Guideline on Housing Discrimination

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NEW BRUNSWICK
HUMAN RIGHTS COMMISSION
COMMISSION DES DROITS
DE LA PERSONNE DU NOUVEAU-BRUNSWICK

Contents

Editor's Note

The New Brunswick Human Rights Commission (Commission) develops guidelines as part of its mandate to protect and promote human rights in the province. These guidelines are intended to raise awareness of the public and stakeholders about their rights and responsibilities under the New Brunswick *Human Rights Act* (*Act*).

The *Guideline on Housing Discrimination* offers the Commission's interpretation of human rights obligations in situations of discrimination in rental housing. It is based on relevant decisions of boards of inquiry, tribunals, and courts;[1] it should be read in conjunction with those decisions, and with the applicable provisions of the *Act.* In case of any conflict between the contents of this guideline and the *Act*, the *Act* would prevail. To seek clarification on any sections of the guideline, please contact the Commission.

For information on rights and duties under other grounds of discrimination, please review the Commission's guidelines on those subjects or contact the Commission directly.

Please be advised that this guideline is not equivalent to professional legal advice.

[1] The Commission thanks human rights commissions from jurisdictions across Canada for the opportunity to study and draw on their policies and documents on housing discrimination.

1.0 Introduction

The *Act* prohibits owners and sellers of property, including their employees and agents, from discriminating against persons who identify with a ground of discrimination prohibited under the *Act*.[1] Discrimination in housing includes denying individuals the right to rent or own property, evicting them from a house or property, and harassing or otherwise disadvantaging them in the enjoyment of property, because they belong to a group protected by the *Act*.[2]

> Owners and sellers of property, including their employees and agents, must not discriminate against persons protected under the *Act* in any matter involving the lease, sale, and enjoyment of property.

Owners and sellers of property are also prohibited from including terms or conditions in a lease or sale agreement that restrict or inconvenience persons protected under the *Act* in their use or enjoyment of property.[3] Terms or conditions of tenancy include, among other factors, rental rates, building maintenance, harassment or demeaning conduct, and access to facilities.

For example, it is a violation of the *Act* to charge higher rent from a tenant because they have a disability or identify with another ground of discrimination; similarly, it is discriminatory if landlords neglect the maintenance of rental units occupied by racialized tenants, for example, or if they restrict a tenant's access to facilities (laundry, parking, recreation, etc.) because the tenant belongs to a group protected under the *Act* (age or social condition, for example).

Furthermore, landlords or property owners must not publish or display "notices, signs, symbols, emblems or other representations", either on their property or in the media, including social media, that are discriminatory to an individual or group based on a protected characteristic.[4] For example, a housing owner who advertises a preference for tenants without children would violate the *Act*, because the advertisement would infringe the rights of parents with children under the ground of family status.

To justify differential treatment of an individual or group protected under the *Act*, property owners must prove that the discriminatory conduct is warranted as a *bona fide* requirement or qualification (BFR). *See sections 1.7 and 5.0 for more details.*

Housing is recognized as a fundamental human right in the following international instruments and treaties, which the Canadian government has ratified: *Universal Declaration of Human Rights*; *International Covenant on Economic, Social and Cultural Rights*; *International Convention on the Elimination of All Forms of Racial Discrimination*; *Convention on the Elimination of All Forms of Discrimination Against Women;* and the *Convention on the Rights of the Child*.

About This Guideline

While the *Act* protects discrimination in all aspects of sale of property, along with rental housing, most housing-related human rights complaints involve discrimination in the rental housing market.[5] For this reason, this guideline is focused on discrimination in rental housing, including rights and responsibilities of parties in co-operatives and government-subsidized social housing.

1.1 Housing is a Fundamental Human Right

Housing is a universal human right recognized at international law.[6] Access to adequate and affordable housing is critical for the well-being, social inclusion, and economic stability of individuals, families, and communities.[7] However, due to low minimum-wage rates and inadequate social assistance payments, many low-income individuals and families face disadvantage in securing suitable housing. Moreover, because options for affordable housing like co-ops and government-subsidized housing schemes are limited, low-income groups are at risk of exposure to unsatisfactory housing arrangements and even homelessness.

The homeless include persons living on the streets, people who use shelters, the hidden homeless (e.g. those couch surfing or living in cars), and people at risk of homelessness. Homeless persons face high risk of exposure to disease, harassment, malnutrition, sleep deprivation, and inclement weather.

Discrimination in housing, therefore, is particularly onerous for society's most vulnerable members. Persons who become homeless (due to discriminatory or forced evictions, for example) find it extremely difficult to reintegrate into mainstream society; they become exposed to severe forms of discrimination, mental and physical health risks, harassment and stereotyping, and rupture of social and family networks.[8]

It is, therefore, imperative that housing providers, both in commercial and social housing, eliminate discriminatory practices and adopt policies that ensure equal treatment in housing to all sections of society.[9]

Government of New Brunswick's Department of Social Development administers programs to facilitate housing opportunities for low-income groups in the province. Details about the department's housing initiatives can be viewed here: https://www2.gnb.ca/content/gnb/en/departments/social_development/housing.html

To comply with its international obligations on housing, the federal government announced a National Housing Strategy (November 2017), which aims to promote housing equality by encouraging community housing programs, the co-op housing movement, sustainable social housing, affordable private (for-profit) housing market, and research on housing.[10]

The Government of New Brunswick has signed a $299.2 million agreement with Ottawa under the policy to build affordable housing in the province. The goal in the first three years of the agreement (2019-2022) is to build 151 new rental units; another 1,111 units would be built in the next seven years (2022-2029).

> The ideology of NIMBYism or "Not in My Backyard" obstructs efforts to improve affordable housing opportunities for low-income groups. It is rooted in stereotypes about poverty and homelessness and in the belief that subsidized housing projects impact the aesthetics, character, and property value of specific neighborhoods. A classist ideology, NIMBYism restricts affordable housing development and encourages ghettoization of the homeless and poor.

However, housing rights groups argue that at least 24,000 new affordable housing units would be needed by 2027, especially to meet the housing needs of new immigrants anticipated to arrive in the province based on provincial immigration targets. Immigrant bodies like the New Brunswick Multicultural Council have highlighted the vulnerability of new immigrants in the provincial rental housing market.

For more details, see *New Brunswick Housing Strategy, 2019-2029* https://www2.gnb.ca/content/dam/gnb/Departments/sd-ds/pdf/Housing/HousingStrategy2019-2029.pdf

1.2 Two Protections in Rental Property

Section 5(1) of the *Act* (the right to occupy or rent property) offers two broad protections to tenants and potential tenants: protection against denial of accommodation and protection against unfair terms and conditions of occupancy.

- **Denial of accommodation:** Human rights case law on housing shows that housing providers, fearing public criticism or formal complaints, avoid direct or open discrimination against vulnerable groups; instead, they conceal acts of exclusion or discrimination in the subtle guise of false justifications or misrepresentations. A common excuse used by landlords to deny prospective tenants at the application stage is to state that a property has become unavailable or it has been rented to someone else. Such denial of accommodation because of an applicant's protected characteristic is a violation of the *Act*.

    - For example, a Black woman and her mother booked an appointment to view an apartment available for rent. The landlord showed them the apartment but informed them later that it had been rented to someone else, which was a lie concocted to deny the unit to the family because of their race.[11]

- **Terms or conditions of occupancy:** Under the housing protections of the *Act*, discriminatory treatment is also prohibited in the terms and conditions of occupancy. Human rights jurisprudence has established that terms or conditions of occupancy cover a range of areas, including, among others:

    - The rate of rent;
    - The length of the lease;
    - The emotional and psychological atmosphere of a housing premises (resulting from a landlord's behavior, for example);
    - The tenant's right to quiet enjoyment of the residential premises;[12]
    - Access to services and facilities in the rental building; and
    - Repairs and maintenance of the housing unit.

    Among other rights, tenants have a right to the quiet enjoyment of their premises. If that right is violated, it would constitute discrimination with respect to terms and conditions of tenancy.

- For example, if a landlord unjustifiably raises the rent of a senior tenant (who is protected under the ground of age) without raising rents of other comparable units in the building, this action would be *prima facie* discriminatory for infringing the terms and conditions of occupancy.

1.3 Test of Discrimination in Rental Housing

To establish a *prima facie* case[13] of discrimination in rental housing (e.g. discriminatory denial of tenancy), complainants must show the following:

1. They belong to a protected group under the *Act*, e.g. race, disability, family status, etc.;
2. They applied for and met the tenancy qualifications stated in the rental advertisement;
3. They were denied the opportunity to rent the property and the protected status was at least part of the reason for the denial;[14] and
4. After the denial, the property owner rented the same property to someone who has similar qualifications but does not identify with the protected characteristic.[15]

> According to the Supreme Court of Canada: "A *prima facie* case is one which covers the allegations made and which, if believed, is complete and sufficient to justify a verdict in the complainant's favour, in the absence of an answer from the respondent".

Because courts interpret the protections granted in human rights laws through a broad lens,[16] later court decisions have accepted more lenient tests, e.g. doing away with the fourth condition listed above.[17]

1.3.1 Burden of Proof in Housing Discrimination

In complaints of housing discrimination, the burden of proof is the same as in other areas of discrimination:

- The complainant bears the burden to establish a *prima facie* case of discrimination as outlined in the above section.
- The burden then shifts to the respondent, to either prove that the alleged adverse treatment did not happen or that it was due to a BFR or a legitimate, non-discriminatory reason.[18] *For details on BFR, see sections 1.7 and 5.0.*

1.3.2 Intention to Discriminate

Intention is not material in complaints of discrimination, i.e. it is not a defense that a respondent did not intend to discriminate against the complainant. The focus of a human rights

> It is not necessary to prove that discrimination was intentional – a rule or practice, neutral on its face and honestly made, can have discriminatory effects.

inquiry is on the effects of discriminatory conduct on a complainant.[19]

- Landlords, therefore, cannot plead that they had no intention to discriminate against a tenant, if the fact of discriminatory treatment is established.
- Similarly, the fact of discrimination is not effaced if a landlord, while discriminating based on a protected ground, also had other *bona fide* reasons for his actions.[20]
- It is not necessary to prove discrimination by direct evidence.
    - Courts have set down that discrimination is often confirmed by circumstantial evidence and inference rather than by direct evidence, because oftentimes people do not discriminate openly and conceal their discriminatory practices in different ways.[21]

- It is not a defense in a complaint of discrimination that a respondent identifies with a protected ground and would therefore not discriminate against similar groups.
    - For example, a racialized person cannot plead that they did not discriminate based on race because they themselves identify with the same ground.[22]

> "The prohibited ground or grounds of discrimination need not be the sole or the major factor leading to the discriminatory conduct [….] There is no need to establish an intention or motivation to discriminate; the focus of the enquiry is on the effect of the respondent's actions on the complainant […] There need be no direct evidence of discrimination; discrimination will more often be proven by circumstantial evidence and inference." *Radek v Henderson Development*, BCHT 2005.

- It is not necessary to show that a prohibited ground (or grounds) was the only or main factor that incited the discriminatory conduct; it is sufficient that it was one of the factors in the discrimination.[23]

1.3.3 Vicarious Liability in Housing Discrimination

Property owners are liable for acts of discrimination committed by their agents or employees in the course of their employment or work duties.

- A human rights tribunal has stated that the common law doctrine of *Respondeat Superior* (Let the master answer) applies in situations of vicarious liability for housing discrimination.[24] According to the doctrine, just as employers are liable for the discriminatory actions of their employees done within the scope of employment duties, housing owners are likewise liable for the discriminatory conduct of their managers or employees.

- Landlords and property owners cannot evade liability by pleading that they were unaware of the discriminatory practices of their employees, agents, building managers or supervisors.
    - For example, the manager of an apartment building refused to rent a unit to a woman because she had a young child. Even though the owners of the apartment complex denied having a rental policy refusing tenants with children, the company was held liable for the discriminatory conduct of the manager.[25]

1.3.4 Types of Discriminatory Practices in Housing

Discriminatory treatment in housing covers a wide arc and may be segmented under the following stages at which it can occur:

Landlords must uphold the dignity, equality, respect, and inclusion of all persons during housing-related transactions and in the housing environment.

- Discriminatory language in the initial advertisements or signs announcing the availability of a rental unit.
- Adverse treatment at the house-viewing stage or during pre- and post-viewing interactions and negotiations.
- Differential treatment during tenancy, including the following:
    - Discriminatory terms and conditions of tenancy, e.g. higher rates of rent, illegal security deposits, assigning of substandard units;
    - Different treatment in the provision of services and facilities, e.g. access to laundry, parking, recreational or common area facilities;
    - Neglect in maintenance and repairs compared to other tenants or units;
    - Negative comments or harassment, including sexual harassment, leading to a poisoned housing environment; and
    - Illegal evictions, reprisals, and other discriminatory practices.

1.4 Best Practices for Landlords

The basic obligations of landlords are enumerated in Section 3 of the *Residential Tenancies Act* (*RTA*).[26] Additionally, for the purposes of human rights protections, landlords and housing providers have the following obligations.

Landlords should uphold the values of dignity, equality, and respect of all persons during housing-related transactions and in the housing environment generally.

Landlords have a legal duty to accommodate the reasonable accommodation requests of tenants who identify with a protected ground of discrimination recognized in the *Act*.

To pre-empt incidents of discrimination, housing providers should adopt the following best practices, commensurate with basic human rights principles of equality, dignity, respect, and inclusion:

- Landlords and housing providers should devise anti-discrimination and anti-harassment policies; these policies should be made available to all concerned parties or displayed in prominent places on housing premises:

    - Housing policies should have clear procedures for responding to accommodation requests, and for resolving disputes quickly and effectively.
    - Policies should have mechanisms to provide immediate solutions, interim solutions or next-best solutions, while ensuring the collaboration, self-respect, and confidentiality of those involved.
    - Policies should also include procedures for accommodating the reasonable requests of tenants, unless such requests would lead to undue hardship for the housing provider.
    - Policies should ensure that rules such as wait-lists, eligibility criteria, guest policies or persons-per-bedroom ratios, among others, do not discriminate against vulnerable groups.
    - Housing staff and tenants should be educated about their human rights obligations and requirements; policies for preventing and redressing potential discrimination should be clearly communicated to them.
    - By implementing these policies in an inclusive way, housing providers will circumvent potential discriminatory treatment in their housing environment and lessen their liability in any human rights complaints that may arise.

> If tenants breach their responsibilities, a landlord's duty to accommodate may reach the point of undue hardship, especially if the landlord has already made proactive attempts at accommodation.

- Landlords must take all complaints of mistreatment, discrimination or lack of accommodation very seriously and take swift action to address them:

    - If required, landlords should allocate specific resources to address a complained grievance.
    - They should explore viable alternative approaches to resolve a problem identified by a tenant.

- Landlords should communicate effectively with the complainant and apprise them of the actions taken to address their complaint.
- Resolving individual complaints is not enough; landlords must investigate and ensure that the housing arrangement is not tainted with underlying problems that lead to discriminatory treatment of specific groups:

- Housing providers have a duty to accommodate the needs of tenants with disabilities to the point of undue hardship:

  - Inaccessible buildings and non-inclusive housing designs are inherently discriminatory against persons with disability; housing providers should continually review accessibility issues on their premises and have plans in place for removing any existing or potential barriers to accessibility.
  - Some examples of accessibility include making the following or related physical modifications in rental buildings:
    - Ramps and elevators for wheelchair users and those with other mobility impairments; visual fire alarms and doorbells for the hearing impaired; support fixtures in toilets and showers; lower kitchen counters for ease of access by wheelchair users; different door handles to facilitate persons with impairments like arthritis, etc.

  - Accommodating disability-related requests should also include waiving or changing existing building-occupancy rules that impede accessibility:
    - For example, a landlord may modify a No-Pets policy to allow a visually-impaired tenant to bring a guide dog or other assistance animal in the building.[27] *For more details on the duty to accommodate, see section 5.0.*

Inaccessible buildings and non-inclusive housing designs are inherently discriminatory against persons with disability; housing providers should continually review accessibility issues on their premises and have plans in place for removing any existing or potential accessibility barriers.

1.5 Responsibilities of Tenants

The basic responsibilities of tenants are enumerated in Section 4 of the *RTA*.[28] If tenants breach their responsibilities, especially if their actions pose health and safety risks to other tenants, to the environment or the public, the landlord's duty to accommodate reaches the point of undue hardship, especially if the landlord has already made proactive attempts at accommodation.

The basic responsibilities of tenants include the following:

- Paying the rent on time and abiding by rental rules and regulations;
- Not causing damage to the unit or property and keeping the rental unit in reasonably clean condition;
- Respecting the health and safety (e.g. fire) regulations of the building and ensuring that no health and safety risks are posed to other tenants or the environment;
- Refraining from noisy or disruptive behaviour and respecting the dignity and rights of other tenants, building staff, etc.;
- Communicating any needs for specific accommodation and cooperating fully in the accommodation process.

1.6 Justifications of Differential Treatment in Housing

In some situations, housing providers will be justified if they cannot fulfill certain accommodation requests of tenants; these justifications include the following:

All BFR claims must be backed by concrete evidence, including, if necessary, statistics and other relevant research.

A BFR Claim: If the action or decision of a landlord or housing provider is made for a legitimate or *bona fide* requirement (BFR), it would not be discriminatory if it has differential consequences for a tenant.

- What constitutes a BFR is context-bound and is assessed on a case-by-case basis.

- Typically, a refusal to accommodate would be justified as a BFR if the cost of accommodation would be too high, or if the accommodation would pose serious health and safety risks to tenants, housing staff or members of the public.

- Substantial evidence should be presented to support or justify a BFR; for example, mere subjective assessments of expenses or health and safety risks are not enough to prove that a measure qualifies as a BFR. *For more on BFR, see section 5.0.*

Special Programs: It is not discriminatory if certain persons or groups are excluded from availing rental housing, if the exclusion is the result of a special program as stipulated in Section 14 of the *Act*.

- Special programs are specific measures designed to give preference in housing, employment or services to one or more protected groups.

- For example, a housing provider may design a special program that reserves one housing unit in an apartment complex for single mothers, based on research that single mothers face difficulty in the rental market where the building is located.

> All exceptions to human rights protections are narrowly construed by courts, i.e. while availing these exceptions, parties must still abide by all other human rights obligations.

    - Although this special program would exclude other groups from renting this unit, it would not be *prima facie* discriminatory against these groups.

- Non-discriminatory special programs in housing may likewise be designed for persons with disabilities, seniors, university students with families, and so forth.

- It is imperative that special programs comply with all human rights principles and not discriminate internally against the groups they are designed to protect;

    - For example, if the above-mentioned special program for single mothers begins to give preference to white women over racialized women, it would violate the *Act*.

Exceptions in Sublets: If property owners rent a portion of their home – either a room or a self-contained unit – they must still abide by all human rights obligations. However, in such situations of sublet, depending on each specific case, a slight exception may be permitted.

If an owner or tenant sublets a room or portion in a unit with shared bathroom or kitchen, the owner or tenant would have the right to prefer certain types of occupants because of the intimate nature of the shared living space.[29]

- For example, a single woman (a widow or single mother) who lives alone and rents a room in her home, with a shared bathroom or kitchen, would not discriminate against other groups if she prefers to rent only to women tenants.

- Such a preference, however, should not be internally discriminatory based on any of the protected grounds; for example, it would still be *prima facie* discriminatory if the landlady denies a racialized woman applicant because of her race.
- In such shared rental accommodation, parties must still adhere to all human rights obligations, i.e. they will be liable for all forms of discriminatory treatment during tenancy:
    - A couple lived on the ground floor of their house and rented the second and third floors to a Black man, with whom they shared kitchen and bathroom facilities. The wife intruded the tenant's space on a daily basis and used abusive language, laced with racial invectives and name calling. A human rights tribunal held the couple liable for racial discrimination in provision of housing.[30]

Legitimate Rental Inquiries: Equal treatment in rental occupancy is not infringed if a landlord requires income information, rental history, credit checks, or other guarantees from prospective tenants.

- However, such inquiries should not violate the dignity and privacy of tenants or be used to prefer certain tenants and exclude protected groups, when all groups meet the required preconditions. *For more details, see section 3.3.*

1.7 Covid-19 and Housing Rights: A Note

Because of the Covid-19 pandemic, the right to housing and the need for adequate shelter have become increasingly crucial. Homeless persons are at higher risk of exposure to the virus; moreover, because of the pandemic, they also face increased risk of harassment, stereotyping, and criminalization (through over-zealous policing or ticketing, for example), merely because homelessness forces them into community spaces, in full public view.

A person infected with or perceived to be infected with Covid-19 is protected from discrimination under the *Act*'s ground of physical disability – such persons should not be treated differently because of their infection or perceived infection.

Additionally, economic hardships resulting from pandemic-related job losses or curtailment of work can push individuals to mortgage default, rental arrears, and threat of evictions. The province placed a moratorium on evictions from rent default, but that moratorium ended on May 31, 2020, so the risk of evictions due to rental default is high among vulnerable population groups.

Recent media reports[31] have highlighted incidents of excessive increase of rental rates in the province, which are putting low-income renters at further risk. The *RTA* does not protect tenants against unfair rent hikes; currently, under the *RTA*, a tenant's only remedy is to apply to the Residential Tenancies Tribunal to request review of a rent increase. For details see: https://www2.snb.ca/content/snb/en/sites/rent.html

The government is considering revisions in the *RTA* to limit rent increases to once a year and protect tenants from unfair rent hikes.

However, in May 2021, the provincial government released a report on the rental landscape in New Brunswick, which includes, among others, recommendations to "modernize" the *RTA* by "limiting rent increases to once a year [and] better protections against unreasonable rent increases" (page 38). The full report is available here: https://www2.gnb.ca/content/dam/gnb/Departments/eco-bce/Promo/rentals-loyers/review-of-the-rental-landscape-nb.pdf

Covid-19 has upended economic predictability, including the stability of the rental housing market. To protect vulnerable renters and enable the promise of affordable housing for all New Brunswickers, it may be prudent to consider other measures in the long-term, like rental subsidies or basic rental income for qualified persons.

Under these exceptional circumstances, it is imperative on landlords and housing providers to continue to fulfill their human rights obligations and any additional responsibilities that may result from the uncertainties triggered by the pandemic. The following general principles may be noted:

- Landlords should ensure that the housing environment is free from acts of hate or harassment, including stigmatization of certain racialized groups (Asian Canadians, for instance) due to perceptions or racial stereotypes that associate COVID-19 infection risks with those groups.
- Landlords and housing providers should not evict and deny housing or housing-related services to individuals because of their exposure or perceived exposure to COVID-19, as long as these individuals follow all precautions and protocols established by the provincial health authorities.

- Persons infected with or perceived to be infected with Covid-19 are protected from discrimination under the *Act*'s ground of physical disability – they should not be treated differently because of their infection or perceived infection.

Under these exceptional circumstances, landlords and housing providers must continue to fulfill their human rights obligations, including any additional responsibilities that may result from the uncertainties triggered by the pandemic.

- Landlords should continue to fulfill their responsibilities related to repair and maintenance of properties, while following protocols of social distancing and other public health guidelines.
- For more details on tenant and landlord rights and responsibilities during the pandemic, contact the Commission or consult the Covid-19 page on the Commission's website:

  https://www2.gnb.ca/content/gnb/en/departments/nbhrc/COVID19-NBHRA.html

2.0 Groups Most Vulnerable to Housing Discrimination

Persons who identify with any of the 16 ground of discrimination enumerated in the *Act* are protected from discrimination in housing; the *Act* also protects against acts of sexual harassment and reprisal in housing-related interactions.

As evidenced in human rights case law, certain protected groups are more likely to face housing discrimination. The Canadian government's National Housing Strategy (section 1.1 above) also confirms that groups identified in this section are more vulnerable to discrimination in the housing market.

2.1 Two Contexts of Housing Discrimination

Two contexts of housing discrimination may be noted at the outset:

All housing discrimination stems from stereotyping and vilification of "other" persons or groups. Moreover, people who face discrimination in housing are more likely to identify with an intersection of protected grounds.

- **Stereotyping:** All discrimination, including housing discrimination, is rooted in prejudice and stereotyping of "other" persons or groups.
    - Many discriminatory acts in housing are committed because landlords hold (consciously or unconsciously) stereotypical views about disadvantaged groups and perceive their identities as "different" from what they see as "normal".
    - Whenever housing providers make decisions based on these stereotypes, their choices will likely result in differential treatment of groups protected under the *Act*.

- **Intersectionality:** Intersectionality is a significant factor in housing discrimination.
    - Intersectionality means that a person is vulnerable due to more than one ground of discrimination, e.g. a Black woman can potentially face discrimination on the grounds of both race and sex.
    - If individuals identify with two or more grounds of discrimination, courts use an intersectional lens to review human rights violations against them.[32]

- Generally, if intersectionality is established as a factor in discrimination, the discriminatory treatment is considered more severe.

2.2 Groups Most Vulnerable to Housing Discrimination

The following groups are more likely to face housing discrimination; in majority instances, these groups identify with an intersection of grounds or with more than one ground.

The groups are not listed in a hierarchy based on the severity of housing discrimination they face; statistically, however, some groups are featured more than others in housing-related human rights complaints.

> Canada's National Housing Strategy recognizes that the following population groups are most vulnerable to losing housing-related protections: women and children fleeing from domestic violence; seniors; Indigenous peoples; homeless persons; people with disability; persons with mental health and addiction issues; veterans; young adults; racialized groups; and newcomers to Canada.

Persons with Disabilities

- Persons with disabilities may also identify with grounds like social condition, age, sex, ancestry, and gender identity or expression.
- Persons with disabilities are subject to stigma and stereotyping, which stem from ignorance and lead to differential treatment.
    - For example, people with disabilities are regarded as undesirable tenants because of the perception that they will require special treatment and accessibility-related accommodations.[33]
        - People with mental disability are viewed as unpredictable and disruptive and difficult to communicate with.
- Housing providers must ensure that buildings and facilities are designed for accessibility and inclusion; they have a duty to accommodate tenants with disability to the point of undue hardship or if they can show with evidence that the discriminatory treatment was based on a BFR.
    - A BFR claim must be reasonable and substantiated by evidence. For example, a board rejected a landlord's argument that he refused to rent to a blind person with a guide dog for reasons of "public safety" – this was not a valid BFR.[34]

- In an earlier case, a landlord argued that renting to a person with HIV would put other tenants at risk – this too was not a valid BFR.[35] *For more details on BFR, see sections 1.6 and 5.0.*

Low-Income Groups

- Low-income groups are protected in the *Act* under the ground of social condition, which prohibits discrimination based on a person's source of income, education or job type.

> An expert testimony before a tribunal confirmed that social assistance recipients are stereotyped as "fraudsters", "lazy, parasitic and irresponsible," and as having "personal failings and lack of adequate virtue." Such stigmatization makes low-income groups easy targets of discriminatory practices in housing.

- Persons with social condition status may also identify with the grounds of sex, race, disability, ancestry, national origin, family status, sexual orientation, and gender identity or expression.
  - These persons may be stereotyped as unreliable tenants who will default on rent payments, regardless of their actual ability to pay the rent.[36]
  - They are also perceived as unsocial and more likely to indulge in criminal behaviour.[37]

- Some landlords use minimum-income criteria and rent-to-income ratios to exclude low-income tenant applicants.
  - However, landlords cannot justify refusing an applicant merely because the applicant does not meet set income criteria – this would not constitute a BFR or undue hardship.
  - An Ontario board accepted expert evidence that persons excluded from housing by income eligibility criteria face intersectional disadvantage:
    - According to the evidence presented, persons discriminated in housing because of income are more likely to be women, young persons, single mothers, refugees, immigrants, and social assistance recipients.
    - According to the board, the landlord's view that persons who did not meet pre-established income criteria would default on their rent was based on cultural stereotypes.
    - Contrarily, the defendants proved by empirical data that large numbers of tenants successfully pay rent amounts greater than the prescribed income percentages set by the landlord in the case.[38]

  - In a similar case, a landlord refused to rent to a single mother of two children because the shelter component of her disability benefit was equal to the

rent payment; he argued that she would have no money left to pay for utilities. The tribunal rejected the argument – the landlord was unable to prove with evidence that the criterion was valid to predict the tenant's ability to pay rent.[39] *For more on rent-to-income ratios, see section 3.3.*

- Some landlords try to evict low-income tenants who have occupied the same apartment for some time, so they can rent to new tenants based on current rent rates – such treatment would constitute *prima facie* discrimination.
    - A tenant with a disability had rented the same apartment for six years and depended on provincial welfare payments and CPP benefits. The landlord applied annually to CMHC for a subsidy arrangement that paid part of the rent. In the year of the complaint, the landlord did not apply for the subsidy, raised the rent twice (without raising rents of other units), and complained of the tenant's cats. It was held that the landlord discriminated against the tenant on grounds of disability and social condition.[40]

- In another case, a rental applicant was refused tenancy because he was on sick leave and consequently unemployed. The refusal was held to be discriminatory based on source of income; the landlord did not have sufficient basis to deny tenancy; the circumstances did not constitute valid factors for undue hardship or BFR.[41]

Racialized Persons

- Racialized groups are protected under the ground of race and may also identify with grounds of colour, national origin, religion, sex, family status, and social condition.
- Racialized persons are vulnerable to vicious stereotyping, exclusion, and discrimination.

> Racialized groups are susceptible to vicious stereotyping, exclusion, and harassment, which puts them at high risk of discrimination in the rental housing market.

    - Most newcomers to Canada who face discrimination in housing belong to this protected ground, intersected with other grounds like national origin.
    - Different cultural stereotypes about specific racialized groups create different patterns of discrimination under the ground of race.
        - For example, a landlord threatened to evict a tenant unless they stopped producing cooking odours in their apartment. According to the tribunal, the landlord violated the dignity of the tenant and their right to enjoy their

culture and ethnicity; he failed to accommodate the tenant and his actions were not justified under a BFR exception.[42]

- Racialized people are more likely to experience denial of housing,[43] harassment in housing, and threats of eviction.

    - For example, a Black woman viewed and liked a one-bedroom basement apartment, but the landlord declined to accept her application and indicated that he wanted to show the apartment to other applicants. Suspecting racial bias, the complainant sent her roommate, a white woman, to see the apartment; the landlord immediately agreed to rent to her. Confirming race discrimination, the board concluded that the landlord's decision was based on the racial stereotype that Black women tenants are financially unstable and host too many parties.[44]
    - In another case, a Black woman, after speaking on the phone with an apartment owner met with him at a nearby convenience store to discuss details. When they met, the owner said that the apartment had already been rented. Later, the woman's husband phoned the owner and was informed that the apartment was still available.[45]
    - A Black Jamaican woman and her children suffered prolonged harassment from their building superintendent. The respondent passed away prior to the hearing, but the board proceeded with the inquiry against his estate based on the *Trustee Act*. Using eye-witness testimonies and the text of the deceased respondent's interview with a Commission investigator, the board pieced together a sequence of racial abuse and harassment; damages were awarded against the corporation that owned the building.[46]

- Racialized persons are also more vulnerable to unequal access to housing-related facilities and to other differential treatment like substandard living conditions due to neglect of repairs or maintenance.[47]

- While race is a protected ground under the *Act*, a discrimination claim cannot be based on allegations of so-called "reverse racism" – reverse racism is not defendable as a human right.

    - A white female tenant complained that her East Indian landlord and his family referred to her as "gori" (a Punjabi word meaning "white girl"), which she alleged was an example of "reverse racism" because the word "gori" was as racially offensive as the N-word that is used to disparage Blacks. The respondent submitted that his family speaks Punjabi and "gori" is a general Punjabi term

for white girls or women, and the tenant knew what “gori” meant but never objected to it. According to the tribunal, while the meaning of words may depend on the sensibility of the listener, there must also be an objective basis to support a perception that a word is offensive. While the N-word has historical connotations that suggest denigration of a particular race, the word “gori” does not have negative historical associations, so the complaint of racism was not tenable.[48]

Indigenous Populations

- Indigenous persons are protected in the *Act* under the ground of ancestry and may also identify with the grounds of social condition, sex, creed or religion, disability, and place of origin.

Indigenous people face deeply entrenched stereotypes in the housing market; they are castigated as irresponsible tenants and stereotyped as lazy, disruptive, and prone to criminal activity.

- Indigenous people face deeply entrenched stereotypes in the housing market; they are castigated as irresponsible tenants,[49] and stereotyped as lazy and disruptive, and as more likely to engage in criminal activity.

    - A single mother of Indigenous ancestry spoke on the phone with a manager to view an apartment, and then arranged to meet him to pay her deposit and sign the lease. When they met the manager commented that he had assumed (from her name) that she was a “white French-Canadian”; he then made disparaging comments about Indigenous people, e.g. "Once you rent to a couple of natives, fifteen Indians come behind". He asked the applicant for references and said that other people were interested in the apartment. When she contacted him to give her references, he said that he was looking to rent to a married couple. Ancestry and family status discrimination were held as factors in the denial of accommodation.[50]

Newcomers to Canada

- Newcomers to Canada would be protected from housing discrimination under the ground of national origin, and may also identify with the grounds of race, family status, colour, sex, age, creed or religion, and social condition.

- New Canadians may face discrimination in housing because they don't have Canadian rental and credit history; sometimes they are asked for rental deposits exceeding the statutory deposit stipulation.

    - Tribunals have held that lack of rental history should not be treated the same as bad rental history.[51]

- People who identify as or are perceived as Muslim, Arab, Middle Eastern and/or South Asian may be subjected to increased racism, Islamophobia or religion-based discrimination in the rental housing market.
    - Other forms of religious or faith-based discrimination like anti-Semitism may also lead to unfair housing treatment.

> New Canadians are vulnerable in the housing market because they may not have rental and credit history, and because they have to contend with racial, cultural, and national stereotypes.

- Temporary foreign workers and migrant workers, besides facing other forms of discrimination, are also highly vulnerable to housing rights violations.

    - A housing corporation required prospective tenants to have good rental and credit history, a minimum income (based on a rent-to-income ratio), and job tenure of at least three months. An Ontario board held that the policy disadvantaged newcomers to Canada under the grounds (in the Ontario of code) of citizenship and place of origin. The board accepted research testimony which showed that there is no link between lack of credit history and rental default. The corporation could not prove that its rental practices were a BFR or that renting to new Canadians would cause them undue hardship.[52]
    - A large corporation leading a major infrastructure construction project in Vancouver discriminated against temporary foreign workers from Latin America under the intersecting grounds of race, colour, ancestry, and place of origin. Beside being disadvantaged in salary rates, expenses, and meals, the foreign workers were allocated substandard housing, compared to workers from Europe. The Latin Americans were housed in second-rate motels, whereas the European workers stayed in proper apartments with all amenities.[53]

Women and Sexual Minorities

- Women and sexual minorities like LGBTQ groups are protected in the *Act* under the grounds of sex, sexual orientation, and gender identity or expression; they are likely

to suffer intersectional disadvantage under the additional grounds of marital status, family status, race, age, ancestry, disability, and social condition.

- Landlord may disapprove of single women with children[54] as tenants because of various negative stereotypes about this group.[55]

- Single mothers, women with disabilities, and young, senior, racialized, and Indigenous women also tend to be financially less stable, making them additionally vulnerable to discrimination under the ground of social condition.[56]

- The *Act* also prohibits housing-related discrimination against women based on pregnancy or conditions related to pregnancy.[57]

- Similarly, women, especially if they are single or racialized, are more vulnerable to harassment and sexual harassment in housing.[58] *For more on harassment and sexual harassment in housing, see sections 4.5 and 4.6.*

Single Persons and Unmarried Couples

- Single persons or couples living in common law relationships are protected from housing discrimination under the grounds of marital status and family status;[59] they may be additionally vulnerable under the grounds of sex, sexual orientation, gender identity or expression, age, and social condition.

> Single mothers, divorced women, and unmarried or common-law couples are more likely to face unequal treatment in the rental housing market.

- The Supreme Court of Canada has recognized the equal rights of common law couples, at par with married couples.[60]

    - A landlord defended his refusal to rent to a common-law couple[61] based on the *Charter*'s religious protection, claiming that renting to unmarried couples offended his religious beliefs. According to the tribunal, once the landlord had made his property available to the public for rent, his responsibility of non-discriminatory conduct in housing trumped his religious rights.[62]
    - Two single roommates applied to rent an apartment, but the superintendent said he would prefer to rent to a middle-aged couple. When the roommates contacted the owner, he backed the superintendent's decision because, according to him, if the roommates split up neither of them would be able to

afford the rent on their own. Discrimination based on marital status was established.[63]

- Unmarried or divorced parents[64] face similar difficulties in rental housing, especially women who may identify with the additional grounds of age, race, ancestry, gender identity or expression, disability, national origin or social condition.[65]

- Some landlords discourage single parents with children because they believe that single parents are less capable to control noisy and disruptive children.[66]

- A landlord discriminated under the ground of family status when he designated a building specifically for families but excluded single-parent families and common-law couples from his definition of "family".[67]

- Single or divorced men may also face housing discrimination sometimes, which would be protected under the grounds of sex or family status.[68]

Seniors and Young Adults

- Seniors and young adults are protected by the ground of age and may also be vulnerable under the grounds of sex, family status, marital status, social condition, and disability.

Some landlords are reluctant to rent to seniors based on the stereotype that seniors are more likely to develop disabilities and would require accessibility related accommodations. Such treatment is in violation of the *Act* under the protected ground of age.

- Young persons are stereotyped as irresponsible, noisy and disruptive (e.g. having parties), and as potential rent defaulters, leading to differential treatment in rental opportunities. They are also vulnerable to harassment, including sexual harassment, in housing.
    - A landlord's refusal to rent an apartment to a 21-year old because of his age was a violation of the Manitoba *Human Rights Act*. The apartment was not designated for renting to seniors, persons with disabilities or other protected groups, so by denying the apartment the landlord discriminated against the applicant based on his relatively young age.[69]

- Because younger persons often fall in the low-income category, their housing rights may also be violated by exclusive rental conditions like extra security deposits, need for guarantors, direct deposits of rent, and so on.

- On the other hand, seniors may suffer discrimination because landlords fear costs linked to age-related accommodations and accessibility requests.
    - Some landlords try to evict older persons because they are long-time tenants who are paying less rent than current rental rates.

3.0 Discrimination in Pre-Occupancy Rental Process

The *Act* applies to all residential premises, including premises in large apartment complexes let by corporate landlords and houses or portions in homes rented out by individual landlords. The *RTA* excludes certain types of residences from its definition of "premises", but human rights protections granted in the *Act* still apply to rights violations linked to those premises.[70]

Once housing providers decide to offer rental accommodation to the public, they must ensure that tenants and prospective tenants are not subjected to discriminatory treatment because of their identification with a protected ground, commensurate with human rights law and jurisprudence.

Discrimination during the renting process against protected groups can happen in the following:

- Discriminatory advertising;
- Discrimination during viewing and early interactions;
- Discrimination in rental preconditions.

Discrimination may begin at the initial stages of the rental process, with discriminatory advertising or differential treatment in early interactions between tenants and landlords.

3.1 Discrimination in Rental Advertising

Section 7(1) of the *Act* prohibits the publication or public display of "notices, signs, symbols, emblems or other representations" that show the intent or have the effect of discriminating against persons or groups protected by the *Act*.

Discriminatory advertising in housing typically makes use of subtle language to conceal its discriminatory intent. However, even if the language of an advertisement is not imperative i.e. it does not use words like "must", "shall", "will" or does not use definitive exclusionary phrases (e.g. "Not available to families"), the language would still be deemed discriminatory if it has the effect of barring protected groups from availing the advertised housing opportunities.

On the surface, phrases like “suitable for” or “geared toward” may seem innocuous and non-discriminatory, but this kind of language violates the *Act* if it excludes certain groups or discourages them from applying to rent an advertised property.

Some examples of discriminatory advertising notices or rental signage include the following:

- **“Suitable for working professionals” or “Geared to young professionals”:** This manner of wording in rental advertisement would have the effect of excluding or discouraging the following kind of tenants:
    - Persons who may be unable to work due to a disability;
    - Persons who are unemployed or receiving social assistance;
    - New Canadians who may not yet have jobs;
    - Students who are under-employed or work part-time;
    - Older persons who are retired, under-employed or employed part-time; and
    - Persons who identify with the ground of social condition i.e. those disadvantaged because of their income, education, or job type (e.g. minimum wage earners, domestic workers etc.).

- **“Suitable for a single person or married couple”:** Such a sign discriminates against the following groups:
    - Families with children based on the ground of family status;
    - Common law couples if they are not treated by the landlord as “married”;
    - Seniors based on the ground of age.

- **“Adults only building” or “Adult lifestyle premises”:** This language in a rental advertisement would exclude the following groups from the rental opportunity:
    - Families with children;
    - Other marginalized groups like persons with disabilities, sexual minorities, and those with social condition status.
        - For example, a building manager denied a single mother from seeing or applying for an apartment because the building was adults-only. The director of the company that owned the building testified that the manager was not an employee (she performed her duties in exchange for reduced rent) and the director had not authorized the building as an adults-only premises. However, the board ruled that the manager was an

agent of the company, and the company was liable for her discriminatory conduct.[71]

- "**Quiet building" or "Not soundproof":** Signs like these are discriminatory against families with children under the ground of family status.
    - For example, a mother with a new baby applied to rent an apartment; she was told that the unit was not suitable for families with children since it was in a heritage building. Her husband independently approached the landlord as a single person and encountered no obstacles. A tribunal ruled that the landlord discriminated against the applicant based on the ground of family status.[72]

3.2 Discrimination During House Viewing and Early Interactions

Comments or conduct that demean persons based on their protected status during the viewing of a unit or in early interaction between the parties are used as evidence of discrimination in human rights complaints, especially if the prospective tenant is subsequently treated unfairly in the rental process.

> Courts recognize that discrimination is oftentimes subtle or hidden. Landlords try to conceal their differential treatment of protected applicants in subtle excuses or misrepresentations.

Viewing of rental premises: If a landlord cancels or makes excuses to delay viewing of a rental unit after learning of an applicant's protected characteristic (like race or national origin, for example), this behaviour would indicate an intention to discriminate and violate the *Act*.[73]

- For example, a tribunal held that a landlord refused to show an apartment to an applicant because he found out that she was from the Caribbean; by denying her the opportunity to view the apartment, the landlord discriminated against the applicant because of her race, colour, and place of origin.[74]

- A woman of Mexican origin and her Brazilian boyfriend, both receiving social assistance, applied to rent an upper-floor apartment in the respondent's home. During the application process, the landlord learnt that the couple were on social assistance and turned down the rental application on ground of their unemployed status; the landlord also commented that the complainant should get a job cleaning houses and her boyfriend should work in construction, revealing his stereotypical views about the applicants' nationalities and the kinds of jobs associated with

them. A tribunal found that the respondent's decision to deny rental accommodation was discriminatory based on place of origin, ancestry, and source of income.[75]

- A recipient of disability benefits called an apartment office and was told by the manager that they did not accept tenants on social assistance. The complainant explained that she had a sufficient shelter allowance, which would allow her to pay the rent; the manager permitted her to view the apartment but discouraged her from making a formal application. Even though the owning company did not authorize the conduct of the manager, the company was held liable for its employee's discriminatory conduct.[76]

- A Canadian-born, Caucasian woman liked an apartment and told the manager that she would return the next day with her husband, an East-Indian man. On seeing the husband, the manager became reluctant to fill out the rental application form. The owning company was held liable for the manager's conduct, which was discriminatory based on race, colour, ancestry, and place of origin.[77]

Invasive questions: Invasive questions about the nature of a tenant's relationships, gender identity or expression, sexual orientation or other personal characteristics are discriminatory and reveal the questioner's stereotypical views about protected groups.

- Such inquiries also violate the privacy and dignity of persons and are used as evidence of discrimination if the matter becomes the subject of a human rights complaints.

> Discriminatory questions in rental application forms violate the privacy and dignity of rental applicants and contravene the *Act*.

Rental application forms: Discriminatory questions in rental application forms related to a ground of discrimination recognized in the *Act* (age, marital status or sexual orientation, for example) are discriminatory under the *Act*.

- A landlord's application form required information about the age of co-occupants who would live in the rental unit. A woman with an 8-year-old daughter was refused the apartment, which was held discriminatory based on family status. The tribunal noted that information about the ages of occupants may be required for fire safety and other reasons, but such information can and should be acquired after the apartment has been rented.[78]

Screening tenants: Screening tenants to assign less well-maintained and/or more expensive units to vulnerable individuals or groups would also violate the *Act*.

- In an early case, a tribunal found that a man of West Indian origin was discriminated in housing based on race and place of origin. The complainant was interested in an apartment that was advertised for $300 per month, but he was informed that the rent was $350; subsequently, he was told that the apartment had been rented. At the same time, other applicants were told that the apartment was available for $300.[79]

3.3 Discrimination in Rental Preconditions

While it is legitimate for landlords to consider certain conditions before renting to a prospective applicant, rental preconditions should not have the effect to discriminate against groups protected by the *Act*.

3.3.1 Legitimate Rental Preconditions

- Landlords can ask rental applicants for income information; however, they should not violate the dignity and privacy of the applicants or use the income information to deliberately exclude persons protected under the *Act*;
    - For example, a person with disability who was on social assistance called an apartment owner to inquire about rental availability; when the manager learned about his source of income, he said that the building did not have any unit for “people like you” – it was held that the manager discriminated against the applicant based on source of income and disability.[80]

- If a prospective tenant’s income information appears unsatisfactory on its face, landlords must consider other factors to form a holistic financial picture of the applicant;
    - For example, if a tenant’s current income status appears unsatisfactory, but they have good rental and/or credit history, the latter fact should be balanced against any deficiency in current income.

- The absence of rental or credit history should not be used as a blanket reason to refuse rental applicants; instead, these details should be seen in the overall context of a rental applicant’s situation.

  - For example, it should not be held against new immigrants or refugees that they do not have Canadian rental or credit history; new Canadians should not face disadvantage in rental housing solely for this reason.

- Similarly, income information should only be considered on its own when no other information is available; even then it should not become the reason for outright refusal to rent.

- Landlords may be justified in asking for a guarantor to co-sign a lease in certain cases; however, it would be discriminatory if guarantor requirements are imposed only to exclude tenants because they identify with a ground under the *Act*.

3.3.2 Discriminatory Rental Preconditions

Overall, under the *Act* and according to human rights jurisprudence, the following rental preconditions are *prima facie* discriminatory:

Minimum income requirements: Requiring applicants to have permanent jobs, a minimum income or a minimum job tenure with an employer.

- These requirements disadvantage, among others, newcomers to Canada, young adults, and those who identify with the ground of social condition.[81]

- Some landlords prefer older tenants with steady jobs, excluding younger groups or those with low-paid jobs from rental opportunities.[82]
  - On the other hand, seniors are also affected by minimum income requirements, as they are more likely to be retired, unemployed or under-employed.

> Rent-to-income ratios have adverse impact on groups protected by the *Act*. Moreover, courts have determined that such ratios are not reliable indicators of tenant credibility or probability of rental default.

Rent-to-income ratios: Some landlords establish rent-to-income ratios (for example, requiring that the rent amount should not be more than 30 or 35 percent of the tenant's monthly income) to estimate a tenant's capacity to pay rent.

This practice discriminates against young persons,[83] low-income individuals and families, and other vulnerable groups protected under the *Act*.

- A Board of Inquiry accepted expert evidence that rent-to-income ratios:
  - Discriminate against young rental applicants at least until they are in their mid-20s;
  - Discriminate against rental applicants belonging to racialized groups;
  - Result in "ghettoized communities" of low-income racialized tenants in poor quality housing, encouraging prejudices and stereotypes about these groups;[84] and
  - Are unreliable predictors of rent default.[85]

- Rent-to-income ratios may be allowed in social or subsidized housing, if they are not used to discriminate internally between similar applicants or comparator groups.

Minimum bedroom rules: Setting minimum bedroom conditions based on family size or requiring unfair person-per-bedroom rules have a discriminatory effect – these preconditions have been found discriminatory based on the grounds of family status, sex, marital status, etc.[86]

Landlords must not discriminate against tenants based on traditional notions of what constitutes a family. The *Act* protects common-law, unmarried and same-sex couples, single or divorced mothers, families with adopted or stepchildren, among others, against housing discrimination under the ground of family status.

- Minimum bedroom requirements may also clash with the cultural values of certain tenants. For example, Indigenous or immigrant families may be used to different person-per-bedroom standards based on their cultural traditions like the joint-family system or the notion of integrated, extended families.

- A landlord refused to rent a two-bedroom apartment with a den to the complainant (a single mother) for herself and her three children but offered her a three-bedroom apartment, which had a higher rent. The board held that the denial was discriminatory under the ground of family status, because the landlord would have rented the apartment to a two-parent family with two children.[87]

- A prospective tenant made a false statement about the number of persons that will reside in the apartment. Although the complainant identified with the ground of social condition, the tribunal held that she committed breach of trust which was enough to justify the landlord's refusal to rent.[88]

- Subsidized and co-op housing may be justified in having such rules, if it can be shown that the policies are made in good faith and are rationally connected to the

housing operation, e.g. to maximize housing opportunities for low- to moderate-income families.[89] *For details, see section 4.8.*

Traditional family requirements: Some landlords use stereotypes about traditional family structures to decide the status of rental applications.[90]

- For example, landlords may discriminate against common law or unmarried couples and single mothers; they may assess rental applicants based on family size and number of children.[91] These practices are discriminatory.

- A single parent was refused membership in a co-op on the basis that (as a single parent) he would have substantial support payments that would interfere with his ability to pay rent. The denial was based, in part, on the assumption that the applicant pays parental support and is thus financially unstable.[92] The denial was discriminatory based on family status.

- A property owner refused to rent a house to a woman who was separated from her husband and lived in an apartment with her three children. The owner wanted to rent to a traditional family; he was concerned that the house and property, with a lawn and a yard, could not be maintained properly by women and children. His action was discriminatory based on sex and marital status.[93]

Illegal rental deposits: It is discriminatory to demand rental deposits that exceed the statutory guidelines for deposits. According to the *Residential Tenancies Act*, landlords are permitted to ask for a security deposit equivalent to one-month's rent, on a month-to-month tenancy.[94]

Other differential practices: Other rental requirements that treat vulnerable groups differently from others may include:

- Requiring direct payment of social assistance cheques toward monthly rent; this practice, however, may be permitted in social housing.[95]

- Chronological allocation of units in subsidized or social housing based on waiting lists – such lists may have a discriminatory effect if they place additional barriers on groups protected under the *Act*.

4.0 Discrimination During Tenancy

During occupancy of rental premises, tenants may experience discrimination in different ways, including but not limited to the following:

- Unequal access to housing-related facilities and services;
- Discrimination in repairs and maintenance of units;
- Refusal of reasonable accommodation requests;
- Discrimination by association;
- Harassment or poisoned housing environment;
- Sexual harassment;
- Other discriminatory practices.

> Denial of housing facilities or repairs, refusal of reasonable accessibility-related requests, and harassment of tenants based on their protected characteristic are *prima facie* discriminatory under human rights law.

4.1 Unequal Access to Housing Facilities

It is discriminatory under human rights law if groups protected under the *Act* are withheld from services or facilities that are normally available to other tenants.

Typical denial of services or facilities may include the following:

- Disallowing access to recreational facilities like pools, gyms or common areas in an apartment building because a person identifies with a protected characteristic;

- Differential treatment in building facilities, e.g. in allocation of storage space, parking privileges, laundry services, etc.

    - The rules of a condominium corporation barred children under 16 from using commonly-owned recreation facilities, including a fitness room and a whirlpool. The condo swimming pool was also off limits for children, except for a narrow time window. A board held that recreational facilities were an integral part of the occupancy of the condominium. The corporation could not prove that the limitations were reasonable and *bona fide,* and it did not

take enough steps to accommodate the complainant. The complainant was discriminated against based on the ground of family status.[96]

4.2 Discrimination in Repairs and Maintenance of Units

Landlords are obligated to provide necessary repairs and maintenance to rental units and buildings irrespective of a tenant's personal characteristic, e.g. race, national origin, sexual orientation, etc.

- If tenants are denied repairs or maintenance to their units, buildings or facilities or if they are provided these repairs unequally compared to other tenants, landlords may be liable for discriminatory treatment.

  - A landlady discriminated against her tenants based on family status and perceived mental disability. The complainant reported recurring plumbing problems, but instead of investigating the problems the landlady responded by discriminatory comments (e.g. suggesting that the tenant was "the type" who would deliberately damage the property). Eventually, complaining of aggressive behavior from the tenants, the landlady brought an eviction notice against them. The tribunal found that the landlady's conduct was based on perceptions about the tenant's mental disability and was thus discriminatory. The mother's eviction was discriminatory because of her association with the tenant.[97]

    If landlords provide inadequate repairs and maintenance to tenants belonging to groups protected under the *Act*, compared to maintenance services available to other tenants, such behavior would be flagged as discriminatory.

  - The management of a building ignored the requests of a Black tenant for repairs and service, while other (non-racialized) tenants were provided the same repairs and services without undue hindrance. The management reacted to the tenant's repeated requests by labeling him as angry, abusive, and threatening, a common response in such situations based on stereotypes about persons protected by the *Act*. The management then used this characterization to obtain an eviction order. A tribunal concluded that the respondent's conduct was prejudiced by their perception of the complainant as an angry and threatening young Black man, and the

intersection of the man's race, colour, age, and sex was a factor in this perception.[98]

- Denial of repairs and maintenance is sometimes more evident in low-income housing, where residents may not complain against substandard living conditions for fear of eviction or reprisal.

    - A landlord discriminated against a group of tenants of Cambodian origin by derogatory comments and poor maintenance of their units. The court held that even though all tenants in the apartment building were provided substandard maintenance, the landlord's adverse comments about his Cambodian tenants implied that they did not deserve decent living conditions and thus showed an intention to discriminate; the comments also created a poisoned housing environment for the tenants.[99] *For poisoned environment in housing, see section 4.5.*

4.3 Refusal of Reasonable Accessibility Requests

Landlords have a duty to accommodate the reasonable accommodation requests of tenants recognized under the *Act* up to the point of undue hardship. *For more details on the duty to accommodate, see section 5.0.*

Landlord must use occupancy rules flexibly to accommodate the reasonable requests of tenants protected under the *Act*.

- Accommodation covers a wide arc and landlords should educate themselves on its scope and basic requirements.

- Accommodating tenants with disability by providing accessible units and buildings is an essential part of the duty to accommodate.

- Modifying existing rules or procedures to accommodate reasonable requests is part of the accommodation process.

    - An occupancy rule may seem neutral on its face, but it may produce a discriminatory effect for certain tenant groups;
        - For example, a landlord may have a No Pets Policy (not discriminatory in itself) in an apartment building; however, as part of the duty to accommodate, the landlord should allow an exception to

the rule if a visually-impaired tenant needs to bring a guide dog or a service animal into their apartment.

- Other apparently neutral policies may produce discriminatory effects and should be modified to accommodate legitimate requests from tenants protected by the *Act*.

    - For example, a landlord has a No-Transfer Policy, which disallows tenants from transferring between rental units in the same building.
        - While neutral on its face, the policy may have adverse impact for certain tenants; families with children, for example, may require a different sized apartment as their family size changes, e.g. following the birth of a child.[100]
        - In such circumstances, if the family requests transfer to a larger unit, the landlord's duty to accommodate would be triggered.

- A tenant with multiple disabilities requested that he be moved from his fifth-floor apartment to a recently-vacated apartment on the ground floor. The tenant used a wheelchair and the elevator was unreliable. However, the transfer was refused, even though other tenants were permitted to transfer apartments. The tribunal found that because the tenant and his wife were on social assistance, the landlord assumed that they would not pay for repairs to their current apartment if they were moved. The landlord also ignored other accommodation requests of the tenant, e.g. failing to make the entrance to the apartment building wheelchair-accessible. The landlord could not prove that non-accommodation of the requests was a BFR and would have resulted in undue hardship.[101]

Tenant's right to enjoy property: Tenants have an unfettered right to enjoy rental property, as long as their use of the property does not inconvenience other tenants or pose health and safety risks.

Housing owners and landlords, including managers, supervisors, and board members (in a housing co-operative), who know or ought reasonably to have known of the poisoned atmosphere in their housing premises but permitted it to continue, are liable for the discriminatory treatment, even if they themselves were not involved in creating that atmosphere.

- In its only housing related judgement, the Supreme Court of Canada held that a condo rule, which disallowed condo co-owners from erecting Jewish succahs on their balconies during a Jewish festival, violated the co-owners' right of religious freedom under the Quebec *Charter*. The appellants, Orthodox Jews, were co-

owners of residential units in two luxury buildings of a Montreal residential complex. The respondent argued that the succahs violated condo by-laws, which prohibited decorations, alterations, and constructions on balconies. The Supreme Court allowed the succahs, as long as they were enacted only for the nine-day duration of the festival, included emergency access, and conformed with the general aesthetics of the property. According to the court, the appellants had not renounced their religious rights by signing the condo rules. Waiver of a fundamental right must be explicitly stated in clear terms; it cannot be implied by indirect or implicit actions or decisions.[102]

4.4 Poisoned Environment in Housing

Tribunals have held that the atmosphere of a workplace (in the employment context) is a component of the terms and conditions of employment, equally with employment terms and conditions like hours of work or rate of pay. Consequently, the emotional and psychological underpinnings of that atmosphere also form part of a workplace's terms and conditions.[103] If the atmosphere gets tainted or poisoned by negative comments or conduct (of a supervisor, for example), that would constitute a violation of the agreed terms and conditions of employment.

The poisoned environment principle has been extended to the housing context, and courts have established that the atmosphere of a rental premises constitutes part of the terms and conditions of tenancy.[104] Therefore, a poisoning of the rental atmosphere (by negative comments or conduct) taints its emotional and psychological environment and violates rental terms and conditions.

- Courts regard poisoned environment in housing as a serious diminishment of a tenant's right to enjoyment of the rental property.

> Even generalized jokes or innuendoes about vulnerable groups that are not directed at any specific individual or tenant could create a poisoned housing environment.

- A poisoned environment is created by inappropriate comments or treatment directed against tenants based on their protected characteristics.[105]

- Most poisoned environment situations in housing arise because of discriminatory attitudes against persons who identify with protected grounds, including but not limited to sex, sexual orientation, gender identity or expression, race, disability, national origin, ancestry, age, marital status, family status, and social condition.

- It is the duty of housing providers and their managers, agents or employees to ensure that tenants enjoy their housing experience free from behaviour that may create a poisoned environment.

- Housing owners and landlords, including managers, supervisors, and board members (in a housing co-operative), who know or ought reasonably to have known of the poisoned atmosphere but permitted it to continue, are liable for the discriminatory treatment, even if they themselves did not participate in creating that atmosphere.[106]

- In addition, it is also the duty of landlords to take reasonable steps to prevent other persons who may be present in the housing premises, like co-tenants or service personnel working on premises, from harassing tenants identified by the *Act*'s grounds.

To determine if a poisoned environment exists or was created in a housing situation, courts use the same yardsticks that are applied to analyze poisoned environment in employment. These yardsticks include:

- The number of discriminatory comments or incidents;
- The nature and seriousness of the comments; and
- Whether, taken together, it has become a condition of the tenant's occupancy that they must endure the discriminatory conduct and comments.[107]

Even a single comment, gesture or incident, if sufficiently serious or substantial, would create a poisoned environment in housing.[108] For example, a landlord's comment that his tenant (a racialized person) should "get out of my home and get out of my country" was enough to create a poisoned environment for the tenant.[109]

A single comment, gesture or incident, if sufficiently serious or substantial, would create a poisoned environment in housing. Courts examine the context of discriminatory comments or conduct to assess their severity.

To assess the severity of adverse comments, courts examine the context and circumstances in which the comments were made. A tribunal noted that the following factors should be considered to assess if a comment was discriminatory:

- The egregiousness or virulence of the comment;
- The nature of the relationship between the involved parties;
- The context in which the comment was made;
- Whether an apology was offered; and

- Whether or not the recipient of the comment was a member of a group historically discriminated against".[110]

Differential treatment in provision of housing-related facilities or in repairs and maintenance may also be regarded as factors in creating a poisoned housing environment;

- For example, a landlord poisoned the housing environment for tenants of Asian ancestry because he failed to provide proper maintenance to their units. He also made derogatory comments about Asians in an article he wrote for the local newspaper.[111]

- A poisoned environment may still be created for tenants even though the discriminatory comments or conduct are not specifically directed at them;
    - For example, if a landlord hurls racial slurs at an Indigenous family living in an apartment building, the comments would also poison the housing environment for other racialized persons living on the same floor, even though the comments are not addressed to them.

- Similarly, generalized jokes or innuendoes about people identified by the *Act*'s grounds, which are not directed at any specific individual or tenant could still create a poisoned environment for those who hear them.
    - For example, if a landlord makes derogatory remarks about LGBT persons, the comments would create apprehension in tenants who identify with other protected grounds about the landlord's bigoted attitude toward vulnerable groups; this would be enough to poison the housing environment, even though no specific individual was the target of the comments.

- If pictures, cartoons or other materials that demean people identified by grounds of the *Act* are displayed in the common area of a residential premises, such display would create a poisoned housing environment.

- Similarly, if graffiti or other representations vilifying a protected group are displayed on the walls of a housing complex, for example, they would contribute to creating a poisoned housing environment, especially if the offensive materials are not promptly removed by the landlord, which action would indicate the landlord's acceptance or complicity.

> An Ontario tribunal reiterated the concept of poisoned housing environment as follows: "The poisoned environment concept may constitute a violation of the general protections against discrimination in the context of the occupancy of accommodation". *Ramnarine-Smith v Havcare Investments Inc.* HRTO, 2018.

- A person with disability received social assistance and lived in his daughter's apartment. The landlord wanted to evict him from the building and harassed him in different ways. The building supervisor and maintenance staff blocked the tenant's access in the hallways, insisted that he move his belongings through a back entrance, and posted derogatory comments about him on a notice board. The tribunal held that the landlord created a poisoned environment for the tenant and discriminated against him based on the grounds of disability and social condition.[112]
- A board ruled that a husband and wife discriminated against their tenant, a Black man, by racial slurs, harassment, and false accusations, to evict him from their basement. The couple repeatedly intruded the tenant's privacy, falsely accused him of having a criminal record, and lied to the police that he had uttered rape and aggression threats against the wife. Even though the husband did not hurl racial epithets himself, the couple were held responsible for creating a poisoned housing environment.[113]

- Comments exchanged between tenants may not constitute housing discrimination under the *Act,* if it is shown that the comments did not impact the terms and conditions of tenancy or create a poisoned environment for the recipient of the comments.

    - The complainant resided in a subsidized housing for seniors and persons with disabilities; on two occasions, one of the tenants made disparaging remarks about the complainant's Russian ancestry. While the tribunal accepted that the comments were insulting, it concluded they were not virulent or frequent enough to either create a poisoned environment or alter the complainant's terms and conditions of tenancy.[114]

4.5 Sexual Harassment in Housing

Sexual harassment includes comments or conduct of a sexual nature that are directed at a person without their consent. Sexual harassment behaviour covers a wide spectrum and includes unwelcome sexual insinuations, leering or inappropriate staring, sexualized comments and gestures, soliciting unwanted intimacy (e.g. requests for dates), and non-consensual touching or physical contact.

- Sexual harassment is rooted in power imbalance between the parties involved; courts have stated that landlords and housing providers, including their agents, like building managers or supervisors, are in a position of power over their tenants.

In a complaint of sexual harassment, courts look at the balance of power between the parties, and the nature, severity, frequency, and impact of the alleged sexual harassment conduct.

    - Courts and human rights tribunals, therefore, are not reluctant to flag even the slightest suggestion of unwanted sexual approach by a person in authority like a landlord or building superintendent as sexual harassment.
    - Similarly, even a single comment of a sexual nature or a single incident of unwanted physical touching would be deemed sexual harassment under human rights law.

- In a complaint of sexual harassment against a building superintendent, a tribunal noted the impact of power imbalance between building superintendents and tenants in such situations:

    - "A superintendent is in a position of power over tenants. They can make the living situation of a tenant uncomfortable or unbearable. An abuse of this power can have a significant effect on a tenant's enjoyment of her living space. When the superintendent is an older male inappropriately exerting power over a younger female in the form of sexual harassment, this undermines her expectation of peaceful occupation of her home".[115]

- Young or single women are most vulnerable to sexual harassment in housing, along with women with disabilities, single or divorced mothers, low-income tenants, LGBTQ persons, and racialized women.

    - Some landlords assume that low-income women would be easy targets for sexual advances; or landlords may try to solicit sexual favours in lieu of rent or for providing maintenance and facilities. Such conduct falls under sexual harassment.
        - The above conduct may also be accompanied by threats of eviction (especially if the tenant's rent payments have fallen into arrears).

    - Similarly, because of stereotypes about different races, some landlords may assume that racialized women are promiscuous, sexually available or

submissive to authority, and engage in sexual harassment conduct against them.

- A complainant, a woman of Thai origin, worked for several years at a shoe store owned by the respondent. She also rented an apartment on the upper story of the store, which was owned by a company that belonged to the respondent. The respondent sexually harassed the complainant for many years, both in the store and in the apartment. He was held liable for sexual harassment in housing for acts committed in the apartment, and for sexual harassment in employment for violations that took place inside the store.[116]

For more details on sexual harassment in housing, see the Commission's *Guideline on Sexual Harassment* at https://www2.gnb.ca/content/dam/gnb/Departments/hrc-cdp/PDF/GuidelinesOnSexualHarassment.pdf

4.6 Other Discriminatory Practices

Illegal evictions, threats of eviction or reprisal for complaints of discriminatory behaviour are some of the other ways in which landlords may discriminate against tenants.

Illegal evictions, threats of eviction or reprisal for complaints of discriminatory behaviour are some of the other ways in which landlords discriminate against tenants.

Threats of eviction: The complainant, an Indigenous single mother, lived in a rented basement suite with her 16-year-old son and two daughters, aged 11 and 8. The respondent purchased the house and harassed the family in a number of ways over the next few months. He criticized the behavior of the complainant's son, asked the whereabouts of the children's father, entered the unit without permission, and threatened the mother with eviction if she complained about his conduct. The tribunal held that the landlord's conduct stemmed from stereotypes about Indigenous people and single mothers and was discriminatory based on the grounds of race, family status, marital status, and ancestry.[117]

Refusing return of rental deposits: A family of new immigrants rented a home for a couple of years and then bought their own house. When they met the landlord to return the keys and request for the return of their $1,000 security deposit, he uttered profanities against them even though the two families had been on cordial terms until this time. The landlord complained that the house was damaged and dirty and refused to return the security deposit. The tribunal held that one comment of the landlord — "Get out of our place and get out of our country" – proved his racial bias. In addition, the

landlord made exaggerated claims of damage to property, despite the fact that no previous complaints about damage had been made. The landlord also used stereotypical remarks about the complainant's cooking habits and resented how the complainants could afford to buy a home, when many other Canadians could not do so. Race and place of origin discrimination were established by the tribunal.[118]

4.7 Discrimination in Subsidized and Co-Op Housing

Government-subsidized and co-op housing schemes provide viable housing options to low-income groups through subsidies and other supportive mechanisms that are not available in the private rental market.

Many tenants living in these housing units identify with grounds of discrimination, including, but not limited to:

> All human rights obligations of landlords in the commercial housing market apply equally to co-ops and government-subsidized social housing.

- Low-wage earners, unemployed persons or those receiving social assistance, who are protected by the ground of social condition;
- People with disabilities;
- Older people in seniors-designated social housing;
- Single or divorced women;
- Aboriginal persons and families;
- New or first-generation immigrants;
- Other vulnerable groups.

Government housing: Government or public housing programs are run by the provincial government to provide subsidized rental housing for families and seniors.

Eligibility for public housing is based on income ceilings which are matched to household size; location of the accommodation (i.e. rural or urban); and waiting lists. In New Brunswick, the Department of Social Development administers public housing programs; for details, see
https://www2.gnb.ca/content/gnb/en/departments/social_development/housing.html

Waiting lists and income criteria rules in social housing should comply with human rights stipulations and should not be discriminatory against individuals or groups protected by the *Act*.

Housing co-ops: Housing co-ops are incorporated under the *Cooperatives Act*. They are jointly owned with a democratic system of by-laws, which is administered on a collaborative basis by a board of directors. Policies, procedures or by-laws of co-ops, even if approved by board members, must not violate the *Act*.

For example, social housing or co-op occupants who receive rental subsidies should not be treated differently from other members.

Similarly, all human rights obligations that accrue to landlords in the commercial housing market apply equally to co-ops and government-subsidized social housing.

Co-op members and social housing residents likewise have a responsibility to fulfill their member and residency obligations and assist in the accommodation process.

- A housing co-op sought to evict an occupant for failing to perform her 2-hours per month volunteer service for the co-op as per the rules of occupancy. The tenant had provided a doctor's note that confirmed her incapacity to do the work on medical grounds. According to the tribunal, the co-op failed in its duty to accommodate the disability needs of the tenant; the complainant could have been assigned tasks she could perform within the limitations of her disability. If that was not possible, exempting her from 2-hours of volunteer work per month would not have imposed undue hardship on the co-op in terms of costs. The eviction order therefore was discriminatory.[119]

- A co-op requirement that members pay the full shelter allowance portion of their social assistance payments as rent was found discriminatory, because it treated the income of social assistance recipients differently from the income of other members.[120]

- A housing co-op discriminated based on family status when it denied co-op membership to an applicant because of problems that the co-op had had with her daughter, who was already a co-op resident. The tribunal found evidence in the co-op board's meeting notes that referred to the applicant as the "member's mother" and referred to her daughter as "high maintenance" because of emails she had sent to the board regarding issues with her unit.[121] The co-op board treated the applicant based on her relationship with her daughter, and thus discriminated based on family status.[122]

- A seniors housing co-operative restricted its membership to persons over 55 years of age and put a limit on the number of days a visitor could stay in the co-operative. A senior couple's son, who was under 55-years-old, visited them a number of times and stayed past the visitor limit. The co-op suspended the couple's membership for violating the visitor rule. A tribunal found that the son was not in a tenancy relationship and was thus not protected by the provincial (BC) human rights code. He was also not protected under the ground of family status because the tenancy protection of the BC human rights code contains an exception whereby family status protections do not apply to residential premises reserved for persons "who have reached 55 years of age".[123]

> Co-op members and social housing residents have a responsibility to fulfill their member and residency obligations and cooperate in the accommodation process.

- A co-op resident lived with his wife in a two-bedroom suite. After his wife passed away, the co-op asked him to move to a one-bedroom suite, pursuant to its "over-housing policy", which aims to maximize housing capacity in the co-op. The complainant alleged discrimination based on marital status and family status. According to the tribunal, the co-op adopted the over-housing policy for a purpose rationally connected with its operation. The policy was not adopted in response to the complainant's change of status, but to optimize the co-op's resources, and secure maximum income over the long-term and across the range of members living at the co-op. Accommodating the complainant's preference for a two-bedroom unit would cause undue hardship to the co-op, because it would affect the co-op's ability to meet its mandate.[124]

- A social housing provider refused to process the housing application of a homeless person because she did not have up-to-date identification documents. The complainant alleged place of origin discrimination in housing; she argued that the requirement to provide proof of legal status in Canada adversely impacts people born outside of Canada, because it takes them longer to get proof of birth. Because the complainant was born in Italy and did not possess current identification, she faced disadvantage in waiting list placement for a subsidized housing unit. However, the respondent argued that all applicants, whether born in or out of Canada, were required to prove valid legal status in Canada, and the housing corporation accepted various documents for such proof, not just birth certificates. The complaint of discrimination was dismissed.[125]

- A co-op member had financial difficulties and was eligible for subsidy on her rent. She received the subsidy for a period, but subsequently refused to fill out subsidy forms that required disclosure of family income. When the co-op cancelled her

subsidy, she alleged discrimination based on family status, marital status, receipt of public assistance, and reprisal. Discrimination, however, was not established, because the co-op's action was based on the applicant's non-cooperation in fulfilling the basic steps in the subsidy process.[126]

5.0 Duty to Accommodate and Undue Hardship in Housing

Landlords have a legal duty to accommodate the legitimate concerns and requests of tenants who identify with grounds of discrimination under the *Act*.

For example, persons with a disability may request changes to their unit to make it more accessible or request landlords to add accessibility features in entrance doors, sidewalks or parking areas.

Other accommodations may relate to family status, e.g. request to move to a larger unit due to change in family size. Similarly, requests may relate to accommodation based on grounds like age, religion or creed, etc.

Both the housing provider and the tenant, and others who may be involved (third-parties like on-site repair workers), have a shared responsibility to cooperate in the accommodation process to the best of their ability.

Landlords have a legal duty to accommodate the legitimate concerns and requests of tenants who identify with grounds of discrimination under the *Act;* the duty to accommodate ceases at the threshold of undue hardship, e.g. when accommodation is either too costly or has potential health and safety implications.

The duty to accommodate covers a wide spectrum, from complete to partial accommodation, depending on circumstances, and may include the following stages:

- **Complete accommodation**, which fulfills the requested accommodation in its entirety;
- **Phased-in accommodation**, which provides the requested relief over a certain time duration, through interim, medium-term or long-term solutions;
- **Alternative accommodation**, which provides a different accommodation than the one requested, but addresses the tenant's request nevertheless; and
- **Next-best accommodation**, which accommodates the request partially, but still offers relief instead of outright refusal.

Landlords may be justified in withholding accommodation if the accommodation would cause them undue hardship, i.e. the cost of the accommodation is too high or offering accommodation would create serious health and safety risks for tenants or the public. The landlord would still be obligated to offer alternative or next-best accommodations, if those are possible without incurring undue hardship.

5.1 Obligations of Landlords in the Accommodation Process

A landlord must accept accommodation requests in good faith and explore all available options of accommodation to the point of undue hardship. The following responsibilities of landlords in the accommodation process may be noted:

- Accommodation should be individualized to the specific needs of each request, and it should be provided in a timely manner; delayed accommodation might itself violate the *Act*.[127]

- Accommodation providers must bear the cost of the requested accommodation, unless the cost is too high and would result in undue hardship.

> Accommodation must be individualized, i.e. landlords must review each accommodation request within its specific contexts before deciding on possible accommodation options.

- Accessibility related accommodations may require landlords to make structural changes in a housing unit or building; examples of such changes include, among others:

    - Installing ramps and elevators in an apartment building;
    - Changing doorways and entrances for convenience of wheelchair access;
    - Using visual fire alarms and doorbells for the hearing impaired;
    - Changing door handles, e.g. to facilitate persons suffering from arthritis;
    - Installing lower counters in kitchens for easier access by wheelchair users;
    - Putting child-safety locks on windows and balconies of high-rise buildings;
    - Installing support fixtures in washrooms (toilet, shower);
    - Designating parking spots for tenants with disability.

- If required, the accommodation provider should seek expert opinion to assess accommodation needs and make sincere efforts to follow expert guidelines.

- Housing providers should always consider alternative options to facilitate accommodation.

    - For example, a tenant with a physical disability residing in a co-op may request the co-op board to be exempted from shoveling and mowing duties required per co-op rules. As alternative accommodation, the board could ask the tenant to contribute the same amount of time to office work for the co-op.

- A tenant has a physical disability and uses a walker that makes thumping noises and creates nuisance for the downstairs tenants. As accommodation, the landlord installs carpeting in the upstairs apartment to muffle the noise and accommodate the needs of both tenants.[128]

- Landlords should be flexible when applying rules and procedures; they must review each accommodation request from all possible angles before imposing adverse measures like eviction proceedings, revocation of subsidies in social housing, etc.

Landlords should be flexible when applying rules and procedures; they must review each accommodation request from all possible angles before imposing adverse measures like eviction proceedings, revocation of subsidies in social housing, and so on.

  - For example, a landlord accommodated a visually-impaired tenant by allowing his guide dog in his apartment, despite the building's No-Pets policy.[129]
  - In subsidized housing, tenants are required to report changes in their income and family size to the management. If a tenant misses the reporting deadline due to a justified reason, it would not be undue hardship for the housing administration to extend the deadline to prevent a possible revocation of subsidy.
  - Some rental applicants may not have a rental history, including:
    - Newcomers to Canada;
    - Women who are leaving an abusive relationship;
    - Young persons; and
    - People who have spent time in public institutions.

  - Landlords should allow such tenants to establish their reliability as tenants in other ways.

- While persons seeking accommodation have a responsibility to communicate their accommodation needs to landlords, some tenants may be unable to communicate or fully participate in the accommodation process.

  - These limitations could result from mental disability or language and cultural barriers (in case of new Canadians, for example).
  - Landlords should be mindful of these limitations and adjust the accommodation process accordingly within reasonable limits.

  - For example, a board ruled that persons who are discriminated because of language (e.g. they cannot speak English) are protected under the grounds of national origin and ethnicity. According to the board, the onus is on landlords to accommodate persons who do not speak English fluently.[130]

- All buildings in New Brunswick must comply with the *National Building Code*, the *National Fire Code*, and guidelines set by the provincial Department of Public Safety; however, in certain situations, these guidelines may not address specific accessibility issues facing people with disabilities. Therefore, it may not be an adequate defense that a building's accessibility standards comply with the relevant building codes, if the standards fall short of requisite human rights principles.[131]

- The accommodation process should not compromise the dignity and self-respect of the accommodation seeker or violate their privacy and confidentiality.

5.2 Responsibilities of Tenants in the Accommodation Process

Beside fulfilling their basic responsibilities as tenants (see section 1.5), tenants have the following responsibilities in the accommodation process:

- Cooperate in the accommodation process and clearly communicate to the landlord or housing provider the details of the required accommodation; landlords are not obligated to know every accommodation need, especially if the need is not clearly obvious.

> Human rights law recognizes that "some hardship" is an aspect of accommodation; only "undue hardship" can justify a landlord's refusal to accommodate tenant requests.

- Discuss possible accommodation options and cooperate with any experts who may be called in to assess the accommodation request.

- Provide any relevant information related to the accommodation, e.g. documentation from healthcare professionals.

- Accept the provided accommodation, cooperate in availing its benefits, and communicate any shortcoming in the said accommodation to the landlord.

5.3 Undue Hardship in Accommodating Tenant Requests

The landlord or housing provider's duty to accommodate ends at the point of undue hardship, a threshold or break point beyond which the landlord is not obligated to accommodate the tenant.

Courts use certain basic benchmarks to assess if the point of undue hardship was reached in a particular situation.

Human rights law recognizes that "some hardship" is an aspect of accommodation; only "undue hardship" can justify a landlord's refusal to accommodate tenant requests.[132]

> Housing providers must furnish clear and tangible evidence of any undue hardship claims, whether they relate to financial costs or health and safety risks.

The Supreme Court of Canada has identified the components of undue hardship in an employment situation;[133] in the housing context, the following two factors are foremost when assessing undue hardship:

Financial cost: The cost of the accommodation is so high that it would put the landlord under severe financial duress – or it would alter the essential nature or viability of their housing operation.

Serious health or safety risks: These risks (for other tenants, members of the public or the environment) are so serious that they outweigh the requested accommodation.

5.3.1 Proof of Financial Cost as Undue Hardship

The housing provider must show clear evidence of any of the undue hardship factors. To determine that accommodation would lead to excessive financial costs or would impact the viability of a housing operation, the following aspects are kept in view:

- **The size of the housing operation** – for example, the threshold of undue hardship for a landlord who rents a second house that he owns, or rents part of his living accommodation, would be significantly different compared to the point of hardship for a registered corporation that runs a large housing business.

- **Mode of recovery of the costs** – for example, if the cost of the accommodation can be reasonably recovered in the normal course of the business or can be phased in, with a certain amount of money allocated per month, for example, that may show that the cost is not unreasonable to justify undue hardship.

Objective evidence must be presented to prove incurred or estimated costs, through financial statements, expert opinion, research data etc. Mere speculation of possible costs is not enough to prove undue hardship.

5.3.2 Proof of Health and Safety as Undue Hardship

Similarly, if a landlord pleads health and safety reasons as justification for denying an accommodation request, the following factors may be considered to evaluate the health and safety risks in the housing environment:

- **The nature of the risk and its harmful effects**, i.e. does it pose a real threat or is the potential threat exaggerated.

- **The severity or scope of the risk**, i.e. the extent of harm the risk can inflict and the persons or entities who may be impacted.

- **The probability of the risk**, i.e. is the risk merely speculative or does it pose real danger.

- **The frequency of the risk**, i.e. how often could the threat be triggered.

5.3.3 Other Factors to Assess Undue Hardship

Other factors to consider when assessing if a landlord has reached the point of undue hardship include:

- The housing provider's previous efforts at accommodation:
  - For example, if the landlord has a record of neglecting accommodation requests, that would tilt the scales against the landlord; contrarily, if the landlord has made sincere efforts at accommodation in the past, that may indicate that the landlord has reached the point of undue hardship.

- The tenant's cooperation or non-cooperation in the accommodation process would likewise indicate whether or not the landlord's duty to accommodate has reached culmination point:
    - For example, if the tenant showed reluctance to participate in the offered accommodation or did not use its offered benefits, the landlord may no longer be obligated to provide further accommodation.

For More Information

For more information about the *Act* or this guideline, please contact the Commission at 1-888-471-2233 toll-free within New Brunswick, or at 506-453-2301. TTD users can reach the Commission at 506-453-2911.

You can also visit the Commission's website at http://www.gnb.ca/hrc-cdp or email us at hrc.cdp@gnb.ca

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Endnotes

[1] *Human Rights Act*, RSNB 2011, c. 171, section 2.1 [*Act*]. The section lists sixteen grounds of discrimination, while the additional grounds of sexual harassment and reprisal are mentioned separately in the *Act*.

[2] The section of the *Act*, which confers protections against housing and property discrimination, reads as follows: "5(1) No person directly or indirectly, alone or with another, by himself, herself or itself or by the interposition of another, shall, based on a prohibited ground of discrimination, (*a*) deny to any person or class of persons the right to occupy a commercial unit or a dwelling unit, or (*b*) discriminate against any person or class of persons with respect to any term or condition of occupancy of a commercial unit or a dwelling unit."

[3] The relevant section of the *Act* states as follows: "5(2) No person who offers to sell property or any interest in property shall, based on a prohibited ground of discrimination, (*a*) refuse an offer to purchase the property or interest made by a person or class of persons, or (*b*) discriminate against any person or class of persons with respect to any term or condition of the sale of any property or interest in property. 5(3) No person shall impose, enforce or endeavour to impose or enforce, any term or condition on any conveyance, instrument or contract, whether written or oral, that restricts the right of any person or class of persons, with respect to property based on a prohibited ground of discrimination."

[4] The relevant section of the *Act* reads as follows: "7(1) No person shall indicate discrimination or an intention to discriminate against any person or class of persons on the basis of a prohibited ground of discrimination in a notice, sign, symbol, emblem or other representation that is (*a*) published, displayed or caused to be published or displayed, or (*b*) permitted to be published or displayed on lands or premises, in a newspaper, through a television or radio broadcasting station, or by means of any other medium that the person owns or controls."

[5] People who identify with the *Act*'s grounds are more likely to reside in rental property, as they tend to have lower incomes or face other barriers against buying property. To qualify as property buyers, individuals need financial stability, good credit, and steady employment, qualifications that groups protected under the *Act* often lack because they are vulnerable to all forms of discrimination. Also, sellers of property, unlike landlords, are less concerned about a buyer's personal characteristics or the impact they would have on the neighbourhood where they purchase property, so long as the buyer meets all financial criteria for the purchase. (Tarnopolsky and Pentney. *Discrimination and the Law*. Toronto: Thomson and Carswell, 2004. Vol. III, 13-25). For these reasons, complaints of human rights violations in sale and purchase of property are few and far between.

[6] The *Universal Declaration of Human Rights* and the *International Covenant on Economic, Social and Cultural Rights* recognize the right to housing. Other international treaties that have affirmed the right to housing include the *International Convention on*

the Elimination of All Forms of Racial Discrimination, the *Convention on the Elimination of All Forms of Discrimination Against Women* and the *Convention on the Rights of the Child*. The Canadian government has ratified these treaties; all Canadian jurisdictions, therefore, recognize that housing is a fundamental human right.

[7] As a Nova Scotia Board of Inquiry has stated: "The ability to find suitable accommodation is even more important for disadvantaged people who are unlikely to be able to buy or build their own home or require a rental accommodation as a first step to being a home owner. To deny this basic right of every Nova Scotian is to deprive equality of opportunity and to impugn the dignity of the person". *Borden v MacDonald* (1993), 23 CHRR D/459 (NS Bd. Inq.) (para. 18) [*Borden*].

[8] Homelessness is a complex condition; the homeless include persons living on the streets, people who use shelters, the hidden homeless (those couch surfing or living in cars, who are not featured in homelessness data), and people at risk of homelessness. Homeless persons are exposed to high risk of disease and infections, harassment and abuse, malnutrition and dehydration, poor hygiene and sleep deprivation, and inclement weather conditions. Moreover, homelessness can lead to involuntary breakup of families and loss of children to foster care or children aid groups.

[9] As housing rights advocates have argued, a stumbling block to adequate housing is the so-called ideology of NIMBYism or "Not in My Backyard", which prevents social change around affordable housing and homelessness. NIMBYism is rooted in stereotypes and stigma about poverty and the homeless; it advocates that affordable housing has adverse impact on the aesthetics, character, and property value of specific neighborhoods, thus impeding affordable housing schemes and encouraging ghettoization of the homeless and poor. To facilitate the affordable housing movement, NIMBYism needs to be replaced by a "Yes in My Backyard" ideology.

[10] The policy, a 10-year, $55 billion initiative to promote more equitable housing for all Canadians, re-engages the public, private, and non-profit sectors to address Canada's housing crisis. The policy identifies sections of the population that are most vulnerable to losing housing-related protections; these groups include women and children fleeing from domestic violence, seniors, Indigenous peoples, homeless persons, persons with disability, people with mental health and addiction issues, veterans, young adults, racialized groups, and newcomers to Canada. For more details on the policy, see https://cmhc-schl.gc.ca/en/nhs/guidepage-strategy.

[11] *Watson v Antunes* (1998), CHRR Doc. 98-063 (Ont. Bd. Inq.).

[12] Interference with the right to quiet enjoyment of one's premises would constitute discrimination with respect to terms and conditions of tenancy. In an early case, *Jahn v Johnstone* (Ont., 1977), a landlord objected to the visits of a Black person in a tenant's unit, which was ruled as discrimination in the terms and conditions of tenancy.

[13] According to the Supreme Court of Canada: "A *prima facie* case is one which covers the allegations made and which, if believed, is complete and sufficient to justify a verdict in the complainant's favour in the absence of answer from the respondent". *O'Malley v Simpson-Sears Ltd.,* [1985] 2 SCR 536 7 CHRR D/3102 (para. 28) [*O'Malley*].

[14] *Wu v Ellery Manufacturing Ltd.,* 2000 BCHRT 53, CHRR Doc. 00-187. Courts and tribunals have repeatedly emphasized this point; see, for example, *Monsson v Nacel Properties,* 2006 BCHRT 543, CHRR Doc. 06-743 [*Monsson*] (para. 25).

[15] *Baer v McDonald*, [1994] BCCHRD No. 26.

[16] *University of British Columbia v Berg*, [1993] 2 SCR 353 18 CHRR D/310 (para. 26).

[17] For example, in *Segin v Chung*, 2002 BCHRT 42 CHRR Doc. 02-223, the tribunal set out a simpler test in a complaint of housing discrimination based on the grounds of sex and family status: "To make out a case of discrimination[…], the Complainant must show that [her] pregnancy or association with children was a factor in the Respondent's differential treatment of her" (para. 22).

[18] See *Borden*, *supra* note 7.

[19] *O'Malley*, *supra* note 13. In *Williams v Melucci*, 2013 HRTO 547, the tribunal noted: "As has been stated many times in the case law, intent to discriminate is not required in order to find a violation of the *Code*; rather, it is the impact of a respondent's actions on the applicant that is the central issue" (para. 27).

[20] *Cunanan v Boolean Developments Ltd. (2003)*, CHRR Doc. 03-200, 2003 HRTO 17 [*Cunanan*].

[21] *Shaw v Phipps*, 2010 ONSC 3884 71 CHRR D/168 (paras. 75-77).

[22] *McCarthy v Kenny Tan Pharmacy Inc.*, 2015 HRTO 1303 82 CHRR D/30 (paras. 88-89). As the tribunal noted, the mere fact that the respondent was South Asian did not make it impossible or less likely that he would not discriminate based on race or place of origin: "Clearly, people who are not white are also capable of holding and acting upon racist stereotypes and/or beliefs".

[23] In *Radek v Henderson Development (Canada) and Securiguard Services (No. 3)*, 2005 BCHRT 302 52 CHRR D/430, the tribunal summed up five elements of discrimination as follows: "1. The prohibited ground or grounds of discrimination need not be the sole or the major factor leading to the discriminatory conduct; it is sufficient if they are a factor; 2. There is no need to establish an intention or motivation to discriminate; the focus of the enquiry is on the effect of the respondent's actions on the complainant; 3. The prohibited ground or grounds need not be the cause of the respondent's discriminatory conduct; it is sufficient if they are a factor or operative element; 4. There need be no direct evidence of discrimination; discrimination will more often be proven by circumstantial evidence and

inference; and 5. Racial stereotyping will usually be the result of subtle unconscious beliefs, biases and prejudices" (para. 482).

[24] *Dadwan v Idylwild Inn (1979) Ltd.* [1985], 7 CHRR D/3275 (BCCHR). In the case, the court held that the respondent company was liable for the conduct of its building manager who refused to rent an apartment to the complainant protected by a code ground. See also, *Starr v Karcher Holdings Ltd. (2007)*, CHRR Doc. 07-569 (Sask. HRT) [*Karcher*], where the respondent corporation was held liable for its director's discriminatory comments about renting to Indigenous people.

[25] *Westbury v Trump Investments Ltd. (1992)*, 17 CHRR D/516 (BCCHR).

[26] *The Residential Tenancies Act*, R-10.2 [*RTA*]. Section 3(1): "A landlord (a) shall deliver the premises to the tenant in a good state of cleanliness and repair and fit for habitation; (b) shall maintain the premises in a good state of repair and fit for habitation; (b.1) shall deliver to the tenant and maintain in a good state of repair any chattels provided therein by the landlord; (c) shall comply with all health, safety, housing and building standards and any other legal requirement respecting the premises; and (d) shall keep all common areas in a clean and safe condition". For additional responsibilities of landlords in rentals on mobile home sites, see Section 25.1 of *RTA*.

[27] *Di Marco v Fabcic*, CHRR Doc. 03-050, 2003 HRTO 4 [*Di Marco*].

[28] 4(1) "A tenant (a) shall be responsible for ordinary cleanliness of the premises and any chattels provided therein by the landlord; (b) shall repair within a reasonable time after its occurrence any damage to the premises or to any chattels provided therein by the landlord caused by the wilful or negligent conduct of the tenant or by such conduct of persons who are permitted on the premises by the tenant; and (c) shall conduct himself and require other persons on the premises with his consent to conduct themselves in a manner that will not cause a disturbance or nuisance". For additional responsibilities of tenants in rentals on mobile home sites, see Section 25.2 of *RTA*.

[29] For a list of premises not considered residential premises for purposes of tenancy, see Section 1 of the *RTA*, *supra* note 26.

[30] *King v Bura*, 50 CHRR D/213, 2004 HRTO 9.

[31] See for example, "Rental Rates Increase in New Brunswick as Vacancy Rates Decrease", Tori Weldon, CBC, Oct. 26, 2020: https://www.cbc.ca/news/canada/new-brunswick/rent-apartment-moncton-increase-1.5773243. Also, "New Brunswick Apartment Buildings Attracting High Prices and National Buyers", Robert Jones, CBC, Oct. 30, 2020: https://www.cbc.ca/news/canada/new-brunswick/nb-apartment-buildings-attract-high-prices-1.5782841

[32] For example, in a human rights complaint involving a racialized person, a tribunal stated that the landlord had formed a "perception of [the complainant] as an angry and

threatening young Black man [and] the intersection of his race, colour, age and sex were at least a factor in this perception". *Monsson*, *supra* note 14 (para. 33).

[33] *Yale v Metropoulos (1992)*, 20 CHRR D/45 (Ont. Bd. Inq.): In this case, a landlord cancelled an apartment viewing with a visually-impaired applicant without notifying her; when she showed up for the viewing, he refused to let her enter the unit and behaved rudely with her.

[34] *Crepault v Woo (1994)*, 21 CHRR D/487 (Man. Bd. Adj.).

[35] *Biggs v Hudson (1988)*, 9 CHRR D/5391 (BC CHR). In another early case, *Timms v Port Moody Senior Housing Society (1986)*, 7 CHRR D/3491 (BC CHR), the landlord presented medical information that questioned a prospective tenant's ability to live independently – this was accepted as a valid BFR.

[36] See, for example, *Québec (Comm. des droits de la personne) c Whittom* (1993), 20 CHRR D/349 (Trib. Qué.) and *Québec (Comm. Des droits de la personne) c Gauthier* (1993).

[37] For example, an expert testimony before a tribunal confirmed that social assistance recipients are vilified as "fraudsters", "lazy, parasitic and irresponsible," with "personal failings and lack of adequate virtue." *Iness v Caroline Co-operative Homes Inc. (No. 5)*, CHRR Doc. 06-450, 2006 HRTO 19 (para. 43).

[38] *Kearney v Bramalea Ltd. (No. 2) (1998)*, 34 CHRR D/1 (Ont. Bd. Inq.) [*Kearney*]. The board accepted that certain types of risk management would be reasonable for landlords, e.g. requiring guarantors or co-signers, credit ratings, and employment or rental histories – if landlords are asked to omit these requirements, that may constitute undue hardship for them.

[39] *Birchall v Guardian Properties Ltd. (2000)*, 38 CHRR D/83, 2000 BCHRT 36.

[40] *Miller v 409205 Alberta Ltd. (2001)*, 42 CHRR D/311 (Alta. HRP).

[41] *Trudeau v Chung (1991)*, 16 CHRR D/25 (BC CHR).

[42] *Chauhan v Norkam Seniors Housing Cooperative Association* (2004), 51 CHRR D/126, 2004 BCHRT 262. South Asian tenants have been denied apartments because of cultural stereotypes about Indian cooking odours in other cases as well. For example, in *Fancy v J & M Apartments Ltd.* (1991), 14 CHRR D/389 (BCCHR), couple of East Indian origin was refused an apartment on pretext that odors from their cooking would disturb other tenants. It was held that the manager's decision was based on cultural stereotypes and he discriminated against the couple based on race, colour, ancestry, and place of origin. See also, *Peroz v Yaremko*, (2008), CHRR Doc. 08-769 (Sask. HRT) [*Peroz*].

[43] In *Baldwin v Soobiah (1983)*, 4 CHRR D/1890 (Ont. Bd. Inq.), a housing provider told potential tenants who belonged to a minority race that the house had been rented, but then communicated its availability to a non-racialized applicant.

[44] *Richards v Waisglass (1994)*, 24 CHRR D/51 (Ont. Bd. Inq.).

[45] *Borden v MacDonald (1993)*, 23 CHRR D/459 (NS Bd. Inq.).

[46] *Morrison v Effort Trust Realty Co. (1993)*, 26 CHRR D/119 (Ont. Bd. Inq.).

[47] See *Ontario (Human Rights Comm.) v Elieff* (1996), 37 CHRR D/248 (Ont. Div. Ct.) [*Elieff*].

[48] *Gowland v Gill*, 2015 BCHRT 187, 82 CHRR D/393.

[49] A tribunal found ancestry discrimination in the housing provider's comment that "Indians are the dirtiest people to rent to." *Karcher*, *supra* note 24.

[50] *Flamand v DGN Investments*, 52 CHRR D/142, 2005 HRTO 10.

[51] *Ahmed v 177061 Canada Ltd*. (2002), 43 CHRR D/379 (Ont. Bd. Inq.) [*Ahmed*].

[52] *Ibid*.

[53] *CSWU Local 1611 v SELI Canada Inc. (No. 8) (2008)*, 65 CHRR D/277, 2008 BCHRT 436.

[54] See *Horneland v Wong (2014)*, CHRR Doc. 14-0003, 2014 BCHRT 3, where a woman applicant, who met all other rental preconditions, was denied a residential unit because she had a young child.

[55] *Conway v Koslowski* (1993), 19 CHRR D/253 (Ont. Bd. Inq.).

[56] *Turanski v Fifth Avenue Apartments (1986)*, 7 CHRR D/3388 (BCCHR).

[57] A tribunal found that a woman's eviction from her apartment was motivated by "her pending motherhood", because the landlord, on learning about her pregnancy, asked if she intended to give up the baby for adoption as he didn't want children in the building. *Peterson v Anderson (1992)*, 15 CHRR D/1 (Ont. Bd. of Inq.) [*Peterson*].

[58] *Kertesz v Bellair Property Management*, CHRR Doc. 07-632, 2007 HRTO 38 [*Kertesz*] and *Reed v Cattolica Investments Ltd.* (1996), 30 CHRR D/331 (Ont. Bd. Inq.) [*Cattolica*].

[59] *Swaenepoel v Henry* (1985), 6 CHRR D/3045 (Man. Bd. Adj.): Three single women who resided together were discriminated against by the landlord because of the stereotype that single persons do not conform to the model of the nuclear family. In

Gurman v Greenleaf Meadows Investment Ltd (1982), CHRR D/808 (Man. Bd. Adj.), two sisters and a brother residing together were discriminated against by the landlord based on their single status.

[60] *Miron v Trudel*, [1995] 2 SCR 418. The court stated that marital status was an analogous ground of protection, in addition to the enumerated grounds of Section 15 of the *Charter*.

[61] In an early case, *Strickland v Dial Agencies (1980)*, 1 CHRR D/245, a tribunal held that a landlord's refusal to rent to a common law couple contravened Saskatchewan's *Human Rights Code* under the ground of marital status.

[62] *Matyson v Provost (1987)*, 9 CHRR D/4623 (Sask. Bd. Inq.). For a similar case of housing discrimination against unmarried couples, see *Vander Schaaf v M & R Property Management Ltd*. (2000), 38 CHRR D/251 (Ont. Bd. Inq.) [*Schaaf*].

[63] *Schaaf*, *supra* note 62.

[64] For example, in the relatively early case of *Booker v Floriri Village Investments Inc. (1989)*, 11 CHRR D/44 (Ont. Bd. Inq.) [*Floriri*], a landlord's refusal to rent to an unmarried couple because they did not conform to his definition of "family" was deemed discriminatory.

[65] *Raweater v MacDonald*, 51 CHRR D/459, 2005 BCHRT 63 [*Raweater*].

[66] For example, in *Flamand v DGN Investments* (2005), a landlord denied renting to a single mother of Aboriginal ancestry and uttered racial slurs against her.

[67] *Floriri*, *supra* note 64.

[68] *Leong v Cerezin (1992)*, 19 CHRR D/381 (BCCHR): A housing provider refused a male applicant and rented to a woman at a lower rent because he believed that women were cleaner and more responsible as tenants. In *Wry v Cavan Realty (C.R.) Inc. (1989)*, 10 CHRR D/5951 (BCCHR), a single man suffered sex and family status discrimination in housing because the landlord wanted to rent only to families and married couples.

[69] *R. v Shuckett (1981)*, 2 CHRR D/484 (Man. Prov. Ct.).

[70] For types of residential accommodations excluded from *RTA*'s ambit, see Section 1(1) of the *RTA*, *supra* note 26.

[71] *Leadley v Oakland Developments Ltd., (2004)*, 51 CHRR D/273 (NS Bd. Inq.).

[72] *Day v Cruickshank (No. 2) (1999)*, 35 CHRR D/503 (BC HRT).

[73] In *Arnold v Dunedin House Bed & Breakfast (No. 1) (2010)*, CHRR Doc. 10-0382, 2010 HRTO 323, a tribunal found that the applicant's sexual orientation and/or marital status played a part in the respondent's decision to withdraw her offer of bed and breakfast accommodation.

[74] *Thomas v Haque*, 2016 HRTO 1012, CHRR Doc. 16-1512.

[75] *Martinez v Garcia*, 2012 HRTO 1239, CHRR Doc. 12-1739.

[76] *Neale v Princeton Place Apts. Ltd.*, 39 CHRR D/161, 2001 BCHRT 6.

[77] *Taber v Stanford Construction Ltd. (1996)*, 25 CHRR D/245 (BCCHR).

[78] *St. Hill v VRM Investments Ltd*., CHRR Doc. 04-023, 2003 HRTO 1.

[79] *Baldwin v Soobiah (1983)*, 5 CHRR D/1890 (Ont. Bd. Inq.).

[80] *Ramnarine-Smith v Havcare Investments Inc. (No. 3)*, 2018 HRTO 878, CHRR Doc. 18-1378 [*Ramnarine*].

[81] *Kearney*, *supra* note 38: The respondents could not prove that rent-to-income ratios were helpful to identify reliable tenants or prevent defaults on rent. The board found that the practice had adverse effect on protected groups.

[82] *Dominion Management v Vellenosi* (1989), 10 CHRR D/6413 (Ont. Bd. Inq.): A 37-year-old woman was discriminated against based on age because the owners preferred older, wealthy couples. See also, *Garbett v Fisher* (1996), 25 CHRR D/379 (Ont. Bd. Inq.).

[83] For example, in *Sinclair v Morris A. Hunter Investments Ltd. (2001),* 41 CHRR D/98 (Ont. Bd. Inq.) [*Sinclair*], the board concluded that rent-to-income ratios have a negative impact on young rental applicants at least until their mid-twenties. The board declared that rent-to-income ratios discriminated on eight of the fourteen prohibited grounds (in the Ontario code), so they could not be applied without contravening the code.

[84] For example, see comment on NIMBYism, *supra* note 9.

[85] *Sinclair*, *supra* note 83.

[86] *Fakhoury v Las Brisas Ltd. (1987)*, 8 CHRR D/4028 (Ont. Bd. Inq.).

[87] *Ibid*. See also, *Peterson*, *supra* note 57.

[88] *Quebec (Commission des droits de la personne) c. Dion (1994)*, 25 CHRR D/418 (TD PQ).

[89] In *Hansen v Penta Cooperative Housing Assn.*, 2005 BCSC 612, the BC Supreme Court concluded that a co-operative had established a BFR for imposing a minimum occupancy standard for various sized units, e.g. a three-bedroom unit had a minimum requirement for two adults and two children or one adult and two children. The court stated that the occupancy standard was consistent with the CMHC's guidelines for co-operatives and with the co-operative's family-oriented vision.

[90] See, for example, *Cha v Hollyburn Estates Ltd. (No. 2)*, CHRR Doc. 05-513, 2005 BCHRT 409, where the complainant and her son were not allowed to rent a single-bedroom unit, as they were considered a family that should occupy at least a two-bedroom apartment.

[91] In *Cunanan, supra* note 20, a landlord discriminated against a family with three teenaged children by refusing their rental application because, according to him, the family size did not conform to "ideal Canadian" standards.

[92] *Carpenter v Westboro Housing Co-operative (No. 2) (2011)*, CHRR Doc. 11-1137, 2011 HRTO 637. See also, *Hendershott v Ontario (Community and Social Services)* 2011 HRTO 482 (CanLII), CHRR Doc. 11-0982.

[93] *Warren v F.A. Cleland & Son and Fowler* (BC HRC unreported). See also, *Veronneau c. Bessette, CP 750-32-001640-78, 1979* (unreported), where a landlord discriminated based on marital status and social condition when he denied tenancy to a woman because she was a divorcee and a welfare recipient.

[94] The relevant section of the *Residential Tenancies Act* reads as follows: Section 8(3): "A security deposit is not to exceed, (a) in the case of a week to week tenancy, the rent payable for one week's occupation of the premises, or (b) in the case of a tenancy other than a week to week tenancy, the rent payable for one month's occupation of the premises". In *Garbett v Fisher* (1996), a request for first and last month's rent was found discriminatory against tenants who relied on public assistance.

[95] *McEwen v Warden Building Management Ltd. (1993)*, 26 CHRR D/129 (Ont. Bd. Inq.).

[96] *Leonis v Metropolitan Toronto, Condominium Corp. No. 741(1998)*, 33 CHRR D/479 (Ont. Bd. Inq.). In a similar and more recent case, *Pantoliano v Metropolitan Condominium Corp. No. 570 (No. 2)*, CHRR Doc. 11-1238, 2011 HRTO 738, a complainant was stopped from bringing her 10-month old daughter to a condo swimming pool, even though the child was properly diapered. The rules barred children under two-years-old from the facility; also, children under the age of 16 could only use it during specified hours. A tribunal found that properly diapered and suited babies did not pose health risk to other pool users, so the rule was discriminatory. The rule restricting swimming hours for children under the age of 16 was also discriminatory because it barred school-age children from pool access during the week. The corporation could not show that the rules were a BFR; they were held discriminatory based on family status.

[97] *Petterson v Gorcak (No. 3)*, 69 CHRR D/166, 2009 BCHRT 439 [*Gorcak*].

[98] *Monsson*, *supra* note 14. For a discussion on the tendency to label people who complain about differential treatment as problematic, see *Naraine v Ford Motor Co. of Canada (No. 4)* (1996), 27 CHRR D/230 (Ont. Bd. Inq.) (paras. 90-97) [*Naraine*].

[99] *Elieff*, *supra* note 47.

[100] *Ward v Godina* (1994), CHRR Doc. 94-130 (Ont. Bd. Inq.).

[101] *Dixon v 930187 Ontario Ltd. (No. 1)*, CHRR Doc. 10-0283, 2010 HRTO 256. In an earlier case, *Ratnam v Capital Construction Supplies Ltd. (1986)*, 7 CHRR D/3497 (BCCHR), an apartment manager discriminated based on race, colour, and place of origin, when he ignored many requests of a Black tenant to move to a larger apartment, which was more suitable for his four-member family.

[102] *Syndicat Northcrest v Amselem, (2004)*, CHRR Doc. 04-657, 2004 SCC 47.

[103] *Dhillon v F.W. Woolworth Co. (1982)*, 3 CHRR D/743 (Ont. Bd. Inq.) [*Dhillon*]. See also, *Naraine*, *supra* note 98 (para. 50).

[104] *Elieff*, *supra* note 47. See also, *Messmer v Piliwood Investments Ltd. (No. 2),* 2011 HRTO 1421 [*Messmer*].

[105] *Wasylnka v Bilich*, 2009 HRTO 265. Tribunals have repeatedly affirmed that verbal insolence by landlords amounts to housing related harassment. For example, in *Lesperance v Selimos (1996)*, 28 CHRR D/36 (Sask. Bd. Inq.), the board noted: "The complainant […] suffered a number of racial epithets and insults - both direct and indirect. These epithets and insults amounted to ongoing verbal harassment and […] verbal harassment is conduct prohibited by s. 16 of the *Code*. In *DesRosiers v Kaur (2000)*, 37 CHRR D/204, 2000 BCHRT 23, a landlord similarly discriminated against an Indigenous woman by refusing tenancy and commenting, "I don't rent to Indians. All you people are drunks. All you do is get drunk and pass out on the lawn". See also, *Dhillon*, *supra* note 103.

[106] This doctrine is derived from a series of employment cases, e.g. *Ghosh v Domglas Inc. (No.2)* (1992), 17 CHRR D/216 (Ont. Bd. Inq.) (para. 76) and *Naraine*, *supra* note 100 (para. 54).

[107] *Crêpe It Up! v Hamilton,* 2014 ONSC 6721 CHRR Doc. 14-3120 at para. 19.

[108] See *Kahsai v Saskatoon Regional Health Authority (No. 2) (2005)*, 55 CHRR D/192; *Dhanjal and Canadian Human Rights Commission v Air Canada* [*Dhanjal*]; and *Canada (Human Rights Commission) v Canada (Armed Forces) and Franke (1999)*, 34 CHRR D/140 (FCTD).

[109] *Peroz*, *supra* note 42.

[110] *Pardo v School District No. 43*, 2003 BCHRT 71 CHRR Doc. 03-252 (para. 12). For more on the same topic, see: *Hadzic v Pizza Hut Canada (c.o.b. Pizza Hut)*, [1999] BCHRTD No. 44 (QL) 37 CHRR D/252 and *Dhanjal*, *supra* note 108.

[111] *Elieff*, *supra* note 47.

[112] *Ramnarine*, *supra* note 80. The court reiterated the concept of poisoned environment in housing as follows: "The poisoned environment concept may constitute a violation of the general protections against discrimination in the context of the occupancy of accommodation". See also, *Elieff*, *supra* note 47 and *Messmer*, *supra* note 104.

[113] *Fuller v Daoud (2001)*, 40 CHRR D/306 (Ont. Bd. Inq.). In a similar case, *Padron v Edney (2000)*, CHRR Doc. 00-171 (Nfld. Bd. Inq.), a Cuban man was subjected to racial epithets, verbal harassment, and differential treatment, and was finally evicted by his landlord, whose actions were held discriminatory under the grounds of race, colour, and national origin.

[114] *Khaskin v Goodwin (No. 5)*, 65 CHRR D/154, 2008 BCHRT 431.

[115] *Kertesz*, *supra* note 58 (para. 57). In the case, both the manager and the company were found liable for the sexual harassment of a young female tenant, when the manager made unwanted sexual comments and tried to solicit intimacy. See also, *Cattolica*, *supra* note 58.

[116] *A.B. v Joe Singer Shoes Limited*, 2018 HRTO 107 (CanLII).

[117] *Raweater*, *supra* note 65.

[118] *Peroz, supra* note 42.

[119] *Eagleson Co-Operative Homes, Inc. v Théberge,* [2006].

[120] *Iness v Caroline Co-operative Homes Inc. (No.5) (2006)*, CHRR Doc. 06-450, 2006 HRTO 19.

[121] *Nicolosi v Victoria Gardens Housing Co-operative and Ruvalcaba (No. 2) (2013)*, CHRR Doc. 13-0001, 2013 BCHRT 1.

[122] In *B. v Ontario (Human Rights Commission),* [2002] 3 SCR 403, 44 CHRR D/1, the Supreme Court of Canada adopted a broad and purposive approach to the interpretation of family status under the Ontario *Human Rights Code*. It concluded that the ground of family status applied where a father was adversely treated based solely on his status as a parent of an employee who had lodged a complaint against his manager. Similarly, in *Gorcak* (*supra* note 97), the tribunal held that the ground of family status can encompass

circumstances where the discrimination results from the status of being the parent of a particular child.

[123] *Fast v Meadowlands Housing Co-operative*, 2015 BCHRT 5, CHRR Doc. 15-0005.

[124] *Bone v Mission Co-op Housing Assn.*, CHRR Doc. 08-192, 2008 BCHRT 122. See also, *Vamburkar-Dixit v Brown (No. 4)*, CHRR Doc. 07-655, 2007 BCHRT 437.

[125] *Hobart v Renfew County Housing Corp. (No. 3)*, CHRR Doc. 10-1361, 2010 HRTO 1154.

[126] *Searchwell v Phillips*, CHRR Doc. 11-1500, 2011 HRTO 1000.

[127] *Di Marco*, *supra* note 27.

[128] *Policy on Human Rights and Rental Housing*. Ontario Human Rights Commission, 2009.

[129] *Di Marco*, *supra* note 27.

[130] *Welen v Gladmer Developments Ltd. (1990)*, 11 CHRR D/348 (Sask. Bd. Inq.). Refugees from Cambodia and Laos alleged that they were denied subsidized housing run by a charitable foundation because they don't speak English fluently. While discrimination was not established because the landlord accommodated the complainants' lack of language skills, the board accepted testimony of a language expert that language "goes hand in hand with ethnicity" and is usually the most important factor of ethnic identity. If language is lost, an individual is usually lost as a member of that particular ethnic group. The board noted that the ground of place of origin (like national origin) is also related to ethnicity and race, even though it has received scant judicial interpretation.

[131] *Quesnel v London Educational Health Centre (1995),* 28 CHRR D/474 (Ont. Bd. Inq.)

[132] *Clean Harbors Canada Inc. v Teamsters, Local Union No. 419,* [2013] CLAD No. 393.

[133] *Central Alberta Dairy Pool v Alberta (Human Rights Commission)*, [1990] 2 SCR 489 (CanLII) (para. 62).