

# Duty to Accommodate: a primer

Session 212 – November 14, 2014, 3 to 5 p.m.

Celia Chandler and Lauren Blumas, Iler Campbell LLP  
[cchandler@ilercampbell.com](mailto:cchandler@ilercampbell.com) and [lblumas@ilercampbell.com](mailto:lblumas@ilercampbell.com)



## What does all this mean for a housing provider?

- It always means that human rights issues are considered – tenant selection, tenancy, eviction, decision-making, hiring...
- It may mean that housing provider provides some things for some tenants that it doesn't provide to others
- It probably means that sometimes the landlord gets accused of being unfair
- It may mean that people use human rights language when they are talking about their personal preferences
- It definitely means that other tenants do not know the details of accommodation
- And it absolutely means that housing providers need to be educated about human rights and promote human rights concepts



Good for you, you're here!



## Overview

1. *Human Rights Code*, duties, resources
  - a) Duty to accommodate
  - b) Who does what?
  - c) Limits on the duty – what is undue hardship?
2. ONPHA Accommodation Policy
3. Case studies
4. Other sources of information
5. Wrap up



## 1. *Human Rights Code*

- Applies to you as housing providers and employers
- Protected grounds
- Duty to accommodate
- Undue Hardship



## Protected grounds

- race
- ancestry
- place of origin
- colour
- ethnic origin
- citizenship
- creed
- sex
- sexual orientation
- age
- marital status
- family status
- **Disability**
- gender identity
- gender expression
- the receipt of public assistance (housing only)
- record of offences (employment only)



## Duty to accommodate

“Accommodation seems to mean that we do not change procedures or services, we simply “accommodate” those who do not quite fit. We make some concessions to those who are “different” rather than abandoning the idea of “normal” and working for genuine inclusiveness... Its goal is to try to make “different” people fit into existing systems.”

*Tranchemontagne v. Ontario (Director, Disability Support Program)* 2006 SCC 14, [2006] 1 SCR 513



## Duty to accommodate - principles

- The needs of persons with disabilities must be accommodated in the manner that most respects their dignity, to the point of undue hardship.
- There is no set formula for accommodation – each person has unique needs and it is important to consult with the person involved.
- Taking responsibility and showing willingness to explore solutions is a key part of treating people respectfully and with dignity.
- Voluntary compliance may avoid complaints under the *Code*, as well as save the time and expense needed to defend against them.



## Who does what: Procedural duty

- Role of person requesting accommodation
- Role of landlord
  - What is the landlord entitled to know?
  - What is the landlord entitled to say to the requester?
  - What is the landlord entitled to say to others?



## Undue Hardship: Substantive duty

undue hardship is a very high threshold – considering cost (including external sources of funding), health and safety

Landlords expected to minimize costs

- Distribute costs across the entire budget
- Phase in accommodation
- Investigate tax deductions
- Establish a reserve fund
- Use creative and less expensive design solutions
- Explore outside sources of funding



## Undue Hardship

What can the housing provider consider when thinking about health and safety?

What cannot be considered?

- People “knew building was inaccessible” when they moved in
- Inconvenience
- Member preferences
- Business interests
- Resentment from other tenants
- “that’s not fair”



## 2. Accommodation Policy

Follow a clear and consistent process to:

- find a solution to a problem
- defend against a complaint

Important to:

- implement a policy
- use the policy
- document its use



### 3. Case Study # 1

- Laura uses a large wheelchair. When she moved into the building she tested her wheelchair in the bathroom and agreed that it was big enough to accommodate her chair.
- Laura contacted the office about a leak in her bathroom sink. When the superintendent attended to the sink, he noticed that the toilet had been badly damaged by the wheelchair.
- The landlord replaced the toilet and charged Laura the cost of its replacement.



### Case Study # 2

- Alexandra, a transgendered woman, was in an abusive relationship with Boris.
- Alexandra applied for housing with OASIS, a housing provider for women who are leaving abusive relationships. OASIS has a policy of not housing men.
- OASIS agrees to accept Alexandra as a tenant.
- Two months after she moves in, Alexandra files a complaint with the landlord that she has been bullied and harassed by other OASIS tenants.



## Case Study # 3

- Rob is a long-term tenant. There have been no complaints about him. He is well-liked and keeps to himself.
- Maninder, a woman of Indian background, moves into the unit next to Rob. Maninder complains to the office that she has heard Rob loudly repeating some very offensive things to her about her race and the fact that she is a woman.
- The manager meets with Rob. Rob explains that he suffers from Tourette syndrome, a condition that in very rare cases causes a person to blurt out obscene words or socially inappropriate and derogatory remarks.
- Rob is terribly embarrassed and apologetic - for years he has had his condition under control but lately it has flared up. He brings a letter from his doctor confirming that he is treated for Tourette syndrome.



## Case Study # 4

- Edgar has been a tenant for twenty years. For most of those years, he has been happy. Recently, the long-term property manager was replaced.
- Edgar was not happy with the decision to replace the manager. He delivers letters to his neighbours almost every week saying that the property manager, Agnes, is incompetent and he puts information on his website that is very critical of the property manager. He says that he's being bullied by the property manager.
- The property manager is upset about this and complains to the landlord.





## Case Study # 5

- Jacek lives in Unit 2. He's retired and is home most days. He is a heavy smoker – about 2 packs a day. His wife, also at home, dislikes his smoking. He promises to quit (!) but to keep peace, Jacek sits on his balcony to smoke.
- Patricia lives in Unit 3 next door. The balcony of Unit 3 adjoins the balcony of Unit 2. Patricia's daughter, Jessica, has had a lot of breathing problems since birth. She has recently been diagnosed with an extreme sensitivity to cigarette smoke and has a doctor's note saying so.
- Patricia makes a formal written complaint, with the doctor's note, to the office to ask if they can stop Jacek from smoking. She threatens to file a Human Rights Application.



## Case Study # 6

- Jolanta has lived in her unit for 10 years. It has become more and more difficult to get access to her unit. She never has guests.
- Paola moves in next door. Paola immediately begins to complain about a smell. Two months after she moves in, Paola advises the office in writing that she thinks she has bed bugs. She is horrified - the landlord immediately fumigates. Paola is sure that the smell and the bugs are coming from Jolanta's unit and complains that they interfere with her right to enjoy her unit.
- The landlord wants to fumigate Jolanta's unit too. The office gives written notice to Jolanta, and asks Jolanta to prepare the unit. Jolanta refuses to let the fumigator in.
- The office meets with Jolanta and her lawyer. That lawyer advises that Jolanta suffers from a mental illness that makes her acquire and keep excessive possessions. Pushing her makes her condition worse.



## Case Study # 7

- Mohamed lives in a two bedroom unit. Until October, he had a roommate.
- Recently his wife, her parents, and his young children have joined him in Canada from Somalia. There are currently four adults and four children living in the space.
- Tomoko lives next door to Mohamed. She does not like the smell of Mohamed's food and she complains about the number of times that the apartment door opens and closes all day long.



## 4. Other sources of information

- [www.onpha.on.ca/onpha/web](http://www.onpha.on.ca/onpha/web)
- [www.ohrc.on.ca](http://www.ohrc.on.ca)
  - Policy and Guidelines on Disability and the Duty to Accommodate - 2009
  - Policy on Human Rights and Rental Housing – 2009
  - Policy on Competing Human Rights - 2012
- CERA [www.equalityrights.org/cera/](http://www.equalityrights.org/cera/)
- Your lawyer



*Thank you!*

