

HUMAN RIGHTS AND RENTAL HOUSING IN ONTARIO

Consultation Paper

ONTARIO
HUMAN RIGHTS
COMMISSION

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The Ontario Human Rights Commission (the Commission) is soliciting your views on a range of human rights issues in rental housing.* The *Background Paper* contains a detailed discussion of these issues and provides social and legal context. It also provides some information about the matters that are of greatest concern to the Commission.

This *Consultation Paper* focuses on the major areas on which input is being sought.

I. Raising Public Awareness and Addressing Discrimination

Many Ontarians are entirely unaware of their rights and obligations under the Ontario *Human Rights Code* (the *Code*) when it comes to rental housing. People seeking housing may not know their *Code* rights or how they can address their rights. Even if they do, they may not see the practical benefit of accessing the human rights system or other available mechanisms and may find that there are barriers to doing so.

Similarly, housing providers and landlords can run afoul of the *Code*, in part out of a lack of understanding of its application to them. Some may have a mistaken belief that they can pick tenants that they find most desirable, while others are confused about the complex rules around what can be used to assess a prospective tenant and when a guarantor can be obtained. There may be other requirements, such as those contained in municipal or provincial laws, of which people are unaware.

It is clear that a greater awareness and understanding of the application of the *Code* to this area would help ensure fewer human rights issues and better redress for those who do experience discrimination. The Commission would like to hear more about what can be done for tenants and housing providers to raise awareness, provide guidance and improve access to mechanisms to address human rights concerns in rental housing.

What can the Commission do to raise public awareness about human rights issues in rental housing and to more effectively combat discrimination in this area? What role do others have in this regard?

What can be done to promote better access to resolution of human rights issues in housing?

* The Ontario *Human Rights Code* protects against discrimination in a broad range of situations relating to housing. However, the Consultation and Background Papers focus on rental housing arrangements. There may be other issues of which you are aware, such as human rights issues in the purchase of property or the negotiation of mortgages, in condominium living arrangements, or in the use of shared living spaces, to name just a few, and which you may wish to bring to the attention of the Commission for future consideration.

II. Affordable Housing

Affordable, adequate housing is a core necessity for everyone in Ontario. There is an undeniable link between affordable and adequate housing and quality of life.

Ontario is one of the wealthiest jurisdictions in the world. Yet, there are still many Ontarians who do not have access to adequate and affordable rental housing. There appear to be several reasons for this, including a shortage of housing supply, low social assistance and wage rates and discrimination practiced by housing providers. Measures have been undertaken in recent years to address housing supply, for example the much talked about Canada/Ontario Affordable Housing Agreement. However, it is clear that much remains to be done.

Social housing, when properly funded and operated, has been a very effective way to meet basic housing needs. However, issues with respect to social housing programs have resulted in a chronic housing shortage for low-income individuals and families. There are long waiting lists; in some jurisdictions the wait is as much as 7 to 8 years.

There are also concerns with the allocation of social housing. For example, waiting lists may be divided based on whether a person is on social assistance or can afford the market rent. The chronological order of waiting lists can have a negative impact on those who may have a more urgent need for social housing and large families may have an even harder time since larger units are even more difficult to obtain. Denying or revoking social housing subsidies, and the limited options for appeal, may also be a concern.

At the same time, social housing providers face their own challenges. For example, rising energy costs combined with very low energy efficiency ratings mean that more social housing projects may move into deficit situations. Similarly, there is a shortage of money to spend on aging buildings.

Co-op housing is another attractive source of affordable housing for Ontarians. However, once again there are long waiting lists for co-op housing and very few new co-op developments. Co-op housing operates effectively through a system of by-laws and the obligations of members and the co-op to each other. However, this sometimes gives rise to human rights concerns. Some have been brought to the attention of the Commission through human rights complaints, for example with regard to requirements that occupants on social assistance pay the full “shelter allowance” portion of their social assistance as rent, rules with regard to transfers to other units, and participation requirements that may not accommodate people’s disabilities.

There are many barriers to establishing new affordable or supportive housing that would provide accommodation for Ontarians identified by *Code* grounds

such as those with disabilities, low income persons, newcomers to Canada, Aboriginal persons and youth. Municipal planning requirements and practices can have the effect of preventing people from moving into specific neighbourhoods. Many municipalities have implemented by-laws requiring minimum separation distances between certain types of housing, zoning by-laws that restrict development based on the people who will live there, development moratoria, and onerous public consultation requirements. Opposition from local residents to affordable or supportive housing can result in long delays and increased costs in getting these projects approved. Even where new housing is successfully established, there may be design compromises that isolate or stigmatize tenants.

What can the Commission do to support the goal of adequate and affordable housing for persons who experience hardship, disadvantage or discrimination because of *Code* grounds?

There appear to be issues with regard to social housing and co-op housing that need further consideration from a human rights perspective. What do you think these issues are? Are there examples of discrimination in the social housing or co-op housing contexts that the Commission could address? What challenges do housing providers face that the Commission can assist with?

III. Discrimination in Rental Housing

The *Code* contains provisions to help ensure that everyone has the equal opportunity to access housing, and the benefits that go along with it, without discrimination based on race, colour, ancestry, creed (religion), place of origin, ethnic origin, citizenship, sex (including pregnancy and gender identity), sexual orientation, age, marital status, family status, disability and receipt of public assistance. It also prohibits harassing behaviour in housing on the basis of these grounds.

Issues of discrimination in rental housing often arise because of a combination of human rights grounds. For example, a young lone mother on social assistance who is looking for rental housing might potentially experience discrimination on the basis of her gender, age, family status and receipt of public assistance. If she is a racialized person or has a disability, her experience of discrimination may change or be compounded.

Discrimination based on one or more grounds that intersect to produce unique experiences of discrimination has been identified by the Commission as an important consideration in all aspects of its work.

What are the ways in which people experience discrimination in rental housing on the basis of each ground of the *Code*? How does the intersection of *Code* grounds impact on discrimination in rental housing?

(a) *Securing Rental Housing*

There are several general ways in which people experience discrimination in rental housing.** One of the first and most obvious ones is when securing housing. For example, people may be screened out or turned away because of their race, colour and ancestry, age, size of their family, sexual orientation or perhaps most commonly because they earn low wages or are in receipt of public assistance.

There may be barriers that result from seemingly neutral policies or practices but that nevertheless prevent people from accessing rental housing. One example would be a “no pets” policy being used to prevent a person with a disability who uses a service animal from renting a unit in the building.

A question that often comes up in the housing context relates to what is and is not allowed when considering a prospective tenant. Landlords have a legitimate need to assess prospective tenants but must do so in a manner that is consistent with the *Code*. Human rights decisions have provided some guidance so far. For example, it is now clear that rent-to-income ratios (i.e. a standard guideline that a tenant applicant should be spending no more than 25-35 percent of his or her income on rent) discriminate on the basis of a number of *Code* grounds and will almost certainly be found contrary to the *Code*.

It is clear that the public would benefit from clarification in other areas. How should O.Reg 290/98***, the Regulation under the *Code* that sets out business practices permissible to landlords in selecting prospective tenants, be interpreted? When can a landlord ask for a guarantor? Is a person’s immigration status ever relevant in assessing his or her tenancy application? Can special rules be applied to students? The Commission is seeking input on these issues.

What barriers do people face in securing rental housing? What discriminatory practices should the Commission be aware of? What can be done to proactively prevent these barriers and practices?

What are the legitimate considerations in assessing prospective tenants? Why are these reasonable and legitimate business practices? What considerations cannot be justified under the *Code*?

** For a very detailed discussion of the many specific areas of discrimination in rental housing, please see the *Background Paper*.

*** For complete text of the Regulation, please see http://www.e-laws.gov.on.ca/DBLaws/Regs/English/980290_e.htm.

Bearing in mind the Commission's role in promoting a progressive interpretation of the *Code*, what policy position should the Commission take with regard to O.Reg 290/98^{*} and other practices that are commonly used to select tenants?**

(b) *Failure to Design Inclusively and Accommodate Needs*

Once they have secured housing, people may face barriers because of a failure to design inclusively or accommodate *Code* related needs. Perhaps the landlord has a policy in place that prevents modifications to a unit that are necessary for an older tenant who is developing a disability. There may be a shortage of accessible parking spots. Children may be excluded from recreational facilities. Rules with respect to transferring to larger or smaller units may be a barrier for different types of families. Landlords have a duty to design inclusively and accommodate *Code*-related needs.

What types of inclusive design and accommodation of *Code*-related needs are necessary to allow all tenants to access rental housing on an equal basis?

What are some of the challenges in designing inclusively and accommodating all tenants and potential tenants?

(c) *Different Treatment in the Occupancy of Rental Housing*

Individuals and families may experience different treatment once they have secured rental housing. People may experience harassment by a landlord or superintendent based on *Code* grounds. Problems experienced with co-tenants may not be addressed on an equal basis. Or people may find that how they are treated with regard to repairs or complaints concerning noise is influenced by their sex, race, sexual orientation, age, disability, religion, place of origin *etc.* In the most extreme circumstances discrimination and harassment can lead to the loss of housing.

In what ways do individuals and families experience harassment and discrimination with regard to the occupancy of rental housing on the basis of *Code* grounds?

IV. Other Legislative Schemes

In addition to the *Code*, there are a number of other laws that are applicable in the rental housing context. These include the newly proclaimed *Residential Tenancies Act*, the *Social Housing Reform Act*, the *Co-operative Corporations*

^{***} For complete text of the Regulation, please see http://www.e-laws.gov.on.ca/DBLaws/Regs/English/980290_e.htm.

Act, the Ontario *Building Code* and various municipal by-laws. The *Code* applies to these laws, the enforcement mechanisms set out in them and to administrative decision makers they establish such as the Landlord and Tenant Board.

Are there human rights issues in rental housing raised by municipal or provincial laws, policies and practices of which the Commission should be aware?

V. Homelessness and Economic and Social Rights

Groups that have experienced historical disadvantage and who are protected under the *Code* are more likely to experience low social and economic status. Poverty is linked with inequality, particularly for women (especially single mothers and older women), Aboriginal persons, racialized persons and persons with disabilities. A person's socio-economic status is highly relevant to his or her housing situation. It will dictate the type of housing available, the likelihood he or she will get the housing that he or she is seeking and may contribute to his or her treatment as a tenant.

It is also clear that one's socio-economic status has a direct relationship to the likelihood of becoming homeless, one of the most extreme outcomes of low social and economic status. Discrimination also contributes to homelessness. Homeless people include persons living on the streets, 'hidden' homeless who use shelters and those at imminent risk of becoming homeless. Homeless people frequently find themselves at the outermost margins of society and are highly vulnerable to ill health, spread of disease, harassment, abuse, malnutrition, dehydration, sleep deprivation and life threatening weather.

Social and economic rights and homelessness in Canada and Ontario have been identified as a priority at an international level. Canada became a party to the *International Covenant on Economic, Social and Cultural Rights* in 1976 and by doing so accepted the responsibility to respect, protect and fulfill the rights guaranteed in the *Covenant*.

While the *Code* makes it hard to tackle all aspects of poverty and homelessness, the Commission is nevertheless interested in exploring ways it can address these issues within its mandate under the *Code*.

In addition, many individuals and organizations, including the Canadian Human Rights Act Review Panel, the Canadian Senate and the Canadian Association of Statutory Human Rights Agencies, have taken the position that human rights laws should be amended to include "social condition" as a new prohibited ground of discrimination.

What steps, if any, do you think the government or others should be taking to address issues of discrimination related to socio-economic status, poverty and homelessness?

What role can the Commission play in protecting and promoting social and economic rights and responding to homelessness?

VI. Conclusion

This *Consultation Paper* identifies several key issues that the Commission would like your input on. In addition, the *Background Paper* contains a wide-ranging and detailed discussion of human rights issues in rental housing. The Commission welcomes any and all comments related to this important matter. All the information received will receive equal consideration as the Commission develops further initiatives in this area.

Based on the information the Commission has provided, and your knowledge of rental housing issues in Ontario, are there any other human rights issues in housing, discriminatory practices or systemic barriers you would like to tell the Commission about?

Do you have any other comments regarding what the Commission or other bodies can do to raise public awareness, promote human rights and develop policy positions in the area of rental housing?