

COMMENT OF THE ONTARIO HUMAN RIGHTS COMMISSION

On

Every Door is the Right Door: Towards a 10-Year Mental Health and Addictions Strategy

Ministry of Health and Long-Term Care

August 31, 2009

The Ontario Human Rights Commission, (the “Commission”) commends the Ministry of Health and Long-Term Care (“Ministry”) for its work on an improved strategy to meet the needs of Ontarians with mental illnesses and addictions. The Commission is pleased to provide its input on this discussion paper, particularly with respect to the sections on Stigma and Healthy Communities. These sections provide a good starting point to begin discussing discrimination and human rights. Eliminating discrimination is critical to combat the marginalization and social exclusion of people with mental illnesses.

The rights of people living with mental illness to: health; dignity; bodily integrity and security of the person, and equal treatment in employment, services (including health care), and housing are all fundamental human rights. Acknowledging these is integral to the redevelopment of the mental health system and can inform a culture shift towards equality for people with mental illnesses and addictions. The Commission is pleased that the Ministry is incorporating aspects of these rights into its vision of an improved system, which we hope will lead to these concepts being translated into lived realities for consumer survivors.

Mental Health as a Strategic Priority and areas of Potential Partnership

Because of the wide-spread discrimination faced by people with mental illnesses in the areas of employment, services and housing, the Commission has made mental health a strategic priority, and is currently working on developing a mental health strategy. This will involve using its mandate to develop key projects to address areas of discrimination against people with mental health issues. These projects may involve public education, policy development, conducting public interest inquiries, establishing partnerships and/or potentially filing human rights applications to address areas of systemic inequality. The Commission would be pleased to discuss the outcome of the Ministry’s consultation at greater length to identify joint areas of interest or projects that could benefit from the Commission’s involvement. The Commission is particularly well positioned to make the links between stigma and discrimination. It can offer expertise to the Ministry and different sectors (such as employment and housing) to address systemic trends affecting the rights of people with mental illness.

August 2009

Ontario Human
Rights Commission

Protections for people with mental illness under the Ontario *Human Rights Code*

People with mental illness are covered under the ground of “disability” in the Ontario *Human Rights Code* (“*Code*”). Section 10(1) of the *Code* provides a broad definition of disability, which covers mental illness under clause (b) people with a “condition of mental impairment” and (d) “mental disorder”. People with mental health issues are protected from discrimination and harassment under the *Code* in the areas of employment, accommodation (housing), goods, services and facilities, contracts, and membership in trade, union or occupational associations. Sections that outline additional protections include:

- Section 10(3), which indicates that a person has a right to equal treatment without discrimination because he or she has or has had a disability or is believed to have or to have had a disability. This is particularly relevant where a mental health problem is perceived or suspected, but due to the nature of the problem, the person is unable to disclose.
- Section 11, which clarifies that discrimination includes constructive discrimination, in which a requirement, qualification or factor that appears neutral has the effect of excluding or disadvantaging a group protected under the *Code*.
- Section 17, which outlines the duty to accommodate. It is not discriminatory to refuse a service or job because the person is incapable of fulfilling the essential requirements. However, a person will only be considered incapable if the needs of the person cannot be accommodated without undue hardship.
- Section 8. People with mental illnesses are also covered by the *Code* if they experience reprisal for asserting their rights.
- Section 12. People who are associated with someone with a mental illness, for example, friends or family, are also protected from discrimination.

Policy and Guidelines on Disability and the Duty to Accommodate

The Commission’s *Policy and Guidelines on Disability and the Duty to Accommodate* (*Policy*) sets out the Commission’s guiding principles around disability and the duty to accommodate, which are applicable to employment, services, housing and other social areas. The *Policy* explicitly recognizes the unique challenges faced by people with non-evident disabilities, such as mental illnesses. It follows the Supreme Court of Canada’s decisions that make it clear that discrimination because of disability may be based on myths, perceptions and stereotypes as well as actual functional limitations.

The *Policy* affirms the standard for undue hardship, which is a high one. There are only three factors to be considered: costs, outside sources of funding, and health and safety.

Comments on Section 5: “Stop Stigma”

As noted above, the Commission agrees with the focus on changing society’s perceptions and attitudes in order to create more understanding of mental illness and addictions, and to eradicate discrimination. Public education, increased exposure to people with mental health issues in a positive way, role models and anti-stigma campaigns are important tools to combat discriminatory attitudes, which lead to the stigmatization of people with mental health issues.

Stigma has been defined as “sign of disgrace or discredit, which sets a person apart from others”¹ and a “...social process, experienced or anticipated, characterized by exclusion or reasonable anticipation of an adverse social judgement about a person or group.”² The Commission sees stigma as part of the impact, or effect, of discrimination, and as the experience of social exclusion of people with mental health issues. The Commission believes that this section of the discussion paper would benefit from more of a discussion on discrimination. Stigma has sometimes been equated to discriminatory attitudes, prejudice or stereotypes, and much research has focused on measuring and combating these attitudes. However, focus is also needed on the relationship between stigma and discrimination; that is, identifying and addressing discriminatory acts that result in unequal treatment for people with mental illnesses.³

The Commission believes that stigma and discriminatory actions are part of a larger belief system of ableism, where inferior value is assigned to people with physical, developmental, emotional or psychiatric disabilities. Like racism or heterosexism, this belief system can be conscious or unconscious, is embedded in structures and institutions, and underpins acts of discrimination. One theorist has used the term “sanism”⁴ to refer specifically to a belief system based in prejudice specifically against people with mental illness.

1 Peter Byrne, “Stigma of mental illness and ways of diminishing it,” *Advances in Psychiatric Treatment* (2000) Vol. 6, p. 65.,

² Weiss, Michael, & Ramakrishna, Jayashree. “Background Paper: Health related stigma: Rethinking concepts and interventions for the Research” (2004). Workshop on Health-Related Stigma Conference, Amsterdam, as cited by Martin, N., and Johnston, V. *A time for action: Tackling Stigma and Discrimination Report to the Mental Health Commission of Canada*, p.8.

³ In the Canadian Mental Health Commission’s 2008 roundtable session on stigma in mental health and addiction, the participants noted that changing behaviour, as opposed to attitudes, is what really helps to reduce stigma and discrimination, and often researchers focus on attitudes because they are easier to measure. Canadian Mental Health Commission and Hotchkiss Institute (2008). *Notes from Roundtable Session on Stigma in Mental Health and Addiction*. Found online at: http://www.mentalhealthstigma.ca/documents/mhcc_notes_roundtable.pdf. Accessed 25/08/2009.

⁴ Perlin, M.L. “International human rights and comparative mental disability law: The role of institutional psychiatry in the suppression of political dissent” (2006) *Israel Law Review*. Vol 39(3).p.73-4.

Discrimination represents either unconscious or conscious acts of unequal treatment, the denial of opportunities and benefits, or lack of accommodation based on a *Code*-protected ground. It can also represent the expression of discriminatory attitudes, such as rude treatment of people with mental health issues, use of perjorative terms, or harassment and profiling.⁵

It is important to note that whereas stigma is related to a pervasive set of beliefs that many people hold, individuals and institutions have a legal obligation under the *Code* not to engage in discrimination, and can be held accountable for discriminatory acts. In addition, people with mental health issues have recourse, for example, through applications at the Human Rights Tribunal (“Tribunal”), to enforce their rights. Overall, organizations have a positive obligation to take action to prevent and respond to breaches of the *Code*.

5.1: Eradicate discrimination in all publicly funded services

The Commission agrees that stigma and discrimination should be eliminated from all public-sector services, and that an important way of doing this is to integrate mental health and addiction services with other health care services. However, this section may benefit from more of a discussion of how to eliminate discrimination in services by:

- Designing systems so they are inclusive of people with mental health issues right from the start
- Examining existing policies, requirements, practices and the service environment to remove barriers that may lead to discrimination (e.g. in how services are funded or delivered to people with physical disabilities vs. people with mental health issues).
- Ensuring that there is a wide level of understanding of the duty to accommodate within all public sector services
- Promoting the establishment of human rights policies and procedures and complaint mechanisms
- Ensuring that people with mental illnesses are aware of their rights and have access to assistance in advocating for them
- Providing education to service providers to combat discriminatory attitudes

The Commission also suggests a slight change in wording to, “All publicly-funded programs should provide supportive services *free from discrimination*” (italics added). In addition, in referring to publicly funded services, it is not clear if these include just health

⁵ “Profiling” refers to any action undertaken for reasons of safety, security or public protection that relies on stereotypes about a *Code*-protected ground, rather than on reasonable suspicion, to single out an individual for greater scrutiny or different treatment. This term is usually associated with racial profiling, but profiling can take place based on a number of *Code* grounds, including mental disabilities. As defined in: Ontario Human Rights Commission, *Policy and Guidelines on Racism and Racial Discrimination*. (Toronto: Queen’s Park Printer, 2005).

care services. If this concept refers to all public services, it would be helpful to identify these; for example, health care services, community-based programs, policing and the courts, income support programs, government services, and schools and post-secondary institutions.

The Commission also supports an integrated approach, with ministries working together within their realms of responsibility, to combat discrimination on a broad scale.

Comments on Section 6: “Create Healthy Communities”

The Commission supports the discussion on how to create healthy communities in order to prevent the onset of mental health problems. Education, income, employment and housing all constitute the broader social determinants of health. It is worthwhile to note in this section that not only does stigma produce social isolation, but the stress associated with experiences of discrimination can also trigger or exacerbate experiences of mental illness. For example, gay, lesbian, bisexual and transgender individuals may face unique risks to their mental health because of experiences of societal stigma, homophobia and transphobia from co-workers, family, peers and broader society. Depression and anxiety rates are related to stress caused by experiences and expectation of discrimination.⁶ Research also supports that experiences of racism are related to depression and psychological distress.⁷ In this way, discrimination is another contributing factor to poor mental health.

6.1. Provide opportunities for secure and adequate income

The Commission supports this statement, and supports the province’s plans to review its social assistance program. Through its consultation on rental housing, the Commission has heard about the intersections between mental health, poverty, and discrimination, and how rates of social assistance are inadequate to maintain both housing and healthy living. People with mental health problems are overrepresented in Ontario’s homeless population, with people with mental illnesses at serious risk of

-
- ⁶ Bostwick, W.B. “Mental Health Issues among Gay, Lesbian, Bisexual and Transgender (GLBT) People. National Alliance on Mental Illness” (2007). Found at: http://www.nami.org/TextTemplate.cfm?Section=Fact_Sheets1&Template=/ContentManagement/ContentDisplay.cfm&ContentID=54036. Accessed 05/08/2009; For a review of the literature, see Dean L, et al. “Lesbian, Gay, Bisexual, and Transgender Health: Findings and Concerns.” *Journal of the Gay and Lesbian Medical Association* (2000)4 (3):101-151.
 - ⁷ For a review of the literature, see Access Alliance, *Multicultural Community Health Care* (2005). *Racialised Groups and Health Status: A Literature Review Exploring Poverty, Housing, Race-Based Discrimination and Access to Health Care as Determinants of Health of Racialised Groups*. Found online at: <http://accessalliance.ca/media/3.5.2%20%20Literature%20Review%20RGHS.pdf>. Accessed 07/08/2009.

becoming homeless. Thirty to 35% of the homeless population, and up to 75% of homeless women, have mental health problems.⁸

There are also human rights concerns with respect to the Ontario Disability Support Program, which does not provide for special diet allowances for individuals with mental health disabilities, despite the recommendations of doctors that recipients require these to maintain their health. Some such cases are currently before the Tribunal.

6.2. Promote employment in supportive, inclusive workplaces.

In its former complaint-handling capacity, the Commission received cases each year alleging discrimination on the basis of mental health, primarily in the social area of employment.

In the text provided under section 6.2, in addition to referring to employment as a source of prevention or contributor to mental health issues, the Commission recommends noting that employers have a duty to respect the human rights of their employees by accommodating them to the point of undue hardship. This is outlined in the Commission's *Policy and Guidelines on Disability and the Duty to Accommodate*, found on the website: www.ohrc.on.ca. However, many employers are unaware of the duty to accommodate. In addition, many rely on stereotypes about people with mental illnesses to inform their assessment of whether or not they can perform the essential duties of their jobs.

For example, in the recent Ontario Human Rights Tribunal case of *Thompson v. Selective Personnel*, the Tribunal found that an employee was turned down for employment as a caregiver because of disability when she was asked to disclose her previous psychiatric history on the application form. The respondent, who was asked about the relevance of this question, indicated that she believed her employer would be open to liability if they recommended someone who "had psychiatric problems and then injured a child in a rage."⁹ This clearly demonstrated the employer's discriminatory stereotypes against people with psychiatric histories. This type of stereotyping on the part of employers was also a noted trend in several cases the Commission received and investigated. In many of the complaints, individuals were treated unequally, and eventually lost their employment, after disclosure of a mental health disability.

Part of creating an inclusive work environment means acknowledging that employees may require accommodation. Many employers are unaware of their obligation to provide accommodation to the point of undue hardship for disability-related needs. Even where an employee is unable to articulate their needs due to the nature of their disability, an employer should attempt to assist a person who is clearly unwell or perceived to have a

⁸ Canadian Mental Health Association Submission to OHRC 2007 Consultation on discrimination in rental housing

⁹ *Thompson v. Selective Personnel Limited*, (2009). H.R.T.O. 1224., p.4.

disability, by offering assistance and accommodation. On the other hand, employers are not expected to diagnose illness or “second-guess” the health status of an employee. The Commission believes that this section of the paper would benefit from noting:

- The obligation of employers to accommodate their employees to the point of undue hardship
- The need for employers to further educate themselves on this issue, particularly where a mental health problem is suspected or assumed
- That employers should not make assumptions about people with mental illnesses and their ability to do their jobs. People must be assessed individually and then offered accommodation to the point of undue hardship
- The need for human rights policies and procedures at places of employment to ensure that everyone understands their rights and responsibilities under the *Code*.

6.3. Promote safe housing and environments

The Commission that, “people with mental illnesses and addictions need access to affordable housing in well-maintained buildings as well as supports to help them find and keep their housing.” In its consultation on human rights and rental housing, the Commission heard from a significant number of consultees about the importance of affordable adequate housing for people with mental health issues. It also heard about the need for appropriate supportive housing and the unsafe living conditions that many people faced. These factors made it difficult for individuals to manage their treatment and increased the risk of relapse. The Commission also heard that stigma and misinformation were major factors why people with people with mental health issues were denied housing, subjected to additional requirements before they could rent, or subjected to evictions for behaviour directly related to their disabilities.

A recent study by the Centre for Equality Rights and Accommodation confirms the overt nature of discrimination against people with mental health problems trying to enter the private rental housing market. The study found that discrimination against people with mental illnesses in Toronto is particularly common, with individuals reporting discriminatory experiences 35% of the time they tried renting an apartment. In addition, many housing providers made overtly negative comments about the prospective tenants, showing that negative attitudes against people with mental illnesses are still publicly accepted.¹⁰

People with past or present mental illnesses continue to experience extreme marginalization and discrimination in rental housing because of neighbourhood opposition. The formidable stigma around mental illness has influenced the

¹⁰ Centre for Equality Rights in Accommodation. (2009). *Sorry, it's rented. Measuring Discrimination in Toronto's Private Rental Housing Market*. Toronto: Ontario.

phenomenon of “Not in My Back Yard” or NIMBY opposition to affordable and supportive housing options. NIMBY opposition has resulted in municipal zoning by-laws that may bar people with mental disabilities from living in certain neighbourhoods.

Any discussion of promoting safe housing should take note of eliminating discriminatory barriers that make it difficult for people with mental health issues to obtain and maintain housing, and should encourage:

- The need for further supportive housing for people with mental health issues
- The need for further information and tools for landlords on the duty to accommodate to the point of undue hardship
- the need to eradicate NIMBY (“Not In My Backyard”) opposition to affordable housing projects for people with mental illnesses
- The need for economic support programs to be re-examined to ensure that people with mental illnesses have enough money to pay the rent and meet their basic needs. This could include:
 - a. minimum wage rates that are indexed to inflation and allow a full-time earner to live above the low-income cut-off
 - b. making the shelter allowance portion of social assistance benefits sufficient to pay average rents
 - c. eliminating claw-backs from social assistance payments
 - d. increasing availability of portable housing allowances
 - e. increasing availability of rent banks to allow tenants to pay rent deposits and to cover arrears
 - f. assessing impacts of rent control/vacancy decontrol.

The recommendations above are included in the 47 recommendations that came from the Commission’s consultation on human rights and rental housing, and its report, *Right At Home: Report on the consultation on human rights and rental housing in Ontario*. The full list of recommendations is attached as Appendix A.

The Commission will be releasing its policy on rental housing in the fall of 2009, which will address many of the issues noted above.

6.4. Provide opportunities for effective, flexible, relevant education

In its former complaint-handling capacity, only a few complaints were filed with the Commission regarding discrimination against people with mental health problems in the education system. However, through its previous consultations on disability and education, the following issues emerged about students with disabilities in the education system:

- Lack of awareness about how to accommodate students with disabilities, resulting in missed educational opportunities

August 2009

Ontario Human
Rights Commission

- Lack of early intervention and timely assessment services for students (e.g. psychological supports)
- Difficulty obtaining services for those facing multiple disabilities
- The impact and stigma of labelling students
- Students being subjected to discipline for behaviours related to their disability

The Commission is currently conducting its mental health consultation with a view to determining if these same issues exist for students with mental health issues. However, it has heard about the importance of providing timely and appropriate accommodation for students with mental health issues so that educational opportunities are not lost while students are waiting to be assessed by mental health professionals. Delays in accommodation can constitute human rights violations when they impact a student's ability to receive an education.

The Ministry's discussion paper would benefit from a discussion, in particular, on how education providers need to be aware of how to be flexible in applying education approaches in order to accommodate the needs of people with mental illnesses.

In its report, *The Opportunity to Succeed: Achieving Barrier-Free Education for Students with Disabilities*, the Commission made a number of recommendations to improve the education system for students with disabilities, which are applicable to students with mental health issues. Some of these recommendations are noted below:

School boards and schools:

- Review local level practices to determine ways in which accommodation can be provided in a more timely manner
- Engage in educational activities designed to raise student awareness of disability issues and to combat negative attitudes and stereotypes about persons with disabilities

Post-Secondary institutions:

- Encourage educators to adopt the principles of universal design when developing course curricula, and delivery and evaluation methods
- Review policies with respect to part-time students, with a view to identifying and removing barriers to students with disabilities
- Take steps to develop and implement appropriate education strategies for faculty and staff with respect to disability-related issues
- Work together to develop and share best practices for service delivery and supports for students with disabilities

Government:

- Take steps to ensure that students with disabilities have access to sufficient funding to ensure equal access to education.
- The Ministry of Education to review special education practices and procedures to determine ways in which delay can be minimized.
- The Ministry to ensure that all parties to the accommodation process are aware of their respective roles and responsibilities, and that in carrying these out, they comply with human rights standards.
- The Ministry of Education to review funding programs at the post-secondary level for students to ensure that their requirements do not directly impose barriers or adversely discriminate against students with disabilities, and that students with disabilities have timely access to appropriate accommodation

A complete list of recommendations is attached as Appendix B. In its discussions on developing a comprehensive mental health strategy that is implemented across sectors, the Commission encourages the Minister's Advisory Group to consider these recommendations, and others included in the report, and promote these with other Ministries to cultivate a barrier-free approach to education.

APPENDIX A

Recommendations from *Right At Home: Report on the consultation on human rights and rental housing in Ontario.*

FRAMEWORK FOR ACTION

Protecting the human rights of vulnerable Ontarians requires a radically different response to the issues of discrimination identified in this report, and the reports of numerous international bodies. We must all bring housing human rights into our homes, apartment buildings, property management offices, government offices, tribunals and commissions, and most importantly, into our collective awareness. This framework suggests concrete action to address the human rights issues identified in the consultation and in numerous reports on housing.

This is not an exhaustive list of actions. Rather, the purpose of the Commission's recommendations is to identify areas in which key stakeholders can demonstrate a commitment to tackling the human rights issues raised and take some first steps to do so. A critical element of this framework for action is the recognition that we must all work together, through partnerships and creative solutions, to make the substantive and long-lasting changes that are warranted.

Housing is an internationally protected right. This understanding should inform our approaches, actions and ways in which we evaluate the effectiveness of any measures implemented to improve access to housing for *Code*-protected individuals and groups in Ontario. It is also important to recognize the link between poverty and human rights violations in housing. Concrete steps must be taken to ensure an adequate standard of living and access to housing for low-income groups and individuals protected under the *Code*.

6.1. Government

Given the continued existence of human rights impacts of the provincial housing system, a key priority is for government to make a coordinated effort to review availability of, and access to, adequate and affordable housing from a human rights perspective. As the Special Rapporteur on affordable housing noted in his March 2008 statement, "As a very wealthy country, with significant surplus in the federal budget, immediate attention is required for the most vulnerable part of the population living in inadequate housing and living conditions. There is no justification for not massively engaging in the improvement of the situation of all those that face inadequate housing and living conditions throughout Canada."^[165]

Housing in Canada is administered through a complex set of relationships, agreements and responsibilities allocated between the various layers of government – federal, provincial or territorial, and municipal. For example, municipalities run shelters and decide whether, and on what terms, to approve supportive housing projects and other forms of affordable housing such as rooming houses and second units. The provincial government, and the Ministry of Municipal Affairs and Housing (MMAH), have primary responsibility for housing in the province, for providing funding to municipalities and for taking steps to give effect to human rights in housing in the province. At the same time, the policies, programs and funding provided by the federal

August 2009

Ontario Human
Rights Commission

government, and federal agencies such as the Canada Mortgage and Housing Corporation, shape the reality of human rights in the province and across the country.

While recognizing the difficulties posed by shared jurisdiction, the Special Rapporteur has noted that the state, whether federal or provincial, municipality or other authorities, is still required to devise strategies to ensure the implementation of the right to adequate housing.^[166]

RECOMMENDED ACTIONS

All levels of government working together

1. THAT the Government of Canada adopt a national housing strategy, in consultation with provincial, territorial and municipal governments (where feasible and appropriate), that includes measurable targets and provision of sufficient funds to accelerate progress on ending homelessness and ensuring access of all Canadians, including those of limited income, to housing of an adequate standard without discrimination
2. THAT the Government of Ontario, along with other provincial and territorial governments, call on the Government of Canada to adopt a national housing strategy.
3. THAT the federal, provincial and territorial governments of Canada give effect to the *International Covenant on Economic, Social and Cultural Rights (ICESCR)* and implement the recommendations of the Committee on Economic, Social and Cultural Rights (CESCR) and other international bodies.
4. THAT all levels of government work together to integrate housing rights into comprehensive and coordinated poverty reduction strategies.
5. THAT governments expand on measures to help housing providers meet the requirements of inclusive design and accommodation. Options that may be considered include grants and other avenues of funding, programmes of education or changes to legislation, regulations or policies.

Government of Ontario

1. THAT the Government of Ontario, in the absence of a national housing strategy, adopt a provincial housing strategy. Such a provincial strategy should include measurable targets and provision of sufficient funds to accelerate progress on ending homelessness and ensuring access of all Ontarians, including those of limited income, to housing of an adequate standard without discrimination. It should also take into consideration the needs of Aboriginal people, people with disabilities including mental illness, women

August 2009

Ontario Human
Rights Commission

experiencing domestic violence, lone parents, immigrants and newcomers and other people living in poverty or with low incomes who are identified by *Code* grounds.

2. THAT the Ontario legislature pass a law such as Private Member's Bill 47, *An Act to establish the right to adequate housing as a universal human right*, to recognize that every person has a right to adequate housing in accordance with Article 11(1) of the *International Covenant on Economic, Social and Cultural Rights (ICESCR)*.
3. THAT the Government of Ontario provide a substantive response that outlines how it will address the concerns raised by the Special Rapporteur on affordable housing, and post such a response on its website.
4. THAT the Government of Ontario work with community organizations and municipalities to identify ways to apply a human rights approach to reducing and preventing homelessness in the province.
5. THAT the Government of Ontario review and improve funding rates, programs, laws and regulations in the province of Ontario to make sure that low-income tenants are able to afford average rents, food and other basic necessities. Specific attention should be given to:
 - ensuring that minimum wage rates are indexed to inflation and allow a full-time earner to live above the low-income cut-off
 - making the shelter allowance portion of social assistance benefits sufficient to pay average rents
 - eliminating claw-backs from social assistance payments
 - increasing availability of portable housing allowances
 - increasing availability of rent banks to allow tenants to pay rent deposits and to cover arrears
 - assessing impacts of rent control/vacancy decontrol.
6. THAT the Government of Ontario's Cabinet Committee on Poverty Reduction be guided by the *ICESCR*, concerns and recommendations of international human rights committees and the dimensions of race, disability/mental illness, sex and family status that have been raised in this consultation.

August 2009

Ontario Human
Rights Commission

7. THAT the Ontario *Building Code* be amended to reflect the legal requirements and principles set out in the Ontario *Human Rights Code* (*Code*), including the principle of accommodation to the point of undue hardship. For example, to require that when a building is designed or renovated, it be made accessible to and inclusive of all members of society. Specific areas for amendment are discussed in greater detail in the **Commission's Submission Concerning Barrier-Free Access Requirements in the Ontario Building Code** (March 2002).
8. THAT standards and regulations under the *Accessibility for Ontarians with Disabilities Act* ("AODA") be harmonized with the *Code* and incorporate the principle of accommodation to the point of undue hardship. Specific concerns about the most recent proposed standard have been raised publicly by the Commission in its **Submission of the Ontario Human Rights Commission to the Transportation Standards Review Committee regarding the Initial Proposed Transportation Accessibility Standard** (August 2007).
9. THAT irrespective of when the Ontario *Building Code* is amended and the AODA standards are harmonized with the *Human Rights Code*, the Government of Ontario comply with the requirements of the *Human Rights Code* and the principles in the **Policy and Guidelines on Disability and the Duty to Accommodate** and educate housing providers of their respective duties in this regard.
10. THAT the Government of Ontario increase availability of supportive housing and appropriate support services and ensure that social housing providers have sufficient funds to meet their duty to accommodate.
11. THAT the Ontario *Human Rights Code* be amended as follows:
 - explicitly list gender identity as a prohibited ground of discrimination and harassment in sections 1, 2(1) and 2(2), 3, 5(1) and (2) and 6.
 - include sexual orientation as a prohibited ground of harassment in sections 2(2) and 5(2).
12. THAT the Government of Ontario consult with the people of Ontario with a view to:
 - amending the *Code* to include record of offences as a prohibited ground of discrimination in subsection 2(1) where it is not a bona fide requirement and re-define "record of offences" in subsection 10(1)
 - amending O. Reg. 290/98 to clarify what tenant selection practices are discriminatory in a way that can be understood by both housing providers and tenants. Specific amendments could include:

August 2009

Ontario Human
Rights Commission

- prohibiting housing providers from inquiring into or considering the source of a tenant's income
 - clarifying the circumstances under which it is appropriate to require a prospective tenant to obtain a guarantee for the rent
 - indicating that security deposits in excess of those allowed under the *RTA* may not be charged
 - prohibiting the usage of minimum income ratios (other than as may be required to determine a tenant's eligibility for rent-geared-to-income under section 3), and
 - prohibiting police record checks that disclose information other than that which pertains to criminal convictions.
13. THAT the Ministry of Municipal Affairs and Housing (MMAH) work with social housing service managers and municipalities to collect data to evaluate barriers associated with the existing approaches to chronological allocation of subsidized housing based on waiting lists and identify ways to remove barriers for persons and groups protected under the *Code*.
14. THAT MMAH update the information on "Discrimination and Harassment in Rental Housing" on its website to make clear that the *Code* has primacy over the *Residential Tenancies Act (RTA)* and to highlight relevant parts of this consultation report, in consultation with the Commission.
15. THAT MMAH initiate a consultation with regard to amending the *RTA* to:
- explicitly identify common discriminatory practices as being prohibited in the *RTA* to increase awareness and enforcement of *Code* rights. Specific amendments would include:
 - prohibiting "adult-only" buildings and related advertising, and
 - clarifying that policies limiting pets must not exclude people with disabilities and other *Code*-related needs
 - prohibiting requests for tenants to sign additional contracts outside of their lease.
 - address any human rights impacts of:

- the definition of tenant (section 2)
- vacancy decontrol (section 113)
- the eviction process for care home tenants (section 148)
- the exclusion from review of eligibility of rent-geared-to-income assistance under the *SHRA* or other housing assistance (section 203)

16. THAT MMAH initiate a consultation with a view to amending the Social Housing Reform Act (*SHRA*), or take other action, to make sure that:

- *Code* needs are accommodated to the point of undue hardship in relation to reporting deadlines, guest policies and other requirements
- there is an independent, impartial review of decisions that affect a tenant's eligibility for a subsidy.

6.2. Decision-makers

In this consultation, the Commission heard about situations in which the decisions and processes of decision-makers, including the Landlord and Tenant Board and social housing service managers, may not be fully consistent with the *Code*. For example, concerns about the application of the duty to accommodate were raised by many consultees. Housing providers, tribunals, government and others responsible for making housing decisions can plan to meet accommodation needs by proactively putting in place accommodation policies and procedures and informing themselves about the primacy of the *Code* and the duty to accommodate to the point of undue hardship.

RECOMMENDED ACTIONS

1. THAT decision-makers, including service managers and the Landlord and Tenant Board (LTB), develop accommodation policies and procedures in accordance with the Commission's recently revised **Guidelines on Developing Human Rights Policies and Procedures**. Such policies should clearly provide a process for dealing with accommodation issues like language interpretation and extensions to deadlines.
2. THAT the *Code*, the *RTA* and *SHRA* be interpreted and applied by tribunals, service managers and other decision-makers in a manner consistent with the *Code* and the *ICESCR*. For example, that the LTB consider the fundamental importance of housing and apply the *Code* principle of accommodation to the

August 2009

Ontario Human
Rights Commission

point of undue hardship when considering whether to evict a tenant with a mental illness for having interfered with the reasonable enjoyment of rental premises.

6.3. Partners in the development of affordable housing

The barriers created by NIMBY opposition cannot be overcome by any one stakeholder in isolation. The committed involvement of housing providers and developers, municipalities, municipal affordable housing committees and committees of adjustment, and other levels of government is necessary to eliminate these kinds of barriers to the creation of new and affordable housing. Neighbourhood groups, local business associations and homeowners in communities across Ontario need also be aware that it is not acceptable to oppose affordable housing developments, just because of who will live in them, when the intended residents are people protected under the *Code*.

RECOMMENDED ACTIONS

1. THAT all organizations, institutions and individuals developing, planning, approving or giving input with regard to affordable housing for *Code*-protected groups take steps to monitor for discriminatory NIMBY opposition and modify their policies, practices and actions to prevent and address it. For example, a municipality might decide not to hold a community forum to discuss a particular housing project if requests for further information about the project appear to be based on discriminatory stereotypes. Alternatively, it may use such a forum as an opportunity to address such stereotypes.
2. THAT organizations across the province, including community groups, the Government of Ontario and municipalities, work in partnership to develop a province-wide strategy to address and prevent discriminatory NIMBY opposition to affordable housing development, in consultation with the Commission.

6.4. Social housing providers

In the consultation, the Commission heard about problems arising from chronological waiting lists for social housing, and disparities in the application of the duty to accommodate by service managers when exercising discretion to extend timelines for reporting requirements. While social housing providers are constrained in some regards by government funding, legislation and other requirements, there are still opportunities for social housing providers to be part of the solution to the human rights issues identified in this consultation.

RECOMMENDED ACTIONS

1. THAT all social housing providers develop policies and procedures to address discrimination and harassment, accommodation requests and human rights concerns in accordance with the Commission's recently revised [Guidelines on Developing Human Rights Policies and Procedures](#). They should

clearly provide a process for dealing with accommodation issues like requests for extensions to deadlines and changes to occupancy rules. In addition, they should also provide a process for tenants to raise concerns about discrimination.

2. THAT social housing provider associations work with municipalities, and the Government of Ontario, to identify best practices in human rights compliance for social housing providers, and to share this information with social housing providers throughout the province to help them enhance their ability to proactively comply with the *Code*.
3. THAT all builders, renovators, designers, developers and housing providers implement the principles of inclusive design in all stages of their work with respect to social housing. For example, to plan housing to meet the needs of all members of society when designing buildings and also when retrofitting, repairing or renovating buildings.
4. THAT social housing providers review the application processes, policies and rules associated with housing programs to identify and remove discriminatory barriers. Such barriers may be identified in consultation with tenant advocates and in consideration of Commission policies. Where such barriers relate to requirements imposed by legislation, regulation or government policy, it is recommended that social housing providers advocate for changes to such requirements with responsible agencies or levels of government.
5. THAT social housing service managers work with MMAH and municipalities to collect data to evaluate barriers associated with the existing approaches to chronological allocation of subsidized housing based on waiting lists, and identify ways to remove barriers for persons and groups protected under the *Code*.

6.5. Private-market housing providers

Consultees indicated that discriminatory practices, such as tenant screening using rent-to-income criteria and challenges in applying the duty to accommodate, exist in the private rental housing sector. Landlords, property managers and housing provider associations need to know about their obligations and have the support they need to be able to fulfill them.

RECOMMENDED ACTIONS

1. THAT housing provider associations work with MMAH to communicate clearly to housing providers that the use of rent-to-income ratios in selecting tenants is prohibited under the *Code* and therefore also under the *RTA*.

2. THAT all housing providers develop policies and procedures to address discrimination and harassment, accommodation requests and human rights concerns in accordance with the Commission's recently revised **Guidelines on Developing Human Rights Policies and Procedures**. Such policies should clearly provide a process for dealing with accommodation issues like modifications to units and situations in which tenants are harassing each other.
3. THAT irrespective of when the Ontario *Building Code* is amended and the *AODA* standards are harmonized with the *Human Rights Code*, housing providers, builders, renovators, designers and developers comply with the requirements of the *Human Rights Code* and the principles in the **Policy and Guidelines on Disability and the Duty to Accommodate** when constructing buildings, making renovations and designing programs and services. For example, that buildings be designed or retrofitted to include visual alerting systems for people with hearing impairments.
4. THAT housing providers take steps to ensure that their policies, rental criteria and tenant screening practices are not having an adverse impact on *Code*-protected people, and that the rental housing provided is inclusively designed to accommodate a range of *Code*-protected people including families with young children, Aboriginal people, people who are racialized or newcomers, and persons with disabilities.
5. THAT housing provider associations work with the Commission to help their members, and other housing providers, proactively comply with the *Code* (for example, through education and training, voluntary certification programs or other measures).

6.6. Service Providers

As the Commission heard in this consultation, there are circumstances in which the withdrawal of support services by a support service provider can result in the loss of housing for a person protected under the *Code*. In such situations, service providers may also have their own duties under section 2 of the *Code*.

RECOMMENDED ACTIONS

1. THAT service providers review current programs, policies and practices, and take steps to assist, where possible, tenants with disabilities to receive appropriate services to enable them to live independently, taking into account the duty to accommodate and the fact that, in some cases, withdrawal of services or decreased services may result in the loss of housing. For example, an organization that provides support services to help a person with a disability perform the essential duties of day-to-day living in a rent-geared-to-income social housing unit has an important role to play in helping this person maintain his or her housing.

6.7. Tenant organizations and human rights advocates

Throughout the consultation, there was broad consensus that there was a lack of awareness of the *Code* and its application in rental housing. Tenant organizations and human rights advocates also play an important role in addressing this.

RECOMMENDED ACTIONS

1. THAT human rights advocates and tenant organizations engage with the Commission to identify and implement measures to increase awareness of human rights issues in rental housing throughout the province, including in local communities.

6.8. The Ontario Human Rights Commission

During this consultation, the Commission was repeatedly reminded of its important function in advancing human rights policy, engaging in strategic initiatives (such as inquiries or litigation) to address systemic discrimination, and in raising public awareness of human rights and rental housing. The Commission takes these responsibilities seriously given the international protections of the right to housing and the fact that housing is essential to ensuring dignity, inclusion and full participation for all.

COMMITMENTS

1. The Commission will consider the strategic use of its mandate, which includes public inquiries, interventions and applications, to address situations of discrimination related to rental housing in light of the broad systemic context identified in this consultation and the *ICESCR*.
2. The Commission will consider initiating applications, public inquiries or taking other action with regard to laws, such as the *Building Code*, or standards such as those under the *AODA* to the extent that they are inconsistent with the requirements of the *Code*.
3. The Commission will meet with the Government of Ontario, including the Secretary of Cabinet, MMAH, Ministry of Community and Social Services, and the Anti-Poverty Cabinet Committee, to review the content of this report and to work towards complying with international treaties and covenants that guarantee the right to an adequate standard of living, including housing.
4. The Commission will develop a policy on rental housing and human rights that will include:
 - a broad and purposive interpretation of the housing rights in section 2 of the *Code*

- clear guidance on the requirement to design inclusively and accommodate to the point of undue hardship in the context of housing
 - clarification of forms of discrimination in housing including harassment, discriminatory tenant screening and systemic discrimination, and
 - a clear statement on organizational responsibility and preventing and responding to discrimination in rental housing.
5. The Commission will further examine the implications of including “social condition” as a prohibited ground of discrimination and harassment in sections 1, 2(1) and 2(2), 3, 5(1) and (2) and 6 of the *Code*.
 6. The Commission will be available to consult with community organizations, municipalities/municipal associations and the Government of Ontario in the development and implementation of a province-wide strategy to address and prevent discriminatory NIMBY opposition.
 7. If the Commission identifies municipal by-laws or other practices that contribute to NIMBYism relating to prohibited grounds of discrimination, it will consider the strategic use of its powers to have these addressed. This may include public inquiries, education, and supporting or initiating a human rights application or *Charter* case to challenge those by-laws or practices.
 8. The Commission will encourage partnerships with housing provider associations, including Federation of Rental-housing Providers of Ontario, Co-operative Housing Federation of Canada, Ontario Non-Profit Housing Association and the Landlord’s Self Help Centre, to identify ways in which the Commission can support them in helping their members, and other housing providers, proactively comply with the *Code*.
 9. The Commission will develop partnerships with, and materials for, community organizations across the province, including those representing or providing services to tenants and housing providers to assist them in delivering public education in local communities.
 10. The Commission will partner with community organizations to develop a public awareness campaign, including plain language brochures, to address stereotypes, harassment and discrimination in rental housing.

^[165] Kothari, Miloon, *supra*, note 97 at 6.

^[166] *Ibid.* at 2.

Appendix B

Recommendations from “The Opportunity to Succeed: Achieving Barrier-Free Education for Students With Disabilities

School Boards and Schools

- (1) Make all classroom materials (handouts, *etc.*) available in alternative formats in a timely manner.
- (2) Review local level practices to determine ways in which accommodation can be provided in a more timely manner.
- (3) Decide their curriculum book lists in a timely fashion so that alternative formats may be arranged for students with disabilities.
- (4) Provide interim accommodation for students pending the completion of professional assessments.
- (5) Consistent with the Commission’s *Disability Policy*, educators use discretion in their application of the *Safe Schools Act* and must assess whether appropriate accommodation has been provided to a student with a disability, and implement practices of progressive discipline, if discipline is appropriate, before that student can be either suspended or expelled.
- (6) School boards to collect and analyze data on suspension and expulsions under the *Safe Schools Act* to ensure that the *Act* is not having an adverse impact on individuals protected under the *Code*. School boards to ensure that individual data is collected in a manner that is provided for in the Commission’s *Guidelines on Special Programs*, and is used only to address inequities and to promote compliance with the *Code*. School boards to take steps to ensure the confidentiality of students in this process.
- (7) Consider the unique situations of students with disabilities who are also members of other historically disadvantaged groups when assessing these students through the IPRC and IEP processes.
- (8) Design and deliver workshops for parents who are new Canadians and/or whose first language is not English to assist them in understanding and participating in the special education system.
- (9) Engage in educational activities designed to raise student awareness of disability issues and to combat negative attitudes and stereotypes about persons with disabilities.

(10) Arrange and conduct information seminars for parents on the accommodation process and aspects of the special education system more generally.

(11) School boards and school personnel abide by human rights obligations when engaging in the accommodation process.

Post-Secondary Institutions

(1) Prepare accessibility plans that, in addition to meeting requirements under the *ODA*:

- set goals, identify steps being taken and report on achievements made with respect to adhering to the principles of inclusion by design, barrier removal, most appropriate or next best or interim accommodation of remaining needs, individualization, confidentiality, and shared responsibilities in the accommodation process. Accessibility plans should also report on policies, procedures and mechanisms for implementation, monitoring, education and training, input, dispute resolution and accountability;

- include timelines, performance measures and accountability structures; and

- respect the dignity and the right to integration and participation of students with disabilities in the process of planning for and implementing accessibility.

(2) Private post-secondary institutions, including private career colleges, private universities, and professional accreditation bodies should also develop and make public accessibility plans that incorporate the broad definition of accessibility outlined above; include timelines, performance measures and accountability structures; include monitoring and review mechanisms; and are developed through a process that respects the dignity and right to integration and full participation of persons with disabilities.

(3) Review their policies with respect to part-time students, with a view to identifying and removing barriers to students with disabilities.

(4) Take steps to develop and implement appropriate education strategies for faculty and staff with respect to disability-related issues.

(5) Work together to develop and share best practices for service delivery and supports for students with disabilities.

(6) Develop and implement dispute resolution procedures for accommodation requests that comply with the *Code* and the *Disability Policy*.

(7) Institute and communicate to staff and faculty confidentiality guidelines with respect to students with disabilities that comply with the requirements of the *Code* and *Policy*.

(8) That faculty make all classroom materials (handouts, *etc.*) available in alternative formats in a timely manner.

(9) Take steps to move away from reliance, in their admissions procedures, on tests that fail to provide appropriate accommodation and confidentiality for students with disabilities.

(10) Encourage educators to adopt the principals of universal design when developing course curricula, and delivery and evaluation methodologies.

(11) Ensure that staff and faculty comply with the requirements of the *Code* and the *Disability Policy* with respect to appropriate accommodation.

(12) Reaffirm their primary responsibility, as institutions, to ensure that they provide equal, non-discriminatory educational services to students with disabilities.

Government

General

(1) That the Ontario *Building Code* be amended to reflect the legal requirements set out in the *Human Rights Code*.

(2) That, irrespective of when the *Building Code* is amended, the government, and educational institutions comply with the requirements of the *Human Rights Code* and the principles outlined in the *Disability Policy* when constructing buildings, making renovations, and designing programs and services.

(3) Federal and provincial subsidies be made available only to publishers which provide access to alternative formats simultaneous with print publication.

(4) Take steps to ensure that students with disabilities have access to sufficient funding to ensure equal access to education.

(5) That the government better co-ordinate special education service delivery among its different ministries.

Primary and Secondary

(1) That the Ministry of Education review the adequacy of resources provided to school boards to ensure that school boards are able to provide timely access to appropriate accommodation for all students with disabilities.

(2) That the Ministry of Education implement and report back on the Provincial Auditor's recommendation that it establish procedures to monitor the costs and effectiveness of special education programs and services.

(3) That the Ministry of Education review and consider the recommendations contained in the report of the *Task Force on Access to Information for Print-Disabled Canadians*, particularly item 15 which recommends that governments at all levels use "the force of procurement" to promote the adoption of universal design standards for accessibility. The report recommends that only materials complying with such standards should be purchased.

(4) That the Ministry of Education ensure that educators receive proper training in the use of assistive devices.

(5) That the Ministry of Education develop a system to better monitor the application of its *Guide for Accommodations, Special Provisions, Deferrals and Exemptions* in the administering of the Grade 10 literacy test, and that it ensure that students are accommodated in accordance with the *Code*.

(6) That the Ministry of Education establish programs to recruit specialized professionals currently under-represented in the special education system. That this initiative provide incentives to encourage special education professionals to make their services available in rural and remote parts of Ontario.

(7) That the Ministry of Education follow the recommendation of the Education Equality Task Force to "develop a funding policy for the transportation of students with special needs" and that this policy be in compliance with the *Code*.

(8) That private schools be required to submit accessibility plans to the Ministry of Education demonstrating efforts to the point of undue hardship to ensure equal access to their services for persons with disabilities.

(9) That the Ministry of Education review special education practices and procedures to determine ways in which delay can be minimized.

(10) That the Ministry of Education and school boards review whether students are being required unnecessarily to obtain professional assessments in cases where disability-related needs are already known and established. That, where possible, the Ministry of Education and school boards provide accommodation to students without requiring professional assessments.

(11) That the Ministry of Education provide appropriate training to educators on how to deal effectively with students whose disabilities may cause them to be disruptive in school.

(12) That the Ministry of Education, school boards and schools develop programs and activities that promote awareness of the unique experience of students with disabilities who are also members of other historically disadvantaged groups.

(13) That the Ministry of Education monitor its Professional Learning Program to determine its ability to prepare teachers to deal effectively with disability issues and to treat students with disabilities with dignity, respect and sensitivity.

(14) That the Ministry of Education, school boards and school staff review special education practices and procedures to ensure that accommodation is governed by the principle of individualization rather than by generalizations about specific disabilities.

(15) That the Ministry of Education ensure that any system of funding that it administers, ISA or otherwise, complies with human rights law and policy. Specifically, that such a system avoids labelling and focuses on the disability-related needs of each individual in its assessment process.

(16) That the Ministry of Education review the IPRC process and make any changes necessary to ensure that it meets both the procedural and substantive components of the duty to accommodate as mandated by the *Code* and the Commission's *Disability Policy*.

(17) That the Ministry of Education develop and implement an effective mechanism for resolving disputes that arise in the accommodation process.

(18) That the Ministry of Education provide to parents plain language guides on the accommodation process in multiple languages prior to the IPRC meeting.

(19) That the Ministry of Education ensure that educators are developing and implementing an accommodation plan for each student with a disability, in accordance with the Ontario *Human Rights Code* and the Commission's *Disability Policy*, either through the IEP process, or otherwise.

(20) That the Ministry of Education collect and analyze data on placements of students with disabilities, in accordance with the Commission's *Guidelines on Special Programs*. That this data be used only for the purposes of addressing inequities and promoting compliance with Commission policy and the *Code*. This data could include: numbers of students in mainstream classrooms versus self-contained classrooms, number of students in each placement according to type of disability, number of students who also belong to other historically disadvantaged groups, *etc.* That the Ministry report its findings to the public.

(21) That the Ministry of Education ensure that all parties to the accommodation process are aware of their respective roles and responsibilities, and that in carrying these out, they comply with human rights standards.

(22) That the Ministry of Education work with the Accessibility Directorate of Ontario to develop guidelines (a) to help educational institutions prepare their accessibility plans similar to the guidelines already prepared for municipalities, and (b) on standards, timelines and benchmarks for excellence and improvement in accessible education.

Post-Secondary

(1) Review funding programs for students to ensure that their requirements do not directly impose barriers or adversely discriminate against students with disabilities, and that students with disabilities have timely access to appropriate accommodation.

(2) Review communications vehicles regarding programs for students with disabilities to ensure that students with disabilities are able to access information about funding in a timely, dignified and effective manner.

(3) Require private career colleges to prepare and make public accessibility plans, as a condition of their licensing. These accessibility plans should incorporate the broad definition of accessibility outlined above; include timelines, performance measures and accountability structures; include monitoring and review mechanisms; and are developed through a process that respects the dignity and right to integration and full participation of persons with disabilities

Other

August 2009

Ontario Human
Rights Commission

Test Providers

(1) Implement policies and procedures to ensure that students with disabilities receive appropriate, dignified and confidential accommodations to testing procedures.

Textbook Publishers

(1) Comply with their duties as service providers under the *Code* by ensuring that texts are available in both traditional and alternative formats.