

What is the Human Rights Code under Ontario's Human Rights System?

**This guide consists of legal information ONLY; information shared in this guide is NOT considered legal advice.*



What is the Ontario Human Rights Code (the “Code”)?

The *Ontario Human Rights Code* is a provincial law that protects the right to be free from harassment and discrimination of everyone living in Ontario.

Under the *Code*, there are five **protected social areas** where people should be free from experiencing harassment and discrimination. These are:



1. Employment



2. Housing



3. Goods, Services, and Facilities

(e.g. malls, restaurants, healthcare settings, schools, institutions)



4. Contracts



5. Unions, Memberships, and Vocational Associations

The *Code* does not apply to harassment and discrimination outside of these protected areas (e.g. street harassment or in another jurisdiction).

The *Code* also does not protect the right against all types of discrimination or harassment. Under the *Code*, there are specific prohibited types of harassment and discrimination (known as **protected grounds**). They are:

- Race and colour
- Ancestry
- Place of origin
- Citizenship
- Ethnic Origin
- Creed (or religion)
- Receipt of social assistance (housing only)
- Sexual Orientation
- Marital Status
- Family Status
- Record of Offences (employment only, must have been pardoned)
- Age
- Disability
- Sex (includes being pregnant, sexual harassment)
- Gender Identity
- Gender Expression
- Reprisal

What is Discrimination?

Discrimination means unequal or different treatment or harassment that causes harm. There are different types of discrimination under the *Ontario Human Rights Code*. These include:

- **Direct/Intentional discrimination:** A form of discrimination that stems from negative stereotypes or beliefs associated with a prohibited ground.
- **Systemic discrimination:** A complex form of discrimination; refers to structures, policies, and procedures that may seem neutral on the surface but may have discriminatory effects on individuals based on one or more different *Code* grounds.
- **Constructive discrimination:** A rule or practice that unintentionally singles out particular people and results in unequal treatment. Also known as adverse effect discrimination.

Discrimination often takes place without any intent to do harm. Intent is not required for a violation of human rights under the *Code* to be established.

What is the Duty to Accommodate?



Under the *Code*, employers, housing providers, unions, and service providers must accommodate the needs of people covered by the protected grounds so that they can participate, live, and engage in society equally. This is legally known as the duty to accommodate. Accommodations must be provided to the legal limit of undue hardship.

For example, a worker with a disability may require an accommodation in the workplace.

Examples of Harassment and Discrimination Under the Ontario Human Rights Code



Example 1: A Black man tries to view an apartment for rent listed today but is told by the landlord that the apartment is no longer available after meeting him. He discovers later that the landlord does not rent to Black people.



This might be an example of direct discrimination due to race (protected ground) while trying to rent an apartment (housing, which is a protected social area).



Example 2: A child with autism is removed from their class because they are not communicating or participating as instructed by the teacher(s).

This might be an example of constructive discrimination based on an individual's disability (protected ground) at school, a protected social area (**services**).



Example 3: A female nurse experiences inappropriate sexual touching and advances from a male doctor at the hospital where they work.

This is an example of sexual harassment (prohibited ground) while working at a hospital, (**employment**, which is a protected social area).



Example 4: A woman is hired for a job and goes to sign the contract but stops. In the contract it says that: "female employees cannot get pregnant and take maternity leave during the first year of employment."



This might be an example of a direct discrimination based on an individual's in an employment contract under protected social areas (**employment** and **contract**).



Example 5: A union is failing to investigate incidents of racism against an Indigenous unionized worker by other unionized employees.



This might be an example of systemic discrimination based on an individual's race (protected social ground) by a union, a protected social area at work (**association** and **employment**).

What is Ontario's Human Rights System?

The Ontario *Human Rights Code* is upheld by three organizations that make up the province's human rights system and ensure people are protected from harassment and discrimination. These organizations are:



Ontario Human Rights Commission (OHRC): The government body that oversees the implementation of the Code. Develops policies, conducts research and analysis on human rights issues, and conducts human rights inquiries.



Human Rights Legal Support Centre (HRLSC): An independent government agency that helps people, who believe their legal rights under the *Code* have been violated, can access legal services including advice, support, and representation.



Human Rights Tribunal of Ontario (HRTO): The Tribunal accepts cases on *Code*-related human rights violations. Cases might be resolved by mediation or a hearing. You could file a human rights application to the Tribunal if you experienced harassment and discrimination covered under the *Code*.

What Legal Terms Should I Remember Before Filing a Human Rights Application?

- **Applicant:** a person who experienced harassment and discrimination. Most likely the same person who is filing the application at the HRTO.
- **Personal Respondent:** a person or individual named in the HRTO application; differs from organizational respondent.
- **Organizational Respondent:** the organizations, companies, or institutions that may be named as parties in the HRTO application; differs from personal respondent.
- **Mediation:** A voluntary settlement meeting for parties to try to resolve their dispute, with the help of a HRTO member, before it goes to a hearing.
- **Hearing:** A legal proceeding where parties present in front of a HRTO adjudicator who will decide, based on the evidence presented, whether the Code was breached and, if so, what remedies to award.
- **Settlement:** Where an HRTO application (or any other legal dispute) is resolved by the parties themselves and not decided at a hearing.



Learn more about **Definitions** used in the HRTO process on the Human Rights Legal Support Centre at: <https://hrlsc.on.ca/definitions/>

What Are the Steps at the HRTO?



There are five basic steps for human rights applications at the Human Rights Tribunal of Ontario:



1. APPLICATION The document (HRTO Form 1) that begins a human rights claim under the *Code*



2. RESPONSE The respondent's answer (Form 2) to the Application (Form 1).



3. REPLY The applicant's answer (Form 3) to the respondent's Response (Form 2). The reply is intended to deal only with new matters that are raised in the Response (Form 2).



4. MEDIATION A settlement meeting. An opportunity for parties to meet with an HRTO member to try to resolve their dispute before it goes to a hearing. A mediation is voluntary and any settlement must be agreed to by both parties.



5. HEARING A legal proceeding in which the parties present their case in front of an HRTO adjudicator who will decide, based on the evidence presented, whether the *Code* was breached and if so, what remedies to award.

Access helpful **How-To Guides** on the Human Rights Legal Support Centre website to complete your human rights application to the HRTO: <https://hrlsc.on.ca/how-to-guides/>

Things I Should Remember Before Filing a Human Rights Application at the HRTO?



- The HRTO Tribunal cannot punish an organization or individual with jail time or costs.



- Establish a connection between the poor treatment AND the prohibited ground(s) of discrimination.



- Establish a connection between the poor treatment AND one of the social areas set out in the *Code*.



- There is no cost to filing a HRTO application

- The purpose of the *Code* is to resolve the harm caused by discrimination and harassment, not punish.

- The HRTO Tribunal can order an individual or organization to compensate you or complete training.

- Applicants can have more agency and control when they participate in mediation and/ or settlement than at a HRTO hearing.

- Applicants can represent themselves at the HRTO; a lawyer is not required but it is a good idea to secure a human rights lawyer who can support you through the process.

How Much Time Do I Have to File a Human Rights Application?



The time limit to file an HRTO application is a year from the last incident of harassment and discrimination the applicant experienced.



If the applicant experienced different kinds of discrimination, the Application must be filed within a year of the earliest act of discrimination. The Tribunal is very strict on time limits, so it's a good idea to call the Human Rights Legal Support Centre (HRLSC) and get specific advice about your case.

For details about limitation periods at the HRTO visit:
<https://hrlsc.on.ca/how-to-guides/limitation-periods/>

Awards and Remedies I May Receive for Human Rights Cases at the HRTO:



*Remedies and awards are determined on a case-by-case basis at the Human Rights Tribunal of Ontario.

- 1. General Damages:** Financial compensation awarded to you for injuries to your dignity, feelings, and self-respect because of the harassment and discrimination. General damages are awarded when there is a breach in the *Code* and the applicant experienced a personal impact from that breach.
- 2. Special Damages:** Financial awards for any money you lost or are forced to spend (such as income loss due to termination, therapy costs, other medical costs) because of the harassment and discrimination. This type of remedy is meant to put you back in the financial position you would have been if the harassment and discrimination did not occur.
- 3. Non-monetary Remedies:** The HRTO can order remedies that will put you back in the position you would have been if the discrimination did not occur in the first place.
- 4. Public Interest Remedies (PIRs):** The HRTO can order remedies or measures to ensure respondents and other people comply with the *Code*. Public interest remedies are intended to impact more people than just the person filing the human rights application and person(s) or organization(s) responding to the application. The intent behind this type of remedy is to prevent similar harassment and discrimination from happening in the future.

Examples of public interest remedies may include:

- Ordering workplace sexual harassment training for the harasser, employer and other staff
- Ordering human rights training for the harasser, employer and other staff
- Ordering the employer to create a sexual harassment policy or update reporting processes
- Ordering the employer to post Ontario *Human Rights Code* cards throughout the workplace

Visit the Human Rights Legal Support Centre website for details about the types of awards and remedies available for harassment and discrimination at the HRTO: <https://hrlsc.on.ca/how-to-guides/completing-and-filing-an-hrto-application/additional-informationsection-10-the-remedy/>

What Resources Can I Use to Help with a Human Rights Application?

Reminder: *The information in this guide should not be interpreted as legal advice.*

For legal advice about your human rights in Ontario, speak to a lawyer or contact the Human Rights Legal Support Centre (HRLSC) for free, confidential human rights legal services:

Human Rights Legal Support Centre

Tel: (416) 597-4900

Toll Free: 1-866-625-5179

TTY: (416) 597-4903

TTY Toll Free: 1-866 612-8627

Press "4" for Indigenous Services



Telephone lines are open:

Monday, Tuesday, Wednesday and Friday: 9 am to 5 pm

Thursday: 2 pm to 5 pm

<https://hrlsc.on.ca/contact-hrlsc/>

