

How to Apply the Code in Tribunal Decisions Part I

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Overview of the Ontario *Human Rights Code*



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Ontario *Human Rights Code*

**Overall principle:
human dignity and respect**

- Preamble to the Ontario *Human Rights Code* speaks of human rights as founded on the idea that every human being has an innate dignity that endows them with rights that should be respected.



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Ontario *Human Rights Code*

- **Creating a climate of understanding and mutual respect for the dignity and worth of each person**
- **Aims to ensure each person feels a part of the community and able to contribute fully**
- **Provides for equal rights and opportunities without discrimination.**



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Ontario *Human Rights Code*

- Code has **quasi-constitutional** status
- Section 47(2) of the Code:
The Code has **primacy** over all other legislation in Ontario, unless the other legislation specifically states that it applies notwithstanding the Code.



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Areas where discrimination is prohibited

Code prohibits discrimination and harassment in five social areas:

- Employment
- Services, goods & facilities
- Housing (“occupancy of accommodation”)
- Contracts
- Membership in vocational and professional associations



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Areas where discrimination is prohibited

- **Sexual harassment and solicitation**
- **Reprisal**



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Code grounds

Unlike *Charter* grounds, which may be enumerated or analogous, *Code* grounds are a specified list:

- Race
- Ancestry
- Place of origin
- Colour
- Ethnic origin
- Citizenship
- Creed (religion)
- Sex (gender identity, pregnancy, breastfeeding)
- Sexual orientation
- Age
- Record of offences (in employment)
- Marital status (all statuses, same-sex & opposite-sex)
- Family status
- Disability (including perceived & mental disabilities)
- Receipt of public assistance (in housing)

Employment

- All types of workers (including volunteers)
- All aspects of employment
 - Recruitment
 - Hiring
 - Policies, practices, qualifications
 - Facilities
 - Training & Promotion
 - Benefits
 - Workplace environment
 - Discipline & termination
- Extended workplace



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Services

- All service users protected
- Provision of services by all types of staff
- Defined very broadly. Includes:
 - Education
 - Policing, justice system
 - Health care
 - Private businesses, not for profit organizations
 - Government services



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Housing

- Rental housing (inc. social housing & co-op housing), also hotels, motels, houses, condominiums...
- *Code* creates requirements for rental housing providers as well as tenants.
- Can apply to housing policies and legislation that indirectly infringe the *Code*



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Human Rights System

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



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Role of the OHRC

Section 29

The broad overall and over-arching functions of the Commission are expressed in section 29 of the Code:

- To promote and advance respect for human rights
- To protect human rights
- To protect the public interest and identify and promote the elimination of discriminatory practices



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Role of the OHRC

Section 29 of the *Code* empowers the Commission to undertake:

- Public education
- Research & analysis
- Policy development
- Review of statutes, legislation, policies, programs
- Role in “tension & conflict”
- Public interest inquiries
- Commission initiated applications & legal interventions
- Monitoring & reporting



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Code Principles

- **Intention is irrelevant**
- **Recognizes substantive equality**
- **Remedial vs. punitive**
- **Rights are interpreted broadly, defences narrowly**



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Organizational Responsibility

Organizations are:

- Obligated to provide an environment free from discrimination and harassment
- Liable for discriminatory acts of employees or agents
- Organizations can be held liable if they condone, ignore or do not respond appropriately to acts of discrimination



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How to recognize a human rights issue in the facts of a case



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- **Where does the human rights issue arise?**
- **This will affect your ability to address it, and if you can address it, will shape the appropriate remedy.**



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Sources of human rights issues

- The dispute between the parties to the adjudication (perhaps most common in landlord and tenant proceedings)
- Other Legislation – *Tranchemontagne* or *Coroners Act* cases
- Regulations – *Hendershott* or *Health Services Appeal and Review Board* case
- By-laws – OMB Decision in Kitchener
- Policies – Social Benefits Tribunal Decision 0707-08819
- The Tribunal's Process
- The Hearing and the Decision



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How to Apply the Code in Tribunal Decisions Continued

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The Effect of *Tranchemontagne*

- You must have a matter properly before you as an adjudicator
- You will continue to be limited by the powers granted to you by statute
- Social Benefits Tribunal Decision 0707-08819



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What is discrimination?

- **Constructive Discrimination**
- **Not all distinctions are discriminatory**



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The *prima facie* case

- A distinction based upon an enumerated ground or a rule with a disparate impact because of an enumerated ground
- Disadvantage flowing from the treatment



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Defences

- Section 11
- Section 17
- Section 24
- The defence of justification, post-*Meiorin*



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Remedies

- Cannot decline to exercise *Code* jurisdiction
- Tribunal's remedial powers are limited by legislation
- No power to make general declaration that a law is inconsistent with the *Code*
- Decline to apply the provision that is inconsistent with the *Code*



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QUESTIONS?



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