HUMAN RIGHTS CODE

2 Accommodation

PART I FREEDOM FROM DISCRIMINATION (SS. 1-9)

Commentary & Cases—Interpretation of the Code—The Consitution Act, 1867 and the Ontario Human Rights Code § I:2 ——Rules of Interpretation—Generally ———The Charter of Rights and Freedoms and the § I:3 **Human Rights Code** § I:4 ———Application of the Code — — Retrospectivity § I:5 § I:6 —The Tests for Discrimination § I:7 —Showing a *Prima Facie* Case of Discrimination § I:8 —Proving Direct Discrimination ——Intention, Malice and Motive § I:10 ——Bias Causing Unfair Treatment § I:11 ——Differential Treatment § I:12 — —Where a Prohibited Ground is One Reason § I:13 ——Conduct Consistent Only with Discrimination § I:14 —Proving Systemic Discrimination § I:15 —Defences—Legitimate Reason Services § 1:1 Case Law—Generally § 1:2 -Facilities and Services Governed § 1:3 —Forms of Discrimination in Services and Facilities— Race § 1:4 ——Place of Origin - —Creed § 1:5 § 1:6 ——Sex § 1:7 ——Sexual Orientation § 1:8 ——Age § 1:9 ——Family Status § 1:10 — — Marital Status § 1:11 — — Disability—Restaurant Service 1:12 — — Other Services § 1:13 — Gender Identity/Gender Expression § 1:14 Related Provisions

§ 2:1 Case Law—Subsection 2(1)—Generally

Annotated Ontario Human Rights Code

```
§ 2:2 — Race/Ancestry/Place of Origin
§ 2:3 ——Age
§ 2:4
      ——Family Status
§ 2:5 ——Disability
§ 2:6 ——Sex
§ 2:7 ——Marital Status
  2:8
      — — Receipt of Public Assistance
§ 2:9 ——Creed
§ 2:10 —Subsection 2(2)—Harassment
§ 2:11 Related Provisions
Contracts
§ 3:1 Case Law
§ 3:2 Related Provisions
Accommodation of person under eighteen
§ 4:1 Case Law
§ 4:2 Related Provisions
Employment
§ 5:1 Case Law—Subsection 5(1)—Generally
      — — Meaning of Employment/Employee
§ 5:2
§ 5:3 ——Prima Facie Case—Hiring/Promotion
\S 5:4 ———Dismissal
§ 5:5 ——Differential Treatment
§ 5:6 ——Defences
§ 5:7 — Grounds of Discrimination—Race
§ 5:8 ————Dismissal
§ 5:9 ————Hiring
§ 5:10 — — Place of Origin/Ethnic Origin
§ 5:11 ———Citizenship
§ 5:12 — — Religion/Creed
§ 5:13 ———Sex
§ 5:14 — — — Poisoned Environment
§ 5:15 — — — Pregnancy
§ 5:16 — — Sexual Orientation
§ 5:17 — — — Poisoned Environment
§ 5:18 — — Age
§ 5:19 ———Record of Offences
§ 5:20 — — — Marital Status
§ 5:21 — — Family Status
§ 5:22 — — — Disability
§ 5:23 ————Benefits
§ 5:24 —Subsection 5(2)
§ 5:25 — Harassment Because of Race/Ethnicity
§ 5:26 — —Harassment Because of Creed
§ 5:27 ——Harassment Because of Age
```

§ 5:28 — — Harassment Because of Family Status § 5:29 — — Harassment Because of Disability § 5:30 Related Provisions Vocational associations § 6:1 Case Law 7 Harassment because of sex, sexual orientation, gender identity or gender expression in accommodation § 7:1 Case Law—Subsection 7(1) § 7:2 —Subsection 7(2) § 7:3 — Conduct § 7:4 — Comment § 7:5 — Perception of the Applicant § 7:6 — Perception of the Respondent § 7:7 —Subsection 7(3)(a) § 7:8 —Subsection 7(3)(b) § 7:9 Related Provisions 8 Reprisals § 8:1 Case Law § 8:2 —Proof of Reprisal § 8:3 —Facts Constituting Reprisal Infringement prohibited § 9:1 Case Law § 9:2 —Accommodation § 9:3 —Employment

PART II INTERPRETATION AND APPLICATION (SS. 10–26)

§ 9:4 Related Provisions

```
10
     Definitions
  § 10:1 Case Law—Subsection 10(1)
  § 10:2 ——Specific Grounds of Discrimination—Age
  § 10:3 ———Harassment
         — — — Disability
  § 10:4
         ———Family Status
  § 10:5
  § 10:6
         — — — Marital Status
  § 10:7 ———Spouse
         ———Services
  § 10:8
  § 10:9 ———Creed
  § 10:10 ———Sex
  § 10:11 ———Record of Offences
  § 10:12 — — Gender Identity/Gender Expression
  § 10:13 —Subsection 10(2)
     Constructive discrimination
  § 11:1 Case Law—Subsection 11(1)—Adverse Effect
            Discrimination
```

Annotated Ontario Human Rights Code

```
§ 11:2 ——Testing
  § 11:3
         — Proving Adverse Effect Discrimination in Hiring
  § 11:4
          — Expert Evidence
  § 11:5
         — —Race, Ethnicity, Place of Origin
         — — Religion/Creed—Employment
          — — Services
  § 11:7
          ——Sex/Pregnancy
  § 11:8
         — — Disability—Employment
  § 11:9
  § 11:10 ———Services
  § 11:11 ——Family Status
  § 11:12 ——Receipt of Public Assistance
  § 11:13 ——Age
  § 11:14 —Subsection 11(2)—Reasonable Accommodation
  11:15 — Employment
  § 11:16 ———Religion
  § 11:17 — — Union/Collective Agreement
  § 11:18 ———Disability
  § 11:19 ———Pregnancy
  § 11:20 ———Race
  § 11:21 ———Family Status
  § 11:22 ——Services
  § 11:23 Related Provisions
     Discrimination because of association
  § 12:1 Case Law
  § 12:2 Related Provisions
13
     Announced intention to discriminate
  § 13:1 Case Law
     Special programs
  § 14:1 Case Law
  § 14:2 Related Provisions
14.1 [Repealed 1995, c. 4, s. 3(1).]
15
     Age sixty-five or over
16
     Canadian Citizenship
  § 16:1 Case Law
     Disability
  § 17:1 Case Law
         —Services
  § 17:2
  § 17:3 —Occupancy of Accommodation
         —Employment—Subsection 17(1)
  § 17:4
  § 17:5
         — — —Substance Abuse
  § 17:6 ——Subsection 17(2)—Accommodation
  § 17:7
         — — Suitable alternatives
         — — — Discharge
  § 17:9 — ——Accommodation and the collective agreement
```

§ 17:10 — — The employer's duty § 17:11 — — Undue hardship § 17:12 — — Medical information/treatment § 17:13 Related Provisions Special interest organizations § 18:1 Case Law § 18:2 Related Provisions 18.1 Solemnization of marriage by religious officials 19 Separate school rights preserved 20 Restriction of facilities by sex § 20:1 Case Law Shared accommodation § 21:1 Case Law Restrictions for insurance contracts, etc. § 22:1 Case Law Discriminatory employment advertising § 23:1 Case Law § 23:2 —Subsection 23(1) § 23:3 —Subsection 23(2) § 23:4 —Subsection 23(3) § 23:5 —Subsection 23(4) Special employment § 24:1 Case Law § 24:2 —Subsection 24(1)(a)§ 24:3 —Subsection 24(1)(b)—Bona Fide Qualification ———Employment Qualifications § 24:4 § 24:5 ———Proof of *Bona Fide* Occupational Qualifications ———Testing § 24:6 ———Age as a *Bona Fide* Qualification ———Sex as a Bona Fide Qualification § 24:8 § 24:9 ———Pregnancy and Bona Fide Qualification § 24:10 — — Record of Offences and Bona Fide Qualification § 24:11 —Subsection 24(1)(d) § 24:12 —Subsection 24(2) § 24:13 Related Provisions 24.1 [Repealed 1995, c. 4, s. 3(2).] Employment conditional on membership in pension plan § 25:1 Case Law Discrimination in employment under government contracts

PART III THE ONTARIO HUMAN RIGHTS COMMISSION (SS. 27–31.7)

The Commission

§ 26:1 Case Law

§ 27:1 Case Law

§ 27:2 Related Provisions 28 **Acting Chief Commissioner** 29 **Functions of Commission** § 29:1 Related Provisions 30 Commission policies § 30:1 Related Provisions Inquiries 31.1 Search warrant 31.2 Evidence used in Tribunal proceedings 31.3 Anti-Racism Secretariat 31.4 Disability Rights Secretariat 31.5 Advisory groups 31.6 Annual report 31.7Other reports PART IV HUMAN RIGHTS TRIBUNAL OF ONTARIO (SS. 32–45.10) 32 Tribunal § 32:1 Case Law 33 Panels § 33:1 Case Law Application by person § 34:1 Case Law § 34:2 —Subsection 34(1)—Subsection 34(1)(a) § 34:3 ——Subsection 34(1)(b) § 34:4 —Subsection 34(2) § 34:5 —Subsection 34(3) § 34:6 —Subsection 34(5) § 34:7 —Subsection 34(11)(a) § 34:8 —Subsection 34(11)(b) 35 Application by Commission § 35:1 Case Law 36 **Parties** § 36:1 Case Law—Parties—Applicants § 36:2 — — Respondents—Individual — — Joint Tenant § 36:3 ———Unincorporated Business Entity § 36:4 ———Corporations, Institutions, and Public Bodies § 36:5 — — — Employer § 36:6

§ 36:7 ———Trade Unions

§ 36:9 — Respondent
 § 36:10 — Unions
 § 36:11 — Intervenors

§ 36:8 —Adding Parties—Complainant

```
§ 36:12 —Removal of Parties
      Intervention by Commission
  § 37:1 Case Law
  § 37:2 Related Provisions
      Disclosure of information to Commission
38
39
      Powers of Tribunal
  § 39:1 Related Provisions
40
      Disposition of applications
      Interpretation of Part and rules
  § 41:1 Case Law
41.1
      [Repealed 1995, c. 4, s. 3(3).]
42
      Statutory Powers Procedure Act
          Case Law on Evidence and Proof of Discrimination—
            Generally—Admissibility and Witnesses
  § 42:2
          — —Hearsay
  § 42:3
          ——Scope of the Evidence—Company Practices
  § 42:4
          ———Effect of Limitation Period
          ———Effect of Substantive Changes in the Code
  §
    42:5
  8
    42:6
          — — — Timeframe
  § 42:7
          —Types of Evidence—Circumstantial Evidence
          ———Evidence of Prejudiced Attitudes and Statements
  § 42:9 ———Evidence of Pretext
  § 42:10 — — General Patterns and Practices
  § 42:11 ———Circumstantial Evidence in Hiring Cases
  § 42:12 ——Statistics as Circumstantial Evidence—Generally
  § 42:13 — — Respondent's Use of Statistical Evidence
  § 42:14 ———In Hiring Cases
  § 42:15 — — Weight and Admissibility
  § 42:16 — — Pattern of Discrimination
  § 42:17 ——Similar Fact Evidence—Generally
  § 42:18 — — Purpose
  § 42:19 ———Limits of Use
  § 42:20 — — Use in Employment Cases
  § 42:21 — — Use in Services Cases
  § 42:22 — Expert Evidence
  § 42:23 —Witness Credibility—Witnesses Generally
  § 42:24 — The Applicant—Generally
  § 42:25 — — Sexual Harassment Cases
  § 42:26 — The Respondent
      Tribunal rules
  § 43:1 Case Law
  § 43:2
          —Jurisdiction of the Tribunal—Charter Issues
  § 43:3 — Jurisdiction to Proceed
  § 43:4 —Conduct of the Hearing—Generally
```

Annotated Ontario Human Rights Code

```
§ 43:5 ——Prima Facie Case
  § 43:6 ——Production of Documents
  § 43:7
         ———Generally
  § 43:8
         ——By the Respondents
  \S 43:9 ——By the Applicant
  § 43:10 ————General
  § 43:11 — — — Medical Records
  § 43:12 ———By Third Parties
  § 43:13 ——Scope of Hearing
  § 43:14 — —Amendment of the Application or Response
  § 43:15 — Expedited Hearing
  § 43:16 ——Summary Hearing
  § 43:17 — Venue
  § 43:18 — —In Camera Proceedings and Publication Bans
  § 43:19 ——Recording of Hearing
  § 43:20 — Consolidation
  § 43:21 ——Control Order
  § 43:22 ——Adjournments
  § 43:23 — Interim Relief
  § 43:24 ——Abuse of Process
  § 43:25 ——Abandonment
  § 43:26 — Judicial Review
  § 43:27 — Withdrawal of the Application
  § 43:28 — Reasonable Apprehension of Bias
  § 43:29 — Vexatious Litigant
  § 43:30 — — The Tribunal Adjudicative Records Act
      Tribunal inquiry
  § 44:1 Case Law
      Deferral of application
45
  § 45:1 Case Law
      Dismissal in accordance with rules
45.1
  § 45.1:1 Case Law
      Orders of Tribunal: applications under s. 34
45.2
           Case Law—Remedies—General—Policy of Remedy
  § 45.2:1
             Provisions
  § 45.2:2
           — —Constitutionality
  § 45.2:3
           ——Powers of the Tribunal
           — —Factors Affecting Awards—Respondent's
  § 45.2:4
             Behaviour
  § 45.2:5
           — — — Applicant's Behaviour
  § 45.2:6 ———Personal Circumstances of the Respondent
  § 45.2:7 ———Delay
  § 45.2:8 ———Corporate Liability for Harassment
  § 45.2:9 —Types of Remedies—Functional Remedies
```

§	45.2:10	— — Types of Orders—Implementation of Non-
		discrimination Policies and Procedures
		————Monitoring Respondents' Practices
		— — — — Apology
§	45.2:13	————Reinstatement, Offer of Employment,
		Promotion
		————Cease and Desist Orders
		————Limits of Power
		————Programs and Training
		— — — Letters of Assurance
§	45.2:18	————Posting/Distributing Human Rights
		Documents
§	45.2:19	———Other Employee-oriented Orders
Ş	45.2:20	————Striking down a Discriminatory Standard or
e	45 0 01	Provision
8	45.2:21	————Reading in Provisions for Compliance with
e	45 0 00	the Code
		————Provision of Services
8	45.2:23	— — General Damages—Head of Damages
8	45.2:24	— — — Quantum
		———Relevant Factors
		———General Policy
		— — — Injury to the Applicant
		———Punitive Damages
		———Lost Opportunity
8	45.2:30	——————————————————————————————————————
2	45 O.21	Public Assistance
		———Racial Harassment
		————Sex
		————Sexual Harassment and Assault
		——Breach of Procedural Obligation
8	45.2:35	——Special Damages—Principles Governing Wage Awards—Dismissals
S	45 9.96	————Refusal to Hire or Promote
		— — ——Foreseeability
		————Mitigation
_		————Sexual Harassment
		———Principles in Accommodation Cases
Ş	45.2:41	————Lost Wages During Search for
e	45 0 40	Accommodation
		————Increased Cost of Accommodation
		—Interest—Principles
		——Applicable Interest Rate
		——Applicable Starting Date
§	45.2:46	——Applicable Finish Date

- § 45.2:47 —Deductions from Awards—Unemployment Insurance Benefits
- § 45.2:48 — Tax Deductions
- § 45.2:49 —Enforcement of Tribunal Orders
- 45.3 Orders of Tribunal: applications under s. 35
 - § 45.3:1 Case Law
- 45.4 Matters referred to Commission
- 45.5 Documents published by Commission
 - § 45.5:1 Case Law
- 45.6 Stated case to Divisional court
 - § 45.6:1 Case Law
- 45.7 Reconsideration of Tribunal decision
 - § 45.7:1 Case Law
- 45.8 Decisions final
 - § 45.8:1 Case Law
- 45.9 Settlements
 - § 45.9:1 Case Law
- 45.10 [Repealed 2017, c. 34, Sched. 46, s. 20(1).]

PART IV.1 HUMAN RIGHTS LEGAL SUPPORT CENTRE (SS. 45.11–45.18)

- 45.11 Centre established
- 45.12 Objects
- 45.13 Provision of support services
- 45.14 Board of directors
- 45.15 Government funding
- 45.16 Centre's money not part of Consolidated Revenue Fund
- 45.17 Fiscal year
- 45.17.1 Annual report
- 45.18 Audit

PART V GENERAL (SS. 46-48)

- 46 Definitions
 - § 46:1 Case Law
 - § 46:2 Related Provisions
- 46.1 Civil remedy
 - § 46.1:1 Case Law
- 46.2 Penalty
- 46.3 Acts of officers, etc.
 - § 46.3:1 Case Law
 - § 46.3:2 —Liability for Acts of Employees
 - § 46.3:3 —Liability for Acts of Management
 - § 46.3:4 —Liability for Harassment
- 47 Act binds Crown
 - § 47:1 Case Law—Subsection 47(2)

48 Regulations

PART VI TRANSITIONAL PROVISIONS (SS. 49–57)

- 49 Definitions
- 50 Orders respecting special programs
- 51 Application of s. 32(3)
- 52 Tribunal powers before effective date
- 53 Complaints before Commission on effective date
 - § 53:1 Case Law
 - § 53:2 —Subsection 53(3)
 - § 53:3 —Subsection 53(5)
 - § 53:4 —Subsection 53(8)
- 54 Settlements effected by Commission
- 55 Where complaints referred to Tribunal
- 56 Regulations, transitional matters
- 57 Review

ONT. REG. 290/98—BUSINESS PRACTICES PERMISSIBLE TO LANDLORDS IN SELECTING PROSPECTIVE TENANTS FOR RESIDENTIAL ACCOMMODATION

1

2

3

4

5

TRIBUNAL ADJUDICATIVE RECORDS ACT, 2019

- 1 Interpretation
- 2 Adjudicative records public
- 3 Rules
- 4 Power to set, charge fees
- 5 Enforcement of confidentiality orders
- 6 Protection from personal liability
- 7 Conflict
- 8 Regulations
- 9 Amendment to FIPPA
- 10 Commencement
- 11 Short title

ONT. REG. 211/19—GENERAL

- 1 Tribunals
- 2 Conflict
- 4 Commencement

Schedule 1 Prescribed Tribunals

HUMAN RIGHTS TRIBUNAL OF ONTARIO—RULES OF PROCEDURE

HUMAN RIGHTS TRIBUNAL OF ONTARIO—PRACTICE DIRECTIONS

HRTOPD:1	Practice Direction on Jurisdiction
HRTOPD:2	Updated Practice Direction on Hearing Formats
HRTOPD:3	Practice Direction on Representation Before Social Justice Tribunals Ontario
HRTOPD:4	Practice Direction on Litigation Guardians before Social Justice Tribunals Ontario
HRTOPD:5	Practice Direction on New Case Processing System and Case Management Conference Calls
HRTOPD:6	Practice Direction on Establishing a Regular Contact Person for an Organization
HRTOPD:7	Practice Direction on Applications on Behalf of Another Person
HRTOPD:8	Practice Direction on Communicating with the Human Rights Tribunal of Ontario
HRTOPD:9	Practice Direction on Electronic Filing by Licensed Representatives
HRTOPD:10	Practice Direction on Hearings before the Human Rights Tribunal of Ontario
HRTOPD:11	Practice Direction on Naming Respondents
HRTOPD:12	Practice Direction on Reconsideration
HRTOPD:13	Practice Direction on Recording Hearings
HRTOPD:14	Practice Direction on Requests for Language Interpretation
HRTOPD:15	Practice Direction on Requests to Expedite an Application and Requests for an Interim Remedy
HRTOPD:16	Practice Direction on Scheduling of Hearings and Mediations, Rescheduling Requests, and Requests for Adjournments
HRTOPD:17	Practice Direction on Summary Hearing Requests
HRTOPD:18	Practice Direction on Intervention by a Bargaining Agent
HRTOPD:19	Practice Direction on Anonymization of HRTO Decisions

HUMAN RIGHTS TRIBUNAL OF ONTARIO—POLICY DOCUMENTS

- HRTOP:1 Accessibility and Accommodation Policy—Adjudicative Tribunals Accountability, Governance and Appointments Act, 2009
- HRTOP:2 Language Services
- HRTOP:3 Complaints Policy and Process

ONTARIO HUMAN RIGHTS COMMISSION—POLICIES AND GUIDELINES

- OHRCPG:1 COVID-19 and Ontario's Human Rights Code –
 Questions and Answers
 OHRCPG:2 OHRC Policy Statement on COVID-19 Vaccine
 Mandates and Proof of Vaccine Certificates
 OHRCPG:3 OHRC Policy Statement on Human Rights in
 Covid-19 Recovery Planning
 OHRCPG:4 OHRC Statement on the Human Rights Impacts of
 Omicron and School Closures
- OHRCPG:5 OHRC Statement on Government's Expansion of Police Powers During Covid Stay-At-Home Order

APPENDIX

Appendix A. Application and Adjudication Procedure— Ontario Human Rights Tribunal

Table of Cases

Index