raised concerns about policies that prohibit former foster children from accessing records about themselves, on the basis that this could compromise the physical or emotional well-being of third-parties. This individual states that "[A]s a Crown Ward or a Former Crown Ward, they assume that we are going to be violent or harmful to someone in our past".

### ***3. Inclusive Design and Accommodation of Needs***

Service providers, like employers and housing providers, have a duty to design their services to include persons identified by family status, to remove existing barriers, and to accommodate remaining needs. Consultees pointed to a number of areas where inclusive design could be of significant benefit to families.

One example of non-inclusive design provided by an individual was her fitness club's rule that children over the age of four must not enter opposite sex changerooms. A mother would be expected to send her five-year old son to change alone in the men's changeroom. There are no family changerooms provided. As this mother pointed out, this policy is neither realistic nor particularly safe for such small children.

A number of stakeholders raised concerns about the design of Ontario Works programs; specifically, that while the program requires OW recipients to work, study or do volunteer work, OW recipients who have childcare responsibilities will require some accommodation of those needs. OFIFC stated that "Childcare may be inaccessible, unavailable. I believe that the service provider (gov't) has a duty to accommodate that need. Also the parent's childcare needs should be taken into consideration when deciding upon an appropriate job." MCSS indicated that

participation requirements may be temporarily deferred under a range of circumstances, including when the participant is a sole-support parent with at least one dependent child and publicly funded education is not available (e.g., where children are not yet of school age). Delivery agents develop and implement local childcare service plans annually, which include the budget for OW childcare and regular childcare. Through the planning process, delivery agents determine the mix and level of child care services appropriate to local needs and priorities.

Inclusive design should take into account that families may include persons who have disabilities, are LGBT, or are from various cultural communities. For example, the Commission heard from ARCH that family members of persons with disabilities may have a great deal of difficulty finding accessible homecare or childcare services and supports. Specialized transportation providers will only rarely permit a parent with a disability to travel with a child, so that a caregiver with a disability may face administrative obstacles when trying to find a way to drop off a child at a daycare and then continue on to an appointment. One individual submission indicated that:

I find that hotels with handicap accessible facilities assume it is a person travelling alone or a couple. Very few facilities have rooms that accommodate a family travelling with a person with a disability.

A number of stakeholders pointed out that families with young children, like persons with disabilities and older persons, face challenges from physically inaccessible services, and would benefit from barrier removal and inclusive design for buildings. Families with young children in strollers, for example, will have difficulty getting in and out of subway stations, or accessing buildings with many stairs and heavy doors. MCSS pointed out that restricted stroller access may be particularly problematic for parents with disabilities, as they are unable to carry small children for even a short period of time. The Commission has previously identified the benefits of physically accessible services for families with young children in its Restaurant Accessibility Initiative, and its consultation on accessible transit services.

#### ***4. Narrow Definitions of Family***

Some service providers have restrictive definitions of what a ‘family’ is, which creates barriers.

For example, one individual told the story of how he and his same-sex partner cared for his elderly mother for many years. However, when she was ill and dying in the hospital, because of the hospital’s rules, his partner was only able to visit her by pretending to be his brother.

The Adoption Council of Canada pointed out that even now, legal distinctions are made between families formed by adoption, and those formed by birth. For example, federal citizenship laws differentiate between a child who is born to a Canadian and one who is adopted by a Canadian: the one automatically receives citizenship, while the other does not. The Adoption Council also raised concerns regarding the treatment of adoptive parents under the *Employment Insurance Act*.

## **5. Child-Free Spaces and Age Restrictions**

It is widely recognized that there may be social policy reasons for treating minors differently than adults in some circumstances. For example, we may not wish to see young children watching adult-oriented movies, or buying cigarettes.

However, caselaw has recognized that rules barring children may have an impact based on family status. In a British Columbia human rights case, a restaurant that refused to allow customers with children to use its services, on the basis that other customers did not like being disturbed when children made a fuss, was found to have discriminated on the basis of family status.<sup>86</sup>

As some consultees noted, there is a balance to be struck between ensuring that children do not have access to services or facilities that compromise their safety or well-being, and protecting the rights of families to access services without discrimination.

There will be situations where you'll see 'child-free' or 'adult-only' and this should only be for the protection of the children from experiencing situations that would be detrimental to their health and wellbeing, not due to the fact they are a child when it comes to their parents or relatives accessing accommodations.

OFIFC

Where a child's health or well-being would be at risk due to the nature of the service provided, the service provider may have a *bona fide* reason for denial of the service to a family.

As well, there may be circumstances where the activities of children may be unduly disruptive to the enjoyment of the service. If children are crying during a movie, for example, it could unduly affect the ability of others to enjoy the service. Children's potential behaviour should not be a reason for a blanket denial of access to all children, some argued, as children, like adults, are individuals and their behaviour can't necessarily be judged beforehand; however, the behaviour of children may in some circumstances legitimately be a reason for asking a family to leave. Further, there is, of course, a distinction to be made between

exclusion of children based on legitimate behavioural concerns, and denial of access based on exclusionary preferences.

It was also pointed out that there may be situations where a service provider may wish to target disadvantaged groups, such as children, youth, women or older persons, and such efforts should be supported. Section 14 of the *Code* permits service providers to implement special programs to relieve hardship or economic disadvantage or to assist disadvantaged persons or groups to achieve or attempt to achieve equal opportunity, or that is likely to contribute to the elimination of the infringement of rights under the *Code*.

## **6. Education**

The service that received the most attention from consultees was education. This was due, no doubt, to the key role that education plays in the lives and prospects of Ontarians.

Many individual consultees pointed out to the Commission that, despite the manifold benefits of education and training for their economic security and prospects, their caregiving responsibilities, together with the pressures of employment, made education and training unattainable.

While I have been working in a management job for over 4 years and have had many challenges that have had successful outcomes, I am being told that my ability to move to a senior position is compromised due to the fact that I have not completed my degree program.... I am the sole caregiver of my children and I am not able to leave them at night to continue with my studies at this time.... My lack of education due to the childcare issues has basically frozen the path to any type of promotion.

Individual

Some stakeholders recommended that education providers consider means of making their services more accessible to persons with caregiving responsibilities. For example, DAWN suggested that since many women chose distance-learning options as a way to juggle their family responsibilities, or to deal with accessibility issues, improving the quality and extent of distance learning programs may be of significant benefit in improving access to educational services. MCSS noted the importance for its clients of improved access to educational opportunities, and provided a number of suggestions for ways in which educational services could be made more accessible to persons with caregiving responsibilities:

On-site daycare services, choice of part-time, day and evening programs, and the ability to take a leave to meet family or personal care obligations are all necessary to assist ODSP recipients to fully participate in their

communities. Programs of study which do not allow leaves or part-time study options, such as engineering, law and medicine, effectively eliminate potentially lucrative education and employment options for those with child or other family-care obligations thus perpetuating poverty and marginalization.

Accommodation of the needs of caregivers was highlighted as an important issue. The Commission has, for example, received complaints regarding the refusal of post-secondary institutions to accommodate the needs of students who are breastfeeding mothers. ARCH indicated that family members may require extra assistance dealing with missed examinations as a result of caregiving obligations, and that a caregiver may be unable to schedule classes in the evening, or to travel, as it may interfere with caregiving obligations. One individual consultee recounted her experiences trying to combine the completion of her PhD with her pregnancy and maternity leave, pointing to the inflexibility of the timetable as a significant barrier to her completion of her qualification exam. Another individual told this story:

My ability to succeed at law school was damaged when my sister became very ill in my second year and I had to balance school and her care. The study of law is not available on a part-time basis except in exceptional circumstances surrounding the student or a person in their 'immediate' family – child or spouse – and then only for one year. My sister is my closest relative.

Submissions emphasized the importance of designing educational services to include the broad spectrum of modern day families. OECTA stated that:

[T]he structure of the school day/year can undermine families. Parents often have difficulties attending school meetings because of scheduled work hours. Childcare can be a financial burden. Sometimes parents are wrongly viewed as being uninterested in their children's education.

Family Services Canada emphasized the need for education providers to be more inclusive of lesbian and gay families. For example, school board policies on signing for school trips or dealing with medical emergencies may not be inclusive of LGB families. Others raised concerns about the need for schools to develop policies more inclusive of the realities of foster children.

As well, the Commission heard that negative and discriminatory attitudes about various family forms may play out in a range of ways in an educational setting; for example, children from families that are perceived to be 'different' may be subject to bullying and ridicule from their peers as a result. Education providers have a responsibility to maintain a positive, non-discriminatory environment, and should take steps to educate students about human rights and implement strategies to prevent discrimination and harassment.

## ***KEY CONCLUSIONS***

**Consultees identified a wide range of barriers related to family status to equal access to services. Particular concerns were identified with respect to social services and educational institutions. Service providers should take steps to design inclusively, accommodate needs related to family status, and overcome negative and discriminatory attitudes.**

## VI. ROLES AND RESPONSIBILITIES

The ground of family status raises wide-ranging and complex issues. It is clear from this consultation that individuals with caregiving responsibilities face a range of systemic barriers to full participation in employment, housing and services. The Commission heard that families cannot, on their own, resolve all of these barriers. Addressing them will require a coordinated approach from government, employers, housing providers, service providers, and the Commission itself.

### 1. Government

The Commission heard that the government has a key role to play in addressing systemic barriers for persons identified by family status. Employers, housing and service providers, left to their own devices, cannot provide complete solutions to these complex challenges; nor is it reasonable to expect them to do so. Only limited progress can be made on these issues unless government provides a solid foundation on which to build.

The Canadian government, as a signatory to numerous international conventions, has acknowledged these obligations. The *Convention on the Elimination of All Forms of Discrimination Against Women*, to which Canada is a signatory, requires states parties to “encourage the provision of the necessary supporting services to enable parents to combine family obligations with work responsibilities and participation in public life”.<sup>87</sup> The *Convention on the Rights of the Child* requires states parties to render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities and to ensure the development of institutions, facilities and services for the care of children.<sup>88</sup> The *International Covenant on Economic, Social and Cultural Rights*, ratified by Canada in 1976, requires states parties to take steps to ensure adequate housing for all.<sup>89</sup> The January 1997 *Report on Canada* of the United Nations Committee on the Elimination of Discrimination Against Women specifically urged the Canadian government to address the deepening poverty among lone mothers and recommended that social assistance programmes directed at women be restored to an adequate level.<sup>90</sup>

To meet these obligations, and ensure the removal of systemic barriers based on family status, government must provide appropriate supports for families with caregiving responsibilities. This includes ensuring appropriate supports are available for childcare, eldercare and persons with disabilities and their families; developing minimum legislated standards that support the ability of caregivers to participate in the workforce; ensuring that vulnerable families have access to adequate affordable housing; and ensuring that its own services are inclusive of the needs of persons with caregiving responsibilities and do not create barriers to participation.

## **2. Employers, Housing Providers and Service Providers**

It is clear from this consultation that employers, housing providers and service providers lack awareness of their responsibilities under the *Code* with respect to family status. It is the Commission's hope that this consultation will provide a solid foundation for efforts to improve awareness.

Employers, housing providers and service providers are all bound by the *Code* to take positive steps to ensure that caregivers are able to participate in, and receive full benefit from these key institutions, in an environment of dignity and respect. In particular, employers, housing providers and service providers have a responsibility to:

- Take seriously issues related to discrimination based on family status;
- Eliminate discriminatory attitudes and assumptions based on family status;
- Ensure that their programs, policies, and practices are designed to include persons with caregiving responsibilities, and take steps to identify and remove existing barriers; and
- Develop policies and procedures for accommodating the needs of persons identified by family status.

## **3. The Commission**

The submissions received during this consultation emphasized the important role that the Commission must play in advancing the interpretation of the provisions of the *Code* related to family status; addressing the systemic issues affecting caregivers; and ensuring awareness among key stakeholders and the general public of rights and responsibilities related to family status.

Based on the foundation provided by this consultation, the Commission will continue to forward issues related to discrimination on the basis of family status through the broad range of its powers under section 29 of the *Code*.

- As a starting point, the Commission will ensure that the results of this consultation are widely disseminated to all key stakeholders and to the broader community.
- Discrimination on the basis of family status has significant intersectional implications. The Commission will continue to move forward in integrating an intersectional approach to all aspects of its work.
- The Commission has committed to develop policies and guidelines related to discrimination on the basis of family status.

- An urgent need has been identified for further work related to discrimination in the area of housing, and the Commission will move forward with public consultations and a policy development process on this issue.
- The Commission's work in the area of family status has revealed a widespread lack of awareness and understanding about this ground of the *Code*: the Commission has a central role in developing strategies and tools for raising awareness of the rights and responsibilities of all of the actors in society related to this ground of the *Code*.

## **VIII. ORGANIZATIONS PROVIDING INPUT**

1. Adoption Council of Ontario
2. Advocacy Centre for Tenants Ontario (ACTO)
3. African Canadian Legal Clinic
4. ARCH A Legal Resource Centre for Persons with Disabilities
5. Association of Law Officers of the Crown (ALOC)
6. Canadian Manufacturers and Exporters
7. Canadian Pensioners' Concerned
8. CANGRANDS
9. CARP – Canada's Association for the Fifty-Plus
10. CAW Canada
11. Centre for Equality Rights in Accommodation (CERA)
12. Centre for Families, Work, and Well-Being (CFWW)
13. Coalition for Lesbian and Gay Rights in Ontario (CLGRO)
14. The Co-Operators
15. Disabled Women's Network Ontario (DAWN)
16. EGALE
17. Family Service Canada
18. Federation of Metro Tenants' Associations (FMTA)
19. Federation of Rental Housing Providers of Ontario (FRPO)
20. Foster Parents Society of Ontario
21. Halton Region's Elderly Services Advisory Committee
22. Human Resources Professional Association of Ontario (HRPAO)
23. Jamaican Canadian Association
24. Law Society of Upper Canada
25. Landlord's Self-Help Centre
26. Metropolitan Action Committee on Violence Against Women (METRAC)
27. Ministry of the Attorney General
28. Ministry of Children and Youth Services
29. Ministry of Community and Social Services (MCSS)
30. Ministry of Government Services Centre for Leadership and Human Resources Management
31. Ministry of Municipal Affairs and Housing (MAH)
32. Multicultural Alliance for Seniors and Aging
33. Older Women's Network
34. Ontario Association of Social Workers
35. Ontario Coalition of Senior Citizen's Organizations
36. Ontario Confederation of University Faculty Associations (OCUFA)
37. Ontario Council of Agencies Serving Immigrants (OCASI)
38. Ontario English Catholic Teachers Association (OECTA)
39. Ontario Federation of Indian Friendship Centres (OFIFC)

40. Ontario Federation of Labour (OFL)
41. Ontario Non-Profit Housing Association (ONPHA)
42. Ontario Rental Housing Tribunal
43. Ontario Secondary School Teachers' Federation (OSSTF)
44. Royal Canadian Legion
45. Ryerson University
46. United Senior Citizens of Ontario

As well, the Commission received submissions from approximately 70 individuals.

## ENDNOTES

---

<sup>1</sup> The Commission would like to extend its thanks to the Ontario Seniors Secretariat for organizing this roundtable.

<sup>2</sup> Alzheimer Society of Canada, "Patterns of Caring for People with Dementia in Canada", online: ASC, <<http://www.alzheimer.ca/english/disease/stats-caregiving.htm>>

<sup>3</sup> ARCH submission, citing R. Traustadottir, "Mothers Who Care: Gender, Disability and Family Life" in M. Nagler, ed., *Perspectives on Disability* (Hamilton: Health Markets Research, 1993) at 173.

<sup>4</sup> 18 December 1979, GA Res. 34/180 (entered into force 03 September 1981) accession by Canada 09 January 1982).

<sup>5</sup> United Nations *Report of the Fourth World Conference on Women* (17 October 1995) A/CONF.177/20

<sup>6</sup> For a thorough discussion of the Australian experience, see *Striking the Balance: Women, men, work and family*, by the Sex Discrimination Unit of the Australian Human Rights and Equal Opportunity Commission, September 2005, available online at [Hwww.humanrights.gov.au/sexHdiscrimination](http://www.humanrights.gov.au/sexHdiscrimination)

<sup>7</sup> New South Wales Anti-Discrimination Board, *Carer's Responsibilities Discrimination, Your Rights*, online: [www.lawlink.nsw.gov.au/lawlink/adb](http://www.lawlink.nsw.gov.au/lawlink/adb)

<sup>8</sup> Work Life Law: *The New Glass Ceiling: Mothers and Fathers Sue for Discrimination*, American University Washington College of Law, November 2002.

<sup>9</sup> Canadian Association for Community Living, *Developing a Family Supportive Policy Agenda to Advance the Citizenship and Inclusion of People with Disabilities* (2006) at 8.

<sup>10</sup> The Commission conducted public consultations on the experience of students with disabilities, and released a report in 2003, *The Opportunity to Succeed*, (available online at [Hwww.ohrc.on.ca](http://www.ohrc.on.ca)) that included numerous recommendations aimed at improving the inclusion of students with disabilities in the educational system. The Commission also consulted on the accessibility of public transportation systems, and released a report with recommendations in 2002. Both documents are available online at [www.ohrc.on.ca](http://www.ohrc.on.ca).

<sup>11</sup> Canadian Association for Community Living, *Developing a Family Supportive Policy Agenda to Advance the Citizenship and Inclusion of People with Disabilities* (2006) at 11.

<sup>12</sup> Canadian Union of Postal Workers, *Moving Mountains: Work, Family and Children with Special Needs* (November 2002) at 21.

<sup>13</sup> Canadian Association for Community Living, *Developing a Family Supportive Policy Agenda to Advance the Citizenship and Inclusion of People with Disabilities* (2006) at 15.

<sup>14</sup> Submission from Disabled Women's Network Ontario (DAWN)

<sup>15</sup> Submission from CANGRANDS

<sup>16</sup> Ontario Human Rights Commission, 2001 (online: [www.ohrc.on.ca](http://www.ohrc.on.ca))

<sup>17</sup> In the Commission's report on its consultation on discrimination against older persons, the Commission made recommendations regarding support for persons providing care for older Ontarians, including a recommendation "That all levels of governments and employers consider providing various forms of support to caregivers. Options for consideration include program supports (e.g., tax credits) and flexible work options." *Ibid.*

<sup>18</sup> Vanier Institute of the Family, *2005 Report on the Current State of Family Finances* (2005), online: Vanier Institute of the Family <[www.vifamily.ca](http://www.vifamily.ca)>

<sup>19</sup> This was a finding of the Board of Inquiry in *Kearney v. Bramalea* (1998) 34 C.H.R.R. D/1, upheld (2001), 39 C.H.R.R. D/111 (Ont. Sup. Ct.)

<sup>20</sup> Ontario Human Rights Commission Discussion Paper: *Toward a Commission Policy on Gender Identity*, October, 1999.

<sup>21</sup> *M.D.R. v. Ontario (Deputy Registrar General)*, 6 June 2006, O.J. No. 2268, (Ont. S.C.J.)

<sup>22</sup> *Ibid.*

<sup>23</sup> Legislation previously passed amending s. 60 of the *Vital Statistics Act* would enable the government to prevent future exclusion of these families and provide some remedy for those already affected: however, these amendments are not in force as they have not been proclaimed.

---

Unproclaimed amendments from 1994 (Statutes of Ontario, 1994, chapter 27, subsection 102(30)) would enable recognition of lesbian non-birth parents in the birth registration process, removing their need to use the adoption process to be recognized as parents. These amendments would allow for the development of regulations prescribing who may certify a birth registration, and for the Registrar General to registrar births based on information that she or he “considers appropriate”. Unproclaimed amendments from 2005 (S.O. 2005, c. 25, s. 13(2)) would allow regulations to be developed that would enable those same-sex parents who had gone through this adoption process in the past due to lack of other options, to gain recognition as “birth parents.”

<sup>24</sup> Vanier Institute of the Family, *Family Facts* (2004), online: Vanier Institute of the Family <[www.vifamily.ca](http://www.vifamily.ca)>.

<sup>25</sup> R. Morissette “On the Edge: Financially Vulnerable Families”, *Canadian Social Trends*, (Winter 2002) 13.

<sup>26</sup> Submission of Professor Lea Caragata

<sup>27</sup> Since this consultation, Ontario’s laws regarding the disclosure of information regarding adoptions have been significantly reformed through the *Adoption Information Disclosure Act*, S.O. 2005, c. 25.

<sup>28</sup> S.C. 1996, c. 23

<sup>29</sup> *Insurance Corporation of British Columbia v. Heerspink*, [1982] 2 S.C.R. 145 at 157 [“Heerspink”]. See also *Zurich Insurance Co. v. Ontario (Human Rights Commission)*, [1991] 2 S.C.R. 321 at para 58 [“Zurich”].

<sup>30</sup> *Moffatt v. Kinark Child and Family Services*, (1998), 35 C.H.R.R. D/205 (Ont. Bd. Inq.); *McKenna v. Canada (Secretary of State)*, (1993), 22 C.H.R.R. D/486 (Can. Trib); *Gill v. British Columbia (Ministry of Health) (No. 1)*, (2001), 40 C.H.R.R. D/321 (BCHRT).

<sup>31</sup> *Dudnik v. York Condominium Corp. No. 216*, (1990), 12 C.H.R.R. D/325 (Ont. Bd. Inq.).

<sup>32</sup> *Supra*, note 16

<sup>33</sup> For a discussion of demographic trends affecting Ontario families, see the Ontario Human Rights Commission’s *Human Rights and the Family in Ontario* (2005), online: Ontario Human Rights Commission <[www.ohrc.on.ca](http://www.ohrc.on.ca)>

<sup>34</sup> Vanier Institute of the Family, *Profiling Canada’s Families III* (2004): 18, online: Vanier Institute of the Family <[www.vifamily.ca](http://www.vifamily.ca)>.

<sup>35</sup> Ontario absorbed 52% of all Canadian immigration in 2005 (Citizenship and Immigration Canada: <http://www.2ontario.com/software/ois/LabourForce.asp>).

<sup>36</sup> According to the Statistics Canada 2001 census: Ontario Ministry of Citizenship and Immigration, <http://www.citizenship.gov.on.ca/english/about/b211105.htm>.

<sup>37</sup> *Recognizing and Supporting Close Personal Relationships Between Adults*, Discussion Paper, Law Commission of Canada. May, 2000, online Law Commission of Canada <[www.lcc.gc.ca](http://www.lcc.gc.ca)>; Vanier Institute of the Family “Reframed Family Portraits”, online Vanier Institute of the Family <[www.vifamily.ca](http://www.vifamily.ca)>

<sup>38</sup> See, for example, the New South Wales *Anti-Discrimination Act 1977*, Section 49S.

<sup>39</sup> *Supra*, note 37. Also the CLGRO submission indicates that if the intent is to support domestic units as an economic measure, there is no reason why these should be sexual or procreative in nature.

<sup>40</sup> *Supra*, note 37

<sup>41</sup> For example, ARCH submission, citing Law Commission of Canada (LCC), *Personal Relationships of Support Between Adults: the Case of Disability*, Roeher Institute (Ottawa:LCC, March 2001).

<sup>42</sup> *Supra*, note 37

<sup>43</sup> The Vanier Institute of the family has suggested that that a “sustained commitment to care is central to how families should be defined.” *Supra*, note 37

<sup>44</sup> Ministry of Community Services, *Special Services at Home (SSAH) Program Guidelines* (Toronto, Queens Printer for Ontario, 2002) at G-3.

<sup>45</sup> *Canadian Human Rights Act*, R.S.C. 1985, sections 2 and 3(1).

<sup>46</sup> The Canadian Human Rights Commission has developed a working definition, available online at [http://www.chrc-ccdp.ca/discrimination/family\\_status-en.asp](http://www.chrc-ccdp.ca/discrimination/family_status-en.asp)

---

<sup>47</sup> The *Employment Standards Act* extends rights to emergency leave specifically to spouses, children (including step-children and foster children), parents (including step and foster parents), grandparents, siblings, spouses of children. S.O. 2000, c. 41, s. 50

<sup>48</sup> *Alberta Human Rights. Citizenship and Multiculturalism Act. Nunavut's Human Rights Act* uses the same definition

<sup>49</sup> Vanier Institute of the Family, *Profiling Canada's Families II*, online: Vanier Institute of the Family <[www.vifamily.ca](http://www.vifamily.ca)>

<sup>50</sup> R. Saunders, *Risk and Opportunity: Creating Options for Vulnerable Workers* (Canadian Policy Research Network, 2006) at 9, online at Canadian Policy Research Network <[www.cprn.org](http://www.cprn.org)>

<sup>51</sup> The legislation extends to spouses (including same-sex spouses), children (including step-children and foster children), parents (including step and foster parents), grandparents, siblings, spouses of their children, or any other relatives that are dependent on them for care and assistance.

<sup>52</sup> S. 49.1. At the time of consultation, these protections only extended to those caring for spouses, parents and children. On October 26, 2006, however, the Ministry of Labour announced that, effectively immediately, these protections would be expanded to include a much broader range of relationships, including grandparents, grandchildren, siblings, nieces and nephews, aunts and uncles, spouses of family members, and anyone who the employee considers to be "like a family member".

<sup>53</sup> *Employment Insurance Act*, S.C. 1996, c. 23, ss. 12, 23. Prior to June 2006, the eligibility requirements restricted benefits to those caring for spouses, children or parents. The Ontario government has not indicated whether it will amend the parallel provisions of the *Employment Standards Act* to ensure that caregivers who are eligible for employment insurance benefits will be entitled to take leaves of absence from work to provide such care.

<sup>54</sup> See, for example, D. Cheal, M. Luxton and F. Woolley, *How Families Cope and Why Policy-Makers Need to Know* (Canadian Policy Research Network, 1998); L. Duxbury et al., *An Examination of the Implications and Costs of Work-Life Conflict in Canada* (Ottawa: Health Canada, June 1999).

<sup>55</sup> See, for example Fiona M. Kay, *Transitions and Turning Points, Women's Careers in the Legal Profession, A Report to the Law Society of Canada* (September 2004) and Joan C. Williams, "Hitting the Maternal Wall", *Academe* (November-December 2004).

<sup>56</sup> The leading case is *Health Sciences Association of British Columbia v. Campbell River and North Island Transition Society*, 2004 BCCA 260, May 10, 2004. This was an appeal from the decision of an arbitrator. The employee in this case was married with four children, the youngest of whom had very severe behavioural problems requiring specific parental and professional attention. She worked for the respondent on a part-time basis, from 8:30 a.m. to 3:00 p.m. Because of program changes, the respondent decided to change her shift to 11:00 a.m. to 6:00 p.m. The grievor was concerned because she needed to attend to her son after school hours. A medical report stated that her son was best served by having his mother care for him after school, noting that he had a major psychiatric disorder, and that his mother's after-school care was "extraordinarily important" to his prognosis. This information was provided to the employer; however, it did not adjust the grievor's schedule. The grievor attempted to work the schedule, but went off work after a few weeks, and was diagnosed with post-traumatic stress disorder. The arbitrator concluded that the ground of family status was not intended to capture circumstances such as these, and rejected the claim of the grievor. The Court of Appeal overturned the decision of the arbitrator, and concluded that "a *prima facie* case of discrimination is made out when a change in a term or condition of employment imposed by an employer results in a serious interference with a substantial parental or other family duty or obligation of the employee". The Court found that such a *prima facie* case had been made out in these circumstances.

<sup>57</sup> In one study, employees who reported high rates of work-life conflict were found to be absent from work an average of 13.2 days per year, as compared to 5.9 days per year for those who report low levels of work-life conflict (L. Duxbury et al, *An Examination of the Implications and Costs of Work-Life Conflict in Canada*, Ottawa: Health Canada, June 1999).

<sup>58</sup> Note that employees who are covered by the ESA and work for employers of over 50 employees may be entitled to limited unpaid emergency leave, as described above.

---

<sup>59</sup> Submission from ALOC.

<sup>60</sup> ESA s. 49.1 Consultees also raised concerns that the definitions of ‘family member’ in the ESA and the *Employment Insurance Act* were far too restrictive, and did not include siblings, grandparents, or other relatives dependent on the employee for care or assistance. Both programs now recognize a much broader range of relationships.

<sup>61</sup> ESA s. 50

<sup>62</sup> Similar concerns were brought to the Commission’s attention during its consultation on discrimination against older Ontarians on the basis of age. In its consultation report, *A Time for Action*, the Commission recommended “That the Ministry of Labour extend the new leave provisions of the *Employment Standards Act 2000* to smaller workplaces (including those of less than fifty employees). *Supra*, note 16

<sup>63</sup> ESA, ss. 17, 17.1

<sup>64</sup> *Health Sciences Association of British Columbia v. Campbell River and North Island Transition Society*, *supra*, note 56.

<sup>65</sup> Submission from ALOC.

<sup>66</sup> In other jurisdictions, unreasonable denial of access to alternative work arrangements has been found to be discriminatory. For example, in an interesting Australian case, an employer’s refusal to allow a female employee returning from maternity leave to move to part-time work was found to be sex discrimination, in that an unreasonable denial of part-time work was likely to disadvantage women because of their disproportionate responsibility for the care of children. *Escobar v. Rainbow Printing Pty Ltd. (No.2)* [2002] FMCA 122

<sup>67</sup> Some American studies have found that racialized employees are less likely to have access to ‘family-friendly’ workplace policies. See Debra B. Schwarz, *An Examination of the Impact of Family-Friendly Policies on the Glass Ceiling*, Report Prepared for the U.S. Department of Labor, Glass Ceiling Commission (New York: Families and Work Institute, 1994).

<sup>68</sup> *Nikoloudi v. Organismos Tilepikoinnoinion Ellads AE*, OJ C-106, 30.04.2005, p.1

<sup>69</sup> Expansion of access to pensions would require amendment of the Ontario *Pension Benefits Act*, which sets out the criteria non-full-time workers must meet in order to be eligible to participate in an employer-sponsored pension plan.

<sup>70</sup> *Knussman v. Maryland*, (272 F.3d 625 (4<sup>th</sup> Cir. 2001)

<sup>71</sup> *Trezza v. Hartford Inc. No. 98*, Civ. 2205, 1998 WL 912101 (S.D.N.Y. Dec. 30, 1998). For a helpful summary of the American caselaw in this area, see *The New Glass Ceiling: Mothers and Fathers Sue for Discrimination*, produced by Work Life Law at the American University Washington College of Law, November 2002.

<sup>72</sup> 16 December 1966, 993 U.N.T.S. 3, Can. T.S. 1976 No. 46 (entered into force 03 January 1976, accession by Canada 19 August 1976). The *General Comment on the Right to Adequate Housing* by the Committee on Economic, Social and Cultural Rights (CESCR General Comment 4 on Article 11(1), 13/12/91) clarifies that the right is to *adequate* housing, including considerations of security of tenure, accessibility, habitability, and affordability, among others. Financial costs associated with housing should not be at a level where the attainment and satisfaction of other basic needs are compromised or threatened. The right to adequate housing has also been affirmed in the *Convention on the Elimination of All Forms of Discrimination Against Women* (18 December 1979, GA Res. 34/180 (entered into force 03 September 1981) accession by Canada 09 January 1982), and the *Convention on the Rights of the Child* (20 November 1989, GA Res. 44/25 (entered into force 02 September 1990) accession by Canada 12 January 1992, Article 18), which Canada has also ratified.

<sup>73</sup> (1998) 34 C.H.R.R. D/1; upheld (2001), 39 C.H.R.R. D/111 (Ont. Sup.Ct.)

<sup>74</sup> Ministry of Community and Social Services, Ontario Works Quarterly Statistical Report, [www.gov.on.ca](http://www.gov.on.ca)

<sup>75</sup> Social assistance rates were raised by 3% for both OW and ODSP recipients in early 2005. The maximum shelter allowance under Ontario Works ranges from \$335 per month for a single person, to \$694 per month for a family of six or more. A lone parent of two children would receive a shelter allowance of \$571 per month, plus a basic needs allowance of up to \$627 per month

---

(depending on the ages of the children), for a maximum total monthly income of \$1198 per month (submission of MCSS).

<sup>76</sup> For a detailed discussion of the Commission's position on housing and older persons, refer to the Commission's *Policy on Discrimination Against Older Persons Because of Age* (Ontario Human Rights Commission, March 2002), online: Ontario Human Rights Commission <[Hwww.ohrc.on.ca](http://www.ohrc.on.ca)>.

<sup>77</sup> *Supra*, note 73.

<sup>78</sup> Ont. Bd. Inq., May 2, 2002, unreported.

<sup>79</sup> *Ibid.*

<sup>80</sup> Ont. Bd. Inq., November 5, 2001, unreported.

<sup>81</sup> (1997), 30 C.H.R.R. D/345 (C.A. Que.)

<sup>82</sup> S.O. 1997, c. 24, s. 1

<sup>83</sup> (1994) C.H.R.R. Doc. 94-130 (Ont. Bd. Inq.)

<sup>84</sup> (1998), 33 C.H.R.R. D/479 (Ont. Bd. Inq.)

<sup>85</sup> S.O. 2000, c. 27

<sup>86</sup> *Micallef v. Glacier Park Lodge Ltd.*, (1998), 33 C.H.R.R. D/249 (BCHRT)

<sup>87</sup> *Supra*, note 4, at Article 11

<sup>88</sup> 20 November 1989, GA Res. 44/25 (entered into force 02 September 1990) accession by Canada 12 January 1992, Article 18

<sup>89</sup> *Supra*, note 73 at Article 11(1)

<sup>90</sup> United Nations Committee on the Elimination of Discrimination Against Women *Concluding Observations of the Committee on the Elimination of Discrimination Against Women: Canada* 12 August 1977, A/52/38/Rev. 1, paras. 306-343. Similar concerns were reiterated in 1998 by the United Nations Committee on Economic, Social and Cultural Rights and in 2003 by the Committee on the Rights of the Child.