



MODULE 6

HOUSING AND HUMAN RIGHTS

OVERVIEW

This module introduces students to the issue of discrimination in the rental housing context, and the protections provided by the *Ontario Human Rights Code* (the *Code*). It engages students in a discussion about adequate housing, and asks them to explore how the *Canadian Charter of Rights and Freedoms* could play a role in giving people whose right to adequate housing has been infringed a mechanism by which to claim the right, through sections 7 and 15.

Learning Objectives

- To introduce students to the protections provided by the *Ontario Human Rights Code* in the rental housing context.
- To introduce students to the concept of adequate housing.
- To introduce students to how the *Canadian Charter of Rights and Freedoms* could recognize access to adequate housing.
- To enhance students' critical thinking skills by asking them to explore theoretical perspectives.

Activity 1: Discrimination and Rental Housing

Materials

- Copies of *Human Rights and Rental Housing Quiz* (one per student)
- Copies of *Human Rights and Rental Housing in Ontario* (one per student)
- Copies of *Writing a Fair Rental Housing Ad*, available here: http://www.ohrc.on.ca/sites/default/files/Writing%20a%20fair%20rental%20housing%20ad_accessible.pdf (one per student)
- Copies of *For Rent! – Drafting a Rental Housing Advertisement* (one per student)

Teaching and Learning Strategies

1. Distribute the *Human Rights and Rental Housing Quiz* to students and give them time to complete the "Before" column. Explain that throughout the lesson they will be watching a series of videos and reading handouts that will increase their knowledge and understanding of human rights in the rental housing context. Invite them to add answers to the "After" column throughout the lesson, and explain that they will also be given time later on to fill in any remaining answers.
2. Provide students with an overview of human rights and rental housing by having them watch a 15-minute video from the Centre for Equality Rights in Accommodation (CERA) called *Human Rights and Housing in Ontario*, available here: http://www.equalityrights.org/cera/?page_id=74. For a deeper understanding of the topic, have students read CERA's self-advocacy toolkit called *Human Rights and Rental Housing in Ontario*, available in the student handouts section. Check for understanding and clarify any points that are unclear.
3. Introduce students to specific examples of discrimination in the housing context by having them review two short videos, *Discrimination in Rental Housing* and *Patterns of Discrimination*, available from the *Ontario Human Rights*



Commission (OHRC) website here:

<http://www.ohrc.on.ca/en/learning/human-rights-and-rental-housing>.

4. Give students time to review their answers to the *Human Rights and Rental Housing Quiz*, and fill in any remaining blanks in the “After” column. Take up the answers as a class.

Teacher’s Key – Human Rights and Housing Quiz

1. I can’t live in adult-only apartments because of my children.	FALSE “Adult-only” buildings are not allowed in Ontario, unless it’s a care facility or residence for seniors.
2. I’m 72, so it’s all right for the building manager to keep asking me if I’m ready to move into a retirement home.	FALSE Repeated, unwanted questions about age could be harassment
3. I’m 16 and because I’m on my own, the <i>Code</i> protects me from discrimination if I want to rent my own apartment.	TRUE If you are 16 or 17 and living on your own, you have a right under the <i>Code</i> to sign a rental agreement or lease.
4. The woman who lives in the main floor unit doesn’t hide her dislike for tenants who receive social assistance. She says they should move away. If I complain to the co-op, they could evict me instead of her.	FALSE The co-op is responsible for providing its tenants with an environment that is free from discrimination. The <i>Code</i> does not allow the co-op to take actions or threaten to take actions, also known as reprisal, against you for being a witness to discrimination.



Teacher's Key – Human Rights and Housing Quiz

5. A landlord can't refuse to show me and my boyfriend the apartment because we are a gay couple.	TRUE Landlords have a responsibility to provide housing accommodation that is free from discrimination. The <i>Code</i> covers the process from applying for an apartment up to and including eviction.
6. I'm a student with a young child. The landlord said he wants to rent to a couple. Is this discrimination?	YES There are assumptions that come with "preferring a couple." Is the reason for not renting the unit because of the age of the mother or father, or because the parent is not married (marital status) but has a child (family status), or the parent is lesbian, gay or bisexual (sexual orientation)?
7. I rent an apartment in a low-rise building with 3 floors. I live on the top floor, but now use a walker. I asked to transfer to a unit on the 1st floor, but the property manager said there's a long waiting list. Is this discrimination?	YES Housing providers have a duty to accommodate tenants short of undue hardship. A waiting list that doesn't consider <i>Code</i>-related factors may discriminate against people with, for example, disabilities or families with young children.
8. Nobody wants noisy neighbours. The tenants upstairs work at night and sleep during the day. So when they come home, I can hear the TV or music playing in the morning. Is this discrimination?	NO It is not a concern that comes up in the <i>Code</i>. The noise is not based on a ground under the <i>Code</i>. However, tenants may have rights under the RTA if neighbours' are engaging in unreasonable behaviours and activities that are interfering with the reasonable use and enjoyment of their tenancy.

 **Teacher's Key – Human Rights and Housing Quiz**

9. The hall lights in Building A are dark and the common area is never cleaned. When new Canadians apply for an apartment, they are shown new units in Building B, but are given units in Building A instead. The landlord says the new building is for “Canadians”. Is this discrimination?	YES Streaming of tenants based on race-related grounds, including language and culture, is discrimination under the <i>Code</i>. “Canadian” is often wrongly used to refer to people who are Canadian-born and usually white.
10. The manager of a local motel automatically gives Aboriginal guests rooms at the back. These are smoking rooms with no view of the lake. Is this discrimination?	YES Equal treatment in rental housing includes renting a room in a hotel, motel, or bed and breakfast. This is another example of streaming based on <i>Code</i>-related grounds.
11. What questions can you ask on a rental application form? Write down all that apply.	• Income • Credit check • Current address
12. Which of the following may screen out tenants based on <i>Code</i> grounds? Write down all that apply.	• Proof of income in the form of pay stubs • Credit profile and criminal check • Minimum 6 months steady work history NB: Landlords can deny a tenant if they have bad credit and this decision would not be discriminatory. However, if they deny a tenant because of a <i>Code</i> protected ground and because of bad credit, then the entire decision would be discriminatory and the Landlord would be opening herself up to an application under the <i>Code</i>. Criminal background is only a protected ground as it relates to employment. However, if the person’s criminal history is related to a <i>Code</i>-protected ground (such as a mental health disability) then any decisions made based on this are arguably discriminatory.



Teacher's Key – Human Rights and Housing Quiz

13. Which of the following may screen out tenants based on <i>Code</i> grounds? Write down all that apply.	• Broken leases or evictions from the past 3 years • Co-signers must be employed
14. My boyfriend works out of town and stays with me on the weekend. The superintendent says that it's not good for my kids to have a man around who isn't their father. This is an example of... based on the <i>Code</i> grounds of sex, family status, and marital status.	• Discrimination by association • Harassment • Poisoned environment
15. The office manager in my building always stops by the swimming pool when I'm there and tries to talk to me. He's asked me out a couple of times and I told him I'm not interested. He knocked on my door and said the neighbours were complaining about the noise, but I've been away for the last week. This is an example of:	• Reprisal • Sexual harassment
16. What wording may screen out tenants on <i>Code</i> grounds in rental ads?	• A. Two-bedroom condo. Ideally suited for mature couple. • C. Available now. Smoke-free apartment on main floor. • D. Must sign 1-year lease and provide verifiable source of income. NB: The issue of how to accommodate smoking as a disability is complicated. There are some conflicting decisions from the Ontario Human Rights Tribunal regarding whether or not addiction to nicotine (i.e. smoking) is a disability and therefore protected by the <i>Code</i>. Additionally, there are often competing rights at play – for example, neighbours who have health conditions that may be aggravated by second hand smoke. In these cases, the landlord must balance the rights of all tenants involved.



5. Explain to students that protection from discrimination in housing also involves ensuring that rental advertisements comply with the Code. To provide an overview of how rental advertisements should be drafted, have students view the OHRC video, *Landlords and Rental Housing*, available here: <http://www.ohrc.on.ca/en/learning/human-rights-and-rental-housing>, as well as the handout, *Writing a Fair Rental Housing Ad*, available here: http://www.ohrc.on.ca/sites/default/files/Writing%20a%20fair%20rental%20housing%20ad_accessible.pdf.
6. Distribute the *For Rent! – Drafting a Rental Housing Advertisement* exercise and have students complete it on their own or in pairs. Once complete, ask for volunteers to present their ad to the class. Debrief and clarify any questions students might have.



HUMAN RIGHTS AND RENTAL HOUSING QUIZ*

QUESTION	BEFORE	AFTER
1. I can't live in adult-only apartments because of my children. • True • False		
2. I'm 72, so it's alright for the building manager to keep asking me if I'm ready to move into a retirement home. • True • False		
3. I'm 16 and because I'm on my own, the <i>Code</i> protects me from discrimination if I want to rent my own apartment. • True • False		
4. The woman who lives in the main floor unit doesn't hide her dislike for tenants who receive social assistance. She says they should move away. If I complain to the co-op, they could evict me instead of her. • True • False		
5. A landlord can't refuse to show me and my boyfriend the apartment because we are a gay couple. • True • False		

*This quiz was produced by the Ontario Human Rights Commission and is available online here: <http://www.ohrc.on.ca/en/learning/human-rights-and-rental-housing/review>.



HUMAN RIGHTS AND RENTAL HOUSING QUIZ

QUESTION	BEFORE	AFTER
6. I'm a student with a young child. The landlord said he wants to rent to a couple. Is this discrimination? • Yes • No		
7. I rent an apartment in a low-rise building with 3 floors. I live on the top floor, but now use a walker. I asked to transfer to a unit on the 1st floor, but the property manager said there's a long waiting list. Is this discrimination? • Yes • No		
8. Nobody wants noisy neighbours. The tenants upstairs work at night and sleep during the day. So when they come home, I can hear the TV or music playing in the morning. Is this discrimination? • Yes • No		
9. The hall lights in Building A are dark and the common area is never cleaned. When new Canadians apply for an apartment, they are shown new units in Building B, but are given units in Building A instead. The landlord says the new building is for "Canadians". Is this discrimination? • Yes • No		



HUMAN RIGHTS AND RENTAL HOUSING QUIZ

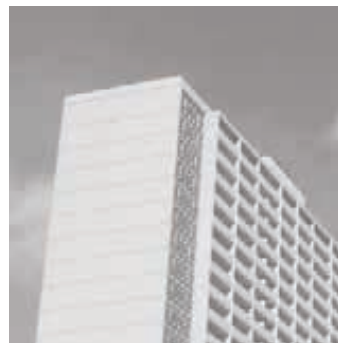
QUESTION	BEFORE	AFTER
10. The manager of a local motel automatically gives Aboriginal guests rooms at the back. These are smoking rooms with no view of the lake. Is this discrimination? • Yes • No		
11. What questions can you ask on a rental application form? Write down all that apply. • Birthdate • Religion • Social insurance number • Employment • Income • Credit check • Current address		
12. Which of the following may screen out tenants based on <i>Code</i> grounds? Write down all that apply. • Proof of income in the form of pay stubs • Current address and phone number • Credit profile and criminal check • Minimum 6 months steady work history		
13. Which of the following may screen out tenants based on <i>Code</i> grounds? Write down all that apply. • Broken leases or evictions from the past 3 years • Co-signers must be employed • Names of references • Emergency contact		



HUMAN RIGHTS AND RENTAL HOUSING QUIZ

QUESTION	BEFORE	AFTER
14. My boyfriend works out of town and stays with me on the weekend. The superintendent says that it's not good for my kids to have a man around who isn't their father. This is an example of: • Discrimination by association • Harassment • Sexual harassment • Poisoned environment • Systemic discrimination • Not In My Back Yard (i.e. NIMBYism)		
15. The office manager in my building always stops by the swimming pool when I'm there and tries to talk to me. He's asked me out a couple of times and I told him I'm not interested. He knocked on my door and said the neighbours were complaining about the noise, but I've been away for the last week. This is an example of: • Negative attitudes, stereotypes, bias • Discrimination by association • Reprisal • Sexual harassment		
16. What wording may screen out tenants on Code grounds in rental ads? • A. Two-bedroom condo. Ideally suited for mature couple. • B. Pet friendly building. Close to parks and schools. • C. Available now. Smoke-free apartment on main floor. • D. Must sign 1-year lease and provide verifiable source of income.		
Score / 16		

HUMAN RIGHTS & RENTAL ... HOUSING IN ONTARIO



A Self-Advocacy Toolkit

Centre for Equality Rights in Accommodation

Working with you to realize
your housing rights.



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What We Do

CERA's public education, outreach, and advocacy activities are focused on fighting discrimination faced by low-income and marginalized tenants in the rental housing market. We work to remove barriers that prevent people from accessing and maintaining housing.

Our Eviction Prevention and Human Rights Hotline provides callers with information and assistance when they are having problems accessing or keeping housing. We can also assist tenants with advice, guidance, and in some cases, representation on applications to the Ontario Human Rights Tribunal.

Contact Us

CERA - Centre for Equality Rights in Accommodation
164 - 215 Spadina Avenue
Toronto, Ontario Canada M5T 2C7

Tel: 416-944-0087

Toll Free: 1-800-263-1139

Email: cera@equalityrights.org

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About CERA

The Centre for Equality Rights in Accommodation (CERA) was established in 1987 as an independent not-for-profit legal advocacy organization. CERA has a provincial mandate and our services are free and available to all Ontarians.

We are the only organization in Canada primarily dedicated to fighting discrimination in housing and using human rights principles to challenge housing insecurity and homelessness.

This Toolkit

This guide was written to help people who face discrimination in housing to assert their rights. The goal of this resource is to promote tenants' rights by sharing information and providing guidance for self-advocacy.

Effective self-advocacy begins with knowing your rights; CERA is always available to support you as you realize your rights.

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Navigating the Code

What is the Ontario *Human Rights Code*?

Ontario's *Human Rights Code* (the Code) is one of the most important laws in Ontario. The Code overrules other laws in the province unless those laws specifically say otherwise. The Code promotes equality of opportunity and creates a climate of understanding and mutual respect for the dignity and worth of each person in Ontario.

Where does the Code apply?

The Code says that all Ontarians have the right to freedom from discrimination in five areas:

- 1) Employment
- 2) Services (including education and healthcare)
- 3) Trade Unions and Vocational Associations
- 4) Contracts
- 5) Occupancy of Accommodation (Housing)

This toolkit focuses on your rights as they relate to housing, but the principles discussed in this resource also apply to the other four areas described above.

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What is protected by the Code?

The Code says that every person has a right to equal treatment without discrimination in housing.

The Code has sixteen "Prohibited Grounds":

- Race
- Ancestry
- Place of Origin
- Colour
- Ethnic Origin
- Citizenship
- Creed
- Sex (including pregnancy)
- Sexual Orientation
- Age
- Marital Status
- Family Status
- Disability
- Receipt of Social Assistance
- Gender Identity
- Gender Expression

If you are treated differently because of a characteristic related to one or more of these grounds, it is against the law. For example, if a landlord tells you that they do not accept tenants with children, they have discriminated against you based on your Family Status. If a landlord says they do not rent to people on social assistance, they have discriminated against you based on your Receipt of Social Assistance.

When this happens, CERA can help.

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Discrimination has happened when a person is treated differently, denied a benefit, or had additional obligations imposed on them because of one of the sixteen prohibited

grounds. For example, if you have been treated differently because you are pregnant, have a physical disability, or are a newcomer to Canada, this is discrimination.

Direct discrimination is what most people think of when they think of discrimination. Direct discrimination occurs when behaviours, actions, policies or practices prevent a person from a Code-protected group from fully participating in society or fully enjoying a benefit.

Indirect discrimination (also called adverse effect discrimination) is often harder to identify. This type of discrimination occurs when a seemingly neutral policy, rule, or practice disadvantages a member of a Code-protected group. Even if unintentional, indirect discrimination is still discrimination under the Code.

Discrimination in Housing

The Code covers just about every kind of rental housing in Ontario. Private market units, social housing units, condominiums, co-ops, supportive housing, retirement homes, rooming houses, and basement apartments are all covered under the Code. It is important to know that if you are required to share a kitchen or bathroom with the

owner of the apartment or a member of their family, you are NOT protected by the Code.

The Code says that all people must be treated equally when they apply to rent a place to live. This means a landlord has to look at each applicant as an individual and not make decisions based on stereotypes.



Harassment is repeated comments or behaviours related to a prohibited ground that are known, or should be known, to be unwelcome.

It is illegal to harass a person because of a characteristic related to the prohibited grounds under the Code.



It is illegal for a landlord, his employee, or another tenant in the same building to harass you on the basis of a prohibited ground. When one tenant is harassing another because of a prohibited ground, it is the landlord's responsibility to make sure the harassment stops.

For example, if a neighbour is harassing you because of your sexual orientation and you report this to the landlord, he needs to take steps to stop the harassment. The landlord might write the tenant a letter telling them what they are doing is illegal and informing them that it must stop.



Reprisal is negative behaviour directed towards a tenant because they have made a human rights complaint. Everyone in Ontario has the right to claim and enforce their human rights without the fear or threat of reprisal. It is illegal for a landlord to try to "get revenge" or "get even" with a tenant who has tried to claim or enforce their human rights.

For example, if a tenant complains to their landlord that another tenant is harassing them based on their race, some landlords might view the complaining tenant as the problem. If the landlord stopped making repairs for the tenant who was complaining or tried to evict them, this could be an instance of reprisal.



Disability is any degree of physical disability, a condition of mental impairment or a developmental disability, a learning disability, or a mental disorder. Disability should be

interpreted **b r o a d l y**. Disability under the Code includes both present and past conditions, as well as society's perception of a disability.

Disabilities can be visible or "hidden" from others. Tenants have the right to the same opportunities and benefits whether their disabilities are visible or not. Mental health issues and/or addictions are defined as disabilities that are protected under the Code.

For example, the Code protects people who have anxiety disorders, panic attacks, depression, schizophrenia, or addictions to alcohol or drugs.

The Code says that people with mental health issues and/or addictions have the same right to be free from discrimination as anyone else with a disability. Discrimination in housing happens when a person is treated in a negative way because of their mental health or addiction disability. Often discrimination is the result of stigma, negative stereotypes or prejudice around visible or "hidden" disabilities.

For example, a landlord may refuse to rent an apartment to someone with a mental health disability because they think the person will not take care of their apartment or pay their rent. This is a stereotype and is untrue, and is discriminatory.



The Duty to Accommodate

The duty to accommodate is a very important part of the Code. It says that structures, rules, policies or practices may have to be changed so that all people enjoy equal benefit, equal treatment, equal rights, and equal access in their housing. A common reason that tenants invoke the duty to accommodate is to request physical changes to the building to accommodate a physical disability. But accommodation can be required in other circumstances as well, including when a tenant needs accommodation due to a mental health disability or addiction.

What are the obligations of the person requiring the accommodation?

A tenant who requires accommodation should provide a written request to the landlord explaining the need for accommodation and how it relates to a prohibited ground under the Code. CERA can assist by writing letters related to accommodation requests on the tenant's behalf. Once the request has been made, the tenant should cooperate with the landlord as they discuss accommodation solutions.

A person who requires an accommodation for a medical reason will likely need to provide a doctor's letter supporting their request.

What is "undue hardship"?

Landlords are required to take accommodation requests seriously and respond to them in a timely manner. Landlords are only able to deny an accommodation request if they can prove "undue hardship."

A landlord can only claim undue hardship if accommodating a tenant would seriously threaten the financial viability of their business or endanger the health or safety of other tenants. Both the landlord and the tenant should look into whether any outside sources of funding, such as government grants, are available to help pay for the cost of accommodation. It is the responsibility of the landlord to prove undue hardship. The threshold for undue hardship is high.

The Duty to Accommodate is comprised of three principles:

- 1) Respect for dignity,
- 2) Individualization, and
- 3) Integration and full participation

How to File a Human Rights Application

If you have been discriminated against and cannot resolve the issue informally with your landlord, you may wish to file an application with the Ontario Human Rights Tribunal. To make a claim with the Tribunal, you must complete a formal application.

Step 1: Collect the information and evidence you need for your application (ie. any correspondence with your landlord, medical evidence, photographs, etc.)

Step 2: Fill out an application. To get an application form, you can contact the Tribunal directly or download a copy from their website:

1-866-598-0322 or TTY: 1-866-607-1240

<http://www.sjto.gov.on.ca/hrto/forms-filing/>

Step 3: Once your application is complete, you can send it to the Human Rights Tribunal by mail, email or fax.

Mail: Registrar - Human Rights Tribunal of Ontario, 655 Bay St. 14th Floor Toronto, ON M7A 2A3

Email: HRTTO.Registrar@ontario.ca
Fax: (416) 326-2199

How does Ontario's human rights system work?

Ontario's human rights system is made up of three separate agencies:

The Human Rights Tribunal is where human rights applications are filed and decided.

The Human Rights Legal Support Centre gives free legal help to people who have experienced discrimination under the Code.

The Ontario Human Rights Commission works to promote, protect, and advance human rights through research, education, and policy development.

Contact information for these agencies can be found in the "Where Can You Go for Help?" section of this resource.

Be Your Own Best Advocate!

Example: You are a tenant and you think your landlord is discriminating against you.

You immigrated to Canada three years ago and have lived in your unit since arriving in Canada. Several times during your tenancy, your landlord has told you that you have too many children. The landlord has also complained about the “smell” when you cook. Recently, you have noticed that while other tenants have repairs made to their units quickly, your requests are always ignored. You think you are being treated unfairly because of your family status and place of origin.

What should you do?

- 1) Keep a written record of events. The dates and times of the incident(s) can be useful evidence if there is a disagreement. Often a log or a calendar is a helpful way to record this information.
- 2) Write down everything that you can remember about the incident(s). Names, dates, and what was said by whom. If you are able to take notes about your conversation while you are talking or soon afterwards, you will have more information to refer to later.

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- 3) Don't forget that email and text communications can be helpful because they create a dated record of your conversations. Keep a copy of any email or texts sent to your landlord. But, remember not to send emails or texts in haste! They could be used against you.
- 4) Write a letter to your landlord detailing your concerns and, if appropriate, request accommodation. Remember to keep a copy!
- 5) Call CERA. Staff or volunteers can contact the landlord to advocate on your behalf.
- 6) You may wish to file an application with the Human Rights Tribunal. You have one year from the date of the last incident of discrimination to file the application.
- 7) Be prepared. The Tribunal process can take time. You may have to wait several months or even a year before your case is resolved.
- 8) The Human Rights Legal Support Centre (HRLSC) may be able to provide assistance. You can contact the HRLSC at 1-866-625-5179 or TTY: 1-866-612-8627. You can also go to the HRLSC website at www.hrlsc.on.ca.

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Be Your Own Best Advocate!

Example: You are apartment hunting and think you have been denied a unit for a discriminatory reason.

You found an apartment listing that you are interested in online. You called the landlord and had a positive conversation. You set up an appointment to view the unit the next day. Once you arrived at the appointment, the landlord looked at you and said "Sorry, it's already rented." You believe the landlord was judging you because of your race.

What should you do?

- 1)** Write down everything that happened including dates, times, and what was said by whom.
- 2)** Check to see if the apartment is still listed online. If so, print and date the advertisement. You can have a friend call to ask for an appointment to view it. You can also call CERA to have a staff member call the landlord.

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3) If the landlord says it is still available, call CERA. Staff can contact the landlord to encourage them to reconsider your application if you are still interested in the apartment.

4) If the landlord refuses your application after they have been confronted about the discrimination, you may wish to file an application at the Human Rights Tribunal. You have one year from the date of the incident of discrimination to file the application.

5) Be prepared. The Tribunal process can take time. You may have to wait several months or even a year before your case is resolved.

6) The Human Rights Legal Support Centre (HRLSC) may be able to provide assistance. You can contact the HRLSC at 1-866-625-5179 or TTY: 1-866-612-8627. You can also go to the HRLSC website at www.hrlsc.on.ca.

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The Basics of Letter Writing

Writing a letter detailing your concerns to the landlord is often a good first step to resolve a conflict. Even if you feel angry or upset, your letter should be polite and clear.

Remember to date and sign your letter. You should also keep at least one copy of the letter for yourself. If the landlord doesn't properly deal with the issue, your letter will be important evidence if you file an application at the Human Rights Tribunal.

If you're unable to write a letter yourself, you should ask a friend or family member for help. You can also call CERA for assistance.

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- Step 1:** Explain the facts of what happened from your perspective. Be as detailed and precise as possible, with dates (or approximate dates), places, and a description of the incidents and everyone that was involved.

Step 2: Remind the landlord of your rights, which are found in the Code.

Step 3: Tell the landlord what you would like to have happen next. For example, request that the landlord contact a tenant who is harassing you, or make a request for accommodation.

Step 4: If your request for accommodation is related to a disability, attach a medical note from your doctor supporting your request.

Remember:
Effective self-advocacy begins with knowing your rights.

Step 5: Ask your landlord to reply to your letter in writing.

Step 6: Sign and date your letter!

Step 7: Keep a copy of the letter in a safe place.

Sample Letter # 1

A letter to your landlord requesting accommodation for a disability.

Scenario: Narmeen lives in an apartment in a 10-storey building that has a communal laundry room. She requires a wheelchair due to a physical disability. Narmeen is unable to access the building's laundry room because there are three steps and a heavy door at the entrance.

What can Narmeen do?

Narmeen can ask her doctor to write a letter explaining that she can't access the laundry room because she requires a wheelchair as a result of her disability. The doctor should explain that Narmeen needs a ramp and an automatic door in order to access the laundry room. Next, Narmeen should write her landlord a clear letter asking for a ramp and an automatic door to the laundry room as an accommodation for her disability. In the letter, she should be as clear and specific as possible. When she sends the letter, she should include a copy of the doctor's letter with it. Narmeen should keep a copy of both letters for her records.

If the landlord does not respond to a letter, or refuses an initial written request, call CERA and we can help.

Date

Name of Landlord
Address of Landlord

Dear **Name of Landlord**,

I live at **Address**. I cannot access the laundry room on the main floor of the building due to a disability. I am unable to open the door or climb the three stairs at the entrance of the laundry room because I require the use of a wheelchair due to my disability. I'm asking **Name of Property Management Company or Landlord** to install a ramp and an automatic door to the laundry room so that I can access the facilities. I am making this request as an accommodation for a disability under Ontario's *Human Rights Code* (the Code):

s. 2(1) – Every person has a right to equal treatment with respect to the occupancy of accommodation, without discrimination because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, age, marital status, family status, disability or the receipt of social assistance.

Under the Code, housing providers have a duty to accommodate tenants' disabilities in a way that meets individual needs, promotes integration and full participation, and ensures confidentiality. If you are unfamiliar with your obligations as a landlord under the Code, the policy on human rights and rental housing can be found on the Ontario Human Rights Commission's website: <http://www.ohrc.on.ca/>.

I have included a letter from my doctor supporting my request for accommodation.

Thank you for your attention to this matter. I would appreciate a written response to this letter within the coming week.

Sincerely,
Narmeen



Sample Letter # 2

A letter to your landlord regarding harassment based on sexual orientation.

Scenario: Enrique has lived in an apartment in a not-for-profit housing complex for ten years. Recently, a new neighbour has been making derogatory comments about Enrique's sexual orientation every time he sees him. The neighbour uses offensive language, puts him down, and threatens to "beat him up." Enrique feels threatened in his own home.

What can Enrique do?

Enrique should keep track of the dates and times of the incidents. He should write down what was said and who said it. Enrique should then write his landlord a clear letter explaining that he is being harassed because of his sexual orientation. Enrique should be sure to include details about the incidents. Enrique can ask the landlord to tell the other tenant what they are doing is against the law and must stop. The landlord should inform the other tenant of the building's human rights policy (if they have one).

If the landlord does not respond to a letter,
or refuses an initial written request, call
CERA and we can help.

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Date

Name of Landlord**Address of Landlord****Dear Name of Landlord,**

I live at **Address**. Recently, **Name of other Tenant** who lives at **Address** has been harassing me because of my sexual orientation. Here is a list of some of the most recent incidents:

1. Date and time: What happened

2. Date and time: What happened

...

As a result of this harassment, I do not feel safe in the building and I am asking you to help stop this harassment. As a landlord, Ontario's Human Rights Code (the Code) obligates you to ensure that occupants of your buildings are not subjected to discriminatory harassment:

s. 2(2) – Every person who occupies accommodation has a right to freedom from harassment by the landlord or agent of the landlord or by an occupant of the same building because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sexual orientation, gender identity, gender expression, age, marital status, family status, disability or the receipt of social assistance.

In line with your obligation under the Code, I am asking you to inform **Name of other tenant** that what they are doing is against the law and will not be tolerated in the building. I am asking that you provide **Name of other tenant** with a copy of the building's human rights policy.

If you are unfamiliar with your obligations as a landlord under the Code, the policy on human rights and rental housing can be found on the Ontario Human Rights Commission's website: <http://www.ohrc.on.ca/>.

Thank you for your attention to this matter. Please take immediate action regarding this issue, and I would appreciate a written response to this letter within the coming week.

Sincerely,

Enrique

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Where else can you go for information and help?

The 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
 Monday, Tuesday, Wednesday and Friday: 9 am to 5 pm; Thursday: 2 pm to 6 pm. Consider visiting the website before calling: <http://www.hrlsc.on.ca>

The Human Rights Tribunal of Ontario

General Inquiries can be made by:
 Tel: 416-326-1312
 Toll-free: 1-866-598-0322
 TTY: 416-326-2027
 TTY toll-free: 1-866-607-1240
 Email: hrto.tdpo@ontario.ca
 Web: <http://www.sjto.gov.on.ca/hrto>

The Ontario Human Rights Commission

Information Line: 416-326-9511
 TTY: 416-314-0503
 Web: <http://www.ohrc.on.ca/>
 Email: info@ohrc.on.ca

*See page 14 of this resource for information about these three organizations.

Housing Help

Housing Help Centres can assist you in finding a unit that meets your needs. Find your local Centre at <https://findhousinghelp.ca>

Landlord and Tenant Board (LTB)

The LTB provides information on residential rental units and resolves disputes between most residential landlords and tenants. Staff can answer questions about: legislation that governs tenants, tenants' rights and responsibilities under the law, specific applications, rules on maintenance and repair of rental properties, rules on automatic rent reductions, and other issues addressed in the *Residential Tenancies Act (RTA)*.
 Toll Free: 1-888-332-3234
<http://www.ltb.gov.on.ca/en/>

Tenant Duty Counsel Program

When tenants have a hearing with the Landlord and Tenant Board, Tenant Duty Counsel are available to provide legal advice and assistance on the day of the hearing at most LTB locations in Ontario. Should tenants require in depth legal services, they should contact a community legal clinic.

Community Legal Clinics

Find your local community legal clinic online at: <http://www.legalaid.on.ca/en/contact/>

Call Us!

If you are facing discrimination in housing, contact CERA:

Toll Free: 1-800-263-1139
In Toronto: 416-944-0087
Web: www.equalityrights.org/cera
Email: cera@equalityrights.org

CERA will try to negotiate with your future or current landlord to make sure the discrimination stops. If it does not, we may provide advice or assist you with filing a human rights application. Your call and anything you tell CERA is completely confidential.

CERA also offers training on human rights in housing. If you, your fellow tenants, or your organization is interested in a training session or education materials, please contact us.

Disclaimer

This toolkit does not necessarily reflect the views of the funders of this project. The content of this resource is for information purposes only. The information provided is not a substitute for legal advice. If you need legal advice please contact a lawyer. CERA, its funders, and the authors of this toolkit will not be held responsible for any loss or damage caused by reliance on any statement, made negligently or otherwise, contained in this toolkit.

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We would also like to thank our partners across Ontario for their support in developing this resource:



FOR RENT! – DRAFTING A RENTAL HOUSING ADVERTISEMENT

Using the Ontario Human Rights Commission's *Writing a Fair Rental Housing Ad* handout as a guide, draft a fair and non-discriminatory ad based on the description of the rental property below.

PROPERTY FOR RENT

- The rental property is a condominium located in a major Canadian city (the city is your choice)
- It is a high-rise building with 30 floors – the rental property is on the 10th floor
- It is a one-bedroom, one-bathroom apartment, but relatively small in size; there is a communal laundry service on the main floor
- The rent is \$900 per month, not including heat and hydro
- There is a communal party room in the condominium on the 3rd floor as well as a communal gym
- There are two bus routes within walking distance of the condominium
- The area is both commercial (i.e., filled with businesses) and residential (i.e., housing); the residential area is comprised mostly of young couples
- There is a hospital, community centre, daycare, and elementary school accessible by bus routes
- There are two parks within walking distance of the condominium

In your ad, you might want to mention that you require your tenant's proof of income. Refer to the *Writing a Fair Rental Housing Ad* guide to see what types of information you can ask for.

This image shows a single sheet of white paper with horizontal blue ruling lines. The lines are evenly spaced and run across the width of the page. There are no margins, text, or other markings on the paper.



Activity 2: The Right to Adequate Housing and the Canadian Charter of Rights and Freedoms

Materials

- Copies of *Adequate Housing, Positive Rights, and the Charter* (one per student)
- Copies of *Debating the Issue – Adequate Housing and the Charter* (one per student)

Teaching and Learning Strategies

1. In small groups, have students create a mind map around the phrase 'Right to Housing'. Take up as a class by creating a larger mind map on the board. Discuss with students whether they think there should be a right to housing in Canada and what they think 'adequate housing' would look like.
2. Have students watch CERA's 12-minute video called *Housing and the Canadian Charter of Rights and Freedoms*, available here: <https://vimeo.com/38812738>.
3. Using a teacher- or student-centred reading strategy, have students review the handout, *Adequate Housing, Positive Rights, and the Charter*. Clarify any questions and check for understanding.
4. Using the structure in the handout *Debating the Issue - Adequate Housing and the Charter* as a guide, hold a class debate on whether ss. 7 and 15 of the *Charter* should be interpreted to include a right to adequate housing, and in turn, if there should be a positive obligation on the government to provide access to adequate housing. Use the fact scenario in the handout as the basis for the debate. This can be done in small groups or by dividing the entire class in half. In advance of the debate, give students some time to prepare their arguments and anticipate those of the opposing side. Encourage them to draw on the case law and information they have learned. At the end of the debate, invite students to give their own opinion on whether they think adequate housing should be guaranteed by the *Charter*.
5. Debrief the debate by having students consider the *Tanudjaja v Attorney General (Canada)* case, which the fact scenario is based on. *Tanudjaja* brought a *Charter* challenge to Canadian courts, arguing that the government's failure to address homelessness and inadequate housing issues violated the rights to life, liberty, and security of the person under s. 7, and equality rights under s. 15. Have students discuss the questions in small groups or as a class.

Extension

Screen for your students the National Film Board of Canada documentary, "*No Place Called Home*," available here: https://www.nfb.ca/film/no_place_called_home. This documentary provides an intimate look inside one Canadian family's struggle with poverty as the family of eight move from town to town in search of affordable housing.



ADEQUATE HOUSING, POSITIVE RIGHTS, AND THE CHARTER

In Canada, the right to adequate housing is a complex issue. Canada has recognized a right to adequate housing through international human rights instruments; however homeless Canadians are not being afforded this right and, in light of recent case law, they do not have access to a mechanism to claim this right. Many people remain homeless, or if they do secure rental housing, it may not be under the best conditions. As such, whether housing should be protected under the Constitution is a hotly debated issue in Canada.

CANADA'S INTERNATIONAL COMMITMENT TO ADEQUATE HOUSING

The *International Covenant on Economic, Social, and Cultural Rights (ICESCR)* is a document that the United Nations created in 1966. Article 11 of the document recognizes that a right to adequate housing does exist, and this right must be respected by the countries that ratified (i.e., signed) the *ICESCR*. Article 11 states,

“The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and **housing**, and the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right...”¹

Canada is one of the “States Parties” mentioned in the above provision. Therefore, when Canada ratified the *ICESCR*, it committed itself to the document’s mandate. However, the right to adequate housing has yet to be realized in Canada.

WHAT DOES “ADEQUATE” HOUSING MEAN?

The right to **adequate** housing is broader than a right to be housed (i.e., simply to have a roof over your head). In fact, Article 11 of the *ICESCR*, specifies the need for “adequate” housing for all people. So, what’s the difference? The United Nations’ Committee on Economic, Social, and Cultural Rights (CESCR) outlined principles that make housing “adequate.”² The principles that the CESCR identified include³:

Security of Tenure – This gives people legal protection against forced eviction, harassment, and other threats. It is available to renters, people living in co-operative housing, people who lease, and in emergency housing/informal settlements.⁴

Availability of Services, Materials, Facilities, & Infrastructure – This means that an adequate house must have facilities essential for health, security, comfort, and nutrition. Examples include safe drinking water, energy, sanitation and washing facilities, garbage disposal, emergency services, etc.

Affordability – This means that household and housing financial costs should be at a level that does not compromise other basic needs in a person’s life. Renters should not be subjected to unreasonable rent levels/increases.

Habitability – This means that housing should be habitable and livable, with adequate space and protection from the cold, damp, heat, rain, wind, or other threats to health.

¹ *International Covenant on Economic, Social and Cultural Rights*, 16 December 1966, 993 UNTS 3 art 11 (entered into force 3 January 1976, accession by Canada 19 May 1976) [ICESCR].

² Committee on Economic, Social and Cultural Rights, *General Comment No 4: The right to adequate housing (art 11(1) of the Covenant*, 1 January 1992. The full document is available here: <http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCESCR%2fGEC%2f4759&Lang=en>.

³ *Ibid* at 8(a)-(g). The above have been slightly modified for the purposes of this module.

⁴ *Ibid*, at 8(a).



Accessibility – This means that everyone must be given full and sustainable access to adequate housing, and it should secure peace and dignity.

Location – This means that housing must be located with available access to employment options, health-care services, schools, child-care centres, and other facilities. Also, housing should not be built on polluted sites or be overly-exposed to contaminants.

Cultural Adequacy – This means housing should be built with appropriate materials and in a way to allow expression of cultural identity and diversity of housing, and should not be sacrificed during any development.

THE ONTARIO HUMAN RIGHTS COMMISSION (OHRC) AND THE ONTARIO HUMAN RIGHTS CODE

In Ontario, the OHRC is a strong proponent of the right to adequate housing. It has submitted several demands to the provincial and federal governments to recognize an adequate housing right. Additionally, the OHRC has voiced many concerns over Canada's failed commitment to respect Article 11 of the *ICESCR*.

The legislation that the OHRC relies on in its work is called the Ontario *Human Rights Code* (the *Code*). While the *Code* does not guarantee a right to adequate housing, it strives to offer protections to people in the rental housing market. For example, the *Code* guarantees the following to renters:

"Every person who occupies accommodation has a right to freedom from harassment by the landlord or agent of the landlord or by an occupant of the same building because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sexual orientation, gender identity, gender expression, age, marital status, family status, disability or the receipt of public assistance."⁵

Also, the OHRC has its own policy on human rights and rental housing that expands on the protections in the *Code*.⁶ While the policy is not law, it is considered to be a very credible document relied on by the Ontario Human Rights Tribunal when it hears cases about human rights violations in the rental housing context.

BACKGROUND ON THE CANADIAN CHARTER OF RIGHTS AND FREEDOMS

The *Charter* was enshrined in Canada's Constitution with the passage of the *Constitution Act, 1982*. It governs the relationship between individuals and the government, ensuring that governments cannot pass laws or enact policies that infringe unfairly upon our rights and freedoms. The *Charter*, therefore, acts as a restraint on government power. Prior to the *Charter*, there was no guarantee in Canada that rights and freedoms would not be taken away by legislation. We had the *Canadian Bill of Rights*, but as a statute, it could be amended or repealed by Parliament. In other words, if a given government was opposed to a particular right or freedom, it could simply vote in Parliament to have it changed or removed. By enshrining these rights and freedoms in the Constitution, they cannot simply be repealed by ordinary acts of Parliament or provincial legislatures.

⁵ *Human Rights Code*, RSO 1990, c H.19, s 2(2) [the *Code*].

⁶ *Ontario Human Rights Commission, Policy on Human Rights and Rental Housing*, (Toronto: Ontario Human Rights Commission, 2009). The full document is available here: <<http://www.ohrc.on.ca/en/policy-human-rights-and-rental-housing>>.



The Constitution is the highest law in all of Canada, and any law or government action must comply with all of its parts, including the *Charter*. As you can imagine, this is particularly important in the right to adequate housing debate. If access to adequate housing is recognized by rights enshrined in the *Charter*, all levels of government, its actions, and laws must respect that.

SECTIONS 7 AND 15(1) OF THE CHARTER

Housing rights advocates have argued that sections 7 and 15 of the *Charter* are opportunities to recognize access to adequate housing as a right. Sections 7 and 15(1) of the *Charter* read as follows:

Life, liberty and security of person

7. Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.

Equality before and under law and equal protection and benefit of the law

15. (1) Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

It is argued that the right to access adequate housing should be protected through “security of the person” under s. 7 and that poverty should be recognized as a ground of discrimination alongside race, colour, sex, etc.

WHAT ARE POSITIVE RIGHTS?⁷

Positive rights demand that the Canadian government act in a particular way, or do something, for individuals. Such rights compel the government to take a positive action in order for individuals to exercise and realize their rights and freedoms (as opposed to refraining from doing something). There are very few positive rights in Canada’s *Charter*. One example is section 23, which demands that provincial governments provide access to education in English or French in locations where such minority language communities exist, or in places where there is high demand for English or French language instruction.

Negative rights, in contrast, protect individuals from the government over-stepping its bounds and acting in particular ways. Such rights prevent the government from intervening and violating individuals’ rights and freedoms. As noted, the *Charter* acts as a restraint on government power, and this captures what is meant by negative rights. Negative rights differ from positive rights because the government usually respects negative rights by doing nothing at all. An example of a negative right found in the *Charter* is section 15, which prohibits the government and its laws from discriminating against people based on their particular characteristics. Section 7 of the *Charter* is another example of a negative right in that it prohibits the government and its laws from interfering with individuals in ways that endanger their life, liberty, and security (unless it is done in a way that is consistent with the principles of fundamental justice).

⁷ This section on positive and negative rights is adapted from The Centre for Constitutional Rights (2013-2015), online: University of Alberta: <<http://ualawccsprod.srv.ualberta.ca/ccs/index.php/pr/534-positive-and-negative-rights>>.



HOW DO POSITIVE RIGHTS RELATE TO THE ACCESS TO ADEQUATE HOUSING DEBATE?

The recognition of positive rights under section 7 of the *Charter* is vital in the access to adequate housing debate. If the law recognized that access to adequate housing was required to ensure a person's right to life, liberty, and security of the person, the government would have a positive obligation to ensure that access to adequate housing is available. In other words, if life, liberty, and security of the person is also a positive right, then the government would have to act to ensure this right is met for all individuals.

Canadian courts have been hesitant to characterize section 7 as a positive right. Historically, the courts have characterized "positive right" issues (i.e., demanding that the government to do something) as policy matters. Canadian courts have stated that policy issues are for the government and policymakers to decide—not the courts.

Although section 7 of the *Charter* has continued to be characterized as a negative right, some cases have pushed Canadian courts to consider whether the *Charter* should also protect positive rights. While these cases are not always successful, and often very complex, they represent key developments in the law on access to adequate housing.

LANDMARK POSITIVE RIGHTS CASES

Gosselin v Quebec (AG) (2002)⁸

Louise Gosselin brought an action against the province of Quebec to challenge a social assistance plan that she thought was unfair to welfare recipients under 30 years old. In the 1980s, Quebec's social assistance plan paid welfare recipients under 30 less than half of what was paid to older recipients. Gosselin argued that this plan violated her section 7 *Charter* right to security of the person. More specifically, she argued that "security" **must include the right for a person to receive a particular level of support from the government to meet basic needs.**⁹

Gosselin's legal challenge was unsuccessful. The Supreme Court of Canada (SCC) stated that although section 7 does protect life, liberty, and security of the person, the section **does not place an obligation on governments to provide for these rights.** However, Chief Justice Beverly McLachlin made an important proclamation in the *Gosselin* case; she said that **one day**, section 7 **may include positive rights**, at which point governments will have positive obligations to ensure that the right to life, liberty, and security of the person are met.

⁸ *Gosselin v Quebec (Attorney General)*, 2002 SCC 84, [2002] 4 SCR 429 [*Gosselin*].

⁹ In *Gosselin*, Louise Gosselin also argued her equality rights under s. 15 of the *Charter* were infringed because the social assistance plan discriminated based on age.

LANDMARK POSITIVE RIGHTS CASES

Chaoulli v Quebec (AG) (2005)¹⁰	Dr. Chaoulli—a private health care doctor—challenged a Quebec law that prohibited people from obtaining private health insurance for services already available in the public health care system.¹¹ Chaoulli argued that the prohibition violated the rights to life and security of the person under both the <i>Quebec Charter of Human Rights and Freedoms</i> and the <i>Canadian Charter</i> because it subjected people to the long and inevitable wait times of the public health system. In turn, people could die while waiting on the public list and their security would be affected because of added stress and physical suffering. In a four to three decision, the SCC held that the laws violated Quebecers' right to life and security of person under the <i>Quebec Charter</i>. Only three of the seven judges also found that the laws violated section 7 of the <i>Canadian Charter</i>. As such, this ruling is binding in Quebec only. The trio of judges concluded that the Quebec laws allow only the “very rich” to obtain private health care in order to avoid delays in the public system. The comments of the three judges suggest that a similar change might be possible in the rest of Canada in a future case. This case has been very controversial, especially because many people consider Canada's public health care system to be a defining characteristic of our nation.
Victoria (City) v Adams (2008)¹²	The City of Victoria, British Columbia brought an injunction (i.e., a remedy from the court to force people to act/refrain from doing something) against homeless people living in a space called Cridge Park. The injunction prohibited homeless people from making temporary structures and shelters in the park because it would violate City bylaws. Natalie Adams, a homeless person living in Victoria, argued that the City's bylaws violated her section 7 <i>Charter</i> rights. Adams' legal challenge was successful. In a landmark decision, Madam Justice Ross stated that the prohibition on makeshift structures imposes on homeless people severe health and safety risks that violate the life, liberty, and security of the person. She also noted that shelter [is] a necessary precondition to security and liberty of the person. This case is instrumental in recognizing that the need for basic shelter is connected to one's life, liberty, and security of the person under section 7 of the <i>Charter</i>.

¹⁰ *Chaoulli v Quebec (Attorney General)*, 2005 SCC 35, [2005] 1 SCR 791 [*Chaoulli*]. It is important to know that *Chaoulli* is a case about the *Quebec Charter of Human Rights and Freedoms* and not the *Canadian Charter of Human Rights and Freedoms*. The *Quebec Charter* mirrors the *Canadian Charter* in terms of its rights.

¹¹ The phonetic pronunciation of “Chaoulli” is “shy-u-lee.”

¹² *Victoria (City) v Adams*, 2008 BCSC 1363, 299 DLR (4th) 193.



DEBATING THE ISSUE - ADEQUATE HOUSING AND THE CHARTER

Hold a class debate on the issue of whether adequate housing should be protected under ss. 7 and 15 of the *Charter*, and in turn, if there should be a positive obligation on the government to provide access to adequate housing. Use the fact scenario below as the basis for the debate. This can be done in small groups or by dividing the entire class in half. Use the chart below to help prepare your arguments and anticipate those of the opposing side. Prepare questions and rebuttals accordingly.

FACT SCENARIO

Jen, Ben, Ansa, and Jan argue that the *Charter* imposes a positive obligation on the government to ensure access to adequate housing (i.e., affordable, accessible, etc.). They argue that inaccessibility to adequate housing and homelessness issues have worsened in Ontario and Canada for two reasons:

- (1) The negative changes made to laws, programs, and services that have limited funding, social assistance, and overall access to adequate housing; and
- (2) Both the provincial and federal governments' failure and inaction to implement and monitor effective housing-based strategies.

The four applicants want a Canadian court to declare that these changes and failures that affect access to adequate housing and homelessness violate:

- Their section 7 *Charter* right to life, liberty, and security of the person; and
- Their section 15(1) *Charter* equality right, because the changes and inaction have sustained issues of inequality and discrimination toward homeless and poor people in Canada.

Applicants Profiles

- Jen is a young, single mother on social assistance who lives in precarious housing with her two children. She has been on the waiting-list for subsidized housing for over two years.
- Ben was diagnosed with cancer and as a result was no longer able to work. He lost his apartment because he could not pay the rent. He lives on the streets and in shelters, and has been on the waiting-list for subsidized housing for four years.
- Ansa was severely disabled in a work accident. Two of his children are also disabled; one is in a wheelchair. He and his family of six live in a two-bedroom apartment that is inaccessible and unsafe. He has been on the waiting-list for subsidized housing for four years.
- Jan and her two young children became homeless when her spouse died suddenly. She has lived in several shelters over the years, and even on the street. She was forced to place her children in her parents' care. She has finally obtained housing, but spends 64% of her small monthly income on rent and is in danger of becoming homeless again.

DEBATE PROPOSITION

Adequate housing should be protected under ss. 7 and 15 of the *Charter*, and in turn, there should be a positive obligation on the government to provide access to adequate housing.



DEBATE PREPARATION

ARGUMENTS IN FAVOUR	ARGUMENTS AGAINST



DEBATE STRUCTURE

One team argues in support of the proposition and one team against it.

- 1. The supporting position presents their arguments (5-7 minutes)**
 - Give a good introduction that gets the opposing team's interest and attention
 - State your main points, giving evidence and reasoning for your arguments
 - Give a strong conclusion
- 2. The opposing position questions the supporting position (3-5 minutes)**
 - Ask questions about the supporting team's position
 - Prepare questions to challenge them in advance
- 3. The opposing position presents their arguments (5-7 minutes)**
 - Give a good introduction that gets the supporting team's interest and attention
 - State your main points, giving evidence and reasoning for your arguments
 - Question the supporting position
 - Give a strong conclusion
- 4. The supporting position questions the opposing position (3-5 minutes)**
 - Ask questions about the supporting team's position
 - Prepare questions to challenge them in advance
- 5. The supporting position presents their rebuttal (5 minutes)**
 - Restate and strengthen your position
 - Identify how your argument is stronger than the opposing position
 - Summarize your case and give a strong conclusion
- 6. The opposing position presents their rebuttal (5 minutes)**
 - Restate and strengthen your position
 - Identify how your argument is stronger than the supporting position
 - Summarize your case and give a strong conclusion

DEBRIEF

THE TANUDJAJA CASE¹

The fact scenario you used in your debate is based on a real Canadian case called *Tanudjaja v the Attorney General (Canada)*.

Jen, Ben, Ansa, and Jan are pseudonyms for the real people in the *Tanudjaja* case: Jennifer Tanudjaja, Brian DuBourdieu, Ansar Mahmood, and Janice Arsenault. These four people, with the Centre for Equality Rights in Accommodation (CERA), submitted an application to have their case heard before the Ontario Superior Court. They wanted the court to declare that changes to legislation, programs, and services, plus the inaction and failure of the provincial and federal governments to implement a housing-based strategy has led to an increase in homelessness and inadequate housing. The applicants argued that these changes and failures violated their *Charter* rights to life, liberty, and security of the person under s. 7 and their equality rights under s. 15 because of sustained discrimination against them as homeless and poor people.

The Governments of Ontario and Canada brought a motion to strike the application before any evidence could be heard by the court. The motion to strike was granted by the Superior Court and the application was dismissed. The applicants' case was deemed to be outside of the court's jurisdiction. The court took the view that the issue was a policy decision best made by elected government officials and policymakers, rather than a question of law.

The applicants appealed the decision to the Ontario Court of Appeal. The Court of Appeal upheld the lower court's decision to not hear the case. The majority judges emphasized that "There is no positive obligation raised by the *Charter* that requires Canada and Ontario to provide for affordable, adequate, accessible housing..."

The applicants applied for leave to the Supreme Court of Canada, which was denied in June 2015. With no further recourse in the courts, the *Tanudjaja* case will not be heard in a domestic court in Canada. Despite this, the *Tanudjaja* case sparked a critical public dialogue about whether access to adequate housing should be recognized by the *Charter*.

Discussion Questions

- Do you think the four applicants had a strong case? Why or why not?
- Do you think access to adequate housing is more of a policy issue than a legal issue? Why?
- Do you think Canadian courts should hear cases when governments and policymakers fail to address pressing social policy issues? Why or why not?
- Do you think that section 7 *Charter* rights, especially security of the person, supports a positive obligation for access to adequate housing? What about the right to life?
- Do you think poverty and/or homelessness should be recognized as a grounds of discrimination under section 15 of the *Charter*?

¹ *Tanudjaja v Attorney General (Canada)*, 2013 ONSC 1878; *Tanudjaja v Canada (Attorney General)*, 2014 ONCA 852.