



## Planning and human rights: legal cases and resources

### Provincial Policy Statement, 2014:

[www.mah.gov.on.ca/Page10679.aspx](http://www.mah.gov.on.ca/Page10679.aspx)

- **S. 1.1.1 (b, f)** and **S. 1.4.3 (a, b, e)** address affordable housing and other needs of *Code*-protected groups; and identifying, preventing and removing land use barriers to inclusion
- **Section 4.6** – PPS must be interpreted in a way that is consistent with the *Ontario Human Rights Code* and the *Canadian Charter of Rights and Freedoms*

### The Municipal Councillor's Guide 2014 (MMAH):

[www.mah.gov.on.ca/AssetFactory.aspx?did=4965](http://www.mah.gov.on.ca/AssetFactory.aspx?did=4965)

- Reminds councillors (s. 3, pp 31-2) that municipal decisions and actions must be consistent with the *Human Rights Code* and the *Charter of Rights and Freedoms*

### Legal cases: decisions and settlements

***Alcoholism Foundation of Manitoba v. Winnipeg (City)*, [1990] M.J. No. 212 (C.A.)**

- Group home zoning restrictions violate the *Charter*

***Tranchemontagne v. Ontario (Disability Support Program)*, [2006] 1 S.C.R. 513**

- Boards and tribunals must apply the *Code*

***Kitchener (City) Official Plan Amendment No. 58*, [2010] O.M.B.D. No. 666**

- Struck down zoning bylaw and official plan amendments that banned new development of all forms of residential care, group homes, rooming houses and non-profit services from a neighbourhood
- Suggested that these amendments were a form of “people-zoning,” and found that the City must consider the impact of planning decisions on *Code*-protected groups
- Decision: [www.omb.gov.on.ca/e-decisions/pl050611-Jan-14-2010.pdf](http://www.omb.gov.on.ca/e-decisions/pl050611-Jan-14-2010.pdf)
- ACTO media release: [www.acto.ca/en/cases/planning-human-rights/excluding-low-income-households-from-ontario-communities.html](http://www.acto.ca/en/cases/planning-human-rights/excluding-low-income-households-from-ontario-communities.html)
- OHRC media release: [www.ohrc.on.ca/en/news\\_centre/municipal-bylaws-must-follow-human-rights-code-omb](http://www.ohrc.on.ca/en/news_centre/municipal-bylaws-must-follow-human-rights-code-omb)

### ***Lynwood Charlton Centre v. Hamilton (City)*, [2012] O.M.B.D. No. 729**

- Allowed a group home to relocate despite the City's minimum separation distance (MSD) requirement
- Cited language from the PPS that reflects the human rights principles of inclusion and barrier removal for older persons and persons with disabilities
- Stated that the PPS requirement to permit and facilitate housing for special needs is a "powerful direction reflecting an important provincial policy interest" (para. 62)
- Noted that allowing the move would be consistent with municipal and regional plans
- Decision: [www.omb.gov.on.ca/e-decisions/pl120529-Aug-23-2013.pdf](http://www.omb.gov.on.ca/e-decisions/pl120529-Aug-23-2013.pdf)

### **Dream Team settlements at the Human Rights Tribunal (HRT) – 2011-14**

- Four cases at the Human Rights Tribunal of Ontario (HRT) brought by a mental health consumer-survivor advocacy group
- Cases were settled with Sarnia (2011), Kitchener (2012), Smiths Falls (2014), Toronto (2014), when each municipality removed MSDs and other zoning restrictions for group homes
- Human Rights Legal Support Centre media release:  
[www.newswire.ca/news-releases/fourth-and-final-municipality-settles-legal-challenge-over-discriminatory-bylaws---ontarians-with-disabilities-free-to-live-in-neighbourhood-of-their-choice-515800381.html](http://www.newswire.ca/news-releases/fourth-and-final-municipality-settles-legal-challenge-over-discriminatory-bylaws---ontarians-with-disabilities-free-to-live-in-neighbourhood-of-their-choice-515800381.html)
- Dream Team statement: <http://thedreamteam.ca/the-dream-teams-fight-against-discriminatory-bylaws/>

## **Expert planner report: remove MSDs for group homes**

**"Opinion on the Provisions of Group Homes in the City-wide Zoning By-law of the City of Toronto," Sandeep Agrawal, PhD, AICP, MCIF**

[www.toronto.ca/legdocs/mmis/2013/pg/bgrd/backgroundfile-56473.pdf](http://www.toronto.ca/legdocs/mmis/2013/pg/bgrd/backgroundfile-56473.pdf)

- Finds no planning rationale for minimum separation distances (MSDs) for group homes
- See Attachment 1 of City of Toronto Staff Report, February 28, 2013 to the Planning & Growth Management Committee, starting at pg. 33

## **Defining and classifying housing**

**Factors for assessing whether housing is a single housekeeping unit or a lodging, rooming or boarding house**

*Good v. Waterloo (City)*, 2004 CanLII 23037 (ON CA): <http://canlii.ca/t/1hsgr>

- The central criterion for identifying a single-housekeeping unit is the degree of occupants' collective decision-making
- The court considered factors such as: how rent is paid; furnishing by the occupants; payment for the utilities; room assignment; and organization of housekeeping issues

*City of Ottawa v. Bentolila*, 2006 ONCJ 541: <http://canlii.ca/t/1qz9q>

- Fire Code and Building Code provisions may differ, depending on the category of occupation, such as single housekeeping units vs. lodging houses
- In identifying a building as a lodging house, the court considered factors such as: the tenants each had separate leases with the landlord; there was no sharing of utilities or other expenses between occupants; and the tenants were selected by the landlord's agent.

### **The rationale for the distinction between single housekeeping units and lodging houses**

- This distinction may be based on different health and safety concerns for different kinds of housing
- *2161907 Ontario Inc. v. City of St. Catharines et al.*, 2010 ONSC 4548: <http://canlii.ca/t/2cktl>  
Lodging houses are subject to more onerous fire and life safety standards than single housekeeping units because the occupants engage in separate activities without a common interest.

### **Classifying housing:**

- The OHRC urges municipalities not to classify a building being used as a residence differently than other housing because of the nature of its occupants.
- A residential building that is occupied by renters might, from the owner/landlord's or municipality's perspective, be seen as part of a business. However, it is where the tenants live, and can be classified as a residential rather than a business use. The OHRC's position is that it *should* be classified as a residential use.
- Similarly, a residential building might be operated as a group home for people who occupy it. It is where those occupants live, and can be classified as a residential rather than an institutional use or as a facility. The OHRC's position is that it *should* be classified as a residential use.
- *Lynwood Charlton Centre v. Hamilton (City)*, [2012] O.M.B.D. No. 729: [www.omb.gov.on.ca/e-decisions/pl120529-Aug-23-2013.pdf](http://www.omb.gov.on.ca/e-decisions/pl120529-Aug-23-2013.pdf)  
One should appreciate that a group home is a home for its residents.

## **Responding to discriminatory opposition**

### **Neighbourhood housing tip sheet (OHRC)**

- Responses to concerns about rental, affordable, social and supportive housing  
[www.ohrc.on.ca/en/neighbourhood-housing-tip-sheet-fact-sheet](http://www.ohrc.on.ca/en/neighbourhood-housing-tip-sheet-fact-sheet)

### **Housing in My Back Yard; A Municipal Guide for Responding to NIMBY (Affordability and Choice Today)**

[www.fcm.ca/Documents/tools/ACT/Housing\\_In\\_My\\_Backyard\\_A\\_Municipal\\_Guide\\_For\\_Responding\\_To\\_NIMBY\\_EN.pdf](http://www.fcm.ca/Documents/tools/ACT/Housing_In_My_Backyard_A_Municipal_Guide_For_Responding_To_NIMBY_EN.pdf)

## **Yes, In My Backyard – a Guide for Ontario Supportive Housing Providers**

(Ontario HomeComing Coalition, 2005)

[www.acto.ca/assets/files/docs/HomeComing\\_YesInMyBackyard\\_2005.pdf](http://www.acto.ca/assets/files/docs/HomeComing_YesInMyBackyard_2005.pdf)

## **We are Neighbours: the Impact of Supportive Housing on Community, Social, Economic and Attitude Changes**

(Alice deWolff, Wellesley Institute, 2008)

[www.wellesleyinstitute.com/wp-content/uploads/2011/11/weareneighbours.pdf](http://www.wellesleyinstitute.com/wp-content/uploads/2011/11/weareneighbours.pdf)

## **Key OHRC publications**

### **In the zone: Housing, human rights and municipal planning**

[www.ohrc.on.ca/en/zone-housing-human-rights-and-municipal-planning](http://www.ohrc.on.ca/en/zone-housing-human-rights-and-municipal-planning)

### **Room for everyone: Human rights and rental housing licensing**

[www.ohrc.on.ca/en/room-everyone-human-rights-and-rental-housing-licensing](http://www.ohrc.on.ca/en/room-everyone-human-rights-and-rental-housing-licensing)

### **Neighbourhood housing tip sheet**

- Resource for planners, municipal staff, councillors

[www.ohrc.on.ca/en/neighbourhood-housing-tip-sheet-fact-sheet](http://www.ohrc.on.ca/en/neighbourhood-housing-tip-sheet-fact-sheet)

### **Policy on human rights and rental housing:**

[www.ohrc.on.ca/en/policy-human-rights-and-rental-housing](http://www.ohrc.on.ca/en/policy-human-rights-and-rental-housing)

## **Affordable housing policies, tools and programs**

### **MMAH guide: Municipal Tools for Affordable Housing**

[www.mah.gov.on.ca/AssetFactory.aspx?did=9270](http://www.mah.gov.on.ca/AssetFactory.aspx?did=9270)

### **MMAH Long-Term Affordable Housing Strategy**

[www.mah.gov.on.ca/AssetFactory.aspx?did=8590](http://www.mah.gov.on.ca/AssetFactory.aspx?did=8590)

### **MMAH Housing Policy Statement**

[www.mah.gov.on.ca/AssetFactory.aspx?did=9262](http://www.mah.gov.on.ca/AssetFactory.aspx?did=9262)

### **Canada-Ontario Affordable Housing Program**

[www.cmhc-schl.gc.ca/en/inpr/afhoce/fuafho/iah/afhopracca/afhopracca\\_009.cfm](http://www.cmhc-schl.gc.ca/en/inpr/afhoce/fuafho/iah/afhopracca/afhopracca_009.cfm)