

Ontario Human Rights Commission Policy on Human Rights and Rental Housing

A Summary for Co-ops

The Ontario Human Rights Commission (OHRC) released its *Policy on Human Rights and Rental Housing* on October 5 2009. The OHRC's policies, and associated guidelines, represent the Commission's interpretation of the Human Rights Code. They guide its public education and awareness initiatives. And they strongly influence decisions made by the Human Rights Tribunal and the courts. This new Policy reaffirms that housing is a human right. All co-ops will need to know the Commission's interpretation and position on discrimination and protections in housing.

There are no new human rights rules or requirements in the Policy. But there are many examples and scenarios offered to help housing providers know how to comply with the Code.

Application of the Code in Housing

The Code prohibits discrimination in housing on the grounds of race, colour, ancestry, creed (religion), place of origin, ethnic origin, citizenship, sex (including pregnancy, gender identity), sexual orientation, age, marital status (including same-sex partnerships), family status, disability and/or receipt of public assistance. These are called protected Code grounds.

Based on any of the Code grounds, people cannot be;

- refused a unit
- harassed by staff, directors or other members/tenants or
- otherwise treated unfairly

The Code applies to every part of the housing process, including;

- marketing/advertising units
- member screening
- occupancy rules
- administrative and maintenance services
- the use of co-op facilities
- the general enjoyment of the premises.

The Code has primacy over other pieces of legislation, including the *Co-operative Corporations Act*, the *Accessibility for Ontarians with Disabilities Act* and the *Ontario Building Code*. Where the Code conflicts with other legislation, the Code prevails. The Code also takes priority over the policies, procedures and by-laws of co-ops.

Social and Economic Status

Low social and economic status is not a protected Code ground. But there is a strong link between low socio-economic status and membership in a Code-protected group. Low social and economic status can

make it very hard for a person to find and keep adequate housing. Co-ops should be fair and flexible with applicants who may experience discrimination based on an intersection of low social and economic status with other grounds. For example:

- A single parent with 2 children wants a 1 bedroom unit because she can't afford a 2 bedroom unit. The co-op should consider the impact that her socio economic status has on the overall discrimination she experiences, and be flexible applying occupancy standards.

Forms of Discrimination

Discrimination in housing on Code-protected grounds may take many forms. These include:

- Negative attitudes, stereotypes and bias
- Subtle discrimination
- Harassment
- Sexual harassment
- Poisoned environment
- Systemic discrimination
- Discrimination by association

Member selection and unit allocation

Advertising a unit: When advertising a unit, a co-op cannot use a notice, sign, symbol or phrase, with the intent to discriminate and exclude people identified by the Code. For example, "quiet building" or "adults only" may be considered to be discriminating on the basis of family status.

Managing Inquiries: When responding to inquiries about a unit over the telephone, or in person, it is contrary to human rights to use any form of discriminatory 'profiling'. For example, it is a violation of the Code to deny someone the opportunity for membership based on a name or an accent.

Screening an applicant: The co-op must ensure that its member selection practices are fair, consistent and do not serve to screen out people who are protected under the Code. If an application form asks questions, such as, "source of income", "age", "place of employment" etc, this information cannot be used to deny membership.

Those responsible for screening applicants (e.g. membership committee, staff, directors) must be certain that if they recommend refusal they can show that they did so using appropriate and non-prejudicial reasons.

Applying rental criteria: Co-ops are permitted to use a number of criteria when assessing prospective members, such as, income information, credit checks, credit references, rental history and guarantees. But there are some limits:

- The use of minimum income or maximum rent-to-income ratios must not be used alone, but along with other available information.

- Income information can only be considered alone when no other information is made available, and only to make sure the applicant earns enough to pay the housing charge.
- The Commission does not support the use of Social Insurance Numbers to conduct credit checks.
- It is illegal to apply a rent-to-income ratio such as a 30% cut off rule, unless the co-op is assessing eligibility for RGI assistance.
- Co-ops can only ask for a “guarantor” (co-signer) if the individual circumstances of the applicant demand it (e.g. poor landlord references, history of rental default). The co-op cannot ask all applicants under 26, or all new immigrants, etc for a guarantor, nor can it set rent-to-income ratios for a guarantor.

Membership/Tenancy

Treatment and Provision of Services: the Code acts to protect occupants from being singled out, adversely affected, or otherwise subjected to negative comments and treatment based on Code grounds. It is a violation of the Code to subject occupants to substandard services or to deny or delay the provision of services on Code grounds.

Occupancy Rules: Occupancy rules cannot be used to target or penalize groups identified by Code grounds. Rules or practices which unintentionally single someone out and result in unequal treatment (“adverse effect” discrimination) will only be allowed if a change or exception to the rule or practice would be too costly or would create a health or safety hazard.

Examples of occupancy policies that could cause “adverse effect” discrimination include,

- “No pet” policies: these must be flexible to allow for service dogs.
- Inflexible participation requirements: these may inadvertently discriminate against disabled members.
- “No transfer” policies (rare for a co-op, but allowed under SHRA): these could discriminate against members who require an internal move for financial reasons or because of a change in family size.
- Guest policies: Co-ops may have to set some rules, especially where the households receives RGI subsidy. Such rules must not be used to target specific groups, such as lone parents with visiting boyfriends or persons with disabilities who have regular visits from care givers.
- Occupancy standards (number of persons per bedroom): Arbitrary rules on the number of occupants allowed in a unit may have an adverse impact on Code-protected groups, such as families with children, pregnant women, and/or “non-Western” or extended families. Co-ops are not obliged to permit overcrowding of their units, but restrictions on the maximum number of occupants in a unit must relate to legitimate health and safety requirements.

The Policy says that housing providers should be flexible in applying rules that could have adverse discriminatory impact on Code protected groups, even if the rules are set by government.

Duty to Accommodate

Under the Code, co-ops have a duty to accommodate the Code-related needs of members, to make sure that the housing they supply supports the inclusion of people identified by Code grounds. Co-ops must take steps to remove any barriers that may exist, unless to do so would cause undue hardship.

Key points:

- Everyone in the accommodation process should work together cooperatively and respectfully to develop and implement appropriate accommodation solutions.
- When providing accommodation the co-op should accept requests in good faith, unless there are objective reasons not to do so.
- Where necessary, co-ops may make reasonable requests for information that is necessary to clarify the nature and extent of the accommodation needs.
- Accommodation seekers are equally responsible to make their accommodation needs known. If they are unable to identify or communicate their needs because of the nature of their disability, other members should try to help.
- Once the co-op is aware of the Code-related need for accommodation, it has a legal responsibility to act.
- In most cases accommodations for Code-identified people will not require significant expenditures, and will often have the potential to benefit many other members in the future. In other cases, accommodation may simply involve making policies, rules and requirements more flexible or accessible.

Undue Hardship: There is a legal test that allows three considerations when assessing whether or not an accommodation would cause undue hardship:

- Cost
- Outside sources of funding, if any
- Health and safety requirements, if any.

The evidence needed to prove undue hardship must be real, direct, objective, and in the case of costs, quantifiable. Inconvenience is not a factor for assessing undue hardship.

Principles of Accommodation: The Policy sets out a framework for examining if the duty to accommodate has been met. It allows people to be assessed based on their own individual needs and abilities.

The duty to accommodate is underpinned by three principles:

- Respect for dignity
- Individualization
- Integration and full participation

The co-op must show that it has provided accommodation up to the point of full inclusivity or undue hardship.

Appropriate Accommodation: Where an accommodation need related to Code grounds has been identified, a co-op must implement the most appropriate accommodation, short of undue hardship. Determination of what is an appropriate accommodation is separate from the analysis of undue hardship. Accommodation is considered appropriate if it will result in the equal opportunity for a member to attain the same enjoyment of benefits and privileges experienced by others.

Forms of Accommodation: The duty to accommodate may take the form of necessary physical modification, or it could be the need to waive or change a rule, either of which should provide full inclusivity.

Balancing the Duty to Accommodate with the Needs of the Community: Co-ops may face serious challenges when the behaviour of one household negatively affects the rights of other members, or indeed the whole community. If the behaviour is linked to a Code-related ground (e.g. mental disability), the co-op should try to resolve the problem before considering corrective measures such as eviction. This may involve accessing support from family or community resources. It may be that eviction is the appropriate remedy if the household is not able to manage the responsibilities of membership. But this should be a last resort after other options have been explored.

Code Obligations and the Regulatory Framework for Co-ops

The Policy says that it is important for housing providers, including co-ops, to avoid blanket rules. It suggests that if policies or rules are adversely affecting someone based on Code grounds, it may be appropriate to waive those policies or rules, even those set by the regulator.

If co-ops identify barriers that are imposed on them by government the Policy says they have an obligation to follow up with government to seek changes or the removal of those barriers. Government, in turn, has an obligation to work with the provider to remove those barriers.

Examples of where discretion may be exercised, and flexibility may be warranted, include the following;

- The requirement for RGI households to report changes in income or household size (if there is a delay in the receipt of this information, complications and unforeseen circumstance should be taken into consideration)
- The number of occupants per unit (if it is not a threat to health and safety, flexibility is appropriate)
- Transfer policies (if a transfer policy threatens the security or well being of someone, alternatives should be considered)
- How federal co-ops set the housing charges for members in receipt of social assistance (a successful human rights claim at a co-op led to recommended changes in the subsidy calculation methodology).

Organizational Responsibility under the Code

Generally speaking, staff and board members in an organization are considered by the Commission to be part of the “directing mind”. They have a responsibility to ensure that the co-op is a non-discriminatory environment. The Commission’s position is that an organization is automatically responsible for discrimination arising from the acts of employees and agents.

It is a violation of the Code for co-ops to:

- Directly or indirectly, intentionally or unintentionally infringe the Code.
- Authorize, condone, adopt or consent to behaviour that is contrary to the Code.
- Condone or further a discriminatory act that has already occurred
- Fail to address known instances of discrimination.

And there is a human rights duty to:

- Respond adequately to harassment or inappropriate behaviour of which one is aware, or ought reasonably to be aware.

A co-op would use the following factors to determine whether or not they have met their responsibilities to respond to a human rights complaint:

- procedures in place at the time to deal with discrimination and harassment
- the promptness of the co-op’s response to the complaint
- the seriousness with which the complaint was treated
- resources made available to deal with the complaint
- whether the co-op provided a healthy living environment for the person who complained
- the degree to which the action taken was communicated to the person who complained.

In order to prevent and respond to discrimination, the co-op should support an approach that involves the following;

- Adopting a by-law and procedures for promoting inclusivity and addressing human rights complaints
- Reviewing and removing barriers through regular reviews of policies and procedures
- Promoting human rights education and training for directors and staff.

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