

New Brunswick Human Rights Commission

Guideline on Discrimination in the Housing Sector Adopted: June 3, 2004

For Rental Agencies, Property Owners, Managers and Tenants:

Please Note

This policy statement embodies the Human Rights Commission's interpretation of the provisions of the New Brunswick *Human Rights Code* (hereinafter the "Code")¹ relating to discrimination as set out in section 4. It is subject to decisions by Boards of Inquiry and the courts. The policy should be read in conjunction with those decisions and with the specific language of the *Code*. If there is any conflict between these guidelines and the *Code*, the *Code* prevails. Any questions regarding this policy should be directed to the staff at the New Brunswick Human Rights Commission. Additionally, this policy is not a substitute for legal advice; any person considering a special programme should seek legal guidance.

Table of Contents

Summary	2
1.0 Who Should Read These Guidelines	3
2.0 Introduction	3
2.1 The Code on Housing	4
3.0 Filing a Human Rights Complaint	5
3.1 Prohibited Grounds	6
3.2 Reprisal	7
3.3 Vicarious Liability	7
4.0 Bona Fide Qualifications Defence	8
4.1 Special Programme Defence	8
5.0 Common Situations of Discrimination in Housing	9
5.1 Target Marketing	10
5.2 Adult Only Housing	11
5.3 Reasonable Children's Noise	12
5.4 Renting Portions of Your Home	12
6.0 Purchase of Property	13
7.0 Proof of Discrimination	13
7.1 Race	13
7.2 Sexual Orientation	14
7.3 Access Issues For Persons With Disabilities	15
8.0 Other Relevant Sections of the Code	15

¹ *Human Rights Code*, R.S. NB. 1985, c.H-11.

9.0	The Rights and Obligations of Owners/Agents	16
9.1	Relevant Qualifications of Tenants	17
9.2	The Rights of Prospective Tenants	17
10.0	Contact Information	17
11.0	Suggested Sample Application for Tenancy	18

Summary

This guideline sets out the New Brunswick Human Rights Commission’s position on discrimination in the housing sector as it relates to the provisions of the New Brunswick *Human Rights Code*.

The *Code* prohibits property owners from using any of the personal characteristics, listed in the *Code* as factors in determining to whom, or in what manner, they will rent, sell or lease property. Property owners are jointly liable for the discriminatory acts of their property managers or other employees.

The following are specific examples of prohibited behaviour in the housing sector:

- refusing to rent or sell to someone because of their race, sexual orientation, religion, etc.
- advertising “adult only” housing
- lease conditions which place all tenants with children in a specific part of a building
- retaliating against a tenant because s/he has filed a human rights complaint
- refusing to accommodate a tenant or potential tenant’s special needs (short of undue hardship)
- evicting a tenant because they have a new baby
- refusing to rent to someone because of their association with someone protected by section 4(1) of the *Code*.

In limited situations, a *bona fide qualification (BFQ)* may be used as a defence to a human rights complaint. In order to be shielded by a *bona fide qualification*, a property owner must show the restriction or preference is one that is adopted for a legitimate reason, in good faith, and it is impossible to eliminate the discriminatory effect without causing the owner undue hardship.

Examples of a BFQ might include:

- target marketing aimed at attracting individuals protected by section 4(1) of the *Code* into a special housing programme
- if the owner is renting a room in a house which s/he owns and occupies

The Commission recognizes that owners have the right to protect their property by selecting suitable tenants and by refusing undesirable tenants. However, property owners are obligated to achieve this goal in a reasonable manner and the Commission supports the use of non-discriminatory methods. Please refer to the Suggested Sample Application for Tenancy attached to the back of this guideline in section 11.0.

The Commission has developed a guideline on special programmes for disadvantaged groups. Property owners who are interested in adopting a special programme should refer to that guideline.

1.0 Who Should Read These Guidelines

These regulations are important if you are:

- a person in New Brunswick who owns or manages a building or house which offers residential or commercial space for rent or sale;
- a building or property management firm;
- a building superintendent or caretaker;
- a rental agency;
- a person in New Brunswick who is currently renting property, or is in the process of renting or buying property.

2.0 Introduction

Provisions under the New Brunswick Human Rights Code take precedence and are paramount over the provisions of every other law of the Legislature unless expressly provided otherwise.²

The *Code* states that all persons are equal in dignity and human rights. According to sections 11 and 12 of the *Code*, the role of the Commission is to enforce the *Code* and the principles underlying it. In order to fulfill this objective, the Commission produces guidelines that reflect its interpretation of the *Code*.³

Discrimination is differential treatment of, or failure to accommodate, an individual on the basis of the individual's actual or presumed membership in or association with some class or group of persons as set out in section 4(1) of the *Code*, rather than on the basis of personal merit.⁴

Courts have recognized that human rights statutes have a quasi-constitutional nature and that their provisions should take precedence over those of every other statute in

² *Newfoundland Association of Public Employees v. Newfoundland (Green Bay Health Care Centre)*, [1996] 2 S.C.R. 3, at para. 20.

³ The Commission would like to acknowledge and thank the Human Rights Commissions from various jurisdictions across Canada for the opportunity to study and draw from their policies and documents on housing and related issues.

⁴ See also *Andrews v. Law Society of British Columbia*, [1989] 1 S.C.R. 143.

case of conflict.⁵ The Commission interprets the *Code*'s provisions in light of the *Canadian Charter of Human Rights and Freedoms* (hereinafter "*Charter*")⁶ and in particular in keeping with court decisions under the equality provisions of section 15 of the *Charter*.

The Commission is also guided by international human rights case law and the treaty obligations imposed on New Brunswick as a result of international human rights treaties that have been ratified by Canada. Article 11(1) of the *International Covenant on Economic, Social and Cultural Rights*,⁷ which Canada ratified in 1976, recognizes the right of everyone to an adequate standard of living for themselves and their family, including, among other things, adequate housing and the continuous improvement of living conditions. *The Universal Declaration of Human Rights*,⁸ adopted by Canada in 1948, states in article 25(1) and (2), that everyone has the right to a standard of living for health and well being including, among other things, housing and the right to security of such in the event of unemployment and other circumstances. Special protection is given to childhood and motherhood.

2.1 The *Code* on Housing

The New Brunswick Human Rights Commission was created in 1967, and housing and property have been protected sectors of activity, under the *Code*, from the beginning. Section 4 of the *Code* establishes the right to equal treatment with respect to housing:

4(1) No person directly or indirectly, alone or with another, by himself or by the interposition of another, shall

(a) deny to any person or class of persons the right to occupy any commercial unit or dwelling unit, or

(b) discriminate against any person or class of persons with respect to any term or condition of occupancy of any commercial unit or any dwelling unit,

because of race, colour, religion, national origin, ancestry, place of origin, age, physical disability, mental disability, marital status, sexual orientation or sex.

4(2) No person who offers to sell property or any interest in property shall

(a) refuse an offer to purchase the property or interest made by a person or class of persons,

⁵ *Supra* note 1.

⁶ *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act*, 1982, being Schedule B to the *Canada Act 1982* (U.K.), 1982, c. 11.

⁷ *International Covenant on Economic, Social and Cultural Rights*, GA Res. 2200A (XXI), UN GAOR, 16 Dec 1966, U.N.T.S. entered into force 3 January 1976, U. N. Doc. HRI/GEN/1/Rev. 1, 5th Sess., 1990 (1994)..

⁸ *Universal Declaration of Human Rights*, GA Res. 217(III), UN GAOR, 3d Sess., Supp. No 13, UN Doc. A/810 (1948) 71

(b) discriminate against any person or class of persons with respect to any term or condition of the sale of any property or interest in property,

because of race, colour, religion, national origin, ancestry, place of origin, age, physical disability, mental disability, marital status, sexual orientation or sex.

4(3) No person shall impose, enforce or endeavour to impose or enforce, any term or condition on any conveyance, instrument or contract, whether written or oral, that restricts the right of any person or class of persons, with respect to property because of race, colour, religion, national origin, ancestry, place of origin, physical disability, mental disability, sexual orientation or sex.

4(4) Notwithstanding subsection (1), a limitation, specification, exclusion, denial or preference because of sex, physical disability, mental disability, marital status or sexual orientation shall be permitted if such limitation, specification, exclusion, denial or preference is based upon a bona fide qualification as determined by the Commission.

4(5) The provisions of subsections (1) and (2) as to age do not apply to a limitation, specification, exclusion, denial or preference in relation to a person who has not attained the age of majority if the limitation, specification, exclusion, denial or preference is required or authorized by an Act of the Legislature or a regulation made under that Act.

As applied to the housing sector, the effects of the provisions are that a property owner (or a tenant who sublets) cannot discriminate against current or potential tenants either by refusing to lease or by creating discriminatory terms in a lease which have the effect of discouraging a person from renting, or which place them at a disadvantage in relation to other tenants.

Example

It is a breach of the Code to require a group of persons to pay higher rent because of their sexual orientation or to have a lease clause that permits subletting only to single working males, or to restrict tenants with children to specific floors of buildings.

3.0 Filing a Human Rights Complaint

Any person claiming to be a victim of discrimination in the provision of housing services may file a complaint with the Commission. If the complaint is made in bad faith, or if it was filed more than twelve months after the incident of discrimination, the Commission may decide not to deal with it. There is no charge for filing a complaint, and staff mem-

bers of the Commission are available to discuss potential complaints over the telephone or in person. Persons who have any questions or require further information regarding the provisions of the *Code* are encouraged to contact the Commission. (Contact information is located in section 10.0 of this guideline)

3.1 Prohibited Grounds

The applicable grounds of discrimination under the *Code* are⁹:

- a. race
- b. colour
- c. religion
- d. national origin
- e. ancestry
- f. place of origin
- g. age
- h. physical disability
- i. mental disability
- j. marital status
- k. sexual orientation
- l. sex, including pregnancy, the possibility of pregnancy, or circumstances related to pregnancy

Note: The *Code* does not define “age”, which means that even persons who have not attained the age of majority are protected against discrimination unless such discrimination is required by an Act of Legislature or a regulation made under that Act.

The law requires that all employment, housing or public service be equally accessible to all members of the public without discrimination. People should be judged on the basis of their individual merits, and not on the assumed merits or deficiencies of any group of people - that is, people should not be stereotyped.

Not only does the *Code* protect an individual from discrimination directed at him/herself, it also protects a person from discrimination because of an association with a member of a protected group. In a case of discrimination because of an association with a member of a protected group, either or both of the persons affected can file a human rights complaint against the landlord or property manager.

The law does permit differential treatment under certain circumstances. These conditions are addressed in sections 4.0 and 4.1 of this guideline.

⁹ Other grounds may be added in the future. Please check an up-to-date version of the *Code*, or contact the Commission.

3.2 Reprisal

Section 8 of the *Code* prohibits negative behaviour directed toward the tenant as a result of filing a human rights complaint. Therefore, if a tenant files a human rights complaint against a landlord, the landlord should not take any actions to “get even” or s/he will be liable for an additional human rights complaint.¹⁰

3.3 Vicarious Liability

The *Code* places responsibility for a discriminatory act not only on the individual who makes the decision, but also on the people s/he reports to; ultimately, an owner or agent is responsible for the action of his/her employees. Therefore, the Commission urges owners and agents to give instructions to their employees, making it known that they will not allow discrimination concerning rentals or sales on their behalf.

The *Code* also prohibits discrimination in the subletting of a housing accommodation. When selecting applicants to sublet a rental unit, both the owner and the primary tenant are required to refrain from discrimination.

Example

A young couple saw a “For-Rent” sign in front of a building and called the number provided. During the conversation, their child began to cry. The apartment manager heard the crying and asked if they had a child. He then informed them that, unfortunately, children are not allowed in the building. Later, they saw a new sign in front of the same building which read, “quiet working adults only”. The couple filed a human rights complaint against the apartment building owners and the apartment manager.

It is important to note that in this case, the owners of the building testified that they had a policy not to exclude children. In fact, they had made the apartment manager aware of this policy, as well as legislation that prohibits discrimination against families. However, the Supreme Court of Canada found the owners liable for the actions of their apartment manager.¹¹

Property owners, have the responsibility of ensuring that their employees and/or agents fully comply with the law.

¹⁰ *Supra* note 2 at s.8.

¹¹ *Westbury v. Trump*, [1992] B.C.C.H.R.D. No. 14, at 2.

4.0 *Bona Fide Qualifications Defence*

Section 4(4) of the *Code* considers a *bona fide qualification* as an exception to section 4(1).

4(4) Notwithstanding subsection (1), a limitation, specification, exclusion, denial or preference because of sex, physical disability, mental disability, marital status or sexual orientation shall be permitted if such limitation, specification, exclusion, denial or preference is based upon a *bona fide* qualification as determined by the Commission.

A *bona fide qualification* may be used as a defence by a business should a human rights complaint be brought against it. Special programmes may also qualify as a defence. (Please see sections 4.1 for more information.)

Property owners should be aware of the stringent nature of the BFQ *test*. To be protected by the BFQ exception, the following must be established:

- First, that the owner adopted the rule for a purpose that is rationally connected to the goals of the housing programme. The focus of this first step is not particularly on the validity of the standard, but on the validity of its more general purpose.
- Second, that the owner adopted the standard in an honest and good faith belief that it was necessary to the fulfillment of that legitimate, programme-related purpose.
- Third, that the standard is reasonably necessary to the accomplishment of that legitimate programme-related purpose. In order to demonstrate that the standard is reasonably necessary, it must be demonstrated that it is impossible to eliminate its discriminatory effect without causing undue hardship.¹²

4.1 *Special Programme Defence*

Special programmes are designed to alleviate the disadvantage of particular groups. For this reason, they may differentiate in ways that under normal circumstances would be a violation of the *Code*. Although these programmes involve treating groups differently than the rest of the population, they are necessary if these groups are to achieve equality.¹³

Equity programmes (a type of special programme) should be understood as integral to, and consistent with, legal guarantees of equality for historically disadvantaged groups in society. Thus, affirmative action is an expression of equality, rather than an exception to it.

¹² *Entrop v. Imperial Oil Ltd.* (unreported decision of the Ontario Court of Appeal, 21 July 2000).

¹³ *Supra* note 10 at s.86.

The location of the building, its design features and its rental fee structure are all key considerations when creating a special programme in housing to assist any disadvantaged group. Special programmes may not discriminate in ways that are not related to their goal of alleviating disadvantage.

The Commission recognizes the legitimate need for housing specifically designed for seniors, disabled persons or other target groups. Generally, this type of housing will not violate the *Code*. For more information, please refer to section 5.1 of this policy.

The Commission has developed a separate guideline for special programmes. Property owners interested in implementing a proposed programme should refer to that guideline.

5.0 Common Situations of Discrimination in Housing

The *Code* addresses advertising in section 6(1).

6(1) No person shall

- (a) publish, display, or cause to be published or displayed, or
- (b) permit to be published or displayed on lands or premises, in a newspaper, through a television or radio broadcasting station, or by means of any other medium that he owns or controls

any notice, sign, emblem or other representation indicating discrimination or an intention to discriminate against any person or class of persons for any purpose because of race, colour, religion, national origin, ancestry, place of origin, age, physical disability, mental disability, marital status, sexual orientation or sex.

The application of this section is subject to *bona fide qualifications* discussed in section 4 of this policy.

This means that when a property owner inserts an ad in the newspaper, or places a sign on the front lawn of a property that s/he wishes to rent or sell, s/he cannot use a discriminatory message.

Examples

<u>House for Rent:</u>	<u>Prohibited Ground</u>
...single tenant only	-marital status
...no unmarried couples	-marital status
...no children, adults only	-age
... "X ethnic origin" need not apply	-ancestry
...white working adults	-age, colour

...Seeking good Christian tenant -religion

All of the above statements are in contravention of the *Code*. Property owners are responsible for this violation, even if it was the property manager or caretaker who placed the advertisement.

Before advertising, consider the language used and the likely effect. Does the advertisement have an unfair effect in screening out or discouraging certain classes of people from applying? If it does, the ad is probably discriminatory.

Is the preference or limitation expressed in the ad a fair indicator of person's qualifications as a tenant or purchaser? If not, then the ad is probably discriminatory.

If the goal is to avoid noisy tenants, consider the following advertisement: "Apartment for rent...quiet tenants preferred" rather than "Apartment for rent...no children." It is discriminatory (and incorrect) to assume that all children are noisy.

If a property owner has a particular concern, s/he should try and state that concern clearly. It violates the *Code* to exclude a particular group of people based on preconceived notions. It is good business sense to concentrate on the real problem and not on irrelevant factors.

Groups of people who have been historically disadvantaged because of discrimination should be assisted in their attempt to gain equality with other groups in our society. Therefore, advertisements which specify "X" minority group welcome" are not necessarily discriminatory – but only where the advertisement encourages a member of a minority group to apply who is disadvantaged or might otherwise be discouraged from applying. In such situations we suggest adding the phrase "all applicants considered," as in:

Applications from "X" welcome. All applicants considered.

Local newspapers, which are usually well versed in the *Code*, may refuse to print an ad if it is in violation of the law. If a newspaper or other media organization publishes a discriminatory ad, it has violated the *Code*.

5.1 Target Marketing

If a property owner has an accommodation project that s/he wishes to market to one particular target group of tenants, s/he should refer to the Commission's guideline on special programmes to ascertain what is within the law. In the general housing market, advertising meant to attract seniors by offering special accommodations is permissible. Language like "special services for seniors," will not generally result in a complaint. However such marketing cannot be exclusionary, unless the housing in question can be defended as having *bona fide qualifications* because of sex, physical disability, mental

disability, marital status or sexual orientation. Please see sections 4.0 and 4.1 of this policy for further information.

5.2 Adult Only Housing

Adult only housing violates the *Code*. Therefore the Commission will investigate complaints about advertisements that say “no children,” “adult building,” “adult community,” etc. The Commission will investigate complaints about advertisements that express, directly or indirectly, a preference for people without children including, but not limited to “adult lifestyle community,” “suitable for mature adults,” etc.

Example

*Marjorie and Jonathon have spent the last six months in a new apartment building. Marjorie was pregnant during this time. The management saw her and was aware of this. One afternoon, a week after returning home from the hospital with their new baby, Marjorie and Jonathon received a phone call informing them that since the building is for adults only, they will be given two months to find other accommodation.*¹⁴

Example

Dennis saw an advertisement for a one-bedroom apartment in his local newspaper. He went to view the apartment, which was located on the sixth floor of the building, and liked it. However, when he mentioned to the building’s superintendent that he had a young child, the superintendent told him that children can only live on the first three floors of the building. As a result, he was not permitted to rent the apartment.

While most people realize that it is illegal to declare an apartment building or complex to be “adults only”, or refuse to rent to someone because they have children, it is also contrary to the *Code* to designate certain units “not suitable for children”, or to restrict families with children to certain floors of a building.

If the purpose of marketing housing exclusively to older people is to ensure a quiet environment, an effective method might be to include lease clauses that address noise from tenants. This would help to accomplish the goal and still be within the law. Building policies that intentionally exclude tenants with children or adults under a certain age are in breach of the *Code*, unless it can be shown that the policy qualifies as a special programme or the restrictions are *bona fide qualifications*. Please see sections 4.0 and 4.1 of this policy for further information.

¹⁴ *Grant v. Strug*, [1994] N.S.H.R.B.I.D. No.1, at 3.

5.3 Reasonable Children's Noise

Example

In the months that followed the birth of their son, Richard and Celeste received a large number of calls from the tenant living below them complaining about the baby's crying. Richard and Celeste tried their best to minimize any disturbances caused by their son's crying, but the other tenant continued to complain. Finally, the couple found a letter from the building's management posted on their door stating that, if the noise did not stop, the management would be forced to evict them and their baby.

A certain amount of noise is to be expected from families with young children. As long as parents make a reasonable effort to minimize their children's noise, landlords or property managers should not threaten to evict them because of noise problems. To do so would be considered discrimination based on age and would be a violation of the *Code*.

5.4 Renting Portions of your Home

When property owners decide to rent out a portion of their home – either a room or a self contained unit – they are offering a service to the public and are bound by the tenets of section 4 of the *Code*. Property owners may not discriminate simply because it is their home. However, the Commission recognizes that the private nature of such a rental may give rise to particular needs and defences in terms of a *bona fide qualification* that may justify the differential treatment.

Example

A widow renting out a room in her home, or a single mother with children, may wish to rent to a female tenant only.

Such fact situations may give rise to legitimate *bona fide qualification* defences. If the property owner can show that the preference is one that has a legitimate reason or purpose, is made in good faith and that there is no less-discriminatory way to achieve the goal, it may be recognized by the Commission.

In cases involving renting out a portion of a property owner's home, the Commission may recognize a legitimate *BFQ* defence where the same defence may be of no avail in the case of a self contained dwelling unit or an absentee landlord. These cases will have to be determined through case law as it evolves, and the Commission will consider each case on its individual merit. In appropriate cases, the Commission would support the landlord's *BFQ* defence before a human rights Board of Inquiry.

While *BFQ* defences may be available in some circumstances, the Commission reminds owners of their duties under the *Code* in every rental situation.

6.0 Purchase of Property

To this point, these guidelines have only addressed rental accommodation situations. However, the *Code* has provisions on the sale and purchase of property. Here is the relevant section:

4(2) No person who offers to sell property or any interest in property shall

(a) refuse an offer to purchase the property or interest made by a person or class of persons,

(b) discriminate against any person or class of persons with respect to any term or condition of the sale of any property or interest in property,

because of race, colour, religion, national origin, ancestry, place of origin, age, physical disability, mental disability, marital status, sexual orientation or sex.

The above is subject to *bona fide qualifications*.

Discrimination in the sale of real estate, housing or any residential or commercial premises or in any term or condition attached to the transaction, is a breach of the *Code* if the property is available to the general public. In a situation where the property is sold to a family member without being publicly advertised, the *Code* would not apply.

In general, the law on the sale of housing is the same as the law covering rental arrangements. Discrimination based on a group factor, i.e. stereotyping, is illegal.

7.0 Proof of Discrimination

Discrimination will be found to exist where it is the most likely inference to be taken from the facts, even in the absence of strong evidence of direct discrimination. Two such examples addressed in this policy are discrimination based on race and sexual orientation. The events leading to an incident may offer sufficient evidence of discrimination to establish a complaint.

7.1 Race

Example

Tia enjoyed her association with the local Youth Group. The Youth Group attracted many international students from the nearby university. As a result, Tia became very

good friends with many different nationalities. A favourite activity of Tia's was a weekly dinner party at which they celebrated a different theme by preparing a variety of ethnic foods. However, the tenants in Tia's building objected. They complained that there was too much noise generated by the get-togethers, and they wanted Tia's friends to be barred from visiting or for Tia to be evicted. Some tenants even said they were afraid when "all those foreigners come". A petition was signed by many of the tenants and presented to the administration, and the Apartment Manager notified Tia. Tia believes that the real problem is that all the friends who visit her are from foreign countries. She believes that she and her friends are the victims of discrimination based on race.

In a case like the one above, the complaint may be established by merely showing that discrimination was a factor, and not necessarily the principal cause or reason for the action causing the disadvantage.

7.2 Sexual Orientation

Example

Susan had found the perfect apartment. The owner of the small apartment building seemed very interested in Susan as a tenant, suggesting that Susan could move in whenever she pleased. Then Susan brought Sherrie, her partner, to view the apartment. After that, the owner told Susan that she had promised the apartment to a gentleman who was skilled at fixing things. The owner explained that the apartment was in need of different repairs and that, since she had promised it to him first, she would have to give him time to show up. The next week, Susan noticed that an ad for the apartment was placed in its window. She went to see the apartment owner again; however she was told the same thing. Susan went home and asked a girlfriend of hers to call and see if the apartment was available. Her friend called and said she was looking for an apartment for her husband and herself. The owner told her that the apartment was available. Susan then got another friend, David, to call for the apartment. He was also told that it was available. Susan believes that Sherrie and she were the victims of discrimination based on sexual orientation.¹⁵

In a situation like the one above the complaint may be grounded by merely showing that discrimination was a factor, and not necessarily the principal cause or reason for the action causing the disadvantage.

¹⁵ See *Andrews v. Ptsaznyk*, [1998] O.H.R.B.I.D. No. 4 at 4. This case concerned adult only housing, but the facts are very similar to situations that many gay and lesbian individuals face in finding housing and employment.

7.3 Access Issues for Persons with Disabilities

Example

XYZ Rentals Inc. is a large residential landlord with several buildings in major cities around the province. Doug and Karen are interested in moving into a new four-story XYZ building in Moncton. However, Doug is in a wheelchair, and they are concerned about the difficulties associated in accessing the new building. The underground parking lot is accessible by elevator, but the doors are difficult to manage, and there are two steps down to the parking floor with no ramp. Doug and Karen believe that to fully enjoy renting one of XYZ's units, they would have to insist on the installation of an automated door in the front of the building, as well as a ramp in the parking garage. They have inquired at the Human Rights Commission for advice.

In such cases, the accommodation of needs of particular tenants may give rise to complaints to the Commission. Landlords who rent residential premises should generally have in mind the needs of prospective physically disabled tenants. The larger the landlord, the more difficult it will be to raise a defence of undue hardship to a complaint of discrimination, where installation of access ramps and automated doors is the issue. Landlords who build new facilities without factoring in the needs of such prospective tenants will face a greater burden in demonstrating that accommodation of these particular needs is impossible.

8.0 Other Relevant Sections of the Code

The *Code* also protects against discrimination in accommodation, services or facilities available to the public.

Section 5 states:

5(1) No person, directly or indirectly, alone or with another, by himself or by the interposition of another, shall

(a) deny to any person or class of persons with respect to any accommodation, services or facilities available to the public.

(b) discriminate against any person or class of persons with respect to any accommodation, services or facilities available to the public, because of race, colour, religion, national origin, ancestry, place of origin, age, physical disability, mental disability, marital status, sexual orientation or sex.

Section 5(2) states that the above is subject to a *bona fide qualification* as determined by the Commission.

The Commission distinguishes between accommodation cases, against innkeepers and hotel owners, which are dealt with under section 5 and the provisions of section 4, which apply more specifically to rental accommodations in a landlord tenant relationship. Cases involving boarders and lodgers will typically be analysed under section 4 of the *Code*. Complaints against bed and breakfast operators would typically fall under section 5.¹⁶

9.0 The Rights and Obligations of Owners/Agents

Deciding on whether to offer a vacant accommodation to a prospective tenant is never an easy decision. Will this person be a good tenant? Pay the rent on time? Maintain the property? Respect other tenants? These are all valid questions directly affecting property management.

Rights

- Property owners have the right to protect their property by selecting suitable tenants for their rental units, and by refusing undesirable tenants.
- Property owners have the right to obtain all the information about an applicant, which is relevant to her/his qualifications as a tenant, as long as the information is not used for discriminatory purposes. For example, a property owner may ask for a list of persons who will be living in a unit, but if the applicant reveals that s/he has children, s/he cannot be refused occupancy because of the children.
- Property owners have the right to screen applicants on the basis of relevant qualifications through the use of application forms, interviews and reference checks. The Commission urges owners and their agents to use such assessment tools to minimize their risks. To assist property owners, we have included a sample application form for tenants. See section 11 of this policy.
- Property owners have the right to use a *BFQ* defences in situations where exceptions apply.

Obligations

- Property owners are obligated to use non-discriminatory methods to rent property, sell property or offer services to the public.
- Property owners are obligated to accommodate the needs of persons protected by the *Code*

¹⁶ *Micallef v. Glacier Park Lodge Ltd.*, [1998] B.C.H.R.T.D. No. 16.

9.1 Relevant Qualifications of Tenants

A qualified tenant is a person who can provide an accommodation owner or rental agent with:

- Reasonable evidence of the ability to pay rent. The tenant should provide information about their potential income and information that would help to determine the stability of that income.
- Reasonable indication that the tenant will honour their responsibilities. Relevant information would be past rental history indicating that the applicant will: pay their rent on time, avoid damaging the premises, not create a disturbance for other tenants, abide by the terms of the tenancy agreement and give proper notice to the owner of any intention to move.

9.2 The Rights of Prospective Tenants

Under the *Code*, prospective tenants have the following rights:

- the right to have an application considered without discrimination.
- once in accommodation, the right to be treated as all other tenants are treated, without discrimination.
- the right to have special measures of accommodation provided as required by their membership in a protected group

10.0 Contact Information

For further information, please check the website of the Human Rights Commission at www.gnb.ca/hrc-cdp/e or contact the Commission at:

Address: PO Box 6000, Fredericton, N.B. Canada E3B 5H1
Phone: 453-2301
Toll free: 1-888-471-2233
Fax: 1-506-453-2653
TDD: 1-506-453-2911
Email: hrc.cdp@gnb.ca

11.0 Suggested Sample Application for Tenancy

For Suite No. ____ (Apartment) of ____ of _____ (Address)

1. NAME: _____

2. Addresses	Telephone	How long resident there?
a) Current		
b) Previous		

3. NAME OF PRESENT PROPERTY OWNER OR MANAGER: _____

Address and or/Telephone: _____

4. PREVIOUS TENANCY: If you have rented before, please list your former property owner, beginning with the most recent. Use back of this page if additional space is required.

Property Owner/Manager	Address/Telephone	From Month/Year to Month /Year

(If you have no previous tenancy record, you may be required to provide a co-signer.)

5. CHARACTER REFERENCES: If you have never rented before, please list the names of **three** persons (other than relatives) who are personally knowledgeable of your suitability and reliability as a prospective tenant. Out-of-province applicants should list at least one New Brunswick reference, if possible.

Name	Address	Telephone

6. EMPLOYER AND MONTHLY INCOME OF LESSEE: If you are employed, please list your employers during the last year, beginning with the most recent; OR, if unemployed list your monthly income. Use back of this page if additional space is required.

Employer or Monthly Income	Address/Phone of Contact Person	From Month/ Year	To Month/ Year	Monthly In- come

7. CREDIT REFERENCES: (bank, credit cards, etc.)

8. LIST THE NAMES OF ALL PERSONS WHO WILL BE OCCUPYING THE ACCOMMODATION WITH YOU:

9. NAME OF PERSON TO CONTACT IN CASE OF EMERGENCY:

Address: _____

Telephone: _____

10. CONDITIONS:

I/We hereby declare that the foregoing information is true and complete. I/We understand that any false information may result in the refusal of my/our application. I/We hereby consent to a credit check and personal investigation.

(The Application for Tenancy and the lease may include other conditions related to such matters as parking, etc.)

SIGNATURE _____ DATE _____