

APPLICABLE TO:

DATE: June 14, 2010

<input checked="" type="checkbox"/>	Municipal & Private Non Profit
<input checked="" type="checkbox"/>	Co-operatives
<input checked="" type="checkbox"/>	Federal Non Profits
<input type="checkbox"/>	OCHAP/CSHP
<input type="checkbox"/>	Rent Supplement

<input checked="" type="checkbox"/>	Mandatory
<input type="checkbox"/>	For Information

SUBJECT: Ontario Human Rights Code Amendment & Duty to Accommodate

BACKGROUND

The Human Rights Code (HRC) of Ontario is a provincial law designed to prevent discrimination and guarantees a right to equal treatment and opportunity in five areas:

1. Employment
2. Housing
3. Goods, Services and Facilities
4. Contracts
5. Membership in Trade and Vocational Associations (i.e., unions)

On June 30, 2008, the Ontario Human Rights Code was amended and changed the human rights system in Ontario. The HRC states that every person has a right to equal treatment with respect to the “occupancy of accommodation” without discrimination or harassment on the basis of the following grounds:

- Age
- Creed (religion)
- Sex (including pregnancy and breastfeeding)
- Gender Identity
- Family status (such as being in a parent-child relationship)
- Marital status (including the status of being married, single, widowed, divorced, separated, or living in a conjugal relationship outside of marriage, whether in a same sex or opposite sex relationship)
- Disability (including mental, physical, developmental or learning disabilities)
- Race
- Ancestry
- Place of origin
- Ethnic origin
- Citizenship

- Colour
- Record of offences (criminal conviction for a provincial offence, or for an offence for which a pardon has been received)
- Association or relationship with a person identified by one of the above grounds
- Perception that one of the above grounds applies.

One of the major changes relate to “Duty to Accommodate”. Duty to accommodate means the responsibility to make alterations, changes or modifications to allow a person with a disability to be housed, or to remain housed if they become disabled after becoming a tenant. Changes to the HRC also include a new adjudication process which has significantly affected how human rights applications are presented and defended.

The new legislation is designed to resolve discrimination claims faster, provide legal support to individuals who believe they have experienced discrimination and promote, protect, and advance human rights. The new human rights system is comprised of three independent organizations:

Human Rights Tribunal of Ontario – deals with all claims of discrimination filed under the *Ontario Human Rights Code* and resolves applications through mediation or adjudication.

Human Rights Legal Support Centre – offers human rights application-related legal support services to individuals who believe they have experienced discrimination.

Ontario Human Rights Commission – works to promote, protect and advance human rights. Its main focus is to address the root causes of discrimination through outreach, cooperation and partnership.

The HRC overrides all other pieces of legislation in the province and unless the contrary is explicitly stated, the HRC will prevail. The HRC takes precedence over the *Residential Tenancies Act (RTA)* and the *Social Housing Reform Act (SHRA)*.

Under the HRC, housing providers are required to ensure they are providing inclusive and non-discriminatory environments. Harassment and discrimination are a violation of the law, and housing providers that fail to take adequate steps to prevent and address harassment and discrimination may be held liable. Providers have ultimate responsibility for ensuring a healthy and inclusive environment, and must ensure their organizations are free from discriminatory or harassing behaviour.

Discrimination need not be intentional - providers violate the HRC if they authorize, condone, adopt or ratify behaviour that is contrary to the HRC. Housing providers have an obligation to be aware of whether their policies, practices and programs have an adverse impact or result in systemic discrimination. Whether or not a formal complaint has been made, housing providers must acknowledge and address potential human rights issues. Preventing and addressing human right violations creates environments that are inclusive, diverse, and free of discrimination.

Duty to Accommodate

The HRC is designated to prevent discrimination against, among other things, people who have a disability. Under the HRC, housing providers have a duty to accommodate to ensure that the housing they supply is designed to be inclusive. They are required to prevent and remove barriers and provide accommodation up to the point of undue hardship.

Failure to fully explore accommodation options and to fulfill the duty to accommodate is a violation of the HRC. This means that structures may have to be changed so that persons with disabilities are able to fully enjoy equal access and benefit, and these changes must be made in a reasonable and acceptable time-frame.

Housing providers have a legal duty to accommodate households with disabilities and are strongly encouraged to be proactive and actively seek to identify and remove barriers. Housing providers are required to develop policies and procedures and carry out reviews of their housing community to address discrimination and harassment, accommodation requests, and human rights concerns in accordance with the HRC.

Additional information regarding the “*Ontario Human Rights Commission*” and “*Guidelines on Developing Human Rights Policies*” can be found at www.ohrc.on.ca.

Housing Provider’s Role

Housing Providers are required to develop policies and procedures to ensure compliance with the Human Rights Code. A complete strategy to prevent and address human rights issues should include all of the following elements:

- A barrier prevention, review and removal plan
- Anti-harassment and anti-discrimination policies
- An internal complaints procedure
- An accommodation policy and procedure
- An education and training program

Attached (Appendix A) is a sample checklist that housing providers can use to complete a general evaluation of their community. Further detailed information on an all-inclusive evaluation of your community, in accordance with the *Accessibility Standards* and the *Accessibility for Ontarians with Disabilities Act, 2005*, can be found at: www.mcass.gov.on.ca or www.accesson.ca.

Indemnification Clause

Housing providers should be aware that, under the revised legislation, there is no ceiling or cap to potential awards. Housing providers should request their corporate lawyers to review existing indemnification clauses to ensure there is adequate protection against human rights claims, as each director may now be at risk of individual damages.

Attached (Appendix B) is a sample indemnification clause that can be adopted by housing providers to be included in their corporate by-laws.

Also attached (Appendix C) is a sample Human Rights Policy that providers may use to develop their own policy.

Housing provider staff are required to forward this Notice to their board of directors for information and action.

Service Manager's Role

NRH will review compliance with this Notice during the operational review process.

NRH will also arrange human rights training workshops for housing provider board and staff. More information on training session will be made available in the near future.

If you have any questions or concerns regarding this notice, please contact your Housing Administrator at (905) 682-9201.

(Original signed by Lora Beckwith)

Lora Beckwith, General Manager

Enclosure:

- Appendix A - Sample Checklist
- Appendix B - Sample Indemnification Clause for Directors
- Appendix C - Sample Human Rights Policy