

GUIDE TO YOUR RIGHTS AND RESPONSIBILITIES UNDER THE *HUMAN RIGHTS CODE*

**ONTARIO
HUMAN RIGHTS
COMMISSION**

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Using the Guide

The *Guide to Your Rights and Responsibilities Under the Human Rights Code* gives a basic overview of Parts I and II of the Ontario *Human Rights Code* (the “Code”). It contains explanations about these parts of the *Code*.

The *Guide* uses examples to show how the *Code* would apply in different situations. Many of these examples come from decided cases or are based on facts from human rights claims that have been filed.

Commission Policy Statements

You will see references throughout this document to policies and guidelines published by the Commission on different sections and grounds of the *Code*. The Commission’s policies and guidelines set standards for how individuals, employers, service providers and policy makers should act to ensure compliance with the *Code*. They are important because they represent the Commission’s interpretation of the *Code* at the time of publication.¹ In addition, they advance a progressive understanding of the rights set out in the *Code*. While they are not binding on the human rights tribunal or on courts, they are often given great deference, applied to the facts of the case before the court or tribunal, and quoted in the decisions of these bodies.

The *Code* states that the Human Rights Tribunal of Ontario may consider the Commission’s policies in its decision-making. Where a party or an intervenor requests it, the Human Rights Tribunal of Ontario *must* consider the Commission’s policies. Therefore, if you have filed or are intending to file a human rights application with the Human Rights Tribunal, you may request that the Tribunal consider a Commission policy that deals with the subject-matter of your application.

The Commission’s policy documents provide guidance to the general public on many different human rights issues. For example, the Commission’s *Policy and Guidelines on Disability and the Duty to Accommodate* defines “disability”, provides guidelines on the duty of employers and others to accommodate people with disabilities, outlines the rights and responsibilities of those involved in the accommodation process, and provides practical examples of what will and will not constitute “undue hardship”.

This information is not legal advice. The official version of the *Code* can be obtained at Publications Ontario. It is also available on the Commission’s website at www.ohrc.on.ca. The Commission’s website also provides

¹ Please note that caselaw developments, legislative amendments, and/or changes in the Commission’s own policy positions which took place subsequent to a document’s publication date, will not be reflected in that document. For more information, please contact the Ontario Human Rights Commission.

information on the *Code*, complete versions of the Commission's published policies, and updates on the Commission's activities.

Introduction

The Ontario *Human Rights Code* is for everyone. It is a provincial law that gives everybody equal rights and opportunities without discrimination in specific areas such as jobs, housing and services. The *Code's* goal is to prevent discrimination and harassment because of race, sex, disability, and age, to name a few of the fifteen grounds. All other Ontario laws must agree with the *Code*.

The *Code* was one of the first laws of its kind in Canada. Before 1962, various laws dealt with different kinds of discrimination. The *Code* brought them together into one law and added some new protections.

In June 2008, major changes designed to renew Ontario's human rights system came into effect. As a result of these revisions to the *Code*, Ontario's human rights system now consists of three separate and independent parts:

- the Human Rights Tribunal of Ontario
- the Human Rights Legal Support Centre
- the Ontario Human Rights Commission.

The **Human Rights Tribunal of Ontario** (the "Tribunal") decides if someone's human rights have been violated. If you think your rights under the *Code* have been violated, you can file an application directly with the Tribunal. The Tribunal will decide the best way to deal with your situation. It may also decide that your rights have not been violated or that it does not have the power to deal with your case.

The **Human Rights Legal Support Centre** (the "Legal Support Centre") helps people who file applications with the Tribunal. Services may include advice, support and legal representation.

The **Ontario Human Rights Commission** (the "Commission") works on the roots of discrimination in order to effect systemic change. It develops policies and provides targeted public education, monitors human rights, does research and analysis, and conducts human rights inquiries. In matters affecting the broad public interest, it may take its own cases to the Tribunal or intervene in human rights cases before the Tribunal.

The *Code* is divided into an introductory section, or "preamble" followed by seven main parts. Part I sets out basic rights and responsibilities. Part II explains how the *Code* is interpreted and applied. Part III explains the role and structure of the Commission. Part IV explains the operation of the Tribunal and how the *Code* is enforced. Part IV.1 explains the role of the Legal Support Centre. Part V deals with general matters, such as the power to make regulations. Finally, Part VI deals with transitional matters.

Preamble

Preamble

Whereas recognition of the inherent dignity and the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world and is in accord with the Universal Declaration of Human Rights as proclaimed by the United Nations;

And Whereas it is public policy in Ontario to recognize the dignity and worth of every person and to provide for equal rights and opportunities without discrimination that is contrary to law, and having as its aim the creation of a climate of understanding and mutual respect for the dignity and worth of each person so that each person feels a part of the community and able to contribute fully to the development and well-being of the community and the Province;

And Whereas these principles have been confirmed in Ontario by a number of enactments of the Legislature and it is desirable to revise and extend the protection of human rights in Ontario;

The Preamble to the *Code* was inspired by the 1948 *Universal Declaration of Human Rights*, an international statement of rights agreed to by many of the world's nations. It is the basis for many of our human rights protections in Canada and around the world. The Preamble sets the tone and spirit for the *Code's* basic aim: to create a climate of understanding and respect for all persons, without discrimination.

The courts have said that because of the importance of the principles set out in the *Code*, it should be given broad and generous interpretation. When there is a difference or conflict between the *Code* and another Ontario law, the *Code* usually has priority.

Part I – FREEDOM FROM DISCRIMINATION

Services

1. Every person has a right to equal treatment with respect to services, goods and facilities, without discrimination because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, age, marital status, family status or disability.

You have the right to be free from discrimination when you receive goods or services, or use facilities. This right applies to:

- stores, restaurants and bars;
- hospitals and health services;
- schools, universities and colleges;
- public places, amenities and utilities such as recreation centres, public washrooms, malls and parks;
- services and programs provided by municipal and provincial governments, including social assistance and benefits, and public transit;
- services provided by insurance companies; and
- classified advertisement space in a newspaper.

This section also applies to businesses, government, community agencies and other organizations in Ontario.

Services and Age

You must be at least 18 years old to file a human rights application on the basis of “age” under this section. Parents or guardians can file applications on behalf of children and youth under 18.

The *Code* permits special discounts for older persons², “golden age” passes and other benefits for persons over 65 years old. Limits on selling tobacco and alcohol to persons under 19 are also allowed.

Services and Religion

You have the right to educational, community and other services that respect your sincerely held religious practices and beliefs.³

² For more information, please see the Commission's *Policy on Discrimination Against Older Persons Because of Age* (2007), available on the Commission's website: www.ohrc.on.ca .

³ For more information, please see the Commission's *Policy on Creed and the Accommodation of Religious Observances* (1996), available on the Commission's website: www.ohrc.on.ca .

Accommodation

2. (1) Every person has a right to equal treatment with respect to the occupancy of accommodation, without discrimination because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, age, marital status, family status, disability or the receipt of public assistance.

Housing – Introduction⁴

Use of the term “accommodation” refers to housing. You have the right to equal treatment when buying, selling, renting or being evicted from an apartment, house, condominium or commercial property. This right also covers renting or being evicted from a hotel room.

The *Code* applies to terms and conditions in contracts and leases such as the amount of rent, security deposits, the requirement of guarantors, occupants’ rules and regulations, lease termination and eviction.

Your right to housing without discrimination also includes suitable access to doors, laundry rooms, swimming pools, other common areas, repairs and other aspects of housing.

Housing and Age

You must be at least 18 years old to file a human rights application on the basis of “age”, or 16 or 17 years old when you have legally withdrawn from your parents’ authority.

Housing and Public Assistance

A landlord cannot discriminate because of a person’s income source, such as welfare, family benefits, disability pension, or other forms of public assistance.

Shared Housing

The *Code* does not apply if you share housing and a bathroom or kitchen facility with the owner or the owner’s family.

Same Sex Residences

The right to be free from discrimination on the basis of sex does not apply to residences that are male-only or female-only.

Applications to Lease and Tenant Screening

Landlords can use income information, credit checks, credit references, rental history, guarantees or other similar business practices for selecting prospective

⁴ For more information on your right to be free from discrimination in housing, please see the Commission’s background paper on human rights issues arising in housing, *Human Rights and Rental Housing in Ontario* (2007), and its consultation report, *Right at Home*, both available on the Commission’s website at www.ohrc.on.ca. The Commission is currently working on a *Policy on Discrimination in Housing* which it expects to release in 2009.

tenants, as long as they do so in a manner that is consistent with the *Code* and its regulations.

With respect to the use of income information, Regulation 290/98 under the *Code* allows landlords to request income information from a prospective tenant only if the landlord also requests credit references, rental history, and credit checks, and to consider income information only together with all the other information that the landlord obtained.

The Regulation specifically reaffirms that none of these assessment tools may be used in an unfair manner to screen out prospective tenants based on *Code* grounds. The criteria must be used in a genuine and non-discriminatory fashion.

Adult-only Buildings

It is discriminatory under the ground of family status if you are denied housing because you have children.⁵ “Adult only” buildings are not permitted in Ontario except for specific situations such as subsidized seniors’ residences or care facilities.

Harassment in Accommodation

(2) 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, age, marital status, family status, disability or the receipt of public assistance.

“Harassment” means comments or actions that are unwelcome to you or should be known to be unwelcome. You have the right to be free from humiliating or annoying conduct that is based on one or more of the grounds in the *Code*. Harassment requires a “course of conduct”, which means that a pattern of behaviour or more than one incident is usually required. For example, a landlord’s repeated comments regarding a tenant’s wheelchair could be harassment in housing.

Although sexual orientation is not specifically included as a ground in this section, the Commission has taken the position that harassment is a form of discrimination. Therefore, a person may file a human rights application alleging harassment in housing on the basis of sexual orientation.⁶

⁵ For more information, please see the Ontario Human Rights Commission’s *Policy and Guidelines on Discrimination Because of Family Status*, available at www.ohrc.on.ca.

⁶ For more detailed information, please see the Commission’s *Policy on Discrimination and Harassment Because of Sexual Orientation* (2006), available on the Commission’s website: www.ohrc.on.ca.

Poisoned Environment

You might feel that your housing is hostile or unwelcoming to you because of insulting or degrading comments or actions that have been made about others based on a ground in the *Code*. When comments or conduct of this kind have an influence on others and how they are treated, this is known as a “poisoned environment”. A poisoned environment cannot, however, be based only on your personal views. You must have facts to show that an objective person would see the comments or conduct resulting in unequal or unfair terms and conditions.

Contracts

3. Every person having legal capacity has a right to contract on equal terms without discrimination because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, age, marital status, family status or disability.

A contract is a legal agreement. It can be a written or verbal agreement.

The right to enter into a contract on equal terms covers all steps in the contract, including the offer, acceptance, price or even rejection of a contract. All types of contracts are covered by the *Code*, including contracts for the purchase of a house, condominium or other type of residential accommodation, and contracts for buying a business, such as office or retail space.

For example, an automobile manufacturer cannot refuse to enter into a contract with the owner of a car dealership because the owner is gay.

Accommodation of person under eighteen

4. (1) Every sixteen or seventeen year old person who has withdrawn from parental control has a right to equal treatment with respect to occupancy of and contracting for accommodation without discrimination because the person is less than eighteen years old.

(2) A contract for accommodation entered into by a sixteen or seventeen year old person who has withdrawn from parental control is enforceable against that person as if the person were eighteen years old.

You can claim the right to equal treatment in housing because you are under 18 years of age, if you are 16 or 17 years old, and you have legally withdrawn from your parents’ authority. If this applies to you, you also have the same legal responsibilities as though you were 18 years old.

Employment

5. (1) Every person has a right to equal treatment with respect to employment without discrimination because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, age, record of offences, marital status, family status or disability.

In Ontario, about three-quarters of all human rights claims come from the workplace.

Employment – General⁷

Employment is used in a very general way in the *Code*. Employees, independent contractors, and volunteers are covered.

Human rights applications can be filed against, not only employers, but also contractors, unions or board of directors. Employers and unions have a joint duty to ensure that workplaces are free of discrimination and harassment.

The right to “equal treatment with respect to employment” covers applying for a job, being recruited, training, transfers, promotions, terms of apprenticeship, dismissal and layoffs. It also covers rate of pay, overtime, hours of work, holidays, benefits, shift work, discipline and performance evaluations.

People with disabilities have the right to be provided with equipment, services or devices that will allow them to do their job.⁸

Employment and Age

In employment, you must be at least 18 years old to file a claim stating that you were discriminated against because of your “age”. There is no age maximum on the right to freedom from discrimination in the workplace on the basis of age. This means that older persons, who feel that they have discriminated against on the basis of their age, may file a human rights claim.⁹

Employment and Record of Offences

When you apply for a job, you cannot be asked whether you have any kind of criminal record. It is, however, legal to ask whether you have been convicted of a federal offence for which you have not received a pardon. You may be asked during an interview whether you are bondable, if that is a requirement for the job.

⁷ For more detailed information, please see the Commission’s publication, *Human Rights at Work* (2008), available on the Commission’s website: www.ohrc.on.ca.

⁸ For more information, please see the Commission’s *Policy and Guidelines on Disability and the Duty to Accommodate* (2001), available on the Commission’s website: www.ohrc.on.ca.

⁹ Please see the Commission’s *Policy on Discrimination Against Older Persons Because of Age*, (2007), available on the Commission’s website: www.ohrc.on.ca.

Employment and Unions

If you are a member of a union, you may have the right to file a grievance under your collective agreement. Check with your shop steward or representative.

Employers cannot come to an agreement with a union or an employee that some or all of the *Code* does not apply to them. Also, if a union is not supportive of an employer's efforts to meet its obligations under the *Code*, a human rights application may be filed against the union.

Employment and Religion¹⁰

You have the right to employment that respects your sincerely held beliefs and practices. You may have religious needs such as prayer breaks, religious days off, and dress requirements. If you ask your employer to meet these needs, they must be met unless your employer can show that it would be too costly or would create a health or safety risk.

Employment Preferences of Certain Organizations

Some organizations have a right to give preference in hiring employees who are of the same race, sex, ethnic origin, ancestry, place of origin, colour, creed, age, marital status or disability. This exception applies on two conditions:

- (1) the organization serves mostly that group of people; and
- (2) the preference is reasonable, genuine and related to the job duties.

Employment – Height and Weight Requirements

Minimum standards for height and weight are sometimes used to screen out certain job applicants, such as women and racialized persons. Such a standard is only allowed if it:

- (1) was adopted for a purpose or goal that is rationally connected to the function being performed,
- (2) was adopted in good faith, in the belief that it is necessary for the fulfillment of the purpose or goal, and
- (3) is necessary to accomplish its purpose or goal, in the sense that it is impossible to accommodate the claimant without undue hardship.

The ultimate issue is whether the person responsible for accommodation has shown that accommodation has been provided up to the point of undue hardship.

¹⁰ For more detailed information, please see the Commission's *Policy on Creed and the Accommodation of Religious Observances* (1996), available on the Commission's website: www.ohrc.on.ca.

Employment, Language and Accent¹¹

If you believe you have been discriminated against because of your “language” or “accent”, you can make a human rights claim based on a number of grounds, such as ancestry, ethnic origin, place of origin and race.

An employer can require that you speak English fluently if it is a genuine job requirement. An employer cannot use language or accent as a way to screen out racialized people or people of particular ethnic origins where language fluency is not really essential to the job.

For example, an employer refuses to hire a person from Spain as a school bus driver because he does not speak “fluent” English. However, being fluent in English is not essential to the job. This could be discrimination because of place of origin.

Employment, Medical Examinations and Drug or Alcohol Testing¹²

Drug and alcohol dependencies, as well as perceived dependencies, are a form of disability. A person with a disability is protected under the *Code* against discrimination in the workplace.

Testing for alcohol and drug use is a form of medical examination. Employment-related medical examinations or questions, conducted as part of the job screening process, are prohibited. Medical examinations to determine the ability to do the essential duties of a job should only be used after a conditional offer of employment has been made, preferably in writing.

Drug and alcohol testing that has no demonstrable relationship to job safety and performance has been found to be a violation of employee rights.

Employment Agencies

Employment agencies cannot discriminate. They also cannot discriminate at the request of a client. For example, an employer asks an agency to send them a young, attractive woman for a receptionist position. This would be discrimination based on age and sex.

Other issues in employment such as applications, medical examinations or inquiries, and interviews are discussed in section 23 of the *Code*.

¹¹ Further information can be obtained in the Commission’s *Policy on Discrimination and Language* (1996), available on the Commission’s website: www.ohrc.on.ca. For a more complete discussion on racism and racial discrimination, please see the Commission’s *Policy and Guidelines on Racism and Racial Discrimination*, (2005), available on the Commission’s website: www.ohrc.on.ca.

¹² For more detailed information, please see the Commission’s *Policy on Drug and Alcohol Testing* (2000) and *Human Rights at Work* (2008); both are available on the Commission’s website: www.ohrc.on.ca.

Harassment in Employment

(2) Every person who is an employee has a right to freedom from harassment in the workplace by the employer or agent of the employer or by another employee because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, age, record of offences, marital status, family status or disability.

“Harassment” means comments or actions that are unwelcome to you or should be known to be unwelcome. You have the right to be free from humiliating or annoying behaviour that is based on one or more grounds in the *Code*.

Harassment requires a “course of conduct,” which means that a pattern of behaviour or more than one incident is usually required.

Sexual orientation is not included in this section. However, the Commission has taken the position that harassment is a form of discrimination. A claim of discrimination alleging harassment can be made on the ground of sexual orientation.¹³

Poisoned Environment

You might feel that your workplace is hostile or unwelcoming to you because of insulting or degrading comments or actions that have been made about others based on a ground in the *Code*. When comments or conduct of this kind have an influence on others and how they are treated, this is known as a “poisoned environment. A poisoned environment cannot, however, be based only on your personal views. You must have facts to show that an objective person would see the comments or conduct resulting in unequal or unfair terms and conditions.

Vocational associations and Unions

6. Every person has a right to equal treatment with respect to membership in any trade union, trade or occupational association or self-governing profession without discrimination because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, age, marital status, family status or disability.

This section deals with your right to join and be treated equally in a union, professional association or other vocational association.

This applies to membership in trade unions and self-governing professions, including the terms and conditions of membership, rates of pay and work assignments. It would include employees’, employers’ and managers’ associations.

¹³ For more information, please see the Commission’s *Policy on Discrimination and Harassment Because of Sexual Orientation*, (2006), available on the Commission’s website: www.ohrc.on.ca .

Sexual harassment ¹⁴

Sexual Harassment in Housing and Workplaces

7. (1) Every person who occupies accommodation has a right to freedom from harassment because of sex by the landlord or agent of the landlord or by an occupant of the same building.

(2) Every person who is an employee has a right to freedom from harassment in the workplace because of sex by his or her employer or agent of the employer or by another employee.

“Harassment” in this section means comments or actions based on sex or gender that are unwelcome to you or should be known to be unwelcome. They may include humiliating or annoying conduct. Harassment requires a “course of conduct”, which means that a pattern of behaviour or more than one incident is usually required for a claim to be made to the Human Rights Tribunal. However, a single significant incident may be sufficiently offensive to be considered sexual harassment.

Women and men have the right to be free from sexual harassment. Sexual harassment includes unwelcome sexual contact and remarks, leering, inappropriate staring, unwelcome demands for dates, requests for sexual favours and displays of sexually offensive pictures or graffiti. For example, an employer’s repeated and vulgar sexual comments to an employee could constitute sexual harassment.

The comments or conduct do not have to be sexual in nature. Someone may tease or bother you because of gender-based ideas about how men or women “should” look, dress or behave. If you are a transgendered person, you are protected from degrading comments, insults or unfair treatment because of gender identity.¹⁵

Poisoned Environment

You might feel that your workplace is hostile or unwelcoming to you because of insulting or degrading comments or actions that have been made about others based on the ground of sex. When comments or conduct of this kind have an influence on others and how they are treated, this is known as a “poisoned environment”. A poisoned environment cannot, however, be based only on your personal views. You must have facts to show that an objective person would see the comments or conduct resulting in unequal or unfair terms and conditions.

¹⁴ For more detailed information, please see the Commission’s *Policy on Sexual Harassment and Inappropriate Gender-Related Comments and Conduct* (1996), available on the Commission’s website: www.ohrc.on.ca.

¹⁵ For more information, please see the Commission’s *Policy on Discrimination and Harassment Because of Gender Identity* (2000), available on the Commission’s website: www.ohrc.on.ca.

Sexual solicitation by a person in position to confer benefit, etc.

(3) Every person has a right to be free from,

(a) a sexual solicitation or advance made by a person in a position to confer, grant or deny a benefit or advancement to the person where the person making the solicitation or advance knows or ought reasonably to know that it is unwelcome; or

(b) a reprisal or a threat of reprisal for the rejection of a sexual solicitation or advance where the reprisal is made or threatened by a person in a position to confer, grant or deny a benefit or advancement to the person.

You have the right to be free from unwelcome advances or requests for sexual favours made by a boss, supervisor or other person in a position of power.

Example

A supervisor makes unwanted sexual advances to an employee. In this situation, it may be implied, directly or indirectly, that a promotion is at risk of being denied if the individual does not agree to accept the advance.

If the supervisor punishes the person because he or she rejected the advance, this is called a “reprisal”. This kind of “getting even” is against the *Code*.

Example

A female employee is fired or demoted because she refused a “sexual proposition” from her manager.

Harassment and Your Safety

If you are being harassed at work and have concerns about your safety, please alert someone you believe can assist you. This could be your employer, police, local community agencies and/or women’s shelters.

Punishment for Exercising Rights

8. Every person has a right to claim and enforce his or her rights under this Act, to institute and participate in proceedings under this Act and to refuse to infringe a right of another person under this Act, without reprisal or threat of reprisal for so doing.

If you believe that your rights under the *Code* have been violated, you may contact the Human Rights Legal Support Centre, consult a lawyer of your own choosing, file a human rights application with the Human Rights Tribunal, or file a grievance under your collective agreement to protect your rights. You cannot be punished or threatened with punishment for trying to exercise these rights. Any attempt or threat to punish you is called a “reprisal”.

The following examples may be a form of punishment or “reprisal” and can result in another human rights claim on that basis:

- A tenant makes a claim under the *Code* against a landlord and tells the landlord of this. The landlord then refuses to make requested repairs to the tenant’s unit and increases the rent as a form of punishment.
- An employee believes that he was not promoted in his job because he is racialized. He tells his manager that he will contact the Human Rights Tribunal to see about making a claim of discrimination. The next day, he is fired.
- An employee quits her job after making a sexual harassment claim under the *Code* against her employer and obtains new employment. She discovers that her previous employer contacted her present employer and made negative comments about her because of her human rights claim.

Discrimination Not Allowed

9. *No person shall infringe or do, directly or indirectly, anything that infringes a right under this Part.*

You have the right to be free from discrimination that is:

- in a specific social area such as jobs, housing and services, and
- because of a ground protected by the *Code*, such as race, disability or sex.

Your rights under the *Code* are not violated if you only have a social area or only have a ground. You must have both. For example, the *Code* does not apply if a stranger on the street insults you by making a racist comment because this did not happen in a specific social area.¹⁶ The *Code* will also not apply if you feel you were treated differently in your job due to a personality conflict with your manager, because there is no ground.

Discrimination can be unequal or different treatment. You do not have to show that the discrimination is deliberate or malicious. Even if comments are “only a joke”, they are not allowed if they are offensive and discriminatory based on a ground in the *Code*.

A person discriminates “directly” when the action itself is discriminatory and when the person acts on his or her own behalf. For example, a building manager who refuses to rent an apartment because he prefers to rent to someone of his own ethnic background is discriminating directly.

¹⁶ For more information on racism and racial harassment, please see the Commission’s *Policy and Guidelines on Racism and Racial Harassment* (2006), available on the Commission’s website: www.ohrc.on.ca.

“Indirect discrimination” is discrimination carried out through another person. For example, a building manager instructs her superintendent not to rent to people of a particular ethnicity because their food “smells too much”. The manager can also be named in the human rights claim because she used the superintendent indirectly to discriminate against people because of their ethnic origin.

Poisoned Environment

You might feel that your workplace or housing is hostile or unwelcoming to you because of insulting or degrading comments or actions that have been made about others based on a ground in the *Code*. When comments or conduct of this kind have an influence on others and how they are treated, this is known as a “poisoned environment”. A poisoned environment cannot, however, be based only on your personal views. You must have facts to show that an objective person would see the comments or conduct resulting in unequal or unfair terms and conditions.

Example

A restaurant owner make negative remarks about African-Canadians. A co-worker of Chinese origin believes that that work environment is “poisoned” for all racialized people because of these comments.

Part II – INTERPRETATION AND APPLICATION

Definitions re: Parts I and II

10. (1) *In Part I and in this Part, “age” means an age that is 18 years or more;*

You have the right to be free from discrimination on the basis of “age” if you are at least eighteen years old.¹⁷

In services, goods, facilities, contracts and membership in unions, you can file a claim as long as you are at least eighteen, except for services related to liquor and tobacco for which the minimum age is nineteen.

Parents or guardians can file for their minor children. For example, where a child with a disability is not receiving the support and assistance she needs to access educational services, her parents can make a claim on her behalf.

¹⁷ For more detailed information, please see the Commission’s *Policy on Discrimination Against Older Persons Because of Age* (2002), available on the Commission’s website at www.ohrc.on.ca.

“Golden age specials” or “seniors” discounts for persons over sixty-five years of age are permissible.

In housing, you must be eighteen years of age, unless you have formally withdrawn from the legal control of your parents, in which case you are protected if you are sixteen or seventeen years of age.

Refusal to sell or lease living accommodation to families with children under eighteen years of age is not allowed.

“disability” means,

(a) any degree of physical disability, infirmity, malformation or disfigurement that is caused by bodily injury, birth defect or illness and, without limiting the generality of the foregoing, includes diabetes mellitus, epilepsy, a brain injury, any degree of paralysis, amputation, lack of physical co-ordination, blindness or visual impediment, deafness or hearing impediment, muteness or speech impediment, or physical reliance on a guide dog or other animal or on a wheelchair or other remedial appliance or device,

(b) a condition of mental impairment or a developmental disability,

(c) a learning disability, or a dysfunction in one or more of the processes involved in understanding or using symbols or spoken language,

(d) a mental disorder, or

(e) an injury or disability for which benefits were claimed or received under the insurance plan established under the Workplace Safety and Insurance Act, 1997;

The *Code* does not list all the conditions that may be considered a disability.¹⁸ “Disability” should be interpreted in broad terms. It includes both present and past conditions, as well as instances in which an individual is perceived or “seen” to have a disability. For example, if an employer does not hire a job applicant because she thinks he has a mental disorder, the job applicant can make a human rights claim that he was discriminated against on the basis of disability. It does not matter that the job applicant does not, in fact, have a mental disorder since he is perceived or “seen” as having a disability by the employer.

The *Code* clearly protects people against discrimination on the basis of mental disability, developmental disabilities and learning disabilities. Students with disabilities have the right to freedom from discrimination in school.¹⁹

¹⁸ For more detailed information on discrimination on the basis of disability and the duty to accommodation the needs of people who have disabilities, please see the Commission’s *Policy and Guidelines on Disability and the Duty to Accommodation* (2001), available on the Commission’s website at www.ohrc.on.ca.

¹⁹ For more detailed information, please see the Commission’s *Guidelines on Accessible Education* (2004), available on the Commission’s website: www.ohrc.on.ca.

A disability may be the result of a physical limitation, an ailment, a perceived limitation or a combination of all these factors. The focus is on the *effects* of the distinction, preference or exclusion experienced by the person and not on proof of physical limitations or the presence of an ailment. Discrimination may also be based on perceptions, myths and stereotypes, generally and specifically, surrounding a disability. Even minor illnesses or infirmities can be “disabilities”, if a person can show that he or she was treated unfairly because of the perception of a disability.

Disabilities that are not obvious to the average observer (also known as “non-evident” disabilities) are also protected. Examples of non-evident disabilities include chronic fatigue syndrome, back pain, and, of course, certain forms of mental illness. Other disabilities may remain hidden because they only flare up occasionally (e.g. epilepsy, environmental sensitivities).

If you have claimed or received benefits under the *Workplace Safety and Insurance Act*, this would be considered a disability. You do not have to prove that your condition itself is a disability.

If you have a disability that requires accommodation at work, you must provide enough information to allow your employer to assist you. This should include information from a qualified professional confirming that you have a disability and stating the assistance you need. For example, you do not want to tell your employer about your heart condition, but you need certain parts of your job changed to accommodate this disability. When your employer asks for proof, you can ask your doctor for a letter saying that you have a medical condition (without being specific) that does not allow you to do certain things, such as climb stairs or lift heavy objects.

You are responsible for certain things, such as making your needs known, giving information about your restrictions or limitations, participating in discussions about possible accommodation solutions, and working with the accommodation provider on an ongoing basis to manage the accommodation process.

Your employer (or housing provider, *etc.*) is responsible for other things, including accepting your requests in good faith (unless there are legitimate reasons not to), getting expert opinions or advice where needed, requesting additional information (if required) to facilitate the accommodation process, taking an active role in arranging the accommodation, keeping your information confidential, and paying the cost of medical documentation (e.g. doctor’s notes) setting out accommodation needs, *etc.*

“equal” means subject to all requirements, qualifications and considerations that are not a prohibited ground of discrimination;

Although “discrimination” is not defined in the *Code*, “equal” is. “Equal” means not only treating people the same way, but may also mean treating people differently. For example, building a ramp for a person with a disability is not “equal treatment” in the strict sense because a ramp is something built especially for persons with disabilities; but it is a requirement for a person who uses a wheelchair to have equal access to a building.

“Equal” means that when you have been discriminated against because of a ground in the *Code*, you are entitled to the *Code*’s protection. You do not actually have to prove that you are racialized or gay or that you have a disability or whatever the ground is as long as you can show that the treatment was because of a ground in the *Code*.

For example, two women are dancing together in a bar and the owner interrupts them and asks them to leave. This happens after one of the women overhears the owner say, “I don’t want people to think this is a gay bar.” Even if the women are not lesbians, they are still able to make a human rights claim because they can show that they have been discriminated against because of sexual orientation, or perceived sexual orientation.

“family status” means the status of being in a parent and child relationship;

This definition not only includes both biological and adoptive parents but also someone who acts in the position of a parent to a child, such as a legal guardian.²⁰

Human rights protections for family status include protection against discrimination based on the particular identity of a family member.²¹ For example, it would be discriminatory for an employer to take negative actions towards an employee because of personal animosity towards that person’s child.

This ground is often raised in human rights claims involving housing when landlords or property managers limit a housing development or apartment to “adults only” or show a preference for married couples over single parents. This is not lawful and is discriminatory.

This may also be the ground of discrimination when a woman is refused housing or other services or facilities because she is a lone parent or because she is breastfeeding.²²

²⁰ For more information on discrimination on the basis of family status, please see the Commission’s *Policy and Guidelines on Discrimination Because of Family Status* (2007), available on the Commission’s website at www.ohrc.on.ca.

²¹ See *B. v. Ontario (Human Rights Commission)*, [2002] 3 S.C.R. 403 at para. 58.

²² For more information on discrimination on the basis of breastfeeding, please see the Commission’s *Policy on Discrimination Because of Pregnancy and Breastfeeding* (2001), available on the Commission’s website at www.ohrc.on.ca.

“group insurance” means insurance whereby the lives or well-being or the lives and well-being of a number of persons are insured severally under a single contract between an insurer and an association or an employer or other person;

You are protected from discrimination in the terms of your group insurance plan. This is usually but not always in relation to employment.

However, an insurance company can make a reasonable preference, differentiation, or exclusion because of age, sex, marital status, family status or disability.²³ For example, auto insurance companies classify young males differently than other persons based on their age and sex. This differential treatment has been found to be reasonable and genuine because statistics show that young males are involved in proportionally more (and more serious) accidents than other drivers and because there is no other practical alternative to this type of classification.

“harassment” means engaging in a course of vexatious comment or conduct that is known or ought reasonably to be known to be unwelcome;

“Harassment” means statements or actions that are not welcome. The other person may know this because you have already told them that the behaviour is not welcome. Or the conduct may be so distressing or annoying that an objective person would agree that the behaviour was unwelcome.

Harassment requires a “course of conduct”, which means that a pattern of behaviour or more than one incident is usually required. However, one incident may be enough to support a finding of harassment where the incident creates a poisoned environment.

“marital status” means the status of being married, single, widowed, divorced or separated and includes the status of living with a person in a conjugal relationship outside marriage;

Generally speaking, marital status is being married or in a common law relationship. This definition includes both same-sex and opposite sex partnerships. It also includes being single, widowed, divorced or separated. For example, you cannot be refused employment because you may or may not be married.

²³ See section 22 of the Code.

Human rights protections for marital status include protection against discrimination based on the particular identity of a person's spouse.²⁴ For example, it would be discriminatory for an employer to take negative actions towards an employee because of personal animosity towards that person's spouse.

“record of offences” means a conviction for,
(a) an offence in respect of which a pardon has been granted under the Criminal Records Act (Canada) and has not been revoked, or
(b) an offence in respect of any provincial enactment;

This ground only applies to employment situations.

You cannot be discriminated against in your job because of:

- pardoned offences under federal law, such as the *Criminal Code*; and
- convictions under provincial law, such as the *Highway Traffic Act*.

This protection does not apply to offences where there has only been a charge. It only applies to convictions.

When you apply for a job, you cannot be asked whether you have any kind of criminal record. However, you can be asked if you have been convicted of a federal offence for which you have not received a pardon. You can also be asked during an interview whether you are bondable or have a driver's licence, but only where there it is a reasonable and essential requirement for the job.

“services” does not include a levy, fee, tax or periodic payment imposed by law;

Services include:

- stores, restaurants and bars;
- hospitals and health services;
- schools, universities and colleges;
- public places, amenities and utilities such as recreation centres, public washrooms, malls and parks;
- services and programs provided by municipal and provincial governments, including social assistance and benefits, and public transit;
- services provided by insurance companies; and
- classified advertisement space in a newspaper.

“spouse” means the person to whom a person is married or with whom the person is living in a conjugal relationship outside marriage.

²⁴ See *B. v. Ontario (Human Rights Commission)*, [2002] 3 S.C.R. 403.

“Spouse” is a person married to or in a common law relationship with another person.

This definition includes both same-sex and opposite sex partnerships.

Pregnancy

(2) The right to equal treatment without discrimination because of sex includes the right to equal treatment without discrimination because a woman is or may become pregnant.

The *Code* protects a woman because she is or was pregnant, may become pregnant, has just had a baby or other pregnancy-related situations.²⁵

“Pregnancy” therefore includes the process of pregnancy from conception up to the period following childbirth and includes the post-delivery period and breastfeeding.

The term “pregnancy” takes into account all the special needs and circumstances of a pregnant woman and recognizes that the experiences of women will differ. Special needs can be related to circumstances arising from:

- miscarriage
- abortion
- complications because of pregnancy or childbirth
- conditions which result directly or indirectly from an abortion/ miscarriage
- recovery from childbirth
- breastfeeding.

You have a right to be treated fairly at work. For example, an employer cannot ask “Are you pregnant?”, “Do you have a family?” or “Do you plan to have a family?” during a job interview, unless it is a reasonable job requirement. It is contrary to the *Code* to fire you, demote you or lay you off (even with notice) because you are or may become pregnant.

If you are or may become pregnant, you have the right to keep your job and not to be passed over for benefits and opportunities, such as:

- being hired or promoted;
- training;
- assignments to important or more challenging projects; and
- resuming your job after your pregnancy or parental leave.

²⁵ For more detailed information, please see the Commission’s *Policy on Discrimination Because of Pregnancy and Breastfeeding* (2001), available on the Commission’s website at www.ohrc.on.ca.

Your employer also should change your job duties or modify rules that affect you for the sake of your health or that of your child.

The rules about pregnancy leave, parental leave and maternity benefits are set out by the Employment Standards Branch of the Ministry of Labour (Ontario)²⁶ and by Service Canada (formerly Human Resources Development Canada)²⁷.

You have the right to use services, such as restaurants, malls or other public areas, and to breastfeed your child in public without being disturbed or harassed or asked to move to a more “discreet” area. You are also protected in the areas of housing, contracts and membership in trade unions.

Past and presumed disabilities

(3) The right to equal treatment without discrimination because of disability includes the right to equal treatment without discrimination because a person has or has had a disability or is believed to have or to have had a disability.

The right to be free from discrimination because of disability includes both present and past conditions, as well as instances in which an individual is perceived or “seen” to have a disability. For example, if an employer does not hire a job applicant because she thinks he has a mental disorder, the job applicant can make a human rights claim that he was discriminated against on the basis of disability. It does not matter that the job applicant does not, in fact, have a mental disorder since he is perceived or “seen” as having a disability by the employer.²⁸

Constructive discrimination

11. (1) A right of a person under Part I is infringed where a requirement, qualification or factor exists that is not discrimination on a prohibited ground but that results in the exclusion, restriction or preference of a group of persons who are identified by a prohibited ground of discrimination and of whom the person is a member, except where,

- (a) the requirement, qualification or factor is reasonable and bona fide in the circumstances; or*
- (b) it is declared in this Act, other than in section 17, that to discriminate because of such ground is not an infringement of a right.*

(2) The Commission, the Tribunal or a court shall not find that a requirement, qualification or factor is reasonable and bona fide in the circumstances unless it

²⁶ See <http://www.labour.gov.on.ca/english/es/> .

²⁷ See <http://www.servicecanada.gc.ca/> .

²⁸ For more information, please see the Commission’s *Policy and Guidelines on Disability and the Duty to Accommodate* (2001), available on the Commission’s website: www.ohrc.on.ca .

is satisfied that the needs of the group of which the person is a member cannot be accommodated without undue hardship on the person responsible for accommodating those needs, considering the cost, outside sources of funding, if any, and health and safety requirements, if any.

(3) The Commission, the Tribunal or a court shall consider any standards prescribed by the regulations for assessing what is undue hardship.

Sometimes a rule or practice unintentionally singles out particular people and results in unequal treatment. This type of unintentional discrimination is called “constructive” or “adverse effect” discrimination.

For example, an employer has a rule that male employees must be clean-shaven. Using this rule, the employer refuses to hire a Sikh man who, according to his religion, is not allowed to shave. The rule is not “intended” to exclude Sikh men from a job, but it has this effect. Unless an employer can show that a change or exception to the rule would be too costly or create a health and safety danger, the employer should agree to change the rule.

The Supreme Court of Canada has set out a framework for examining whether the person responsible for accommodation has met the duty to accommodate.²⁹ Where it is established that a standard, factor, requirement or rule results in discrimination on its face, the person responsible for accommodation must show that the standard, factor, requirement or rule:

1. was adopted for a purpose that is rationally connected to the function being performed,
2. was adopted in good faith, and
3. is reasonably necessary to accomplish its goal or purpose, in the sense that it is impossible to accommodate the claimant without undue hardship.

As a result of this test, the rule or standard itself must be inclusive and must accommodate individual differences up to the point of undue hardship. This approach is preferable to maintaining discriminatory standards supplemented by accommodation for those who cannot meet them.

Discrimination because of association

12. A right under Part I is infringed where the discrimination is because of relationship, association or dealings with a person or persons identified by a prohibited ground of discrimination.

²⁹ Please see *British Columbia (Public Service Employee Relations Commission) v. BCGSEU*, [1999] 3 S.C.R. 3 [“Meiorin”]. Also, please see *Hydro-Québec v. Syndicat des employé-e-s de techniques professionnelles et de bureau d’Hydro-Québec, section locale 2000*, (2008) SCC 43 for the Supreme Court of Canada’s recent comments on what the third part of this test means, in a practical sense, in the context of a disability accommodation in the workplace.

You cannot be discriminated against because of your association, relationship or dealings with another person identified by a ground in the *Code*. You have this protection whether or not you are identified by a ground in the *Code*.

For examples:

- A restaurant owner refuses to serve you because you are accompanied by someone who is a member of a racialized group.
- A landlord refuses to rent an apartment to you because your co-tenant is a woman with a young child.

Announced intention to discriminate

13. (1) A right under Part I is infringed by a person who publishes or displays before the public or causes the publication or display before the public of any notice, sign, symbol, emblem, or other similar representation that indicates the intention of the person to infringe a right under Part I or that is intended by the person to incite the infringement of a right under Part I.

Opinion

(2) Subsection (1) shall not interfere with freedom of expression of opinion.

This section makes it illegal to display or publish certain kinds of offensive material. For the *Code* to apply, the offending item must be a notice, sign, symbol, emblem or other similar representation (e.g. a cartoon). It must also show intent to discriminate or harass, or an intent to provoke others to discriminate or harass.

For example, a landlord distributes a button that states “do not rent to immigrants” at a community meeting on housing issues for new immigrants. This would be a public display of a notice causing discrimination against people because of their race, ancestry, colour, ethnic origin, or place of origin.

Section 13 of the *Code* is not intended to interfere with freedom of expression. Newspaper opinions and editorials, for example, are likely to be protected under freedom of expression of opinion unless they contain notices, signs or representations that are intended to result in discriminatory treatment.

Special programs

14. (1) A right under Part I is not infringed by the implementation of a special program designed to relieve hardship or economic disadvantage or to assist disadvantaged persons or groups to achieve or attempt to achieve equal opportunity or that is likely to contribute to the elimination of the infringement of rights under Part I.

Application to Commission

(2) A person may apply to the Commission for a designation of a program as a special program for the purposes of subsection (1).

Designation by Commission

(3) Upon receipt of an application, the Commission may,

(a) designate the program as a special program if, in its opinion, the program meets the requirements of subsection (1); or

(b) designate the program as a special program on the condition that the program make such modifications as are specified in the designation in order to meet the requirements of subsection (1).

Inquiries initiated by Commission

(4) The Commission may, on its own initiative, inquire into one or more programs to determine whether the programs are special programs for the purposes of subsection (1).

End of inquiry

(5) At the conclusion of an inquiry under subsection (4), the Commission may designate as a special program any of the programs under inquiry if, in its opinion, the programs meet the requirements of subsection (1).

Expiry of designation

(6) A designation under subsection (3) or (5) expires five years after the day it is issued or at such earlier time as may be specified by the Commission.

Renewal of designation

(7) If an application for renewal of a designation of a program as a special program is made to the Commission before its expiry under subsection (6), the Commission may,

(a) renew the designation if, in its opinion, the program continues to meet the requirements of subsection (1); or

(b) renew the designation on the condition that the program make such modifications as are specified in the designation in order to meet the requirements of subsection (1).

Effect of designation, etc.

(8) In a proceeding,

(a) evidence that a program has been designated as a special program under this section is proof, in the absence of evidence to the contrary, that the program is a special program for the purposes of subsection (1); and

(b) evidence that the Commission has considered and refused to designate a program as a special program under this section is proof, in the absence of evidence to the contrary, that the program is not a special program for the purposes of subsection (1).

Crown programs

(9) Subsections (2) to (8) do not apply to a program implemented by the Crown or an agency of the Crown.

Tribunal finding

(10) For the purposes of a proceeding before the Tribunal, the Tribunal may make a finding that a program meets the requirements of a special program under subsection (1), even though the program has not been designated as a special program by the Commission under this section, subject to clause (8) (b).

This section allows organizations and employers to create temporary special measures on a voluntary basis. The purpose of a special program is to help create opportunities for people who experience discrimination, economic hardship and disadvantage.³⁰

A program must meet one of the following conditions:

- it must relieve hardship or economic disadvantage, or
- assist disadvantaged persons or groups to achieve or attempt to achieve equal opportunity, or
- contribute to the elimination of discrimination.

If a special program does not meet one of these conditions, the Commission may decide that it is not valid.

Examples of a special program include:

- Programs designed to promote the hiring and advancement of women in a welding shop.
- Programs designed to encourage the enrolment of Aboriginal students in a university.

An organization may be required to create a special program as a result of a human rights claim made against them.

Special programs have to be developed carefully and with clear reasons about why a particular group is chosen for special assistance.

A person can apply to the Commission for approval of a program it wishes to be classified as a special program. The Commission can approve the program automatically, or it can ask the person to make some specific changes before approving it.

³⁰ Please see the Commission's *Guidelines on Special Programs* (1997), available on the Commission's website: www.ohrc.on.ca.

The Commission can also, on its own initiative, review programs (excluding government special programs) to decide whether they are “special programs” within the meaning of the *Code*.

A program that has been classified as a special program by the Commission will keep this classification for 5 years (or earlier if specified by the Commission). A person may apply to the Commission to have their classification renewed.

The Commission’s classification that a program is a special program (or that it is not a special program) can be used as proof of the program’s status in a legal proceeding if there is no evidence to the contrary.

Programs that are implemented by the Crown or an agency of the Crown are excluded from these rules.

The Human Rights Tribunal can also classify a program as a special program in its own proceedings even though the Commission may not have already done so. Where the Commission has already reviewed the program and decided that it is *not* a special program, this could be considered proof that a program is not a special program, in the absence of evidence to the contrary.

Age sixty-five and over

15. A right under Part I to non-discrimination because of age is not infringed where an age of sixty-five years or over is a requirement, qualification or consideration for preferential treatment.

The *Code* allows preferential treatment of persons 65 years and over. Common examples include special “seniors’ “ discounts, reduced rates for older persons taking public transit, “golden age” passes and other benefits.

Canadian citizenship

16. (1) A right under Part I to non-discrimination because of citizenship is not infringed where Canadian citizenship is a requirement, qualification or consideration imposed or authorized by law.

(2) A right under Part I to non-discrimination because of citizenship is not infringed where Canadian citizenship or lawful admission to Canada for permanent residence is a requirement, qualification or consideration adopted for the purpose of fostering and developing participation in cultural, educational, trade union or athletic activities by Canadian citizens or persons lawfully admitted to Canada for permanent residence.

(3) A right under Part I to non-discrimination because of citizenship is not infringed where Canadian citizenship or domicile in Canada with the intention to obtain Canadian citizenship is a requirement, qualification or consideration adopted by an organization or enterprise for the holder of chief or senior executive positions.

You cannot be discriminated against because of your citizenship, except where Canadian citizenship is a legal requirement to get a job or obtain certain services. For example, since the law requires that you must be a Canadian citizen to vote in a municipal or provincial election, this requirement is not discriminatory.

There is no discrimination if Canadian citizenship or permanent residency is required to help participation in a cultural, educational, union or sporting activity. For example, certain competitive sports require that participants be either Canadian citizens or permanent residents.

The Code also allows organizations to require CEOs or other senior executives to meet residence requirements.

Disability

17. (1) A right of a person under this Act is not infringed for the reason only that the person is incapable of performing or fulfilling the essential duties or requirements attending the exercise of the right because of disability.

Accommodation

(2) No tribunal or court shall find a person incapable unless it is satisfied that the needs of the person cannot be accommodated without undue hardship on the person responsible for accommodating those needs, considering the cost, outside sources of funding, if any, and health and safety requirements, if any.

Determining if undue hardship

(3) In determining for the purposes of subsection (2) whether there would be undue hardship, a tribunal or court shall consider any standards prescribed by the regulations.

This section deals with the individual needs of a person with a disability.³¹

There is a test that is used to decide if the Code requires an employer, service provider (such as the TTC), landlord or other person to “accommodate” a person with a disability. In this section, “accommodation”, means meeting the needs of a person with a disability.

³¹ For more detailed information on the duty to accommodate persons with disabilities, please see the Commission’s *Policy and Guidelines on Disability and the Duty to Accommodate* (2001), available on the Commission’s website: www.ohrc.on.ca .

If you are a person with a disability, and you are able to do the job or meet the requirements once your needs are met, there is a duty to accommodate those needs unless they are “unduly” costly or would create real health or safety dangers. The employer, landlord, service provider, *etc.* can consider outside sources of funding to accommodate your needs.

You are responsible for certain things, such as making your needs known, giving information about your restrictions or limitations, participating in discussions about possible accommodation solutions, and working with the accommodation provider on an ongoing basis to manage the accommodation process.

Your employer (or housing provider, *etc.*) is responsible for other things, including accepting your requests in good faith (unless there are legitimate reasons not to), getting expert opinions or advice where needed, requesting additional information (if required) to facilitate the accommodation process, taking an active role in arranging the accommodation, keeping your information confidential, and paying the cost of medical documentation (*e.g.* doctor’s notes) setting out accommodation needs, *etc.*

Ability to Perform Essential Duties and Requirements

Essential duties and requirements are those that are necessary for the use of a service, access to housing or to do a job. The requirement must be reasonable and genuine. For example, if a person applies for a job as a lawyer, it may not be essential that he or she be able to operate a photocopier. However, if that person is applying for a job in a copy shop, the ability to use a photocopier is likely essential.

If you cannot perform the essential duties or requirements of a job, you should identify any needs that may allow you to do these essential duties or requirements. Your employer then must try to meet your needs, but only to the point of undue hardship, which considers costs, any outside sources of funding, and any health or safety concerns. If needs simply cannot be met or you cannot do the job even after your needs are met, your employer’s duty to accommodate ends and there is no violation of the *Code*.

If your disability prevents access to housing or use of a service, you should identify any needs that may allow such access or use. A landlord or service provider then must make efforts to meet these needs but only to the point of undue hardship, which considers cost, any outside sources of funding and any health or safety concerns. If your needs simply cannot be met or you still cannot access housing or use the service even after your needs have been met, the landlord’s or the service provider’s duty to accommodate ends, and there is no violation of the *Code*.

Special interest organizations

18. *The rights under Part I to equal treatment with respect to services and facilities, with or without accommodation, are not infringed where membership or participation in a religious, philanthropic, educational, fraternal or social institution or organization that is primarily engaged in serving the interests of persons identified by a prohibited ground of discrimination is restricted to persons who are similarly identified.*

This section is an exception to the rule that services must be offered without discrimination. It only applies to organizations such as charities, schools, social clubs or fraternities which want to limit their right of membership and involvement. They are allowed to do this on the condition that they serve only or mostly a particular group of people identified by a ground in the Code. Because this is an exception to the Code, it must be read narrowly, so that only organizations that clearly qualify as religious, charitable, etc. can use this section.

For example, a cultural club serving only persons with physical disabilities may limit membership to those persons, a shelter for battered women is permitted to serve only women.

Solemnization of marriage by religious officials

18.1 (1) *The rights under Part I to equal treatment with respect to services and facilities are not infringed where a person registered under section 20 of the Marriage Act refuses to solemnize a marriage, to allow a sacred place to be used for solemnizing a marriage or for an event related to the solemnization of a marriage, or to otherwise assist in the solemnization of a marriage, if to solemnize the marriage, allow the sacred place to be used or otherwise assist would be contrary to,*

(a) the person's religious beliefs; or

(b) the doctrines, rites, usages or customs of the religious body to which the person belongs.

(2) *Nothing in subsection (1) limits the application of section 18.*

Definition

(3) *In this section,*

"sacred place" includes a place of worship and any ancillary or accessory facilities.

This section is an exception to the rule that services and facilities must be offered without discrimination. It allows a religious official to refuse to perform a marriage ceremony, to refuse to make available a sacred place for the purposes of performing a marriage ceremony or for an event related to a marriage ceremony, or to assist in the marriage ceremony where the ceremony would be against the person's religious beliefs or the principles of their religion.

This section would apply to allow religious officials to refuse to perform same-sex marriages without violating the *Code*. Requiring a religious official to perform a marriage ceremony that goes against his or her religious beliefs about marriage may violate that person's right to freedom of religion as protected by the *Charter of Rights and Freedoms*.

The Commission has been clear in its position, however, that nothing in this section permits *public officials* who are licensed to perform marriage ceremonies to refuse to perform this service for same-sex couples. The section only applies to religious officials.³²

Separate school rights preserved

19. (1) This Act shall not be construed to adversely affect any right or privilege respecting separate schools enjoyed by separate school boards or their supporters under the Constitution Act, 1867 and the Education Act.

Duties of teachers

(2) This Act does not apply to affect the application of the Education Act with respect to the duties of teachers.

Separate schools in Ontario have special rights guaranteed by the Constitution and by the *Education Act*. Section 19 means that the *Code* cannot affect those rights, which are mainly related to the existence and funding of Roman Catholic schools.

This section does not deal with the rights or privileges of any religiously-based schools other than Roman Catholic schools.

Restrictions of facilities by sex

20. (1) The right under section 1 to equal treatment with respect to services and facilities without discrimination because of sex is not infringed where the use of the services or facilities is restricted to persons of the same sex on the ground of public decency.

This section allows separate washrooms, examination areas, change rooms and other services that are men-only or women-only. Transgendered persons should be treated in a manner that is consistent with the gender that they present and accordingly should be provided access to the appropriate facilities.³³

³² For more information on the right to be free from discrimination on the basis of sexual orientation, please see the Commission's *Policy on Discrimination and Harassment Because of Sexual Orientation* (2006), available on the Commission's website at www.ohrc.on.ca.

³³ For more information, please see the Commission's *Policy on Discrimination and Harassment Because of Gender Identity* (2000), available on the Commission's website: www.ohrc.on.ca.

Minimum drinking age

(2) The right under section 1 to equal treatment with respect to services, goods and facilities without discrimination because of age is not infringed by the provisions of the Liquor Licence Act and the regulations under it relating to providing for and enforcing a minimum drinking age of nineteen years.

This section is an exception to the rule that services, goods and facilities must be offered without discrimination on the basis of age. It allows the restriction of alcohol consumption to persons who are nineteen years and older.

Recreational clubs

(3) The right under section 1 to equal treatment with respect to services and facilities is not infringed where a recreational club restricts or qualifies access to its services or facilities or gives preferences with respect to membership dues and other fees because of age, sex, marital status or family status.

Recreational clubs such as sports clubs may give different services or charge different fees to persons based on sex, marital status, or family status. For example, special family rates in a community centre or women-only sections of a gym are permitted forms of discrimination.

Tobacco and young persons

(4) The right under section 1 to equal treatment with respect to goods without discrimination because of age is not infringed by the provisions of the Smoke-Free Ontario Act and the regulations under it relating to selling or supplying tobacco to persons who are, or who appear to be, under the age of 19 years or 25 years, as the case may be.

This section is an exception to the rule that services, goods and facilities must be offered without discrimination on the basis of age. It allows the restriction of the sale and supply of tobacco to persons who are (or appear to be) under the age of 19 years, or 25 years, depending on the context.

Residential accommodation

Shared accommodation

21. (1) The right under section 2 to equal treatment with respect to the occupancy of residential accommodation without discrimination is not infringed by discrimination where the residential accommodation is in a dwelling in which the owner or his or her family reside if the occupant or occupants of the residential accommodation are required to share a bathroom or kitchen facility with the owner or family of the owner.

This section is an exception to the rule that housing must be offered without discrimination. It allows an owner of a residence to select occupants of his or her choice where the owner or his or her family will be living in the same residence and sharing a bathroom or kitchen with the occupants.

Restrictions on accommodation, sex

(2) The right under section 2 to equal treatment with respect to the occupancy of residential accommodation without discrimination because of sex is not infringed by discrimination on that ground where the occupancy of all the residential accommodation in the building, other than the accommodation, if any, of the owner or family of the owner, is restricted to persons who are of the same sex.

This section is an exception to the rule that housing must be offered without discrimination on the basis of sex. It allows an owner of a residence to restrict access to accommodation in that residence to men only or women only (excluding the part of the residence, if any, occupied by the owner or his or her family).

Prescribing business practices

(3) The right under section 2 to equal treatment with respect to the occupancy of residential accommodation without discrimination is not infringed if a landlord uses in the manner prescribed under this Act income information, credit checks, credit references, rental history, guarantees or other similar business practices which are prescribed in the regulations made under this Act in selecting prospective tenants.

This section allows landlords to use income information, credit checks, credit references, rental history, guarantees or other similar business practices for selecting prospective tenants, as long as they do so in a manner that is consistent with the Code and its regulations.

With respect to the use of income information, Regulation 290/98 under the Code allows landlords to request income information from a prospective tenant only if the landlord also requests credit references, rental history, and credit checks, and to consider income information only together with all the other information that the landlord obtained.

The Regulation specifically reaffirms that none of these assessment tools may be used in an unfair manner to screen out prospective tenants based on Code grounds. The criteria must be used in a genuine and non-discriminatory fashion.

Restrictions for insurance contracts, etc.

22. *The right under sections 1 and 3 to equal treatment with respect to services and to contract on equal terms, without discrimination because of age, sex, marital status, family status or disability, is not infringed where a contract of automobile, life, accident or sickness or disability insurance or a contract of group insurance between an insurer and an association or person other than an employer, or a life annuity, differentiates or makes a distinction, exclusion or preference on reasonable and bona fide grounds because of age, sex, marital status, family status or disability.*

This section is an exception to the rule that services and contracts must be offered without discrimination. This section allows insurance providers to make distinctions based on age, sex, marital and family status, or disability when they offer individual accident, sickness or disability insurance or group insurance (not part of an employment situation). However, these distinctions must be made on reasonable and genuine grounds.

Employment

23. (1) *The right under section 5 to equal treatment with respect to employment is infringed where an invitation to apply for employment or an advertisement in connection with employment is published or displayed that directly or indirectly classifies or indicates qualifications by a prohibited ground of discrimination.*

Application for employment

(2) *The right under section 5 to equal treatment with respect to employment is infringed where a form of application for employment is used or a written or oral inquiry is made of an applicant that directly or indirectly classifies or indicates qualifications by a prohibited ground of discrimination.*

Questions at interview

(3) *Nothing in subsection (2) precludes the asking of questions at a personal employment interview concerning a prohibited ground of discrimination where discrimination on such ground is permitted under this Act.*

Job Advertisements

Advertisements for jobs should not refer, directly or indirectly, to prohibited grounds of discrimination. For example, an advertisement that says “We prefer hiring younger people” is not allowed.³⁴ However, there are certain exceptions for special employment, such as youth counselors.

³⁴ For more information on age discrimination, please see the Commission’s *Policy on Discrimination Against Older Persons Because of Age* (2007), available on the Commission’s website at www.ohrc.on.ca.

Application Forms

Application forms should not contain questions that ask, directly or indirectly, about race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, record of offences, age, marital status, family status or disability. Employment-related medical examinations or inquiries, that are part of the applicant screening process, are also not allowed under the *Code*.³⁵

Application forms should not include categories such as maiden or birth name; form of address (Mr., Mrs., Miss., Ms.); relationship with persons to be notified in case of emergency or insurance beneficiary or age.

Example

An employer is looking for certified welders with “Canadian experience”. This advertisement may be discriminatory because it could result in the exclusion of welders who have qualified experience outside of Canada.

Employment and Driver’s Licences

Employers should not request driver’s licences on job application forms because, first, it may screen out applicants with disabilities without first determining whether the person may be accommodated, and second, it may allow the use of the licence to tell the person’s age.³⁶

If operating a vehicle is an essential job duty (e.g. truck, bus or taxi driver or chauffeur), and if individual accommodation is not possible, the requirement for a valid driver’s licence may be stated in an advertisement and discussed at an interview. A request for a driver’s licence number or a copy of the licence can be made following a conditional offer of employment.

Employment Interviews

At the interview stage of the employment process, you may be asked job-related questions necessary to determine your qualifications or ability to do the job. Any conclusions should be made on an objective and not subjective basis. For example, an employer can ask you during an interview about your physical abilities if the job is for a furniture mover. However, if you are being interviewed for a computer systems analyst position, it would likely be inappropriate for a potential employer to ask about your physical abilities.

If your disability becomes an issue at the interview, for example, if you choose to talk about your disability, an employer may ask about your ability to do the essential duties of the job and about how your needs can be met. Questions

³⁵ For more information, please see the Commission’s publication, *Human Rights at Work* (2008), available on the Commission’s website at www.ohrc.on.ca.

³⁶ For more information, please see the Commission’s *Policy on Requiring a Driver’s Licence as a Condition of Employment* (1996), and the *Policy and Guidelines on Disability and the Duty to Accommodate* (2001), available on the Commission’s website at www.ohrc.on.ca.

should not be out of curiosity, such as “How did you end up in a wheelchair?” or “Have you been blind all your life?”³⁷

Employment agencies

(4) The right under section 5 to equal treatment with respect to employment is infringed where an employment agency discriminates against a person because of a prohibited ground of discrimination in receiving, classifying, disposing of or otherwise acting upon applications for its services or in referring an applicant or applicants to an employer or agent of an employer.

An employer cannot use an employment agency to hire people based on preferences related to race, sex, disability or the other grounds of the Code. For example, a company cannot ask an agency to send only “persons of European background” to fill a receptionist position.

Employment agencies cannot screen applicants based on discriminatory grounds and are not allowed to keep records of client “preferences” of this kind.

If a temporary employee is referred by an agency and then requires assistance to meet his or her disability-related needs, it would be the joint responsibility of the agency and the client to arrange accommodation.

Special employment

24. (1) The right under section 5 to equal treatment with respect to employment is not infringed where,

(a) a religious, philanthropic, educational, fraternal or social institution or organization that is primarily engaged in serving the interests of persons identified by their race, ancestry, place of origin, colour, ethnic origin, creed, sex, age, marital status or disability employs only, or gives preference in employment to, persons similarly identified if the qualification is a reasonable and bona fide qualification because of the nature of the employment;

(b) the discrimination in employment is for reasons of age, sex, record of offences or marital status if the age, sex, record of offences or marital status of the applicant is a reasonable and bona fide qualification because of the nature of the employment;

(c) an individual person refuses to employ another for reasons of any prohibited ground of discrimination in section 5, where the primary duty of the employment is attending to the medical or personal needs of the person or of an ill child or an aged, infirm or ill spouse or other relative of the person;

³⁷ For more information, please see the Commission’s *Policy and Guidelines on Disability and the Duty to Accommodate* (2001), available on the Commission’s website at www.ohrc.on.ca .

(d) an employer grants or withholds employment or advancement in employment to a person who is the spouse, child or parent of the employer or an employee;

(e) a judge or master is required to retire or cease to continue in office on reaching a specified age under the Courts of Justice Act;

(f) a case management master is required to retire on reaching a specified age under the Courts of Justice Act;

(g) the term of reappointment of a case management master expires on the case management master reaching a specified age under the Courts of Justice Act; or

(h) a justice of the peace is required to retire on reaching a specified age under the Justices of the Peace Act.

Reasonable accommodation

(2) No tribunal or court shall find that a qualification under clause (1) (b) is reasonable and bona fide unless it is satisfied that the circumstances of the person cannot be accommodated without undue hardship on the person responsible for accommodating those circumstances considering the cost, outside sources of funding, if any, and health and safety requirements, if any.

Determining if undue hardship

(3) In determining for the purposes of subsection (2) whether there would be undue hardship, a tribunal or court shall consider any standards prescribed by the regulations.

(4) Clauses 24 (1) (e), (f), (g) and (h) shall not be interpreted to suggest that a judge, master, case management master or justice of the peace is an employee for the purposes of this Act or any other Act or law.

Organizations are generally not allowed to hire in a discriminatory way. However, there are some exceptions. The most common ones are:

1. A religious, philanthropic, educational, fraternal or social institution or organization is allowed to employ only people from certain groups if the organization serves mostly the interests of that group of people (identified by race, ancestry, place of origin, colour, ethnic origin, creed, sex, age, marital status or disability). This exception is only permitted if membership in that group is reasonable, genuine and linked to the job duties.
2. It is legal to make a hiring decision based on age, sex, record of offences or marital status only if an employer can show that the requirement is reasonable, genuine and based on the nature of the job.
3. The Code allows you to hire any medical or personal attendant for yourself or an ill member of your family. This section does not, however, allow agencies or health care services to send nurses or personal attendants to

clients based on discriminatory preferences. You must be the “employer” in order to hire who you want to care for you or an ill family member.

Employee benefit and pension plans

25. (1) The right under section 5 to equal treatment with respect to employment is infringed where employment is denied or made conditional because a term or condition of employment requires enrolment in an employee benefit, pension or superannuation plan or fund or a contract of group insurance between an insurer and an employer, that makes a distinction, preference or exclusion on a prohibited ground of discrimination.

(2) The right under section 5 to equal treatment with respect to employment without discrimination because of sex, marital status or family status is not infringed by an employee superannuation or pension plan or fund or a contract of group insurance between an insurer and an employer that complies with the Employment Standards Act, 2000 and the regulations thereunder.

(2.1) The right under section 5 to equal treatment with respect to employment without discrimination because of age is not infringed by an employee benefit, pension, superannuation or group insurance plan or fund that complies with the Employment Standards Act, 2000 and the regulations thereunder.

(2.2) Subsection (2.1) applies whether or not a plan or fund is the subject of a contract of insurance between an insurer and an employer.

(2.3) For greater certainty, subsections (2) and (2.1) apply whether or not “age”, “sex” or “marital status” in the Employment Standards Act, 2000 or the regulations under it have the same meaning as those terms have in this Act.

(3) The right under section 5 to equal treatment with respect to employment without discrimination because of disability is not infringed,

(a) where a reasonable and bona fide distinction, exclusion or preference is made in an employee disability or life insurance plan or benefit because of a pre-existing disability that substantially increases the risk;

(b) where a reasonable and bona fide distinction, exclusion or preference is made on the ground of a pre-existing disability in respect of an employee-pay-all or participant-pay-all benefit in an employee benefit, pension or superannuation plan or fund or a contract of group insurance between an insurer and an employer or in respect of a plan, fund or policy that is offered by an employer to employees if they are fewer than twenty-five in number.

Compensation

(4) An employer shall pay to an employee who is excluded because of a disability from an employee benefit, pension or superannuation plan or fund or a contract of group insurance between an insurer and the employer compensation

equivalent to the contribution that the employer would make thereto on behalf of an employee who does not have a disability.

Employment may not be denied or made conditional upon enrolment in a benefit or similar plan, which discriminates based on a *Code* ground. The general rule of non-discrimination in employment applies to pension plans, benefit plans and terms of group insurance except where reasonable and genuine distinctions or exclusions are based on age, marital status, family status or sex.

An employee with a disability can be treated differently in a life insurance or benefit plan where a pre-existing disability increases the risk to a high level. An employer must compensate an employee with a disability if the employee is excluded from an employee benefit, pension or superannuation plan or fund, or a contract of group insurance between an insurer and the employer. The payment should be the same as the amount contributed to the insurer for an employee **without** a disability.

As a rule, the right to receive benefits under disability plans ends when you are on pregnancy or parental leave. But if your employer offers disability benefits to employees who are off on other kinds of leaves, such as educational leaves or sabbaticals, they are required by law to pay the benefits to people on pregnancy leave and parental leave. You should check with your employer.

Discrimination in employment under government contracts

26. (1) It shall be deemed to be a condition of every contract entered into by or on behalf of the Crown or any agency thereof and of every subcontract entered into in the performance thereof that no right under section 5 will be infringed in the course of performing the contract.

Idem: government grants and loans

(2) It shall be deemed to be a condition of every grant, contribution, loan or guarantee made by or on behalf of the Crown or any agency thereof that no right under section 5 will be infringed in the course of carrying out the purposes for which the grant, contribution, loan or guarantee was made.

(3) Where an infringement of a right under section 5 is found by the Tribunal upon a complaint and constitutes a breach of a condition under this section, the breach of condition is sufficient grounds for cancellation of the contract, grant, contribution, loan or guarantee and refusal to enter into any further contract with or make any further grant, contribution, loan or guarantee to the same person.

The right to freedom from discrimination in employment applies to the performance of government contracts or subcontracts. This right applies to the performance of government agency contracts also.

The right to be free from discrimination in employment applies to the carrying out of government grants, contributions, loans or guarantees. This right applies to government agencies also.

If a Tribunal finds that discrimination in employment did take place in the performance of a government contract, grant, contribution, loan or guarantee, the government contract, grant, contribution, loan or guarantee will be cancelled. No further contract with or grant, contribution, loan or guarantee will be made to the same person.

To file a human rights claim, please contact the Human Rights Tribunal of Ontario at:

Toll Free: 1-866-598-0322

TTY: 416-326-2027 or Toll Free: 1-866-607-1240

Website: <www.hrto.ca>

To discuss your rights or if you require legal assistance please contact the Human Rights Legal Support Centre at:

Toll Free: 1-866-625-5179

TTY: 416-314-6651 or Toll Free: 1-866-612-8627

Website: <www.hrlsc.on.ca>