



# A Guide for Condo Boards on the Ontario Human Rights Code

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Canadian  
Centre for  
Housing Rights

## About CCHR

The Canadian Centre for Housing Rights (CCHR) is Canada's leading non-profit organization working to advance the right to housing. Founded in 1987, CCHR has worked tirelessly for 35 years at the intersection of human rights and housing. We advance the right to housing by serving renters to help them stay housed, providing education and training about housing rights, and advancing rights-based housing policy through research, policy development, advocacy and strategic litigation.

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# Introduction

This guide provides condominium boards with a clear overview of their obligations under Ontario's *Human Rights Code*. It also informs condominium boards of their obligations regarding accessibility standards under the *Accessibility for Ontarians with Disabilities Act (AODA)*.

Most tenants living in condominium units live in standard freehold condominiums (commonly referred to as condos). Normally, these are large buildings made up of many units. The buildings are governed by a condo corporation, and the individual units within the building are sold by the condo corporation to individual owners. Unit owners within a condo collectively elect the condo corporation's Board of Directors, which governs the condo corporation.

Individual owners may rent out their units to tenants, and by doing so, these owners become landlords. This generates unique obligations on the part of landlords and the condo corporation. This guide highlights the main obligations held by landlords and condo corporations to tenants under Ontario's *Human Rights Code*.

# The Legislative Framework

## The Human Rights Code

Ontario's *Human Rights Code* (the *Code*) is a provincial law passed in 1962.<sup>1</sup> The *Code* protects people from discrimination by the government and by private citizens in certain areas of life including housing, employment, contracts, vocational associations and services. The *Code* has a quasi-constitutional status, which means it supersedes and overrules other provincial laws and statutes whenever they conflict. The Human Rights Tribunal of Ontario (HRTO) as well as all other courts and tribunals can consider the *Code* in their decisions.

## The Residential Tenancies Act

The *Residential Tenancies Act* (RTA) is a provincial law passed in 2006. It outlines the rights and obligations of tenants and landlords of residential units. The RTA supersedes and overrules other legislation like the *Condominium Act*, except in limited circumstances. The Landlord and Tenant Board (LTB) is the tribunal that hears disputes between landlords and tenants related to the RTA, which does not govern the relationship between a tenant and a condominium corporation – unless the landlord is the condominium corporation.

## The Condominium Act

The *Condominium Act* is a provincial law passed in 1998. This act provides the “powers and responsibilities of the condo corporation, an owner’s rights and obligations, as well as what is permitted in the condo corporation and restrictions that must be observed.”<sup>2</sup> It also sets out requirements for what governing documents a condo must have.

## The Accessibility for Ontarians with Disabilities Act

The *Accessibility for Ontarians with Disabilities Act* (AODA) is a provincial law passed in 2005 which enforces accessibility standards for disabled citizens in both public and private domains, such as employment, transportation and housing.<sup>3</sup> Its purpose is to

achieve accessibility for all Ontarians regardless of ability by 2025.

## Condominium by-laws, rules, and declaration

In addition to provincial laws, condo corporations also have their own governing documents. A condo's declaration is the "constitution" of the condo corporation. The by-laws regulate how the condo corporation will be governed, including how the board will be run, and the condo rules determine what individuals on the property of the condo can and cannot do. Tenants in a condominium, like owners and the condo itself, must follow the condo's declaration, by-laws, and rules.

Landlords in condos must provide their tenants with a copy of the condo corporation's declaration, by-laws and rules, and then must notify the corporation of the tenant's name and contact information when the tenant moves in. All rules must be reasonable and consistent with the *Code*, *Condominium Act* and the condo's declaration and by-laws.

Any resident of the condo can complain to the Board of Directors if they believe that the condo, or another resident, has breached the declaration, a by-law or a rule. The Board must take all reasonable steps to enforce the condo governing documents. Similarly, if a tenant believes that another tenant in the condo is not following the governing documents, they can contact that tenant's landlord, who must take reasonable steps to ensure their tenants comply with the governing documents. If the tenant's landlord does not intervene, the condo corporation may be able to sanction the landlord. The Condominium Authority Tribunal (CAT) can deal with many disputes related to the condo's rules.

# Discrimination and harassment under the Ontario *Human Rights Code*

Under the *Code*, housing providers – including condo boards – must provide an environment free of discrimination and harassment based on any of the 16 grounds established in section 2 of the *Code*: race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, gender identity, gender expression, age, marital status, family status, disability, and the receipt of public assistance.<sup>4</sup>

## Harassment

The *Code* defines harassment as “engaging in a course of vexatious comment or conduct that is known or ought reasonably to be known to be unwelcome.” The Ontario Human Rights Commission highlights that harassment can occur regardless of the wrongdoer’s motives; what is important is that their actions or comments were unwanted or could reasonably be foreseen as undesirable.<sup>5</sup>

## Discrimination: direct and adverse effect

Direct discrimination refers to situations where a person is treated differently based on any of the 16 protected grounds in the *Code*.

Adverse effect discrimination – referred to as “constructive discrimination” in the *Code* – occurs when the built environment or a neutrally worded policy unintentionally reinforces historic disadvantages against a *Code* protected group.<sup>6</sup> When adverse effect discrimination occurs, housing providers have a duty to correct that discrimination through accommodating the affected residents.

Direct discrimination <sup>7</sup>	Adverse effect discrimination <sup>8</sup>
<p>Different treatment in the application process:</p> <ul style="list-style-type: none"> <li>• Screening out an applicant on the basis of a racialized name.</li> <li>• Prohibiting board members from renting to tenants who receive financial aid.</li> <li>• Refusing to rent to someone with children.</li> </ul>	<p>Different treatment regarding the amenities associated with some accommodation:</p> <ul style="list-style-type: none"> <li>• Inaccessible recreational facilities.</li> <li>• Failing to build a ramp in time for a disabled tenant to move in.<sup>9</sup></li> </ul>
<p>Different treatment relating to the obligations of a landlord that can be tied to a <i>Code</i> ground:</p> <ul style="list-style-type: none"> <li>• Refusing to allow a tenant to sublet their unit to another person, because that person receives social assistance.</li> <li>• Refusing to do required repairs when a tenant is elderly.</li> </ul>	<p>Negative impact as a result of a seemingly neutral rule:</p> <ul style="list-style-type: none"> <li>• Inflexible “no pets” policy that impacts a person who uses a service animal.</li> <li>• Requiring all tenants to perform physical labour (shoveling snow, emptying out drawers to enable fumigation, etc.).</li> </ul>

## Intersectionality

Intersectionality refers to when one person has multiple marginalized characteristics. This means, some people may face multiple forms of discrimination based on two or more protected grounds. For instance, a single mother with two children living on social assistance might face disproportionately large challenges in accessing housing because of discrimination related to her gender, family status and income source.



# Prohibited grounds of discrimination

## On the basis of gender expression & gender identity

The grounds of gender expression and gender identity were added to the *Code* in 2012. The Ontario Human Rights Commission recommends that all organizations – including condo boards – have practices and designs that avoid discrimination against transgender, non-binary and gender non-conforming individuals.

The Ontario Human Rights Tribunal has ruled that although construction companies do not have to include gender-inclusive facilities in the building design if they were not asked to at the time of construction, condo boards are responsible for making space for gender-inclusive facilities for non-binary individuals while operating a condo.<sup>10</sup>

## On the basis of sexuality

Same-sex couples are protected under the *Code* on the basis of sexual orientation. This means that landlords must not deny housing to LGBTQ+ individuals and must ensure an environment free of discrimination and harassment from unit owners and other occupants.

## On the basis of sex

Women – particularly women of colour and Indigenous women – are disproportionately affected by housing insecurity. They are often confronted by outdated stereotypes regarding their gender and sex. For instance, a landlord in Ontario was found to have discriminated against a prospective tenant after refusing to rent to her, partially because he was convinced that the yard would not be maintained properly due to the absence of a man.<sup>11</sup>

The only time that it is legal for a landlord to discriminate based on sex is when all the units in the home are restricted to people of the same sex. In that case, potential tenants can be denied an apartment because they are of a different sex.

Although all genders can be subjected to sexual harassment, women are disproportionately impacted. According to the Ontario Human Rights Commission, discrimination on the basis of sex does not have to be sexual in nature. Harassment

against a female tenant can include “unwanted prying into her personal life, unannounced visits to her unit when she is not home, refusals to make necessary repairs, threats to cut services, and threats of eviction”.<sup>12</sup> It can also include unwanted advances and assault.

## On the basis of ethnicity, skin colour, place of ancestry and creed

The Ontario Human Rights Commission groups several identities under the umbrella term “race and related grounds”<sup>13</sup> because they all are intertwined in similar forms of discrimination based on stereotypes regarding people’s visible or ethnic identities.

Racial discrimination in housing can manifest itself in different ways, for example when landlords:

- Refuse to accept housing applications.
- Eliminate prospective tenants of colour or steering them to inferior housing through the selection process.
- Provide subpar living standards.
- Fail to complete maintenance or repairs.
- Use verbal abuse.
- Create a “poisoned environment”.
- Intrude into the unit without prior notice.
- Complain about the aroma of the food a tenant cooks.

## On the basis of immigration status

Recent immigrants, refugees and non-citizens are extremely vulnerable to housing discrimination and exploitation, as they are often unfamiliar with the law and/or are unable to defend themselves due to linguistic and cultural barriers or out of fear of retaliation. Even though landlords have the right to request income information and credit checks when selecting a tenant, landlords may not assume that the absence of a credit rating for a newcomer without Canadian credit history means that they are more likely to default.<sup>14</sup>

## On the basis of marital and family status

Marital status relates to “being married, single, widowed, divorced or separated and includes the status of living with a person in a conjugal relationship outside marriage”.<sup>15</sup> Discrimination here can look like the refusal to rent to roommates, single parents, and common law couples in favour of married couples.

Family status includes being in a parent and child relationship. In the context of housing accommodations, some landlords discriminate on the basis of family status by refusing to rent due to the presence of children, the composition of the tenant’s family (such as a gay couple with a child), and the absence of traditional parental figures. For instance, single mothers – notably Black and Indigenous single mothers – disproportionately lack access to safe and affordable housing. This is another example of how multiple characteristics like race, family status, gender, and income intersect to worsen people’s housing outcomes.

## On the basis of age

Age discrimination can occur against younger people, who may be prejudged as being troublemakers or irresponsible, as well as older people who may be subjected to poorer maintenance or illegal rent increases due to their perceived lack of power.

The *Code* protects young people – including 16- and 17-year-olds who have withdrawn from parental control – from discrimination in housing, while also allowing preferential treatment to be afforded to those aged 65 years or older.

## On the basis of income

Those who receive public assistance like Ontario Works are sometimes unfairly seen as lazy, irresponsible and criminal. They can also be victimized by predatory and illegal vetting or renting practices, such as requirements to pay their landlord with their government-issued assistance cheque directly, or to pay unreasonably large and often illegal rent deposits. A regulation to the *Code* describes what factors a landlord can consider when deciding who to rent to. The primary factors are the potential tenant’s credit and rental history information. Landlords can also consider income information if they have asked for rental history and credit information, but in no case can they use any of this information in a discriminatory way.

## On the basis of disability

The term “disability” is defined very broadly in section 10 of the *Code* to include just about any degree of physical or mental impairment.

People with disabilities face significant barriers in society. Unfortunately, discrimination based on a disability is a widespread issue in housing, and can include the denial of housing, harassment and refusal to accommodate. The refusal to accommodate a tenant with a disability can occur when a landlord fails to install accessible facilities – such as parking spaces, ramps, or elevators – and it can also occur through tenant policies – such as a no-pet policy that excludes tenants with service animals. These all count as forms of adverse effect discrimination.

### ***Mental health disabilities***

The Ontario Human Rights Commission points out that people with mental health conditions are also subjected to distinct negative stereotypes and assumptions, which makes them particularly vulnerable to homelessness and discrimination in housing.

In the context of evictions, the LTB must consider whether the grounds for eviction directly flow from the tenant’s disability. If so, then the tenant cannot be evicted if an accommodation can be reached without undue hardship (as described below). If a tenant raises the issue of discrimination under the *Code* during an eviction process, the LTB may rely on its Interpretation Guideline 17.<sup>16</sup> The tenant must first establish *prima facie* discrimination by demonstrating:

- A) They are protected under the *Code*, and
- B) They have been discriminated against in violation of the *Code*.

If they are successful, the burden will then shift to the landlord to prove that they have attempted to accommodate the tenant to the point of undue hardship *prior* to starting the eviction process.<sup>17</sup>

Although the RTA does not allow “no pets” provisions for residential units, condo boards have the right to limit the number, type and breed of pets allowed in their units in their governing documents, and some may choose to ban animals altogether. For example, some condominium boards may amend their governing documents to limit the size and weight of pets, where owners can keep their animals in their unit, and the restrictions placed upon them in public areas. However, service animals are exempted from blanket bans and limitations, as the right to them is protected under the accommodations section of the *Code*.<sup>18</sup>

## Reasonable accommodations and undue hardship under the Ontario *Human Rights Code*

Housing providers, such as condo owners and boards, have a duty to accommodate the needs of residents, both tenants and condo owners, which are related to the grounds specified in the *Code*. Most often, these accommodations will relate to a disability, but the obligation to accommodate exists for all of the *Code* grounds.

Accommodation processes are collaborative. All parties involved, including the resident asking for accommodations, must participate in good faith. Accommodation processes where parties do work together are opportunities for condo management to offer better customer service and strengthen the condo community.

The process often starts with the resident requesting an accommodation and disclosing relevant information about their limitations. These requests should be documented, but often start as verbal requests between the resident and their housing provider. The resident can be asked to submit medical verification of their restrictions, but they cannot be required to disclose their diagnosis. If there is a cost for the resident to provide verification of their restrictions, the housing provider can be required to pay that cost.

Sometimes, where a resident has a mental health condition that may prevent them from communicating their need for accommodations, the housing provider may have a duty to inquire whether the resident can benefit from accommodations and may want to seek external advice.<sup>19</sup>

Once a housing provider becomes aware of the need for an accommodation, it has procedural and substantive duties. A housing provider must gather information about the resident's situation and then work with the resident to determine what accommodations would be appropriate. They then have to provide those accommodations in a timely, reasonable and effective manner. This may involve hiring consultants to understand what options may be available to accommodate the resident.

Housing providers should try and ensure that any accommodation respects the following three principles:

1. **Dignity:** accommodations should consider and be respectful to the resident's right to privacy, autonomy and integration, as well as their other human rights.

2. Individualization: each individual's needs are specific to their circumstances and must be considered when a request for accommodations is made.
3. Integration and full participation: the process to implement reasonable and effective accommodations should include the resident who made the request to the maximum.

The housing provider must accommodate residents with *Code*-related accommodation needs unless doing so would create an undue hardship on the housing provider. An undue hardship occurs if the costs or health and safety risks the accommodation would create are significant and cannot be mitigated. The Ontario Human Rights Commission states that costs can amount to undue hardship if “they are quantifiable, shown to be related to the accommodation, and so substantial that they would alter the essential nature of the enterprise or so significant that they would substantially affect its viability”.<sup>20</sup> When a housing provider assesses whether providing an accommodation would cause an undue hardship, it may consider its specific circumstances, like whether there are outside sources of funding, the condition of the impacted building and its financial situation.

Residents who have requested accommodations may not be able to insist that their preferred accommodation is implemented, particularly if doing so would be an undue hardship for the housing provider. What is most important is that the resident's needs are accommodated in a way that respects the principles mentioned above.

By engaging in the accommodation process in good faith, housing providers give their residents better service and ensure that no one is left out of the life of the building.

For more information, consult the Ontario Human Rights Commission's resource: [Human Rights and Rental Housing in Ontario: Background Paper](#) (2007).

# Standards under the *Accessibility for Ontarians with Disabilities Act*

The AODA works with the *Code* to ensure accessibility and the protection of disabled people's rights. While the *Code* deals mostly with individual claims, the AODA mandates a minimal threshold of accessibility in many areas of life. Accessibility, when done right, is about increasing the helpfulness of services and housing for everyone, and not simply a checkbox to satisfy a few people's needs.

Under the AODA, condo boards must draft their governing documents with the purpose of identifying, eliminating, and preventing systemic barriers faced by individuals with disabilities related to the condo's policies, communications, buildings and infrastructure.<sup>21</sup>

The Government of Ontario has developed Integrated Accessibility Standards Regulation (IASR), which encompasses 5 accessibility standards under the AODA designed to improve accessibility.

The IASR's 5 standards include:

1. Customer service
2. Information and communication
3. Employment
4. Transportation
5. Design of public spaces

The fields of customer service, information and communication, and the design of public spaces are particularly relevant to condos and their residents. When new policies, renovations and residential buildings are being planned, they should incorporate "the principles of universal design" and "new barriers should never be created in the construction of new facilities or in the renovation of old ones."<sup>22</sup>

For more information about adopting accessibility for housing providers, read our resource: [Unlocking the AODA: Obligations of Housing Providers Under the Accessibility for Ontarians with Disabilities Act](#) (2017).

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## Endnotes

- <sup>1</sup> [Guide to your rights and responsibilities under the Human Rights Code](#) (2013), Ontario Human Rights Commission.
- <sup>2</sup> [Declarations, By-Laws, and Rules](#), Condominium Authority of Ontario.
- <sup>3</sup> [About Accessibility Laws](#) (2022), Government of Ontario.
- <sup>4</sup> [Relevant Code Provisions](#), Ontario Human Rights Commission.
- <sup>5</sup> [Fact Sheet #1: The Ontario Human Rights Code](#), Ontario Human Rights Commission.
- <sup>6</sup> *SWL-11849-17 (Re)*, 2018 CanLII 88671 (ON LTB).
- <sup>7</sup> [Human Rights and Rental Housing in Ontario: Background Paper](#) (2007), Ontario Human Rights Commission, p. 19-20.
- <sup>8</sup> *SWL-11849-17 (Re)*, 2018 CanLII 88671 (ON LTB).
- <sup>9</sup> *Di Marco v. Fabcic*, 2003.
- <sup>10</sup> *Andrews v. Great Gulf*, 2019 HRTO 370 (CanLII), para 16.
- <sup>11</sup> *Conway v. Koslowski*, 1993.
- <sup>12</sup> [Human Rights and Rental Housing in Ontario: Background Paper](#) (2007), Ontario Human Rights Commission, p. 32-33.
- <sup>13</sup> [Human Rights and Rental Housing in Ontario: Background Paper](#) (2007), Ontario Human Rights Commission, p. 23.
- <sup>14</sup> [Human Rights and Rental Housing in Ontario: Background Paper](#) (2007), Ontario Human Rights Commission, p. 28.
- <sup>15</sup> *Ontario Human Rights Code*, s.10(1).
- <sup>16</sup> *SWL-11849-17 (Re)*, 2018 CanLII 88671 (ON LTB).
- <sup>17</sup> *Rinaldi v. Paragon Protection Ltd.*, 2021 HRTO 248 (CanLII).
- <sup>18</sup> [Pets and Animals](#), Condominium Authority of Ontario.
- <sup>19</sup> [Human rights, mental health and addiction disabilities \(brochure\)](#), Ontario Commission of Human Rights.
- <sup>20</sup> [Human Rights and Rental Housing in Ontario: Background Paper](#) (2007), Ontario Human Rights Commission, p. 21.
- <sup>21</sup> [Unlocking the AODA: Obligations of Housing Providers Under the Accessibility for Ontarians with Disabilities Act](#) (2017), Canadian Centre for Housing Rights, p. 8.
- <sup>22</sup> [Human Rights and Rental Housing in Ontario: Background Paper](#) (2007), Ontario Human Rights Commission, p. 22.





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