

ATTACHMENT C

Background Information for Human Rights By-law

This Attachment contains background information relating to the Model Human Rights By-law. It does not form part of the By-law itself.

This Attachment may be updated from time to time. The CHF Canada website should be checked for the most recent version.

GENERAL INFORMATION

1. Why have a Human Rights By-law?

The Model Human Rights By-law does two things.

- First, it states the co-op's commitment to the Ontario *Human Rights Code*.
- Second, it states a procedure for dealing with human rights problems at the co-op.

2. What is the Ontario *Human Rights Code*?

The Ontario *Human Rights Code* is a basic law of the Province of Ontario. It states detailed rules and definitions on the human rights that are protected in Ontario. It states procedures on how those rights can be enforced.

The rules in the *Human Rights Code* are explained by decisions of courts and tribunals on what the Code means and by policy statements and other materials issued by the Ontario Human Rights Commission.

3. Does the *Human Rights By-law* state the human rights that are protected?

No. People's human rights are part of the law of the Province, not things that the co-op adopts in a by-law.

The basic commitment to human rights is a simple and straightforward principle, but working it out according to law is complicated. Therefore, the basic commitment is in the By-law, but not the detailed legal rules.

4. What are the human rights guaranteed by the *Human Rights Code*?

The *Human Rights Code* states that people have a right not be discriminated against or harassed on certain specific grounds. It is only discrimination on those grounds that is illegal.

5. What are the prohibited grounds of discrimination in housing?

The prohibited grounds of discrimination in housing are:

- race,
- ancestry,
- place of origin,
- colour,
- ethnic origin,
- citizenship,
- creed,
- sex,
- sexual orientation,
- gender identity,
- gender expression,
- age,
- marital status,
- family status,
- disability,
- the receipt of public assistance.

6. What are the prohibited grounds of discrimination in employment?

Co-ops are employers as well as housing providers. The prohibited grounds of discrimination in employment are the same as in housing except:

- An employer cannot discriminate based on record of offences. A housing provider can take record of offences into consideration.
- A housing provider cannot discriminate based on receipt of public assistance. This is not in the list of prohibited grounds for employment.

7. Should we change the list for our co-op?

This is not recommended.

- The list in the *Code* is accompanied by definitions and other sections which explain and qualify the obligations. It is important that these apply.
- Experience shows that when co-ops adjust the list, they are basically covering the same things in different words. But there may be a slightly different meaning that is hard to predict.

- Co-op by-laws are legally operative documents. It is important to be accurate and consistent so that co-ops do not have unexpected liabilities.

HARASSMENT

8. What is harassment?

Harassment is inappropriate comment or conduct that is known or should be known to be unwelcome. It is illegal if it is on a ground stated in the *Human Rights Code*. The prohibited grounds of harassment are substantially similar to the prohibited grounds of discrimination.

Some examples of harassment when based on a prohibited ground are:

- epithets, slurs or jokes;
- name calling or nicknames;
- jokes, cartoons or graffiti;
- verbal abuse;
- displaying offensive or derogatory images;
- practical jokes causing awkwardness or embarrassment;
- condescending or patronizing behaviour undermining a person's self-respect.

9. What is sexual harassment?

Sexual harassment is harassment because of sex, sexual orientation, gender identity or gender expression. Some examples are:

- gender-related comments about an individual's physical characteristics or mannerisms;
- unwelcome physical contact, patting or pinching;
- suggestive or offensive remarks or innuendoes about members of a specific gender;
- propositions of physical intimacy;
- gender-related verbal abuse, threats, or taunting;
- leering or inappropriate staring;
- bragging about sexual prowess;
- demands for dates or sexual favours;
- offensive jokes or comments of a sexual nature about a person;
- display of sexually offensive pictures, graffiti, or other materials;
- questions or discussions about sexual activities;
- paternalism based on gender which a person feels undermines his or her self-respect or position of responsibility;
- rough and vulgar humour or language related to gender.

10. Are there other kinds of sexual harassment?

Yes. In addition, sexual harassment is any kind of sexual advance made by someone who is in a position to grant or deny a benefit or advancement such as someone's employer or superior. It is also any reprisal by such a person for rejection of a sexual advance.

11. Does the victim have to object for it to be sexual harassment?

No. It is not necessary for someone to object to behaviour for it to be contrary to the *Human Rights Code*.

RESPONSIBILITIES OF CO-OPS

12. What are the co-op's legal responsibilities?

As a housing provider the co-op has to follow the *Human Rights Code* in all areas of its operations. This includes its role as housing provider and as employer.

The co-op is responsible for the acts of the co-op as a corporation. It also can have responsibility for the acts of its staff and anyone acting on its behalf. This can include directors, officers, committee members and others.

13. Is the co-op responsible for the acts of individual members?

If the co-op is a place where discriminatory or harassing language or acts are common, it is said to have a "poisoned environment" or "poisoned atmosphere". Under the *Human Rights Code* the co-op could be responsible.

The co-op has to do what is reasonable to ensure that the general atmosphere at the co-op is free of discrimination or harassment on human rights grounds. It cannot just ignore such conduct.

ACCOMMODATION OF DISABILITIES

14. Does someone who is disabled have to obey the same rules as other co-op members?

Yes. But those rules have to be adjusted to allow for the person's disability if it can be done without undue hardship.

15. Does the co-op have to go to special expense to fill the needs of someone who is disabled?

Yes. The co-op has to provide equal housing to everyone, including any members who are disabled. In order to permit the disabled members to have equal housing, special measures may be needed, such as automatic door openers.

The co-op and anyone else providing accommodation has to take such measures if it can be done without undue hardship.

16. What is undue hardship?

Undue hardship is not defined in any exact way. However, it would include cost, outside sources of funding, if any, and health and safety requirements.

17. Doesn't it cost a lot to accommodate people with disabilities?

No. The Human Rights Commission says that a great many examples of accommodation can be done very inexpensively.

For instance, some people are highly sensitive to certain chemicals such as cleaning fluids. Pricing out alternatives that are less offensive (and maybe better for the environment) shows that they only cost a co-op slightly more. The same is true of a great many other accommodations.

18. Is there a hard and fast dollar limit for an accommodation?

No. The *Human Rights Code* does not state a specific limit and the explanations given in court and tribunal cases do not lead to any specific limit. You should consult your local federation or lawyer when this issue comes up.

INDIRECT DISCRIMINATION

19. What is indirect discrimination?

Indirect discrimination is also called “constructive” discrimination. It exists if there is a requirement or factor that is not discrimination on a prohibited ground but that results in the exclusion, restriction or preference of a group of persons identified by a prohibited ground.

An example might be religious beliefs. Co-ops might be scheduling meeting times for good reasons that have nothing to do with any human rights issues. But if a members' meeting falls on a holiday that affects a lot of the members, that could be indirect discrimination.

20. Does the co-op have to go to expense or change its rules to avoid indirect discrimination?

Yes. But the co-op's obligations are subject to the same test of undue hardship as for accommodating disabilities.

EQUAL TREATMENT FOR ALL MEMBERS

21. Does accommodating disabilities and avoiding indirect discrimination involve treating some members better than others?

No. This is the biggest issue that bothers co-op members. Co-ops are founded on the basis that all members have equal worth. This is not like other kinds of corporations where worth depends on the number of shares or the amount of investment.

But sometimes people have to be treated differently in order to receive equal service. For instance, no one would suggest that there is anything wrong with giving a household of five a larger unit than a household of one. It is accepted that this better fits their needs.

In the same way co-op services need to be adjusted in a sensitive way to meet other specific needs of co-op members if it will not cause undue hardship.

22. Is the co-op entitled to proof of the needs?

Yes. The co-op is entitled to reasonable evidence if there is any need for accommodation.

However, the most important thing to remember is that the member involved is entitled to be treated with dignity. People should get away from the mindset that there is any kind of “special privilege”. Instead recognize that whatever is being done is being done to give service that is effectively equal to others.

Therefore, any request should be treated with respect and dignity, and, of course, complete confidentiality on a need-to-know basis.

OTHER ISSUES

23. Are there other legal issues related to the *Human Rights Code* and human rights at co-ops?

Yes. A lot of them. This paper only skims the surface. It is important to get legal advice when issues come up.

24. If a complaint is made against the co-op to the Human Rights Tribunal, what should the co-op do?

First, the co-op should report it to the co-op’s insurance company. The complaint might be covered by the co-op’s insurance.

It is important to do this whether or not the co-op thinks there is any merit in the claim. That is because the legal or other costs can be very high, whether or not the co-op defeats any complaint. The insurance company may not provide coverage unless it is consulted from the beginning. It is a requirement of the insurance that the co-op consult it from the beginning.

Second, the co-op should not discuss the matter with the person involved or their lawyer and no one acting on the co-op’s behalf should do so.

Third, the co-op’s own lawyer should be notified in the case the insurance company lawyer does not take over.

25. Will following the Human Rights By-Law mean that no claim can be made against the co-op?

No. The By-law is intended to be a way to enhance human rights at the co-op and to resolve problems. However, anyone who is dissatisfied or does not want to use the By-law can complain to the Human Rights Tribunal.

