

TENANTS' HUMAN RIGHTS GUIDE

RENTAL HOUSING AND THE ONTARIO *HUMAN RIGHTS CODE*

What is the Ontario *Human Rights Code*?

Ontario's *Human Rights Code* (the *Code*) is one of the most important laws in Ontario. The *Code* overrides other laws in the province unless those laws specifically say otherwise. The *Code* promotes equality of opportunity and creates a climate of understanding and mutual respect for the dignity and worth of each person in Ontario.

Where does the *Code* apply?

The *Code* says that all Ontarians have the right to freedom from discrimination in five areas:

- 1) Employment
- 2) Services (including education and healthcare)
- 3) Trade Unions and Vocational Associations
- 4) Contracts
- 5) Occupancy of Accommodation (Housing)

This toolkit focuses on your rights as they relate to housing, but the principles discussed in this resource also apply to the other four areas described above.

Discrimination in Housing

Discrimination has happened when a person is treated differently, denied a benefit, or had additional obligations imposed on them because of one of the sixteen prohibited grounds. For example, if you have been treated differently because you are pregnant, have a physical disability, or are a newcomer to Canada, this is discrimination.

The *Code* covers just about every kind of rental housing in Ontario. Private market units, social housing units, condominiums, co-ops, supportive housing, retirement homes, rooming houses, and basement apartments are all covered under the *Code*. It is important to know that if you are required to share a kitchen or bathroom with the owner of the apartment or a member of their family, you are NOT protected by the *Code*.

The *Code* says that all people must be treated equally when they apply to rent a place to live. This means a landlord has to look at each applicant as an individual and not make decisions based on stereotypes.

Harassment and Housing

Harassment is repeated comments or behaviours related to a prohibited ground that are known, or should be known, to be unwelcome. It is illegal to harass a person because of a characteristic related to the prohibited grounds under the *Code*.

It is illegal for a landlord, his employee, or another tenant in the same building to harass you on the basis of a prohibited ground. When one tenant is harassing another because of a prohibited ground, it is the landlord's responsibility to make sure the harassment stops. For example, if a neighbour is harassing you because of your sexual orientation and you report this to the landlord, he/she needs to take steps to stop the harassment. The landlord might write the tenant a letter telling them what they are doing is illegal and informing them that it must stop.

Reprisal

Reprisal is negative behaviour directed towards a tenant because they have made a human rights complaint. Everyone in Ontario has the right to claim and enforce their human rights without the fear or threat of reprisal. It is illegal for a landlord to try to "get revenge" or "get even" with a tenant who has tried to claim or enforce their human rights.

Disability

Disability is any degree of physical disability, a condition of mental impairment or a developmental disability, a learning disability, or a mental disorder. Disability should be interpreted broadly. Disability under the *Code* includes both present and past conditions, as well as society's perception of a disability.

Disabilities can be visible or "hidden" from others. Tenants have the right to the same opportunities and benefits whether their disabilities are visible or not. Mental health issues and/or addictions are defined as disabilities that are protected under the *Code*.

For example, the *Code* protects people who have anxiety disorders, panic attacks, depression, schizophrenia, or addictions to alcohol or drugs.

The *Code* says that people with mental health issues and/or addictions have the same right to be free from discrimination as anyone else with a disability. Discrimination in housing happens when a person is treated in a negative way because of their mental health or addiction disability. Often discrimination is the result of stigma, negative stereotypes or prejudice around visible or "hidden" disabilities.

For example, a landlord may refuse to rent an apartment to someone with a mental health disability because they think the person will not take care of their apartment or pay their rent. This is a stereotype and is untrue, and is discriminatory.

The Duty to Accommodate

The duty to accommodate is a very important part of the *Code*. It says that structures, rules, policies or practices may have to be changed so that all people enjoy equal benefit, equal treatment, equal rights, and equal access in their housing. A common reason that tenants invoke the duty to accommodate is to request physical changes to the building to accommodate a

physical disability. But accommodation can be required in other circumstances as well, including when a tenant needs accommodation due to a mental health disability or addiction.

What are the obligations of the person requiring the accommodation?

A tenant who requires accommodation should provide a written request to the landlord explaining the need for accommodation and how it relates to a prohibited ground under the *Code*. The Centre for Equality Rights in Accommodation (CERA) can assist by writing letters related to accommodation requests on the tenant's behalf. Once the request has been made, the tenant should cooperate with the landlord as they discuss accommodation solutions.

A person who requires an accommodation for a medical reason will likely need to provide a doctor's letter supporting their request.

What is "undue hardship"?

Landlords are required to take accommodation requests seriously and respond to them in a timely manner. Landlords are only able to deny an accommodation request if they can prove "undue hardship."

A landlord can only claim undue hardship if accommodating a tenant would seriously threaten the financial viability of their business or endanger the health or safety of other tenants. Both the landlord and the tenant should look into whether any outside sources of funding, such as government grants, are available to help pay for the cost of accommodation. It is the responsibility of the landlord to prove undue hardship. The threshold for undue hardship is high.

HOW TO FILE A HUMAN RIGHTS APPLICATION

If you have been discriminated against and cannot resolve the issue informally with your landlord, you may wish to file an application with the Ontario Human Rights Tribunal. To make a claim with the Tribunal, you must complete a formal application.

Step 1: Collect the information and evidence you need for your application (i.e. any correspondence with your landlord, medical evidence, photographs, etc.)

Step 2: Fill out an application. To get an application form, you can contact the Tribunal directly or download a copy from their website:

1-866-598-0322 or TTY: 1-866-607-1240

<http://www.sjto.gov.on.ca/hrto/forms-filing/>

Step 3: Once your application is complete, you can send it to the Human Rights Tribunal by mail, email or fax.

Mail: Registrar - Human Rights Tribunal of
Ontario, 655 Bay St. 14th Floor Toronto,
ON M7A 2A3

Email: HRTO.Registrar@ontario.ca
Fax: (416) 326-2199

ADEQUATE HOUSING, POSITIVE RIGHTS, AND THE *CHARTER*

In Canada, the right to adequate housing is a complex issue. Canada has recognized a right to adequate housing through international human rights instruments; however homeless Canadians are not being afforded this right and, in light of recent case law, they do not have access to a mechanism to claim this right. Many people remain homeless, or if they do secure rental housing, it may not be under the best conditions. As such, whether housing should be protected under the Constitution is a hotly debated issue in Canada.

Canada's International Commitment to Adequate Housing

The *International Covenant on Economic, Social, and Cultural Rights (ICESCR)* is a document that the United Nations created in 1966. Article 11 of the document recognizes that a right to adequate housing does exist, and this right must be respected by the countries that ratified (i.e., signed) the *ICESCR*. Article 11 states,

“The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right...”¹

Canada is one of the “States Parties” mentioned in the above provision. Therefore, when Canada ratified the *ICESCR*, it committed itself to the document’s mandate. However, the right to adequate housing has yet to be realized in Canada.

What does ‘adequate’ housing mean?

The right to adequate housing is broader than a right to be housed (i.e., simply to have a roof over your head). In fact, Article 11 of the *ICESCR*, specifies the need for “adequate” housing for all people. So, what’s the difference? The United Nations’ Committee on Economic, Social, and Cultural Rights (CESCR) outlined principles that make housing “adequate.”² The principles that the CESCR identified include³:

Security of Tenure – This gives people legal protection against forced eviction, harassment, and other threats. It is available to renters, people living in co-operative housing, people who lease, and in emergency housing/informal settlements.⁴

Availability of Services, Materials, Facilities, & Infrastructure – This means that an adequate house must have facilities essential for health, security, comfort, and nutrition. Examples include

¹ *International Covenant on Economic, Social and Cultural Rights*, 16 December 1966, 993 UNTS 3 art 11 (entered into force 3 January 1976, accession by Canada 19 May 1976) [ICESCR].

² Committee on Economic, Social and Cultural Rights, *General Comment No 4: The right to adequate housing (art 11(1) of the Covenant*, 1 January 1992. The full document is available here:

<http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fICESCR%2fGEC%2f4759&Lang=en>.

³ *Ibid* at 8(a)-(g). The above have been slightly modified for the purposes of this module.

⁴ *Ibid*, at 8(a).

safe drinking water, energy, sanitation and washing facilities, garbage disposal, emergency services, etc.

Affordability – This means that household and housing financial costs should be at a level that does not compromise other basic needs in a person’s life. Renters should not be subjected to unreasonable rent levels/ increases.

Habitability – This means that housing should be habitable and livable, with adequate space and protection from the cold, damp, heat, rain, wind, or other threats to health.

Accessibility – This means that everyone must be given full and sustainable access to adequate housing, and it should secure peace and dignity.

Location – This means that housing must be located with available access to employment options, health-care services, schools, child-care centres, and other facilities. Also, housing should not be built on polluted sites or be overly-exposed to contaminants.

Cultural Adequacy – This means housing should be built with appropriate materials and in a way to allow expression of cultural identity and diversity of housing, and should not be sacrificed during any development.

The Ontario Human Rights Commission (OHRC) and the Ontario *Human Rights Code*

In Ontario, the OHRC is a strong proponent of the right to adequate housing. It has submitted several demands to the provincial and federal governments to recognize an adequate housing right. Additionally, the OHRC has voiced many concerns over Canada’s failed commitment to respect Article 11 of the *ICESCR*.

The legislation that the OHRC relies on in its work is called the Ontario *Human Rights Code* (the *Code*). While the *Code* does not guarantee a right to adequate housing, it strives to offer protections to people in the rental housing market. For example, the *Code* guarantees the following to renters:

“Every person who occupies accommodation has a right to freedom from harassment by the landlord or agent of the landlord or by an occupant of the same building because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sexual orientation, gender identity, gender expression, age, marital status, family status, disability or the receipt of public assistance.”⁵

Also, the OHRC has its own policy on human rights and rental housing that expands on the protections in the *Code*.⁶ While the policy is not law, it is considered to be a very credible document relied on by the Ontario Human Rights Tribunal when it hears cases about human rights violations in the rental housing context.

⁵ *Human Rights Code*, RSO 1990, c H.19, s 2(2) [the *Code*].

⁶ *Ontario Human Rights Commission, Policy on Human Rights and Rental Housing*, (Toronto: Ontario Human Rights Commission, 2009). The full document is available here: <<http://www.ohrc.on.ca/en/policy-human-rights-and-rental-housing>>.

Background on the Canadian Charter of Rights and Freedoms

The *Charter* was enshrined in Canada's Constitution with the passage of the *Constitution Act, 1982*. It governs the relationship between individuals and the government, ensuring that governments cannot pass laws or enact policies that infringe unfairly upon our rights and freedoms. The *Charter*, therefore, acts as a restraint on government power. Prior to the *Charter*, there was no guarantee in Canada that rights and freedoms would not be taken away by legislation. We had the *Canadian Bill of Rights*, but as a statute, it could be amended or repealed by Parliament. In other words, if a given government was opposed to a particular right or freedom, it could simply vote in Parliament to have it changed or removed. By enshrining these rights and freedoms in the Constitution, they cannot simply be repealed by ordinary acts of Parliament or provincial legislatures. The Constitution is the highest law in all of Canada, and any law or government action must comply with all of its parts, including the *Charter*. As you can imagine, this is particularly important in the right to adequate housing debate. If access to adequate housing is recognized by rights enshrined in the *Charter*, all levels of government, its actions, and laws must respect that.

Sections 7 and 15(1) of the Charter

Housing rights advocates have argued that sections 7 and 15 of the *Charter* are opportunities to recognize access to adequate housing as a right. Sections 7 and 15(1) of the *Charter* read as follows:

Life, liberty and security of person

7. Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.

Equality before and under law and equal protection and benefit of the law

15. (1) Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

It is argued that the right to access adequate housing should be protected through “security of the person” under s. 7 and that poverty should be recognized as a ground of discrimination alongside race, colour, sex, etc.

What are positive rights?⁷

Positive rights demand that the Canadian government act in a particular way, or do something, for individuals. Such rights compel the government to take a positive action in order for individuals to exercise and realize their rights and freedoms (as opposed to refraining from doing something). There are very few positive rights in Canada's *Charter*. One example is section 23, which demands that provincial governments provide access to education in English or French in locations where such minority language communities exist, or in places where there is high demand for English or French language instruction.

Negative rights, in contrast, protect individuals from the government over-stepping its bounds and acting in particular ways. Such rights prevent the government from intervening and violating individuals' rights and freedoms. As noted, the *Charter* acts as a restraint on government power, and this captures what is meant by negative rights. Negative rights differ from positive rights because the government usually respects negative rights by doing nothing at all. An example of a negative right found in the *Charter* is section 15, which prohibits the government and its laws from discriminating against people based on their particular characteristics. Section 7 of the *Charter* is another example of a negative right in that it prohibits the government and its laws from interfering with individuals in ways that endanger their life, liberty, and security (unless it is done in a way that is consistent with the principles of fundamental justice).

How do Positive Right Relate to the Access to Adequate Housing Debate?

The recognition of positive rights under section 7 of the *Charter* is vital in the access to adequate housing debate. If the law recognized that access to adequate housing was required to ensure a person's right to life, liberty, and security of the person, the government would have a positive obligation to ensure that access to adequate housing is available. In other words, if life, liberty, and security of the person is also a positive right, then the government would have to act to ensure this right is met for all individuals.

Canadian courts have been hesitant to characterize section 7 as a positive right. Historically, the courts have characterized "positive right" issues (i.e., demanding that the government to do something) as policy matters. Canadian courts have stated that policy issues are for the government and policymakers to decide—not the courts.

Although section 7 of the *Charter* has continued to be characterized as a negative right, some cases have pushed Canadian courts to consider whether the *Charter* should also protect positive rights. While these cases are not always successful, and often very complex, they represent key developments in the law on access to adequate housing.

⁷ This section on positive and negative rights is adapted from The Centre for Constitutional Rights (2013-2015), online: University of Alberta: <<http://ualawccsprod.srv.ualberta.ca/ccs/index.php/pr/534-positive-and-negative-rights>>.

LANDMARK POSITIVE RIGHTS CASES

<p>Gosselin v Quebec (AG) (2002)⁸</p>	<p>Louise Gosselin brought an action against the province of Quebec to challenge a social assistance plan that she thought was unfair to welfare recipients under 30 years old. In the 1980s, Quebec’s social assistance plan paid welfare recipients under 30 less than half of what was paid to older recipients. Gosselin argued that this plan violated her section 7 <i>Charter</i> right to security of the person. More specifically, she argued that “security” must include the right for a person to receive a particular level of support from the government to meet basic needs.⁹</p> <p>Gosselin’s legal challenge was unsuccessful. The Supreme Court of Canada (SCC) stated that although section 7 does protect life, liberty, and security of the person, the section does not place an obligation on governments to provide for these rights. However, Chief Justice Beverly McLachlin made an important proclamation in the <i>Gosselin</i> case; she said that one day, section 7 may include positive rights, at which point governments will have positive obligations to ensure that the right to life, liberty, and security of the person are met.</p>
<p>Chaoulli v Quebec (AG) (2005)¹⁰</p>	<p>Dr. Chaoulli—a private health care doctor—challenged a Quebec law that prohibited people from obtaining private health insurance for services already available in the public health care system.¹¹ Chaoulli argued that the prohibition violated the rights to life and security of the person under both the <i>Quebec Charter of Human Rights and Freedoms</i> and the <i>Canadian Charter</i> because it subjected people to the long and inevitable wait times of the public health system. In turn, people could die while waiting on the public list and their security would be affected because of added stress and physical suffering.</p> <p>In a four to three decision, the SCC held that the laws violated Quebecers’ right to life and security of person under the <i>Quebec Charter</i>. Only three of the seven judges also found that the laws violated section 7 of the <i>Canadian Charter</i>. As such, this ruling is binding in Quebec only. The trio of judges concluded that the Quebec laws allow only the “very rich” to obtain private health care in order to avoid delays in the public system. The comments of the three judges suggest that a similar change might be possible in the rest of Canada in a future case. This case has been very controversial, especially because many people consider Canada’s public health care system to be a defining characteristic of our nation.</p>

⁸ *Gosselin v Quebec* (Attorney General), 2002 SCC 84, [2002] 4 SCR 429 [*Gosselin*].

⁹ In *Gosselin*, Louise Gosselin also argued her equality rights under s. 15 of the *Charter* were infringed because the social assistance plan discriminated based on age.

¹⁰ *Chaoulli v Quebec* (Attorney General), 2005 SCC 35, [2005] 1 SCR 791 [*Chaoulli*]. It is important to know that *Chaoulli* is a case about the *Quebec Charter of Human Rights and Freedoms* and not the *Canadian Charter of Human Rights and Freedoms*. The *Quebec Charter* mirrors the *Canadian Charter* in terms of its rights.

¹¹ The phonetic pronunciation of “Chaoulli” is “shy-u-lee.”

<p>Victoria (City) v Adams (2008)¹²</p>	<p>The City of Victoria, British Columbia brought an injunction (i.e., a remedy from the court to force people to act/refrain from doing something) against homeless people living in a space called Cridge Park. The injunction prohibited homeless people from making temporary structures and shelters in the park because it would violate City bylaws. Natalie Adams, a homeless person living in Victoria, argued that the City's bylaws violated her section 7 <i>Charter</i> rights.</p> <p>Adams' legal challenge was successful. In a landmark decision, Madam Justice Ross stated that the prohibition on makeshift structures imposes on homeless people severe health and safety risks that violate the life, liberty, and security of the person. She also noted that shelter [is] a necessary precondition to security and liberty of the person. This case is instrumental in recognizing that the need for basic shelter is connected to one's life, liberty, and security of the person under section 7 of the <i>Charter</i>.</p>
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FOR MORE INFORMATION

More information can be found at the Human Rights Legal Support Centre and their guide Your Right to Accommodation - <http://www.hrlsc.on.ca/en/how-guides-and-faqs/your-right-accommodation>.

If you have any questions arising from this guide or concerns which have not been addressed, please contact a lawyer in your area for consultation. You can locate a lawyer who deals with these matters by doing an internet search or by going to lsrs.lsuc.on.ca/lsrs/ or www.titleplus.ca.

¹² *Victoria (City) v Adams*, 2008 BCSC 1363, 299 DLR (4th) 193.