



ONTARIO

HUMAN RIGHTS CODE

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

And Whereas it is public policy in Ontario that every person is free and equal in dignity and rights without regard to race, creed, colour, nationality, ancestry or place of origin;

And Whereas these principles have been confirmed in Ontario by a number of enactments of this Legislature;

And Whereas it is desirable to enact a measure to codify and extend such enactments and to simplify their administration;

Therefore, Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. (1) No person shall publish or display or cause to be published or displayed or permit to be published or displayed any notice, sign, symbol, emblem or other representation indicating discrimination or an intention to discriminate against any person or any class of persons for any purpose because of the race, creed, colour, nationality, ancestry or place of origin of such person or class of persons.

(2) Nothing in this section shall be deemed to interfere with the free expression of opinion upon any subject.

2. No person, directly or indirectly, alone or with another, by himself or by the intervention of another, shall:

(a) deny to any person or class of persons the accommodations, services or facilities available in any place to which the public is customarily admitted; or

(b) discriminate against any person or class of persons with respect to the accommodations, services or facilities available in any place to which the public is customarily admitted,

because of the race, creed, colour, nationality, ancestry or place of origin of such person or class of persons.

3. No person, directly or indirectly, alone or with another, by himself or by the intervention of another, shall:

(a) deny to any person or class of persons occupancy of any apartment in any building that

contains more than one self-contained dwelling unit; or

(b) discriminate against any person or class of persons with respect to any term or condition of occupancy of any apartment in any building that contains more than one self-contained dwelling unit.

because of the race, creed, colour, nationality, ancestry or place of origin of such person or class of persons.

4. (1) No employer or person acting on behalf of an employer shall refuse to employ or to continue to employ any person or discriminate against any person with regard to employment or any term or condition of employment because of his race, creed, colour, nationality, ancestry or place of origin.

(2) No trade union shall exclude from membership or expel or suspend any person or member or discriminate against any person or member because of race, creed, colour, nationality, ancestry or place of origin.

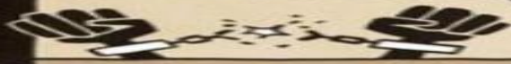
(3) No person shall use or circulate any form of application for employment or publish any advertisement in connection with employment or prospective employment or make any written or oral inquiry that expresses either directly or indirectly any limitation, specification or preference as to the race, creed, colour, nationality, ancestry or place of origin of any person or that requires any applicant to furnish any information concerning race, creed, colour, nationality, ancestry or place of origin.

The aim of the Ontario Human Rights Code is to create a climate of understanding and mutual respect among our people, so that all will be afforded the unhindered opportunity to contribute their maximum to the development and enrichment of our province.

The Universal Declaration of HUMAN RIGHTS

Adopted by the General Assembly of the United Nations in 1948, the Universal Declaration states basic rights and fundamental freedoms to which all human beings are entitled.

No one has the right to hold you in slavery.



No one has the right to torture you.

You have the right to recognition everywhere as a person before the law.

We are all equal before the law and are entitled to equal protection of the law.

You have the right to seek legal help if your rights are violated.

No one has the right to wrongly imprison you or force you to leave your country.

You have the right to a fair and public trial.

Everyone is innocent until **PROVEN** guilty.

You have the right to privacy. No one can interfere with your reputation, family, home or correspondence.



You can travel wherever you want.

You have the right to seek asylum in another country if you are being persecuted in your own country.



Everyone has the right to a nationality.

All adults have the right to marriage and to raise a family.



**WE ARE ALL BORN FREE AND EQUAL
EVERYONE IS ENTITLED
TO THESE RIGHTS**

NO MATTER YOUR RACE, RELIGION OR NATIONALITY

**EVERYONE HAS THE RIGHT TO
LIFE, FREEDOM
AND SAFETY**



*You have the
responsibility to respect
the rights of others*

**NO ONE
CAN TAKE AWAY
ANY OF YOUR RIGHTS**

You have the right to own property.



Everyone has the right to belong to a religion.

Freedom of Expression:
You have the right to free thought and to voice your opinions to others.

Everyone has the right to gather as a peaceful assembly.

You have the right to help choose and to take part in governing your country, directly or through chosen representatives.



You have the right to social security and are entitled to economic, social and cultural help from your government.

Workers' rights:
Every adult has the right to a job, a fair wage and to join a trade union.

You have the right to leisure and rest from work.

Everyone has the right to an adequate standard of living for themselves and their family.



Everyone has the right to education.

Your intellectual property as an artist or scientist should be protected.

We are all entitled to social order so we can enjoy these rights.

Strengthen collaborative relationships and partnerships

Increase public awareness about rights and responsibilities to foster a human rights culture

Indigenous reconciliation

Human rights culture

Provide practical tools to guide and support advancing human rights

Work together with rights-holders to identify and advance human rights priorities

Health and well-being

**HUMAN RIGHTS FIRST:
A plan for
belonging in
Ontario**

Education

Improve duty-holders' capacity and accountability to address systemic discrimination

Enhance institutional awareness about human rights obligations to reduce discriminatory practices

Criminal justice

Build an efficient and sustainable organization

Vision

An inclusive society where human rights are a lived reality and where all people are valued and treated with dignity and respect, feel a sense of belonging, and take responsibility for promoting and protecting human rights

Values

- Social justice
- Relationships
- Collaboration
- Integrity
- Accountability

Mission

To create a climate of understanding and mutual respect for the dignity of all people by promoting and protecting human rights in Ontario and addressing systemic discrimination



Ontario
Human Rights Commission
Commission ontarienne des
droits de la personne

Ontario Laws related to Employment

- Provincially Regulated Work
 - Employment Standards Act
 - Occupational Health & Safety Act
 - Human Rights Code of Ontario
 - Common Law
 - Industry Specific Laws and Regulations
 - Workplace Safety and Insurance Act

Discrimination

- Direct or Indirect
- Intention is not relevant
- Prima facie test for discrimination:
 1. Is the worker protected by a characteristic/ground in the Code?
 2. Has the worker experienced something bad (adverse treatment)?
 3. Is there a connection between the adverse treatment and the protected characteristic?

Human Rights Code

Employment

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

(emphasis added)

OHRC Policy of Discrimination and Language

A person's accent is also often associated with her or his "mother tongue" or place of origin. Because a person's accent is usually related to her or his ancestry, ethnic origin or place of origin, the Code can be infringed when someone is denied employment, service, housing, or is otherwise discriminated against because of an accent. In these kinds of situations, the underlying discrimination is often actually based on ancestry, place of origin and, or ethnic origin. (Ontario Human Rights Commission Policy of Discrimination and Language) emphasis added

Harassment

Harassment in employment

5(2) Every person who is an employee has a right to freedom from harassment in the workplace by the employer or agent of the employer or by another employee because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sexual orientation, gender identity, gender expression, age, record of offences, marital status, family status or disability. (emphasis added)

Vicarious Liability

- Generally, employers are not held responsible or liable for the acts of their **employees** who commit sexual harassment or harassment (s. 46.3(1))
- Must be a “directing mind” of the employer for the company to be held liable for harassment or sexual harassment by an employee or if worker can show the behaviour caused the workplace to be poisoned

Sexual Harassment

Harassment because of sex in workplaces

7(2) Every person who is an employee has a right to freedom from harassment in the workplace because of sex, sexual orientation, gender identity or gender expression by his or her employer or agent of the employer or by another employee.

What does the worker need to provide to the employer?

- They have a disability that requires workplace accommodation (but not usually obligated to provide the diagnosis)
- The limitations, restrictions or needs associated with the disability
- Whether they can perform the essential duties of their position, with or without accommodation
- The type of accommodation or job modifications they require in order to perform their essential duties
- Prognosis about how long these limitations or needs will last

Two-way Street

- The accommodation process has been called a "multi-party" inquiry
- This means a worker is obligated to provide this information to their employer
- If a worker fails to provide it, or the information is insufficient, it could lead to the employer determining the worker has abandoned their position or terminate them
- If a worker is on a medical leave of absence they must provide information to their employer about their prognosis and recovery

Employer's Obligations

- The employer must:
 - Accept the request in good faith;
 - Only get a second opinion or expert advice when needed, not routinely ;
 - Maintain confidentiality;
 - Pay for the costs of the associated medical reports;
 - Limit the requests for information to only what is necessary to respond to the accommodation request; and
 - Implement accommodation in a timely manner.

Duty to Accommodate

Disability

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

Accommodation

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

Accommodation Process - Disability

- Two parts to the duty to accommodate: procedural accommodation and substantive accommodation
- Once an employer becomes aware of a worker's disability this triggers the accommodation process and places a burden on the employer to inquire into a worker's potential accommodation needs
- Disability has been given a broad interpretation but does not include temporary conditions such as the common cold etc.

Human Rights Tribunal of Ontario

- If an employer breaches their obligations under the Code workers may file a claim with the HRTO
- The HRTO has the ability to award financial compensation, non-monetary remedies and public interest remedies
- Workers must file a claim within one year of the last incident of discrimination/breach

Choice of Forum: HRTO or Landlord and Tenant Board

HRTO	LTB
-Limited to claims of discrimination / harassment on Code-protected grounds	-Can also look at maintenance, unlawful charges, and substantial interference with reasonable enjoyment
-Can look at issues re: prospective tenants, undertenants, or occupants	-No jurisdiction re: prospective tenants, undertenants, or occupants
Speed - Slow	Speed – Resolved faster
Mediation – Meaningful	Mediation – Not meaningful

Duty to Investigate Complaints

1. Awareness of issues of discrimination/harassment, policy, complaint mechanism and training:
 - Was there an awareness of issues of discrimination and harassment in the workplace at the time of the incident?
 - Was there a suitable anti-discrimination/harassment policy?
 - Was there a proper complaint mechanism in place?
 - Was adequate training given to management and employees?
2. Post-complaint: seriousness, promptness, taking care of its employee, investigation and action:
 - Once an internal complaint was made, did the employer treat it seriously?
 - Did it deal with the matter promptly and sensitively?
 - Did it reasonably investigate and act; and
3. (3) Resolution of the complaint (including providing the complainant with a healthy work environment) and communication:
 - Did the employer provide a reasonable resolution in the circumstances?
 - If the complainant chose to return to work, could the employer provide her/him with a healthy, discrimination-free work environment?
 - Did it communicate its findings and actions to the complainant?

Laskowaska v. Marineland of Canada Inc., 2005 HRTO 30 (CanLII), at para 59.

Human Rights Code & Housing

- Landlords are responsible for making sure housing environments are free from discrimination and harassment
- HRC covers:
 - Process for choosing and evicting tenants
 - Occupancy rules
 - Repairs
 - Use of facilities/services
 - General enjoyment of unit/complex
- Code does not apply to personality conflict, unrelated to Code grounds

Guide to:

Human Rights in Ontario

See also: LGBTQ2S Legal Concerns

JUSTICE
FOR CHILDREN
AND YOUTH

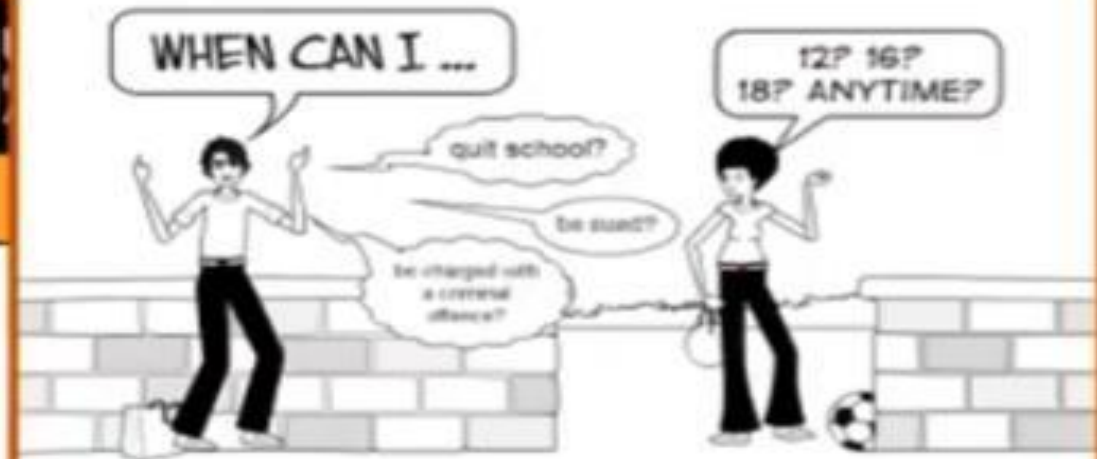


Guide to:

Healthcare and Mental Healthcare



Your Age and the Law



This pamphlet contains information on the laws in Ontario as it applies to children and youth at different ages.

Youth Records Are Private

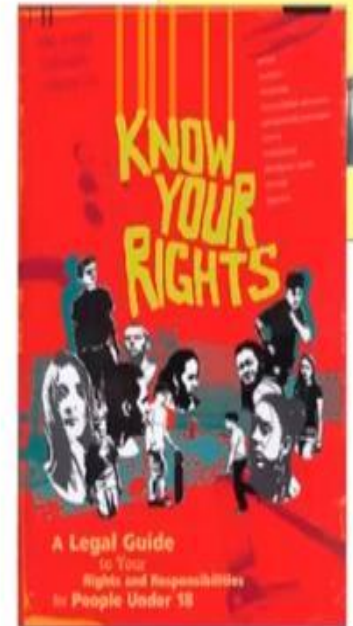
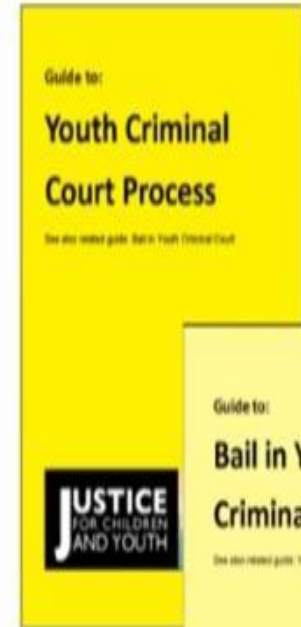
- Youth should not discuss their charges with the school
- Youth are not supposed to share their bail paperwork with school (or other contexts, eg employment, housing)
- A school cannot use police involvement as a justification for a suspension or expulsion
- Use of youth records in any other context requires an order from a youth criminal court judge



Overlap with Youth Criminal Justice

Students facing school discipline and criminal charges; some issues:

- Participation in Principal's investigation on school discipline (vs right to remain silent)
- Right to counsel for criminal, not education
- Bail conditions (victim contact, attend premises)
- Records (privacy)
- Meaningful consequences (criminal vs school outcome)



Today's Focus: Rights of Students Attending Publicly Funded Schools in ON

1. Brief Introduction to JFCY
2. School System & Context
3. Attendance
4. Discipline: suspensions, expulsions, exclusions
5. Special Education: accommodation and processes, evidence
6. Overlap with Youth Criminal Justice



School Discipline

1. List of behaviours that can lead to discipline
2. Requires progressive discipline
3. Formal discipline:
 - Suspensions
 - Suspensions Pending Expulsions
 - Expulsions (a school or all schools of board)
 - Exclusions

PPM 145: Progressive discipline and promoting positive student behaviour

Suspensions

Principal is required to **consider** whether to suspend a student, for offences listed in *Education Act*:

- Uttering a threat to inflict serious bodily harm.
- Possessing alcohol or illegal drugs.
- Being under the influence of alcohol.
- Swearing at a teacher or another person in authority.
- Vandalism that causes extensive damage.
- Bullying.
- Any other activity that is an activity for which a Principal may suspend a student under a policy of the Board.

Nexus: the activity took place at school, at a school-based activity, or in other circumstances where engaging in the activity has an impact on school climate.



Suspensions – Notice

Principal must:

- Inform teachers; and
- make all reasonable efforts to inform parent/guardian within 24 hours
- ensure that written notice is given promptly to the student and to the parent/guardian.

Notice to parent must include:

- Reason and Length of Suspension
- Information about Suspended Students homework and/or program
- Information about Appealing Suspension (within 10 days of start)

School Context

School System:

- Publicly funded Elementary, Secondary, Catholic schools
- *Education Act & Regulations*
- Ministry of Education's Policy/Program Memoranda
- Example: Policy/Program Memorandum 119: Developing and implementing equity and inclusive education policies in Ontario schools

- Human Rights Code
- Tribunals: eg. HRTTO, Child Youth and Family Services Board
- Courts (common law): applications (eg civil lawsuits) judicial reviews (eg suspensions, exclusions), appeals from other levels