

Hey, that's not fair – or is it?

Human Rights Obligations and the Duty to Accommodate

February 19, 2020 noon to 1 p.m.
Celia Chandler, Iler Campbell LLP
cchandler@ilercampbell.com



Human Rights are Important



"We need human rights. Whether we like it or not, religious, ethnic and cultural diversity is part of our modern world – and increasingly, part of our national and community reality.

Human rights and the respect for every individual upon which they rest, offer the best hope for reconciling the conflicts this diversity is bound to generate.

If we are to live together in peace and harmony ...– we must find ways to accommodate each other."

-- Right Honourable Beverley McLachlin,
Former Chief Justice of Canada (2009)

What does this mean in a Co-op?



- human rights always considered
- co-op accommodates
- board seen as unfair
- people use human rights language – mean personal preferences
- accommodation details private
- co-op members and staff need
 - education and
 - to promote human rights

*Good for you,
you're here!*

Overview

1. Human Rights Legislation
2. Duty to Accommodate
3. No harassment & discrimination –
Rouge Valley Decision
4. Competing Human Rights
5. Human Rights and Behaviour Flowchart
6. Resources





Legal information?

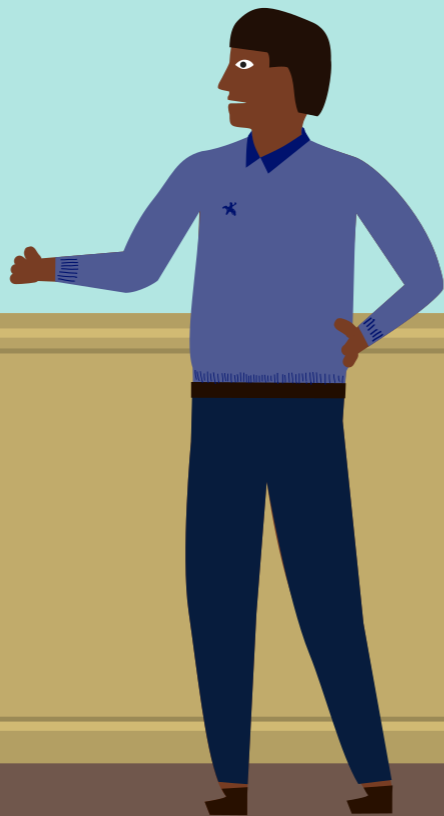


Legal advice?

Human Rights Code







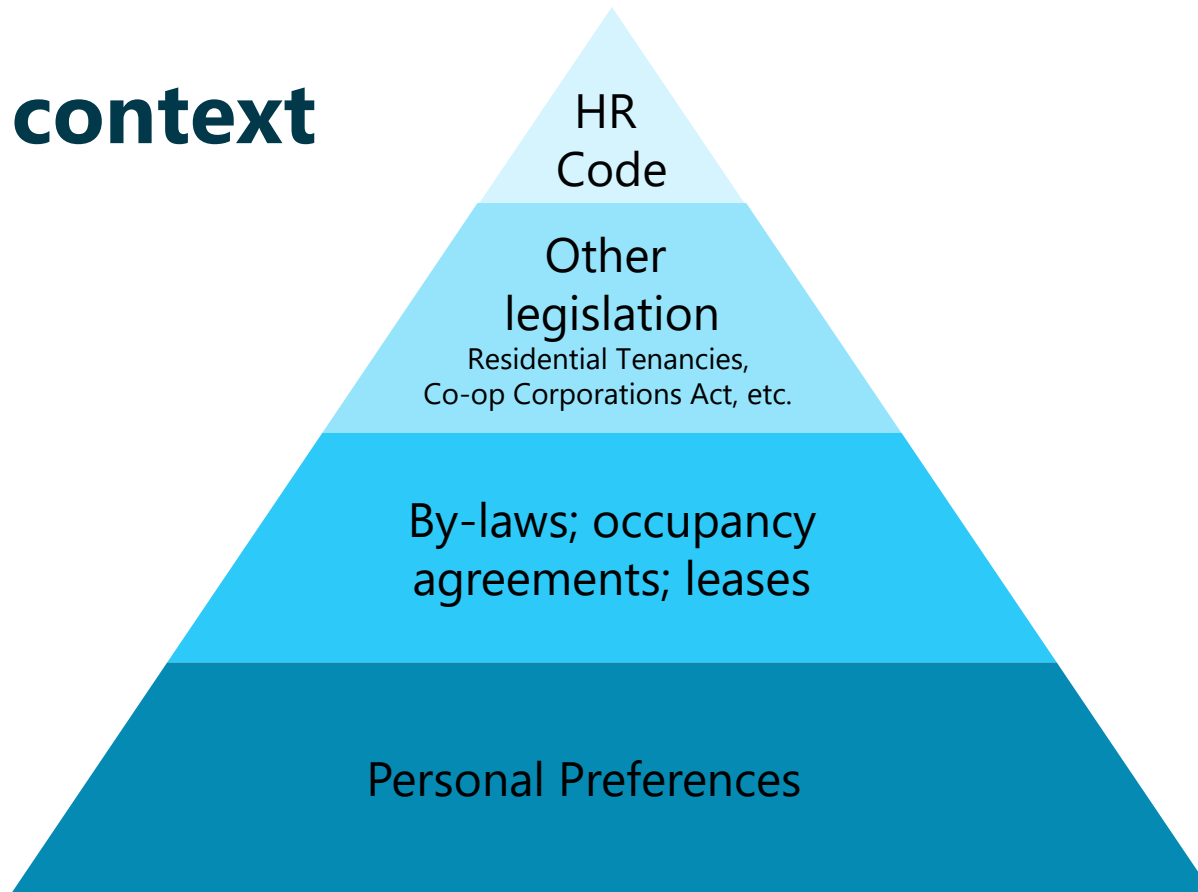
Handwritten calendar for the month of March (March 2017). The calendar is a grid with days of the month and some handwritten notes.

1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30	31				

Notes: The number 7 is circled in green in the top row, column 3. The number 22 is circled in purple in the third row, column 1. There are various other small handwritten marks and lines throughout the calendar grid.



HR in context





- Applies to the Co-op as a housing provider and an employer
- Protected grounds under the *Human Rights Code*

Protected grounds

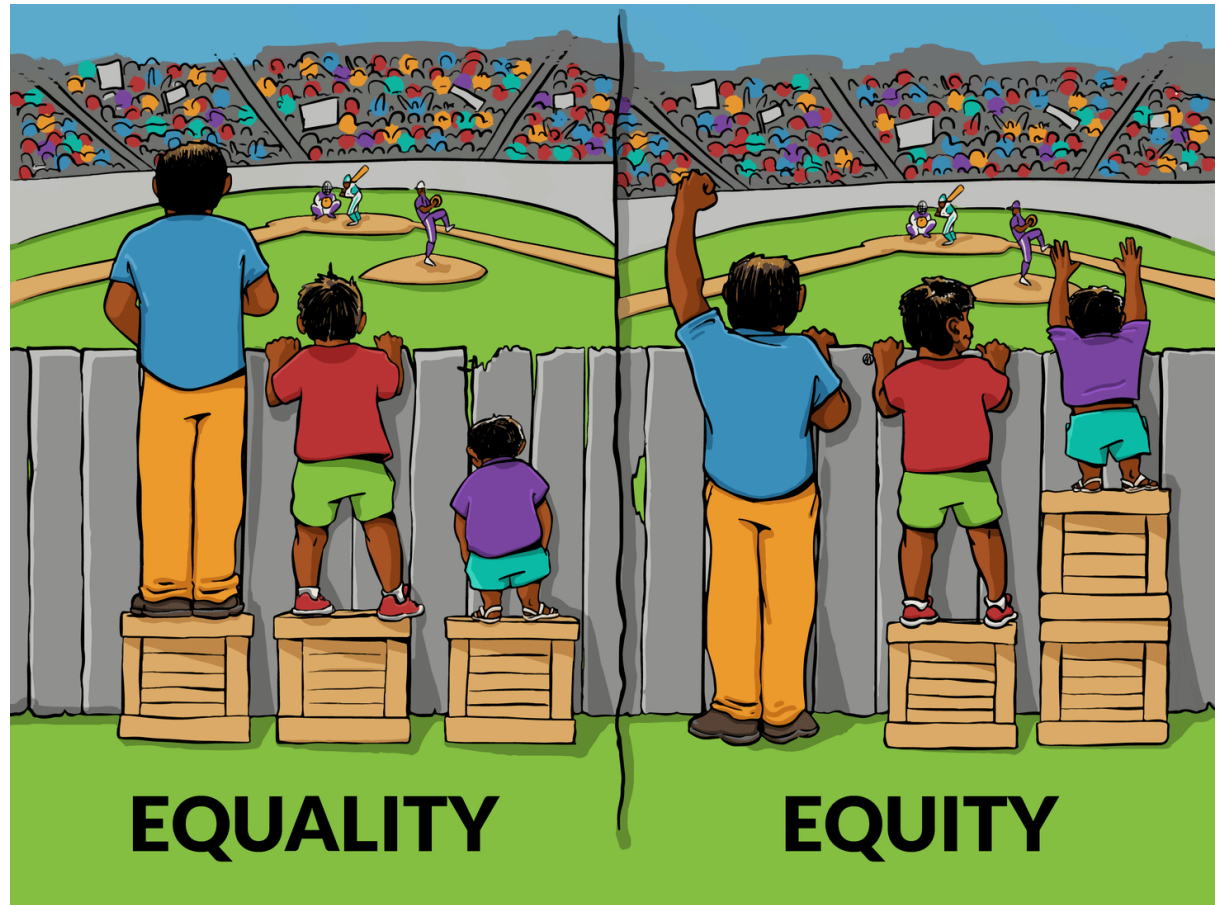
- race
- ancestry
- place of origin
- colour
- ethnic origin
- citizenship
- creed (*i.e religion*)
- sex
- sexual orientation
- age
- marital status
- family status
- disability
- gender identity
- gender expression
- the receipt of public assistance (housing only)
- record of offences (employment only)

Duty to accommodate

What is accommodation?

Providing something for one member what others do not get so that the member needing accommodation has a similar housing experience as other members have.

Like this



Principles for Accommodation

- respect for dignity
- no set formula - consult
- be responsible and willing - explore solutions
- comply voluntarily
- **undue hardship**

Undue Hardship

Very high threshold

Two things to consider:

1. cost (including external sources of funding),
2. health and safety

Nothing else.

Undue Hardship - Cost

Minimize costs

- distribute costs across budget
- phase in
- tax deductions
- reserve fund
- use creative & less expensive solutions
- outside sources of funding

Undue Hardship – Health and Safety

What can the Co-op consider when thinking about health and safety?

- nature of risk
- severity of risk
- probability of risk
- scope of risk

Undue Hardship

Other considerations?

- “knew building was inaccessible”
- member preferences
- “that’s not fair”
- business interests
- inconvenience

No Harassment & Discrimination

Rouge Valley Decision

What was happening at the Co-op?



Examples from Para 4 of decision

COME SEE THE INBREEDS AND RETARTS IN 406

COME SEE THE FAT SLOB PIGS IN 202

COME SEE THE DUMBFUCK HICKS IN 408

COME SEE THE DRUNK IN 608

COME SEE THE CUNT AND THE CRIPPEL IN 502

COME SEE THE CRIPPEL FREAK IN 705

COME SEE THE OLD WHORE IN 1008

COME SEE THE OLD DRUNK IN 506

COME SEE THE FAT OLD WHORE IN 905

BETTER THAN THE CIRCUS

EVERY NIGHT IN ROUGE VALLEY PARK

FREE SHOW



What did the Board do?



What did the complainants do?



What did the HERTO say?

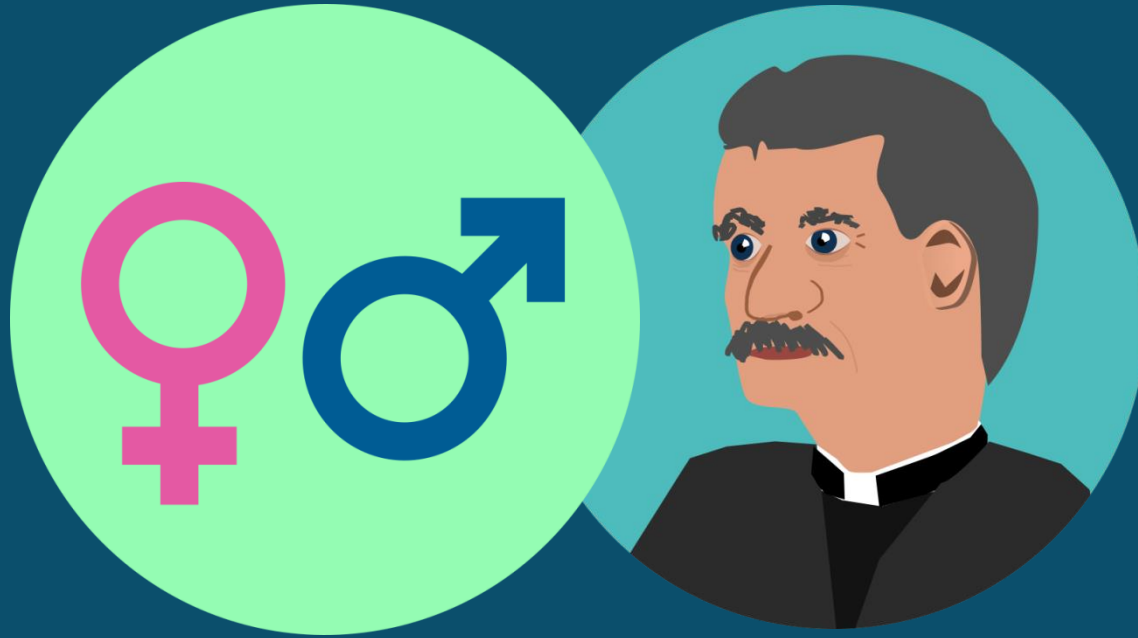


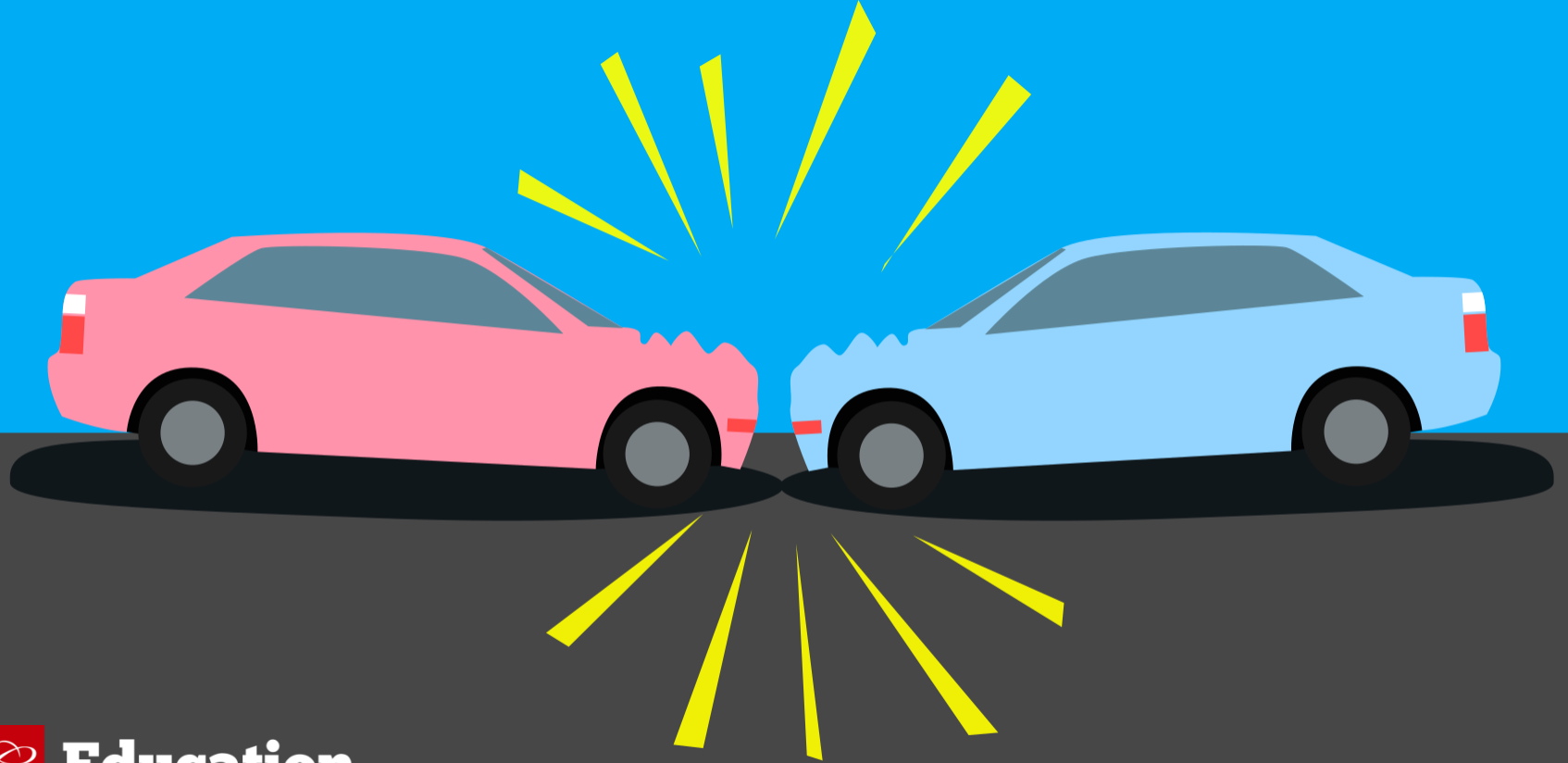
Other lessons learned





Competing Human Rights









Competing rights principles

- No rights are absolute
- No hierarchy of rights
- Rights may not extend as far as claimed
- Consider context
- Look at extent of interference
- Core of right protected more than its periphery
- Respect both sets of rights

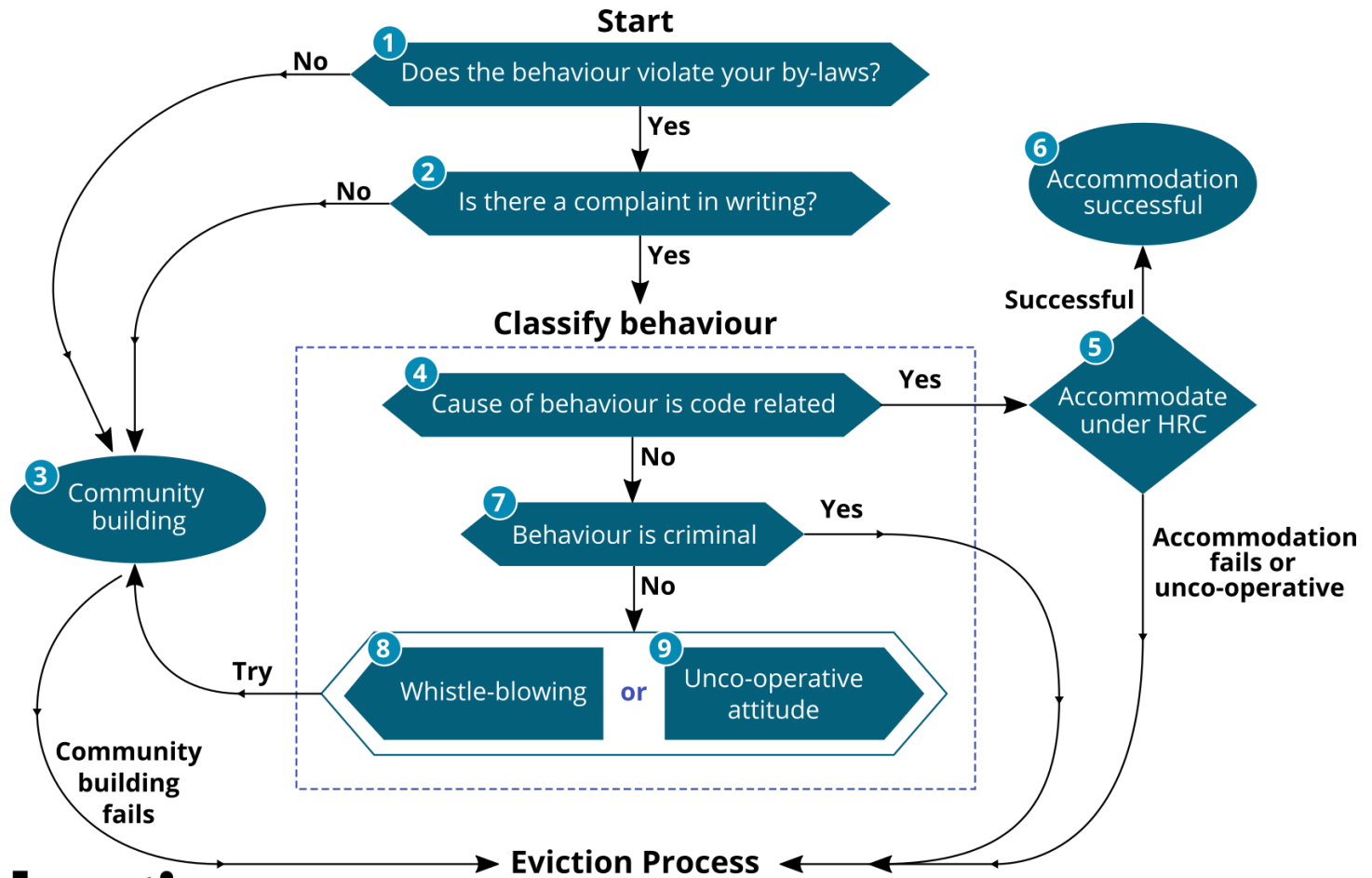
The Policy Framework

Stage One: Recognizing competing rights claims

Stage Two: Reconciling competing rights claims

Stage Three: Making decisions

Human Rights and Behaviour Flowchart



Resources

- Ontario Human Rights Commission : ohrc.on.ca
- Centre for Equality Rights in Accommodation: equalityrights.org/cera
- CHF: chfcanada.coop
- Canadian Human Rights Commission: chrc-ccdp.ca
- Your lawyer
- Our blog: ilercampbell.com

Things to take away with you:

1. Rights issues arise all the time in housing
2. Know the difference between a human right and a personal preference
3. Use available resources
4. Document, document, document...
5. Not all rights are equal but no rights will always trump other rights
6. Facts matter
7. Respect all view points
8. Act quickly to resolve issues before they become problems
9. Be creative and flexible
10. Human rights protection is a good thing!



Questions -
you likely have some!

